

## FISCAL FEDERALISM AND CENTRALIZING DRIFT: A COMPARATIVE STUDY OF INDIA'S GST COUNCIL AND SOUTH AFRICA'S EQUITABLE SHARE SYSTEM

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### **ABSTRACT**

*This research paper provides an exhaustive comparative analysis of the phenomenon of 'centralizing drift' within the fiscal federalism frameworks of India and South Africa. Despite divergent constitutional categorizations India as a 'Union of States' with a federal superstructure and South Africa as a unitary state with distinctive 'spheres' of government both nations exhibit a pronounced trajectory toward fiscal centralization. This study interrogates the institutional mechanisms facilitating this drift: India's Goods and Services Tax (GST) Council and South Africa's Equitable Share system. Through a doctrinal and socio-legal analysis of primary constitutional texts, including the Constitution of India 1950 and the Constitution of the Republic of South Africa 1996, alongside pivotal judicial pronouncements such as *Union of India v Mohit Minerals Pvt Ltd*<sup>1863</sup> and *Uthukela District Municipality v President of the Republic of South Africa*,<sup>1864</sup> the report demonstrates how 'cooperative federalism' is frequently deployed as a rhetorical device to obscure structural coercion. The analysis reveals that while India's centralization is constitutionally codified through the 101st Amendment and the voting asymmetry of the GST Council, South Africa's centralization is functionally entrenched through extreme vertical fiscal imbalances and the subordination of provincial autonomy to the National Treasury. The paper concludes that the preservation of subnational autonomy in both jurisdictions requires a paradigmatic shift from purely 'cooperative' models to frameworks that institutionalize 'uncooperative' contestation and robust fiscal capacity at the periphery.*

GRASP - EDUCATE - EVOLVE

<sup>1863</sup> *Union of India v Mohit Minerals Pvt Ltd* (2022) SCC OnLine SC 657.

<sup>1864</sup> *Uthukela District Municipality v President of the Republic of South Africa* 2003 (1) SA 678 (CC).

## INTRODUCTION

### 1.1 The Global Crisis of Fiscal Federalism

In the contemporary landscape of constitutional governance, fiscal federalism represents the critical artery of state power. It is the mechanism that translates abstract political authority into tangible public service delivery. The classical theory of federalism, positing a neat division of sovereignty where general and regional governments act coordinately but independently, has largely collapsed under the weight of the modern administrative state.<sup>1865</sup> In its place, complex systems of 'cooperative federalism' have emerged, ostensibly designed to foster interdependence and shared governance. However, empirical observation across the Global South suggests a counter-intuitive trend: the institutions established to manage cooperation frequently evolve into instruments of control, facilitating a gradual but relentless 'centralizing drift'.<sup>1866</sup>

This research investigates this phenomenon through the comparative lens of two influential constitutional democracies: India and South Africa. Both nations grapple with the imperatives of managing deep heterogeneity linguistic, ethnic, and regional while pursuing national economic integration and redistribution. Their fiscal constitutions are the battlegrounds where these competing imperatives collide.

### 1.2 The Indian Context: The 'Grand Bargain' and its Discontents

India's federal journey began with a strong centrist bias, described by Granville Austin as "cooperative federalism with a centralizing drift".<sup>1867</sup> This drift was historically managed through the Planning Commission and

discretionary grants. However, the introduction of the Goods and Services Tax (GST) in 2017 via the *Constitution (One Hundred and First Amendment) Act 2016* marked a paradigmatic shift. It replaced the chaotic heterogeneity of state sales taxes with a unified "One Nation, One Tax" regime.<sup>1868</sup>

The institutional heart of this new regime is the GST Council, a body tasked with pooling the sovereignty of the Union and thirty-one State/Union Territory legislatures. While heralded as a beacon of cooperative federalism, the Council's architecture has come under intense scrutiny for its voting structure, which effectively grants the Union a veto over state taxation powers.<sup>1869</sup> The breakdown of trust during the COVID-19 compensation crisis and the Supreme Court's intervention in *Mohit Minerals* have laid bare the tensions between legal harmonization and political autonomy.<sup>1870</sup>

### 1.3 The South African Context: The Illusion of Spheres

South Africa's post-apartheid constitutional settlement in 1996 rejected the federal/unitary binary in favor of three "distinctive, interdependent and interrelated" spheres of government: national, provincial, and local.<sup>1871</sup> Despite this progressive nomenclature, the fiscal reality is starkly hierarchical. The National Treasury retains a vice-like grip on revenue generation, collecting over 90% of the country's tax receipts.<sup>1872</sup>

Provinces, tasked with the heavy lifting of social delivery (health, education, welfare), are rendered mere spending agencies, dependent on the 'Equitable Share' transfers mandated by section 214 of the Constitution.<sup>1873</sup> The Financial and Fiscal Commission (FFC), designed as an independent arbiter to check central power, largely functions in an advisory capacity, its recommendations frequently subordinated to

<sup>1865</sup> Ronald L. Watts, *Comparing Federal Systems* (3rd edn, McGill-Queen's University Press 2008).

