

Modi's 'Cooperative Federalism': A Policy Promise in Search of Implementation

M.P. Singh¹, Rekha Saxena², and Ritesh Bhardwaj³

Promise of 'cooperative federalism' in intergovernmental affairs at home and 'Team India' in foreign affairs figured prominently in both the Bharatiya Janata Party (BJP) manifesto for the 2014 Lok Sabha polls and in the long electoral campaign led by the party's prime ministerial candidate Narendra Modi. The working of the Modi-led BJP/National Democratic Alliance (NDA) government over the last seven months or so is too early for a definitive review and evaluation. Nevertheless we propose to undertake a review of the installation of the first *de facto* one-party government after the Congress government led by Rajiv Gandhi in December 1984 and also the first coalition government with a single party majority in the Lok Sabha since November 1989, when the phase of federal coalition government began after nearly four decades of Congress predominance.

The term 'cooperative federalism' first entered into the lexicons of comparative federal theory and practice when the classical

1. Formerly Professor of Political Science, University of Delhi, Delhi, and presently honorary Senior Fellow, Centre for Multilevel Federalism, Institute of Social Sciences, New Delhi.
2. Professor of Political Science, University of Delhi, Delhi.
3. Assistant Professor of Political Science, Shyam Lal College (Evening), University of Delhi, Delhi.

modern federations of the USA, Canada, and Australia, especially the latter two, departed from the spirit of dual sovereignty within their constitutions and devised social security programmes under the provisional New Deal policy package of President Franklin D. Roosevelt in the USA and more comprehensive welfare state policies in Canada and Australia. These innovative policies were devised to deal with economic dislocations and devastations caused by the Great Economic Depression of 1929-30s and the Second World War (1939-1945). The formulation and implementation of these policies demanded close cooperation between federal and state governments.

Renewed emphasis on cooperative federalism in India today may be seen in three contexts: (a) adverse economic and social consequences of neoliberal economic reforms since 1991; (b) the present juncture when the newly elected Modi government is widely perceived to be intending to accelerate such reforms; and (c) extreme regionalisation of the highly fragmented party system since 1989 under Janata Dal-led National Front (NF) and United Front (UF) governments, BJP-led NDA governments, and Indian National Congress (INC)-led United Progressive Alliance (UPA) governments, though the 2014 general elections have shown a tendency to reduce this political fragmentation to an appreciable extent.

The Indian constitution was drafted in the post-World War II period, when the era of dual-sovereignty federalism was over and cooperative federalism had dawned. Cooperative governance is built into our constitution itself, both in the political and fiscal domains. If anything, it goes beyond cooperative federalism and verges on tutelary, even coercive, federalism, in some ways, as it gives overriding powers to the Union government over the States limited not only to the constitutionally contemplated emergencies but also in normal times.

However, India's federal constitutional balance was greatly disturbed both during the phase of Congress party's dominance under Indira Gandhi and later under the phase of coalitional governance. The pendulum moved excessively towards the Centre under Indira Gandhi. It swung overly towards the States during the phase of federal coalition governments. The Modi government is an opportune moment to seek to restore the federal constitutional

balance in intergovernmental relations within our parliamentary-federal system today. For despite BJP's single-party majority in the Lok Sabha and its continuing winning spree in State Assembly elections since then in Maharashtra, Haryana, and Jharkhand, some regional parties, both outside and inside the NDA continue to hold their grounds. And the Rajya Sabha still remains under an oppositional majority. This situation will not change until around 2017, by which time the changing contours of State party systems would come to be reflected in the federal second chamber.

Issues relating to federal governance were quick to surface soon after Modi's accession to power, e.g. replacement of judicial collegium by the National Judicial Appointments Commission (NJAC), attempt to replace the UPA-appointed Governors, trampling upon the autonomy of the UGC, University of Delhi, Indian Institutes of Technology (IITs), treating the meritocratic All India Services like a spoils system bureaucracy in Union government appointments by systematically weeding out from his charmed circle anyone who had worked with the previous UPA government, among others. The Union Ministry of Human Resources also stirred up a controversy over Sanskrit versus German by ordering in the middle of an academic session that Sanskrit be taught as the third language in central schools and private schools, replacing it by Sanskrit as it was in the view of the Union Government a deviation from the three-language formula (Hindi + English + a regional or primary language listed in the eighth schedule of the constitution) consensually agreed between the Union and States, among others. The matter went to the Supreme Court that sustained the decision with rationalizing this midstream disruption. On the balance, however, the above events indicate that during the current phase of federalization, autonomy of State governments has been less under threat than the autonomy of constitutional and statutory institutions in the social sector and civil society.

In several instances the revivalist Hindutva fringe element leadership in and out of the Parliament made some intemperate statements that agitated some sections of civil and political society. Moreover, the Vishva Hindu Parishad (VHP) announced and also partially organised reconversion of Hindus who had embraced

Islam or Christianity, calling it '*ghar vapasi*' (returning home). All this caused a great flutter in minority circles and disruption of parliamentary proceedings by the opposition parties. The Modi government found itself caught in a cleft stick. It stoically endured the tension between its developmental and Hindutva discourses, discreetly seeking to rein in the forces of revivalism, on the one hand, and reassuring the ruffled feelings of the minorities, on the other.

National Judicial Appointments Commission (NJAC)

Soon after taking over, the Modi Government picked up the threads of the incomplete process of bringing about judicial reforms by the UPA Government by changing the process of appointment of Supreme Court and High Court judges through a constitutional amendment bill that came to be approved by almost complete consensus among the political parties in the Parliament. Perhaps next on the agenda would be introducing some mechanism of judicial accountability beyond the ultimate recourse to the removal of judges by the President on resolutions in the Parliament in support of the move by two-thirds majority in each House. The UPA Government could not see through the judicial standards and accountability bill, and the Modi Government may take it up soon, given the agreement within the political class to move against the judiciary. It is feared that it might restart a conflict between the Parliament and the judiciary reminiscent of the turbulent 1970s under Indira Gandhi.

