

## Original Article

# Analytical Study of the Cooperative Federalism in the Indian Legal System

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Manuscript ID:

JRD -2025-171106

ISSN: 2230-9578

Volume 17

Issue 11

Pp. 37-40

November. 2025

## Abstract

*The Federal system has become an important feature of democratic states. Under the federal system, there exist three tiers of governance, i.e. central, provincial and local government. Moreover, in modern times concept of cooperative federalism has also come into existence. The Western federal democratic countries have developed accordingly over the years in a gradual manner. However, in the Indian democratic system, at the instance with the Constitution concept of federalism has been implemented. Therefore, it is necessary to analyse the Indian federal pattern from the point of view of the three tiers of governance along with cooperative federalism. The present research article provides insight regarding the same.*

**Keywords:** Federal system- three tiers of governance- cooperative federalism-written constitution- role of the judiciary.

## Introduction

While submitting the draft constitution, the chairman of the drafting committee, Dr. Babasaheb Ambedkar, had stated that, “although the constitution may be federal in nature, the committee had used the term union because of certain advantages”. The constitutional system of India is basically federal, but with striking unitary features. Federalism is derived from the Latin word 'foedus', which means agreement. In a federal system of government, national and local systems of government are combined under a common sovereignty with power sharing amongst both, as well as division of legislative and administrative powers among them. In **Gangaram Mulchandani Vs State of Rajasthan AIR 2001 SC 2616**, the Supreme Court reiterated that the Indian Constitution is basically federal in form and is marked by the traditional characteristics of the federal system, namely supremacy of the Constitution, division of powers and existence of an independent judiciary. Thus, it is apparent that India follows a quasi-federal form of government. Such a form of federalism calls for the states to increasingly cooperate with each other and with the centre as well. This gives rise to cooperative federalism.

**Concept of cooperative federalism:** Cooperative federalism is a form of federalism in which national, state and local governments increasingly interact cognitively and collectively to solve common problems. It was laid down by the Supreme Court in **State of Rajasthan vs Union of India 1978 SCR (1)**, that the Indian model of federalism is predominantly cooperative.

**Sir K.C. Wheare** defines it as, “the method of dividing powers so that general and regional governments are each within a sphere coordinate and independent.” It basically implies that, though there is a constitutional provision for division of powers in practice, these are to be exercised jointly by the centre and states, as observed by the distinguished jurist MP Jain, “these governments are interdependent and not independent.”

## Cooperative federalism enshrined under the Indian Constitution and Indian governance:

The Constitution of India does not use the term federal, but its working and also the working of the Indian government after independence has been on the pattern of cooperative federalism.



Quick Response Code:



Website:

<https://jrdrvb.org/>

DOI:

[10.5281/zenodo.17836604](https://doi.org/10.5281/zenodo.17836604)



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## How to cite this article:

Aswar, U. S. (2025). Analytical Study of the Cooperative Federalism in the Indian Legal System. *Journal of Research and Development*, 17(11), 37–40. <https://doi.org/10.5281/zenodo.17836604>

The cooperative federalism under the Indian legal system could be observed through the constitutional provisions for elections and representation, Distribution of legislative powers, distribution of the financial powers, distribution of the self-governance, administrative relations, recognition of interstate validity, adjudication of the interstate water disputes and interstate Councils. Further, the actual working of the cooperative federalism in the governance of India is analysed and studied under the heads, namely *Sarkaria* Commission, the Zonal Council, the fight against the COVID-19 pandemic, the Niti Aayog, centrally sponsored schemes and Judicial review and scrutiny

**a) Cooperative federalism as displayed through the election of the President:** Article 54 of the Constitution pertains to the election of the President of India; while it may not directly formulate cooperative federalism, it plays a significant role in fostering cooperative relations between the central government and the states. This is because the president is indirectly elected by an electoral college which consists not only of elected members of both houses of the parliament, but also of the elected members of the Legislative Assemblies of the states. This inclusion ensures representation of the state's interest. Further, even Article 80 of the Constitution makes a provision to have a Council of State that is the Rajya Sabha, which shall form a part of the parliament. The seats in the Council of State are filled by the representatives of the states and Union territories, and 12 members are nominated by the president. The representatives of the states are elected by the elected members of the Legislative Assemblies of the state. Thus, the constitution provides ample representation of the states in the election of the central government. This ensures balanced central state relations and a system of constitutional checks and balances, and overall representation of states in the Union Legislative process.

**b) Decentralisation and self-governance:** The 73<sup>rd</sup> Constitution Amendment Act introduced the Panchayati Raj system to rural India. The 74<sup>th</sup> Amendment introduced the Municipal System in Urban India. The 73<sup>rd</sup> amendment added part IX to the Constitution, which contained Articles 243 to 243O, while the 74th amendment contained Articles 243P to 243 ZG. Both of these amendments provide a basic framework for the decentralisation of powers and authorities and give local self-governments their due place in the Democratic setup of this country. However, the responsibility of giving it a practical setup rests with the states. These amendments, introduced in 1992, contribute to cooperative federalism in various ways.

i) These provisions empower local bodies with constitutional status and autonomy to enlist & exercise functional powers. ii) There is sharing of the powers and resources between the centre and state, Panchayat and municipalities, and their functions and responsibilities are clearly divided. iii) through the mechanisms such as district planning committees and metropolitan planning committees. These amendments have brought about partnership and cooperation in governance.

