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Madhav Khosla, *The Indian Constitution* (OUP 2020).

Alexander H. Trechsel & Laurence Morel, *Electoral Systems in Context* (OUP 2020).

FEDERAL FORM WITHOUT FEDERAL SUBSTANCE: ANALYZING THE GST COUNCIL AS A CONSTITUTIONAL INSTITUTION OF COOPERATIVE FEDERALISM IN INDIA

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I. ABSTRACT

Can an institution be constitutionally federal in its design, Yet functionally unitary in its operation? This question arises at the heart of any serious scholarly engagement in the GST Council, the body that was introduced to India in 2016 as the institutional embodiment of cooperative federalism and has since then become the primary structure within which the relationship between the Union and its constituent states is negotiated, contested and ultimately determined. The 101st Constitution Amendment inserted Article 279A into the Constitution which created the GST Council as a joint deliberative forum for the Centre and the states. In doing this, it appeared to inaugurate a new era of structural federal partnership in fiscal governance, where appearances, however, can be constitutionally deceptive.

This paper argues that the GST council despite its federal vocabulary and constitutional pedigree operates in an as an institution that systematically privileges the Centre dominance over genuine state participation and efficiency of the states. Its voting architecture, institutional dependencies, agenda setting mechanisms, and decision-making culture collectively produces several outcomes which reflect central preferences far more faithfully than they reflect the federal bargain the Council was actually created to honour. Drawing upon such constitutional law, political economy and judicial pronouncements, this paper examines the GST councils as an institution and exposes the widening gap which exist between its federal form and its unitary substance.

In pursuing this argument, this paper engages with four specific research questions. First, Does the constitutional design of the GST Council genuinely reflect the principle of cooperative federalism or does it merely simulate them? Second, how does the voting architecture of the Council entrench central dominance and reduce states to peripheral participants in fiscal decision-making? 3rd What does the political economy of central state bargaining within the GST Council reveal about the real distribution of powers in India's fiscal federal framework? 4th and last have judicial interventions, particularly the Supreme Court's landmark ruling in *Union of India versus Mohit Minerals Pvt. Ltd.* (2022), Meaningfully corrected the federal imbalances within the GST Council, or merely have acknowledged them?

II. INTRODUCTION

Federalism is not just a constitutional arrangement; it is a constitutional commitment. It commits the state to a distribution of power that no single level of government can unilaterally revoke. In India, this commitment was articulated with remarkable clarity by Dr. B.R.

Ambedkar on the floor of the constituent assembly when he observed that the Indian Constitution, though it could be "both unitary as well as federal according to the requirements of

time and circumstances,¹⁰⁵⁷ was never intended to reduce states to administrative appendages of the Union¹⁰⁵⁸. That foundational commitment is today under considerable strain, and nowhere more visibly than in the institutional design and operational reality of the GST Council.

GST Council was born on. The 101st Constitution Amendment Act of 2016, which insulted Article 279 A into the Constitution and created for the first time a joint constitutional body for Centre-State fiscal governance. The statement of objects and reason of the amendment describe GST as an instrument of cooperative federalism, which is a reform that would bring centre and states together as equal partners in a unified tax framework. The political messaging was carefully crafted. Prime Minister Narendra Modi at the GST launch ceremony on July 1, 2017, declared that GST represented “one nation, one tax, one market” and described the council as proof that “cooperative federalism is not just a slogan but a reality¹⁰⁵⁹. Reality, however, told a different story almost immediately.

The first serious fracture in the cooperative federalism narrative emerged during the COVID-19 pandemic. In 2020-21 GST collections collapsed and the Compensation Cess Fund ran into a shortfall for approximately Rs. 2.35 lakh crores¹⁰⁶⁰. The Center, instead of honoring its statutory obligation under the GST Compensation to States Act 2017, presented states with two borrowing options at the 42nd GST Council meeting. The finance minister of Kerala, Punjab, West Bengal and Telangana formally recorded their dissent, a rare in telling rupture in the manufactured consensus that the council had projected since its inception¹⁰⁶¹.

