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India and Australia's federal systems have responded fairly well to COVID-19. But the US system hasn't

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The COVID-19 global pandemic is testing the strengths and weaknesses of federal systems of governance across the world like never before. While it is too early to draw conclusions about successes or failures in terms of the public health response to COVID-19, there are enough insights to draw some comparative perspectives about the performances of federal systems of India, Australia and the United States.

These three nations have huge divergences in terms of political complexity and population: India (1.35 billion), US (327 million) and Australia (25 million), but all three have federal systems where legislative power is held by national and state governments to varying degrees. Each system has responded to the COVID-19 pandemic differently, with very different degrees of success.

India: Cooperative Federalism

India reported its first confirmed case of COVID-19 on 30 January 2020. Before then, authorities took preemptive action such as the thermal screening of airline passengers, the cancellation of international flights from six affected countries (particularly China), banning mass gatherings and public health awareness campaigns. Once COVID-19 infections began spreading through many cities and

states by mid-March, federal (Union) and state governments took a series of steps to contain the spread. Many state governments imposed partial lockdowns and sealed their borders; and on March 24 the Union government announced a 21-day nationwide lockdown intended to restrict the movement of the entire population of 1.35 billion people. The national lockdown was imposed with only four hours' notice and most states were unprepared, which caused considerable chaos for many such as migrant workers who were told to return to their home villages, as well as supply chain breakdown. However, the unprecedented action by the Union government, which would have created a major political flashpoint in normal times, was not opposed by state governments. Throughout May, June and July, subsequent lockdowns with varying degrees of restriction have been imposed by the Union and state governments.

India has a mixed record so far. Although it took more than two months to reach 100,000 cases of infections, it took less than two weeks to add another 100,000 cases. By early July, India had become the third most affected country in the world. A number of large and populous states such as Maharashtra, Tamil Nadu, Karnataka, Telangana and West Bengal are experiencing a rapid surge in infections putting critical health care and support infrastructure under great stress. While this is obviously very concerning, according to official figures the number of fatalities per million population is one of the lowest in the world (14.27 against the global average of 68.29). The fact that the number of recovered cases are now outstripping active cases indicates a gradual turnaround. Two states, Maharashtra and Tamil Nadu, account for half of total cases, whereas a number of states like Kerala, Goa, Rajasthan, Uttar Pradesh, and Assam seem in control of the pandemic.

The enforcement of a draconian and complete national lockdown in India would not have been possible without a federal structure allowing for swift and coordinated decisions by the Union government. The federal mandatory guidelines for the public health response and related measures have been largely followed by states, albeit with certain changes based on local requirements. There have been major issues – particularly the plight of migrant workers – but Union and state governments have

not acted in a partisan way.

The Union and states have managed to put up a coordinated response largely on the basis of the Epidemic Diseases Act (EDA), 1897; and the National Disaster Management Act (NDMA), 2005. The broad architecture and flexibility of the two Acts have allowed both Union and state government to address pandemic in diverse ways.

The EDA and the NDMA allows both the Union and state governments to regulate the spread of epidemic diseases. While the Union government can take preventive emergency measures to control epidemic diseases at ports of entry and exit, states are empowered to adopt preventative administrative and regulatory measures to contain pandemics, such as restrictions on mass meetings, religious gatherings, shutting down recreational activities and educational institutions and ordering businesses to work from home. In fact, a number of states including Kerala, Punjab and Odisha were the first to use the EDA to impose partial lockdowns before the federal government announced full lockdown on March 24. Once the nation-wide lockdown was imposed by the Union government, it directed all the states to invoke responses as allowable under Section 2 of the EDA. There are major concerns about the vagueness of both Acts in situations of pandemics leading to potentially serious infringements of human rights. (This this issue is beyond the scope of this article).

The joint efforts of the Union and states have been furthered by a clear constitutional demarcation of powers between the two. Under the Indian constitution, health is a state subject (providing states major responsibilities for health service delivery), and infectious disease control is in the Concurrent List which requires the Union government's critical overarching role.

In short, key policies and the planning framework for the health sector are navigated by the Union government, contrary to the response of most federal countries such as the U.S. and Canada. While this goes against federal principles in its distortion of the principles of subsidiarity, in a crisis such as the COVID-19 pandemic, it has been

quite effective. The evidence of this can be seen in the cooperative roles played by the Union and states to ensure the enforcement of lockdowns and their gradual relaxation.

The Australian example of co-operative federalism

So far, Australia has remained in control of the COVID-19 pandemic. The first cases were recorded in late January and escalated until mid-March when each state and territory imposed a lockdown with varying degrees of severity and length. The lockdown resulted in effective suppression of the virus, before a recent escalation in cases in Melbourne, Australia's second largest city, which has recently entered its second lockdown. To date, Australia has recorded approximately 10,000 confirmed cases of COVID-19, and over 100 deaths.

