

**“CENTRE-STATE LEGISLATIVE CONFLICTS IN GST VS. CONCURRENT SUBJECTS”****AUTHOR** – ARNAV PARSEWAR, STUDENT AT CHRIST UNIVERSITY, BANGALORE**BEST CITATION** – ARNAV PARSEWAR, “CENTRE-STATE LEGISLATIVE CONFLICTS IN GST VS. CONCURRENT SUBJECTS”, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (2) OF 2026, PG. 528-538, APIS – 3920 – 0001 & ISSN – 2583-2344.**Abstract**

The paper investigates the tensions found in the constitution and administration between the uniformized cravings of the Goods and Services Tax (GST) system and legislative distribution of constitutional powers in India, that is, in comparison to State years of authority in such inquiries as taxation and legislative topics. Following a doctrinal approach close study of Article 100-100 and 100-127 of the constitution, legislations, parliamentary database, and judiciary outbursts, the paper tracks the process of introducing Article 246A<sup>1288</sup>, and Article 279A<sup>1289</sup> that set up a special GST framework and cooperative federal instrument (the GST Council) by the Hundred and First Amendment (2016). This follows by looking at current judicial responses on especially the Union of India v cases brought to them as a foremost part of the judiciary. Mohit Minerals (based on recommendations on GST council and ocean freight) and State of Telangana v. M/s Tirumala Constructions (on post-GST amendments to the VAT laws) – to find out the shifting balance between the legislative power in Article 246A (simultaneous legislation) or State autonomy. The results indicate that the constitutional structure is expected to harmonize homogeneity with cooperative federalism, although courts have put limits on this score: (Recommendations of the GST Council) have persuasive (not binding) influence, and legislative power by Statute to express its State-competence to amend GST corresponding tax policies after implementation is strongly limited. To lessen repeating frictions between the centre state, the paper supports the idea of clarity of text in the constitution, statutory dispute resolutions, and institutional reforms.<sup>1290</sup>

Keywords- Article 246A, Cooperative federalism, GST council, Repugnancy (legislative conflict), State legislative competence

GRASP - EDUCATE - EVOLVE

<sup>1288</sup> Constitution of India, Art.246A.

<sup>1289</sup> Constitution of India, Art.279A.

<sup>1290</sup> Goods & Service Tax, CBIC, Government of India :: 101st constitution amendment act, 2016. Available at: <https://cbic-gst.gov.in/hindi/constitution-amendment-act.html> (Accessed: 26 September 2025).

## Introduction

### Background and research problem:

The implementation of the Goods and Services Tax (GST) in India on 1 July 2017 was a constitutional, fiscal and administrative re-balancing that was of extraordinary magnitude. In order to permit a supply-based national indirect tax, the Constitution (One Hundred and First Amendment) Act, 2016 was passed, authorising that both the Union and State legislature introduce laws giving its inclusion under the law of GST; the GST Council was constitutionalised through the creation of Article 279A that formed the formal intergovernmental framework. The new law took action in a constitutional crisis that was urgent: a supply based tax of goods and services could not be vividly arranged within the demarcations of the Seventh Schedule. Article 246A thus established an institutional cooperation machinery,<sup>1291</sup> and Article 279A established a tailored competence space.<sup>1292</sup>

But now, soon, they collide in doctrine and practice. The overarching research question that this paper will respond to is the following question: how has the GST architecture (Article 246A and Article 279A and implementing statutes) redistributed the distribution of legislative powers between Centre and States and where have tensions occurred where GST has been applied to overlap with their existing subject-matter of State jurisdiction? The sub-questions are: (a) what the law says about the simultaneous nature of the power of Article 246A; (b) are the recommendations of the GST Council legally enforceable; (c) to what extent may States make post-implementation GST changes to pre-existing laws governing VAT/sales tax.

### Methodology:

<sup>1291</sup> Constitution of India, Art.246A.

<sup>1292</sup> *Goods & Service Tax, CBIC, Government of India :: 101st constitution amendment act, 2016*. Available at: <https://cbic-gst.gov.in/hindi/constitution-amendment-act.html> (Accessed: 26 September 2025).

It is a doctrinal study on constitutional text and statutes around both sitting Supreme Court decisions, official GST council documents and quality legal commentary. Purposive statutory interpretation, institutional analysis of the law and precedential reasoning are all used in the analysis. Compared and empirical observations are made, but the paper makes no attempt at the quantification of a thorough fiscal impact analysis, but is constitutional, doctrinal and institutional.

