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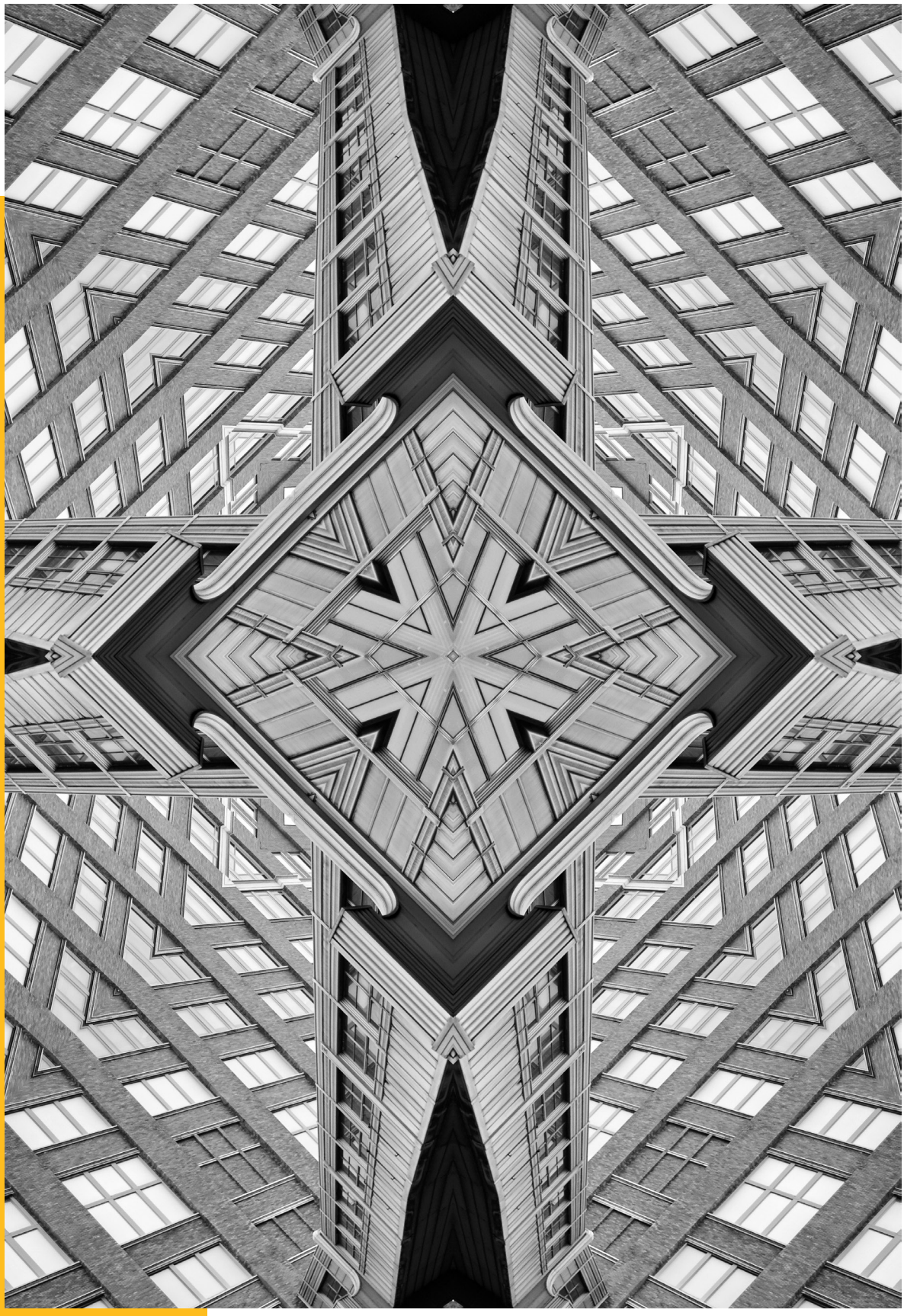

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The COVID-19 Challenge to Indian Federalism

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Abstract

In different parts of the world, the federal system of government is facing some of its biggest trials yet, from the COVID-19 pandemic. Federalism—which believes in shared sovereignty and territoriality between multiple constituent units of governance—was anticipated to fail against a massive pandemic that needed swift, and presumably centralised, response. This paper examines federal India's own experience in the past 18 months. The aim is to uncover the nature and dimensions of India's pandemic response, and the obstacles it has had to hurdle given the challenges posed by its federal design. The paper outlines lessons for future crises.

