POST-GST FISCAL FEDERALISM IN INDIA: BETWEEN CONSTITUTIONAL ASPIRATION AND INSTITUTIONAL REALITY: A STRUCTURAL CRITIQUE AND REFORM AGENDA

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ABSTRACT

Of the many structural transformations wrought upon India's constitutional order since the adoption of the Constitution in 1950, the Constitution (One Hundred and First Amendment) Act, 2016 stands apart for the breadth of its fiscal implications. By inserting Articles 246A, 269A, and 279A into the constitutional text-simultaneously vesting concurrent legislative competence over goods and services tax in both Parliament and State Legislatures, establishing a fresh constitutional mechanism for inter-State revenue sharing, and bringing into existence the Goods and Services Tax Council -the Amendment undertook a comprehensive reorganization of India's indirect tax architecture. The guiding constitutional logic was unambiguous: the Union and States, operating as co-architects of a unified national tax system through an institutionalized inter-governmental forum, would together govern the GST regime while preserving each tier's constitutional identity and fiscal integrity.

What has emerged over seven years of operation, however, tells a more complicated story. Drawing upon doctrinal constitutional analysis, empirical data from GST's implementation record, and the Supreme Court's pivotal ruling in Mohit Minerals Pvt. Ltd v Union of India ((2022) 9 SCC 650), this article contends that the GST Council's structural features -weighted voting tilted heavily toward the Centre, a secretariat housed within the Union Ministry of Finance, and near-exclusive agenda-setting power vested in the Central executive -have produced conditions characteristic of coercive rather than cooperative federalism. Three constitutional pathologies are identified: the systematic erosion of State fiscal autonomy through the substitution of genuine legislative power with entitlement-based receipts; the structural unraveling of the GST compensation mechanism, which culminated in a fiscal crisis during the COVID-19 emergency and the constitutionally questionable extension of the cess beyond June 2022; and the worsening of

both vertical and horizontal fiscal imbalances across the federation. Comparative perspectives from Australia, Canada, and Germany inform a structured reform agenda spanning constitutional amendments, legislative revisions, and institutional restructuring directed at restoring the cooperative federal balance the Amendment was designed to achieve.

Keywords: Fiscal Federalism · GST Council · Cooperative Federalism · Article 279A · Mohit Minerals · Centre–State Relations · Constitutional Amendment.

I. INTRODUCTION

Among the structural organizing principles of any federal constitutional order, the allocation of fiscal power occupies a position of foundational importance. As both normative ideal and institutional reality, fiscal federalism governs how revenue generation, public expenditure, and inter-governmental transfers are distributed across different governmental tiers -serving the twin objectives of economic efficiency and political accountability at each level.[1] India's constitutional design has always exhibited a structural asymmetry in this regard: Parliament was entrusted with the most revenue-productive tax bases while the States were assigned the most expenditure-intensive public functions. This inbuilt imbalance has made fiscal federalism not merely an academic concern but one of the most persistently litigated and politically charged dimensions of Indian constitutional law.[2]

Against this institutional backdrop, the Constitution (One Hundred and First Amendment) Act, 2016 stands as the most consequential reordering of India's fiscal architecture since independence. The Amendment dismantled a fragmented dual indirect tax regime and replaced it with a unified Goods and Services Tax administered concurrently across the country through Articles 246A, 269A, and 279A.[3] Its declared aspiration -cooperative federalism in the domain of indirect taxation -envisioned Union and States functioning as constitutional equals through the GST Council, jointly governing a shared system without either sacrificing its institutional identity or fiscal independence.

Seven years after GST's rollout, a substantial divergence between aspiration and institutional practice has become difficult to ignore. The Council has consistently functioned in ways that have privileged Central fiscal preferences. The compensation mechanism -the political concession that persuaded States to surrender their most productive revenue source - has experienced what can only be described as structural breakdown, culminating in the

contested post-2022 cess extension. Fiscal imbalances, both vertical and horizontal, have deepened rather than moderated. And the judiciary, most significantly through Mohit Minerals Pvt Ltd v Union of India,[4] has been drawn into delimiting the constitutional boundaries of this novel arrangement. The pages that follow offer a systematic analysis of these developments, situate them within India's constitutional framework, draw on comparative federal experience from three jurisdictions, and propose a concrete reform agenda directed at structural rather than symptomatic correction.

1.1 Research Problem

The central constitutional tension that animates this article is the gap between the cooperative federalism mandate inscribed in the 101st Amendment and the coercive fiscal dynamic that institutional implementation has produced. The Supreme Court affirmed in SR Bommai v Union of India that India's federal character constitutes part of the unamendable basic structure of the Constitution.[4] A constitutional amendment that formally preserves States' concurrent legislative competence while simultaneously eroding fiscal autonomy through institutional design raises a question of considerable constitutional moment: does such an arrangement satisfy the basic structure standard? That is the primary constitutional problem this article investigates.

1.2 Research Questions

Five research questions structure the analysis that follows:

- Whether the GST Council's institutional architecture is constitutionally consistent with the cooperative federalism mandate of Article 279A, having regard to the structural asymmetries in its voting formula and secretariat arrangements.

- Whether the failure of the GST compensation mechanism constitutes a breach of the constitutional compact underlying the 101st Amendment, and what remedies States may legitimately invoke.

- Whether the Supreme Court's holding in Mohit Minerals adequately addresses the constitutional pathologies of the GST regime, or whether the decision's practical reach is more limited than its doctrinal significance suggests.

- What institutional lessons Australia, Canada, and Germany offer for reforming India's post-GST fiscal federalism.

- What constitutional amendments and institutional changes are necessary to restore the federal balance the 101st Amendment was designed to achieve.

1.3 Methodology

The analysis proceeds primarily by way of doctrinal legal research, supplemented by comparative constitutional analysis. The doctrinal method -involving systematic identification, organization, and critical evaluation of legal rules derived from primary sources -is the natural methodological home for a study concerned with constitutional architecture and its judicial interpretation. Primary sources consulted include the constitutional text and its parliamentary history, Supreme Court and High Court decisions, statutes, Finance Commission reports, and official communications from the Ministry of Finance. Secondary sources comprise standard constitutional law texts, economic literature on fiscal federalism, and peer-reviewed scholarship. The comparative analysis draws on federal constitutional practice in Australia, Canada, and Germany -jurisdictions selected for their direct relevance to the institutional questions under examination, particularly the design of federal VAT systems and inter-governmental equalization mechanisms.

