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**COMPARATIVE ANALYSIS OF CREATIVE FEDERALISM ACROSS CANADA AND  
INDIA**

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**ABSTRACT**

*Federalism is a form of government in which two levels of authority share control over the same region. Larger territorial areas are typically governed more broadly by an overarching national government, while local issues are handled by smaller subdivisions, states, and cities. The central government and the smaller political entities both have the authority to enact laws and enjoy some degree of independence from one another. A model of intergovernmental relationships called cooperative federalism acknowledges the fact that the national and state governments' roles often overlap. The dual federalism approach, in contrast, asserts that the national and state governments have separate and distinct governmental tasks.*

*Cooperative federalism, in general, claims that political power is not centralised at any level of government or in any institution. Instead, power is shared between the federal and state governments. For instance, state and federal bureaucracies typically work together to implement governmental programs. Due to the division of duties among the several levels of government, there are numerous avenues through which organised interests and the general public can influence public policy. This article dives into the concept of Cooperative or creative federalism and attempts to compare the notion of Federalism in India and Canada.*

**Keywords:** *Creative, Cooperative, Federalism, Government, National, State.*

## 1. INTRODUCTION

There has been an explosion in recent years of federal social and economic programs implemented through grant-in-aid relationships with State and local governments. Concerns have been raised about the effectiveness of the grant-in-aid system, the role of the Federal Government as a policy participant in traditionally local functions, and the feasibility of putting in place the necessary management and administrative machinery to ensure the efficient and cost-effective implementation of cooperative programmes.<sup>1</sup>

Federal-State-local governmental collaboration systems face enormous philosophical and operational challenges. Those who care about Federal-state-local intergovernmental programmes concur that they face an equally massive management and administrative problem. The purpose of this article is to provide a high-level overview of the expansion of federal grant programmes at the state and local levels and to address the resulting challenges in fiscal management.<sup>2</sup>

The Federal Government is now either directly operating these programs or providing financial help in the form of grants in aid to State and municipal governments to shoulder the cost of providing these services. Jointly administered programmes have been defended on the grounds that they help the federal government achieve its goals in areas like education, health care, and social services, as well as urban development, by doing the following: recognising the variety of local considerations and needs; dispersing creative innovation in public services from one jurisdiction to another; and maintaining a fair and equitable tax system. Advocates and other Scholars have given the partnership arrangement names including "new federalism," "cooperative federalism," "dynamic federalism," and, most commonly, "creative federalism."<sup>3</sup>

## 2. GROWTH OF GRANT-IN-AID PROGRAMS

More than a century ago, several of the features that are now associated with Federal grants in aid to State and local governments were developed. The Morrill Act of 1862 allowed states to

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<sup>1</sup> Robert P. Inman & Daniel L. Rubinfeld, *Rethinking federalism*, 11 J. ECON. PERSPECTIVE (1997)

<sup>2</sup> MICHAEL BURGESS, *COMPARATIVE FEDERALISM: THEORY AND PRACTICE* (Routledge 2006)

<sup>3</sup> WALLACE E. OATES, *FISCAL FEDERALISM* (Harcourt Brace Jovanovich 1972)

acquire federal lands in exchange for creating educational institutions that taught fields including agriculture, engineering, and home economics. Federal agencies oversaw the awards and ensured they were used as intended by the legislation. Grants of this type eventually earned the label of "categorical" funding. In the early twentieth century, the federal government expanded its support for state and local governments through the introduction of new agricultural programmes. A new apportionment mechanism, mandatory State matching of Federal payments, and pre-approval of State plans were all innovations brought to the cooperative agricultural extension programme in 1914. State highway programmes, vocational education, and repair received funding from the federal government between 1916 and 1920.<sup>4</sup>

As a response to the economic crisis of the 1930s, the federal government established a wide range of assistance programmes, including those for the unemployed, workers' compensation, public housing, and health care. The goal of these initiatives was not only to assist individuals but also to reduce the strain on State and local budgets. The participation of State and local staff in these programmes was required to be covered by merit systems as a condition of the grant. After WWII, the United States government authorised new health, education, and urban regeneration programmes. The federal government has made it a priority in recent years to increase access to K-12 and higher education, revitalise economically depressed areas, provide better health services and medical care for the poor, combat poverty, and makeover formerly rundown urban neighbourhoods. To account for variations in State budgets, an equalisation factor was included in the formulas for allocating and matching funds. In addition, many grant programmes mandated that State grant funds be managed by a centralised body.