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Introduction

In the past year-and-a-half, the COVID-19 pandemic has laid bare the strengths and weaknesses of all forms of political systems and structures: democratic and authoritarian; unitary and federal; and every model in-between. This paper focuses on federalism. Given the diffused and decentralised overall pathway followed by a federal structure of government, there were legitimate concerns over how countries with such a system could handle a rapidly spreading pandemic of a highly infectious disease. It acquired a serious tone when the pandemic began exposing the vulnerabilities of the United States (US), a federal country that has what is generally presumed to be an advanced healthcare system that will be able to withstand such an emergency. Analysts raised concerns about what they said were the inherent disadvantages of a federal political system against a pandemic that requires rapid and unitary response.[1] Indeed, political analysts in the US started calling on the government to abandon the rigid dual federal system where health is an exclusive domain of states and local governments.[2] Observers contrasted the US's early experience against China's swift response in Wuhan, as proof of the efficacy of a centralised response.[3]

India, with its diffused democratic federal system, has often been contrasted with the authoritarian centralised system of China. The desire for decisive, unequivocal leadership at the top of a unified hierarchy as an established response to the threats has guided the comparison.[4] It needs to be reiterated that historically, emergency and disaster management has required a command-and-control approach to civil defence to protect the population in case of armed aggression.[5]

Against these assumptions, where does India stand as far as pandemic response is concerned? How has a large federal country—saddled with multi-level authorities and horizontal structures resting on inter-agency and cross-sector collaborations between a multitude of actors and institutions—managed the pandemic? This paper evaluates India's response since the outbreak in 2020. It looks at the key legal and institutional mechanisms that the federal and state governments have embraced, and identifies the challenges facing the federal system and its processes. The paper offers specific recommendations to strengthen the federal response to crises of similar proportions.

Many countries have been through multiple waves of the pandemic since the first cases were reported in December 2019 from Wuhan, China. India is battling its second wave. After the first case, reported on 30 January 2020, governments at various levels took precautionary measures: thermal screening of passengers at airports; cancellation of international flights from affected countries (particularly from China, the epicentre, and Italy which was then recording the highest infections and deaths); and banning mass congregations. A number of states also imposed partial lockdowns and sealed their borders. On 24 March 2020, the Union government announced a three-week-long nation-wide lockdown, giving only a four-hour notice—this triggered a crisis for the country's migrant labourers.[6] The Union government would later extend the lockdown until 1 May 2020, as many states had demanded; it would again be stretched up to 17 May, although with certain relaxations. From 18 May, the Union government in consultation with the states began the unlocking process in various phases until October.[7]

Although it took more than two months for India to reach 100,000 cases, another 100,000 were added within the subsequent 15 days. By early September, India became the second most affected country in the world.[8] Before 2020 ended, though, India's daily cases had dropped to below-25000, prompting some analysts to declare the end of the first wave.[9] Throughout that period, fatalities per million population were among the lowest in the world in terms of percentage (1.70 percent against the global average of 3.04 per cent).[10] By early February 2021, new cases averaged between 11,000-12,000; the reported deaths were at the lowest since April 2020.[11] While the crisis overwhelmed a number of states, such as Maharashtra, Gujarat, Tamil Nadu, and Delhi—India managed to contain the first wave with a combination of strict lockdowns, rapid expansion of healthcare infrastructure, and effective coordination between the Union and state governments.

The country's celebratory tone, as exemplified by the prime minister's address to the World Economic Forum in late January,[12] was short-lived. By early March, India saw the onslaught of the second wave. A new variant (i.e., B.1.617)[13] accelerated the pace of infections in many states including Maharashtra, Gujarat, Punjab, and Delhi.