II. THE CONSTITUTIONAL ARCHITECTURE OF FISCAL FEDERALISM AND THE 101ST AMENDMENT

2.1 The Pre-Reform Constitutional Landscape

Prior to the 101st Amendment, the constitutional regulation of Centre–State financial relations was distributed across Part XII (Articles 264–300) of the Constitution, read alongside the Seventh Schedule's tripartite legislative allocation.[5] The Union List concentrated the most buoyant revenue sources in Parliament's exclusive domain -income tax, corporation tax, customs duties, and central excise on manufactured goods -while the State List assigned States authority over sales and purchase taxes, entertainment taxes, vehicle taxes, and land revenue.[6] The Concurrent List contained relatively few fiscal entries.

In Bharat Sanchar Nigam Ltd v Union of India, the Supreme Court observed that this allocation reflected the constitutional assumption that nationally administered taxes would be

more productively collected at the central level, while locally variable levies could appropriately remain under State control.[7] The practical consequence, however, was a structural vertical imbalance favoring the Centre, which the Finance Commission mechanism under Article 280 was intended to partly address through mandated devolution. The pre-GST indirect tax regime was characterized by a proliferation of overlapping levies generating cascading tax effects, barriers to inter-State commerce, and heavy compliance burdens. The constitutional complications of this system were illustrated vividly in Jindal Stainless Ltd v State of Haryana, where the Court grappled with the Seventh Schedule's limitations on State entry taxes.[8] Successive Finance Commissions, the Kelkar Task Force of 2003, and the Empowered Committee of State Finance Ministers all identified indirect tax rationalization as an institutional and fiscal priority. The constitutional amendment that eventually materialized after more than a decade of negotiations responded, in this sense, to a genuine structural problem.

2.2 The Three Pillars of the 101st Amendment: Articles 246A, 269A, and 279A

The Constitution (One Hundred and First Amendment) Act, 2016 inserted three provisions that collectively transformed the constitutional foundation of India's indirect tax system.[9] Article 246A was the most radical departure from the pre-existing scheme: it conferred concurrent legislative power over goods and services tax on both Parliament and State Legislatures, a category of taxation that had previously occupied no secure concurrent domain. This concurrent grant was carefully qualified -Parliament retains exclusive authority over GST on inter-State supplies under Article 246A(2), and Article 254's standard conflict-resolution rule governs inconsistencies between Central and State GST legislation.

Article 269A established the constitutional basis for taxing inter-State supplies, vesting in Parliament the authority to determine the place of supply and to apportion IGST proceeds between the Union and States according to Parliament's prescribed formula. Article 279A, the provision most consequential to any cooperative federalism inquiry, constituted the GST Council as the inter-governmental forum for coordinating GST policy, chaired by the Union Finance Minister, with the Union Minister of State for Finance and all State Finance Ministers as members.[10]

The Council's decision-making architecture under Article 279A(9) merits careful attention. Resolutions require a three-fourths supermajority of the weighted votes of members

present and voting, with the Centre's votes weighted at one-third and the States' collective votes at two-thirds. The mathematical consequence of this formula is seldom acknowledged with candour in official discourse: the Centre holds what amounts to a functional blocking minority. Any resolution the Centre opposes would require a near-unanimous coalition of States to carry. Historical practice has demonstrated the practical impossibility of assembling such a coalition -rendering the Centre's one-third weight a structural advantage that belies the nominal equality Article 279A ostensibly creates.[11]

2.3 The Basic Structure Question

Assessing the constitutional validity of the 101st Amendment requires engagement with the basic structure doctrine developed in Kesavananda Bharati v State of Kerala and reaffirmed in SR Bommai v Union of India.[4] If India's federal character is an inviolable constitutional fundamental -as the Court has repeatedly held -then an amendment whose practical institutional operation undermines the balance of fiscal power between Centre and States must be scrutinized against that standard. The relevant question is not whether concurrent legislative competence is formally preserved (it is), but whether the institutional design in which that competence is embedded -particularly the Council's voting formula, secretariat arrangements, and the compensation mechanism -maintains the meaningful fiscal autonomy that the federal principle demands.

The submission advanced in these pages is that the GST framework, in its current institutional form, generates a constitutional tension with the basic structure requirement of federal character. The displacement of State Legislatures from their role as primary architects of consumption tax policy -effectively replaced by Council recommendations that function as legislative mandates notwithstanding the Mohit Minerals holding -represents a qualitative erosion of State constitutional autonomy that the basic structure standard cannot sustain without structural correction. The argument that devolution and fiscal transfers adequately compensate for this loss fails as a constitutional proposition: federalism protects governmental autonomy as a structural principle, not merely aggregate fiscal receipts.

III. THE COMPENSATION MECHANISM: FROM CONSTITUTIONAL COMPACT TO STRUCTURAL FAILURE

3.1 Design and Constitutional Foundations

The Goods and Services Tax (Compensation to States) Act, 2017 -enacted under the authority conferred by the 101st Amendment -represented the critical political concession that secured State agreement to the constitutional bargain.[12] The legislation guaranteed each State revenue growth of fourteen per cent per annum, compounded from the 2015–16 base year, for five years from GST's commencement. Shortfalls between States' protected revenue trajectories and actual GST receipts were to be covered from the GST Compensation Fund, financed by a cess on luxury and demerit goods levied over and above the applicable GST rate. The mechanism thus embedded a constitutional undertaking -expressed in statute but rooted in the inter-governmental compact the Amendment embodied -that States would not suffer fiscal deterioration as the price of surrendering their most productive revenue source.