State and local government officials' failure to keep track of several overlapping benefits for which their governments may be qualified is a common complaint levelled against grant-in-aid programmes. There is a growing awareness of the need for better coordination, management, and administration as a result of the exponential growth in the number and size of grant programmes. Assigning specific categories of programmes to designated departments and agencies, consolidating grants into fewer categories, and consulting with State and local government

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<sup>4</sup> PAUL E. PETERSON, BARRY G. RABE & KENNETH K. WONG, WHEN FEDERALISM WORKS (Brookings Institution Press 2010)

officials in the development and execution of plans are all actions taken or proposed by the Federal Government.<sup>5</sup>

These actions point to opportunities for enhancements to grant-in-aid programme management and administration, but their effective fulfilment by specific measures will challenge even the most resourceful leaders. The 89th Congress approved legislation that, in a promising development for the organisation of Federal grants in aid to State and local governments, merged several grant authorizations for categorical health programmes (covering areas like tuberculosis, cancer, communicable diseases, and venereal diseases) into a single programme for comprehensive health services of a flexible nature and variety as set forth in plans developed by the States. All necessary guidelines, permissions, and funds come from a single source. Numerous internal and external investigations into how this methodology could be applied to other categorical award programmes have been prompted by these legislations.

### **3. DEVELOPMENT OF CREATIVE FEDERALISM IN THE INTERNATIONAL WORLD**

There was an innovative period of federalism that began in the '50s and lasted into the '60s when many new programmes were implemented and the federal, state, and municipal levels of government became more closely intertwined. President Lyndon B. Johnson (1963-1969) is credited with coining the term "creative phase" in a 1964 commencement address at the University of Michigan. As a matter of fact, the creative phase is inextricably linked to Johnson's Great Society series of programmes and policies, as well as his administration's views on intergovernmental relationships, which emphasised increased cooperation between levels of government, bolstering the role of local governments and citizens, and identifying innovative, or "creative," ways of tackling policy problems, especially poverty and racial injustice. Overall, the federal system became larger in terms of funding and the number of programmes offered, broader in terms of the range of governmental functions affected, deeper in terms of grant

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<sup>5</sup> Alfred Stepan, *Federalism and democracy: Beyond the US model*, 10 J. DEMOCRACY (1999)

conditions, and more complicated as the number of local governments and nonprofits receiving funding and implementing programmes grew.

There were three major characteristics of federalism that arose during the innovative phase: an increase in citizen and interest group participation in intergovernmental issues; improved programme planning and a stronger focus on administration; and a proliferation of categorical project awards.

In the imaginative stage, the federal government expanded its use of categorical project grants to assist state and local governments in addressing policy problems and advancing certain federal goals across a wide range of policy areas, including health, social welfare, the environment, transportation, and criminal justice. For instance, between 1959 and 1970, federal grant outlays grew from \$4.9 billion to \$23.9 billion, and in just two years (1966-1968), more than 100 project awards were awarded. Most of these grants had strict limitations on how the money might be spent, specific populations or sections of the country that were targeted, and mandatory reporting requirements, all of which gave the federal government a greater say in state and municipal affairs. In addition, many grants contained matching requirements, which increased the federal engagement in state and local allocation of budgetary resources by having states or localities contribute a percentage of the programme in addition to the federal funds.

During this time, the federal government also initiated several intergovernmental programmes that necessitated extensive advance preparation and management. In order to meet the goals, set by Congress or a federal agency, the federal government imposed administrative obligations on the states and municipalities. In fact, before receiving federal funding, many state and local governments were forced to submit extensive grant bids or requests. It took a lot of time, effort, and money to apply for and manage these awards. During the innovative period, it became increasingly vital for governors, mayors, programme professionals, and other state and municipal officials to successfully apply for and manage federal grants. Not all governments were able to access the new influx of federal money for the same reasons, mostly having to do with disparities in the fiscal administrative resources available to them.