The cases would engulf most regions by end-April, with states such as Maharashtra, Uttar Pradesh, Karnataka, Goa, Gujarat, Haryana and metro cities like Delhi and Bengaluru getting completely overwhelmed by the exponential surge in infections. Images of people desperately looking for medical oxygen, medicines, and hospital beds on their own, made headlines across the globe;[14] social media became the channel for individuals asking for help, and others extending their hand.

The recorded daily deaths in April-May varied between 3,500-4,000. By June 17, India had recorded as many as 29,700,313 cases and 381,931 deaths, second only to the United States. At the same time, some health analysts warned that these official figures may be grossly undercounted.[15]

While the infections have steadily declined since the end of May, daily reported infections are still high. Unlike the first wave, the current one has spread to the rural districts in many populous states, posing serious challenges for a rapid containment.[16] And even before India has seen the end of the second wave, experts are warning about a possible third wave that could come around September or October, especially given the slow vaccine rollout and the emergence of new virus variants.[17]

> "How has India, a large federal country with multi-level authorities and horizontal structures resting on effective collaborations—managed the pandemic?"

In terms of response, the second wave did not witness a national lockdown or strictly enforced central guidelines from the Ministry of Home Affairs (MHA). The Centre has largely left the decision-making to the state governments. As a result, states announced localised lockdowns in April and May and have followed pandemic guidelines or protocols based on their needs. At the time of writing this paper, states were relaxing lockdown norms and the country appeared certain of recovering from the second wave. However, the massive fallout of the second wave is still widely visible.[18]

India's COVID-19 Response: Constitutional and Legal Instruments

Once it became clear that the COVID-19 pandemic was a devastating crisis that would have grave ramifications across the entire country, the Centre and the states faced a dilemma as to which provisions of the Constitution can be invoked to respond. While some analysts[19] debated about using key provisions in the Constitution to deal with emergencies,[20] there were also discussions around which officials are more suitably positioned to make the key decisions regarding the management of the pandemic.[21]

From a federal perspective, the Seventh Schedule of the Constitution which distributes the powers between different constituent units (Union and the States) gives states precedence over the Centre on health. Entry 81 of the Union List grants the legislative power for "inter-state migration; inter-state quarantine" to the Centre; meanwhile, Entries 1, 2 and 6 of the State List give the legislative field of "public order," "police" and importantly "public health and sanitation; hospitals and dispensaries" to the states; and Entries 23 and 29 of the Concurrent List[22] allocate the areas of "social security and social insurance; employment and unemployment" and "prevention of the extension from one state to another of infectious or contagious diseases or pests affecting men, animals or plants" to both the Centre and States.

The Constitution further states under Article 73 and 162 that the executive power of the Union and states is "coextensive with the legislative power".[23] Thus, from the constitutional scheme, the state governments are expected to play the primary role in the management of healthcare, as well as law and order, while the Centre is tasked to provide the overarching national leadership, facilitate coordination among key federating units, monitor the overall pandemic situation, and provide financial and other critical assistance to the states.

India's COVID-19 Response: Constitutional and Legal Instruments

As the crisis loomed large in India in early March 2020, the Centre and the States invoked two available legal instruments to deal with the crisis. The Centre declared the pandemic as a "notified disaster", and cited[24] the Disaster Management (DM) Act, 2005,[25] in particular, to impose the nationwide lockdown on 24 March 2020.[26] As the word "disaster" is not present in the Seventh Schedule, the Centre used its residuary powers[27] to invoke the law and to issue various directives to the states as the pandemic situation aggravated.

The states, for their part, turned to[28] the Epidemic Diseases Act, 1897,[29] which empowers the states to deal with an epidemic-like situation. Many state governments used this law to issue State Epidemic Diseases COVID-19, 2020 regulations[30] for their jurisdictions, including restrictions on movement and closure of commercial establishments, offices, and other public places. Various sections of the Indian Penal Code, 1860 were used by the states as a guide for laying down punishments for violators, much before the Centre started to issue its own guidelines. However, these existing laws that were supposed to ensure effective federal response to the pandemic proved inadequate in many instances. As these existing legislations were either colonial-era or not categorically designed to deal with a pandemic-like situation in the contemporary era, their provisions proved inadequate. A challenge as serious as COVID-19 required an up-to-date, focused, and comprehensive legal regime—this was visibly absent. It forced both the Centre and states to resort to ordinances, and use the IPC and other provisions to make up for the constitutional and legal deficiencies.[31]

> "As the crisis loomed large in early March 2020, the Centre and the States invoked two laws: the Disaster Management Act, 2005, and the Epidemic Diseases Act, 1897. They would prove inadequate."

