

## Cooperative Federalism to “Competitive” Cooperative Federalism

The case of Covid vaccination

Who gains? Who loses?

E A S Sarma

Former Secretary to Government of India

***“However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot “***

***“A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities...The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism”***

Dr B R Ambedkar's address to the Constituent Assembly when he presented the draft Constitution on November 25, 1949

These ominous words of Dr Ambedkar seem to have come alive today, like never before!

*“We have moved from Co-operative Federalism to Competitive Co-operative Federalism”,* announced Prime Minister Modi triumphantly, in his 2017 Independence Day speech (<https://www.narendramodi.in/pm-s-independence-day-speech-2017-highlights-in-english-536597>). BJP's “Sankalp Patra”, the party's Manifesto for 2019 Lok Sabha elections ([https://timesofindia.indiatimes.com/realtime/BJP\\_Election\\_2019\\_english.pdf](https://timesofindia.indiatimes.com/realtime/BJP_Election_2019_english.pdf)) also referred to the party's inviolable resolve to pursue the idea of cooperative federalism by stating, *“We will continue to pursue this course by ensuring greater involvement of the states in all aspects of policy making and governance thereby strengthening federalism.*

Cooperative federalism lies at the heart of the federal system of governance in India. To consciously promote it is indeed a laudable objective.

## **Federalism and the Indian Constitution:**

The Seventh Schedule to the Constitution has clearly delineated the respective legislative domains of the Centre and the States, with the residual authority vested in the Centre. Therefore, what we have in India is not a federal system of the kind provided in the Constitution of the USA but a quasi-federal system of governance in which the Centre has the residual authority in all those domains not clearly stated in the Seventh Schedule. It does not however imply that the Centre could cross the *lakshman rekha* of federalism and arbitrarily interfere with governance in the States. It does not give authority to the Centre to restrict the flow of funds legitimately due to the States and indirectly erode their autonomy, nor does it imply the Centre misusing its agencies to intimidate the State leaders to subjugate them.

The idea of cooperative federalism arises in such matters on which the Centre and the States mutually agree to work together for the overall good of the people. For example, if there are economies of scale in relation to transactions that cover the entire population of the country, it will be advantageous for the States to seek Central intervention and in such matters, the Centre has the responsibility to take the lead.

## **Combating Covid:**

There can be no better example of the need for cooperative federalism than in the case of the ongoing campaign to contain the Covid virus.

The subject “public health” falls within the “State List” in the Seventh Schedule. In the normal course, therefore, the States have the freedom to act on their own, whether in the matter of containing the Covid virus or in the matter of vaccinating the people in their respective areas. However, no single State is in a position to undertake the kind of scientific effort that is called for in facing a new, devastating pandemic like Covid nor can they individually afford to develop the necessary vaccine production capacities. In the matter of science and technology development, it is the Centre that has the wherewithal, either for investigating the characteristics of Covid and its multiple mutants or for developing and overseeing the required vaccine production facilities and, if necessary, for importing vaccines to fill the uncovered gap, if the demand exceeds indigenous availability. Most pharma giants are super-profit-seekers and, if we are not alert, they are sure to fleece us. India's strength lies in its huge population of 1.3 billion and, if we can join hands as a nation, we can dictate terms to the vaccine suppliers. The most advantageous proposition therefore is that the Centre should assume total responsibility for making the vaccines available to the States on the most advantageous terms. It is the Centre that can also ensure equity in vaccine allocation

among the States, depending on the proportion of the vulnerable groups in the population of each State, the inter-State differences in the spread of the virus and so on. It is therefore logical that the Centre should assume full responsibility for ramping up indigenous vaccine production, procuring vaccines from overseas sources on the most advantageous terms and allocating the vaccines to the different States in an equitable manner, based on transparent norms.

This is not the first time that such a contingency has arisen in India. In eradicating small pox, polio and several other diseases, through mutual consent and cooperation, the Centre and the States acted together to achieve success.

