
COOPERATIVE FEDERALISM IN INDIA

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ABSTRACT

A strong Centre as well as a strong State are not incompatible rather both are inter-dependent. A Centre could not be strong without strong States and vice versa. The federation of India provides for centre and state cooperation. Undoubtedly, the differences of race, religion and culture point towards a federal structure and there has to be an intergovernmental co-operation. India is a multi-party democracy and political cohesion is one of the most important facets in achieving best result of cooperative federalism. Although the roles of the state and centre are very well mentioned in the Indian constitution and they have defined powers but the government does not act in water-tight compartments. But, when it comes to taking decisions, it is always observed that the blockages emerge. This paper focuses on how due to these different ideologies and political interest the objective of cooperative federalism has not been achieved. In addition to this, this paper suggests about what is the way forward.

Concept of Federalism

The word federalism means a political concept where power is divided between a central authority and number of regional governing authority. So, it is the division of power of government at the centre and the state level. The origin of word 'federalism' is from Latin word 'foedus' meaning treaty or covenant. Federalism is a system of government wherein a country is controlled by two levels of government.¹ Broadly, there are two kinds of states – Union and Federal. In the union form of the government the powers are vested in the central government whereas in federal states the power is divided in both centre and its states. In the federal system, the states and the centre work together for inclusive growth and all-round national development. In the unitary form of government, the powers of the government are centralised in one government i.e., central government and the provinces are subordinate to the centre while in the federal system there is a division of powers between the federal and state governments and both are independent in their own spheres. The framer of the Indian Constitution took note of federalism as it was operating in countries like US and Australia. ²They took note of the practical needs of the country and recognised the need for a system that would be able to subserve the needs of a vast and diverse country like India. The Indian Constitution is, therefore, neither purely federal nor purely unitary but a combination of both. It is based on the principle that in spite of federalism the national interest and unity are paramount.

The Unitary form of government is the most common form of government in the world – China, UK, Indonesia, Japan and France are few examples. A single power confers the control over the whole government. The decision-making power is with the central government and the freedom of speech and expression is not exercised in its full capacity. In the unitary system the states can't pass their own laws and they have to abide by the sovereign authority. In the Federal system of government there is a horizontal relationship between the states and the Centre. The state units jointly share the powers and it doesn't rest only with the centre. However, India has a 'Quasi-federal' system. If we look our country India the states and the central government has no treaty, agreement or anything else of similar nature is signed among themselves. So, to term India and union of states as Federal government is not ideal way in any sense.

Meaning of Cooperative Federalism

¹ Ambar Kumar Ghosh, "The Paradox of 'Centralised Federalism': An Analysis of the Challenges to India's Federal Design," ORF Occasional Paper No. 272, September 2020, Observer Research Foundation.

² M P Jain, Indian Constitutional Law, eighth edition, Chapter- XIV, Co-operative Federalism.

Federalism may be executive, cooperative, collaborative or competitive. Cooperative Federalism is a concept or subset of federation where national, state and local government interact cooperatively and collectively to solve common problems and to deliver goods and services to the people. According to *State of Rajasthan V. Union of India*³, the Indian system of government is cooperative.

“In a sense, the Indian Union is federal. But the extent of federalism in it is largely watered-down by the needs of progress and development of the country which has to be nationally integrated, politically and economically co-ordinated and socially, intellectually and spiritually uplifted. With such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government”

In Cooperative federalism, a horizontal relationship is seen between the centre and the state. They focus upon National Development by working in the same direction. Cooperative federalism advocates variety of issues and concerns of the States and Union territories with the Ministers. There is no supremacy in this kind of federalism structure. The states and the centre have a healthy and flexible relationship and they have to work together. In cooperative federalism, union government is expected to play a role of elder brother.

This concept of co-operative federalism helps in promoting co-operation between the states and minimizes friction which in turn helps in achieving desired goals. This co-ordination between the states helps in promoting public welfare. The Centre has the largest amount of funds and its position is such that it can help other states in meeting their demands. The Centre is also dependent on states for implementation of laws that are made under the Concurrent list.

