

Inter-State Council and Indian Federalism: An Institutional Failure of Co-operative Federalism?

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Abstract: The Inter-State Council (ISC) that was envisioned in Article 263 of the Indian Constitution¹ was conceived as a top level institutional process of cooperation in federalism and established dialogue between the Union and the States. It has been a constant underutilised adjunct to the federal governance structure in India, notwithstanding the fact that it was constitutionally mandated. This study analyzes whether ISC has been failing as an institution of cooperative federalism and why. An overarching thesis that is being developed is that the poor performance of the ISC actually is not just the outcome of bureaucratic inefficiency or the occasional political oversight, but instead resides in institutional and political limitations inherent in the way the organization is designed and operates.

Based on a doctrinal approach, the study examines the text of the Constitution, judicial interpretations, and other applicable commission reports to determine the legal standing of the ISC and its structure of operation. This is supplemented with an institutional design critique appraising the consultative character of the Council, its reliance on executive discretion and the unenforceability of its results. A comparative federalism approach also places the ISC in the context of other similar intergovernmental organisations in other federal systems and how structural autonomy and regularisation are essential to successful intergovernmental coordination.

The paper is also innovative in its contribution to the existing literature by repositioning the ISC as not a dormant or failed body, but as an institution that is structurally constrained and whose constraints are indicative of tensions on a larger scale in the centralised form of federalism in India. The results are highly policy relevant as they can provide a clue to the redesign of the relationships between Centre and States as well as guide future reforms to be made in order to enhance cooperative federal governance in India.

Keywords: Inter-State Council; Cooperative Federalism; Indian Federalism; Centre–State Relations; Institutional Design

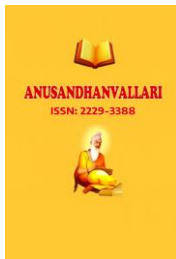
1. Introduction

Indian federalism since independence has experienced a radical shift of the traditional paradigm which was a majorly centralised system to an aspirational model of cooperative federalism in both legal and political texts. The creators of the Indian Constitution were aware of the difficulties of ruling such a large and culturally diverse country; therefore, the constitutional document foresaw a federal polity possessing the means of achieving harmony between unity and regional autonomy. Early post-independence federalism in India is characterised by scholars as the so-called quasi-federalism, i.e. a system in which unitary tendencies tend to prevail over the federal decentralisation, primarily owing to the constitutional allocation of powers and the dominance of Parliament over the important topics under the Seventh Schedule.

Article 263, authorising the President to form Inter-State Council (ISC) in case at any point it is deemed that the interests of the people would be served by such a body to resolve disputes, deliberate on common issues and

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¹ INDIA CONST. art. 263.



suggest coordinated policy measures, achieved the constitutional commitment of cooperative federalism. This is a short provision, which represents an institutional declaration of inter-governmental dialogue outside the courts or executive fiat. The operationalisation of the ISC, however, was not to occur until much later, nearly forty years after the adoption of the Constitution, by the suggestions of the Sarkaria Commission (1988), which called it imperative to have an organised forum to negotiate the relations of the centres and the states. The creation of the Council by a presidential decree in 1990 was aimed at enriching the constitutional framework of cooperative federalism by providing a permanent consultative forum of policy harmonisation between the Union and states, and also between the states.²

Even with these foundations of the constitution and the institution, the transformation of rhetorical commitment to successful practice has been inconsistent. The initial Indian federalism literature focused on high central control based on historical necessities like national integration and national development planning which tended to override state autonomy. The dynamics of federalism have changed over the years inspired by political pluralism, regional assertion, and economic liberalisation that have triggered a kind of resurgence of focus on cooperative processes. Recent examinations propose that even though Indian federalism is growing appreciative of shared power and consultative actions, substantive collaboration stays restricted through deep-rooted central supremacy, aggressively competitive inter-governmental conduct and institutional constraints.

1.1 Research Problem

In this changing federal structure, the practical performance of the Inter-State Council has been the matter of serious concerns. In spite of the fact that Article 263 gave the ISC a central role in enhancing inter-governmental dialogue, scholarly and policy critics note that it has rarely met, has poor agenda-setting capability and the results of its work are merely advisory, all of which undermines its ability to promote significant cooperation. The ISC meeting pattern reflects a lapse of time between meetings with very minimal involvement in urgent policy matters and this reflects a gap in operation between the intent of the constitution and the strategic practice. Furthermore, the lack of binding authority limits the ISC to proposing solutions without guaranteeing their implementation, which reduces its role in the policy disagreements resolution and expression of the national opinion on controversial issues.

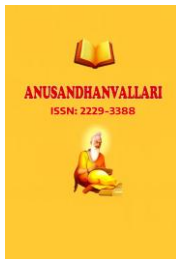
This tendency is indicative of a more general divergence between the ideological potential of cooperative federalism and the realised performance of the Council. Although there is rhetorical agreement over the relevance of collaborative processes in the Indian politics, the low functionality of the ISC begs the question of how constitutional forums can be translated into the workability of the governance process. The existence of such gaps sheds light on one of the central research problems: Why has an institution, whose constitution is fundamentally aimed at strengthening cooperative federalism, been poorly exploited and marginalised in its operations in the context of the Indian federal system?

1.2 Research Questions

To unravel this problem, this study examines three interrelated questions:

- Why has the Inter-State Council remained ineffective?
- Is the Council's failure rooted in institutional structures, political dynamics, or a combination of both?

² Kapur, Suvir. "INDIAN FEDERALISM SINCE INDEPENDENCE: A POLITICAL AND ECONOMIC PERSPECTIVE." The Indian Journal of Political Science 76, no. 3 (2015): 467–72. <https://www.jstor.org/stable/26534869>.



- What does the ISC's performance reveal about the practice of cooperative federalism in contemporary India?

These questions foreground the central investigation of this paper: the interplay between constitutional ideals and political practice in shaping inter-governmental cooperation.

1.3 Argument

This paper develops a central argument: the Inter-State Council, even though constitutionally described, is actually a dramatic form of federalism, not functional and substantive cooperation. That is, even though the ISC is an institutionalized commitment to be able to dialogue, its limited convocations, limited agendas, and non-binding recommendations make it mostly a ritual in the Indian federal matrix. The system of cooperative federalism in India, however, does not take place via the constitutional establishment of mandate bodies, but rather ad hoc executive, including the GST Council and informal consultative networks, which in many cases are more practical in policy co-ordination and dispute settlement. These executive forums although they are successful in some policy areas fall out of the constitutional vision as enshrined in Article 263, posing significant questions of the locus of inter-governmental cooperation in Indian federalism.

