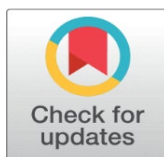
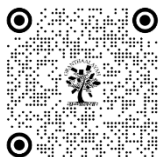


GOODS AND SERVICES TAX & GOODS AND SERVICES TAX COUNCIL

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ABSTRACT

This paper examines the Goods and Services Tax (GST) introduced in India on 1st July 2017, which revolutionized the country's indirect tax system and reshaped Central-State relations. GST represents a significant shift from the prior tax regime, which had separate tax domains for the Centre (excise and service tax) and the States (VAT on sale and purchase of goods). The paper delves into the formation of the GST Council, a constitutional body established to oversee the implementation and administration of GST, comprising the Union Finance Minister, State Finance Ministers, and other key officials. The GST system, backed by the 101st Constitutional Amendment Act of 2016, aimed to create a unified market by replacing multiple tax layers with a single tax structure, thus facilitating seamless interstate commerce and fostering economic growth. It analyzes the GST Council's role in cooperative federalism, emphasizing how it navigates the balance of tax levying powers between the Centre and States. The paper also highlights key judicial pronouncements, which clarified the non-binding nature of the GST Council's decisions, emphasizing the council's recommendatory role. Furthermore, the paper explores the challenges and conflicts that have arisen, particularly around the compensation mechanism to States for revenue losses post-GST implementation and the Centre-State disputes regarding GST revenue distribution. It argues for the necessity of strong coordination and negotiation within the GST Council to maintain the unified tax system's integrity and ensure equitable revenue sharing, especially during crises like the COVID-19 pandemic. The GST's impact on fiscal federalism is significant, centralizing the tax regime and altering the financial autonomy of States. The paper concludes by discussing the need for ongoing reforms and adjustments to address the evolving economic landscape and ensure the GST system's long-term success.

Keywords: Goods and Services Tax, GST Council, Central-State Relations, Fiscal Federalism, Cooperative Federalism

1. INTRODUCTION

On July 1, 2017, India witnessed a landmark reform in its indirect tax regime with the rollout of the Goods and Services Tax (GST). This new system was not merely a fiscal reform but a significant restructuring of the economic framework aimed at creating a unified national market. The GST subsumed a plethora of central and state taxes into a single tax, thus eliminating the cascading effect of multiple taxes and fostering a more straightforward tax structure. This reform signified a major shift in the relationship between the Central and State governments, redefining the financial dynamics and cooperative federalism within India's constitutional framework. The GST is an indirect tax that is applied to the supply of goods and services. It is a value-added tax levied at each stage of the supply chain, from production to the point of sale. The final consumer bears the tax, while businesses can claim credits for the tax paid on their purchases. This system is designed to be self-policing, as businesses at each stage have an incentive to ensure their suppliers have paid the requisite tax to claim the input tax credits. Before the implementation of GST, India had a complex tax system

with various indirect taxes levied by both the Centre and the States. The Union government levied taxes such as Central Excise Duty, Service Tax, and Customs Duty, while the States imposed taxes like Value Added Tax (VAT), Central Sales Tax (CST), and local levies such as Entry Tax and Octroi. This multiplicity of taxes led to a fragmented market, with each state operating as a separate tax jurisdiction, which in turn created barriers to trade and impeded economic growth. The introduction of GST required a constitutional amendment – the 101st Constitutional Amendment Act of 2016. This amendment provided the legal framework for the introduction of GST and the establishment of the GST Council, a federal body responsible for making key decisions regarding the tax. The GST Council, chaired by the Union Finance Minister and comprising the finance ministers of all the states, was envisioned as a platform for cooperative federalism, where both the Centre and the States could work together to manage the new tax regime. One of the fundamental changes brought about by the GST is the concept of concurrent jurisdiction. Prior to GST, the Constitution clearly delineated the tax powers of the Centre and the States, with no overlap. The Centre could levy taxes on the manufacture of goods (Excise Duty) and services (Service Tax), while the States could tax the sale of goods (VAT). GST, however, introduced a concurrent jurisdiction over the supply of goods and services, meaning that both the Centre and the States have the authority to levy GST on the same transaction. This required significant coordination and cooperation between different levels of government to ensure a seamless implementation of the tax.