During the innovative period, citizens and interest groups became increasingly involved in the federal government. In an effort to give minorities and the economically disadvantaged a greater

voice in local politics, several Great Society programmes sought to maximise citizen engagement at the local level. In fact, in order to help those closest to the people, grants for the creative phase of the categorical approach were generally given to local governments instead of state ones. Some recent federal initiatives, for instance, strongly suggested or mandated that state and local governments include programme participants in programme administration and policymaking. An example of this strategy is the War on Poverty's support for community action agencies, which aim to equip local residents and activists with the tools they need to take a more active role in determining the course of their community. However, there were frequent disagreements between residents and advocates and government officials and programme administrators when this method was used. During this innovative period, interest organisations also rose in importance inside the governmental framework.

The federal government also enacted a number of groundbreaking new programmes and laws throughout the innovative period that have had a profound effect on federalism. The Great Society initiatives of the mid-1960s saw the rapid establishment of most of these. Medicaid, Project Head Start, Model Cities, Water Quality Act, Elementary and Secondary Education Act, Voting Rights Act, and Older Americans Act are only a few of the new laws and programmes that have been passed. The federal government's involvement in state and municipal affairs was furthered during this time period by the establishment of several new federal agencies, such as the Departments of Transportation and Housing and Urban Development.

After some time had passed and government officials and citizens had gained experience with the creative phase's programmes and policies, a number of issues began to surface. For one, citizen disillusionment in the late 1960s was fueled by persistent discrepancies between lofty goals and actual accomplishments. In 1975, the Government Accounting Office evaluated federal aid programmes from the era and summed up a number of other issues connected to the innovative stage. For instance, the report highlighted how the federal government lacked mechanisms for disseminating information necessary for state and local governments to adequately identify and manage grant programmes; how state and local governments struggled to both identify sources of federal aid and apply for and administer such aid; and how the federal grant system was highly fragmented, with similar programmes being administered by different federal agencies, fostering complex and confusing processes. This led to increased requests in

the 1970s for the consolidation of narrower categories of grants into more comprehensive block grants, the simplification of application and implementation criteria, and the expansion of state and local discretion in grant administration.

#### **4. FEDERALISM IN INDIA**

The Indian Constitution has adopted a political system, which is federal in nature and there is provision for two tiers of government (strictly speaking the third tier cannot be considered a federal tier, at best a sub-tier of state governance): federal government and state. The constitution tilts balance largely in favour of the centre. The executive and legislative powers are distributed between the federal government (Centre) and regional government (State) by the constitution, and roles and responsibilities are clearly demarcated between them so that they could not infringe the rights of the other. It does not mean that India follows exclusive structural logic of power distribution as we find in the case of the USA. Constitution has adopted and innovated with the union model of federalism. Indeed, there are many important features of dual federalism, such as jurisdictional distribution; the written constitution and the supremacy of the constitution; the provision of the upper house and the independent judiciary etc.

The provision for constitution amendment has been made rigid by the Constitution so that neither the union nor the state could make change easily. None of the governments has constitutive authority to over or rewrite the constitution. Residuary power allows the federal government to encroach upon the authority of state governments. It is especially true in abnormal or unforeseen circumstances.

In normal circumstances, polity acts as federal as any other federation of the world. Undoubtedly, judicial supremacy ensures the credibility of the federal system. It is because of the independence of the judiciary that the Indian constitution invented the basic structure doctrine of the constitution, restricting parliament to alter features like democracy, secularism, justice, rule of law, federalism etc. The Indian Constitution makes provisions for a powerful centre and weak states by giving exclusive powers to the federal government, particularly in financial and national security sectors. An interesting thing in the matter of national security management is

that it is ensured by the federal government because it has the primary responsibility to protect the sovereignty, integrity, and dignity of the nation.<sup>6</sup>

The federal government has exclusive powers for enacting the laws related to national security and allied subjects and establishing the investigating and enforcing agencies for achieving the objective of national security at the national level. It means that it has authoritative power to ensure national security, but it cannot force the state governments to execute those laws because the states have the autonomous power to accept or reject them. However, the states are subordinate to the federal government and play a crucial role in maintaining law and order situation in their jurisdictional boundaries. Whether the federal government has authoritative power to enact the laws and establish the federal agencies, the states have administrative powers to execute them within their jurisdictional boundaries.