The thesis highlights a more general normative issue, namely that constitutional federalism can be formally accepted but failed to be institutionally implemented unless the consultative institutions such as the ISC are given the power to be regular, procedurally transparent and substantively authoritative.

1.4 Structure of the Paper

This introduction is followed by the paper that takes up five substantive parts. The following one examines constitutional and theoretical backgrounds of cooperative federalism and outlines the institutional design of the ISC. Then, the empirical data and case studies give light to the work history of the Council, pointing to the trends of participation and the lack of opportunities. One special section question is the structural and political determinants of the performance of the ISC, which encompasses comparative insights and reforms. Lastly, a conclusion draws conclusions and recommends improvements in reviving constitutional federalism by having strong inter-governmental institutions and promoting better cooperative practice.

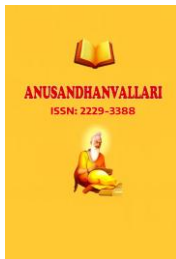
2. Conceptual and Theoretical Framework

2.1 Federalism and Intergovernmental Relations (IGR)

As a normative ideal and an institutional device, federalism presents the allocation of power between the central and regional governments, balancing the joint rule and territorial autonomy on a constitutional basis. Literature identifies major models that represent various forms of relational dynamics between government levels. Competitive federalism focuses on inter-jurisdictional competition rather than regulatory policies, fiscal incentives, or residency attraction, and argues that intergovernmental competition can discipline policy decisions and promote innovation among subnational units when a great deal of autonomy is given.³

Competitive systems Governments can compete to get capital or population in competitive systems, a concept linked to market-based analogies of governance rivalry in conditions of decentralization. Opposite this model, cooperative federalism focuses on mutual interaction at inter-governmental levels based on the argument that joint goals in policies and mutual decisions could be more effective in addressing inter-jurisdictional dilemmas, which cannot be tackled by either of the levels alone. Such collaborations are especially pertinent in federations where

³ Rupak Chattopadhyay & Liam Whittington, Apex-Level Intergovernmental Relations in Federal Systems: Comparative Perspectives and Lessons for the Indian Context (Forum of Federations), <https://forumfed.org/intergovernmental-relations-in-federal-systems>.



the overlapping of competencies or responsibilities is constitutionally entrenched, and the coordination of policy-enhances the outcome of the public service delivery across jurisdictional boundaries.⁴ Executive federalism, which is a prevalent mobilization in policy implementation settings, is a dependency on the intergovernmental administrative networks which may include ministers or senior officials to negotiate policy implementation or resource allocation and thus make practical federal relations a reality instead of mere constitutional text itself. These conceptualizations depict a spectrum in which competitive desires could influence the policy experimentation, cooperative formations could assist in policy consonance, and executive procedures could assist in enforcing shared agendas in a complex political environment. Such a theoretical terrain shows that federalism is not subdued to a particular form of intergovernmental interaction but is an expression of changing institutional reactions to governance issues.

The interaction of central and subnational governments is through intergovernmental relations (IGR) which are both formal and informal. IGR frameworks involve the use of negotiation, consultation, and coordination systems that reduce unilateralism and promote the use of joint problem-solving in various areas of government.⁵ Governments negotiate fiscal transfers, align regulatory standards, and plan consistent responses to new public policy questions through institutional mechanisms (i.e., councils, committees or federal forums) which offer a structure upon which the governments can deliberate and determine the response to the emerging problems. When frequently convened and substantially empowered such councils increase policy coherence because they allow executive actors to engage in dialogue about their responsibilities where they share responsibilities which brings about stability as well as efficiency in administration within a federal system. Through horizontal and vertical collaboration, the intergovernmental councils are able to eliminate disruptive unilateral activities and help achieve long-term policy solutions that take into consideration the needs of collectivities without encroaching upon territorial autonomy.

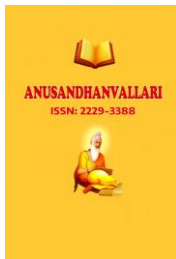
2.2 Institutional Effectiveness in Federal Systems

The institutional effectiveness of federal systems can be measured under various standards such as autonomy, the frequency of interactions, agenda control and the capacity to resolve disputes. Autonomy shows the amount of autonomy present in subnational units to set policy priorities, carry out administrative functions and distribute resources without being closely watched by the central authority. The institutional contacts and recurrent interactions that create familiarity and understandings in small areas mitigate transaction costs and create continuity in governance over policy arenas. Agenda control can be defined as the ability of the federal institutions to influence the priorities of the deliberative agenda, the policy scopes, and bring different interests together into coherent policies, with this ability being essential when overlapping competencies or shared legislative jurisdictions are common. Institutional performance is also anchored on effective dispute resolution mechanisms whether constitutional courts, intergovernmental tribunals or structured negotiation processes provide pathways of non-coercive resolution of disputes that emerge as a result of overlaps in jurisdiction or disagreement between policies.

The New institutionalism is progressive in the development of our knowledge of federal performance as its main focus is on the effects of formal rules, organizational structures, and historical legacies on the behaviours of actors and the dynamics of institutions. In new institutionalist conceptions, federal institutions are dynamic and constantly change due to institutional layering, adaptation and reinforcement of past structures, which is usually influenced by path dependency where initial institutional decisions produce self-enforcing mechanisms that

⁴ Johanne Poirier & Cheryl Saunders, Comparing Intergovernmental Relations and Cooperative Mechanisms in Federal Systems: An Introduction, 1–13 (2015).

⁵ Szmulewicz Ramírez, E. (2023). Intergovernmental Relations. In: Cremades, J., Hermida, C. (eds) Encyclopedia of Contemporary Constitutionalism. Springer, Cham. https://doi.org/10.1007/978-3-319-31739-7_221-1.



restrict or facilitate future change. According to the historical institutionalist branch of this theory, the developmental path of federal systems is deeply rooted in their shape of institutional structures which result in gradual changes and not radical ones over such a long period.⁶ The reason why some federal practices, which include fiscal transfer formula or pattern of judicial review, may remain into new contexts to produce consistent patterns of intergovernmental interaction and institutional behaviour is called path dependency. These path-based processes highlight why changes in federal politics are slow and that historical institutional structures still have a role to play in modern federal politics.