### Scope:

This study charts the constitutional, statutory and institutional landscape formulated by the 101st Amendment and the GST statutes, and looks into the interaction between that landscape and the already existing division of subjects in the Seventh Schedule – particularly State List taxation (sales/VAT) and the associated co-incidents. In practice the paper will discuss: (a) textual and purposive interpretation of Article 246A, Article 279A and the transitional provisions (Section 19); (b) the CGST/SGST/IGST statutory framework and the Compensation mechanism; (c) the role and process and products of the GST Council and how and why it translates (or does not translate) into statute/notifications; (d) tests of legislative competence (in the form of pith and substance and occupation of a field and repugnancy) It is an empirical boundary of the doctrinal and institutional- legislative texts, official documents, judicial law and comparative practice, and not macro-economic measure. It seeks to find out where the law is uncertain or institutionally dysfunctional in generating recurring Centre-State frictions, and suggests specific legal and procedural remedies that manage to sustain both the aim of uniform indirect taxation, which GST accomplishes, and an autonomy of states, which that aim should not.

### Legal implications:

The GST building brings into play a new special competence in the legislative field of good and services tax in Article 246A, which operates

concomitantly and distinctly with the Seventh Schedule in place of the central and sovereign power over inter-state supplies, which redefines the way the traditional pith-and-substance and occupation-of-field principles are applied by the courts. The constitutions of GST Council bring legal problems on whether its recommendations are enforceable, and whether a further administrative measure can take place within the consensus of the Council – matters that give rise to constitutional problems in circumstances where executive or subordinate acts appear to produce a substantive change in the absence of such legislative support. Classic repugnancy questions and any post-GST devolution enactments trigger classic competence issues: the States would find it easy to have their statutes or amendments struck down unless it can be shown that they operate to the detriment of the GST scheme or as to create any other encroachment upon the exclusive inter-state regressive field. To the administrative level, the interrelations among legislative texts, notifications and Council minutes also generate uncertainty about the delegated authority of making rules, retroactive taxation measures and taxpayer approachable certainty the four of which are presented to judicial review and corrective doctrines (ultra vires, procedural fairness, legitimate expectation). Lastly it sets the case of a perpetual litigation and governance worry: without better procedural guidelines of translating Council approval to the device of the binding legal protocols, the courts will recur in mediating exterior Centre-State conflicts and see themselves to have to depend on eventual judicial reproductive techniques instead of the institutionalised tensions scot utilising. The legal policy is thus deliberate in a dual aspect, namely a jurisprudential reorganization of federal tax competence on the one hand, and an actual policy challenge on the other, of the statutory and institutional reform which will

minimize constitutional agitation and tax contingency.<sup>1293</sup>

## Constitutional Allocation of Taxing Powers and the GST Innovation

### 1. The pre-GST constitutional taxonomy and its limits

The original constitutional distribution of taxing powers created a system in which it was chiefly based on the Seventh Schedule: the Union List included customs, central excise and various high-scale federal levies and tolls whereas the State List included sales tax (Entry 54) and other turnover taxes. This separate a part of taxation was adequate in times where indirect taxation pertained mainly at discrete levels (manufacture, sale) and when the thing being taxed was mostly goods. However, as the years wore on, services (of an economic value) broadened in economic importance; the distinction between goods and services became erased through technological change; and inter-state supply chain development was complicated. The pre-GST architecture created cascading taxes and fragmented compliance obligations and provided huge barriers to inter-State trade which defeated the constitutional goal of a common market.

### 2. Article 246A<sup>1294</sup>: a special constitutional instrument of GST

Under the constitutional division, article 246A placed a special carve-out into it: Within anything in articles 246 and 254 Notwithstanding anything in the allocation of the Constitution, the Parliament, and, subject to the qualification in clause (2), the Legislature of every State, have the power to make laws with respect to goods and services tax imposed by the Union or by any such State. Clause (2) keeps only power to the Parliament over the provision in the process of inter-state trade or commerce. The significance of the instrument in terms of doctrine is two-fold: It makes a "simultaneous"

<sup>1293</sup> Findings of the Supreme Court on the levy of GST on ocean freight and the recommendations made by the GST Council (2022) Shardul Amarchand Mangaldas & Co. Available at: <https://www.amshardul.com/insight/findings-of-the-supreme-court-on-the-levy-of-gst-on-ocean-freight-and-the-recommendations-made-by-the-gst-council/> (Accessed: 26 September 2025).