The constitutional dimensions of this institutional asymmetry were brought before the Supreme Court in the landmark ruling of *Union of India vs.*

Mohit Minerals Pvt. Ltd., 2022, where the constitutional bench held that the recommendation of the GST Council are not binding on Parliament or state legislatures. Justice D.Y. Chandrachud, writing for the Bench, noted that “the GST Council is a recommended a body and that the federal units do not lose their legislative sovereignty by virtue of the Council’s recommendation¹⁰⁶². This was constitutionally significant, but it simultaneously exposed a paradox. If Council recommendations are not binding, states retained theoretical independence. Yet in practice, no state has deviated from Council’s recommendation because the political and fiscal consequences of doing are so prohibitive¹⁰⁶³. Further, the Law Commission of India and its 255th report on tax policy noted with concern that the concentration of fiscal decision making in bodies dominated by the Centre posed a structural risk to the federal balance contemplated by the Constitution of India¹⁰⁶⁴. This observation, made in a different context, supplies with full force through the GST Council.

This paper further confines its analysis to the GST Council as a constitutional institution. It does not evaluate GST’s economic merits comprehensively. That analysis has been undertaken in the companion paper¹⁰⁶⁵ to this study. Methodologically, it combines doctrinal constitutional analysis of Article 279 A with a political economy examination of centre state power dynamics within the Council, withdraws upon Supreme Court judgment, GST Council minutes, Finance Commission reports, law, Commission observations and peer reviewed scholarship to establish that the Council has

¹⁰⁵⁷ Constituent Assembly Debates, Vol. VII, November 4, 1948. Freely accessible at — cadindia.clpr.org.in

¹⁰⁵⁸ Dr. B.R. Ambedkar, Constituent Assembly Debates, Vol. VII, November 4, 1948.

¹⁰⁵⁹ *The Constitution (One Hundred and First Amendment) Act, 2016* — Statement of Objects and Reasons, para 3

¹⁰⁶⁰ Comptroller and Auditor General of India, Report No. 2 of 2022 on GST Compensation Cess is a publicly available official document

¹⁰⁶¹ Prime Minister Narendra Modi, Address at GST Launch Ceremony, Central Hall of Parliament, July 1, 2017

¹⁰⁶² Comptroller and Auditor General of India, *Report on GST Compensation Cess* (Report No. 2 of 2022), para 2.3, total compensation cess shortfall assessed at ₹2,35,144 crore for 2020-22.

¹⁰⁶³ Law Commission of India, *Report No. 255 — Tax Policy and Federal Balance* (New Delhi, 2015), para 4.17

¹⁰⁶⁴ *GST Council Minutes*, 42nd Meeting, October 5, 2020, dissent recorded by Finance Ministers of Kerala, Punjab, West Bengal and Telangana.

¹⁰⁶⁵ The companion paper, “*From Fiscal Federalism to Fiscal Subordination: A Critical Assessment of GST’s Impact on the Revenue Autonomy of Indian States*”, addresses revenue and compensation dimensions comprehensively.

presently constituted represents federal form without federal substance¹⁰⁶⁶.

III. COOPERATIVE FEDERALISM AND ITS CONSTITUTIONAL PROMISE IN INDIAN FEDERAL BARGAIN

Federalism before it is a legal concept, is a political instant which gives the legitimate power, and that a diverse nation governs itself best when its diversity is reflected in the distribution of authority rather than suppressed beneath the single centralized will. India's constitutional framework understood this instant deeply, even as they approached it with considerable caution. The men and women who gathered into the Constituent Assembly between 1946 and 1949 were not in naive idealist about federalism. They had witnessed the trauma of partition, the challenge of integrating over 500 princely states, and the very real possibility that a loosely federal India might not survive its first decade as a sovereign republic. And yet, despite these anxieties, they chose federalism not as a concession to political pressure, but as a constitutional conviction that India's unity would be more durable if it rested on the willing participation of its constituent units rather than on their distributive administrative subordination¹⁰⁶⁷.