The constitution originally provided for the appointment of superior court judges by the President of India, which means the Union Executive, in consultation with the senior most judges of the Supreme Court for the apex court. For appointing the High Court judges the President made the appointments in consultation with senior Supreme Court judges and the Chief Justice of the concerned High Court and the Governor of the State. Since 1993 the process was replaced under a case law. The foregoing process of appointment by the Union Executive was formally continued but the substantive power came to be exercised by a judicial collegium comprising the Chief Justice of India and a few of his senior most judges who advised the President of India in consultative interaction with the Union

Cabinet but ultimately with binding effect on the government on higher judicial appointments.¹

Now under the amended constitution effected by the Modi government the judicial collegium is replaced by the NJAC comprising the Chief Justice of India as the chair, two other senior most Supreme Court judges, Union Minister of Law, and two 'eminent persons' to be nominated by a committee consisting of the Prime Minister, the Chief Justice of India, and the Leader of the Opposition or of the largest opposition party in the Lok Sabha. One of the two 'eminent persons' shall be nominated from amongst Scheduled Castes or Scheduled Tribes or minorities or women. The advice of NJAC, if not vetoed by any two of its members, is binding on the President, subject to only one request for reconsideration by the Commission. In this communication the Cabinet is to serve only as the transmission belt between the Commission and the President.

Governor: A Continuing Central Thorn in the Federal Flesh

There occurred a growing quantum of federalisation of the polity since 1989 to 2014 on account of the party system transformation from one-party dominance to multiparty coalitional governance and judicial intervention. Thanks to this major political shift, no issue of Union intervention in States' executive governance under Article 356 has so far arisen. Nor has there been any glaring instance of disallowance of State legislative bill by the Union government reserved for the consideration by the President under Articles 200 and 201. These could have been, going by past experience, major points of Centre-State tensions and conflicts. This was particularly endemic in the pre-1989 period. But even during the phase of coalitional governance, threatened or even actual exercise of these Union powers were not totally absent.

That the institution of Governor has remained insufficiently 'federalised' so far is evident from the fact the soon after the Modi Government's coming to power, the question of change of UPA-appointed Governors to make room for appointees of the new political dispensation to the Raj Bhavans raised its ugly head in an unseemly manner. Unlike earlier instances of this nature, this time,

the Union Home Minister did not directly come into the picture with verbal or written communication to the Governors appointed by the previous government to voluntarily quit or face removal. Instead, the Union Home Secretary was prompted to audaciously phone the Congress-appointed 'Their Excellencies' to bow out of office in deference to the change of the government at the Centre. Some governors resigned promptly, some initially resisted but subsequently complied, and two were sacked. Nine gubernatorial heads in all had rolled in the process. One Governor (Aziz Qureshi, Uttarakhand) has challenged the move in the Supreme Court where the case is in process. Governor Qureshi survives in office, putting both the Union Home Minister and Union Home Secretary on back foot in denial mode. But later he was curtly transferred to Mizoram. Qureshi is holding out in Mizoram with postures on some public issues ingratiating to the government. We may recall that the UPA after coming to power in 2004 had also indulged in the same unconstitutional game and removed the Governors appointed by the preceding NDA Government headed by Prime Minister Atal Bihari Vajpayee, and had fixed their own political retainers. The matter was taken to the Supreme Court in *B.P. Singhal v. Union of India* in 2004 and the verdict delivered in 2010. While the Court upheld the doctrine of President's pleasure in appointment and removal of Governors without assigning any reasons under Article 156 (1). Nevertheless, it added that this power 'cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons.'² We doubt whether the act of the NDA in 2014 fulfils the criteria laid down by the Supreme Court in 2010.

Urban Development

One of the first concurrent jurisdiction subjects to have received active attention of the Modi Government is urban development. Perhaps it is in recognition of the growing urbanization in the country and the world at large. The urban population in India in the 2011 census was 31.6 per cent; it was 27.8 per cent in 2001. India is fast moving to join the league of some other countries like China, Indonesia, South Africa, and Brazil in the global South

with urban populations at 50.6, 50.7, 62, and 84.6 percentage points respectively. It was this policy area in which one of the first intergovernmental ministerial conferences was convened by the Modi Government in New Delhi in early July 2014 chaired by the Union Urban Development Minister Venkaiah Naidu. The Union Government offered a joint 25-point charter for urban planning and management to the States. It included the objective of slum-free cities and GIS-based regional urban planning. The Union and State governments agreed to work together to provide housing for all by 2022 under a national declaration. Naidu also advocated the need to make government officers accountable under new laws for mishaps such as building collapse due to poor construction caused by corrupt deals made by contractors or builders. Recurrence of such disasters in national capital and all-over urban India has appreciably prompted this policy initiative. So far, however, no follow-up action by Union and State governments is noticeable. A total absence of an institutional mechanism in the domain of 'executive federalism' is being increasingly recognized and lamented.³

Another major urban development initiative of the Modi Government – 100 Smart Cities to be built – was unveiled early on in the interim budget presented to the Parliament by Finance Minister Arun Jaitley with start-off allocation of ₹6,274 crores. Urban Development Minister Naidu later said the scheme was being elaborated in discussion with all stakeholders, including State governments. These cities would be clusters of all modern amenities like education, healthcare, employment opportunities, and entertainment. These are the pull factors that cause rural-to-urban migrations.⁴ The Smart Cities thus betray the pro-urban bias of the present government that is further underlined by the lukewarm, not entirely negative approach to the pro-rural Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) initiated by the UPA Government which sought to mitigate the push factors in burgeoning urbanisation in the country. Demand for a similar policy intervention to deal with urban unemployment has been ignored by both the UPA and NDA governments so far.