Grandville Austin calls Indian federation as cooperative federation however Morris Jones called India as an example of bargaining federation. In bargaining model centre acts a big brother. However, because of the coalition government in contemporary times there is a comparative increase in the bargaining powers of state government as well. Unlike USA, neither all states have equal representation in union parliament nor all states have equal status. There are variety of provisions for different states. Alfred Stepan calls USA as ‘Demos constraining model’ whereas India as ‘Demos enabling model’. In USA, all states irrespective of the population have two seats in senates & thus there is under representation of demos/people. Whereas in India seats are allocated in Rajya Sabha according to the population and hence more representation which is why

³ 1977 AIR 1361

it is called 'Demos enabling model'. Hence according to Alfred Stepan, India is a better example than USA with respect to the model of federation for new countries.

India towards Cooperative Federalism

The concept of 'competitive federalism' which signified a sense of competition between the Centre and the States slowly turned into 'co-operative federalism' because when the Indian Constitution was drafted, at that time that classical economies of the USA, Canada were facing a great depression of the 1930s and they had also experienced two world wars. During that period, despite the nature of the constitution the political systems in those countries had experienced centralisation. Therefore, when the constitution of India was being drafted, the doctrine of dual sovereignty in federal theory had given way to shared or collaborative sovereignty instead of applying dual sovereignty between the centre and state. Since the constitution of India was drafted in such altered times, the framers of the constitution found it relevant to give significant powers to the Parliament. So, during the emergency the State becomes highly centralised but also in normal circumstances the centre has overriding effect. In case of the conflict, the parliamentary law prevails as it has been given special powers. Hence, the concept of cooperative federalism is built into the constitution of India which was not the case in the classical federal system.

India is a vast and diverse country with numerous languages, ethnicities and cultures that cannot be governed by just a central authority. Due to this the makers of the constitution had opted federal polity. According to the constitution, states are not supreme in their own sphere. A complete federal flavour is not seen in India due to the centralising tendency of the Indian federalism. The Union has a control over most of the important subjects like defence, currency, external affairs, citizenship, railways. Both centre and state can make laws in the subjects mentioned in the concurrent list but the centre has an overriding effect. The state government are dependent upon the centre for finances and the centre is dependent upon the state for implementation of policies because it doesn't have such huge administrative machinery. There is no independence but inter-dependence is present.

The quasi-federal nature of our Constitution has been referred to as cooperative federalism recognizing the inherent independence of centre and state governments.⁴ Article 1 states that India i.e. Bharat is Union of States which means Union of India is permanent and indestructible as Indian

⁴ Federalism is not a one way-street - <https://www.hindustantimes.com/columns/opinion-federalism-is-not-a-one-way-street/story-h05HnOx1v2WyTNKkOfdV7O.html>

Federalism is devised with strong centre and makers of the constitution is aware that resources of our country is unequally distributed and to ensure basic needs to common man and to bring fundamental change in structure of Indian society we require a strong centre. The drafting committee has also made it clear that India is a federation but such federation is not a result of agreement by states to join federation unlike USA and the states has no right to secede themselves from the union of India. The country is divided only because of administration convenience and the whole country is one unit. Therefore, having a strong centre and other states they have their division of legislative power under Schedule 7 of the Indian constitution. Hence, we are not unitary or federal we are quasi federal government.

The Parliament can make changes in the area, boundaries or name as mentioned under Article 3 of the Indian Constitution. Due to unilateral action of Parliament, states are destructible and can be merged or removed by the centre. Also, the Parliament can make amendments to the constitution without consulting the states. In emergency, the Central government becomes the most powerful and the states go into the control of the centre. Even the constitutional head of the state i.e. the governor holds the office as per the President.

Sarkaria Commission on Indian Federalism⁵

After Independence, strong centralising tendencies arose in India because of the rule of one monopoly party. This power of Congress Party was however broken in 1967 and several political and regional parties have emerged since then. The States are at a strong position and can also bring pressure on the Centre. Now since the scenario has changed and demands of re-ordering of Indian Federalism have been made time and again. But mostly, they are unrealistic and exaggerated. The Sarkaria Commission's report made the following recommendations:

- The residuary powers should not be transferred from Centre to the States.
- The need for federal supremacy for a successful functioning was emphasized.
- Article 356 is a very debatable provision but the demand to remove it was rejected. However, It should be used in a restrictive manner and with great caution.
- The contention of merging Finance and Planning Commission was also rejected.