<sup>1294</sup> Constitution of India, Art.246A.

or bespoke concurrent competence for GST, which is distinct from the ordinary concurrent list entries and their repugnancy rules. This was to allow participation of either tier of government in one supply-style regime with central primacy intact amid the subnational operation and hence trying to achieve a balance between uniformity and subnational involvement.<sup>1295</sup>

### 3. Article 279A<sup>1296</sup>: the constitutionalised coordination for the GST Council

The GST Council was institutionalised in Article 279A, which forms a permanent body of council which is constituted of the Union Finance Minister (Chair), the Union Minister of State the revenue/finance and state finance ministers. The roles carried out by the Council are a recommendation of the goods and services that should be taxed or exempted, model law provisions, place-of-supply regulations and threshold, among other issues. It is deliberately structured as an advisory organ: consensus and negotiation between the politics was seen to be important to generate administrative practical and widely acceptable GST policy. It is the constitutionalised presence of the Council that therefore constituted a political trade off, believed to allay concerns of states about only law-making powers were left to legislatures yet the opinion of the states would be a hallmark in GST governance.<sup>1297</sup>

### Legal Contours: Instructional Interventions by the Judicial System and indications of Doctrine.

This constitutional innovation needed to be framed, both statutory (CGST, IGST, SGST Acts) and administrative (Council recommendations, notifications). In reference matters or ambiguity in text or practice, disputes were taken to courts. Two decisions of the Supreme Court– Union of

India v. State of Telangana v. Mohit Minerals Pvt. Ltd. (May 19, 2022). M/s Tirumala Constructions (Oct 20, 2023) especially notable are their great deal of importance towards their doctrines.

#### 1. Union of India v. Mohit Minerals (May 19, 2022)<sup>1298</sup> -- Council suggestions and ocean freight:

Facts and questions. The court case involved notices that were trying to charge IGST on ocean freights in imports through CIF by reverse charge and legal implications of GST council recommendation which already affirmed some of the administration standpoints. Whether the recommendations of the GST Council could be considered to constitute positively binding obligations or otherwise to the exclusion of the statutory process was the important constitutional issue. The Court considered the consistency of notifications evidencing IGST voice on ocean transport and the validity in recommendations made by the Council, possible to justify administrative choices.

Holding and reasoning. The Supreme Court maintained that GST Council recommendations on their own are not law as they can only have persuasive weight of the legislature set by enacting laws, or appropriately inferring as subordinate legislation. The Court also discovered that the obligation to impose IGST via reverse charge on importers of ocean freight in CIF imports was in conflict with the statutory and the custom structure– because the customs duty category included the CIF value, and the scheme could not qualify to place an additional reverse charge in those conditions. The decision hence underlined primacy of the legislation and safeguarding against the administrative / quasi-legislative expansion on the basis merely of Council guidance.<sup>1299</sup>

Doctrinal import. Mohit Minerals called on the constitutional principle that a recommendatory

<sup>1295</sup> Article 246A: Special provision with respect to goods and services tax (2024) Constitution of India. Available at: <https://www.constitutionofindia.net/articles/article-246a-special-provision-with-respect-to-goods-and-services-tax/> (Accessed: 26 September 2025).

<sup>1296</sup> Constitution of India, Art.279A.

<sup>1297</sup> The GST Council Standardisation Testing and Quality Certification Directorate. Available at: <https://www.gstcouncil.gov.in/gst-council-0> (Accessed: 26 September 2025).

<sup>1298</sup> Mohit Minerals Pvt. Ltd. v. Union of India, (2022) 4 SCC 481

<sup>1299</sup> BDO Indirect Tax News issue 3/2022 - July 2022 BDO. Available at: <https://www.bdo.global/en-gb/microsites/tax-newsletters/indirect-tax-news/issue-3-2022/india-supreme-court-strikes-down-gst-reverse-charge-on-ocean-freight-in-cif-imports> (Accessed: 26 September 2025).

constitutional organ has no ability within itself to make the law binding. The political authority of the Council is significant, and needs to be legitimated by statutory or rule-making law by legislatures or other competent executive functionaries on statutory competence basis. What was saved in the decision however was the distinction between advice/coordination on the one hand and law-making on the other.