2.3 Cooperative Federalism in the Indian Context

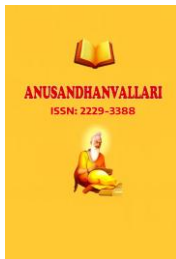
The federal structure of India is a distinctive combination of constitutional structure and political practice, which is often referred to as co-operative federalism, in the literature of political science. Although the Constitution gives the Union and state governments extensive legislative and administrative authority, the realities of carrying out national policy, redistributing revenues and expenditures, and social-economic planning have brought about cooperative government. The concept of cooperative federalism in India involves the collaboration between the Union and states in resolving common problems, crafting national priorities to suit the regionally-specific solutions. Since the economic reforms of the 1990s, and the growth of parallel lists of legislation, the pattern of Indian federal practice has been a substantial involvement of the central ministries, state governments and joint councils in the coordination of the implementation of policies. According to the scholars, this type of collaborative interaction is necessary considering the complicated socio-economic environment in India and necessities of public goods provision in various regional settings.

Judicial interpretation has been very instrumental in strengthening the principle of cooperative federalism by precluding unilateral central encroachments and the constitutional independence of the states. This Supreme Court case that made history in *S.R. Bommai v. Union of India* (1994) is an oasis in this direction.⁷ The Court in *Bommai* decided that the yearning of President Rule under Article 356 of the Constitution is a judicial factor and that the majority of a state government must be challenged on the floor of the Legislative Assembly and not by the subjective gubernatorial judgment. This historic ruling limited arbitrary removal of state governments, and was seen to give strength to the initial premise that federalism is one of the fundamentals of the Constitution's basic design, a necessary protection of state sovereignty against federal encroachment. *Bommai* strengthened the relations of cooperation based on respect of federal balance by generating the constitutional limitations on the power of the federal government and the need to have objective evidence of federal intervention.

In spite of the fact that federal balance is supported by the judiciary, political domination by the executive has maintained cooperative federal practice in India. The financial tools, centrally funded programmes, and the national policy frameworks of central governments can often have a significant influence and can override the autonomy of the states. Although cooperative federalism is manifested in institutional ways like the Inter-State Council and the GST Council, particular institutional forms of cooperation have a tendency to rely more on whether it is a politically willing sphere of agreeable negotiation, rather than a constitutional requirement on its own. Coalitional politics, partisan identification, and the centralisation of the decision-making process within the executive can occasionally make cooperative federalism incline towards centre outcomes, and this aspect takes a toll on the normative principles of equal power distribution. This means that the Indian national experience is one of persistently straddling constitutional promises of autonomy with political demands of executive dominance, and as a result, has had to negotiate and recalibrate its institutions to maintain some meaningful cooperation between government levels.

⁶ John Phillimore, *Understanding Intergovernmental Relations: Key Features and Trends*, 72 *Austl. J. Pub. Admin.* 228, 228–238 (2013), <https://doi.org/10.1111/1467-8500.12025>.

⁷ *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1 (India).



3. Constitutional Design and Mandate of the Inter-State Council

The legal basis of the formation of the Inter-State Council (ISC) is contained in Article 263 of the Constitution of India. The Article permits the President of India to formulate a council in case at any given time it seems that the interests of the people would be well served should a council be established with certain responsibilities pertaining to inter-state disputes, scrutiny of issues of common interest between the Union and states and suggestions on enhancing coordination of policy and action. Beneath its express words, the President can, by decree, decide what the Council is to do, how it is going to be organised and how, but with an emphasis on executive initiation and not constitutional permanence. This discretionary form puts the ISC in a position as a potentially loose forum of intergovernmental interaction, but leaves its operationalization to the political discretion of the executive as opposed to the mandatory character of its establishment as the Constitution comes into force. Article 263 thus represents a desire to enable inter-governmental coordination at the federal system, and at the same time, limits its institution by not requiring its establishment but giving it no binding powers.⁸

Article 263, as debated by the Constituent Assembly, shows that the framers were very subtle in their approach to the federal cooperation. Although it was widely acknowledged that some mechanisms would have to be implemented in order to regulate conflicts and place a liaison between the governance in a diverse union, there was apprehension that overbearing intergovernmental organs could limit parliamentary sovereignty and central authority. This left a consultative, advisory architecture as opposed to an adjudicative or binding decision making body. According to constitutional commentators, this structure is indicative of the cautious Indian Constitution of federalism which is federalism with a unitary bias so as to guarantee both national integration and administrative coherence in the early post colonial era.⁹ This led to the ISC being conceived as a place of dialogue and co-ordination as opposed to a tribunal with binding jurisdiction over conflict, and its recommendations were to be persuasive as opposed to binding.

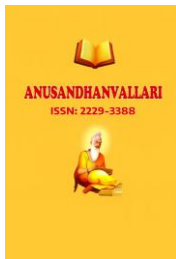
Article 263 was included in the original constitutional text of 1950 but it was not realised until 40 years later by the ISC. This lag has been greatly contributed by lack of urgency on the part of political actors to operationalise the provision coupled with a long-term tendency towards centralised administrative organisation. One of the most significant developments occurred with the Sarkaria Commission on Centre-State Relations which was commissioned in 1983 by the Government of India with the role of revising federal arrangements and proposing reforms. The wide scope of the Commission was indicative of increasing strains within the relations between the centre states such as legislative power, fiscal transfers and Article 356 use (President Rule). The Sarkaria Commission, in its report (1988) suggested forming a permanent Inter-State Council as required in Article 263 to provide an institutionalised consultative, consensus building and coordinating mechanism across various aspects of federal governance.¹⁰ Notably, the Commission conceived the ISC to make operational the entire range of clauses (b) and (c) of Article 263, which involved issues of common policy concern and concerted action between governments and not just issue inquiry in the course of dispute.

The Government took this recommendation and by a Presidential Order dated 28 May 1990 formally constituted the ISC with the Prime Minister as its Chairman and Chief Ministers of all the states and union territories as its members. As the vision of the Sarkaria Commission was normative and general-focused (with regular consultation, substantive agenda-setting, and long-term engagement), the literal structure of the ISC was dictated by the language of Article 263 of the constitution and discretionary interpretation of its mandate by the executive.

⁸ INDIA CONST. art. 263.

⁹ Km. Pragati, Centre-State Relations in India: An Analysis of the Sarkaria Commission's Recommendations and Their Impact on Federalism, 5 Int'l J. Advanced Legal Res., no. 1 (Mar. 2024).

¹⁰ Joginder Singh, Sarkaria Commission & Federal Relations in India: An Overview, 2 Int'l J. Res. 973 (2015), <https://edupediapublications.org/journals/index.php/IJR>.