<sup>1866</sup> Onyinyechi Elike, 'A Comparative Analysis of Federalism in South Africa and India' (2025) 11 *International Journal of Social Sciences and Management Research* 160.

<sup>1867</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 186.

<sup>1868</sup> *Constitution (One Hundred and First Amendment) Act 2016*.

<sup>1869</sup> *Constitution of India 1950*, art 279A(9).

<sup>1870</sup> *Mohit Minerals* (n 1).

<sup>1871</sup> *Constitution of the Republic of South Africa 1996*, s 40.

<sup>1872</sup> National Treasury, 'Budget Review 2024' (Government Printer 2024).

<sup>1873</sup> *Constitution of the Republic of South Africa 1996*, s 214.

the macroeconomic dictates of the national executive.<sup>1874</sup>

#### 1.4 Research Questions

This report addresses the following core questions:

1. How do the constitutional architectures of the GST Council (India) and the Equitable Share system (South Africa) facilitate or inhibit fiscal autonomy?
2. In what ways do the mechanisms of decision-making weighted voting in India versus formula-based allocation in South Africa manifest 'centralizing drift'?
3. Can the concept of 'uncooperative federalism' provide a normative framework for resisting centralization in these jurisdictions?

#### 2. Literature Review

##### 2.1 Theoretical Foundations: From Dualism to Interdependence

The study of fiscal federalism is anchored in the works of K.C. Wheare, who defined the federal principle as the method of dividing powers so that general and regional governments are each, within a sphere, coordinate and independent. However, this 'dual federalism' has been widely criticized as legally formalistic and economically impractical for modern welfare states.

Modern scholarship, particularly by Wallace Oates and Ronald Watts, emphasizes 'cooperative federalism', where levels of government are mutually dependent.<sup>1875</sup> In the economic sphere, the 'Decentralization Theorem' posits that public goods should be provided by the lowest level of government capable of doing so efficiently (subsidiarity). However, theorists like M. Govinda Rao note that in developing economies, the need for macroeconomic stabilization and redistribution

often provides a theoretical cover for centralization.<sup>1876</sup>

##### 2.2 Cooperative vs. Uncooperative Federalism

A burgeoning body of literature, pioneered by Jessica Bulman-Pozen and Heather Gerken in the US context and adapted to India by the Supreme Court in *Mohit Minerals*, challenges the normative value of 'cooperation'. They argue that 'uncooperative federalism' where states use their administrative powers to resist or alter national policy is a vital safeguard for democracy. It creates "friction" that prevents the monopoly of power. This report applies this lens to compare how Indian states (who can theoretically legislate against the GST Council) differ from South African provinces (who have no such power).<sup>1877</sup>

#### 3. Methodology

##### 3.1 Comparative Constitutional Approach

This research employs a functional comparative methodology. Rather than focusing solely on the textual differences between India's "Union" and South Africa's "Republic", the study examines the *function* of fiscal institutions. It isolates the variables of **Revenue Assignment**, **Intergovernmental Transfers**, and **Dispute Resolution** to draw parallels between the two systems.

##### 3.2 Primary Legal Sources

The analysis is grounded in a close reading of:

- **Constitutions:** *Constitution of India 1950* (Articles 246A, 269A, 270, 279A) and *Constitution of the Republic of South Africa 1996* (Sections 214, 227, 230).
- **Statutes:** The *Central Goods and Services Tax Act 2017* (India), the *Intergovernmental Fiscal Relations Act 1997* (South Africa), and the *Division of Revenue Act 24 of 2024* (South Africa).<sup>1878</sup>

<sup>1874</sup> Financial and Fiscal Commission, 'Submission on the 2025 Budget' (2024) 30.

<sup>1875</sup> Watts (n 3).

<sup>1876</sup> M Govinda Rao, 'Goods and Services Tax in India: Progress, Performance and Prospects' (2019) MSE Working Paper 221.

<sup>1877</sup> Jessica Bulman-Pozen and Heather K Gerken, 'Uncooperative Federalism' (2009) 118 Yale LJ 1256; *Mohit Minerals* (n 1).

