

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 3
2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

GST & Co-operative Federalism India's Fiscal Evolution

DEV KUMAR YADAV¹

ABSTRACT

Under cooperative federalism, states and the federal government work together to promote development while recognizing the value of "interstitial contestation" and cooperative dialogue between the two tiers of government. Underpinned by the values of fairness, capacity, stability, and progress, important organizations such as the Finance Commission, GST-Council, and NITI Aayog are essential to policymaking and contemporary federalism in India. By allowing the Center and States to impose taxes on goods and services simultaneously, the 101st Amendment—which established the Goods and Services Tax (GST)—marked a major breakthrough in cooperative federalism and preserved the federal system.

In order to promote uniformity in indirect taxation, the Center gave up its exclusive tax authority over manufacturing, and the States gave up their exclusive tax authority over sales.

The continuous disagreements between the federal government and the states over everything from the distribution of funds to the setting of GST rates have once again raised concerns about our federal system, which must be resolved if the nation is to prosper. The main goal of the goods and services tax is to balance the power between the federal government and the states under the GST regime. The cascading effect that was meant to eliminate this power shows that the central government has the authority to take over the indirect tax system, which will reduce state autonomy and lead to inconsistencies and contradictions between the CGST and SGST Acts, as well as the destruction of the federalist principle.

Keywords: *Federalism, Cooperative Federalism, Fiscal Federalism Goods & Service Tax(GST), GST Council*

I. INTRODUCTION

India is a union of states², with 28 states and 8 union territories making up its territory. The Indian constitution embraces the parliamentary system and establishes a federal structure³ with a separation of powers between the federal government and state government for

¹ Author is an Assistant Professor of Law at Chandigarh Law College, CGC Mohali, India.

² Article 1 of the Constitution of India

³ NCT Delhi vs Union of India [2018] 8 SCC 501

executive and legislative functions.

The Indian constitution has the most comprehensive plan on federal financial relations of any federal constitution in the world. It is interesting to note that the main characteristic of fiscal federalism in the US is the almost complete lack of a clear set of constitutional provisions outlining the respective budgetary authorities of the federal and state governments as well as their interrelationships⁴.

Two categories are included in the Indian constitutional provisions⁵ that, when viewed through the lens of taxes, have the most influence on fiscal federalism:

(1) Distribution of tax receipts/revenue sharing; and

(2) Allocation of Taxing Powers

India as a nation attained political unification, with the inclusion of the Princely States into the Indian Union in the 1950s. The 101st Constitutional Amendment's passage of the Goods and Services Tax cleared the path for the nation's economic unity also. To achieve the objective of a single, economically integrated India with a "one market," the federal government and the states have relinquished their taxing authority and established a single tax system⁶.

In our federal system, the federal government, and the state government both are able to levy taxes. The Union and State Lists under the 7th Schedule specify how these taxing powers are divided. The Indian Constitution includes specific provisions in Part XII for this. But now that the Indian Constitution has been amended, the power of this significant restructuring of the federal budgetary system demonstrates the strength and resolve of the federal structure ties for the benefit of the common good⁷. Originally, the Empowered Committee of Ministers and then the GST Council's process made this convergence for the greater welfare of society possible. The Union Finance Minister, the Union M.O.S. for Finance, and the State Finance Ministers make up the GST Council, which makes recommendations that the Centre and States act upon. The accommodating nature of federalism is reflected in the division of voting power between the States and the Centre, which is 2/3 to 1/3.

⁴ Jason Sorens, 'The Institutions of Fiscal Federalism' [2011] 41 *Publius* <<https://www.jstor.org/stable/23015078>> accessed on 18 February 2024.