The ISC had no independent constitutional or standing status or authority, as in other federations, it was fully institutionally entrenched as the federal councils; it was still subject to periodic reconstitution and executive oversight of its procedures and the frequency of its meetings. More so, the larger anticipation of the Commission to have the Council as an active brood of cooperative federalism has been checked with the infrequency of meetings and lack of control of the agenda.

Among the clearest structural constraints of the ISC, the character of its secretariat can be mentioned. In 1991, the Inter-State Council Secretariat (ISCS) was established which was placed under the administrative supervision of the Union government and headed by an officer in the rank of Secretary to the Government of India. Since the secretariat is manned and managed by officials who are appointed in the executive arm, it is not an autonomous administrative body. This dependency on executive management has brought about concerns on whether the ISC can be used as a neutral place of intergovernmental dialogue especially when states are harsh on the central policies or want to argue their independent standpoints.¹¹ The absence of institutional independence automatically reduces the capacity of the secretariat to take the initiative on agenda setting, implement actions, or maintain follow up actions.

The other important structural limitation is that there are no enforcement or follow-up mechanisms. Despite the fact that the ISC will be able to discuss the issues of common interest and will be able to make recommendations regarding the improved coordination, these decisions will not be binding on both the Union and the state governments. This advisory role is based on the constitutional text itself which does not give the Council the adjudicatory powers or structures to enforce compliance. Consequently, this has led to a lack of an institutional response in following up on the recommendation of the Council even in the event that there is consensus among the Council. This has helped to promote the view that the ISC is largely a mere consultative operation that does not significantly affect the federal governance provisions in comparison to other institutions such as GST Council, which has constitutional binding of fiscal affairs.

4. Performance Analysis of the Inter-State Council (ISC)

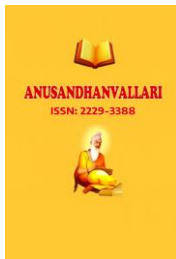
4.1 Frequency and Functioning

Article 263 of the Constitution of India in 1990 led to the formation of the Inter-State Council (ISC), to help the Union government and the states in their cooperation and to help the states themselves. The text of the Constitution authorizes the President to design such a council, in the event it seemed to him that the national interest would be promoted, and to prescribe its functions and methods. Article 263 by as much as it contemplated frequent interaction as a way of managing inter-governmental relations, it did not go further to direct a permanent body that had fixed meeting times. Rather, the meetings of the Council are organized through executive notification and are run more or less by consensus amongst the members.

Although it was established as the foundation of the Trust and has played an important role in monitoring activities, the number of meetings held by the ISC since its inception is abysmal: government documents show that fewer than 11-12 meetings have been held between 1990 and 2017. The extended planning periods such as the 2006-2016 difference within the two conferences depict the practice lapses, which have compromised the body as a routine platform of discussion. Similar concerns are brought out in the academic researches on cooperative federalism in India which point out that such an irregular convening of the Council undermines its ability to create an uninterrupted policy discourse and action among governments.¹²

¹¹ Avneesh Upadhyay, Cooperative Federalism in India: Navigating the Interplay of Collaboration and Competition in a Diverse Nation, 5 Indian J. Integrated Res. L., no. 3, at 421 (2023).

¹² Rajesh Choudhary, Federalism in India: Assessing State–Centre Relations and Dynamics, 4 Int’l J. Creative Res. Thoughts, no. 2, at 816 (2016).



The Presidential Order that created ISC had envisioned a meeting every three years or so, although in reality, the systemic irregularity has weakened its apparent role as a long-term inter-governmental consultation mechanism.

4.2 Nature of Issues Discussed

This discursive pattern of meeting has formed the character and content of discussion in the ISC. An analysis of ISC agendas shows that most of them are about broad consensus agenda topics like adopting commission reports (especially the Sarkaria and Punchhi commission reports on Centre-State relations) and not a real policy dispute. As an example, the early meetings put much emphasis on discussion and implementation of the recommendations of the Sarkaria Commission on financial, legislative, and administrative relations, but not the urgent conflict resolution.

The academic studies of the agenda content of ISC confirm that controversial Centre-State matters are either bypassed or directed to another institution. Dispute mediation is theoretically part of the ISC advisory and deliberative mandate, though those with deep political or fiscal conflict are conspicuously represented in the ISC records of its agenda. Consequently, the ISC has had an urge to be drawn to matters which can be debated along political boundaries without controversy such as administrative reforms, the quality of education, or disaster preparedness.

The makeup of the Council which insists on consensus on decisions is also discouraging to debate issues which would tend to divide the agreement between the constituent states and the Centre. This limitation of institutional design, as indicated by scholars, is stimulating agenda dilution, wherein the priorities are formed less by urgency of inter-governmental conflict than by likelihood of accord.

4.3 Outcomes and Implementation Deficit

Though the mandate of the ISC allows it to give recommendations on the coordination of policies, the recommendations made are quite sound and not binding. Absence of mechanisms by which governments are held accountable to adopt or implement ISC outputs has attributed to high implementation deficit. An example is the general agreement on reforms in the Sarkaria Commission which has not been converted into major legislative and administrative action in all states, a fact which indicates a limited leverage of the Council.

A number of scholarly studies contextualize this implementation gap in the framework of cooperative federalism in India, which compares the performance of the ISC negatively with other inter-governmental entities.¹³ Assessed in comparison to the outputs of the Finance Commission who are constitutionally required to propose devolution formulas of taxation, which would be enforced by the Parliament, the outputs of the ISC are not binding. Similarly, the GST Council, though being advisory too, has become an effective yet functional structure of fiscal federalism due to its decision being open to adoption by law and being part of the governance structure of the GST regime.

These comparative institutional studies highlight why ISC recommendations die on the vine: lack of statutory compliance channels and administrative inertia implies that a good number of proposals are on paper only and never become policy or practice either at the Union or state level.

4.4 Case Illustrations

To explain how the ISC has been ineffective in its operational impact, one can refer to several areas of inter-governmental conflict:

¹³ Sawan Yadav, Federalism in India and the Challenges of Cooperative Federalism: Constitutional Vision, Contemporary Practices and Emerging Trends, 5 Rev. Contemp. Sci. & Acad. Stud., no. 9, at 543 (Sept. 2023), <https://thercsas.com/rcsas5092025002>.