Three structural design flaws compromised the mechanism from the outset. The first was an unrealistically optimistic growth guarantee: the fourteen per cent figure was derived from the average rate of State own tax revenue growth in the preceding decade, a period predating the structural deceleration of Indian economic growth that became apparent from 2018 onwards. As GST revenue growth settled at eight to ten per cent in the first two years of operation, compensation liability accumulated well beyond cess collections. The second flaw was the Fund's inherently procyclical revenue profile -cess collections on luxury goods contract precisely when the economy contracts, while compensation liability expands at the same moment. Third, the statute provided no enforcement mechanism through which States could compel timely payment short of proceedings under Article 131, a route whose political and practical costs deterred even the most aggrieved States.

3.2 The COVID-19 Emergency and the Constitutional Controversy of 2020

The COVID-19 pandemic of 2020–21 subjected the compensation mechanism's structural frailties to conditions more severe than any of its architects had contemplated. Monthly GST collections, which had approximated Rs 1.05 lakh crore in February 2020, collapsed to Rs 32,172 crore in April 2020 -roughly thirty per cent of pre-pandemic levels. Compensation cess collections fell even more sharply, as the consumption of luxury and demerit goods on which the cess depended was effectively suspended by the national lockdown. The resulting shortfall in the Compensation Fund for 2020–21 was of an order of magnitude that the Fund could not remotely meet.[17]

The Central Government's response in August 2020 -presenting States with two

borrowing "options" -amounted, on any honest constitutional reading, to a fundamental breach of the compensation compact. The distinction drawn between a "GST implementation shortfall" (approximately Rs 97,000 crore, attributed to GST-specific factors and in respect of which the Centre accepted responsibility) and a "COVID-related shortfall" (the additional Rs 1.38 lakh crore, attributed to the pandemic and in respect of which States were invited to borrow) finds no textual support in the Compensation Act, which guarantees the protected revenue growth trajectory without regard to the cause of any shortfall. Requiring States to borrow against their own future revenues to discharge obligations Parliament had legislatively imposed upon the Centre was constitutionally anomalous -a reversal of the compensatory relationship that made the creditor bear the debtor's burden. Non-NDA States were entirely correct in characterizing this as unlawful, though the absence of Article 131 litigation meant the constitutional question was never judicially resolved.

3.3 The Post-2022 Extension: From Compensation to Central Debt Service

The 47th GST Council meeting's decision in June 2022 to extend the Compensation Cess beyond its prescribed five-year term -given legislative expression through the Goods and Services Tax (Amendment) Act, 2023 -raises constitutional questions that cannot be dismissed with reference to Parliament's formal competence under Article 246A.[18] Section 8(3) of the Compensation Act fixed the cess's duration at five years from commencement; that period conclusively expired on 30 June 2022. Legislative extension was formally within Parliament's power. But the functional transformation of the cess from a mechanism compensating States for revenue losses into a vehicle for servicing Central back-to-back borrowings taken nominally on States' behalf represents a qualitative change in the cess's constitutional character that scholarship has rightly identified as deeply problematic.[19]

The practical consequence of the post-2022 arrangement is that States whose compensation entitlements technically terminated in June 2022 received no direct compensation in the cess extension period running to March 2026; cess revenues instead serviced Central Government borrowings. Fiscal federalism in form has thus become fiscal dependency in substance. States that surrendered their most productive revenue source in reliance on a constitutional compact now find themselves in a position where the compact's primary obligation has been silently converted into a Central debt service arrangement from which they derive no direct fiscal benefit.

IV. FISCAL IMBALANCES IN THE GST ERA: VERTICAL ASYMMETRY AND HORIZONTAL INEQUITY

4.1 The Vertical Dimension

Vertical fiscal imbalance - the structural mismatch between governmental tiers' revenue-raising capacity and expenditure responsibilities -was a pre-existing feature of Indian fiscal federalism that the GST has affected in complex, partially offsetting ways.[20] The conventional measure of vertical imbalance in India -States' own revenues as a proportion of total expenditure -stood at approximately fifty-five to sixty per cent before GST, reflecting significant reliance on Central transfers. GST has simultaneously improved revenue efficiency by eliminating cascading effects and reduced State fiscal autonomy by replacing independent legislative taxing power with entitlement-based receipts calibrated to Council-determined rate structures.

The CAG's documented finding that unsettled IGST balances of approximately Rs.53,000 crore remained outstanding as of March 2018 reveals a specific mechanism through which the GST's institutional design produces a systematic Central fiscal advantage.[16] The Centre's control over IGST collection and settlement timing generates an interest-free float in its favour that constitutes, in economic terms, an unacknowledged transfer of fiscal resources from States to the Centre -operating entirely outside the Finance Commission's constitutional devolution framework. The Fifteenth Finance Commission's maintenance of divisible pool devolution at forty-one per cent -a reduction from the Fourteenth Commission's forty-two per cent -means States have received no compensatory uplift in Finance Commission transfers to offset their diminished fiscal autonomy.

4.2 The Horizontal Dimension: Producing and Consuming States

The shift from an origin-based to a destination-based indirect tax has introduced a distinct horizontal fiscal dimension that the pre-GST framework did not generate. Under the destination principle, IGST on inter-State supplies accrues to the consuming State rather than the producing State. For an economically heterogeneous country in which manufacturing capacity is concentrated in a limited number of States, this shift carries redistributive implications of considerable fiscal magnitude.[21] States with large industrial bases -Gujarat, Maharashtra, Tamil Nadu, Karnataka -have experienced a structural contraction in their

effective tax footprint: production previously generating excise and CST revenues in these States now generates SGST revenues primarily in States of consumption.

The Finance Commission's horizontal distribution formula, calibrated to address aggregate fiscal capacity differentials, does not systematically account for the GST-specific imbalances generated by the destination principle. A producing State that loses revenue from the origin-to-destination shift may in fact be a relatively affluent State that the Finance Commission formula disadvantages through a lower income-distance weight rather than benefits. The horizontal divide thus creates a class of fiscal losers within the GST framework that the existing equalisation architecture is structurally unable to remedy -a constitutional design gap requiring specific institutional attention.