Key Dynamics of India's Federal Response

The federal response to the pandemic has evolved in a number of ways. The following paragraphs summarise the key responses, and the dynamics they involved.

First Wave: Between Central Unilateralism and State Autonomy

Constitutional provisions and existing legislations confer the primary responsibility for handling a situation like the COVID-19 pandemic, to the state government. Nonetheless, the Centre assumed the role of anchor and led from the front in managing the pandemic, particularly during the periods involving national lockdowns (24 March – 31 May 2020). As the pandemic threatened human lives and livelihoods, demanding swift action on a national scale, the Centre took over the many responsibilities which otherwise fall within the domain of the state. Among many comprehensive measures, the Centre took a series of decisions to scale up vaccine procurement, knowledge production for setting standards and guidelines for the state and local governments, and mitigation of inter-state externalities.[32]

For starters, the Centre took the unilateral decision on 24 March 2020 of announcing a national lockdown. While it consulted the state governments about the nature of the threat, the decision to impose a uniform nationwide lockdown with just four hours' notice was solely the Centre's.[33] The Centre derived this power from the DM Act, 2005.[34] Yet, the Centre imposed the lockdown without any parallel, cohesive national plan to mitigate the fallout of the sweeping restrictions on movement.[35] Further, the Centre used other provisions of the DM Act to issue compulsory guidelines and instructions[36] to the states in matters such as the length of the lockdown, restrictions, and containment zoning.[37] According to the DM Act, the Union Ministry of Home Affairs (MHA) acted as the nodal body for issuing guidelines and overseeing the implementation of lockdowns and related norms for the entire country.[38]

Key Dynamics of India's Federal Response

A fundamental criticism of the Centre's response to the pandemic in the first wave was related to the sudden imposition of a nationwide lockdown without consulting the states. A humanitarian crisis ensued—migrant workers, stranded in the cities without jobs and bare necessities, returned to their hometowns, many of them having to walk many kilometres to do so. The crisis was tackled by the state governments, themselves caught unprepared to deal with their returning migrant workers.[39]

Moreover, the Centre's blanket decisions and stringent measures regarding lockdowns and containment zoning—implemented without adequate knowledge of the ground situation—impeded the states' capacity to combat the spread of the virus.[40] For instance, the states were not allowed to purchase medical kits on their own without the Centre's permission. This impacted the states' ability to mobilise and augment critical resources.[41] In several instances, the MHA deputed supervisory teams to states to monitor their responses to the pandemic without consulting the respective state governments.[42] Therefore, the pandemic brought the wider powers of the Centre in full display, especially during the early phase: it was the Centre that imposed the lockdown, and it was also the Centre that monitored state responses including physical-distancing norms, regulation of economic activities, and provision of financial packages.[43]

It was also during the lockdown phase that the federal government usurped key state powers and jurisdictions such as the banning of liquor sale, and the stoppage (or resumption) of public transportation[44] —these provoked outcry from the states.[45] Arguably the highlight of "centralised federalism" was when the MHA forced the Kerala state government to take back its decision to allow the opening of restaurants based on their local assessment.[46] Eventually the Centre would give up the powers that it took on, after pressure built up from the states demanding more autonomy, and it became clear that centralised control was a roadblock to containing COVID-19.[47]