⁵ Part XII, Chapters I-II Constitution of India

⁶ Sujith T.S., 'A Study on Economic benefits of Goods and Services tax on Indian Tax Scenario' [2017] 2 *IJCRM* <[Researchgate.net/publication/355845257_A_study_on_economic_benefits_of_Goods_and_Services_Tax_on_Indian_Tax_Scenario](https://www.researchgate.net/publication/355845257_A_study_on_economic_benefits_of_Goods_and_Services_Tax_on_Indian_Tax_Scenario)> accessed on 20 February 2024.

⁷ Shreehari Aney and Abhay Kumar, 'Recasting of Federal Structure of the Indian Constitution' (*SCC Online* 2 April, 2021) <<https://www.scconline.com/blog/post/2021/04/02/indian-constitution/>> accessed on 21 February 2024.

II. CO-OPERATIVE FEDERALISM

"The practice of administrative co-operation between general and regional governments, the partial dependence of the regional governments, by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions," states A.H. Birch⁸ in explaining the meaning of "co-operative federalism".

A system known as cooperative federalism allows state and federal (central) governments to complement one another and work together to carry out a number of tasks. It is intended to complement and enhance the present legal structure of federalism, not to replace it. The notion of cooperative federalism recognizes that advancing the general welfare is the shared objective of all governmental entities, and that these entities ought to collaborate rather than act in isolation to achieve this objective.

As a matter of fact, in most modern federal countries, "cooperative federalism" has swapped the classic doctrine of material independence of the 2 level of governments—federal and state⁹. In his study *Union- State Relations in India, 1960*, Sri K. Santhanam argues that two reasons have strengthened our constitution's unitary bias in practice to the point where very little remains of federalism. These two factors are: (a) the Union's enormous financial strength and the States' total reliance on Union grants to fulfil their mandates; and (b) the scope of the Union Planning Commission, which was formed under the concurrent authority over planning¹⁰.

There are differences in the roles that the Centre and the State play in a federal system. Each has a designated area of competency. There aren't any waterproof compartments, though¹¹.

There are several tools available to encourage intergovernmental cooperation. Granville Austin claims that the Indian Constitution was maybe the first to be embraced by a constituent body, federalism that is cooperative from the beginning.

Principles Of Co-Operative Federalism

In the United States, cooperative federalism, also referred to as "marble-cake federalism," refers to the idea that the federal and state governments complement one another and work together to carry out specific tasks. It only makes corrections to the current federalist legal

⁸ Durga Das Basu, *Introduction To The Constitution of India*, 65, 22nd Edition, Lexis Nexis, Haryana, India, 2016.

⁹ H.J.Wiseman, 'Regional Cooperative Federalism and the US Electric Grid' [2022] Penn State Law http://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1449&context=fac_works accessed on 22 February 2024.

¹⁰ Alice Jacob, 'Centre-State Governmental Relations In The Indian Federal System' [1968] 10, *Journal of the Indian Law Institute* < <https://www.jstor.org/stable/43949975> > accessed on 20 February 2024

¹¹ Durga Das Basu, *Commentary on the Constitution of India* (9th edition, Vol. 1, Lexis Nexis 2014).

framework, not replaces it. The foundation of cooperative federalism is the notion that all federal entities ought to collaborate in order to realize their shared objective of advancing the general welfare.

In numerous rulings, most notably in *NCT of Delhi v. Union of India*¹², the Indian Supreme Court has acknowledged the idea of cooperative federalism. The Indian Constituent Assembly, which drafted the federal provisions of the Indian constitution, could not have predicted that the federal government and the states would collaborate to achieve coordination; instead, it envisioned a cooperative federal architecture¹³. The Indian Supreme Court claims that the concept of cooperative federalism is based on cooperation, negotiation, and the resolving of any disputes that may develop between the central government and the states in their respective pursuits of development¹⁴. However, the Indian Supreme Court has made it clear that both the federal government and the states must operate within their own jurisdictions and refrain from considering encroaching.