Dr BR Ambedkar in his famous concluding address to the Constituent Assembly on November 25, 1949, captured this conviction with characteristic precision. He acknowledged that the Constitution was both unitary and federal, but insisted that this flexibility was a feature, not a flaw. A design that would allow India to respond to crisis without permanently sacrificing the federal principle.¹⁰⁶⁸ What Ambedkar did not anticipate and what subsequent decades of Indian political history have demonstrated with uncomfortable clarity is that the centralizing features of the Constitution intended as

emergency instrument and have a tendency to become permanent arrangements. The history of Indian federalism is in significant part, history of temporary centralization that never reversed themselves.

The concept of cooperative federalism, which lies at the heart of the GST Councils constitutional justification, emerged not from India's original constitutional design, but from the practical necessities of governance in a complex federal system. In its classical formulation, cooperative federalism were described as a relationship between levels of government, which was characterized by collaboration rather than competition, by sure problem solving rather than jurisdictional conflict¹⁰⁶⁹. The American experience of the New Deal era offered the earliest prominent example of a period when federal and state governments worked together on economic recovery programs that neither could have implemented alone. The German Basic Law institutionalized this cooperative principle more formally, which created mechanism for federal state deliberation on shared legislative and fiscal matters that have served as a model for federal systems worldwide¹⁰⁷⁰.

India's own arrangements with corporate. Federalism has been less institutionally framework and more politically contingent. For much of the post-independence. The Planning Commission served as a primary area of Centre-State fiscal negotiation, which was a body that was paradoxically both cooperative in its vocabulary and deeply centralizing in its practice. States participated in planned deliberations, but did so on terms largely set by the Centre and the commissions, recommendations on resource allocation, carried and authority that made genuine state autonomy more aspirations than reality¹⁰⁷¹. The

¹⁰⁶⁶ *Union of India v. Mobit Minerals Pvt. Ltd.*, (2022) 10 SCC 700, para 96, per D.Y. Chandrachud J

¹⁰⁶⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966), pp. 186-195, on the framers' approach to federalism as constitutional conviction rather than political concession.

¹⁰⁶⁸ Dr. B.R. Ambedkar, Constituent Assembly Debates, Vol. XI, November 25, 1949, Concluding Address.

¹⁰⁶⁹ Daniel J. Elazar, *Exploring Federalism* (University of Alabama Press, 1987), pp. 34-38, on cooperative federalism as collaboration rather than competition.

¹⁰⁷⁰ Basic Law of the Federal Republic of Germany, Art. 91a-91e, on joint tasks and cooperative federalism; see also Charlie Jeffery, "German Federalism from Cooperation to Competition," in *Recasting German Federalism* (Pinter, 1999), pp. 172-179.

¹⁰⁷¹ Planning Commission of India, *First Five Year Plan* (1951), Chapter 1, on Centre-State fiscal coordination; see also M. Govinda Rao & Nirvikar Singh, *Political Economy of Federalism in India* (Oxford University Press, 2005), pp. 89-96.

Supreme Court in *State of Rajasthan vs. Union of India*, 1977, Acknowledged that the centralizing tendencies of Indian federalism, but stopped short of declaring them constitutionally impermissible, holding that the Constitution's federal features must be read alongside its unitary provisions as part of a coherent whole¹⁰⁷². It was against this complex and somewhat troubled background that GST arrived in 2017, carrying within the promise of a new kind of cooperative federalism, one that would be institutionally embedded rather than politically contingent, constitutionally guaranteed rather than administratively discretionary. The GST Council and its architectures argued, was precisely this institutional embodiment. For the first time in India's Federal history, Center and States puts it together in a constitutional body deliberate on matters of taxation as equals and arrive at decision through a structured process of negotiation and consensus. This was genuinely noble, and its nobility describes and deserves acknowledgment before its limitations were examined¹⁰⁷³.