<sup>1878</sup> *Division of Revenue Act 24 of 2024* (South Africa).

- **Judicial Decisions:** *Union of India v Mohit Minerals Pvt Ltd (2022)*,<sup>1879</sup> *Uthukela District Municipality v President of the Republic of South Africa (2003)*,<sup>1880</sup> and *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal (2010)*.<sup>1881</sup>

### 3.3 Data Analysis

The report utilizes fiscal data from the Indian Ministry of Finance, the South African National Treasury, and reports from the Financial and Fiscal Commission (FFC) to substantiate the claims of fiscal imbalance and centralization.<sup>1882</sup>

## 4. Analysis: Status Quo and Legal Architecture

### 4.1 India: The Constitutionalisation of Indirect Tax Harmonization

The pre-2017 fiscal landscape in India was fragmented. States levied Value Added Tax (VAT) and Entry Tax on goods, while the Union levied Excise Duty on manufacture and Service Tax on services. This created a vertical silo system with cascading taxes.

#### 4.1.1 Article 246A: The Concurrent Power

The 101st Amendment introduced **Article 246A**, a unique provision that overrides the traditional exclusivity of the Seventh Schedule. It grants both Parliament and State Legislatures the "simultaneous power" to make laws with respect to goods and services tax.<sup>1883</sup> This simultaneity is the legal bedrock of the GST.

#### 4.1.2 Article 279A: The Institutional Mechanism

To manage this concurrency, **Article 279A** created the GST Council.

- **Composition:** The Union Finance Minister (Chair) and State Finance Ministers.

- **Mandate:** To make recommendations on rates, exemptions, thresholds, and model laws.<sup>1884</sup>

- **Voting Weightage (Article 279A(9)):**

- Union: 1/3rd of the total votes cast.
- States: 2/3rds of the total votes cast (collectively).
- Decision Threshold: 3/4ths of the weighted votes.<sup>1885</sup>

Feature	Specification	Implication
Union Weight	33.33%	Effectively a veto (since 75% is needed to pass).
State Weight	66.67%	States cannot pass a resolution without Union support.
Passage Requirement	75% Majority	Requires broad consensus or Union dominance.

#### 4.1.3 The Integrated GST (IGST)

Under **Article 269A**, the Union levies and collects IGST on inter-state supply. This revenue is then apportioned between the Union and States based on the recommendations of the GST Council. This centralizes the *collection* mechanism for inter-state trade, removing the states' ability to erect fiscal barriers (like octroi).<sup>1886</sup>

### 4.2 South Africa: The Constitutional Guarantee of Equitable Shares

South Africa's fiscal constitution is reactive to the legacy of apartheid, where resources were hoarded by the white minority government. The 1996 Constitution centralizes revenue collection

<sup>1879</sup> *Mohit Minerals* (n 1).

<sup>1880</sup> *Uthukela* (n 2).

<sup>1881</sup> *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 (6) SA 182 (CC).

<sup>1882</sup> Financial and Fiscal Commission (n 12).

<sup>1883</sup> *Constitution of India* 1950, art 246A.

<sup>1884</sup> *ibid* art 279A(4).

<sup>1885</sup> *ibid* art 279A(9).

<sup>1886</sup> *ibid* art 269A.

to ensure redistribution but decentralizes expenditure to ensure delivery.

#### 4.2.1 Section 214: The Division of Revenue

**Section 214(1)** mandates the annual division of revenue raised nationally. Unlike India, where states have significant own-tax powers (liquor, stamp duty, petroleum), South African provinces have almost none.

- **Vertical Division:** The split between National, Provincial, and Local spheres.
- **Horizontal Division:** The split among the nine provinces.

### 5. Analysis: The Problem of Centralizing Drift

#### 5.1 India: The 'Veto' and the Illusion of Pooled Sovereignty

The central problem in India is the structural asymmetry of the GST Council. While described as "pooled sovereignty," the mathematics of Article 279A(9) reveal a "Union-dominated pooling."

##### 5.1.1 The Mechanics of the Union Veto

For a decision to pass, it requires 75% of the votes.