III. TAX-STRUCTURE IN INDIA BEFORE GST

There was no overlap between the federal government's and the states' taxing authority before to the 2016 constitutional amendment pertaining to the GST; each had its own sources of revenue. In order to avoid the problems that had developed in several previous federal constitutions with overlapping powers of taxation, the constitution made their taxing powers mutually exclusive.

Apart from the tax-overlapping situation brought about by the GST-related constitutional amendment, it is safe to say that the Indian constitution does not allow for tax overlapping, as the fields of taxation are clearly enumerated in the union and state lists and receive no noteworthy mention in the concurrent list¹⁵.

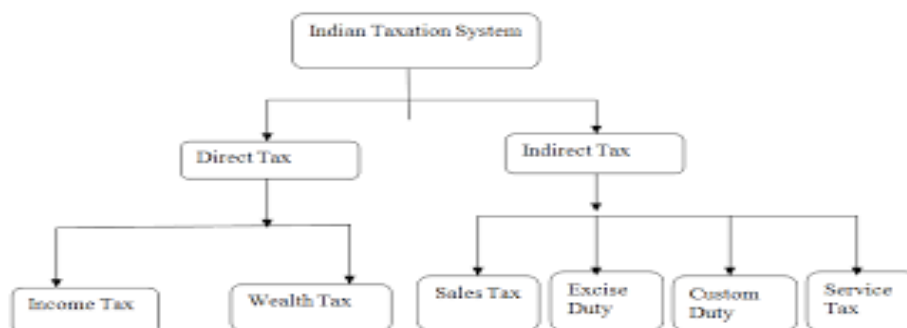


Fig-1: Tax Structure Before GST¹⁶

¹² [2018] 8 SCC 501

¹³ Ibid

¹⁴ Ibid

¹⁵ *State of West Bengal vs Kesoram Industries Ltd* [2004] 10 SCC

¹⁶ Dr. Shant Kumar A.B, Dr. Sanjeev Kumar, 'An Overview of Indian Tax System Before and After GST' IOSR

As there were a separate taxing powers, both the centre and states had the exclusive domain over certain taxes. For instance, Direct Taxes (are defined as those taxes whose burden is borne by the person who pays the tax. There is some debate as to whether this definition holds good any longer, considering that corporations do not always bear the incidence of the corporate tax) are primarily the domain of the centre i.e. it has exclusive power to impose Income tax and Corporate Tax, which altogether account for more than the half of the revenue from the tax collected by the centre while the states has only the realm of agricultural income in case of Direct taxes. Since the implementation of the GST, the federal government's and the states' respective jurisdictions over indirect taxes (Indirect taxes, as traditionally understood, are taxes whose burden can supposedly be passed on, in whole or in part, to other institutional units by increasing the price of the goods or services supplied. Indirect taxes are usually imposed on transactions, goods, or events.) have shifted. To be clear, the centre had the sole authority to impose the following indirect taxes under the pre-GST regime: sales tax on interstate sales of goods, customs duties on the import and export of goods, excise duty on the manufacture of all goods (apart from alcohol for human consumption), and service tax on the provision of services. Prior to the implementation of the GST, the states were alone authorized to levy the following indirect taxes: purchase tax, luxury tax, entertainment tax, sales tax/VAT (on intrastate sales of goods), lottery, betting, and gambling taxes, and entry tax (octroi). Nearly all of the previously stated indirect taxes have been absorbed by the GST reform and replaced with a single tax, the GST

IV. EVOLUTION OF GST

The Goods and Services Tax (GST) was first suggested for India in 2006, during the tenure of Prime Minister Shri Atal Bihari Vajpayee. The Empowered Committee of State Finance Ministers (EC) devised the organizational structure and strategy, while the Finance Minister proposed the GST in his Financial Budget for 2006–07. In 2009, the European Commission published its first discussion paper on goods and services tax (GST), which outlined the proposed GST and established the framework for the laws and regulations in place today. Despite being introduced in March 2011, the 115th Constitution Amendment Bill, 2011 was not passed for political reasons. Introduced in December 2014, the 122nd Constitution Amendment Bill, 2014 was approved in May 2015.