⁵ Supra, note 2

- The Commission also recommended the need for Intergovernmental Council under Article 263.

Legal Framework supporting Cooperative Federalism

- Article 1⁶ of the Constitution quotes that “India shall be a Union of States.” This clarifies that Union and the states are inseparable and are constitutionally obliged to cooperate with each other.
- Schedule 7 of the Constitution of the constitution consists of three lists – the Union list, the state list and the Concurrent list which lists down the subject matters on which the said authority can make laws. The matters that are mentioned in Concurrent list are matters on which both state and union can make laws.
- Article 263⁷ of the Indian Constitution establishes Inter-state council to investigate upon the subject matters that are of larger public interest and are necessary to investigate. The council is responsible for making recommendations for better implementation and coordination between centre and state which is a major challenge of cooperative federation. This council also has a function to resolve the disputes arising between the states as mentioned under Article 263 (a). It helps in promotinf horizontal and vertical cooperation. Four regional councils have been established to make recommendations for better co-ordination of policy relating to sales tax which is a State subject. The Central Council of Health has also been established under Article 263 and it is an advisory body whose functions are to recommend policies relating to health, make legislations and determine broad lines of policy, to examine the possibility of co-operation between states during the times of quarantine and epidemics. Intergovernmental Council Article 263 of the constitution establishes a committee to examine and investigate matters of mutual interest between the federal government and the states. The Supreme Court proposed the formation of a council under Article 263 to discuss and resolve issues of central state taxation in *Dabur India Limited v. State of Uttar Pradesh*⁸.
- Under Article 282, the Union or State can make grants for public purposes even when the public purpose are beyond their respective legislative competences as laid down in the seventh schedule.

⁶ The Constitution of India, 1950

⁷ Supra, note 6

⁸ 1990 AIR 1814, 1990 SCR (3) 294

Fiscal transfers to states are also implemented through Article 282. It is done for the Centrally Sponsored Schemes (CSS).

- The Full Faith and Credit clause⁹ in Article 261 provides that all public acts, documents, and judicial proceedings of the Union and each State shall be given full confidence and credit throughout the territory of India. This is a step toward increasing collaboration and trust between the federal government and the states.
- The States Re-organisation Act, 1956 introduced Zonal Councils in between the centre and the States. There are 5 zonal councils that have been established according to the geography – Northern, Eastern, Western, Central and Southern. All the states have equal representation. It aims to promote the councils can discuss any matter that is presented before them by the States where they have common interest like economic and social planning, water disputes, inter-State transport or linguistic minorities matters etc.

Classic examples of Cooperative Federalism

a) NITI AAYOG

NITI Aayog has been constituted to enable good governance in India. It formulates special schemes and policies to ensure sustainable development. NITI Aayog is evolving into a cutting-edge resource centre with the requisite expertise and skills to respond quickly, stimulate research and innovation, offer the government with a strategic policy vision, and cope with unforeseen difficulties. It has an affiliated office, the Development Monitoring and Evaluation Organisation (DMEO), a flagship initiative, the Atal Innovation Mission (AIM). Cooperative federalism reassures that the government at all levels take steps towards the national development¹⁰.

NITI Aayog aims to achieve national development with active involvement of states through structured support initiatives and policies with states on a continuous and regular basis and recognizes that strong States make a strong Nation. It also focuses on integrated bottom to top planning approach by formulating plans at village level and aggregating those plans progressively at higher level of governance.

⁹ Supra, note 2

¹⁰ <https://www.niti.gov.in/aspirational-districts-programme>

In 2017, the NITI Aayog called out for competitive “cooperative federalism” stressing that this formula would redefine the relationship between the Centre and the States. Former vice chairman of the Aayog Arvind Panagariya put the burden on the States to reimagine brand India. There appears to be a silver lining in the functioning of the Aayog in enabling states competing with each other to promote governance initiatives in the spirit of co-operative, competitive federalism.