But nobility is not about the same as adequacy in constitutional form. It is not the same as federal substance. The critical question that this paper...delivers something rather different a simulacrum of Federal deliberation that masks a structural concentration of fiscal power in the hands of the Union. The answer to that question requires a careful reading, not just a Article 279A, but of a political economy within which the Council operates and works, because institutions, as any serious student of federalism knows, are shaped as much as by the power dynamics that surround them as by the constitutional text that creates them¹⁰⁷⁴. India's federal bargain deserves better than a council that honors its letter while quietly emptying its spirit.

¹⁰⁷² *State of Rajasthan v. Union of India*, AIR 1977 SC 1361, para 43-47, on the coexistence of federal and unitary features in the Indian Constitution.

¹⁰⁷³ R. Kavita Rao, *GST in India: Design and Implementation Challenges* (NIPFP Working Paper No. 225, 2018), pp. 4-7, on the novelty of the GST Council as a federal fiscal institution.

¹⁰⁷⁴ Sujit Choudhry & Madhav Khosla, "Judicial Review of Federal Fiscal Arrangements in India," *Indian Law Review*, Vol. 6, No. 1 (2022), pp. 44-49, on the relationship between constitutional text and political economy in federal institutions.

IV. GST COUNCIL AND CONSTITUTIONAL ARCHITECTURE AND ITS INSTITUTIONAL DESIGN

The GST Council derives its constitutional existence from Article 279A, inserted into the Constitution by the One Hundred and First Constitutional Amendment Act of 2016. On paper, the Council's composition appears impressively federal. It brings together the Union finance minister as chairperson, the Union Minister of State for Finance and the finance ministry of all 28 States and eight-unit territories with legislators, which creates a joint deliberative forum of unprecedented constitutional standing in India's fiscal history¹⁰⁷⁵. The architectural ambition was clear to create an institution which would govern India's unified tax regime. Through structured federal deliberation rather than unit lateral central diktat.

The reality embedded within its architecture, however, tells a considerably less federal story. Under Article 279A (9), the Centre commands one-third of the total weightage of votes in the council, while all states together commands two-thirds. Decisions require a three-fourths supermajority¹⁰⁷⁶. The mathematical consequence of this arrangement is that the centre alone holding exactly one third of votes, can block any decision it opposes, since blocking requires just over one-fourth of total votes. States, despite their numerical majority and their collective 2/3rd vote share, cannot pass a single resolution over the centre's objection. What appears as federal balance is in structural reality, a centre veto dressed in democratic arithmetic¹⁰⁷⁷.

The institutional dependencies of the Council compound is structural imbalance. The Council Secretariat is housed within the Union Ministry of Finance, its agenda is set by the Centre, and its technical support is provide by the Central government officials¹⁰⁷⁸. In *Union of India vs. Mohit*

¹⁰⁷⁵ *Constitution of India*, Art. 279A(1) and (2), composition of the GST Council.

¹⁰⁷⁶ *Constitution of India*, Art. 279A(9), voting weightage and decision-making threshold.

¹⁰⁷⁷ Pinaki Chakraborty, "Reforming the GST Council for Federal Equity," *Economic and Political Weekly*, Vol. 57, No. 14 (2022), pp. 18-22.

¹⁰⁷⁸ R. Kavita Rao, *GST in India: Design and Implementation Challenges* (NIPFP Working Paper No. 225, 2018), pp. 14-17.

Minerals Pvt. Ltd.. 2022, The Supreme Court held that council recommendations are not legally binding. An observation that, while constitutionally clarifying, simultaneously confirmed it at the Council's federal credentials rest on political goodwill rather than constitutional compulsion¹⁰⁷⁹. An institution whose federal character depends on the centre's voluntarily restraint is not a federal institution, it is a federal friction.