- The Union holds 33.3%.
- Therefore, the maximum vote share the States can muster *without* the Union is 66.7%.
- **Result:** The States can never pass a decision against the Union's wishes. The Union has a permanent, constitutional veto.
- Conversely, the Union needs only 50% of the State vote share (plus its own 33.3%) to reach 75%.<sup>1887</sup>

This structure forces states to negotiate on the Union's terms. As noted in the *Mohit Minerals* judgment, the "Centre has a veto in the GST Council".<sup>1888</sup>

#### 5.1.2 The Compensation Crisis (2020–2022)

The 'drift' became palpable during the COVID-19 pandemic. The *GST (Compensation to States) Act 2017* guaranteed states a 14% annual revenue growth for five years, funded by a specific Compensation Cess. When revenues collapsed in 2020, the Union Finance Minister invoked an "Act of God" to deny full compensation, suggesting states borrow directly from the market.<sup>1889</sup>

This unilateral stance shattered the trust in the "Grand Bargain." It revealed that the Union controlled not just the tax policy, but the *insurance mechanism* itself. States were left fiscally stranded, having surrendered their taxation powers and receiving only partial compensation in return.<sup>1890</sup>

##### 5.1.3 The 'Tyranny of the Status Quo'

Economist M. Govinda Rao argues that the requirement for a 3/4ths majority (and the practice of seeking unanimity) creates a "tyranny of the status quo." Important reforms, such as rationalizing the 28% tax bracket or including petroleum under GST, are stalled because any single large bloc (Union or a group of States) can block change. This stagnation often defaults to the Union's preferred administrative position, reinforcing centralization by inertia.<sup>1891</sup>

#### 5.2 South Africa: Vertical Fiscal Imbalance and Administrative Hegemony

In South Africa, the centralization is less about voting mechanisms and more about the "power of the purse."

##### 5.2.1 Extreme Vertical Fiscal Imbalance (VFI)

South Africa exhibits one of the highest degrees of VFI in the world.

- **Revenue:** The National Government collects ~95% of total revenue.

<sup>1889</sup> Santosh Kumar Das, 'Revenue Shortfall and GST Compensation: An Assessment' (2023) 58 EPW 9.

<sup>1890</sup> *ibid.*

<sup>1891</sup> Rao (n 14) 22.

<sup>1887</sup> *Mohit Minerals* (n 1).

<sup>1888</sup> *ibid.*

- **Expenditure:** Provinces are responsible for ~43% of total government expenditure.<sup>1892</sup>
- **Result:** Provinces rely on national transfers for over 90% of their budgets.

This creates a principal-agent relationship. The National Treasury (Principal) sets the ceiling for the Division of Revenue. The Provinces (Agents) merely allocate the funds within that ceiling. The "entitlement" under section 227 is practically constrained by what the National Treasury determines is "available" after servicing national debt.<sup>1893</sup>

### 5.2.2 The Marginalization of the FFC

The Financial and Fiscal Commission (FFC) was designed to be the independent check on this imbalance. However, the *Intergovernmental Fiscal Relations Act* only requires the Minister to "consult" the FFC.

- **Critique:** The FFC has repeatedly warned about the inadequacy of the Equitable Share to fund basic services, particularly given population growth and migration to metros.
- **Outcome:** These recommendations are frequently ignored in the final Budget Review. For instance, the 2024/25 Division of Revenue Bill shows a trend of "top-slicing" funds for debt service costs (which have risen to 17.9% of revenue) before the equitable share is calculated, effectively forcing provinces to pay for national debt.<sup>1894</sup>

### 5.2.3 The Scourge of Unfunded Mandates

"Unfunded mandates" are the quintessential tool of centralizing drift in South Africa.

- **Mechanism:** A National Department (e.g., Health) passes a regulation setting new standards for hospitals.
- **Impact:** Provinces must implement these standards. However, the National

Treasury does not increase the Equitable Share commensurately.

- **Example:** The *policy* on library services or the *norms* for nurse-to-patient ratios often exceed the funding available in the provincial block grant. This forces provinces to divert funds from other areas, effectively giving the national government control over provincial budget prioritization without paying for it.<sup>1895</sup>

## 6. Arguments: The Logic of Centralization

### 6.1 Efficiency and Market Harmonization (India)

The primary argument for the centralized structure of the GST Council is economic efficiency.

- **Common Market:** Before GST, India was a fragmented market with check-posts at every state border. The GST created a seamless national market, reducing logistics costs and the cascading effect of "tax on tax".<sup>1896</sup>
- **Race to the Bottom:** Centralized rate-setting prevents a "race to the bottom" where states compete to lower taxes to attract investment, eroding the national tax base. The Union veto ensures that national revenue interests are protected against populist state tax cuts.<sup>1897</sup>

## 7. Counterarguments: The Democratic Deficit

### 7.1 The Erosion of Accountability

The strongest counterargument to centralization is the severing of the link between taxation and representation.