### **National Small-Pox Eradication Programme:**

Small pox was a highly contagious virus, with considerable social stigma associated with it, certainly more than that seen in the case of Covid. In the early 1960s, India accounted for nearly 60% of the reported smallpox cases in the world. The particular strain of smallpox found in India was far more deadly than the strains found in West Africa. With meagre resources at their command, the States were not able to tackle the virus by themselves. Therefore, it was the Centre that stepped in decisively, obtained WHO's technical support, planned the procurement of high-quality vaccines from both domestic and overseas sources and launched the National Small Pox Eradication Programme (NSPEP). NSPEP brought in high quality freeze-dried vaccines, introduced the “multiple puncture technique” with bifurcated needle to minimise vaccine wastage and adopted a *surveillance-containment-searching* approach to identify potential small pox cases within the shortest possible time. Had the Centre placed the blame for wastage of the vaccines on the States and did nothing to solve the problem, as it is the case now with Covid vaccines, the small pox eradication effort would have floundered. The Centre frontally addressed the technical issues of vaccine wastage and found technical solutions to resolve the problems. In what could be termed the most shining example of cooperative federalism, the Centre and the States joined hands to eradicate small pox by 1975. The last known case of the infection was found in May 1975.

(<https://apps.lib.umich.edu/online-exhibits/exhibits/show/smallpox-eradication-india/indian-engages-pandemic>).

### **Pulse Polio Immunisation Programme:**

The Pulse Polio Immunisation Programme was yet another cooperative effort of the Centre and the

States. In 1995, following WHO's Global Polio Eradication Initiative (1988), India launched a nationwide Pulse Polio Immunisation Programme with universal immunisation as its goal. The Pulse Polio Immunisation Programme in India had been recognised as among the largest successful immunisation efforts in the world. The last reported cases of wild polio in India were in West Bengal and Gujarat on January 2011.

In the case of both small pox and polio, high quality vaccines were procured on advantageous terms through a ***centralised purchase system*** put in place by the Centre. Both these viruses could be controlled through meticulous planning and coordinated effort in which the Centre and the States played their respective roles in a constructive manner. In either of these vaccination programmes, neither the Central leadership was more interested in projecting its image nor there was any mutual retribution among the Centre and the States. In the true spirit of cooperative federalism, emphasis was on problem solving, not fault finding. No false promises; hollow bravado; self congratulation!

### **Vaccine development effort in India:**

In the early years after Independence, India recognised that science and technology could play a crucial role in disease control. It was as early as in 1952 that the National Institute of Virology (originally Virus Research Institute) was set up under the aegis of ICMR. The National Institute for Disease Control (erstwhile National Institute of Communicable Diseases) was set up under the Union Ministry of Health in 1963. In addition, the CSIR had several national laboratories covering R&D in a wide range of fields including drugs, genomics, biotechnology etc. As a result of the policy of the successive governments over the last several decades, at least 14 private vaccine manufacturing facilities and 18 PSU facilities have come up. The first private facility got its license in 1979. The Serum Institute and Bharat Biotech got their clearances in 1988 and 1998 respectively. The credit for such a large number of vaccine production facilities coming up in both the private and the public sectors certainly goes to the successive governments at the Centre spanning a time frame of more than half a century.

The idea of cooperative federalism implies the Centre and the States coming together to achieve a common national goal. It is an equal partnership of the Centre and the States. Where there is such a coordinated effort, the outcomes have been truly spectacular. In these efforts, India as a nation has also gained an enormous pool of knowledge and experience in disease control and the ability to overcome the last-mile hurdles. If India has been able to handle a massive nationwide Covid vaccination drive today, the credit should be shared with the successive governments at the Centre and in the States over the last several decades. It does not belong to one government or one political

executive.

### **The first wave of Covid:**

The first wave of Covid disrupted the lives of the people in India, mainly as a result of the inadequate health infrastructure in the country not being able to handle its fury when it peaked and the sudden, ill-planned nationwide lockdown unilaterally announced by the Centre, ostensibly to contain the Covid spread, which triggered one of the largest humanitarian crises in the world, depriving millions of migrants of their livelihoods, with no relief in sight. It was the States that bore the brunt of it, with resource transfers to them from the Centre getting unduly delayed and no adequate effort on the part of the Centre to help the States in other ways in dealing with the migrant crisis. However, the fury of the first wave started abating towards the last quarter of 2020.