The Aspirational Districts Programme is the flagship initiative of NITI Aayog in the competitive cooperative federalism. The programme focuses on 112 least developed districts of the country. It ranks these districts on 5 Pillars - Health & Nutrition, Education, Agriculture & Water Resources, Financial inclusion & Skill Development, and, Basic Infrastructure. The rankings promote a sense of competitive as well as cooperative federalism. It also follows a 3C’s approach – Convergence, Collaboration and Competition. It creates a strong set of innovative practices and creates a real time feedback mechanism to rank these districts.

b) GST COUNCIL (ARTICLE 279 A)

Goods and Services Tax (GST) is one of the most revolutionary financial tax reforms that our country has adopted. It was introduced by the passage of the 101st Constitutional Amendment Act, 2016, which has eliminated various Central and States-level taxes and cesses. It has opened a wide opportunities for development of states ensuring proper tax management. The Act was passed, as required, by 2/3rd majority of the Parliament as well as agreed to by more than half of the states. The provisions abolishing custom duties truly uphold the federal principle of the Constitution. The tag like “One India, One Tax” showcases the spirit of federalism.¹¹ The introduction of the GST is a massive example of co-operative federalism where certain powers of both the centre as well as the states are sacrificed for the common good of the public in the form of a single tax. In the GST council all states ministers and union ministers jointly made recommendations and undertook important tax decisions.

Not just the passage of the Act, but various other measures such as giving the voting powers to the states to the extent of 66.67% in the GST Council (Article 279 A) is also testament to the fact what co-operative federalism can achieve. The achievement is a commendable effort considering the geo-political situation of Indian politics where consensus building is rather rare, even so, when a measure involves a fundamental reordering of fiscal relations between the Centre and the states. It is important for governance to be carried out through cooperative federalism, particularly in a

¹¹ Brief history of GST, available at <https://gstcouncil.gov.in/brief-history-gst>

country like India where diversity is so great; and it is imperative that decisions be made by consensus and discussion between the centre and the states so that policies can be implemented in the best way possible to serve the common good of the people. As a result, while the GST has been praised as a symbol of cooperative federalism's success, It contains its positives and negatives, as many people believe that a state's financial authority has been taken away. The true test of cooperative federalism is still to come, and it will be determined by how well and efficiently the GST is implemented.¹²

c) ALL INDIA SERVICES (ARTICLE 312) ¹³

AIS Services is another example of cooperative federalism. These services are maintained by the central government by consultation of the state government even though All India Service is a unitary feature. To enforce both state and federal laws, an integrated judicial system has been formed. The Union government recruits the people and assign them to the states. Major decisions regarding the recruitment like retirement age, dismissal and removal etc are kept in the hands of the union government however minor matters like promotion and transfer are kept with the state government. So, the central government has ultimate control whereas state has immediate control. Since the All India Services are managed in consultation with the states, it is good example of cooperative federalism.

In the spirit of cooperative federalism, several agreements have been signed in the last three years to end extremism and bring lasting peace to the North Eastern states. A historic agreement was signed by CM of Assam and CM of Meghalaya for settlement of their inter-state boundary on 29 March, 2022. ¹⁴This agreement is said to immensely benefit people living in these areas, ensure long lasting peace and boost development. Additionally, New Medical Colleges are being established in the government sector under centrally sponsored scheme throughout the country with central share at 60%. The programme is a demonstration of cooperative federalism as it provides no room for either party to claim total ownership.

¹² GST & cooperative federation: Through the eyes of the Indian constitution available at the International Journal of Advanced Research and Development

¹³ Prajjwal, Cooperative Federalism <https://www.legalserviceindia.com/legal/article-4882-cooperative-federalism.html>

¹⁴ Assam and Meghalaya sign historic agreement to resolve boundary dispute, available at ; <https://newsonair.gov.in/News?title=Assam%2C-Meghalaya-sign-agreement-to-resolve-interstate-boundary-disputes&id=438118> (last visited April 16, 2022)

The case of *Jaora Sugar Mills v Madhya Pradesh*¹⁵ is the best example of federal-state cooperation. The Madhya Pradesh government adopted the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958, which established a sugarcane cess that was due in accordance with the Act's provisions. This Act was eventually declared to be illegal because the Centre had legislative authority over the matter under the Union list. As a result, it was declared invalid. However, the Parliament realised that this Act, as well as a number of other state statutes, had the same constitutional inconsistencies and flaws. The Sugarcane Cess (Validation) Act 1961 was passed in response to this issue. The appellants were ordered to pay a two-year cess. The appellants challenged the constitutional legitimacy of such an Act after the High Court dismissed the petition, claiming that it was "colorable legislation." The Supreme Court ruled that the Act was constitutionally acceptable, notwithstanding the fact that its purpose is debatable.