1. **River Water Disputes:** The most ongoing federal conflicts are the conflicts over water of inter-state rivers (e.g., Cauvery, Krishna). These wars are between common natural resources and they have challenged Centre-State relations severally. Although consultation may have been possible through the ISC, adjudication has been largely done under legal means, using tribunals under Interstate River Water Disputes Act (1956) or judicial under Article 131 of the Constitution, but has not been done through ISC processes.¹⁴ The fact that the Council has not been very instrumental in resolving such disputes illustrates how limited the Council has been when there is a big economic and political interest.
2. **Fiscal Federalism Conflicts:** Fiscal imbalances and disagreements on tax devolution are examples of areas of tension in cooperative federalism. Although theoretically the ISC offers a forum in which such issues can be discussed, actual negotiation has been conducted through such institutions as the Finance Commission and more recently the GST Council, the recommendations of which have a legislative consequence as well as a rule on revenue sharing. These constitutionally based bodies have been unresponsive to the ISC advisory recommendations on fiscal issues in terms of their impact on resource allocations.
3. **Central Legislation Impacting States:** The cases when central legislation interferes with the state autonomy such as the amendments in centrally-sponsored schemes or regulatory models tend to cause the political resistance of the states. According to the scholars, such disputes are rarely solved using the ISC since the Council has no legal power to force a change. Rather, states either use judicial review or political bargaining in the legislature to avoid the ISC altogether.

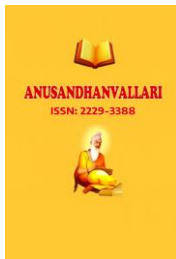
5. Political Economy of ISC's Failure

As an institutional device to foster cooperative federalism by establishing dialogue between the Union and state governments and among the states, the Indian Inter-State Council (ISC), stipulated in Article 263 of the Constitution of India, was an idea. Even though the text of the constitution recognizes the idea of cooperative federalism as an ideal, the general politics of Indian governance have had a systematic effect of limiting the relevance of the ISC. Practically, the political power has been centralized, in this particular instance, through the rise of a powerful executive in the form of a prime minister, which has undercut the institutional functions of forums with a federally oriented orientation such as the ISC (the concept of Indian quasi-federalism as conceived by Austin highlights this shift). The Centre executive executive has had a long-standing domineering influence over the collective decision-making process in the federal institutions, which is realized through giving precedence to central directives over federal decision-making. More recent commentary holds that this centralising drift, though not explicitly specified by the text of the constitution, has become a hallmark of the Indian political practice that ISC currently finds itself operating in and has undermined its ability to have an impact on power.

Centralization of Political Power and Declining Institutional Federalism

The persistence of a strong central executive within India's political framework has been reinforced through political and constitutional mechanisms, often at the expense of decentralised institutional forums designed to balance state autonomy with national unity. Even though the Inter-State Council is constitutional in origin and chaired by the Prime Minister, its decision-making outputs are advisory rather than binding, weakening its impact as an autonomous federal platform. The primacy of the prime ministerial office — enhanced through electoral dominance, fiscal controls, and centralised policy prioritisation — reinforces executive discretion over dialogue-based negotiating processes. Scholars have characterised Indian federalism as “quasi-federal,” with a structural

¹⁴ S. U. S. Mithra, An Analysis of Interstate Water Disputes, 4 Indian J.L. Rev., no. 3, at 244–254 (2024).



tilt toward central authority that was deemed necessary for post-independence political consolidation but now increasingly limits the effective functioning of constitutional bodies like the ISC.¹⁵

This centralisation is not merely an unintended consequence of constitutional design, but a product of political evolution. Modern governance practices, especially in the post-2014 period, demonstrate a trend toward consolidating authority within the Union executive — influencing policy processes and diminishing the bargaining space for states within formal federal institutions. As the political centre strengthens, institutional federalism — represented by bodies like the ISC — tends to be sidelined unless state governments and the Centre share aligned political priorities. The political logic of centralised authority reduces the ISC's role to a supplementary platform for elite communication rather than a locus for equitable negotiation.

Party System Dynamics and Federal Institutions

The nature and contours of India's party system have also affected the ISC's political efficacy. During eras of coalition governance at the Centre (particularly in the 1990s and early 2000s), there were stronger incentives for sustained federal negotiation and consultative policymaking, as coalitions required negotiation with regional parties to maintain parliamentary stability. Regional parties and coalitions tended to assert state interests in federal structures, giving institutions like the ISC a contextual space for authentic negotiation. As political scholarship notes, the interplay between intra-party competition, coalition governance, and federal institutions shaped an environment where federal bargaining carried tangible political weight.

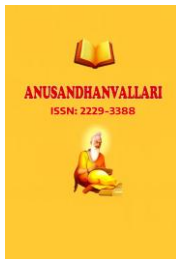
By contrast, periods of dominant single-party rule — notably in the current political cycle — correlate with a shift away from institutionalised bargaining toward more centralised governance models. Single-party dominance reduces the electoral and legislative necessity for negotiation with regional representatives, thus lowering incentives to meaningfully engage with federative institutions such as the ISC. Instead, political priorities are streamlined through central channels, and state representation becomes subordinated to central policy agendas. This dynamic undercuts the ISC's role as a platform for robust federal negotiation because the dominant party at the Centre can pursue policy objectives without needing structured consensus-building across state governments.

Furthermore, states governed by opposition parties have at times expressed scepticism about centralised federal forums, preferring alternative avenues for influence. Evidence from recent NITI Aayog meetings — where several chief ministers from non-aligned states chose not to attend meetings chaired by the Prime Minister — illustrates how political competition intersects with institutional usage in federal governance. The boycott by opposition-ruled states at NITI Aayog governing council meetings demonstrates a political calculus in which participation in central forums may be viewed as legitimising central dominance rather than fostering cooperative negotiation.

Executive Federalism Outside the Constitution

The Indian political economy has been characterized by the emergence of informal and executive-based mechanisms to coordinate the movements and interactions between governments in place of constitutional institutions like the Inter-State Council. Among them, it is possible to distinguish the National Institution of Transforming India (NITI Aayog), prime minister-chief minister (PM-CM) meetings, and other executive policy forums. These forums unlike the ISC exist beyond the constitutional requirement and in many cases; they perform policy coordination roles that circumvent deliberative federal arrangements. The NITI Aayog, which was formed in 2015 to replace the Planning Commission, has become a key coordinating think-tank and strategic planning apparatus, which includes representatives of the states and central governments. Despite its supposedly developed purpose to enhance cooperative federalism, its advisory nature indicates executive priorities and general recreation

¹⁵ Kapur, Suvir. "INDIAN FEDERALISM SINCE INDEPENDENCE: A POLITICAL AND ECONOMIC PERSPECTIVE." *The Indian Journal of Political Science* 76, no. 3 (2015): 467–72. <https://www.jstor.org/stable/26534869>.



of central policy models across states. In spite of the rhetoric of collaborative cooperation, researchers criticize NITI Aayog that it continues to uphold centralised influence on state policymaking to prioritize central leadership in determining national agendas and downplaying federal negotiation to strategic consultation.¹⁶

Moreover, the rising number of direct PM-CM relations, formal as well informal, has turned to be a more popular platform of inter-governmental communication. Such interactions, which are frequently planned out via executive directives and political branding simplify the process of policy coordination in a manner that filters symbolic collaboration without involving formal institutions such as the ISC. This process carries larger movements in the direction of executive federalism, where negotiations occur at an interpersonal level between union and state politicians, and not through negotiated results using structured and constitutional institutions.