The Constitutional amendment was notified as the Constitution (101st Amendment) Act 2016 in September 2016, paving the way for the GST journey.

Why was GST introduced?

It may be questioned why concurrent jurisdiction was required when the taxing authority over indirect taxes was expressly outlined in the constitution. The short explanation is that several economic sectors were created inside India as a result of frequent and disorganized use of the central government's and the states' separate taxation authorities¹⁷.

For example, different states in India have different rates of sales tax and value-added tax (VAT) on the same commodities, and several have entry fees on goods passing through their borders¹⁸. The centre created a significant barrier to the free flow of trade by imposing an excise tax and an origin-based tax on the regional sale of goods, which exacerbated the already-existing bias consequences. What worsened the situation was that, there were no credits available for any of the input taxes paid in the earlier phases. As a result, taxes increased gradually. From a fiscal perspective, India was not a unified market, mainly because of the inconsistent and disorganized ways in which the individual states utilized their commodity tax authorities. This meant that, compared to trade blocs like the European Union, it was frequently more difficult (or costly) to trade goods inside Indian states. Trade was frequently diverted by disparate sales tax rates on the same good in various states.

It was usual for purchasers from one state to make purchases in another just to have their sales tax liability reduced. For instance, prior to the GST, the manufacture and sale of coal were liable to several taxes, each levied at a different rate, with a total tax of almost 13 percent. The states applied variable-rate sales tax (VAT) on intrastate purchases, while the central government levied excise duty, stowing excise duty, and central sales tax on interstate transactions.

Concurrent Taxation Under the GST

It became necessary to give the federal government and the states equal authority to levy the new unified indirect tax in order to prevent any meaningful impact on the taxing powers related to indirect taxes and to preserve the budgetary autonomy of all federation entities.

For this reason, the GST comes in four varieties.

1. Central GST (CGST)- A tax imposed, gathered, and held by the center on intrastate deliveries of goods and services ;
2. State GST (SGST) – a tax on intrastate deliveries of goods and services that is imposed,

¹⁷ Rahul Mukherji, 'The State, Economic Growth, and Development in India' [2009] India Review < <https://doi.org/10.1080/14736480802665238> > accessed on 24 February 2024.

¹⁸ Jindal Stainless Limited vs State of Haryana [2017] 12 SCC

collected, and held by the states and those union territories that have legislatures.

3. Union Territory GST (UTGST)- A tax on intrastate deliveries of goods and services that is imposed, collected, and held by those union territories lacking legislatures. ,and

4. Integrated GST (IGST): This tax is levied on interstate supply of goods and services, including imports of goods and services, and is collected by the federal government before being disbursed to the state in which the commodities and services are utilized.

It's critical to recognize this new concurrent authority that the states and the federal government have to levy taxes concurrently on the same tax base—that is, the same intrastate supply of goods and services—from the current concurrent legislative power of the federal government and the states over issues covered by the concurrent list of the Indian constitution. As previously stated, while state legislatures have the exclusive authority to legislate on issues mentioned in the state list, and Parliament has the exclusive authority to legislate on issues listed in the union list, both Parliament and state legislatures have the concurrent power to legislate on issues listed in the concurrent list. Laws on the concurrent list may give rise to repugnancy issues in certain circumstances. Repugnancy is the legal term for when a state law and a central law disagree on a matter covered by both, in which case the parliamentary legislation will take precedence and the state legislature's bill will be void to the degree of the repugnancy.

V. VIEW OF 14TH FINANCE COMMISSION TOWARDS CO-OPERATIVE FEDERALISM

The Fourteenth Finance Commission (FFC), chaired by Dr. Y. V. Reddy, was presented in December 2014 with recommendations for implementation spanning 2015 to 2020. After considering the requirements of the states, the FFC suggested grant-in-aid and tax devolution to cover the revenue shortfall. It ought to be carried out within the allocated budget. Sanitation, drinking water, education, and health are significant public sectors that need to be moved from the federal level to the state level. The Union and the State will be involved in the implementation of new institutional arrangements with the proper assistance of subject matter specialists.