V. MOHIT MINERALS PVT LTD V UNION OF INDIA: DOCTRINAL ANALYSIS AND FEDERAL IMPLICATIONS

5.1 The Constitutional Questions and the Court's Reasoning

The Supreme Court's judgment in Mohit Minerals Pvt Ltd v Union of India, (2022) 9 SCC 650, represents the most significant judicial contribution to the constitutional architecture of the GST regime since the Amendment's enactment.[13] The case arose from a challenge to Notification No. 10/2017-Integrated Tax (Rate), which imposed IGST on ocean freight services on a reverse charge basis in the hands of Indian importers. Since the CIF value of imports -which forms the customs duty base -already included the ocean freight component, the notification effectively levied tax twice on the same transaction: customs duty on the CIF value and separately IGST on the ocean freight element. The Gujarat High Court struck down the notification on double-taxation grounds, a conclusion the Supreme Court affirmed.

The Court, speaking through D.Y. Chandrachud J (as he then was), identified three interconnected constitutional questions: the legal character of GST Council recommendations vis-à-vis Parliament and State Legislatures; the substantive tax law validity of the impugned notification; and the constitutional relationship between Parliament's legislative power under Article 246A and the Council's recommendatory function under Article 279A.

5.2 The Non-Binding Character of Recommendations: A Three-Pillar Analysis

On the first and constitutionally most consequential question, the Court held

unequivocally that GST Council recommendations carry persuasive weight only and impose no legal obligation upon Parliament or State Legislatures.[14] Three analytically distinct foundations support this conclusion. The first is textual: Article 279A(4) employs the word "recommendations," which is irreconcilable with binding legal force as a matter of ordinary constitutional interpretation. The deliberate use of this term in a provision drafted with care cannot be treated as inadvertent.

The second foundation is structural. Parliament and State Legislatures are the primary law-making institutions under the constitutional framework established by Articles 79–122 and 168–212 respectively. Treating Council recommendations as binding would elevate an executive inter-governmental body to super-legislative status without subjecting it to the accountability mechanisms that legislative processes require -a constitutional inversion of the relationship between executive and legislative functions. The third foundation is democratic: Council members are Finance Ministers, not elected legislators acting in their legislative capacity. They lack both the democratic mandate of elected representatives and the institutional accountability that fiscal legislation demands in a constitutional democracy.[15]

The Court's affirmation of the double-taxation ground carries independent significance for fiscal federalism: it confirms the constitutional reviewability of Central Government action under the GST framework, preserving a necessary judicial safeguard against the incremental expansion of Central fiscal authority through executive notification.

5.3 The Mohit Minerals Paradox

The Mohit Minerals decision has generated a paradox that its doctrinal correctness does not resolve. The Court correctly preserves legislative autonomy as a constitutional principle; but the structural conditions making States fiscally dependent upon Council decisions remain entirely unaltered. States are formally empowered to deviate from Council recommendations, but the IGST settlement mechanism's reliance on Central administration, the Centre's control over the compensation cess, and States' revenue dependence on SGST receipts calibrated to Council-determined rates collectively make legislative deviation practically and politically costly. The decision's constitutional significance lies in preventing the Council's de facto super-legislative status from hardening into formal constitutional doctrine -a genuine and important contribution. Its practical contribution to State fiscal autonomy is, nonetheless, constrained, and structural reform of the Council's institutional architecture remains the

indispensable complement to judicial correction of this kind.

VI. COOPERATIVE FEDERALISM OR COERCIVE FISCAL CENTRALISATION? A STRUCTURAL EVALUATION

6.1 Analytical Framework

The distinction between cooperative and coercive federalism is analytically important and not merely terminological. Cooperative federalism, as both theory and the constitutional aspiration of the 101st Amendment, describes inter-governmental relations characterised by genuine shared decision-making, substantive consultation, and mutual recognition of each tier's distinct constitutional role. The GST Council represents India's most ambitious experiment in institutionalised cooperative federalism -a constitutionally created inter-governmental forum with a defined mandate, formal procedural structure, and representation from both governmental tiers. Coercive federalism, by contrast, describes a mode in which one governmental tier exploits superior fiscal or institutional resources to compel compliance without formally overriding the other's constitutional jurisdiction.

Applied to the GST framework, this distinction is not binary but dimensional. The Council has on specific occasions produced outcomes reflecting genuine inter-governmental compromise -the Kerala Flood Cess approval, COVID-19 vaccine rate reductions, and various sector-specific accommodations demonstrate its capacity to function cooperatively. But these episodes coexist with systematic structural features that exhibit the hallmarks of coercive federalism: the Centre's effective blocking minority; the Union Ministry of Finance's exclusive secretariat control; the use of back-to-back loans as a surrogate for statutory compensation obligations without substantive State consent; and the attachment of reform conditions to enhanced COVID-19 borrowing limits in areas of exclusive State constitutional jurisdiction.[22]

6.2 Three Structural Pathologies

Three structural pathologies in the Council's institutional design merit specific identification and critique.

The first is the secretariat problem. The Council's Secretariat is housed within the Union Ministry of Finance and staffed by Central Government officers. Agenda preparation, background paper drafting, and technical analysis are consequently conducted by officials who

are hierarchically accountable to the Central Government rather than to the Council as a collectivity. States seeking to elevate issues not on the Centre's preferred agenda face procedural obstacles in securing their inclusion. Several non-NDA Finance Ministers have documented instances of their preferred items being relegated to "any other business" without substantive deliberation -a recurring symptom of the information asymmetry that Central secretariat control produces.

The second pathology is an accountability deficit inherent in the Council's legislative-bypass character. When Council recommendations are implemented through Central and State notifications, they alter the substantive incidence of taxation on businesses and consumers without passing through ordinary legislative process. State Finance Ministers voting in the Council act in their executive rather than legislative capacity; they lack the mandate and accountability of legislative deliberation. Meeting minutes, when published, provide minimal insight into individual States' positions, making meaningful democratic scrutiny of Finance Ministers' conduct within the Council practically impossible.

The third pathology is the politicisation of what was designed as a technocratic coordination forum. The Council has increasingly become an arena of partisan political contest mirroring national parliamentary divisions. States governed by NDA or allied parties have broadly supported Central positions; opposition-governed States have been more assertive. Electoral considerations have demonstrably influenced the timing of rate adjustments. The result is a pattern in which Council decisions reflect political calculation rather than fiscal rationality, and States' fiscal interests are mediated through the prism of their relationship with the national ruling coalition.