Challenges and Political Hinderances

When we have different political parties and leaders the relations between the party in power on in centre and the parties which are in power in different states are not congenial. So, at political level, there are certain issues which do not get sorted out. This ends up in failure of major schemes affecting crores of people. The Multi-Party system creates conflicts between the union and the state because of the competition between the political parties. Different ideologies and opposing character of the parties has become a hurdle in law making procedures. Even when a law is for the benefit of the people, regional parties end up going against in order to grab votes for a specific community. This is a major drawback of a cooperative system because at the end it is the citizens of India who do not get the benefits of the schemes. Hence instances of tussles between the agencies of central government and state government and it have become quite common in India. The above statement can be supported by two recent example – Citizenship Amendment Act, 2019- Kerala opposed this and filed a petition challenging its validity. The state claimed this Act to be against the minorities. In The Motor Vehicle Act, 2019, the centre increased the amount of fine imposed of violation of traffic rules. But under populist sentiments states with the opposition party government like Madhya Pradesh, Chattisgarh, Rajasthan, Kerala, Odisha and West Bengal want to put the law on hold. National Investigation Agency (Amendment) Act, 2019 in the national interest the centre passed a law to contain terrorism. It increased the power of the NIA to investigate

¹⁵ 1966 AIR 416, 1966 SCR (1) 573

terror cases across the country without acquiring special permission from the state. But the states took it as a attack on their power to control such matters.

The States ruled by the opposition party always strive for more power and autonomy. They also feel that there is bias in distribution of funds. It makes Bringing implementation of the central schemes to zonal and district level a major challenge. Even during GST, the opposition parties highly criticised the move and did not take part in the midnight session. The States cooperation is very important for example, Uttar Pradesh is a state with 80 districts with a population which is equal to the entire population of Pakistan. And bringing positive change and benefits to the last person has not been achieved.

The Zonal Councils that have been created to promote Interstate co-operation by discussing common problems and conjointly taking action to resolve it has not achieved any spectacular results yet. The aim of these statutory bodies is to take action on matters represented by states with common interest and make recommendations. It allows the states to pool their resources and resolve regional problems. These councils have not been able to achieve their purpose because of the rivalries between the neighbouring states. There is always friction amongst the states when different political parties are in power.¹⁶The Sarkaria Commission also expressed that the Zonal Councils have failed to fulfil their aim and meetings should be held at least twice a year that too in camera. Talking about the River Water Disputes, since India has many rivers and it goes across many state such water cannot be regarded as a property of one state. It is therefore governed by the centre and Article 262(1) empowers the Centre to provide for the adjudication of disputes relating to use, distribution and control of the said water. A dispute also arose between the States of Punjab and Haryana regarding the water of river Sutlej. The question was whether Punjab government is obligated to construct a canal of the shared water. However, due to a prior agreement, Punjab was directed to construct a canal.¹⁷

The federal structure of India had some striking unitary features as well. The federal nature of the government is time and again doubted due to the supremacy of power at the centre. Due to these eccentricities in federal character the federal government is perceived to be more of a unitary nature. The states do not play any relevant role in amending of the constitution and most of the power lies with the union itself. In the pandemic, few opposition states demanded autonomy with respect to lockdown and declaring containment zones. Several states complained about fiscal

¹⁶ Supra, note 2

¹⁷ State of Haryana V State of Punjab, AIR 2002 SC 685

centralisation by Centre and not getting fiscal grants from the Centre. Although the federalism has come a long way from applying President's rule. Between 1947 and 1977 emergency was imposed 44 times. In the case *S.R. Bommai V. Union of India*¹⁸ the apex court narrowed down the legislative powers of the President as mentioned under Article 356. In the said case, it was noted that federation is the basic structure of constitution. The Centre enjoys control over the states. There have been many occurrences of contentious terrain. Firstly, Taxation is one controversial issue because of the constitutional provisions. The Goods and Services Tax (GST) had put forward a scenario where states had to forego their taxation powers. There are many items of taxes on which the centre keeps full the revenue with itself.