The GST Council plays a critical role in this regard. It is tasked with making recommendations on various aspects of GST, including the rates, exemptions, threshold limits, and the division of tax revenue between the Centre and the States. The Council's decisions are made by consensus, reflecting the collaborative spirit of the new tax regime. The establishment of the GST Council marked a significant departure from the traditional fiscal federalism model in India, where the Centre and the States operated in largely separate spheres. Under GST, they are required to work together more closely, demonstrating the principles of cooperative and collaborative federalism. The GST regime also brought in a unified tax structure across the country, addressing the issue of different tax rates and structures in different states. This unification was essential to create a common national market, which would facilitate the free movement of goods and services across state borders. By reducing the barriers to trade and harmonizing the tax structure, GST aimed to enhance the efficiency of the economy and stimulate growth. However, the transition to GST was not without challenges. The initial implementation phase saw businesses grappling with the new compliance requirements and the complexities of the GST framework. The IT infrastructure supporting the GST, primarily the GST Network (GSTN), faced teething problems, leading to difficulties in filing returns and claiming input tax credits. Over time, however, these issues have been addressed through continuous improvements in the system and capacity-building initiatives.

Another significant aspect of the GST is its impact on the financial autonomy of the States. Prior to GST, states had significant control over their revenue through taxes like VAT. With GST, the states had to surrender a part of their taxation power to the GST Council. To address concerns about potential revenue loss, the Centre assured compensation to the States for any shortfall in revenue for the first five years of GST implementation. This compensation mechanism was crucial in securing the consent of the States for the new tax regime. The GST also has broader implications for fiscal federalism in India. By bringing both the Centre and the States together on a common platform for tax administration, GST has fostered a more cooperative approach to fiscal policy. The GST Council's functioning exemplifies this cooperative federalism, where both levels of government work collaboratively to address issues and make decisions that are in the best interest of the country as a whole. This collaborative approach is particularly important in a diverse and federal country like India, where the economic priorities and conditions can vary significantly across states. Furthermore, the GST reform aligns with the broader goals of economic policy in India, such as improving ease of doing business, enhancing tax compliance, and increasing the efficiency of tax administration. By creating a single market and simplifying the tax system, GST has the potential to attract more investment, boost manufacturing, and promote economic growth. The role of the judiciary has also been significant in the context of GST. Various aspects of the GST framework have been challenged in courts, leading to important judicial pronouncements that have shaped the interpretation and implementation of the law. For instance, the Supreme Court's rulings on the powers of the GST Council and the constitutional validity of various provisions have provided clarity and guidance on the functioning of the GST regime. In conclusion, the introduction of the Goods and Services Tax in India represents a monumental shift in the country's tax landscape. It has brought about a more unified and simplified tax system, fostering greater cooperation between the Centre and the States. The GST Council, as a key institutional innovation, embodies the principles of cooperative and collaborative federalism, ensuring that both levels of government work together to manage the tax system. While the transition to GST has posed challenges, its long-term benefits in terms of creating a common national market, enhancing economic efficiency, and promoting fiscal federalism are expected to significantly outweigh the initial hurdles. As India

continues to refine and improve its GST framework, the lessons learned from this major reform will be invaluable in shaping the future of its tax policy and federal structure.

2. GST & CENTRE STATE RELATIONS

When it comes to tax levying power or power to generate revenue¹, the framers made it very clear that the power shall lie either with the Center or with the State. Therefore, the framers avoided enlisting any subject matter related to tax in the Concurrent List. So that, there shall be exclusivity either the Central shall levy the tax or State shall levy the tax. Then, depending upon the constitutional arrangement whatever Center is levying tax the proceeds of it can be used with the state or it can be retained with the Center. This what cited in the original arrangement, when you look at the constitutional scheme. The implementation of Goods and Services Tax has really played a very vital role in transforming Central-State relation on the matter of finances. Because, prior to this there has been a kind of exclusivity, *for example - Union had the power to tax on manufacturing of goods which was known as excise and then provision of services i.e., service tax* which was there with the Center and States were given an exclusive power to tax on sale of goods i.e., sale and purchase were the exclusive power of the State which was known as VAT. Thus, the Excise Duty was the responsibility Center whereas, VAT was the responsibility State. This is how they were trying to generate revenue in their respective domains.

Goods and Service Tax has altered the financial relationship and it has introduced a concurrent jurisdiction on the matter of indirect tax where the jurisdiction has been interested to both the Center and the State. Therefore, in GST, an exclusive domain of the Center and the exclusive domain of the State on a tax levying power has become a sort of connected one, where both the Center and the State have got a shared responsibility. So, this traditional fiscal understanding, fiscal relationship, fiscal Arrangement has been introduced in a newer form under the Central and State relation.