In addition, modern political experience indicates the existence of an ambivalent association among constitutional federal forums, politically motivated executive mechanisms. Although formal organizations such as the ISC are laid down in the constitution, when it comes to numbers, it all depends on the political will and alignment across governments. Conversely, informal relations and executive relations have spread at the cost of institutional federalism, whilst the fora explicitly created to balance between the interests of the Union and the states have been marginalised. This marginalisation highlights a central paradox in political economy in India, the simultaneity of constitutional ambitions of cooperative federalism and factual centralised policy-making that is based on executive prerogatives.

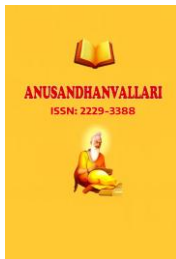
6. Comparative Perspective:

The mechanisms of intergovernmental cooperation of the federal systems of the world have been designed differently, and in most cases, these mechanisms can be traced to the design of constitutions, political processes, and administrative culture. These examples demonstrate the different institutionalization of intergovernmental dialogue and decision-making process by the Council of the Federation in Canada, the National Cabinet in Australia, and the Bundesrat in Germany with varied implications to legal authority, the independence of the agenda, and embeddedness in policy decisions each of which can be useful to the India Inter-State Council (ISC).

The intergovernmental relations in Canada have developed in practice as opposed to text in the constitution. Canadian Constitution fails to introduce a formal intergovernmental council, rather, provincial and federal leaders have created institutionalized forums throughout the years in order to deliberate on common policy issues. A multilateral institution that convenes at least twice a year, the Council of the Federation (COF) was established in 2003 by the provincial and territorial premiers in Canada to facilitate interaction among the provinces and point out common positions on issues of mutual interest. Its mandate extends to the construction of constructive Confederation and the consolidation of interprovincial cooperation in developing economic and social policy in the event of what some areas may have legislative jurisdiction and in what areas they might need coordination in approaches. More importantly, the power of the COF is a result of political consensus, not a constitutional granting of power, and it does not have the ability to influence the results of federal policy by using power legislatively or executive. The success of the forum is based on its ability to mobilize regional voices, and indirectly impact on the national agendas via the indirect political leverage as opposed to obligatory legislative thrust. This horizontal model of cooperation has allowed provinces to collectively express their interests and bargain with the federal government as one of collective power and yet remain autonomous at provincial level.

Australia, by comparison, has a more recent example of intergovernmental governance in the form of the National Cabinet, which was created in response to the COVID-19 pandemic. Conventionally, Australian federalism incorporated the Council of Australian Governments (COAG), which was the main factor in the federal-state

¹⁶ Rajendra Prasad, A Decade of NITI Aayog: Federalism, Sustainability, and Governance Challenges in India, 11 Int'l J. Applied Soc. Sci. 536, 536–540 (2024), <https://doi.org/10.36537/IJASS.11.12.536-540>.



collaboration. COAG did not meet very often and was accused of being procedurally rigid and having little effect on substantive policy co-ordination. COAG was subsequently substituted by the National Cabinet, which consists of the Prime Minister and the heads of the states and the territories, and it represents a prime example of an executive-based intergovernmental forum. The National Cabinet, though not established on the basis of the Australian Constitution, has facilitated regular and practical communication especially in times of emergency to allow the jurisdictions to organize the policy responses to suit the local circumstances without compromising the directions of national significance. Scholars who have examined federal-level practice in Australia in relation to federal propositions of pandemic response observe that the National Cabinet has helped in participative inter-governmental interaction, enhancing responsiveness and responsiveness to policy changes without encroaching on state competencies.¹⁷ However, also the informal and executive-oriented nature of the body casts doubts on its institutionalization and transparency in the long run as its suggestions are not legally obligatory but are subject to the further legislative or administrative action by every government.

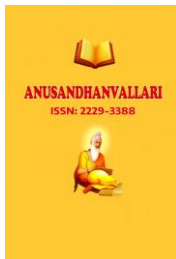
In Germany, the Bundesrat is in a stark contrast with the Canadian and Australian models since it is a federally institutionalized chamber that engages directly in the process of legislation in the country. Bundesrat As a formal institution of the federal state in the Basic Law of Germany, the Bundesrat is a shared-rule institutional design: through the governments of the 16 Lander (states), its members represent their interests in federal legislative procedures and have to give their approval to a wide category of laws, including those touching on Lander competencies, finances, and constitutional amendments. The Bundesrat has some legal power, in a few instances a veto, over federal law, unlike the entirely advisory or consensus-based forums, concentrating on the deep-rooted cooperative federalism in which sub-national governments have structural power in national politics. The role of the Bundesrat does not rest on mere periodic meetings but it has become part of the legislative process by way of formal review, consent and mediation. A single academic evaluation provides that the institutional design of the Bundesrat such that Lander governments have a voice in drafting or obstructing legislation that has impacts on their administrative and budgetary functions so that the central is not a unilateral domination.¹⁸ Although the role of the Bundesrat at times decelerates the process of decision-making, its constitutional power gives the intergovernmental negotiation a direct law-making rather than consultative or symbolism role.

These federations are different, but they help to show opposite ways of maintaining a balance between national coherence and sub-national autonomy. The example of the COF in Canada shows that horizontal collaboration between its constituent units can make provincial voice and influence stronger without constitutional authority, which is appropriate in a system where political bargaining is the primary factor. The experience of the National Cabinet of Australia demonstrates that responsive and adaptive executive forums can lead to better coordination during the crisis, although it will depend on the political will and not the law. The Bundesrat of Germany highlights the importance of embedding the sub-national involvement in the legislative authority into the constitution to safeguard the regional interests and incorporate the intergovernmental negotiation as the fundamental part and parcel of the decision-making process.