The distribution of responsibility in the Seventh Schedule indicates that the State list includes subjects like Agriculture, Sanitation, Public health, Maintenance of law and order which requires a lot of development. But the subjects which have revenue rising capacity are given to the Centre. This lands us on a situation where money is with the central government and responsibilities are given to the state government. This in turn creates vertical imbalances i.e., the revenue generating capacity of the state government is not in proportion to the developmental requirements. This was addressed by the Finance Commission of India which acts as the balancing wheel in the centre and state financial relations. It recommended that the net profit generated by the taxes should be shared with the states. Earlier the share of the state governments in net tax revenue was 22% which was very progressively increased to 42%. Due to implementing recommendations made by the 14th finance commission, the fiscal condition of the states has improved.

The emergence of covid-19 highlighted the drawbacks of our federal system.¹⁹ A huge criticism was received on the sudden imposition of nationwide lockdown without consulting the states. Migrant workers suffered in a big number and a crisis of basic necessities was witnessed. Due to this, the states themselves had to deal with the situation. During the lockdown, the centre government also controlled the key state powers by banning the liquor sale, stoppage of public transportation which put states into a trouble. This 'centralised federalism' was also seen in fiscal matters. The states were going through a phase of financial disruption and the centre took financial claims from the general public through PM Cares Fund. The centre was expected to lead the states in the crisis but a debate arose regarding the subject matter of health. It was pointed out that health is a state subject and the states are solely responsible for the conditions faced by them. Political

¹⁸ 11 March, 1994 AIR 1918, 1994 SCC (3) 1

¹⁹ Niranjana Sahoo and Ambar Kumar Ghosh, "The COVID-19 Challenge to Indian Federalism," ORF Occasional Paper No. 322, June 2021, Observer Research Foundation.

interests could clearly be seen and the focus was less on saving the people. In such a situation the country required an impactful decentralised response in which states could be the key drivers.²⁰ A highly centralised administration was quick to realise the role of state and local bodies.

Therefore, mutual disputes and selfish political motives hindered the path of cooperative federalism in India, as a result of which, positive results could not be achieved.

Strengthening Cooperative Federalism: a way forward

India being most densely and highly populated State with numerous ethnicities is almost incomparable with other countries. And with such diversity, Cooperative federalism is the only way forward looking at the needs of our country. When state and centre work together with schemes, the speed of work increases and benefits reach to the last person who is to benefit from the scheme. Both, the Centre and State are mutually interdependent. The roles are very well defined in the constitution for centre and states and we are a union of centre but with a strong centre. The political masters need to understand that the schemes and programmes introduced by the centre are of common interest of the state as well. The opposition party leaders should also take up those programmes and not cause any hinderances to it. Because states do not have the resources which are required to fulfil the objective of the schemes and the centre will provide the necessary resources to the state.

The centre must bring enough flexibility to the scheme allowing the states to pick and choose. Because what might be required in North-eastern states might not be required in southern states. There cannot be a common prescription for all states as some states are larger than most countries in the world and have their own peculiarities and requirement. The centre must make arrangements according to the necessities of the states. The state should also go with clean hands to the centre for getting the budgetary requirements fulfilled. The centre after realizing the difficulties of the states shall provide assistance and support so that there is leeway and flexibility built in the schemes. The aim of a collaborative federation is to address the issues and problems and work towards its solution. The states should express their readiness to acquire common goals and working harmoniously. The authorities, irrespective of their political interests should show concern over any conflict and hardships faced by the people. The states need to be empowered and encouraged for a healthy competition among themselves regarding the formation of new policies

²⁰ Sarthak Sethi, "Covid-19 and Indian Federalism: Through the Lens of the Disaster Management Act, 2005 and Fiscal Federalism", *Indian Law Journal*. <https://www.indialawjournal.org/covid-19-and-indian-federalism.php>

and effective implementation. The Centre should develop good conventions for getting corporation from the states instead of applying 'one size fits all' approach. All the different ethnicities of states must be taken into account. Hence, the centre must take the anchor's role in difficult times but states should not be neglected. Covid had put the federal structure on test. Some during the pandemic, the panchayats and other local bodies showed an active participation in dealing with the situation without any guidance of the centre. The most important lesson that was learnt in the crisis situation was that a healthy cooperation is required between the union and the state in order to function effectively.