Smart Cities is a major component of a new urban development mission projected to replace the Jawaharlal Nehru National Urban

Renewal Mission (JNNURM) of the UPA Government. The Urban Development Ministry in the Modi government has been slow in its move and until mid-December 2014 it was staring at the possibility of surrendering most of the fund allocated in the interim budget. The PMO set the December-end deadline for making a final presentation. Meanwhile, the future of about 250 unfinished infrastructural projects in big cities under JNNURM is a worrisome drag. The government has stopped releasing funds for these projects. The parliamentary committee of Ministry of Urban Development has critically observed: 'It would be a monumental waste of public money to have expended thousands of crores on incomplete projects only due to lack of coordination and flexibility between the Union and State governments. This would be a most undesirable state of affairs.' The Committee found that no urban infrastructure project had been completed in the seven mission cities in Uttar Pradesh, while only 33 out of 71 projects in Gujarat, 16 out of 46 in Karnataka, and 17 out of 50 in Andhra Pradesh had been completed. It recommended the completion of all the pending projects with continued release of federal funds in a time-bound manner. The Ministry in its new urban mission proposal to the cabinet would include provision of about ₹2,000-3,000 crores annually for unfinished projects towards their completion.⁵

The Smart Cities project has elicited early action by Maharashtra, the most urbanized among the States. The State Cabinet has decided to call these urban entities, mostly to be built around Mumbai and Pune, 'integrated cities' in the sense of being economically sustainable as 20 per cent of the 100 acre would be utilized for economic activities with walk-to-work concept. Centrally-sponsored Smart Cities would be precursors to the State government's 134 new townships across the State.⁶

The idea of Smart Cities has also elicited a good response from Singapore with an offer to build a knowledge city in India, replicating Tiangjin, Suzhou, Guangzhou, and Szechuan in China.⁷ The US multinational Microsoft has officially announced a partnership with the Surat Municipal Corporation in Gujarat, as one of 13 cities along with Paris, Washington, and Auckland across the globe. It has already devised a dashboard for the local body through which customized

view of key performance indicators in specific city domains like complaints, health, ongoing project status, and others would be available.⁸

Modi's 'Make in India'

Modi has taken up the challenge of reviving the economy by giving a thrust to industrial manufacturing. This is clear from his much hyped 'Make in India' campaign addressed to both national and multinational capital. It is critically dependent on the major factors of production like land, labour, and investment. With neoliberal economic reforms since 1991 and the quantum of public investment declining, private sector has assumed a critically important role in India's economic development. The two most important tasks that stare cooperative federalism in the face today in India are amendments in labour laws and land acquisition laws. In late July 2014, the Modi Cabinet approved amendments to three labour laws: Apprenticeship Act, 1961; Factories Act, 1946; and Labour Laws (Exemption from Furnishing Returns and Management Registers by Certain Establishments) Act, 1988, to begin with, in a series of reforms promised by all Union and State governments but never carried much forward. The proposed reforms include repeal of the draconian provision for imprisonment of company directors for non-implementation of the intents of the Act, dropping the obligation of the employers to absorb at least half of the apprentices in regular jobs, and addition of 500 new trades and vocations in the skill development schemes including Information Technology (IT)-enabled services. Factories Act amendments propose, among others, improved safety of workers, doubling overtime opportunities from 50 hours a quarter to 100 hours in certain areas and from 75 hours to 125 hours in others, greater penalties for violation of the Act by owners, allowing female workers in areas of industries hitherto barred, and reducing to 90 from 240 days of work before becoming eligible for leave with pay. Amendments to the Labour Laws Act intend to give greater freedom to companies with 10 to 40 employees to hire without cumbersome requirements of filing returns; the previous ceiling was 19.⁹

It is somewhat puzzling that the Land Acquisition, Rehabilitation, and Resettlement Act, 2013, put in place around the last days of the UPA Government more or less by parliamentary and federal consensus, has come to be seen in need of amendment so soon after its enactment. The pre-2013 Act dating back to the colonial British Indian government was so draconian that it forced landowners to sell land if the government considered it to be in public interest. The new Act claimed to be more fair and transparent. It allowed land to be acquired by governments for a public-private partnership project with the consent of 70 per cent of affected cultivators or with 80 per cent if the government acquires land for a private company to build power stations, ports or other public infrastructure. The Act requires acquirers to pay four times of the market price in rural areas and twice the market price in urban areas to landowners. Social impact assessments and resettlement and rehabilitation packages are also required. The Modi Government is trying to amend the Union land acquisition Act in line with Gujarat laws by diluting the clauses relating to consent, price, social impact assessment, and compensation packages. To amend the concurrent jurisdiction federal law, the Modi government convened a conference of State revenue ministers in June 2014. The minutes of the meeting drawn by the Union Ministry of Rural Development suggests that the changes proposed by State governments include the following points, among others:

1. Do away with or dilute consent for PPP projects;
2. Delink price of land from market value;
3. Reduce non-landowners on the site for compensation;
4. Give States power to use urgency clause for more than defence and strategic projects;
5. Remove clause that blocks speculative purchase;
6. Dilute retrospective clause;
7. Remove land-for-land provisions;
8. Rehabilitation & Resettlement prerequisites to only be for large projects;
9. Social impact assessment only for large projects;
10. State laws in this concurrent jurisdiction to have veto over Central law; and
11. Unutilised land not to be returned to landowners.

Strong contingents of farmers in the Parliament and opposition majority in the Rajya Sabha apart, the Rashtriya Swyam Sevak Sangh (RSS) and its affiliates have sought to be consulted before the government goes ahead with any amendment. With increased sense of entitlement among the landowners under the

2013 Act, amendments are sure to provoke strong popular protests and agitations.¹⁰

Soon after the winter session of Parliament ended, the government proceeded to amend the land acquisition law by a presidential ordinance, ignoring the opposition from the Congress and others both on points of substance and procedure. Within the government itself three ministers in the Cabinet meeting raised objections such as what if the President sits over it or returns it for reconsideration, why not consult the States again in view of continuing reservations in among some Union ministers and some State governments, ordinance may not be an effective way to get around the Parliament logjam, how strong would be a reforms signal via an ordinance. The President did raise a few questions as to the hurried move bypassing the Parliament. But after three important ministers briefed the President, the ordinance was cleared. The urgency was sought to be justified on the ground that the 2013 law provided for special notifications regarding relief and rehabilitation for 13 purposes, which must be placed in the Parliament for 30 working days for lawmakers for their study. December 31 was the last day for notification as per scheduled introduction of the bill in budget session of the Parliament and the winter session being disrupted by the opposition on alleged communal polarization by the elements in the ruling party and allied organisations and the Prime Minister's refusal to yield to the demand of the opposition to make a statement in the Rajya Sabha the government had to opt for an ordinance.¹¹