Australia's federal system has worked well in stemming the spread of the pandemic, despite long being widely criticised as archaic. While the constitutional responsibility and most of the burden of handling disasters or epidemics rests with states and territories, the federal government is vested with responsibility for coordinating the responses of states and providing resources and expertise. However, states are responsible for public hospitals. This certainly potentially complicates the response to a global health emergency. Yet, the constituent units have shown high degree of cooperation in tackling the COVID-19 pandemic.

In responding to a rapidly-spreading pandemic, Australia's national and state governments quickly formed a national coordinating mechanism called National Cabinet, comprised of the Prime Minister, all state and territory Premiers (equivalent of US Governors). With National Cabinet comprising of leaders from different political parties, partisan politics has been minimal, thereby allowing this bipartisan body the power to develop overarching health response on COVID-19, such as setting guidelines/protocols on limits on indoor and outdoor gatherings and

travel restrictions, among others. This apart, the National Cabinet formed a forum for governments to debate critical matters and quickly resolve issues or communication problems, as well as review progress. While the National Cabinet has been coordinating a unified national response, the state and territory governments have been implementing these measures with considerable variation in protocols and guidelines.

Beyond the institutional structure which some analysts call "Executive Federalism", some well laid out legal provisions such as the Biosecurity Act 2015 and Public Health Act 2016 have helped governments to secure border control and impose travel bans, among others.

Compared to Australia, India has not created a broad bipartisan formal structure; nor has India tried to revive existing federal institutions particularly the Inter-State Council. However, Prime Minister Narendra Modi and key central ministers (Home and Health) have been regularly consulting state chief ministers and other key constitutional and administrative functionaries such as lieutenant governors and health officials before arriving at any major decisions related to lockdown and post-lockdown measures.

The common connecting element in the Australia and India responses to COVID-19 is cooperative federalism, which has brought positive results.

The US response is seriously hampered by the inconsistent response of states

Nowhere has federalism been more seriously tested by COVID-19 than the United States. The number of coronavirus cases is topping more than three million and more than 138,000 deaths, with huge increases being recorded in many states over the last few weeks. A number of analysts attribute this to an "inconsistent and uncoordinated" response by government. A dual federal system with rigid rules on

distribution of powers and responsibilities between the federal government and states appears to have prevented a coordinated national response.

While a lot of issues can be traced to the erratic decisions and statements of President Donald Trump (such as his assertion that he has "total power and States cannot do anything without the approval of the President") there are serious design issues in American federalism that are constraining a united response.

According to some analysts, the United States' federal structure mean that the COVID-19 response is implemented in a piecemeal way by states, city and local authorities. As a result of constitutional design, the COVID-19 response has been split among 2,000 state, local public health departments. In addition, the instruments for national response such as the Department of Health and Human Services, the Federal Emergency Management Agency and, importantly, the Centers for Disease Control and Prevention have limited power over state and local officials to enforce action.

There have been some positive developments. Several state governors including New York's Andrew Cuomo have set health benchmarks for other states and local governments to determine when it's appropriate to relax lockdown restrictions. There are also examples of as many as 17 states forming regional partnerships to coordinate response. For instance, California, Oregon and Washington have come together to form the Western States Pact, while seven east coast states such as Delaware and Massachusetts have formed a similar partnership.

However, over recent weeks skyrocketing infections in Texas, Florida and Arizona indicate growing instances of slow and knee-jerk responses from state authorities. For instance, the Governors of Texas and Florida paid no heed to economic restrictions and social distancing until they experienced a rapid surge in infections in late June. Worryingly, there are numerous instances of partisan politics that have come to play in the fight against COVID-19. For instance, when the Democratic Governor of North Carolina ordered all bars and restaurants to shut in the state, the

Republican Lieutenant Governor challenged the legality of the decision. Thus, continued competition and turf wars between the federal government and states, and between states, on partisan lines in relation to lockdown strategy, emergency protocols, the reopening of economy–as well as the staggering number of coronavirus cases–raise serious questions about the efficacy of the US federal system to tackle a global pandemic that requires a coordinated national response.

The COVID-19 pandemic is testing federal systems like never before

Under question are federal design, governing principles, norms and processes, and intergovernmental mechanisms to reduce friction and ensure cooperation in emergency situations. A snapshot of three major federal systems in response to COVID-19 reveals some mixed trends. Australia and India – owing largely to federal designs and intergovernmental mechanisms – have brought greater decisiveness and rapid response to the pandemic. India's strong Centre federalism ensures a significant role for the Union government, allowing it to generate a rapid national response with co-operation from the states. The Australian federal system has responded by creating an intergovernmental mechanism, National Cabinet, made up leaders from different political parties to create national level coordination to fight the pandemic.

In the United States, constitutional design tilts power greatly to the states. Leaving aside President Trump's bungling in terms of providing a national response, and several American states and local governments doing exemplary works to contain the disease, the US federal model has created roadblocks for a swift and coordinated national response. American federalism has stuck to its 'competitive' roots rather than a largely co-operative approach. This does not mean the federal response in India and Australia have been without problems. In short, the COVID-19 crisis is laying bare the strengths and weaknesses of different forms of federal systems.

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