Numerous tasks on the Concurrent List fall within the States' purview and have historically been handled by them. Nonetheless, in keeping with cooperative federalism, there are some duties that are better performed by the Union and State Governments in addition to those included in the State and Concurrent lists. For instance, it should be ideal for everyone to have access to certain public services, regardless of where they live, at least in terms of the minimal requirements. Therefore, there is a shared obligation between the federal government and state

governments to uphold these defined basic requirements. The issues and approach adopted by this Commission leads to the following conclusion: -

1. Although opinions about the necessity of some special purpose transfers from the Union to the States are convergent, disagreements still exist regarding the ideal scope and the way these transfers are now carried out outside of revenue devolution and grants from the Finance Commission.
2. There is a consensus that the purpose of Union-to-State transfers should be to augment the transfers that the Finance Commissions suggest.
3. There exist divergent opinions regarding the extent or intentions of such transfers outside the Finance Commission.
4. The Committees' recommendations have shown that they are uncomfortable with the Union making decisions about the character, scope, and design of the Centrally Sponsored Schemes in a unilateral manner.
5. For a number of years, worries have been raised over the fact that many Centrally supported programs follow a "one size fits all" philosophy and that many times the scheme designs are not suitable for a number of States.
6. Several Commissions and Committees have advocated for formula-based, untied transfers to replace the current balance of monies from the Union to the States.

Therefore, there is a need for changes in the existing reform of fiscal transfers and if needed institutional changes should also be considered.

VI. HAS GST PAVED THE WAY FOR THE INDIA'S FISCAL EVOLUTION?

The Indian economy is now more competitive and efficient as a result of the increased coordination, less tax barriers, and simplified tax structure. The Central and State Governments must work together and adopt a consensus-based strategy for the Goods and Services Tax to be implemented successfully. It has changed how people interact financially and increased the efficiency and coordination of the Indian tax system. Yes the GST has paved the way for India's Fiscal Evolution by keeping in mind the principles of co-operative federalism in many ways . Firstly, One Nation, One Tax (GST): GST took the place of excise duty, service tax, value-added tax (VAT), and other indirect taxes levied by the federal and state governments. It brought uniformity to India's tax structure and removed the tax cascading effect. The second aspect of the GST is its dual structure, which consists of the Central GST (CGST), which is enforced by the Central Government, and the State GST

(SGST), which is imposed by the State Governments. Interstate transactions are subject to the federal government's Integrated Goods and Services Tax (IGST), which is collected and disbursed to the individual states. Goods and services imports would be considered interstate supplies and would be subject to the IGST in addition to applicable customs duties. This point signifies the essence of co-operative federalism in Indian Constitution

VII. CONCLUSION

The Goods and Services Tax (GST) is the most significant change since liberalisation started in 1991. Its goal is to establish "a one Economic India" and is expected to increase the country's productivity and efficiency. Numerous macroeconomic benefits could also follow from it. By demonstrating India's parliamentary democracy and laying the foundation for the nation's GST system, the One Hundred and One Constitutional Amendment Act, 2016 was enacted.

Whether in power or not, both political parties have influenced it. The GST Council serves as an excellent illustration of the Center and States working together, regardless of political affiliations. As of right now, it doesn't seem like the introduction of the GST Act in India has even somewhat undermined the idea of cooperative federalism even to a minimum. Furthermore, the implementation of the GST may serve as a model for cooperative federalism in the future. It can also be used as a model for modernizing other cooperative federal organizations, starting with the interstate council. Similar to political unification, the GST system could potentially herald the arrival of "One Economic Nation," a beloved pet peeve of our nation.