**Distribution of legislative powers:** Part XI and the seventh schedule of the Constitution provide for the distribution of legislative powers among the Union and the states.

Article 246(1) provides that the Parliament alone has the exclusive power to make laws with respect to any matter enumerated in the Union list. These include defence, armed forces, atomic energy, CBI, foreign affairs, citizenship, etc. Article 246(2) provides that both the parliament and the legislature of any state have the power to make laws relating to any of the matters enumerated in the concurrent list. It includes criminal law and procedure, marriage, divorce, contracts, transfer of property, forests, population, wildlife, etc.

Article 246(3) provides that the Legislature of any state has the exclusive power to make laws for any matters enumerated in the state list. These include public order, police, local government, sanitation, liquor, fisheries, etc. Such a clear demarcation of legislative powers constitutes cooperative federalism as i) it ensures that the states also partake in law-making, especially for matters catering to the needs of the population of a specific state. ii) It was held in *State vs Narayandas, AIR 1958 (Bom) 58*, that the state legislature is not a delegate of the Union Parliament, as both the Legislatures derive powers from the same constitution. Thus, the state legislature has an independent legislative power. iii) It was held in the *Re Delhi Laws Act 1912 (1951) 2 SCR 747* that one legislature cannot, by delegation of subjects that are specially within the fields, clothe the others with legislative capacity to make laws on that subject. iv) However, in the field of lawmaking, parliament still holds considerable precedence over the states. As Article 248 states that Parliament has exclusive power with respect to any matters not enumerated in the concurrent or state list, also called as residuary powers. (v) Also, the parliament can legislate with respect to any matter in the state list, if it is in national interest and as declared by a resolution supported by not less than two-thirds of the members of the Council of States (Article 249), or it can also legislate on such a matter during an emergency (Article 250). vi) Article 254 declares that when a state law conflicts with a law made by Parliament, the latter shall prevail. Thus, by distribution of legislative powers, the constitution ensures a smooth governance with laws catering to the specific diverse needs of different states. It, however, ensures that the centre still holds considerable dominance, so that the unity and integrity of the country is maintained. And there is some uniformity in the laws enacted.

**Administrative Relations: i) Article 261:** Through this article, it is stated that full faith and credit is to be given to the public acts, records and judicial proceedings of the union and every state throughout the territory of India. This means that any public act, record or judicial proceedings that are valid and legal in one part of the country must be recognised

and respected in all other parts of the country. This article promotes cooperative federalism by ensuring uniformity and consistency in recognition and enforcement of public acts, records and judicial proceedings; thereby contributing to the strength and integrity of the nation's governance.

**ii) Article 262:** This article allows parliament to adjudicate interstate water disputes; thereby preventing interstate conflicts. In *T N Cauvery Sangam vs Union of India, AIR 1990 1316*, it was clarified by the Supreme Court that the parliament could appoint a tribunal for such adjudication to ensure trust and transparency.

**iii) Article 263:** It provides for the establishment of an interstate council for resolving disputes which may have arisen between the states. Interstate councils are a recommendatory and constitutional body and were set up based on the recommendations of the Sarkaria Commission. It promotes cooperative federalism because it acts as a tool for cooperation, coordination and evaluation of public policy. It also deliberates on other matters of general interest as may be referred to it by the chairman, i.e. the prime minister. One of the main functions of the Interstate Council is to create a strong institutional framework to promote and support cooperative federalism.

**Distribution of financial powers:** There is a constitutionally backed system of distribution of the financial resources of the country. A fitting introduction to this arrangement has been given by the Supreme Court in *Koffee Board vs CTO AIR 1971, 870* sources of revenue which have been allocated to the Union are not meant entirely for the Union but have to be distributed among the states. The union and states together form one organic whole for the purposes of utilisation of the resources of the territories of India as a whole.

**GST and cooperative federalism:** Article 279 provides for the establishment of a GST council to establish a common national market and to ensure uniformity in tax rates across the country. All the states and the union territories came together with the central government to pool their sovereign indirect tax powers. The Supreme Court in *Union of India vs M S Mohit Minerals Pvt, Ltd. Civil Appeal No. 1390 of 2022* stated that the GST council established under Article 279A is not merely a constitutional body restricted to the indirect tax system, but it is also an important focal point to foster federalism and democracy.

**Finance commission:** Under Article 280, the President can constitute a finance commission which will make recommendations regarding distribution between the Union and the states of the net proceeds and taxes, which are to be allocated to the states and also principles governing the grant-in-aid of the revenue of the states. It also makes recommendations in measures needed to augment the consolidated fund of the state to supplement the resources of the panchayats and municipalities. Thus, overall, the constitution provides for a system of distribution of revenues between the Union and the states, thereby providing cooperative federalism.