## 2. State of Telangana v. M/s Tirumala Constructions<sup>1300</sup> (Oct 20, 2023) -- Section 19 and state tinkering.

Facts and questions. This complex of appeals questioned whether or not states retained the competence to provide or utilize post-implementation measures in their VAT/sales tax statutes, whether or not a transition provision, (under Section 19, 101st Amendment), allowing the continued existence of pre-existing law at least temporarily or awaiting overrule) permitted any or substantial state tampering thereafter.

Holding and reasoning. It was determined by the Supreme Court that the purpose and scope of the transitional preservation in Section 19 was not to enable states to engage in repealing, or reviving, existing taxes under pretexts that undermine the GST system, but rather it was a temporary measure to preserve continuity less the payroll taxes were being transitioned. As a result, the amendments to the post-GST state legislative acts themselves were invalidated due to the exceeding limited legislative competence in cases of establishing parallel taxation or conflicting with uniformity. The Court pointed out that the 101<sup>st</sup> Amendment created a new legal structure whereby the state amendments that disrupted the integrated GST base would be nullified.<sup>1301</sup>

Doctrinal import. Tirumala went a long way for state autonomy by their role in definition by understood the wording of the Section 19 transitional power by making it clear that the

range of the power is limited. According to the ruling, therefore, tipped the constitutional scales towards any national uniformity where such uniformity is needed when the aim is to protect the goal of one nation one tax.

## 3. Expansive judicial practice and indicators in the lower courts:

The issues of litigation after GST in the High Courts and tribunals have been vivid to the problems relating to classification, place of supply, transitional credits, input tax credit reconciliation, and compliance of the procedure. Recommendations of Councils have largely been taken as instances of political agreement and efficiency, but never as causes of law. Court interpretations have often taken a purposive approach conducive to upholding the overall goals of GST, to facilitate a common market, to only eliminate cascading and by avoiding facilitation, however results are often subject to technical statutory interpretation and facts regarding the administration.

## Analytical Framework Themes, Tensions, and Institutional Dynamics

### 1. Two incompatibilities in a permanent conflict: uniformity vs autonomy:

The GST architecture manages to bring two appealing yet contradicting rationales to the table:

- a. Homogeneity and integration of the markets: A national common market, certainty to taxpayers, compliance and removal of cascading effect of tax demand uniformity of rates, classification, place-of-supply rules and the credit mechanisms would require high degree of conformability.
- b. Subnational fiscal flexibility and policy experimentation: States need adequate policy room in order to design tax instruments according to local economic information available, maintain the fiscal autonomy and be experimenters that respond according to the local welfare, local development criteria.

<sup>1300</sup> (2023) 15 S.C.R. 141

<sup>1301</sup> *Constitutional validity of VAT amendments on introduction of GST? Tax&TMI*. Available at: <https://www.taxtmi.com/article/detailed?id=12155&utm> (Accessed: 26 September 2025).

Article 246A and Article 279A have also tried a dedicated compromise: both layers of lawmaking (inter-state exclusivity over supply) and a consultative Council that would allow harmonisation of norms. However when a political agreement becomes frail or technical differences be present, the default mechanism to get the system back on track falls back to judicial intervention thus revealing the imperfections of a pure political bargain that could not give way to predictable official conversion mechanisms.

## **2. The two-fold nature of the GST Council; as a political machine and legal vacuum:**

The Council is a strong political agreement power. It has a political legitimacy due to its composition and its recommendations are rapidly transferred to the administrative practice and legislation. However, its recommendatory character generates legal black hole: the regulation of the route between Council recommendation and enforceable legal norm is not automatic. That gap is at the root of most controversy--attempts by administration because general opinion suggests to it that it have a good-faith notice and because a Court maintains that a good-faith notice have to be based upon statutory authority. The ensuing tension creates expensive lawsuit and regulatory unpredictability.

## **3. As a weakness, transitional drafting:**

The vagueness in Section 19 that were created to preserve continuity have also become a weakness. The contents of the provision provided an allowance of interpretation to states to excuse post-GST customizing that saw judicial argument resolved with actuality. Major constitutional revision thus involves the need of accurate triggers to transition together with sunsets through which a potential long-term jurisdictional spill will be evaded.