Beyond the political and administrative centralisation, India's initial COVID-19 response was marked by fiscal centralisation. With the Centre enjoying monopolistic power over scare financial resources, state governments in many instances were left at its mercy. Indeed, India's federal design has a 'central bias' in terms of taxation powers and related jurisdictions.[48] The Centre took advantage of the pandemic to appropriate certain financial instruments where the states have legitimate claims. First, the issue of the payment of the Goods and Services Tax (GST) due to the states, amounting to INR 300 billion became a point of contention. While states were suffering financial shock due to the lockdown and other disruptions, the Centre delayed the release of the GST incomes for several months; this pushed the states to issue dire warnings.[49] Second, with the pandemic causing the drying up of public coffers and the states seeking additional revenues to meet their exigencies, the arbitrariness of the Centre became more visible.[50] The Centre emphasised more on rolling out conditional loans to the states rather than unconditional relief grants, which was the imperative.[51] Yet, given the nature of the threats and having less resources, states had little choice but to accept the temporary loss of power and autonomy, and largely cooperated with the federal government.[52]

> "The pandemic brought the wide powers of the Centre in full display, especially in the early phase."

Second Wave: Unilateral Decentralisation

The first wave of the pandemic was about unilateralism and overtly centralised response by the Union. The opposite has been the case during the second wave. Louise Tillin, a known scholar on federalism captures this trend succinctly when she says: "India has moved from unilateral centralized decision-making in the first wave to something

that approximates unilateral decentralized decision-making—by default—in the second wave".[53] For one, the Centre during the first wave acted swiftly and decisively as federal governments ought to do during national emergencies. While many state governments imposed localised lockdowns and physical-distancing protocols, it was the Centre which announced a national lockdown, and issued real-time alerts and guidelines and protocols to state authorities to stem the virus spread. A proactive federal leadership was able to coordinate with states and other constituencies to quickly procure and produce medical equipment and PPE kits, and create emergency health infrastructure in record time.[54] However, most of these Central initiatives were found wanting when the more infectious second wave began overwhelming states and the country's health systems.

Despite credible early projections in February 2021 from health experts— and subsequently from the government's own scientific advisory body—about the spread of a new and deadlier variant,[55] the Central government and its designated institutions failed to act on those warnings. In early March, the Union Health Minister announced that India was seeing the "dead end" of the pandemic.[56] Despite warnings from health experts, authorities allowed organisers of the major religious pilgrimage and festival, Kumbh Mela to proceed,[57] and the central leadership occupied itself with election campaigns in five states, holding massive rallies without pandemic-appropriate restrictions.[58]

The Centre would start taking note of the crisis when many states started experiencing rapid surges in infections and health systems began collapsing, triggering mass panic and public outcry including amongst the core support base of the ruling party.[59] Launching the nationwide federal response, the prime minister on April 20 addressed the nation and appealed for Covid-appropriate behaviour; he also asked authorities to quickly ramp up responses.[60] By then, however, the infections had rapidly spread across the country, and there were already signs of a virtual 'state collapse'.[61] This became visible when a number of state governments openly fought with each other over essential medicines and oxygen cylinders, some blocking others' supplies.[62] The breakdown of inter-state coordination became so acute and as the Centre faltered and lost its initiative, the Supreme Court intervened to resolve the deadlock between the battling states.[63]

While one would have expected the federal government to lead the states in a time of grave national crisis, it instead blamed them, stating that health was a state subject and sub-national governments should not have lowered their guard to the pandemic.[64] Not only did the Centre express reluctance to take bold measures such as a national lockdown (when the situation was more dire than the first wave), it was not quick enough in alerting the states about the nature of the new variant; it also did not issue protocols and guidelines on treatment and logistics. Instead, it left the states to take localised measures to contain the spread—a step which it allowed grudgingly in the first wave. Thus, the pendulum moved from outright centralisation to unilateral decentralisation.

The decentralisation logic became more visible in the case of the vaccination policy. As the country faced acute vaccine shortages (partly attributed to the Central government's sudden decision to expand the vaccine rollout to the 18-44 age group) many state governments called for autonomy to procure vaccines from international markets. The Centre acceded, as analysts found it impractical given the demand-supply mismatch and the cutthroat competition for vaccines.[65] Several states which went ahead with tenders for procuring vaccines found no prospective bidders. This, along with deferential pricing[66] of vaccines created a chaotic situation and became a contentious aspect of India's federal structure as the Centre and the states blamed each other for the confusion. It required the intervention of the Supreme Court to end the Centre-state deadlock.

