

INDIAN FEDERALISM PERSPECTIVES

As the Centre for Multilevel Federalism enters its thirteenth year, on 2nd October 2022, the world stumbles towards increased economic uncertainty and India's own economic growth story enters troubled waters. The tsunami that is sweeping the geopolitical arena in the wake of the Ukraine war is yet to reveal its full impact. Various descriptions are being bandied for this stormy period for many national economies, bloodbath and meltdown being the milder ones. India's capacity to withstand this global economic turmoil will depend largely on the quality of its fiscal federalism apparatus and its skillful use of the levers and institutions of our multilevel federal system.

What is on test is the system developed over the past decade to achieve macro- economic stability and unity of purpose in a federal system marked by gross regional inequalities. The role of autonomous arbiters like the Reserve Bank of India is going to be tested, as also the institutions of 'cooperative' federalism, notably the Goods and Services Taxes Council (GSTC). The extent to which they are able to carry the states with them in a participatory framework will be of paramount importance in a period of stress. The Covid 19 phase showed cracks in this framework, as the 'cooperative' dimension melted and recriminations flew fast and furious. It is in times of stress that institutions are tested, as also the ability of those who manipulate the levers of command to rise above immediate exigencies and avert the possible damage to institutions of cooperation. The erosion of federal principles is easily inflicted but not so easily repaired.

The issues of equity also come under severe test in periods of economic stress. The tendency to focus excessively on growth and to neglect the demands of equitable redistribution is frequently encountered in India's economic history. It is under such circumstances that the tendency to jettison asymmetric federalism can prove disastrous for the much-needed stability of the federal system.

Welfare measures are not only meant for electoral campaigns, they are crucial to how the poorer sections of our society survive in times of economic slowdown and stress. Unemployment and accompanying malnutrition affect first and foremost the vulnerable sections of the population, namely the girl child and women who are pushed into early matrimony. The national workforce has yet to recuperate the women who were pushed off the labour market during the Covid years. Here again, the proper functioning of federal institutions at the third tier can contribute significantly to alleviating the suffering caused.

The debate on freebies as ‘revris’ or handouts that endanger macro-economic stability is symptomatic of this blinkered view of the federal system, where these are seen to be occurring only at the state level. The bailouts and loan waivers by nationalised banks are not decided by the states, nor are the tax-breaks and fiscal incentives to industrialists to attract them to invest. In fact, this race for attracting capital investments has injected a curious slant to intergovernmental relations, where political ‘alignment’ with the Centre and opting for ‘double-engine’ governments are seen as indispensable assets for moving forward in an atmosphere of ‘competitive’ federalism.

We are pleased to present, in this 12 th anniversary edition of the Indian Federalism Perspectives series, a contribution by Chanchal Kumar Sharma, Senior Fellow at the CMF, on GST Reforms and Fiscal Federalism in India. The GST Council has become an important component of the institutional structure that permits vibrant intergovernmental interaction on critical issues. As the Interstate Council stagnates, the functioning of the GSTC comes under greater scrutiny. The unanimity that marked its decisions in the first phase has given way to a more contentious decisional process. In a context of large-scale democratic backsliding, it is inevitable that India’s multilevel federal system will be put to the test. There are rays of hope in isolated pockets of the system, as some states resist resolutely. On this 12 th anniversary, we wish our readers a bright future, for hope is of the essence.

Balveer Arora

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GST Reforms and Federalism in India

Understanding the Role of Critical Junctures, Veto Players, Constitutional Structures and the Judicial Safeguards of Federalism

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Designing and implementing goods and services tax (GST) reforms in federations is challenging. While the best practice is implementing a unified national GST assessed on a broad base at a low uniform rate, this format does not suit federal countries because complete tax harmonisation violates the federal principle. In particular, implementing a VAT/GST is problematic in federations where: (a) regional identities and provincial loyalties are strong or subnational fiscal autonomy is a politically sensitive issue (b) subnational governments (SNGs) depend largely on indirect taxes and do not have access to other broad-based taxes (for example, personal income taxes and payroll taxes).