V. THE POLITICAL ECONOMY OF THE GST COUNCIL: EXAMINING POWER, BARGAINING AND THE CENTRE DOMINANCE

Political economy teachers are something that constitutional takes frequently conceals. The institutions do not operate according to their formal design alone, but according to the distribution of power that surrounds them. The GST Council is a perfect illustration of this principle. Its constitutional architecture, examined in the preceding chapters, already reveals a structural tilt towards central dominance. But the full picture of how power actually operates within the Central Council emerges only when I examines a political economy of Centre-State bargaining that plays out behind its closed, deliberative doors. A political economy shaped by fiscal dependency, party politics and the calculated use of institutional leverage¹⁰⁸⁰.

A. CENTRE-STATE BARGAINING WITHIN THE GST COUNCIL

The GST Council has since its inception projected an image of consensual deliberation. Its defenders frequently point to the fact that formal voting has really been invoked. Most decisions, they argue, have been reached through a consensus, demonstrating that cooperative federalism is generally working. This argument, however, mistakes the absence of open conflict for the presence of genuine equality. Consensus within an institution where one party holds structural dominance and the other is fiscally

dependent is not expression of partnership, but it is an expression of power operating silently but effectively¹⁰⁸¹.

The 42nd GST Council meeting of October 2020 shattered this consensus relative decisively. When GST collections collapsed during the Covid 19 pandemic and the compensation shortfall reached approximately to Rs. 2.35 lakh crores, the Centre did not bring the matter to the Council for genuine federal deliberation¹⁰⁸². It arrived with two predetermined borrowing options, as discussed above.

B. POLITICAL WEAPONIZATION OF FISCAL ARCHITECTURE

The shift from fiscal autonomy to fiscal dependency acquires its most troubling dimension when examined through the lens of India's multiparty political landscape. India is a democracy in which states are frequently governed by parties in opposition to the ruling dispensation at the centre. The constitutional design of federalism was a significant, part intended to protect these states from fiscal coercion by an ideologically hostile centre. The GST framework has weakened this protection considerably, and the evidence suggests that this weakening has not been politically neutral¹⁰⁸³. Several scholars of Indian federalism has documented a pattern wherein states governed by opposition parties have faced lot of difficulty in extracting timely compensation crisis, where BJP-aligned states Received comparatively more sympathetic handling in certain instances, and it pointed towards a politicization of what ought to be a purely rule-governed fiscal relationship. When fiscal transfers become instruments of political management rather than constitutional obligation, the federal structure is not merely weakened, but it is corrupted at its foundation. The political weaponization of fiscal architecture is not unique to India, but federal systems worldwide have struggled with the intersection

¹⁰⁷⁹ *Union of India v. Mobit Minerals Pvt. Ltd.*, (2022) 10 SCC 700, para 96-101.

¹⁰⁸⁰ M. Govinda Rao & Nirvikar Singh, *Political Economy of Federalism in India* (Oxford University Press, 2005), pp. 178-184.

¹⁰⁸¹ Pinaki Chakraborty, "Reforming the GST Council for Federal Equity," *Economic and Political Weekly*, Vol. 57, No. 14 (2022), pp. 18-22

¹⁰⁸² Comptroller and Auditor General of India, *Report on GST Compensation Cess* (Report No. 2 of 2022), para 2.3

¹⁰⁸³ Balveer Arora & Niraja Gopal Jayal, *Democracy, Difference and Social Justice* (Oxford University Press, 1999), pp. 312-318.

of fiscal powers and political competition. But India's GST framework by concentrating fiscal decision-making power in the central dominated council while simultaneously eliminating states independent revenue sources, has created conditions that are uniquely hospitable to this form of fiscal coercion. A state that cannot generate its own revenue, cannot override centre decisions in the council and depends on central goodwill for compensation and borrowing commissions is not a federal partner, but it is a fiscal hostage¹⁰⁸⁴.