It is important to note that right from the beginning of the pandemic in 2020, the Central government had taken the sole responsibility of coordinating the entire process of vaccination in India; and rightly so. Like all federal governments, the Union government is undoubtedly endowed with greater resources and technical knowhow for approaching the international vaccine manufacturers, conducting trials, giving clearances, providing logistical and financial incentives to the manufacturers, and subsequently, procuring the vaccines.[67] Accordingly, the federal government steered the vaccination drive in 2020 when it facilitated two vaccines for use: Oxford AstraZeneca-

made Covishield vaccine, being manufactured in India by the Serum Institute in Pune, and Covaxin, from the Indian company Bharat Biotech. As planned, the Centre procured the vaccines from the manufacturers and distributed them to the states for vaccinating, first, the frontline workers, and later the senior citizens, and eventually the population of 45 years and above.

While many opposition-ruled states cannot escape the blame for making unreasonable demands on vaccine procurement and some of them politicised Centre's vacillation on vaccination to hide their ineptitude in managing the pandemic,[68] the primary responsibility rests with the Union government.[69] The ensuing bitter blame game between the Centre and opposition-ruled states, finally ended after the former in early June reversed its decision to take control of the vaccination drive.[70] While the Centre-state deadlock on vaccination was resolved, the country lost the initial advantage of procuring vaccines and ramping up the rollout—key to finally ending the pandemic.

Decentralisation by Default: The role of third-tier governments

Amidst the Centre-state tussles in managing the pandemic, the most neglected third-tier institutions have emerged as unsung heroes: the *panchayats* (rural bodies) and urban local bodies. While the Centre has frequently emphasised the involvement of these third-tier institutions, various states have delegated substantial powers and responsibilities to these bodies in managing the pandemic.[71] For instance, the Odisha government delegated the *sarpanch*[a] with the powers of a magistrate to control the movement of migrants and oversee physical-distancing norms.[72] Similarly, the Kerala government[73] allowed local bodies to do contact-tracing, conduct health camps and sanitation drives, and sensitise people on health protocols. The local governments at the village level also helped "in sustaining agricultural activities by ensuring the labour supply and availability of critical food supply chains in villages."[74]

a Sarpanch is the head of the Village Panchayat or Gram Sabha which is the constitutionally sanctioned Indian village-level local self-government's governing body.

During the first wave, district-level interventions in Agra (Uttar Pradesh), Bhilwara (Rajasthan), and Pathanamthitta (Kerala) were exemplary in containing the spread of infections.[75] Similarly, municipalities in states like Maharashtra where the COVID-19 cases have been steep, also made innovations in crisis management at different phases of the pandemic. Worth mentioning is the collaboration between the Brihan Mumbai Municipal Corporation (BMC) and the Mumbai Police to supervise quarantine procedures and create public awareness in the Dharavi slums;[76] they succeeded in controlling the Covid situation in the area.[77] The BMC repeated the feat during the second wave by quickly innovating in contact-tracing, testing, and expanding medical support by creating 'ward-level war rooms'. [78] In other words, decentralised responses bore fruits at the local level, wherever governments have delegated powers and trusted these self-governing institutions.

Table 1. Centre's and States' Responses to the First and Second Waves of COVID-19

First Wave		Second Wave	
Centre	**States**	**Centre**	**States**
Absence of concrete steps initially as first case reported on 30 January 2020.	Declared localised lockdowns, invoked Epidemic Act (1897), conducted awareness campaigns, and launched socio-economic packages for the poor and the migrant workers.	Complacent and dismissive to early warnings and alerts from its own experts and state-level officials. Top-level leaders declared India's "victory" against the virus.	Most states took cues from the Centre and loosened Covid-related restrictions with similar complacent approach; did nothing to curb vaccine hesitancy and vaccine wastage.