The Australian and German systems are the best models for the federations not afflicted by most of the constraints mentioned above. These federations levy national GST, the bases and rates of which are determined jointly by the central and local governments and use a formula to share the GST or VAT revenue. For other federal countries, a system of decentralised VAT harmonised with federal GST is generally endorsed. However, this requires a high level of intergovernmental coordination and a reasonably advanced tax administration. Thus, a system of destination-based subnational VAT alongside a federal GST does not exist in any federal country except Canada. The long and painful history of the evolution of the tax system in Canada and the affordability concerns lend credence to the notion that implementing and sustaining a dual GST model poses considerable challenges even in a 'developed country' federation.

These difficulties are exacerbated in 'developing country' federations, which—in addition to facing issues posed by intergovernmental political dynamics and federal constitutional structures—are beset by the problems of low per capita income, income inequalities, regional disparities, fiscal imbalances, poor accounting practices, and weak tax administration. Brazil, for instance, is facing immense hurdles in attempting to reform its consumption tax system—an origin-based state VAT—due to its complex and inefficient tax administration and a lack of coordination between federal, state, and local governments. Pakistan is another example where the weaknesses in the legal framework and tax administration have led to the failure of the GST. In Malaysia, the fierce public opposition in light of rising inflation and the GST's regressive effects on income distribution led the

government to scrap the GST in 2018, barely three years after its rollout.

Given the well-documented challenges associated with introducing a GST in developing country federations, the successful introduction of a 'Dual GST' model in India from 1st July 2017 makes it a case of GST reforms having no parallel. India is now the only developing country federation with a dual GST system, which – unlike the Canadian system – grants states no discretion regarding the SGST (the subnational component of GST) and has no system to equalise SGST revenues.

India's successful transition stems from the fact that, on the one hand, the Indian GST model was allowed to deviate from the purist ideal to suit India's federal context; on the other hand, the practice of fiscal federalism itself was modified to implement the GST reforms. In what follows, I discuss the role of critical junctures, veto players, federal constitutional structures and the judicial safeguards to federalism in India's transition from a sales tax regime to the GST regime.

The Role of Critical Junctures

Bringing about ideational changes and radical reforms

Critical junctures—defined as crises followed by ideational changes (Hogan & Doyle, 2007)—may be created by (a) economic crises which expose the weaknesses of the prevailing economic systems and bring new ideas and institutions into politics (Matthijs, 2012) or (b) electoral landslides which indicate a weakening of the existing regimes and trigger overwhelming mandates for change (Garrett & Lange, 1995). In other words, paradigmatic shifts in policies and politics, or 'points of change', can be explained using critical junctures.

The first critical juncture which initiated reforms in India's Indirect tax regime happened in 1991 when India undertook the large-scale liberalisation reforms, hot on the heels of an acute economic crisis. It was a choice point that closed off the possibility of returning to a planned and closed economy because an ideational change followed the crisis favouring liberalisation,

privatisation, and globalisation (Sharma, 2011). It generated a broad consensus on the need to achieve the policy goal of establishing a common market. The necessity of lifting barriers to factor and product mobility rendered the reform of India's inefficient indirect tax system essential (Chelliah, 1996). However, since the development of fiscal constitutions over time or their designs at any given moment are a product of interplay between the prevailing economic paradigm and political bargaining (Sharma, 2017), a favourable economic paradigm alone is not enough to bring about a radical change in federal fiscal arrangements.

A common understanding in the rational choice literature is that political institutions, as structures of voluntary cooperation, are also required to resolve coordination and collective action problems. In the absence of this pre-condition, the design of VAT/GST emerged as a significant source of disagreement between the centre and states because the new tax regime proposed to subsume the sales tax, the only significant revenue source for sub-national governments in India (Bagchi, 2005; Sharma, 2005). The proposed reforms also sparked a debate between the supporters of fiscal restructuring (for macroeconomic stability and sustainability) and local fiscal autonomy (Chandrasekhar & Ghosh, 2005). The diversity of thinking on the virtues of competing models of the VAT, despite a widely recognised need to overhaul India's indirect tax system, was reflected in the recommendations of the Tax Reforms Committee (Chelliah, 1993) and the Bagchi Report (Bagchi, 1994). While the former recommended a 'national VAT' for India, the latter took subnational revenue autonomy into account and recommended steps to transform State Sales Taxes into State VATs.