Ecological Federalism

Since the mid-1980s, a series of laws and regulations pertaining to protection of ecology and environment and disaster management have been put on the statute book, mostly in the concurrent jurisdiction of Union and State governments in India. In this policy area Environmental Impact Assessment (EIA) has emerged as standard policy regime the world over. India has also followed suit with its own version of EIA since its inception in 1994. With a major reform in it in 2006, the system has been in a state of evolution in consultation with the stakeholders at home and abroad. An academic

study by a legal expert has found the system lacking on multiple counts.¹²

The system of green clearances has become a bone of contention among Union and State governments, industries, ecological activists, and courts. Even some ministries of the Union government have voiced criticism of the Ministry of Environment and Forests (MoEFs). Incumbents in this ministry like Jairam Ramesh and Jayanti Natarajan, who replaced the former midstream in the Congress-led UPA-II government, came in for praise for overzealous ecological activism or red tapeism respectively.

The Modi government has taken a number of steps in the last seven months to speed up clearances, but it is still seized with the delicate task of reconciling the conflicting claims of economic growth and ecological protection. Recommendations of several environmental committees set up by this ministry are said by its officials under consideration for inclusion in the existing laws or a new umbrella law. The panel headed by the former Union Cabinet Secretary T. S. R. Subramanian has made 55 recommendations and the government is discussing them with stakeholders. Ideally, the committee should have done this exercise of discussion after having been given the status of a statutory commission with consequential autonomy. In any case, the Subrmanian committee's major suggestions include the establishment of a National Environment Management Authority (NEMA) and a State Environment Management Authority (SEMA) on a full-time basis as processing, clearing, and monitoring agencies in this policy area. In addition, the panel recommends: (i) Revised single-window, unified, and time-bound application procedure for environmental clearance of industrial, infrastructural, and defence projects; (ii) Special treatment for linear projects, power/mining and strategic border projects; (iii) Environmental mapping of the country clearly identifying the areas where projects can or cannot be allowed; (iv) Finalisation of the demarcation of coastal regulation zone and bringing it in public domain; (v) Incorporation of noise pollution in as an offence in the Environment Protection Act, 1986; (vi) Addition of polythene bags and plastic bottles in the banned list under the Wild Life Protection Act, 1972; (vii) Authorisation of officers of the Wild Life Crime Control Bureau to file complaints in courts;

(viii) New systems and procedures for handling municipal solid waste in cities; (ix) Economic incentives for increased community participation in farm and social forestry; (x) Market-related incentive system to encourage Green projects.¹³

Mines and Minerals

Union-State relations in the field of mines and minerals are complex as the subject is enumerated in the State List (entry number 50, taxes on mineral rights) but such rights are subject to the Union List (entry number 54, Union's power of regulation and development declared by a parliamentary law to be 'expedient in the public interest'). In coal block allocation scam case decided by the Supreme Court, the State governments of West Bengal, Maharashtra, and Odisha made some complaints against unilateral action of the Union government in allocation of coal blocks to private and public corporations for captive use of mines for industries. The Attorney General of India argued that the State governments as the owners of mines within their territories participated in the Steering Committee meetings and at no stage objected to the allocation of coal blocks by the Central government. The Court, however, observed: 'The process evolved by the Central Government for allocation of coal blocks for captive use has significantly and effectively reversed the scheme in the 1957 Act inasmuch as in most of the cases the applications have been made directly to the Central Government'. The Court went on to observe: 'It must be noted without an iota of hesitation that the process for allocation of coal blocks for captive use has rendered the role of the State Government only mechanical and the concept of "previous approval" in Section 5 of the 1957 Act meaningless after recommendation has been made by the State Government. It is not without any reason that confronted with this difficulty, the 1957 Act has been amended and Section 11 inserted in 2010 providing for allocation of coal blocks and also the mode and manner of such allocation'.¹⁴ The Court thus finds the 1957 Act in order but the 2010 amendment to it constitutionally unsustainable. The policy under judicial scrutiny pertains to the UPA government as well all governments since 1993, but it is the Modi Government now that

will have to evolve a corruption-free and federally consistent policy regime in this vital area of the national economy.

Multiculturalism and Asymmetrical Federalism

The BJP manifesto as well as the electoral campaign in 2014, as always, raised the issue of two provisional features of the Indian Constitution – Article 44 relating to the directive principles of state policy relating to the objective of a common civil code and Article 370 regarding Jammu & Kashmir. Both have come to – they need not, necessarily – be associated with the Hindutva ideology of the BJP and the RSS network of organizations. The BJP/RSS themselves regard these issues pertaining to constitutional vision of the nationalist founding generation in the Constituent Assembly. In our opinion there is nothing wrong in proposing a debate on these vital issues in Indian national life and in rational public democratic dialogue, which is sought to be undemocratically and unconstitutionally blocked by vested communal and neo-feudal political dynastic interests masquerading as 'secularism'. The Modi Government, for all its zeal, seems not to be intending to go beyond an open debate. The Kashmir issue is complicated both nationally and internationally and requires patience and cautious moves. Indeed, it is puzzling why the government does not aim at a low-hanging fruit of sub-state federalism first, i.e. regional and district-level devolution of powers going down to the Panchayats being demanded for over half a century without any real response from the State government.

Another related issues hotly being debated today are communal polarization, incidence of communal riots, and spurt in communally provocative political speeches and religious conversions rationalized as '*ghar wapasi*' (return of the Hindu converts to the fold of Hinduism). The excesses are not to be found on only one side of the political divides, yet the BJP in power must act with greater sense of civic and cosmopolitan responsibility. Rabid Hindutva and communal discord would derail the agenda of development and good governance on which Modi campaigned and won elections in 2014.