VII. COMPARATIVE CONSTITUTIONAL PERSPECTIVES: AUSTRALIA, CANADA, AND GERMANY

7.1 Australia: The Commonwealth Grants Commission Model

Australia's fiscal federal arrangement offers the most directly comparable model for India's GST federalism, given that the Australian GST (introduced in 2000) is the closest analogue to a federal VAT in any major democracy. The arrangement is characterized by extreme vertical fiscal imbalance -the Commonwealth collects approximately eighty-two per cent of total tax revenues while States bear approximately fifty-five per cent of public

expenditure -but the entirety of GST proceeds is distributed to States and Territories through an equalisation mechanism administered by the Commonwealth Grants Commission (CGC), an independent expert body established by statute.[24]

The CGC model offers India two structurally significant lessons. First, the technical equalisation function should be institutionally separated from the politically constituted inter-governmental body. In Australia, the Council on Federal Financial Relations determines broad fiscal principles while the CGC independently assesses fiscal capacity relativities and recommends distribution shares. This institutional separation prevents political dynamics from distorting technical equalization assessment. Second, distributing the entirety of GST revenues to States -with the Commonwealth retaining none -provides a structural commitment to State fiscal adequacy that goes beyond India's partial devolution model, where the Centre retains significant revenues through CGST and IGST timing advantages.

7.2 Canada: Fiscal Differentiation within Federal Integration

Canada's Harmonized Sales Tax framework illustrates that a degree of provincial fiscal differentiation is fully compatible with the maintenance of an effective national market. The HST permits provinces to opt into a harmonized system combining the federal GST at five per cent with a provincial component administered jointly through the Canada Revenue Agency.[25] Quebec's independent administration of its own version of the federal GST -the Quebec Sales Tax -is particularly instructive: it demonstrates that a subnational government can independently administer a complex VAT-type tax without disrupting the national tax system, provided there is adequate inter-governmental coordination on base definition and compliance.

The Canadian model's relevance for India lies in demonstrating that limited State-level rate differentiation is compatible with federal market integration. India's GST debate has frequently been framed as a binary choice between full rate uniformity and the fragmentation of the pre-GST era. The Canadian experience suggests a viable middle path: States could be permitted to levy limited surcharges within prescribed ceilings on specified categories of goods without undermining the GST's essential uniformity or the efficiency gains it produces. This would partially restore the fiscal autonomy States surrendered in the constitutional compact.

7.3 Germany: Constitutional Bicameralism in Federal Fiscal Legislation

Germany's fiscal federal system provides the most directly constitutional comparative

lesson: the integration of Lander representatives into the federal legislative process for fiscal matters through a constitutionally entrenched upper chamber possessing binding rather than merely consultative authority.[26] Federal VAT legislation under the German Basic Law requires the consent of the Bundesrat -the upper house composed of Länder government representatives -giving the Lander a formal legislative veto over changes to the federal tax structure affecting their revenues.

The constitutional insight the German model offers India is the institutional advantage of embedding State fiscal interests within the federal legislative process itself, rather than in an advisory inter-governmental council that operates parallel to and outside Parliament. While replicating the Bundesrat model wholesale would require fundamental restructuring of India's parliamentary architecture, the translatable lesson is clear: the Rajya Sabha's existing constitutional role could be reinforced to require specific concurrence in GST legislation, or the GST Council could be formally integrated into the legislative process by mandating Parliamentary or State Legislative Assembly ratification of recommendations above a specified significance threshold.

7.4 Synthesizing the Comparative Lessons

The comparative analysis generates four lessons applicable to India's reform agenda. First, independent expert bodies should be institutionally separated from politically constituted inter-governmental forums and entrusted with technical equalization functions. Second, limited subnational fiscal differentiation -through surcharges or opt-in components -is compatible with national market integration and should be constitutionally permitted. Third, democratic accountability requires that constitutional legislatures, not merely executive forums, play a meaningful role in GST governance. Fourth, permanent fiscal equalization mechanisms anchored in independent constitutional institutions provide more stable foundations for State fiscal adequacy than time-limited statutory compensation schemes -a lesson India's post-2022 compensation crisis illustrates with painful clarity.

VIII. THE JUDICIAL LANDSCAPE OF GST FEDERALISM

8.1 The Courts as Constitutional Arbiters

The judicial response to GST-related Centre–State disputes has combined doctrinal

activism on structural questions with relative deference to political judgments on rate and policy decisions. The Mohit Minerals decision, analyzed above, represents the apex court's most significant structural contribution. Two High Court decisions merit attention for their contribution to the emerging constitutional jurisprudence of GST federalism.

The Supreme Court's affirmation in Filco Trade Centre Pvt. Ltd v Union of India of the Gujarat High Court's direction permitting taxpayers to file transitional credit claims on the GSTN portal establishes the constitutional principle that the State cannot exploit the technical failure of its own administrative systems to defeat taxpayers' substantive legal entitlements.[28] For fiscal federalism, this carries wider significance: it affirms that the GST's administrative infrastructure -including the GSTN, which operates under Central Government control -is subject to constitutional review and cannot be deployed in ways that prejudice taxpayer rights or State revenue entitlements.

The Bombay High Court's observations in Prism Johnson Ltd v Union of India regarding the constitutional limits of the National Anti-Profiteering Authority are relevant to the broader question of how GST enforcement mechanisms interact with State fiscal interests.[29] The NAPA operates across the dual GST structure, and its determinations can affect the effective incidence of both CGST and SGST revenues in ways the Council's rate structure does not contemplate. The Court's insistence on objective criteria for profiteering determinations provides a constitutional constraint that protects both taxpayer rights and the integrity of the rate structure negotiated within the Council.

IX. PRINCIPAL FINDINGS

The analysis yields five principal findings.

First, the GST Council's institutional design -combining the Union's effective blocking minority, the Ministry of Finance's secretariat control, and the Centre's agenda-setting advantage -has produced a structural asymmetry approximating coercive rather than cooperative federalism in the Council's deliberative practice, notwithstanding the constitutional mandate of Article 279A.