After the Chief Ministers' conference in November 1999 examined competing models, the Central Government, in April 2000, extended MODVAT, rechristened as Central VAT (CENVAT), to all goods and in July 2000, set up the Empowered Committee of State Finance Ministers (EC) to design and implement State VAT. In 2002, the Kelkar Task Force on Indirect Taxes recommended a "grand bargain" between

the centre and the states for exercising concurrent dual GST at all points in the supply chain, going up to the final consumer (Kelkar, Shome & Chelliah, 2003). Nevertheless, it could not be achieved due to the constitutional division of tax power between the centre and the states.

The constitutional amendment needed to overcome the constitutional constraints required a reasonable consensus across political parties and state governments, which could not be forged due to the contentious politics of the coalition era. Thus, a state-level VAT system was implemented in the country on 1st April 2005. Although the CENVAT and the State VATs laid the foundation for more comprehensive tax reforms in the future, they did not remove the irritants that were discouraging new investment and keeping the Indian market fragmented. These irritants included the continuation of the origin-based Central Sales Tax (CST) on inter-state sales and restricted input credit on inter-state transfers¹, exemptions under the CENVAT, service tax and the State VAT contribute towards the cascading effect (tax on tax). Besides this, the poor infrastructure for tax administration also increased compliance costs.

The critical juncture in economic policymaking generated a broad consensus on the need to reform India's overly complex and inefficient indirect tax system. However, comprehensive reforms could not be undertaken in a political context characterised by the rise of regional parties as active actors in national politics. Therefore, India gradually switched from a sales tax system to a state VAT system by 2008 while preserving the stability of the constitutional distribution of tax powers between levels of government. Although still largely inefficient, this system was a considerable improvement over the archaic, irrational, and complex system existing till then. While India could not switch to a dual GST system during the coalition era, incremental reforms during this period did prepare the ground for further reforms.

The quantum jump to a dual GST system was made possible by another critical juncture in Indian politics in 2014 when a landslide victory

of the BJP in the general elections brought the era of coalition politics to an end and a stable 'dominant party equilibrium' began to operate. This gave rise to a new system of politics and political processes—formal and informal—by which the coordination problems could be resolved. It was the one-party dominance, which, as a political structure of voluntary cooperation between the two levels based on partisan ties, facilitated the GST Constitutional Amendment Act, providing concurrent powers to levy to both the centre and the state's GST. This brings us to a discussion on the role of veto players.

THE ROLE OF VETO PLAYERS

Deflecting attempts at diminishing their institutional empowerment

The difficulty or ease with which the constitution can be amended depends on whether strong or weak veto possibilities characterise the operating environment. For instance, the rise of a fragmented party system in the 1990s created a political context with strong veto possibilities by increasing the number of (a) opposition party Members of Parliament (MPs) in the national legislature, (b) states ruled by opposition parties and (c) regional parties sharing power at the national level. As political opposition became challenging to manage, the interactions between institutional but partisan veto players became more conflictual. This precluded the possibility of a constitutional amendment to implement GST because it required ratification by the subnational incumbents, most of whom belonged to the opposition parties. For instance, the GST bill, introduced by the Congress-led United Progressive Alliance (UPA) in 2011, was opposed by the non-affiliated states and blocked by the opposition parties in the upper house. Therefore, even if there was a broad consensus on the need for indirect tax reforms, the only way forward—in the context of a high level of fractionalised multipartyism—was to negotiate and compromise with the veto players who had a decisive say in constitutional amendments.

Thus, India witnessed a halting process of change during this period of intensely competitive politics, which was aptly described as 'creating a

strong consensus for weak reforms' (Ahluwalia, 2002). While the adversarial politics of veto players had scuttled the comprehensive reforms during the era of coalition politics, the rise of the 'dominant party equilibrium' reduced the number and impact of veto players (opposition chief ministers and parliamentarians) and presented a unique opportunity for radical reforms. In fact, with the dawn of single-party dominance after 2014, it became feasible to forge political compromises on constitutional settlements. The study of the political experience during Mrs Gandhi and Modi regimes shows that intergovernmental coordination happens through a combination of two strategies under single-party governments. One through 'intraparty interactions with affiliated states and two by establishing a 'punishment' regime against opposition-ruled states. In this system of centralised federalism—made sustainable and self-enforcing under the dominant party equilibrium—it becomes difficult for the partisan veto players to pose an outright challenge to the central government. In other words, when national and subnational incumbents are co-partisans, the most difficult constitutional change that aims to reallocate powers becomes easy to accomplish.