## **5. FEDERALISM IN CANADA**

The framers of the Constitution of Canada made the provision for a highly centralised state with a powerful national government by drafting the Constitution in 1867. The constitution of Canada was re-enacted in 1982, in which a bill, i.e., The Canadian Charter of Rights and Freedoms, was incorporated. However, there had been no change in the basic structure and institutions of government since its predecessor in 1867. The constitution ensures the representation of the interests of the provincial by making provisions for Senators in the federal cabinet. Therefore, the provision has been made for equal representation from Ontario, Quebec, the Atlantic Provinces, and the Western Provinces, the traditional four regions of Canada. The federal government is responsible to legislate the laws related to the matter of national security, national interests, and the Peace, Order, and Good Government of Canada 'POGG Power'.

However, the federal government has the authority to legislate on the matter of religious education for protecting the rights of minorities, which come under the jurisdiction of the

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<sup>6</sup> PAUL E. PETERSON, BARRY G. RABE & KENNETH K. WONG, WHEN FEDERALISM WORKS (Brookings Institution Press 2010)



provincial government. Therefore, it can be said that the Canadian federal system is 'quasi-federal' under the Constitution Act, 1867 on the basis of an analysis of the unitary features.

However, the powers have been distributed clearly between the federal and provincial governments by the constitution, but there have been noticed many complications and contradictions in distributing powers between both governments practically because many times, the originally contemplated balance of powers is reversed by the judicial decisions, interpreted by the Privy Council, such as one, the property and civil rights matter is part of the provincial government, but these things were shifted toward common law so that it can be made one of the most significant powers exercised at any level by the Privy Council. Much of what is now widely regarded as public law.

Second, the federal government has the power to legislate on 'POGG Power', and the scope of these powers is very broad, but it has been limited by the Privy Council's interpretation. For example, the Privy Council found it inadequate to sustain federal regulation related to the financial distribution of resources nationwide relating to the regulation of the provinces, which is a very important power under contemporary economic conditions.

Third, therefore, the many complications and contradictions can be noticed in the power-sharing mechanism in many areas, such as immigration. Therefore, it has control over the settlement authority in the matter of integration of immigrants. Similarly, the federal government has jurisdictional authority over criminal law, and it can legislate on that subject, but the administrative control over the course of criminal justice rests with the provincial government, which has a substantial influence on the provincial government.

Like this, there is no clarity in the matter of trade and transportation between the federal and provincial governments because the matter of international treaties is overseen by the federal government, while the executive authority is under the control of the provincial government. Therefore, the federal government cannot execute them unilaterally. However, the residuary powers are in the control of the federal government. Therefore, it is responsible for those subjects, too, that have not been given to the provincial governments constitutionally. However, the federal government has an obligation to meet the financial requirement of the provincial governments. Therefore, it makes the provision for equal distribution of revenues to all

provincial governments by adopting the principle of “distribution of equalisation revenues” among all provinces equally. Although it has the residuary power to over-collected revenues or financial resources. Even then, it constantly makes every possible effort to provide sufficient revenue to the provincial governments so that they could meet the requirement of their people or public services easily. In fact, the provinces have also revenue-generating authority from limited sources by levying the taxes, such as personal and corporate income tax, sales and services taxes, and exclusive access to the proceeds of the exploitation of natural resources.

However, these revenue sources generally vary from one region to the other depending on the resources available to them. The third stakeholder of government is the Municipality, which has the responsibility to look after the matters of local governance or matters of provincial governments. They oversee the local subjects such as road maintenance, municipal police, waste collection and management, water supply, etc. Many times, it has been noticed that the federal government misuses its 'spending power' to influence the provincial government for its political gain. The federal government plays an important role in facilitating economic stability, national defence, and territorial spread.<sup>7</sup>

Therefore, it is said that the Canadian Constitution is dissonant with a rigid approach to federalism. There is also much complication between the power of the federal and state governments over the system of equalisation of intergovernmental income redistribution in Canada. However, there can be many complications and contradictions over the matter of financial resource distribution and intergovernmental income redistribution in Canada. Always, practically, the Canadian government adopted the system of equal distribution of income redistribution. Therefore, the federal government has an obligation to make equal payments to the provincial governments based on collected revenues for meeting the requirements of public services, but there have been noticed mismatching practices of releasing equalisation distribution of resources.