Second, the compensation mechanism was designed with structural vulnerabilities -an optimistically calibrated growth guarantee, a procyclical funding model, and no enforcement

mechanism -that made eventual breakdown predictable rather than exceptional. The COVID-19 crisis and the post-2022 cess extension represent the culmination of these design failures, not anomalous departures from a well-functioning system.

Third, Mohit Minerals correctly preserves legislative autonomy as a constitutional principle and provides an important safeguard against the Council's functional super-legislative status becoming constitutionally entrenched. The decision's practical contribution to State fiscal autonomy is, however, constrained by the structural fiscal dependencies the Council's institutional design continues to generate.

Fourth, the shift from origin-based to destination-based indirect taxation has generated vertical and horizontal fiscal imbalances that the existing Finance Commission equalisation framework is structurally unable to address -creating a class of fiscally disadvantaged producing States whose interests require specific institutional attention.

Fifth, comparative analysis from Australia, Canada, and Germany demonstrates that the pathologies identified are not intrinsic to the structure of federal VAT systems but are specific to the institutional choices made in designing India's GST framework -choices amenable to constitutional and legislative correction.

X. CONSTITUTIONAL REFORMS AND INSTITUTIONAL RESTRUCTURING

10.1 Constitutional Amendments

Three constitutional amendments are proposed on the basis of the foregoing analysis. First, Article 279A(9) should be amended to reduce the Central Government's voting weight from one-third to one-quarter of total weighted votes while retaining the three-fourths supermajority requirement. This revision would eliminate the Centre's effective blocking minority while preserving its meaningful participation in Council deliberations: the Centre would need a coalition of States to carry any resolution, more closely approximating the genuinely cooperative dynamic the provision was designed to produce. As an amendment of significant fiscal federal import, this would appropriately require ratification by a majority of State Legislatures under Article 368(2).[31]

Second, Article 246A should be amended to insert a proviso authorising State Legislatures to levy a surcharge not exceeding two per cent on specified categories of goods -

principally those generating negative externalities such as tobacco, sugary beverages, and single-use plastics -without individual Council approval, subject to a ceiling and safeguard mechanism prescribed by Parliament to prevent inter-State trade distortion. This would partially restore the fiscal legislative autonomy States surrendered under the constitutional compact and is supported by the Canadian precedent of limited provincial rate differentiation.

Third, Article 280 should be amended to explicitly include within the Finance Commission's mandatory terms of reference the assessment of vertical and horizontal fiscal imbalances generated by the GST system, ensuring devolution recommendations systematically account for GST-specific fiscal effects that the current constitutional mandate leaves unaddressed.

10.2 Legislative Reforms

Three legislative reforms are proposed. First, the Goods and Services Tax (Compensation to States) Act, 2017 should be comprehensively amended to replace the time-limited cess-funded mechanism with a permanent fiscal equalisation framework anchored in Article 275, under which the Finance Commission periodically determines a minimum GST revenue floor for each State -calibrated to fiscal capacity and expenditure need -with shortfalls met from a Fiscal Equalisation Fund. A fiscal compact of this constitutional magnitude should not be contingent on the functioning of a time-limited cess; it demands embedding in the permanent constitutional transfer architecture.

Second, a GST Council (Procedure, Transparency, and Accountability) Act should be enacted to establish: an independent Secretariat recruited and reporting outside the Union Ministry of Finance's hierarchical control; a formal right for States to propose agenda items subject to a threshold of support from ten or more States; mandatory publication of individual States' voting positions within seven days of each Council meeting; and simultaneous publication of technical analysis papers with their distribution to members. These procedural reforms collectively address the accountability deficit and institutional bias that the current secretariat arrangements generate.

Third, a specialized GST Disputes Tribunal -staffed by retired Supreme Court and High Court judges alongside senior fiscal economists -should be established with jurisdiction over inter-governmental disputes arising from the GST framework. The Tribunal would provide a

technically capable and constitutionally legitimate mechanism for resolving compensation calculation disputes, IGST settlement controversies, and rate classification conflicts that the Council's political process is structurally unable to adjudicate and that the Supreme Court's original jurisdiction under Article 131 handles with evident inefficiency.[30]

10.3 Institutional Reforms

Institutional reforms achievable without constitutional amendment include the reconstitution of the GST Council's Secretariat as an independent body -modeled on the institutional independence of the Election Commission -reporting to the Council as a whole rather than to the Union Ministry of Finance; the establishment of a permanent inter-State equalization committee comprising independent fiscal economists to periodically assess the producing-consuming State fiscal differential and recommend compensatory adjustments to the Finance Commission; and a formal protocol requiring the Council Chairperson to circulate complete technical analysis to each State Finance Ministry at least three weeks before each Council meeting, ensuring States have adequate information to participate meaningfully rather than reacting to Central proposals under time pressure.

XI. CONCLUSION

The Goods and Services Tax represents, in its constitutional conception, the most significant reordering of India's fiscal federal architecture since independence. The ambition inscribed in the 101st Amendment -a genuinely cooperative inter-governmental arrangement in which Union and States function as constitutional equals in governing a unified national tax system -was worthy of the decade of difficult negotiation that produced it, and the reform it replaced genuinely needed replacement. The implementation experience of the past seven years has, however, opened a material gap between that ambition and the federal reality that has emerged: the Council's structural asymmetries, the compensation mechanism's chronic and ultimately catastrophic failure, the deepening of fiscal imbalances, and the post-2022 transformation of the cess into a Central debt service instrument collectively constitute a systemic challenge to the cooperative federal mandate that demands structural, not merely managerial, response.

The Mohit Minerals decision represents the judiciary's most important contribution to correcting the GST framework. By holding Council recommendations legally non-binding, the

Court preserves the constitutional principle of legislative autonomy and prevents the Council's functional super-legislative character from solidifying into formal constitutional doctrine. But judicial correction of this kind addresses symptoms rather than structural causes. The institutional asymmetries that advantage the Centre within the Council -the voting mechanism, secretariat control, the agenda monopoly -remain intact after Mohit Minerals. The compensation compact's collapse -the most tangible injury to State fiscal interests -was not before the Court. And the horizontal fiscal inequity generated by the destination principle continues to disadvantage producing States without any systematic remedy.