However, this does not mean that the coordination dilemma that had plagued the indirect tax reform process since 1991 could have been resolved without paying heed to the GST-related concerns expressed by the state governments. This brings us to the role played by the federal constitutional structures.

THE ROLE OF FEDERAL CONSTITUTIONAL STRUCTURES

Compelling a dominant party regime into concessions

The explanation relying exclusively on the party hegemony or dominance leaves open the question of incentives that induce the hegemon to adhere to the previously made commitments. The dilemma is that any government powerful enough to extract states' acquiescence is also powerful

enough to enact reforms without offering any concessions or reneging on its commitment later.

The resolution to this dilemma lies in the federal constitutional structures. In a federal context, the dominant party is restrained by the path-dependent effects of the procedural and political safeguards inherent in the constitutionally established federal structure and the role of courts in safeguarding federalism. Furthermore, even if affiliated states outnumber them, opposition-ruled states can still present obstacles to reforms. More importantly, outright encroachment upon states' jurisdictions can threaten the dominance of the national ruling party in state elections. In a nutshell, a federal organisation solves the 'commitment problem' by creating legally independent and constitutionally protected spheres of political authority (Elazar, 1987). Therefore, although the dominant party equilibrium makes it difficult for the partisan veto players to pose an outright challenge to the central government, the existing federal structure, political processes, and judicial safeguards activate a federalism imperative that necessitates compromises as midpoints of competing claims.

Note that the research related to GST design was pursued by the Empowered Committee of State Finance Ministers (EC) after its reconstitution in 2004. This committee included the finance ministers of all states as its members, most of whom belonged to opposition parties, could not resolve contentious issues related to the GST architecture and compensation for losses arising from the GST. The BJP was the strongest critic of the proposed GST reforms and opposed it tooth and nail. However, after 2014, when the BJP emerged as the dominant party at the centre and in the states, the path-dependent effect of the one decade's groundwork undertaken by the EC ensured that generous concessions were offered to states.

For instance, to take the state governments on board, India has adopted a "Concurrent Dual GST" model that is far from the ideal one—a single, unified national GST. In India's dual model, the centre and the states levy Central GST (CGST) and State GST (SGST) on intra-state

supplies of goods and services. In addition, the centre has exclusive power to levy and collect integrated GST (IGST) on all inter-state supplies of goods and services. IGST is then shared between the centre and the destination (consuming) state with jurisdiction over the consumer.

The union government established a 'compensation fund' guaranteeing full compensation to the subnational governments for any loss during the transition to GST—assuming a compound annual growth rate of 14% in GST revenues for five years over the base year of 2015-16 (Section 18 of the 101st Amendment Act, 2016)². The GST Council (GSTC) has been institutionalised to facilitate continuous intergovernmental interaction. The GSTC and its innovative voting structure have contributed to achieving state government support for the GST reform. The establishment of the GSTC ensured that the decline of self-rule was offset by increased participation in the shared rule system.

In addition, the centre also accepted the States' demand to keep petroleum products (crude oil, natural gas, aviation fuel, diesel, and petrol), alcohol, electricity, and real estate outside the purview of GST. In the 45th GSTC meeting convened on 17th September 2021, the proposal regarding the inclusion of petroleum products under GST was discussed but was not acceptable to the GSTC members. Similarly, a multi-rate tax structure with numerous exemptions has been adopted to satisfy state governments' demands. These anomalies will be gradually rectified as the system matures³.

It is essential to highlight that the executive's willingness to offer concessions had prevailed throughout the coalition era in Indian politics, yet the reforms lingered. This happened because the opposition parties—who ruled more than half of the states and were confident in their ability to block the centre's bid to pass the contentious GST bill—had no incentive to concede. Thus, the 'concessionary approach' did not work during the coalition era. Interestingly, the SNGs, which were reluctant to part with their tax authority under coalition governments, became amenable to

engaging in the reciprocity of concessions under a dominant-party system. This happened because the logic of a dominant party equilibrium is such that if only the opposition group (which is outnumbered by the affiliated states under a dominant-party system) mounts a challenge—for example, an attempt to block constitutional amendments designed to limit subnational autonomy—it is likely to fail.