Whether the principal authority for collecting revenue is of provincial governments, even then, the federal government has more powers over fiscal resources to fulfil programmatic objectives.

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<sup>7</sup> Larry Kramer, *Understanding Federalism*, 47 VANDERBILT L REV. (1994)

Undoubtedly, the matter of constitutional amendment has become a complicated and disputable issue in the Canadian political system. The amending powers have been given to the parliament, but there has been made a compulsory condition for doing so in the Constitution if there is a need to amend any part of the Constitution.

## 6. COMPARATIVE ANALYSIS

Any federal system's intergovernmental budgetary interactions would inevitably face vertical and horizontal imbalances as a result of the delegation of responsibilities and the distribution of resources among the several branches of government. Public order, police, public health, agriculture, water, etc. are all delegated to the states in the Indian federation, while the federal government is responsible for matters of national importance like defence, foreign affairs, the Supreme Court and the high courts, elections, etc. The federal government is responsible for levying taxes on things like non-farm income, customs, excise duties, and corporate tax, while the individual states are responsible for anything else. Taxes on land, alcohol, agriculture, goods, transportation, occupations, high-end consumer items, services, cultural events, stamps, etc. are all collected by the latter.<sup>8</sup>

The constitutional provisions that grant the states taxing authority and essential tasks requiring public expenditure create a vertical imbalance between the federal government and the states. There is a large disparity in the endowment of natural resources between the states on a horizontal scale. The provinces in Canada have access to all the major broad-based taxes, and there are no constitutional limits on the exclusive use of certain bases by different levels of government, both of which contribute to Canada's narrower vertical difference. Tax rates are another matter that can be decided at the provincial level. Intergovernmental fiscal transfer in Canada helps level off vertical and horizontal inequalities by ensuring a floor of national quality in provincial and municipal public services. As a result, low-income provinces receive unconditional block transfers to ensure a baseline for public service development across the country. There are many different states in India, and they all have their own unique geography,

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<sup>8</sup> MICHAEL BURGESS, *COMPARATIVE FEDERALISM: THEORY AND PRACTICE* (Routledge 2006)

population, economy, forest cover, and mineral deposits. Larger payments are needed for the poorer states' proportion of the population compared to the wealthier states.<sup>9</sup>

## 7. CONCLUSION

Federalism is an ever-evolving idea. However, its essential core includes autonomy and integration. Similarly, there is no fixed meaning associated with national security federalism. However, national security governance generally follows a complex model of centralization and decentralisation. Neither absolute centralisation nor decentralisation could possibly address the concerns of national security federalism. Undoubtedly, national security institutions are hierarchically organised.<sup>10</sup>

Canadian constitution provides more power to the federal government than the provincial government, and it has exclusive powers over the matter of national security, but it validates and accommodates the autonomy of provincial governments, in which both governments have a common interest. However, law and order is a state subject, and it is overseen by the municipality because the municipality has been made accountable for local administration or maintaining law and order by the provincial legislation.

What is being argued here is that given the fast-changing security scenario and board-crossing threats, one cannot but have decentralized and thoroughly networked governance when each level of government and each institution work as essential aid and cooperation of each other. The emerging model thus would be of interdependent-cooperative federalism, with less hierarchy but defined modules of coordination.<sup>11</sup>

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<sup>9</sup> Robert P. Inman & Daniel L. Rubinfeld, *Rethinking federalism*, 11 J. ECON. PERSPECTIVE (1997)

<sup>10</sup> Alfred Stepan, *Federalism and democracy: Beyond the US model*, 10 J. DEMOCRACY (1999)

<sup>11</sup> WALLACE E. OATES, *FISCAL FEDERALISM* (Harcourt Brace Jovanovich 1972)