The dilemma of India is that it cannot uncritically imitate either the model of revolutionary secularism pioneered by the USA and

France or the model of evolutionary secular state under the façade of hegemonic Protestant Christianity as in the United Kingdom. The makers of the Indian Constitution wisely did not preclude the reformist role of the state in the religious domain in the interest of fundamental rights of 'internal' minorities within all religious communities, women and children. The Courts must also decide what is alien to natural human rights in religion-based personal and family laws and what religious practices are or not justifiably integral to a religion, e.g. *sati*, untouchability, 'triple' *talaq*, *jihad*, *tandava*, etc.

Fiscal Federalism

An overhaul of the fiscal federal system in place began with the public proclamation from the ramparts of the Red Fort in Prime Minister's Independence Day speech by announcing to abolish the Planning Commission. The government's proposed replacement of the Planning Commission by a Policy Commission was placed in the first meeting of the National Development Council (NDC) on 7 December 2014, where it was duly supported by a majority of Chief Ministers of States ruled by BJP and regional parties but opposed by a minority of Congress Chief Ministers and the Trinamool Congress Finance Minister. Working out of the details of this replacement would be completed by early next year.

In the meantime, we gather that the Modi government is considering a stronger institution that would be a combination of three-four divisions, each headed by a Secretary: Inter-State Council Division, Evaluation Division, Unique Identification Authority of India (UIDAI) Division, Direct Benefit Transfer Division. Chaired by the Prime Minister, it would be restructured to meet the needs of changing economic paradigm and comprise domain experts and States' representatives. It could provide internal consultancy services to the Centre and States on different policies and related matters. It could also be used to design medium- and long-term strategies.¹⁵

The existing Planning Commission has two major Divisions, namely, General Planning Division, and Programme Administration Division. It did sustained work in the Nehru era and the Lal Bahadur Shastri years (1950s-1965) in planning the strategy

of import-substituting industrialization, leaving agricultural development and social sector development largely in rain shadow. It got largely sidelined as a truly planning system by considerations of populist 'vote bank' politics as well as made subservient to neo-feudal rent-seeking by the political and bureaucratic class during the 1970s and 1980s. Since the early 1990s it came under the pressures of political federalisation and economic liberalization and globalisation. Democratic equality-claims came to be subordinated by federal and multicultural diversity-claims. Right from the time of Prime Minister Rajiv Gandhi the Commission became a butt of criticism and was continued more by political inertia than by momentum. In the belated debate on its alternatives three points of views have been put forward: (i) it should continue with a streamlined structure as we are back to the square, by and large, as in 1947, as argued by Pronab Sen; (ii) it should retain its present form and adapt to the transition from a mixed economy to market economy, as reasoned severally by M.S. Ahluwalia and D.M. Nachane; and (iii) it should given a farewell as contended by an Indian-American expert Ajay Chhibber, appointed to an Independent Evaluation Office by Prime Minister Manmohan Singh and dismissed by Prime Minister Modi.¹⁶

In a more discursive discussion, C. Rangarajan argued that the Planning Commission had been performing three major tasks: (i) formulating ideas regarding future economic profile of the economy; (ii) inter-State allocation of funds; and (iii) evaluation of projects prepared by Union Ministries. The first task could be given to a think tank; inter-State allocation of funds could go to the Finance Commission; and project evaluation could be entrusted to the respective ministries. The NDC could continue to play its present role in the changed economic scenario.¹⁷ As discussed above and below, the Modi Government does not want this change with continuity; it prefers a more root and branch transformation in view of parameter-altering transformations in the federal political economy of India.

Chaired by the Prime Minister, who will appoint its deputy chairman and CEO, the Policy Commission or NITI (National Institution for Transforming India) would comprise seven-eight full-time members besides two part-time members from

leading universities and research institutes. Arwind Panigariya, an economist of repute and one who used to praise the Gujarat model of development has been appointed the Vice-chairman of NITI. Other appointments are likely to be made soon. It will have a governing council of Union Ministers and Chief Ministers and executive heads of Union Territories (thus making the existing National Development Council redundant) and a regional council to deal with more than one State in a region. The basic thrust of the NITI would be on 'cooperative federalism' and a shift from top-down planning to consultative policy making. It will also serve as a think tank for Union and state governments and as a resource centre on good governance and best practices in India and abroad.¹⁸ NITI will reflect paradigmatic shift in political federalism and economic liberalism and globalization in India since the early 1990s. These developments suggest that our constitution has remarkable resilience to adapt to enormous changes in domestic and external parameters of the polity, economy, and structures of international relations and global capitalism.

Another major issue in debate in the realm of fiscal federalism has been continuing since the Congress-led UPA governments and the BJP/NDA government will have to address is the demand of Special Category status by some States other than the eleven sub-Himalayan States already enjoying it. This will require the revision the criteria for it devised by the Finance Commission and Planning Commission and approved by the government of India and the NDC. Also to be considered is the Raghuram Rajan Committee report on backwardness of States submitted to the UPA-II government. Perhaps a new committee or constitutional commission may also be appointed on this question.