In this scenario, although it was easy for the national ruling party to 'impose' cooperation on the states, the constitutional protection of the state's power to levy tax and a stringent amendment formula to alter the constitutional assignment of powers induced the centre into a process of 'negotiated cooperation' in which it offered significant concessions to states for agreeing to a GST. This process of reciprocal offers of concessions in the context of a dominant party system implies that even when party congruence paves the way for hierarchical control over the SNGs, the need for an explicit bargaining process cannot be entirely ignored, simply because the institutional condition of federalism lurks in the background. This reciprocity of concessions—whereby any loss of utility suffered by the SNGs in one dimension is at least partially offset by a gain in some other dimension(s)—represents an important aspect of 'concessionary federalism' (Sharma, 2022a). It also represents a tactical choice, an efficient frontier that seeks to address the trade-off between national and subnational utilities in a federal system (Sharma, 2022b).

THE ROLE OF JUDICIAL SAFEGUARDS OF FEDERALISM

Enforcing the constitution's limit on federal power

Before the GST rollout, the central government resolved several intractable issues by accommodating the states' concerns raised during intergovernmental GSTC meetings (Mint, 2017). However, since 2019, as the BJP won a second term in office with a greater majority than the first term and has retained control over most Indian states, its appetite for accommodation has been minimal. The reason for this lies in the co-

option of the affiliated SNGs by the national ruling party to the extent that they have ceased to be sub nationally oriented. Thus, the twin objectives of protecting the states' authority and promoting subnational interests in India's centralised federal system have been left to states ruled by opposition parties. However, their options are limited since they control only 11 of the 31 states and union territories. Thus, the capacity of the GSTC to protect states' interests in financial matters depends to a large extent on how important actors (national and subnational incumbents) engage in the politics of collective action. Suppose the partisan logic of collective action looms large when a single party dominates at the centre and governs most states. Then, the council's capacity to uphold the states' interests and achieve convergence beyond politics will be compromised.

When the central government reneged on its promise to compensate states for revenue losses due to the transition to the GST regime in August 2020, all BJP-ruled states supported the centre's proposal, despite the realisation that it would throw their finances into disarray. These states supported the centre against those 'opposition-led States, which demanded that the centre undertake all the borrowings to compensate states for the revenue shortfall. With 21 states agreeing to borrow to meet the shortfall in compensation, the central government hardened its stance against the opposition-ruled states. As the logic of the dominant party equilibrium unfolded, the central government flayed the disgruntled SNGs for their uncooperative attitude and threatened to postpone the payment of their compensation dues for a further two years until June 2022.

In response, some dissenting SNGs threatened to move the apex court—the guardian of Indian federalism—as a strategy against what they called a 'discriminatory and illegal action of Centre regarding GST Compensation.' The effective use of legal threat⁴ by the opposition-ruled SNGs and induced the central government to change its stance. The centre then offered to borrow the estimated shortfall arising out of GST implementation—excluding the estimated shortfall on account of the coronavirus-induced

lockdown—and pass it on to the states as a back-to-back loan instead of GST compensation cess releases. The government also decided to extend the GST compensation cess (imposed on luxury, demerit and sin goods) until March 2026 to repay the borrowings that were done between 2020 and 2022⁵. This fits into the theoretical expectation derived from the literature on auto-limitation that governments consider the court's preferences and exercise 'self-restraint' to avoid defeat at the court (Stone, 1992). It also supports the argument that courts should be systematically included in the veto player analysis of political systems (Brouard & Hönnige, 2017) because the judiciary plays a significant role in ensuring that governments at both levels act within the boundaries set by law.