In the case of the Inter-State Council of India, these instances allude to a number of lessons. To begin with, there is the issue of legal authority: councils that have constitutionally or legally binding powers, such as the Bundesrat, are further embedded into the decision-making systems and, therefore, tend to produce more long-lasting policy results. The absence of such authority can cause the advisory councils to be unable to transition away from consensus-building to implementation as in the case of low institutional impact in ISC. Secondly, agenda autonomy - the right to decide and regulate on its topics of discussion increases the relevance of a council. Bodies

¹⁷ Guy Z. Hill, John Garrick & Nat Barton, Fault Lines of Federation: Australia's Intergovernmental Cooperation and Human Rights During the Pandemic, 30 J. Transnat'l L. & Pol'y 119 (2021).

¹⁸ Grotz, F., Schroeder, W. (2023). The Bundesrat. In: The Political System of Germany. New Perspectives in German Political Studies. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-32480-2_11.



such as the Canada COF(that hold regular and independent meetings) and define priorities will tend to foster trust and co-operation within the body but those with episodic or the Centre dominated agendas will face marginalization by the forums. Thirdly, institutional design and political culture are associated with embeddedness in decision-making, which is the extent to which the outputs of an intergovernmental council are transformed into statutory or executive action. The federal negotiated compromises are guaranteed by the constitutional embedding of Lander voices in Germany, which means that federal decisions usually incorporate a compromise, even though in other bodies, such a mechanism is usually non-existent, and the compromise often may lead to watering down or disregard of their recommendations.¹⁹

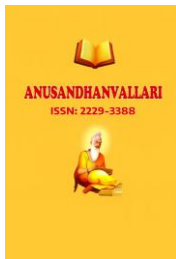
7. Rethinking Cooperative Federalism in India

The constitutional structure of India represents the perfect example of cooperative federalism, which presupposes the collaboration between the Union and states as the fundamental principle of governance. Such cooperation can be traced in the provisions of Articles 245-263 that outline the allocation of legislative powers and enable such consultative bodies as the Inter-State Council (ISC). Nevertheless, the actual existence of intergovernmental affairs is not necessarily in line with this constitutional vision which creates a gap between the form and content of cooperative federalism that raises the question about whether cooperative federalism has become substantive or it has been turned rhetorical. Theoretically, cooperative federalism is based upon constitutional text and institutional structures, but in reality, it has continued to experience a series of challenges due to political centralization, under-use of institutions and only a few instances of engagement, which has made scholars propose that it has been hovering between ideal and illusion, instead of always informing the relationship between governance interactions. Rhetoric used in partnership with the states, often conflicts with the political culture of placing central leadership and central decision-making which leads to quasi-federal relations whereby the exercise of autonomy is not even, and the institutional dialogue is under executive discretion.

The history of ISC operations is one of the primary examples of such a disconnection. Article 263 permits its creation to encourage consultations on the issues of common interest, but its gatherings have been infrequent and its publications have been mainly consultative, with little impact in influencing the long-term policy solutions. The constitutionalization of the ISC is not transferred to mandatory gatherings or resolutions, and this fact suggests that, although it could act as a mediator of conflicts and align the policies, its institutional strength is low. This lack of compulsory participation will create an intermittent discussion that strengthens the perception of cooperative federalism as not stationary and not entrenched in the decision-making operations. Without regular intergovernmental forums having statutory powers, there is always a default of political practice to ad-hoc or direct executive-level contacts without formal arrangements.

It is then the role of reforming the ISC to ensure revitalization of cooperative federalism in India. Among the reforms that would have the most significant effect, there would be the establishment of regular meetings with set intervals. The institutionalization of ongoing conversation as opposed to reactive consultation may be achieved by making ISC sessions required, either by statutory amendment or executive order with the backing of legislative supervision. This would deal with the inconsistency with which the Council has been operating and assist in making sure that intergovernmental communication is not reliant entirely on expediency. In addition to the usual meetings, it is possible to enhance the institutional capacity of the Council by building an independent and professionally staffed secretariat. It would have an independent secretariat with sufficient research and administrative capacity to assist in agenda preparations, follow-ups on proposals and in monitoring

¹⁹ Johanna Schnabel, *Managing Interdependencies in Federal Systems: Intergovernmental Councils and the Making of Public Policy* (Palgrave Macmillan 2020), <https://doi.org/10.1007/978-3-030-35461-9>.



implementation, an issue at present limited by the ad-hoc nature of Council secretarial services.²⁰ Such a secretariat would serve as the foundation of the regular intergovernmental interaction instead of placing the coordination process at the hands of the periodic interactions that take place at the high levels.

The other aspect of reform is parliamentary checks and balances of the ISC functions. By allowing the reports and deliberations of the ISC to be reviewed by a parliamentary committee on federal relations they may serve as an added measure of accountability as well as increase intergovernmental dialogue into the legislative realm. The parliamentary scrutiny would not only bring democracy to the process but would also promote the follow-through of the implementation process between the advisory recommendations and the policy action. By making the ISC more entrenched in formal politics, the intergovernmental affairs would be less prone to the informal or executive space.

Nevertheless, the ISC reform will be not sufficient unless the other mechanisms remain to prevail on the landscape of intergovernmental relationships. The emergence of executive-based forums which run parallel to constitutionally provided bodies has been experienced in Indian federalism as scholars argue.²¹ Institutions like the National Institution of Transforming India (NITI Aayog) which is an institution put forth to facilitate joint work, sharing of best practices, and providing technical assistance to the states have been more active in facilitating joint work. The activities of NITI Aayog combined with systematic relations between the Union and state governments and programs such as the Aspirational Districts Programme highlight the growing popularity of more informal forms of executive coordination that frequently overshadows deliberative space. Although such mechanisms play to part in the collaboration, the use of such executive tools as opposed to constitutional partners puts in question balance and institutional legitimacy in the federal governance.

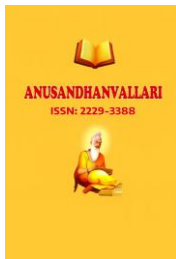
The other substitute strategy to the ISC reform is the intensification of judicial federalism as an auxiliary provision of resolving the federal conflict and constitutional balance enforcement. The federal relations have been gradually developed by the courts, especially the Supreme Court, through jurisprudence of the Centre-State powers, the interpretation of the lists of the legislative power, and the confines of the executive power. Court decisions regarding the appearance of instances of Centre-State conflicts such as the delimiting of the scope of legislative and executive authority have sometimes served as a restraint on unilateral centralisation, forcing member states to comply with constitutional boundaries. Improving the access and the transparency of judicial adjudication in federal cases can tame the political players and strengthen the constitutional structure of cooperative federalism, especially when institutional talk-breaks.