A major issue in taxation reforms is the introduction of Goods and Services Tax (GST), which has been eluding consensus in the empowered committee of state's finance ministers appointed by the Union Finance Ministry for over a decade now. Imminent Union-State consensus in the empowered committee of State Finance Ministers chaired successively by West Bengal, Bihar, and Jammu & Kashmir incumbents and datelines for its implementation have been missed with agonizing regularity, including the lapsing of a

constitutional amendment bill introduced in the Lok Sabha by the previous UPA II government. As if at the end of the tunnel, Union Finance Minister Arun Jaitley in the Modi government has finally introduced the 122nd Constitutional Amendment Bill (2014) in the Winter Session of the Parliament, calling it the 'biggest tax reform since 1947'. It seeks to bring about a seamless GST across the country by removing the cascading effect of several State and Central taxes and levies, including excise duty, services tax, State and Central Value Added Tax (VAT), central sales tax, purchase tax, entertainment and luxury taxes – all included in this indirect tax regime. It proposes to include petroleum and octroi in GST while providing for a five-year compensation to the States for any possible revenue loss due to it. In the interim, petroleum products would remain subject to respective Union and State taxes until the GST Council, provided for in the law, decides to bring them under the ambit of the proposed GST. Yielding to the demand of the manufacturing States like Gujarat and Maharashtra, the Centre agreed to allow additional levy of one per cent on supply of goods in inter-State trade for two years, extendable further if the GST Council so decides. This could be a cause of continuing criticism as this one per cent discretionary levy at source contradicts the concept of GST which is a destination-based tax.¹⁹ This fiscal reform is significant in taxation administration, expansion of revenue, and speeding up of economic growth.

In the larger political economy, the Modi government has been grossly seized with the issue of streamlining the smooth implementation of the policy of Foreign Direct Investment (FDI) in multibrand retail trade abruptly announced by the UPA government in its last phase without caring to create workable Union-State consensus. Latest on the anvil of the present government are the proposals to allow FDI with a 49 per cent cap in defence and insurance sectors.

The Modi government and the BJP government in Rajasthan have already announced some proposals for industry-friendly labour law reforms, which every Union government since 1991 has been promising without making any legislative move in face of strong opposition by all the Central and State trade unions (including the Bharatiya Mazdoor Sangh or BMS affiliated with the BJP). The Modi

government also intends to amend the land acquisition Act recently amended by the UPA government in 2013, with long-drawn-out process of obtaining consent of State governments and with active support of the NDA in the Rajya Sabha. The Modi government is under pressure from industries to make the land acquisition law congenial for industrial and infrastructural development as the high prices allowed to land sellers and the requirement of obtaining the consent in stipulated proportions of the local community has virtually made it impossible to buy land, the industrialists and developers contend. Land being a State subject and land acquisition being a Concurrent subject, the Union government must move with Union-State consensus on the issue.

Foreign Policy

Foreign policy and treaty-making power, unlike the US presidential federalism where the President and the Senate representing the States jointly partake in it, are an exclusive Union executive power in the Commonwealth parliamentary federalism.

However, a practice of what has come to be called 'constituent diplomacy' has developed in the USA as well as Canada of going beyond the constitutional Provisions and consulting almost as a matter of right in practice the affected States or Provinces in foreign policy or treaty making. In Canada the Prime Minister's foreign visits are increasingly made along with interested provincial Premiers together forming Team Canada. Practice of US Governors or Canadian premiers going abroad alone has developed to engage with foreign governments on issues of common economic and cultural concerns with informal/tacit understanding of the federal governments. The government of the French-Canadian Province of Quebec has got away with maintaining a overseas office in Paris separate from the Canadian Embassy there. Some of these tendencies have also been seen in India, especially since the onset of federal coalition governments since 1989 and neoliberal economic reforms since 1991. A Chief Minister of Punjab in India managed to get to invite the Chief Minister of Punjab in Pakistan to hold a Resurgent Punjab Conference in Chandigarh a few years back to promote

economic progress through across-the-border trade and cultural exchange. The Chief Ministers of Tamil Nadu at the top of coalition governments headed by either All India Anna Dravida Munnetra Kazhagam (AIADMK) and Dravida Munnertra Kazhagam (DMK) have sought to dictate terms, not always successfully, to the Union coalition governments in Indo-Sri Lankan relations. These and other Tamilian parties in government or opposition are always up to such antics. The West Bengal Trinamool Congress Chief Minister Mamata Manerjee has also tried to do the same in India's relations with Bangladesh. She changed her mind on accompanying UPA Prime Minister Manmohan Singh a few years back in his diplomatic mission to Dacca at the eleventh hour, forcing him to shelve the signing of the Teesta river water sharing treaty with the government of Baangladesh. Since Trinamool Congress was part of the ruling coalition in New Delhi on which the survival of the government depended, Singh had to yield. Due to the compulsions of coalition government again, the UPA government headed by Singh during its first term (2004-2009) was forced to stall finalising of the Indo-US civilian nuclear deal for almost half of its tenure because of the opposition of the communist parties which were parts of the legislative coalition with the government without joining the cabinet. Only after Singh secured his government's survival by the supportive parliamentary voting by Samajwadi Party could his pet deal with the United States be formalized.

Governments in the past continued to have dialogue with Pakistan despite their meddling in internal affairs of India by formally inviting extremist and moderate separatists in Jammu & Kashmir. On coming to power, Modi sent an olive branch to the Nawaz Sharif government in Pakistan, but cancelled a scheduled resumption of Secretary-level talk between the two countries on the Pakistan High Commission inviting a Kashmiri separatist leader for talks in New Delhi just before the diplomatic meet in Islamabad.

Modi has been very vociferous during his long electoral campaign about professions of his commitment to cooperative federalism and Team India. He plunged head on with diplomatic foreign policy ahead of other concerns in policies and governance with great acclaim at home and abroad. In the South Asian neighbourhood,

the Global South, larger Asian theatre, and Asia Pacific, he has gone ahead with daring and drive that no Prime Minister since Nehru and Indira Gandhi can claim. From BRICS Bank to an Asian axis linking the USA, India, Japan, and Australia offers a security framework for India which may well be the best that can be feasible in a multipolar world in which our conventional sheet anchor of nonalignment has lost its relevance; yet, India cannot become a satellite to any power howsoever great.

It is yet to be seen how Modi makes good his promise of Team India. Since the BJP has a decisive majority in the ruling NDA as well as in the Lok Sabha, he may be tempted to act alone. But acting in unison will make sail through the Rajya Sabha where the ruling party and the coalition lacks a majority. His image and prestige abroad would also carry greater weight and mileage if he carries the concerned states together in Team India. He could also make a beginning in making occasional consultations in the Inter-State Council a sounding board for evolving consensus on foreign policy, especially in relation to the South Asian and Asian neighbours. Domestic consensus and stability is a key to successful foreign policy.