## **4. Administrative diversity and litigation incentives.**

The administrative capacity of the states (classification, IT systems, forum of adjudication, heterogeneity) generates unequal fulfillment and increases the number of disputes. In the situation where there is undercapacity the states can make amendments which can be seen to seal the perceived gap; this can be done by crossing the constitutional boundary or through formation of two-layered taxation--thus, litigation. Capacity variance therefore causes as well as escalates centre state legal conflict.

## **Comparative Perspectives and institute alternatives**

Other federations are considered which are helpful in understanding institution options and trade-offs.

### **1. Australia: federalised with central tax collection and state revenue distributive GST:**

Australia used supranational GST that was to be collected by the Commonwealth with ratios to determine the revenue to be given to the states. In exchange of rival forms of sales taxation states gave in favour of a federal type and this generated a span of clarity and uniformity in the law but demanded political compensatory bargain concerning revenue sharing. The impact of the Australian concept is that legal certainty can be obtained at the expense of state legislative direction.

### **2. Canada: discretion on the part of provinces, and selective harmonisation:**

The arrangements are different in Canadian provinces, some no longer have provincial sales tax (PST), the others harmonised with the federal GST (HST) via agreements. The example of Canada demonstrates the possibility of provinces developing autonomy in coordination with federal regulations and indicates that the burden of the administrative regulation on taxpayers is not without charge in all jurisdictions.

## Litigation Patterns, Doctrinal outcomes and consequences

### 1. Law suit bunching and doctrines:

The litigation that has followed GST has focused on:

- Boundary issues: is the supply inter-state or intra-state; is the supply to goods or services; place of supply.
- Transitional disputes: the issues would be, could the amendments made by the states post-GST be considered under the narrower provision of transitional provisions.
- Administrative acts based on the recommendation of Councils: whether are notifications predicated on statutory legislative authority.
- Settlement of tax credit and refund claims: very complicated inter-statements and timing problems.

Tendencies towards purposive interpretation by courts have served the purpose of safeguarding the principal aims of GST which include avoiding the cascading effect of taxation, credit continuity and the survival of the common market.

### 2. Implications on both government officials and taxpayers:

Typical costs happening as a result of legal uncertainty include the cost of compliance, experienced delay in receiving a refund, legal litigation expense and financial plan burdens on companies that conduct inter-state commerce. In the governance level, courts become overburdened with disputes against the government, since the disputes rise to a higher level; there is leverage on the judicial system and its policy controls as adjudicate over the abuses of power by the administration after-the-fact, instead of curing pre-factum.

### Detailed Reform Proposals Legal, Institutional and Procedural

In order to balance GST structure and maintain the federal balance, this paper will recommend a multi-pronged reform agenda. These

proposals will seek to conserve democratic legitimacy, guard state consent as well as curb litigation by covering predictable institutional and procedural processes.

### 1. There should be a statutory sunrise mechanism of conversion of technical Council recommendations.

Mechanism: Refreeze some types of GST Council recommendations (technical, non-rate, model laws) automatically to quasi-statutory instruments without them being voted out by a specified political vote.

Rationale: There are a number of technical Council suggestions (classification, place-of-supply regulations, model forms of procedures). By default conversion of such recommendations into law helps to minimize the delays in implementing them, and the uncertainty of the law without depriving states of their substantive fiscal discretion.

Design elements:

- Limitations: Non-rate technical (classification rules, model forms, place-of-supply guidelines, threshold/registration procedures). Minimize rate determination, compensation structure, and revenue sharing system.
- Trigger mechanism A recommendation comes into force as a central regulation and model state provision after a period of transparency (e.g. as 120 days) unless a super-majority of states (e.g. two-thirds by population two-halves by number) or clearly understood minority (e.g. thirds) disagrees with the recommendation with reasoned objections registered.
- Procedural protection: It contains procedures of enforcing regulatory impact statements on a mandatory basis, publication of minutes, and constrained notice

of challenges which may be undertaken judicially within a limited time.

- Sunset and review: The Council with a Parliamentary oversight committee must review every converted approach automatically in up to five years.

Benefits: It makes taxpayers predictable; it accelerates harmonisation; it does not give up the democratic checks and balances by opting out of the state, or judicial review.

Risks and mitigation: Centralisation, perceived--mitigate through narrow scope and explicit veto/opt-out right.

## 2. A statutory Constitutional Tax Panel (CTP) for technical intergovernmental arbitration

Purpose: Offer an expedited expert, binding, limited judicial appeal, inter-governmental technical dispute settlement mechanism (classification, place of supply, transitional issues and so forth).