It appeared at that time that the vaccine developers in India and abroad were about to achieve major breakthroughs and universal vaccination could contain Covid once for all. When the first wave of Covid started subsiding, the Central leadership, ever eager to claim credit for the smallest achievement, believed that it had more or less “conquered” Covid by then. Those at the helm of affairs thought that the time was ripe to cap that achievement by announcing a universal vaccination drive, as if it was the first ever such large scale vaccination drive in India, as it could help project their image globally. It was in that context that the BJP, in its manifesto for the Bihar elections in November, 2020, promised the voters that each and every one of them would be vaccinated for Covid, free of cost, implying that it would be possible to find enough of the vaccine doses to cover not only Bihar's population but also perhaps the entire population of the country. One would have thought that the Central leadership had already done its calculations right about the availability of vaccines for covering a population of 1.3 billion people in India but the subsequent developments proved it wrong.

### **Events leading to the second wave:**

During the interregnum period between the end of the first wave of Covid and the onset of the second wave, the Centre had enough time not only to plan vaccine supplies for universal vaccination but also to draw lessons from the experience gained from the first Covid surge and start building up the health infrastructure throughout the country to be better prepared to face either a

second Covid wave or any other similar pandemic. Had the Centre consulted its experts, they would have cautioned it of the possibility of a second wave of Covid, as it was the case with the Spanish Flu of 1918-19, and advised it to take advance action. With new mutants of Covid continuing to evolve, the Centre ought to have invested heavily in genome sequencing labs across the country so that the vaccine development effort could keep pace with the way the virus would evolve. There was complacency and near inaction on the part of the Centre on all these fronts.

### **Covid vaccination drive:**

Launching the nationwide Covid vaccination drive in a grand style on January 16, 2021, Prime Minister Modi announced that India's successful Covid efforts had received global recognition and, being alert, *India took the right decisions at the right moments*. The impression that gained strength from the confident statements made by the Central leadership at that time was that the health planners at the Centre were in full command of the universal vaccination programme on hand, that the bulk of the vaccines would be produced by the Indian vaccine manufacturers and that India was in such a confident position that it could even supply its vaccines to more than ninety countries in need of them. What transpired subsequently proved that the Centre had no clue whatsoever of the huge vaccine crisis that would unfold within a few months.

A simple back-of-the-envelope calculation of the vaccine requirement of India will show how the health planners at the Centre failed to foresee the crisis.

India's population exceeds 1.3 billion. Assuming that we have already vaccinated around 150 million people, we are left with another 1150 million people to be vaccinated. If we wish to vaccinate at least 80% of the remaining population, 920 million need to be vaccinated. If two doses of vaccine are to be administered for them, as is the case with most vaccines available in India and elsewhere, we will need 1840 million doses. If the target population are to be vaccinated within the next three months, the daily vaccination rate would be a little over 20 million. The maximum availability of vaccines from the two Indian producers, even after assuming that they could achieve their enhanced capacities soon, would be only 4 million doses, leaving a gap of 16 million doses per day to be imported. Without vaccine imports, it would have taken 460 days, or more than one year and three months, to vaccinate the target population. If we wish to vaccinate the target population within a longer time frame of, say, six months instead of three months, the daily vaccine dose requirement would still be 10 million, leaving a gap of 6 million to be imported. Even at this stage, according to the indications given by the Indian vaccine producers, the ramped up capacities may not be available for another 2-3 months. It is not going to be easy for the country to rely on vaccine imports, as we are in competition for the same with several other countries. The latest statements made by the Union Health Minister (<https://scroll.in/article/995202/will-india-really-have-enough->

[vaccines-to-cover-the-entire-population-by-the-end-of-2021](#)) indicate that his Ministry has firmed up vaccine supplies so as to cover the target population fully by the end of December, 2021. The proof of the pudding lies in the eating. Going by the Centre's past track record, one would like to wait and watch.