Institutionalising Cooperative Federalism

No less important than policy issues in intergovernmental relations is the question of institutionalising cooperative federalism envisaged by Modi. Ever since the turbulent 1970s democratic and federal reforms have moved the centre-stage, From the early 1980's, when the first Commission on Centre-State Relations under Justice R.S. Sarkaria was appointed, to the appointment of the second Commission on Centre-State Relations in the mid-2000s under Justice M.M. Punchhi, a series of recommendations have been made alongside the scholarly reformist discourse on the subject. None among the significant recommendations arising out of these reformist discourses have been implemented so far. The domain of intergovernmental forums has also remained beyond the scope of judicial scrutiny so far.

In presidential federations based of separation of powers the federal second chamber does not get eclipsed by the lower house as the custodian of parliamentary confidence in the government and

the holder of the purse string. So it can afford to play a prominent role in the conduct of intergovernmental relations. It is not so in parliamentary federations as the federal second chamber tends to be a secondary chamber to the national chamber to which the executive is collectively responsible and dependent for its survival in office. In parliamentary federations therefore 'legislative federalism' is replaced by 'executive federalism' as the typical mode of the conduct of intergovernmental relations. In India these forums of executive federalism are the Inter-State Council (ISC) (Article 263 of the Constitution first set up by a President's order in 1990), National Development Council (NDC) (set up early on by a cabinet resolution in 1950 for giving guidelines for formulation of five-year plans by the Planning Commission and their approval), National Councils in some policy areas under Acts of Parliament, and ad hoc Chief Ministers'/Ministers'/Secretaries' conferences. Consisting of the executive or administrative heads from the two orders of governments, these bodies are chaired by the Prime Minister or Union Minister or Union Secretary concerned. They normally decide by consensus as sensed by the chair.²⁰ Compared to Anglo-Saxon and the White Commonwealth federations, intergovernmental relations in India are less institutionalized and participative and rule-based.

Ironically, the most formal of the foregoing forums of executive federalism in India set up under the Constitution – ISC has remained most marginalized. Article 263 remained unimplemented until 1990, and, when set up, it first met in 1996 and thereafter infrequently. If Prime Minister Jawaharlal Nehru had used it instead of the NDC (whose membership is exactly the same as that of the ISC), the trajectory of its history would have been different. It could have doubled as a political as well as an economic planning body wearing two hats, depending on its agenda. But preferring flexibility and informality, Nehru set up both the Planning Commission and the NDC outside the framework of the Constitution. And when the ISC got belatedly set up under the Constitution by Prime Minister V.P. Singh of the Janata Dal-led National Front government in 1990, the Presidential order bringing it into existence omitted Clause (a) of Article 263 which is perhaps the most important of its functions: 'inquiring into and advising upon disputes which may have arisen

between States.' It might have been hoped that with the end of the one-party Congress dominance, the need and relevance of the ISC would be more acutely felt. As the inter-state disputes which were more easily settled in the highest intra-party forums like the Congress Working Committee and Congress Parliamentary Board and Congress Central Election Committee would now require an inter-party intergovernmental forum. The advent of multiparty system did occasion the first establishment of the ISC, but it still remained a marginal organisation. In addition to some foregoing reasons already mentioned above, it may also be attributed to the large-size coalition governments comprising as many as 8, 15, or 24 political parties – national or regional – and some or several of them in power in States. Thus the Central which council of ministers itself often became the site for airing inter-state grievances or discontents, at least for those leading parties in power in States which were partners in the federal coalition government and thus directly represented at the Central ruling establishment.

Only ten meetings of the ISC has been held so far since its founding in 1990, the last being held in 2006. Even the first meeting was held in 1996 – about six years after its establishment. If anything, the NDC has been more pressed into use in planning process. Since its inception, it has met 57 times, the latest being in 2012.²¹ Notably, the membership of the two bodies are common inasmuch as they include the executive heads of the two orders of governments.

A critical mass of reforms to produce what may be meaningfully considered cooperative federalism in India's parliamentary-federal system would include the following:

- (i) Governors should be an eminent person in some walk of life, from outside the State, not too intimately connected with active politics in the recent past, especially in the State concerned. They should have fixed tenure of five years and the doctrine of pleasure should be replaced by the process of impeachment as in the case of the President of India.²²
- (ii) The elevation of the enfeebled Inter-State Council to the original constitutional vision under Article 263.
- (iii) Constitutional entrenchment of the National Development Council presently set up by a cabinet resolution, as

recommended by Justice R.S. Sarkaria Commission Report on Centre-State Relations.²³

- (iv) Equal representation of States qua States in the Rajya Sabha with effective committees on issues affecting States and intergovernmental affairs, as recommended by Justice M.M. Punchhi Commission Report on Centre-State Relations.²⁴
- (v) The constitutional amendment in Section 3 of the Representation of People Act abolishing the domiciliary criterion for membership of the Rajya Sabha, which was sustained by the Supreme Court in *Kuldeep Nayyar v. Union of India* (2006) 7 *Supreme Court Cases*:1, should be reversed by a constitutional amendment to strengthen the federal character of the House.²⁵
- (vi) Permanent status for the constitutionally set up Finance Commission under Article 280 of the Constitution (presently appointed on an ad hoc basis every five years) as recommended by the Sarkaria Commission.²⁶
- (vii) Constitutional status for NITI whose final shape is neither yet clear nor final. We suggest the need of a constitutionally entrenched policy foundation or think tank with a mandate for autonomous role in public/national interest. Adequate say or representation of States in the Finance Commission and NITI Commission.
- (viii) It is desirable to have prior consultation by the Union government with the Inter-State Council before signing any treaty vitally affecting the interest of the States regarding matters in the State List.²⁷
- (ix) Regular meeting of the Inter-State Council and its committees and continuing dialogue among the Central and State governments on all intergovernmental affairs, as recommended by the Punchhi Commission. 'It should have sufficient resources and authority to carry out its functions effectively and to engage civil society besides governments and other public bodies.'²⁸