Besides judicial intervention, formalization of the executive intergovernmental relations (IGR) mechanisms can offer a viable way through inclusive governance. Although such agencies as NITI Aayog have a significant coordinating role, the fact that they are informal implies that they do not replace forums entrenched in the constitution. Formalization of these spaces, by making procedural guidelines, reporting processes, constitution-integration aspects of executive coordination, may assist in making executive coordination to constitutional standards of federal consultation.²² Halfway covenants between executive responsiveness and constitutional legitimacy could allow quick policy coordination as well as dialogue without the variants of the extreme executive dominance or the advisory councils being barely used.

²⁰ Rekha Saxena, *Intergovernmental Relations in India: A Case for Cooperative and Collaborative Federalism* (Working Paper), available at <https://solconference.in/Rekha-Saxena-Nepal-1>.

²¹ Ibid.

²² K. P. Krishnan et al., *Working Paper Series: Cooperative Federalism—From Theory to Practice* (Ctr. for Pol'y Rsch., Working Paper, Feb. 1, 2023), <https://cprindia.org/workingpapers/working-paper-series-cooperative-federalism-from-theory-to-practice>.



The bigger problem in the reconsideration of cooperative federalism is the ability to balance the constitutional aspirations of India and political realities. The Constitution proposes a Union of States with a balance between unity and the local diversity, but political practice has been testing this balance time and time again. The history of the development of federal mechanisms - be it in institutional reform, judicial action, or formalized executive coordination - should seek to strengthen the underlying principle of the constitution, that cooperative federalism is not an empty rhetoric, but a process of collective rule making. The statutory support of intergovernmental forums, creation of institutional capacity and equalisation of different mechanisms of cooperation are crucial steps towards a federal order, where decentralisation and unity should go hand-in-hand in practice, not in form only.

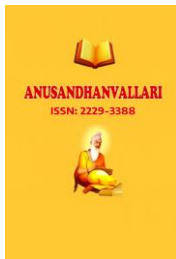
8. Conclusion

An analysis of the Inter-State Council (ISC) in the context of wider notion of cooperative federalism shows that there has always been a tussle between the constitutional ideals and political practice in the Indian federal democracy. The Constitution of India had provided a model of cooperative form of federalism, in which coordination, consultation, and common governance are main themes of policy-making and dispute resolution. Article 263, the ISC is to play this very role, a platform of discussion on ways of mutual interest between the Union and the states and between states themselves. However, the use of the Council has been intermittent and not systematic in almost forty years of operation since its inception in 1990 and there have been significant pauses between meetings and very little impact on policy results. Such institutional spaces are provided through the constitutional design of cooperative federalism and the evidence indicates that ISC has been under-exploited and has not been able to make substantive changes in the overall dynamics of intergovernmental relations. According to the scholars, this disparity between constitutional idealism and political reality indicates a larger lack of coupling in the federal system of India, in which the mechanisms of co-operation are talked about in theory, but rarely codified in daily governance.

One of the key results of this analysis is that the ISC has weaknesses which are not random but structural. Its advisory mandate, which has no binding power, constrains the ability of the Council to coerce compliance and adherence to recommendations. However, according to the remarks of constitutional commentators, the non-binding status of the ISC is indicative of a larger design decision in Indian federalism that vests discretionary power in central executive settings, but creates consultative spaces that are not subject to enforcement. Besides, this has been compounded by the irregularity of ISC meetings which without institutionalised periodical interaction the council will not be able to operate as a forum of ongoing dialogue. This trend of infrequent meetings, which is motivated not by commitment to the institution but rather by political expediency, kills the capacity of ISC to enhance long-lasting intergovernmental collaborations.

The failure of this systemic nature of ISC carries considerable implications on the Indian federal democracy. The constitutional system of cooperative federalism, which is reflected in the Indian constitutional system, is based on a careful balance between unity and autonomy. However, the danger is that federalism can be an imaginary notion and not a reality when the mechanisms that are meant to support cooperative practice are on the outskirts of the normal functioning of the government. The weakness of the ISC in settling the serious disagreements, including the cases of the distribution of resources or the introduction of controversial policy demands, indicates that the traditional institutional channels of the federal discussion can be inadequate to cool down the centre-state tensions and allow regional differences. It has been noted in the literature on Indian federalism that without the presence of strong institutions of cooperation, political conflicts and power imbalance are likely to be meted out via alternative and even hostile avenues, such as litigation and informal executive bargaining out of constitutional courts.

The consequences go beyond the technicalities of the dialogue between the governments; they reach the welfare of the democratic pluralism in India. Federal democracies are built upon negotiated compromises, trust between



levels of government and devotion to collective government. In absence of facilitation by institutional bodies like the ISC, the lack of trust may develop and the spirit of collaboration required to tackle emergent policy issues like economic inequalities, health crises in the population, and environmental control become compromised. The failure of institutional tools such as the ISC to be able to unearth and solve intergovernmental problems can also strengthen the belief of an overly centralised polity, undermining the capacities of the state and active involvement in the process of making decisions nationally.

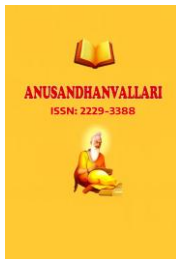
These systemic failures should be used to inform the future research agenda of Indian federalism. Long-run empirical studies that monitor the performance of ISC should be conducted with the help of comparative analysis of the frequency of meetings, the impact of the agenda on the changes, and recommendations that governments implement should be conducted to better understand where and why institutional engagement fails. Equally, making comparisons between the ISC and the international intergovernmental councils in other federal systems - e.g. in Canada, the Council of the Federation, or in Germany, the Bundesrat - can help shed light on the interaction between constitutional design and political culture in determining intergovernmental cooperation. Moreover, research, which examines the interplay between formal institutions (such as the ISC) and informal executive processes such as NITI Aayog and Prime Minister-Chief Minister vehicles can be used to determine how various forms of intergovernmental engagement reinforce or weaken each other.

Lastly, studies that discuss judicial federalism - the position of courts in its interpretation and enforcement of federal relations - can yield some insight into the impact of constitutional adjudication on cooperative practices. The outlines of the intergovernmental relations are being increasingly stipulated by courts, particularly where the institutional forums are less effective, and their shifting jurisprudence is a promising area of scholarly focus on the issue of autonomy versus coordination in the context of the federal democracy in India.²³

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