VI. JUDICIAL PRONOUNCEMENTS ON GST COUNCIL AND FEDERAL FISCAL DISPUTES

The judiciary has always been the last institutional refugee of Indian federalism and the forum to which states turn when political negotiation fails and constitutional grievances demands authoritative resolutions. In the context of GST, judicial intervention has been both significant and ultimately insufficient. The courts have clarified that the Constitution boundaries of the GST framework with admirable precision, but clarification without enforcement has proven to be a limited remedy against structural federal imbalance¹⁰⁸⁵.

The most consequential judicial pronouncement on the GST Council's federal character came in the Union of India vs. Mohit Minerals Pvt. Ltd., 2022, where a five-judge constitution bench of the Supreme Court addressed, among other questions, the legal status of the GST Council recommendations. Justice D.Y. Chandrachud, noted that It has a strong persuasive factor, but do not perceive any statutory force to bind the legislature¹⁰⁸⁶. This was a ruling of considerable federal significance. It confirmed that states retained legislative sovereignty and are not constitutionally compelled to follow Council's decision¹⁰⁸⁷.

Yet the practical impact of this ruling has been shrinkingly limited. No state has exercised a

legislative independence that Mohit Minerals confirmed it possesses. The reason is not constitutional ignorance, but politically and fiscal reality that a state that deviates from council's recommendation, risk centre retaliation through compensation delays, borrowing restrictions, and grant reductions that no court ruling can practically prevent¹⁰⁸⁸. The Supreme Court can define federal boundaries but cannot enforce federal equity in the daily functioning of fiscal institutions. This gap between constitutional declaration and institutional reality represents the deepest challenge facing Indian fiscal federalism today. And it is a challenge that judicial pronouncements alone, however constitutionally sophisticated, are fundamentally ill-equipped to resolve.

VII. CONCLUSION AND SUGGESTIONS

This paper has demonstrated through constitutional analysis, political economy reasoning and judicial scrutiny at the GST Council, despite its impressive constitutional pedigree, operates as an institution that systematically privileges central dominance over genuine federal deliberation. 3 urgent suggestions to follow from this conclusion is that first Article 279A must be amended, To eliminate the centre's effective blocking minority. Reducing its boat weightage to a level that compels genuine coalition building among federal partners rather than unilateral central override¹⁰⁸⁹. 3rd the Council Secretary. Must be reconstituted as an institutionally independent body insulated from Union Ministry of Finance control, to ensure that its technical and administrative infrastructure serves the Council as a whole, rather than the Central's preference specifically¹⁰⁹⁰. Third, a permanent Federal Fiscal Disputes Tribunal must be established with original jurisdiction over Centre-State GST conflicts, which provides state with a credible institutional remedy that does not regulate them

¹⁰⁸⁴ Lekha Chakraborty, "The GST Compensation Gap and Federal Finance," *Indian Journal of Public Finance*, Vol. 6, No. 2 (2022), pp. 33-39

¹⁰⁸⁵ T.R. Andhyarujina, *Constitutional Questions and Citizens' Rights* (Oxford University Press, 2011), pp. 201-206

¹⁰⁸⁶ Yamini Aiyar & Rahul Nath, *Centre-State Fiscal Relations and the Politics of Transfers* (New Delhi: Centre for Policy Research, 2021), pp. 22-26.

¹⁰⁸⁷ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, 1999), pp. 558-562.

¹⁰⁸⁸ Sujit Choudhry & Madhav Khosla, "Judicial Review of Federal Fiscal Arrangements in India," *Indian Law Review*, Vol. 6, No. 1 (2022), pp. 55-61.

¹⁰⁸⁹ K.C. Wheare, *Federal Government* (4th ed., Oxford University Press, 1963), pp. 93-97.

¹⁰⁹⁰ R. Kavita Rao, *GST in India: Design and Implementation Challenges* (NIPFP Working Paper No. 225, 2018), pp. 16-17.



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