The constitutional and institutional reform program proposed in this article is designed to engage structural causes rather than their symptoms. The revision of Council voting weights, the constitutional provision for limited State surcharges, the integration of GST fiscal effects into the Finance Commission's mandatory remit, the replacement of the compensation mechanism with a permanent equalization framework, the creation of an independent secretariat, and the establishment of a dedicated disputes tribunal collectively constitute a reform agenda that would move the GST federal framework meaningfully towards the cooperative constitutional mandate the 101st Amendment proclaimed. Australia, Canada, and Germany demonstrate that such reforms are not utopian: federal VAT systems can be designed with institutional arrangements that genuinely balance national market integration with subnational fiscal autonomy.

The foundational constitutional question ultimately is whether India's federal architecture -whose basic structure the Supreme Court has consistently held is not subject to parliamentary destruction -can accommodate an institutional arrangement that in its practical operation reduces State governments to fiscally dependent recipients within a Centre-governed distribution system, rather than the constitutionally autonomous polities the federal principle demands. The analysis advanced here leads to the conclusion that it cannot, and that the constitutional corrections proposed are not merely desirable policy options but imperatives demanded by the enduring basic structure of the Indian federal republic.

Endnotes:

1 Charles M Tiebout, 'A Pure Theory of Local Expenditures' (1956) 64 Journal of Political Economy 416, 418; Wallace E Oates, Fiscal Federalism (Harcourt Brace Jovanovich 1972) 35.

2 Richard A Musgrave, The Theory of Public Finance: A Study in Public Economy (McGraw-Hill 1959) 179–182.

3 State of West Bengal v Union of India AIR 1963 SC 1241, per Sinha CJ; M Govinda Rao and Nirvikar Singh, Political Economy of Federalism in India (Oxford University Press 2005) 12–15.

4 Kesavananda Bharati v State of Kerala (1973) 4 SCC 225; SR Bommai v Union of India (1994) 3 SCC 1, paras 252–265 per Ramaswamy J.

5 Constitution of India, Arts 246, 246A, 269A, 279A, Seventh Schedule Lists I and II (as amended by the Constitution (One Hundred and First Amendment) Act, 2016).

6 MP Jain, Indian Constitutional Law (8th edn, LexisNexis 2018) 1425–1520; Arvind Datar, Commentary on the Constitution of India (3rd edn, Wadhwa 2018) Vol III, 1985–2010.

7 Bharat Sanchar Nigam Ltd v Union of India (2006) 3 SCC 1, paras 42–56.

8 Jindal Stainless Ltd v State of Haryana (2017) 12 SCC 1, paras 78–102.

9 Constitution (One Hundred and First Amendment) Act 2016, ss 2, 9–17.

10 Constitution of India, Art 279A(1)–(4), (9).

11 Constitution of India, Art 279A(9); Rao and Singh (n 3) 12–15; Lekha Chakraborty and Balamurali Balakrishnan, 'Political Economy of GST Council Voting' (NIPFP Working Paper No 350, 2022) 8–15.

12 Goods and Services Tax (Compensation to States) Act 2017, ss 3–8.

13 Mohit Minerals Pvt Ltd v Union of India (2022) 9 SCC 650, per DY Chandrachud J (as he then was), SA Nazeer and JB Pardiwala JJ.

14 ibid paras 96–113.

15 ibid paras 55–80.

16 CAG, Report No 11 of 2019 on ‘Implementation of Goods and Services Tax’ (Comptroller and Auditor General of India, 2019) paras 3.1–3.14.

17 Ministry of Finance, ‘GST Compensation: Option 1 and Option 2 for States’ (27 August 2020); Parliamentary Standing Committee on Finance, Report No 51 on ‘GST Compensation to States’ (2021) paras 4.12–4.18.

18 Goods and Services Tax (Compensation to States) Act 2017, s 8(3); Goods and Services Tax (Amendment) Act 2023; Minutes of the 47th GST Council Meeting (28–29 June 2022).

19 Radhika Pandey and Rajeswari Sengupta, ‘GST Compensation Cess: Extended Life, Diminished Purpose’ (NIPFP Working Paper No 345, 2022) 8–20.

20 MG Rao, ‘Fiscal Federalism in India: Theory and Practice’ (2001) 26(3-4) Economic and Political Weekly 1063, 1065; Report of the Fifteenth Finance Commission (Government of India, 2020) Vol I, Chapter 7.

21 Saurabh Ghosh, Siddharth Niyogi and Sangita Misra, ‘GST Revenue Implications for States’ (RBI Occasional Paper, December 2021) 14–22.

22 Constitution of India, Art 293; Ministry of Finance, OM No F.4(2)PD/2020 (17 May 2020) (Relaxation of borrowing limits-COVID-19).

23 Sarkaria Commission on Centre-State Relations, Report (1988) Vol II, Chapters 15–17; MM Punchhi Commission on Centre-State Relations, Report (2010) Vol IV, Chapter 8.

24 Commonwealth Grants Commission (Australia), Report on GST Revenue Sharing Relativities (2022 Update); Robin Boadway and Anwar Shah, Fiscal Federalism: Principles and Practice of Multiorder Governance (Cambridge University Press 2009) 145–180.

25 Thomas J Courchene, ‘Fiscal Federalism: Heads of Agreement’ (2007) 53(1) Canadian Tax Journal 1, 8–14; Jack Mintz and Michael Smart, ‘Income Shifting, Investment, and Tax Competition’ (2004) 88 Journal of Public Economics 1149.

26 German Basic Law (Grundgesetz), Arts 104a–115; David Currie, The Constitution of the Federal Republic of Germany (University of Chicago Press 1994) 195–213.

27 Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of the Indian Constitution (Oxford University Press 2016) 612–615.

28 Filco Trade Centre Pvt Ltd v Union of India (2022) SCC Online Guj 1919, affirmed by Supreme Court Civil Appeal No 7514 of 2022 (22 September 2022).