Reasons: Courts are simply clogged down busier than ever; technical wrangles need expert attention and quick consideration so as not to disrupt the market.

Design elements:

- Decision: Chair (retired Supreme Court judge), two tax law experts, two tax economists and two senior revenue officials (non-voting) as administration.
- Jurisdiction: Centre/State(s) transitional matters relating to the sunrise mechanism or particular questions referred to by either party namely in regard to particular technical questions related to intergovernmental dispute.
- Procedure: Expedited hearing (90-120 days), determination of facts and technical interpretation that is binding, can only be

appealed to Supreme Court on issues of law.

- Enforcement: Conclusions made and enforced by GST administrations; non-enforcement would be subject to administrative penalties and expedited enforcement.

Merits: Fastness, technical know-how, less possibilities to resort to lengthy litigation.

Risks & mitigation Separation of powers problems--direct by making the panel statutory (not constitutional) and ensuring that it appeals to the Supreme Court on laws questions only and limits its authority to internal intergovernmental cases, not to competition basalt legislative tasks.

## 3. Clarify Section 19: precise sunset clauses and triggers

Purpose: Substitute unclear transitional terms with definite triggers and sunset dates to eliminate the long-term individual state fiddling undermining the uniformity of GST.

Rationale: There was diffidence in section 19 that created back retrospective court cases that had to be settled upon. Obvious motivators cut down litigation.

Design elements:

- Sunset trigger options: having a statutory sunset (e.g. two years after 1 July 2017) or a functional trigger (e.g. as soon as national GST IT reconciliation platform attains full operational interoperability), the earlier.
- Data authorised transitional activities: All measures are allowed to the extent essential in order to maintain continuity and to prevent dislocation, without including tax measures that bring in duplicate taxation on fortune transaction.
- Emergency carve-outs: Facilitated, time-limited

emergency arrangements to states to defend income in cases of provable and instable holes, to be determined on a CTP basis.

Merits: Minimizes amendments of convenience, explains competence.

Such risks and mitigation: Rigid sunsets can lead to local challenges – counter to slender emergency carve-outs and supervision.

#### 4. Essential transparency requirements in the deliberation of Council

Goal: To enhance the procedural transparency within the Council to enhance confidence and revision of judicial and legislative approval.

The reason being: Opacity encourages mistrust amongst states, and hinders accountability by people; transparency minimizes controversy related to lack of understanding of Council intent.

Design elements:

- Publication: Agenda, including summary of the minutes, the result of the voting caused and a modest reasoning in the case of a restricted embargo (e.g., 30 days).
- Redactions: Harden only in order to safeguard the commercially sensitive or security related content, the reasons should be documented.
- Responsibility: Minutes that can be referred to under judicial review in order to promote regularity of procedures as well as justifications.

Merits: cultivates or enhances credibility; assists courts in addressing the level of village of Council decisions, which is to be deferred on appeal.

Alteration to risks and mitigation: The potential chilling effect on your open negotiation- the embargo and limited redaction will mitigate the effect.

#### 5. Model legislative templates and fast-track adoption protocols

Goal: Lessening the variance of drafting and lagging in the process of adoption by institutionalisation of model legislative templates and hastening procedures of State adoption.

Reasons: Divergent state drafting not only leads to uncertainty in the law but to litigation too; model texts facilitate the attainment of uniform adoption.

Design elements:

- Smiling secretariat Technological secretariat: A permanent GST technical secretariat that issues model clauses, annotated bills and machine readable legislative text.
- Fast-track procedure: States implementing Council technical proposals will be allowed to do so under a quicker legislative process of the adoption of purely technical measures, which are open to publicity and legislative review.
- Opt-out ritualised: States desiring to do other things must put this rationale in print and have the deviation idly reviewed by CTP in case it affects GST uniformity.

Profits: Coexistence, capacity building.

Risks & mitigation: State sovereignty on substantive fiscal issues; none other but technical issues.

#### 6. Capacity building and harmonisation of the digital plans

Purpose: Administrative level even across States to minimise litigation, which was based on implementation failures.

Reasoning: Technical disagreements carry with them the deficit of capacity and not divergence of principles.