Presuming that the Centre had a clear idea of the supply-demand scenario for the vaccines all along, how could the Centre announce a “*tika utsav*” during April 11-14, 2021, when it could not provide enough *tikas*! One shrewd Chief Minister, facing acute shortage of the vaccines in his State, politely informed the Prime Minister of his earnest wish to celebrate the *tika utsav* in a grand style and requested him to allocate enough doses to enable him to do it! Later, the Centre came up with yet another brainwave, this time, that vaccination would be provided to all adults (18+ years age) with effect from May 1, 2021, at a time when it could not meet even the second-dose requirements of the senior citizens and those with co-morbidity conditions. This decision raised expectations among the youth but, as it was to be expected, the Centre could not make available the necessary doses of the vaccines by May 1, creating all round confusion and chaos.

If the Centre had done its calculations correctly, it would have realised that there was going to be an acute shortage of the vaccines and that it would therefore be necessary to prioritise its use. By ignoring this basic fact and rushing into making hasty statements on universal vaccination, the Centre had indirectly become instrumental in excluding many priority sections of the population from getting vaccinated. Even today, there are many frontline Covid workers including sanitation employees, especially those on contract employment, who have not benefitted from vaccination. They stand perilously exposed to the virus.

### **The second wave of Covid:**

Meanwhile, the second wave of Covid arrived with much more fury and devastation, putting to test the capacity of the nation in every one of its departments, ranging from ambulances to carry the patients to the hospitals, the number of hospital beds available, the capacity of the ICU facilities, availability of oxygen to revive patients critically ill, the number of functional ventilators, the availability of essential Covid drugs and even the capacity of the crematoriums to handle the piling up bodies of the deceased. Political parties and their star campaigners, including the high and the mighty at the Centre, added enough fuel to the raging fire of the second wave, by holding massive election rallies in the poll-bound States and arranging huge religious congregations, throwing Covid norms to the wind, just in order to get electoral advantage at the cost of human lives. Their sole aim

was to remain in power , even if it caused human misery. How can the idea of cooperative federalism survive in a political environment in which the sole aim of the leaders at the Centre is to crush federal autonomy and convert India into a unitary State?

### **Liberalised Pricing and Accelerated National Covid-19 Vaccination Strategy:**

Amidst such a state of confusion, the Centre announced on April 21, 2021 the so-called “*Liberalised Pricing and Accelerated National Covid-19 Vaccination Strategy*” which literally allowed the Centre to wash its hands of its primary responsibility of procuring the vaccines centrally and providing them to the States on affordable terms. According to this strategy, 50% of the vaccines locally available will be allocated to the Centre and the rest thrown open for direct procurement by the States and others. Even with 100% of the locally supplied vaccines, the Centre would not have ever achieved universal vaccination within the near future, as already indicated. In other words, the new vaccination strategy has put an end to the idea of universal vaccination once and for all.

### **Rationale of cooperative federalism in the combat against Covid:**

The rationale for Central intervention in vaccine procurement, as already explained, is that the Centre could take advantage of the economies of scale, procure sufficient vaccine doses for the majority of the population of 1.3 billion on most advantageous terms and make the vaccines available to the States according to their needs. Even if the vaccines were to be subsidised, the subsidy burden on the States would be minimal. The Centre could have exercised its leverage with the big super-profit-seeking pharma companies and forced them to shed their super profits so that India may procure the vaccines on reasonable terms. On the other hand, the pharma giants would prefer a situation in which the buyers remain a divided lot, each with a heavily reduced leverage, so that they could dictate terms to the buyers. This is what exactly the *Liberalised Pricing and Accelerated National Covid-19 Vaccination Strategy* announced by the Health Ministry on April 21 achieved.

It is the pharma giants who are the ultimate gainers from this strategy, as explained below.