Key Dynamics of India's Federal Response

First Wave		Second Wave	
Centre	**States**	**Centre**	**States**
Invoked the Disaster Management Act, 2005 in mid-March as fears rose. Took unilateral decision of national lockdown with four-hour notice.	Grudgingly adhered to Centre's issuance of uniform guidelines and Home Ministry directives and protocols	Highest central leadership pre-occupied in the election campaigning for the ongoing Assembly elections in five states as cases rose in March and middle of April	Harshly affected states, ruled by opposition parties, started raising the alarm regarding a deadly second wave and the Centre's inadequacies.
As a migrant crisis unfolded due to sudden lockdown, the Centre after initial hesitation and inaction, issued directives to states for providing food and shelter to the migrants and transport arrangements were made to carry them back home.	The states took greater onus to arrange for the logistics of migrants stranded within their state territories and coordinated with Centre and other states for their safe return to their home states	Remained largely absent in its coordinating role for mobilising medical resources to the badly hit areas; blamed the states for raising false alarm regarding oxygen, leading in several instances of bitter fights among states over supply. This prompted the judiciary to intervene.	Took the onus of dealing with the crisis; blamed the Centre for not adequately addressing the issue of scarcity of oxygen and medicines in many states.
Centre took the lead in coordinating logistics, procurement and production of medial materials, PPE kits, expansion of emergency Covid health infra, etc. Released financial packages for people and firms particularly MSMEs affected by the pandemic, and enhanced allotments for Central schemes such as PMSGY, MGNREGA.	States too played their part in expanding health infrastructure, organising isolation camps for migrant workers. States like Kerala took the lead in pandemic management.	Launched the national vaccination programme on 16 January 2021 in different phases. In the first phase, the targeted groups were frontline workers. The vaccines were procured by the Centre and distributed to the states.	States coordinated vaccination process, arranged logistics and organised vaccination camps.

Key Dynamics of India's Federal Response

First Wave		Second Wave	
Centre	**States**	**Centre**	**States**
Took decision to fix criteria for containment zones at the state and local levels. Also, led the initiatives to procure and produce vaccines, look for potentials pharmaceutical companies to produce vaccines and related medical materials, and arrange for financial resources.	Though followed the Centre's directives, few opposition-ruled states demanded more autonomy regarding declaration of lockdowns and containment zoning. States were left out of the decisions on vaccination (procurement and pricing) by the Centre	Once pandemic began exploding and states demanded more vaccines and the Centre was found lagging in initiatives to place enough orders for vaccines, it deflected the same by accusing the states of playing politics. At the same time, it removed the age criteria and made vaccination universal, leading to bigger chaos. Importantly, it conceded to states' demand for vaccine procurement.	Opposition-ruled states accused the Centre of inaction on vaccine procurement and demanded autonomy to procure vaccines on their own.
As infections rose and centralised approach seemed inflexible, decentralisation of decision-making regarding lockdown and containment zoning took place as states got more autonomy.	States led the heath crisis management with more autonomy for devising policy responses in a localised need-based manner.	With Centre faltering in its response particularly with regard to disputes between states over supply of oxygen, the Supreme Court had to intervene.	Many states too faltered in mobilising resources to the hotspots, ramp up testing; accused of underreporting of infections and Covid deaths and accused of vaccine wastage.
Accused of not releasing funds for fiscal assistance to states; ban of liquor sales falling under state jurisdiction; not releasing adequate GST compensation to states; declared conditional loans for states under financial package.	Several states complained of fiscal centralisation by Centre and not getting the due GST compensation and unconditional fiscal grants from the Centre	On judicial directives, took the responsibility of ensuring adequate supply of resources and vaccines; chaired meetings with state and district administration for better coordination; constituted empowered committees	Some states accused Centre of delayed response and not hearing the concerns of states in the meetings
In the initial phase of the pandemic, communications from the political leadership and top health officials to the citizens were more frequent, but mostly discontinued after that.	Communications to the people from the state leadership regarding changing guidelines, lockdown rules, awareness and cautionary measures mostly continued till the end of first wave.	Political communication from the highest leadership of the Centre was limited compared to the first wave	State-level communication on Covid restrictions continued like in the first wave; increased in some worst-hit states.

Drawing Lessons for Future Crises

Perhaps no other crisis in India's contemporary history has tested the country's federal system more than the ongoing COVID-19 pandemic. The second wave, in particular, has raised some essential questions about the design and capacity of India's federal arrangements to tackle global health crises that require a unified national response. The following points outline certain lessons that should guide India towards a stronger federal system.