Design elements:

- Standards: GST IT systems, returns, confronting and refund handling National minimum technical standards.
- Grants: Non-conditional central grants to the states meeting the milestones in IT interoperability and staff training.
- Training: A national course on tax officer on classification, place of supply, input tax credit reconciliation and audit practice.

Benefits: Minimizes unintended cases of non-compliance and lawsuits; streamlines the experience of taxpayers.

Risks, mitigation: Political of lean in-state-consultation, flexible-timelines design grants.

#### **Normative evaluation and Trade-offs**

Between predictability and consent of state:

The reforms suggested are somewhere in between: technical uniformity is necessary to complete market, but it may be attained by default legal conversion of technical Council recommendations, and by maintaining complete state control over rates and revenue sharing. The justification of normativity is based on the principle of subsidiarity: power to make significant fiscal decisions with the political preferences must remain in the states, technical harmonisation for market functioning may be liberalised to standardisation.

Democratic legitimacy issues and isolation of powers:

Any system which renders analytical authority to Council recommendations enters into some conception of the democratic accountability: the Council is not legislatures but ministers. All of the proposed safeguards: state vetos, judicial review, limited scope, and periodic check by the parliament are intended to protect the democratic legitimacy and judicial review and make it easier to predict.

Thought politics and institutional realism:

The economic activities of institutional reforms are the political venture. Even politically valid mechanisms have to be valid politically. As an illustration, a sunrise mechanism needs to be worked in, starting with voluntary pilots, among interested states; the CTP should be established in a constitutional way, with express protection, transparency norms should take due forwarding without making the Council useless. The institutional realism proposes gradual implementation where evaluation is done continuously.

#### **Doctrinal Implications to Constitutional Law**

1. 246A as model of special constitutional regimes.

The experience of the GST has lessons in constitutional law: the introduction of domain-specific articles (one of which is Article 246A) into a federal constitution may permit new forms of governance, but special provisions must be coupled with more transitional clauses, pathways through which intergovernmental guidance may be converted into foreign language, and mechanisms used to settle the disputes. Otherwise the courts will be under obligation to construct gaps ad hoc.

2. **Federal functions of courts in administering federal bargains:**

The courts will remain a constant imperative enforcing constitutional limits to the weakening of the political processes. Nonetheless, judicial correction is costly and ex post and good institutional design will minimize litigation clarifying the legal implication of political agreements.

#### **Conclusion: Towards Durable Cooperative Federalism:**

GST is a bold experiment of competitive federalism in the constitution. Article 246A and Article 279A represented a political and legal compromise that was aimed at forming an integrated supply-based tax without interfering with the existing subnational authority and involvement. Both Mohit Minerals have been significant over time to apply constitutional

restraints and ensure the integrated GST base was safeguarded by the decisions of the Supreme Court, both Mihit Minerals were confirmatory of the recommendatory nature of the Council and Tirumala received a tightening of Section 19 to cover the transitional effect of the section better. But judicial correction is *ex post facto*, and is prohibitive.

A lasting balance must have institutional and statutory scaffolding: transitional clauses, processes to translate technical Council consensus into predictable legal effect, including state keeping over substantive fiscal policies, an expert, expedited splinter dispute process, better transparency and record keeping, template legislative models and capacity building agenda. These changes would help cut down on litigation, give a taxpayer confidence and sustain the federal bargain that has been part and parcel of the Indian constitutional order.

The success of GST over time is therefore based on improving institutional learning, in which law and courts hold vital guardrails, but improved *ex ante* design and more political processes of accountability, transparency and technical arbitration will ease the need to cut in the use of courts and improve a more cooperative fiscal federation.

#### Key recommendations:

1. Conversion to sunrise: legal means to transform named technical Council elaborations into type-boilerplate enforceable rules by default, which fall prey to methodical state veto and review.
2. Constitutional Tax Panel (CTP): public executive arbitration of technical inter-governmental disputes entailing established determinations and deprived of judicial equivalency.
3. Section 19 clarification: legal revision to statute with specific sunset activation and select emergency carve-outs.
4. The rule of transparency: Council minutes, the results and the reasons of

the voting must be published after a period of short embargo.

5. Fast-track adoption & model law templates: technical secretariat model clauses: produce clauses that are stable across cases and include an opt-in fast-track adoption protocol, intended by the technicians to be adopted by the states.
6. Capacity building - conditional grants, training initiatives and IT interoperability standards to even the playing field in the administrative capability of different states.