**Sarkaria Commission:** To review the working of the existing arrangements between the Union and the state, the parliament constituted a commission on 9<sup>th</sup> June 1983 under the chairmanship of Justice R.S. Sarkaria; Shri B. Shivaraman and Dr. S.R. Sen were its members. The Sarkaria Commission report covered intergovernmental relations in the sphere of legislation and administration. One of the main recommendations was that it supported the idea of cooperative federalism and stated that it was more a functional arrangement for cooperative action than a static institutional concept. It put forth several other recommendations, like having a permanent interstate council, implementation of welfare schemes by states, empowerment of the All-India services, etc To promote cooperative federalism, it also recommended that Presidential rule in the state should be imposed under very extreme circumstances. The state governments must be involved in the appointment process of the Governor of the state.

**Role of Niti Aayog:** In 2017, the Niti Aayog called out for 'competitive cooperative federalism' to redefine the relationship between the centre and the states. The number of steps have been taken by it in this regard, and patterns hereinafter provided were adopted, i.e. meetings between the Prime Minister and Cabinet Ministers and all chief ministers, sharing of best practices, policy support, capacity development, aspirational district programmes, etc. It also promotes state centre partnership by development support initiatives to states (DSSS) and the Sustainable Action for Transforming Human Capital (SATH) programme (*National Portal of India, Niti Aayog*).

**Zonal councils:** These are statutory bodies established under the States Reorganisation Act 1956 and later reconstituted by the Zonal Councils Act 1956. There are five zonal councils tasked with the primary functions of promoting cooperative federalism and regional cooperation amongst the states in each zone. In the words of the Home Minister, the zonal council meetings are an effort to enable the centre and states to actively participate in development-related policies, and to make states stronger with support from the centre.

Some achievements of the zonal Council meetings are i) In the southern zonal Council meeting held in November 2021, progress was made with regard to renewable energy. ii) In the western zonal council meeting held in August 2019, a solution was found for the issue faced by coastal fishermen in deep sea waters, and PVC Aadhar cards with QR Codes was issued to them (*Vigilant India, Issue 16, Vol 12, Enabling Cooperative Federalism, 30th September 2023*).

**Centrally sponsored schemes:** These are schemes implemented by the state governments, but funded by the central Government. For example, the MGNREG Act and Pradhan Mantri Gramin Sadak Yojana. The central Government also provides guidelines for their implementation within the state Governments with the flexibility to adopt them.

**Cooperate with federalism during the COVID-19 pandemic:** India had a federal response to the COVID-19 pandemic; the nationwide lockdown was imposed under the Disaster Management Act, 2005, which finds its legal basis in the concurrent list. Thus, all states and local governments played a relevant role in eliminating this contagious disease. Many state governments even implemented their own Acts to mitigate the pandemic impact, for example, in Tamil Nadu, the Tamil Nadu Public Health Act 1939 was invoked to tackle the pandemic situation (*Cooperative Federalism in India and Covid-19, Rukmini Bhattacharya, IIPA Digest, Sept. 2021*).

**Judicial review and Scrutiny:** One of the best examples of centre-state cooperation is one which was observed in *Jaora Sugar Mill vs Madhya Pradesh AIR 1966, 416*, in which the MP state Government had enacted the Madhya Pradesh Sugar Regulation, Supply and Purchase Act 1958, which made sugarcane cess payable as prescribed. This act was later found to be invalid since the legislative competence for the same rests with the central government under the Union List; therefore, it was struck down. But the parliament realised that this act, along with several other state acts, suffered from the same constitutional inconsistency. Thus, it passed the Sugar Cess Validation Act 1961. The Supreme Court held that the Act was constitutionally valid, though the intention behind it may be questioned.

**Scrutiny under power context:** There are numerous challenges associated with the working of the cooperative federalism in India, they are regional power imbalance, political polarisation, central Government's interference in state matters, issue of fiscal autonomy of states, quest for administrative betterments, etc. Cooperative federalism is often used as a tool in political propaganda and tussles. However, it shows that just now much importance is given to this concept in the Indian scenario. Opposition political parties in India have termed the policies of the central Government regarding federal traditions as the 'confrontational federalism'. They criticised the central Government for the fiscal centralisation, obstruction of state programmes, destabilising state governments, misusing governors and suppressing the rights of the states where opposition political parties are ruling. Opposition political parties have accused the central government of violating the letter and spirit of Article 01 of the Constitution, which states that, "India, that is Bharat, shall be the union of states."

## Conclusion

Cooperative federalism is especially important for a country like India, which is home to many diverse groups and a huge population. Our constitution has provisions for it in all fields, legislative, administrative, financial, electoral, etc. Many other schemes and institutions have been introduced and established, as discussed above, to further integrate this concept into our governance. We need to strive for a balance between our federal and unitary aspects to ensure that cooperative federalism is upheld and that unity, effective governance and fair resource distribution are promoted.

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