- (x) There is an imperative need to strengthen and empower the Inter-State Council: 'On the issue of creating a forum for coordination of intergovernmental relations', the Punchhi Commission 'is of the considered view that the Inter-State Council (ISC) need to be substantially strengthened and activated as the key player in intergovernmental relations. It must meet at least thrice a year on an agenda evolved after proper consultation with States.' The Commission goes on to suggest measures for its functional powers, including adjudicatory and quasi-judicial ones, aided by a professional secretarial assistance and domain and multidisciplinary experts and structural autonomy.²⁹
- (xi) Negotiation with greater involvement of States and representatives in Parliament by the Centre in case of treaties which affect or impinge on the rights and obligations of citizens as well as subjects in the State List. A note on the proposed treaty should be prepared by the concerned Union ministry and circulated among State governments for their views for the purpose of use by the negotiating team. If the implementation of a treaty entails financial obligations on part of certain States, the Centre should underwrite the additional liability of the concerned State(s) according to an agreed formula between the Centre and States. Financial obligations under treaties and agreements and their impact on State finances should be a permanent part of the terms of reference to the Finance Commission appointed every five years.³⁰
- (xii) In the interest of India's greater competitiveness in trade, commerce, and industry and to respond to increasing pressures of globalization, it is necessary to establish by law an Inter-State Trade and Commerce Commission under the Ministry of Industry and Commerce under Article 307 of the Constitution read with Entry 42 of the Union List.³¹
- (xiii) Establishment of a National Environment Management Authority and a State Environment Authority under a law as recommended by T.S.R. Subramanian Committee.

Endnotes

1. *Supreme Court Advocates-on-Record Association v. Union of India*, *All India Reporter (AIR)* 1994 SC: 368; and *In re Presidential Reference*, *AIR* 1999 SC 1: 1998.
2. Supreme Court, *B.P. Singhal v. Union of India*, May 7, 2010. Reportable version in typescript.
3. M.P. Singh, 'Accountability in Intergovernmental Polity', *Management in Government: Journal of Administrative Reforms*, vol. XLIII, no. 1, April-June, 2011: 79-88.
4. *The Times of India*, July 23, 2014, timesofindia.indiatimes.com..., accessed on 21.12.2014.
5. *The Times of India*, December 21, 2014, timesofindia.indiatimes.com..., accessed 21.12.2014.
6. *The Times of India*, July 23, 2014, timesofindia.indiatimes.com... accessed on 21.12.2014.
7. *The Times of India*, July 4, 2014, timesofindia.indiatimes.com... accessed on 21.12.2014.
8. *The Times of India*, December 20, 2014, timesofindia.indiatimes.com... accessed on 21.12.2014.
9. *The Economic Times*, July 31, 2014, articles.economictimes.indiatimes.com..., accessed on 21.12.2014.
10. *Business Standard*, December 22, 2014, BS <http://www.business-standard.com...>, accessed on 22.12.2014.
11. *The Indian Express*, New Delhi, January 2, 2015: 1-2; and January 8, 2015 : 1-2.
12. O.V. Nandimath, *Oxford Handbook of Environmental Decision Making in India: An EIA Model*, New Delhi: Oxford University Press, 2009.
13. *The Times of India*, New Delhi, January 5, 2015:10.
14. *Manoharlal Sharma v. The Principal Secretary and Others*, Supreme Court, August 25, 2014. Reportable version in typescript.
15. <http://planningcommission.gov.in...>, accessed on 24.12.2014.
16. Dilip M. Nachane, 'Yjana Bhawan: Obiter Dictum,' *Economic & Political Weekly*, vol. XLIX, no. 37. September 13, 2014: 12-17.
17. *Ibid*: 15-16.

18. *The Times of India*, New Delhi, January 2, 2015, p. 1.
19. *The Indian Express*, December 21, 2014, indianexpress.com..., accessed on 21.12.014.
20. M. P. Singh and Rekha Saxena, 'Intergovernmental Relations.' In John Kincaid, Johann Pourier, and Cheryl Saunders, eds. *Intergovernmental Relations in Federal Political Systems*, Oxford University Press Canada for Forum of Federations, Ottawa, forthcoming.
21. Rekha Saxena, 'Intergovernmental Relations,' in Meghna Sabharwal and Evan M. Berman, eds. *Public Administration in South Asia: India, Bangladesh, and Pakistan*, New York & London: CRC Press: Francis Taylor Group, 2013: 73-90.
22. Government of India, *Commission on Centre-State Relations, Report, Vol. II, Constitutional Governance and the Management of Centre-State Relations*, New Delhi, March 2010, Chapter 4, Para 4.6.01. A four-member constitutional commission chaired by Justice M. M. Punchhi.
23. Government of India, *Commission on Centre-State Relations, Report, Part I*, Nasik: Government of India Press, 1988, Chapter IX. A two-member constitutional commission chaired by Justice R. S. Sarkaria.
24. Punchhi Commission Report, *op. cit.*, Chapter 11, Paras 11.17.10-12.
25. *Ibid.*, Chapter 11, Para 11.18.02.
26. Sarkaria Commission Report, *op. cit.*, Chapter X.
27. Government of India, *Report of the National Commission to Review the Working of the Constitution (NCRWC)*, <http://lawmin.nic.ncrwc/finalreport/volume1.htm>, Chapter 8, Para 8.13.3. A ten-member constitutional commission chaired by Justice M. N. Venkatachaliah, appointed in 2000 and reported in 2002.
28. *Op. cit.*, Chapter 11, Paras 11.13.01-04, 11.25.01-10.
29. Punchhi Commission Report, *op. cit.*, Chapter 11, Paras 11.25.01-10.
30. Punchhi Commission Report, *op. cit.*, Chapter 11, Paras 11.5. 01-02.
31. NCRWC Commission Report, *op. cit.*, Chapter 8, Paras 8.8.1 & 2