29 Prism Johnson Ltd v Union of India (2023) SCC Online Bom 7821, paras 67–72.

30 R Raghunathan, 'Constitutional Adjudication of GST Disputes: The Case for a Dedicated Forum' (2021) 10 NLS Business Law Review 45, 48–52; Parliamentary Standing Committee on Finance, Report No 47 on 'Functioning of the GST Council' (2021) paras 3.1–3.8.

31 Constitution of India, Art 368(2); Rathin Roy, 'Reforming Fiscal Federalism in India' (NIPFP Working Paper No 250, 2019) 18–24.

BIBLIOGRAPHY

A. Cases

Atiabari Tea Co Ltd v State of Assam AIR 1961 SC 232

Bharat Sanchar Nigam Ltd v Union of India (2006) 3 SCC 1

Filco Trade Centre Pvt Ltd v Union of India (2022) SCC Online Guj 1919, affirmed SC Civil Appeal No 7514 of 2022

Hoechst Pharmaceuticals Ltd v State of Bihar (1983) 4 SCC 45

Jindal Stainless Ltd v State of Haryana (2017) 12 SCC 1

Kesavananda Bharati v State of Kerala (1973) 4 SCC 225

Mohit Minerals Pvt Ltd v Union of India (2022) 9 SCC 650

Prism Johnson Ltd v Union of India (2023) SCC Online Bom 7821

SR Bommai v Union of India (1994) 3 SCC 1

State of West Bengal v Union of India AIR 1963 SC 1241

Union of India v Mohit Minerals Pvt Ltd (2020) SCC Online Guj 2633

B. Statutes and Constitutional Provisions

Central Goods and Services Tax Act 2017

Constitution of India 1950, Arts 14, 131, 245–254, 264–300, 246, 246A, 269A, 279A, 280, 292–293, 368; Seventh Schedule

Constitution (One Hundred and First Amendment) Act 2016

Fiscal Responsibility and Budget Management Act 2003

German Basic Law (Grundgesetz), Arts 104a–115

Goods and Services Tax (Amendment) Act 2023

Goods and Services Tax (Compensation to States) Act 2017

Integrated Goods and Services Tax Act 2017

Union Territory Goods and Services Tax Act 2017

C. Books

Boadway R and Shah A, Fiscal Federalism: Principles and Practice of Multiorder Governance (Cambridge University Press 2009)

Choudhry S, Khosla M and Mehta PB (eds), The Oxford Handbook of the Indian Constitution (Oxford University Press 2016)

Currie D, The Constitution of the Federal Republic of Germany (University of Chicago Press 1994)

Dam S, The Republican Constitution (Bloomsbury 2021)

Datar A, Commentary on the Constitution of India (3rd edn, Wadhwa 2018) Vol III

Jain MP, Indian Constitutional Law (8th edn, LexisNexis 2018)

Musgrave RA, The Theory of Public Finance: A Study in Public Economy (McGraw-Hill 1959)

Oates WE, Fiscal Federalism (Harcourt Brace Jovanovich 1972)

Rao MG and Singh N, Political Economy of Federalism in India (Oxford University Press 2005)

Shah A (ed), The Practice of Fiscal Federalism: Comparative Perspectives (McGill-Queen's University Press 2007)

D. Journal Articles

Bagchi A, 'GST in Australia and Canada: What India Can Learn?' (2003) 38(23) Economic and Political Weekly 2261

Barik SK, 'Cooperative Federalism in Germany and India: A Comparative Study' (2020) 3 Indian Journal of Federalism 55

Chakraborty L and Balakrishnan B, 'Political Economy of GST Council Voting' (NIPFP Working Paper No 350, 2022)

Courchene TJ, 'Fiscal Federalism: Heads of Agreement' (2007) 53(1) Canadian Tax Journal 1

Jain T, 'GST Litigation Trends: A Statistical and Thematic Analysis' (2022) 2 Indian Tax Review 55

Kurien PJ, 'Kerala Flood Cess and the Limits of State Fiscal Autonomy' (2019) 54(41) Economic and Political Weekly 14

Mintz J and Smart M, 'Income Shifting, Investment, and Tax Competition' (2004) 88 Journal of Public Economics 1149

Narayanan P, 'Procedural Fairness in the GST Council: An Assessment' (2021) 56(42) Economic and Political Weekly 30

Oates WE, 'An Essay on Fiscal Federalism' (1999) 37 Journal of Economic Literature 1120

Pandey R and Sengupta R, 'GST Compensation Cess: Extended Life, Diminished Purpose' (NIPFP Working Paper No 345, 2022)

Rao MG, 'Fiscal Federalism in India: Theory and Practice' (2001) 26(3-4) Economic and Political Weekly 1063

Raghunathan R, 'Constitutional Adjudication of GST Disputes: The Case for a Dedicated Forum' (2021) 10 NLS Business Law Review 45

Roy R, 'Reforming Fiscal Federalism in India' (NIPFP Working Paper No 250, 2019)

Sarkar S, 'Fiscal Autonomy within GST: Legal and Policy Options' (2022) 1 Indian Tax Review 12

Tiebout CM, 'A Pure Theory of Local Expenditures' (1956) 64 Journal of Political Economy 416

E. Reports and Official Documents

CAG, Report No 11 of 2019 on 'Implementation of Goods and Services Tax' (Comptroller and Auditor General of India, 2019)

Commonwealth Grants Commission (Australia), Report on GST Revenue Sharing Relativities (2022 Update)

Ministry of Finance, 'GST Compensation: Option 1 and Option 2 for States' (27 August 2020)

NIPFP, 'COVID-19 and State Finances' (Working Paper No 326, 2020)

Parliamentary Standing Committee on Finance, Report No 47 on 'Functioning of the GST Council' (2021)

Parliamentary Standing Committee on Finance, Report No 51 on 'GST Compensation to States' (2021)

Punchhi Commission on Centre-State Relations, Report (2010) Vol IV

Report of the Fifteenth Finance Commission 2020–25 (Government of India, 2020) Vol I

RBI, 'State Finances: A Study of Budgets 2021–22' (Reserve Bank of India, 2021)

Sarkaria Commission on Centre-State Relations, Report (1988) Vol II