- **India:** When a State Government is elected on a promise to lower taxes on petrol or textiles, it cannot fulfill that promise because it has surrendered that power to the GST Council. The voter cannot hold the State Government

<sup>1892</sup> Elike (n 4).

<sup>1893</sup> Steytler and De Visser (n 16).

<sup>1894</sup> Financial and Fiscal Commission (n 12) 33.

<sup>1895</sup> *Intergovernmental Fiscal Relations Act 97 of 1997* (South Africa), s 9.

<sup>1896</sup> Rao (n 14).

<sup>1897</sup> *Mobit Minerals* (n 1).

accountable for tax burdens, nor can the State Government claim credit for relief. This dilutes the democratic mandate of state legislatures.<sup>1898</sup>

- **South Africa:** Similarly, when a municipality fails to provide water or electricity, it blames the "insufficient Equitable Share." The National Government blames "municipal mismanagement." The voter is left in a fog of accountability, unable to pinpoint who is responsible for the failure. The *City of Johannesburg* case highlighted how financial distress is often a result of systemic underfunding rather than just local incompetence.<sup>1899</sup>

## 7.2 The 'Uncooperative' Safeguard: *Mohit Minerals*

The Supreme Court of India provided a robust counter-narrative in *Mohit Minerals*.

- **The Argument:** The Union argued that the GST Council's recommendations *must* be binding to ensure the "One Nation, One Tax" goal.
- **The Judgment:** The Court rejected this, holding that Article 246A gives *plenary* power to states. To make Council decisions binding would be to subject the State Legislature to the Council, violating the basic structure of federalism.
- **Theoretical Pivot:** Crucially, the Court cited Bulman-Pozen and Gerken to argue that "uncooperative federalism" friction and contestation is desirable. It forces dialogue. If the Union knows states *can* defect, it is more likely to listen to them. This judgment effectively put a legal speed-bump on the centralizing drift, transforming the

Council from a legislative superior into a persuasive forum.<sup>1900</sup>

## 8. Conclusion

### 8.1 Synthesis of Findings

This comparative study establishes that 'centralizing drift' is a defining feature of both Indian and South African fiscal federalism, though the mechanisms differ.

1. **India** suffers from **Political Centralization:** The constitutional architecture of the GST Council (Article 279A) was designed to force consensus, but the weighted voting structure grants the Union a hegemony that can only be checked by the high political cost of 'uncooperative' state action.
2. **South Africa** suffers from **Structural Centralization:** The extreme vertical fiscal imbalance and the lack of provincial tax powers render the 'distinctive spheres' of government hollow. The Equitable Share is an allowance, not a right negotiated among equals.

### 8.2 The Failure of 'Cooperation'

In both cases, the rhetoric of 'cooperative federalism' often masks the reality of coercion. In India, "pooling sovereignty" meant states surrendering their only major fiscal tool. In South Africa, "interdependence" means provincial dependence on the National Treasury.

### 8.3 Recommendations for Reform

To arrest this drift and restore genuine federal balance:

- **For India:**
  - **Reform Voting Weights:** The Union's vote share in the GST Council should be reduced (e.g., to 25%) to remove the unilateral veto, forcing it to build broader coalitions.

<sup>1898</sup> Alok Prasanna Kumar, 'Supreme Court's Judgment on GST Council: Does it Promote or Hinder Cooperative Federalism?' (2022) The Leaflet.

<sup>1899</sup> *City of Johannesburg* (n 21).

<sup>1900</sup> *Mohit Minerals* (n 1), citing Bulman-Pozen and Gerken (n 17).

- **Institutionalize Expertise:** As suggested by M. Govinda Rao, the GST Council needs an independent Secretariat with technical expertise, rather than relying on the Union Revenue Secretary, to provide neutral data on revenue impacts.<sup>1901</sup>
- **For South Africa:**
  - **Empower the FFC:** The recommendations of the FFC regarding the division of revenue should be made binding or require a super-majority in Parliament to override.
  - **Provincial Tax Powers:** Meaningful tax powers (e.g., a provincial surcharge on personal income tax) must be devolved to break the 'flypaper effect' and restore accountability.
  - **Justiciability of Unfunded Mandates:** The Courts must be willing to strike down national regulations that impose obligations on provinces without accompanying funding.
- *Integrated Goods and Services Tax Act 2017* (India).
- *Intergovernmental Fiscal Relations Act 97 of 1997* (South Africa).
- *Division of Revenue Act 24 of 2024* (South Africa).
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Ultimately, federalism survives not through forced harmony, but through the structured management of conflict. Both India and South Africa must move beyond the platitudes of cooperation and build institutions that can withstand the necessary friction of democratic governance.

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