2.1. PRELUDE: GOODS AND SERVICE TAX

101st Constitutional Amendment Act, 2016 introduced a new system in India, wherein on the matter of indirect tax it was considered to be a kind of one unit for entire country. it was suggested in the year 2000 by a Kelkar Task Force that in order to avoid a different laying of the taxes structure in this country, which is affecting the industrial growth and affecting the investment in this country. let there be a kind of uniform structure across the country.

Apart from the Kelkar Task Force, you find that there are two more committees which assisted for it. one is discussion paper on Goods and Service Taxes which was released by the empowered committee of state finance ministers done in 2009 and then the Task Force also submitted a report on Goods and Service Tax which was released by 13th Finance Commission in 15th December, 2009. So, what you find is that with the GST, different taxes have now been subsumed like Central Excise Duty, Service Tax, Surcharges, Cesses, VAT, Sale Tax, Luxury Tax etc.,

2.2. PRIOR TO GST: UNION'S POWER

Prior to GST, exclusive power² was given to the Center to make a law on levying taxes which was there under Article 246. The most important sources of indirect tax revenue for the Union were customs duty [Entry 83 of Union List], central excise duty [Entry 84 of Union List], and service tax [Entry 97 of Union List]. Although Entry 92C was inserted in the Union List by the 88th Constitutional Amendment Act, 2003 for levy of taxes on services, it was not notified. So, tax on service were continued to be levied under the residual power, i.e., Entry 97 of the Union List till GAT came into force. *for example*, custom duty was there with the Union List, Central Excise Duty was there with the Union list, Service Tax was there with the Union List.

¹ Ministry of Finance Department of revenue, 'GST-An Update' (Central Board of Indirect Taxes and Customs, 1st June 2019) <https://gstcouncil.gov.in/sites/default/files/gst-knowledge/Overview-of-GST.pdf> accessed 4th August 2024

² V Sridharan, 'GST: Constitutional Perspective' (National Judicial Academy India, 2018) https://nja.gov.in/Concluded_Programmes/2018-19/P-1124_PPTs/2.GST%20Constitutional%20Perspective.pdf accessed 4th August 2024

2.3. PRIOR TO GST: STATE'S POWER

A similar situation was there with the State, where exclusive power was there with the State on sale and purchase Entry 54. The Excise Duty on alcoholic liquor, opium and narcotics in Entry 51. Taxes on luxuries entertainments amusements betting and gambling were there on Entry 62 of the state list or octroi or entry tax was also there or electricity tax was there with the state government or agricultural on a direct taxes agricultural income is their income tax on direct taxes is there with the Union.

3. GST REGIME

GST regime has introduced a kind of unified taxing structure³ for the country. It said that any tax on supply of goods or services or both, except on the exemptions which are there for the supply of alcoholic liquor for human consumption so that is still outside the domain of GST. Article 246 A has been introduced through 101st Constitutional Amendment which provided for a special provision for Goods and Service Tax. This Arrangement was needed in order to come up with a kind of newer formula on the legislative relation as prior to this, the formula was exclusivity with the Union and with the States in their respective domains. Now, because new formula has brought in a concurrent jurisdiction on the tax, Article 246 A has come into picture. It says notwithstanding the provisions of Article 246 and Article 254 meaning thereby it gives in a way overriding power to the union on the matter of GST. So, whatever arrangement have discussed while discussing legislative relation on Article 246, here we find that on a financial relation GST brings in a newer kind of arrangements i.e., state legislature's power to impose tax is further restricted. when you look at Article 246 A (2) is that the Parliament has got an exclusive power to make laws with respect to GST where the supply of goods or of services or both takes place in the course of interstate trade of Commerce. Meaning thereby, a deal happening transaction between more than one States. Article 269A says that GST on supplies in the course of interstate trade or Commerce shall be levied and collected by the Union and the collection of the GST be a person between the Union and the States, in the manner as may be provided by parliament on the recommendation of GST Council. Thus, a new constitutional body came into existence known as Goods and Services Tax Council.