The Municipal Corporation of Greater Mumbai (MCGM) has called for global tenders for 10 million doses to cover 27% of its population. UP has called for similar tenders for 40 million doses to cover 10% of its population. Rajasthan and Karnataka are planning to call for tenders for 10-40

million doses and 20 million doses respectively. Uttarakhand, AP, Telangana, Odisha, Tamil Nadu, W.Bengal, MP, Delhi and Goa are also considering similar action. As the vaccine crisis deepens, many more States will be forced to step in and call for global tenders, though they can ill afford it. Some of them have explicitly excluded the Chinese vaccines, while others have imposed stipulations on the storage temperatures etc. Such restrictions have further differentiated the supply sources, reducing competition and tilting the terms of supply in favour of the suppliers. (<https://www.downtoearth.org.in/news/health/covid-19-vaccines-for-all-decoding-global-tenders-by-states-76913>).

With 62% of the global production capacity of 22.2-billion Covid vaccines already tied up in agreements for sale, the State governments that have floated global tenders to procure vaccines could face challenges in the next two months. According to indications, the prices may range from \$5 to \$62 per course. Therefore, on affordability considerations, some suppliers may have to be excluded, which reduces competition further and allows the other suppliers to dictate terms. Depending on the States' financial strength, the proportion of the population to be covered will also vary.

In other words, the *Liberalised Pricing and Accelerated National Covid-19 Vaccination Strategy* of the Centre has resulted in India losing its market leverage, as a result of the Centre absolving itself of its responsibility to procure the vaccines on a centralised basis, bringing divisions among the States to force them to call for global tenders individually and allowing the powerful pharma companies to have a field day in what can be termed as an artificially created “sellers' market” in all its dimensions. The strategy has introduced inter-State inequities in the distribution of the vaccines, the more affluent States gaining marginally at the cost of the weaker States, but the nation as a whole paying a heavy price to the pharma giants. The ultimate loser is the Indian tax payer on the one side who may have to bear the heavy price of partial subsidisation of vaccination and the low-income families on the other side, many of whom may not ever be fortunate enough to get vaccinated, as the strategy is likely to place the States at the mercy of the big super-profit-seeking pharma companies who will extract their pound of flesh but fall short of meeting the huge demand for the vaccines.

### **From cooperative federalism to competitive cooperative federalism:**

Against this background, one wonders what the Prime Minister had implied by saying in his 2017 Independence Day speech, “*We have moved from Co-operative Federalism to Competitive Co-operative Federalism*”!

Certainly, we seem to have moved quite a distance away from the original idea of cooperative federalism that generated spectacular outcomes in the national small-pox and polio eradication programmes in which the Centre had played a pivotal role, in close consultation with the States.

When the Centre announced its *Liberalised Pricing and Accelerated National Covid-19 Vaccination Strategy*, it did not care to consult the States, who are the main stakeholders in vaccinating the people. In other words, those that took such a unilateral decision ignored the first principle of cooperative federalism, that is, to take the States into confidence. There cannot be any cooperation, when there is no mutual consultation. The NDA alliance at the Centre, largely driven by BJP's policies, seemed to have moved away from what the BJP promised to the voters at the time of the 2019 Lok Sabha elections, “*We will continue to pursue this course by ensuring greater involvement of the states in all aspects of policy making and governance thereby strengthening federalism*”. Election manifestos in Indian politics are based on the assumption that the voters' memories are short and, therefore, the political parties can do what they like later.

Has the more recent *Liberalised Pricing and Accelerated National Covid-19 Vaccination Strategy* of the Centre ushered in a new kind of “competitive” cooperative federalism that the Prime Minister had announced in 2017? From what is evident from the above analysis, if there is any competition, it is an imperfect, unhealthy competition that runs counter to the idea of a strong buyer of the vaccines like India exercising its bargaining strength in the market and securing the best possible terms of vaccine availability for its citizens. It is the kind of a muted competition that fragments the buyers and introduces multi-dimensional inequities in vaccine availability to the citizens. It places Indians at the mercy of the big pharma companies and allows the latter to fleece us in order to earn super profits. Is it the kind of “competitive” cooperative federalism that the country deserves? Words, when they are spoken by those in power, may mean different things to different people.

This reminds one of the meaning of “words” as explained in a scornful tone by Humpty Dumpty in Lewis Carroll's classic work, “Through the Looking Glass”, “*When I use a word,.. it means just what I choose it to mean — neither more nor less.*”

Will the idea of Cooperative Federalism survive in India for long?