CONCLUSION

This article has focused on the fundamental theoretical insights from the Indian experience in resolving the coordination dilemma associated with the introduction of GST. It highlights the logic of 'concessionary federalism' (Sharma, 2022a&b) that made the subnational states approve the tax reforms, notwithstanding the clear prospect of reducing their fiscal autonomy after implementing the GST. It has highlighted the role of critical junctures; the role of the post-2014 political environment characterised by weak veto possibilities in removing barriers to change; the role of federal constitutional structures in compelling the dominant national ruling party into making concessions, and the role of judicial safeguards in protecting the states from federal overreach, pre-emption and coercion.

It has been argued that the transition to a GST regime became a reality only when the dominant national ruling party, otherwise capable of imposing cooperation via hierarchical control, adopted the negotiating path under the influence of India's federal governance in general and the path-dependent legacies of the two decades of coalition politics in particular. The union government embraced a concessionary approach by (a) agreeing to the GST design most preferable to the SNGs, (b) increasing vertical devolution of the states' share in the divisible pool of Union taxes (c) agreeing to a generous

compensation package (d) accepting the states' demand to keep a few revenue yielding products out of the purview of the GST and finally (e) enshrining in the constitution, a new institutional mechanism (the GST Council) through which the centre and the states pool the legislative sovereignty of Parliament and the state legislatures to make decisions related to the GST in India. Notwithstanding the salutary effect of the concessionary approach to dispute resolution—which is the only way to undertake reforms that impinge upon subnational fiscal autonomy—the federal bargain, struck under the influence of a domineering centre, remains somewhat asymmetric, with states losing more sovereignty and space than the centre.

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Notes

¹ When GST was introduced in July 2017, it was expected that restrictions on input tax credit (ITC) would be removed, enhancing the 'ease of doing business. However, the approach post implementation of the GST has been to impose rather stringent restrictions to boost revenue and curb GST fraud. More recently, Union Budget 2022-23 has laid down six new conditions on availing input tax credit and filing of returns, which goes against the principle of providing seamless input tax credit (ITC) via a robust ITC mechanism (See Finance Bill, 2022 (Bill No. 18 of 2022) introduced in Lok Sabha on 1st February 2022).

² The GST Council, in its 47th Meeting on June 28-29, 2022, recommended an extension of the compensation mechanism for another five years, till 2027.

³ The 45th GST Council (GSTC) meeting in September 2021 took up the issue of rationalising tax rates and merging multiple slabs to simplify the indirect tax regime. A Group of Ministers was constituted to suggest ways for augmenting revenue and minimising refund pay out by rationalising tax rates and addressing anomalies in tax structure (Office Memorandum S-31011/12/2021-DIR(NC)-DOR dt. 24th September 2021). The GoM on GST rate rationalisation failed to reach a consensus in its meeting on 17th June 2022. In addition to the opposition by some states to the proposed changes to tax slabs and rates, the potential inflationary impact of GST rate rationalisation, in a situation with already elevated

inflation, has delayed submission of the report. However, there are reports that the GoM is considering increasing the 5% slab to a revenue-neutral rate of 7-8 % and doing away with the 12% GST slab. The report (if submitted) is likely to be discussed at the 48th GST Council meeting in October 2022.

⁴ The constitutionalisation of fiscal federalism in India and the resultant 'role of the Supreme Court in policing it (Swenden & Saxena, 2021) increases the scope of negotiated cooperation in this domain

⁵ Although the opposition-ruled states had demanded that market borrowing equivalent to 5 per cent of GSDP be allowed to all states unconditionally—rather than linking 1 per cent of it to reform targets and 0.5 to achieving capital expenditure targets, as determined by the centre for the FY 21—the central government simply removed the 1 per cent of borrowing room tied to reform targets for the FY 22. The Union Budget 2022-23—acting on the recommendations of the XVth Finance Commission—determined the net borrowing limit for states at 3.5% of GSDP, with an additional 0.5% limit conditional upon introducing power sector reforms. In addition, the centre also proposed a scheme that enabled the States to avail of loans from the central government for the next 50 years. This combination of policies (reducing access to market borrowings and expanding access to loans from the Central Government) can limit the borrowing autonomy of states because, as per Article 293 of the Constitution, states that are indebted to the centre cannot borrow from the market without permission from the centre. Since all states are indebted to the central government, the net borrowing ceiling for each state is determined by the central government every year at the beginning of the fiscal year.

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