1. The pandemic has exposed the infirmities of the federal system—in particular, the challenges of ensuring a coordinated response from the Centre and the states during a national crisis—and has laid bare the inadequacies of existing constitutional, legal and administrative architectures to meet such a once-in-a-century crisis. This is not to say that this experience is unique to India; indeed, COVID-19 has tested the limits of federal systems all over the world. Federal countries such as the United States, Brazil, Germany, and Canada, too, struggled in the initial waves. Some of them, particularly the US and Germany, found their decentralised and diffused responses failing in the face of surging infection rates. However, most of them learned their lessons quickly and put up more effective responses in the subsequent waves of the pandemic.[79] India, for its part, managed well in the first wave by quickly ramping up healthcare, logistics and minimising the fatalities, but then hugely failed during the second wave. Both the Centre and the states let their guards down and allowed the pandemic to overwhelm the health system—thereby setting a poor example for federalism.

2. COVID-19 has revealed the crucial role of federal bridging institutions as demonstrated in other advanced federal countries.[80] The MHA, which was the coordinating point for the entire nation under the provisions of the DM Act, 2005, has often been a sore point for the states ruled by opposition parties; this created mistrust and caused deadlocks. For instance, the National Executive Council (NEC), an apex decision-making body under the National Disaster Management Act that was invoked in 2020, never met

between November and March to discuss the response and take stock of preparations for the succeeding waves of the pandemic; this was while the Home Minister, who heads the NEC, was being reported in the media to be busy in election campaigns.[81] This underscores the importance of intergovernmental forums such as the Inter-State Council and other federal bridging institutions that could have reduced the friction by ensuring better communication and coordination on a national scale.[82] For such institutions to work effectively, what is required is political will and mutual trust involving the Centre and State leadership, transcending the challenges of political partisanship.

3. In many ways, the pandemic has also exposed the inadequacies of the existing constitutional and legal provisions in dealing with a pandemic or a health emergency of pan-India dimensions. There are concerns about the vagueness of both the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 in the context of a pandemic.[83] While both these laws do not have provisions related to health emergencies, both Centre and States resorted to either expansive interpretation or ad-hoc measures such as issuing ordinances for instance to protect the frontline workers or ensure implementation of physical-distancing norms. The Centre[84] along with some states like Uttar Pradesh,[85] Punjab,[86] and Andhra Pradesh,[87] resorted to blunt and extreme measures such as enforcement of the colonial-era sedition law, and other similarly stringent legislations. This makes it imperative for the federal government to initiate the drafting of a comprehensive national legislation that can effectively deal with pandemics like the COVID-19, and other national emergencies that India could face in the future.

> “COVID-19 has revealed the crucial role of federal bridging institutions such as the National Executive Council, an apex body under the Disaster Management Act.”

Conclusion

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Even without a pandemic, India has suffered manifold challenges because of its fragile and underfunded public health system, and weak state capacity. Analysts were quick to sound the panic button in early 2020, making headline-grabbing projections of infections,[88] deaths, and likely devastation in a sub-continent with a 1.35-billion population. The situation demanded extraordinary responses, and the central and state governments rose to the challenge in multiple ways in the first wave. While the states emerged as first movers, the Centre took on the leadership in terms of providing policy direction, coordinating the supply of critical resources, and extending technical support. Notwithstanding a series of blanket measures and many centralised decisions from the Centre, the management of COVID-19 has largely moved in the spirit of cooperative federalism. This is an achievement for a country with a long history of bitter centre-state battles over jurisdictions. In the US and Canada, for example, in the initial phase of the pandemic, the central and state governments engaged in such bitter clashes.[89]

While the first-wave response was a mixed success, India's federal response has hugely floundered during the second wave. A combination of triumphalism for managing the first wave, a sense of complacency, and lack of urgency in the beginning of the second wave, compounded by missing federal leadership and the breakdown of trust and cooperation between the Centre and states—all led to the gross mismanagement of the pandemic and a momentary virtual collapse of the State. The most fundamental lesson from India's experience with the second wave of the COVID-19 pandemic, is that managing a grave national crisis requires healthy cooperation between the Centre and states. The federal government must be prepared to take the anchor's role.

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