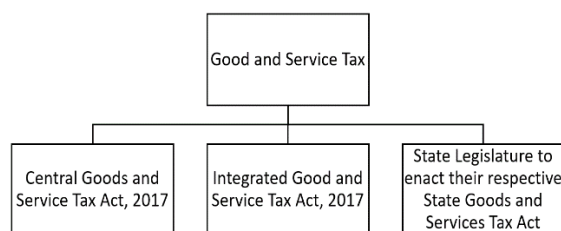


Figure 1 GST Regime

Further, it suggested is that let Parliament come up with a law to formulate the principles for determining the place of supply. when supply of goods take place or of services and both takes place in the course of interest rate trade or Commerce so, when you look at it the major change which has been brought in GST regime is that earlier the taxes were largely driven by the arrangement on manufacturing. But, now with GST it has been done on the factor of sale or consumption which has its own impact.

4. FEATURES OF GST

GST has introduced on indirect tax matter i.e., one nation one tax. For the entire country we have one tax where there are different slabs depending upon the goods. Prior to GST one goods were getting subjected to different tax slabs i.e., one by the Centre and other by the State, which was in a way unnecessarily discouraging the industry in other words, unnecessarily creating a sort of bottlenecks for the industry to grow. So, now we have uniformity in tax market. So, what you find is the GST has in a way an attempt to create a Common National Market in this country. It has been suggested

³Ashima Bansal, 'GST and Co-operative Federalism' (Goods and Service Tax Council, 2019)

(<https://gstcouncil.gov.in/sites/default/files/gst-knowledge/Overview-of-GST.pdf>) accessed 4th August 2024

that the trade shall be without any barrier movement of goods. So, the Common National Market has been realized the goal with the enactment of GST. Additionally, it has also minimized the cascading effect as I said that earlier what was happening is that two layers of government levying taxes and directly or indirectly affecting the industry or the economic growth. Now, it has been addressed through the GST.



Figure 2 Feature of GST

5. GST COUNCIL

GST council is a new constitutional body which has been introduced with an idea to recommend on the rate slabs with the idea that what all goods are to be brought in within the ambit of GST. GST council is a political body and a multi-member body where the representation of the state and the Centre is there. Article 279 A establishes GST Council and the members, it says that Finance Minister of the Union shall be the Chairman of the Council; Minister of State of Revenue shall be the member and Finance Minister of every State are the members of the GST Council. Further, under Article 279 A (7) one half of the total members of the council shall constitute the quorum at its meeting. Furthermore, under Article 279 A (8), the council shall determine what shall be the procedure for the functioning of the council. Therefore, an independence has been given to this constitutional body to decide the procedure, that how the meetings shall be carried forward.

5.1. FUNCTIONS OF GST COUNCIL

The taxes, cesses and surcharges levied by the center in the states and the local bodies. Now, it is been subsumed under GST. It is the council which recommends that what shall be the slab for taxing and which good shall fall under which slab and rate. The goods and services that may be subjected to are exempted from the GST. So, that is also the council decides what goods are to be brought within the ambit and what goods are to be exempted. for example – alcoholic liquored is been for human consumption is been excluded.

Then, it is also suggested that Council shall come up with a model GST laws because every state has to make a law. so, it is desirable that there shall be a model law for every state. The principles of levy, apportionment integrated GST and the principles that govern the place of supply. The goods and services are supplied at a particular location. Now it becomes clear that who shall pay the tax and how the collection shall happen and the threshold limit of turnover below with the goods and services may be exempted from GST.

Further, it says what shall be the rates of tax shall be the responsibility of GST Council i.e., any special rate or rates for a specified period to raise additional resources during natural calamity or disaster. It is again the responsibility of the GST Council to make a special provision for Northeastern States, Jammu and Kashmir, Himachal Pradesh and Uttarakhand considering the geographical positioning of these states. It has been suggested that these states may require some kind of incentivization in order to attract industry. Therefore, let them be get benefited for certain period on the

matter of GST. So, the council has been given a wide power. one may say that what was earlier being deliberated on the floor of the house on the matter of tax.

now that has been sifted to the GST Council in a unified forum so you can very well visualize that what kind of effort must have gone in making the GST Council in reality because different political priorities different kind of preferences of the States and the Center. Now, with GST coming into existence the center and the states they have addressed their differences and they have agreed to come on the one platform and they have decided to come up with one kind of unified structure which would be beneficial for economic growth of the country.

5.2. GUIDING PRINCIPLE [ARTICLE 279A(6)]

It shall be kind of harmonized structure as I said that it is generally been decided that which categories of goods shall be taxed for, then development of a harmonized national market for goods and services, centrally controlled kind of tax regime and concurrent space for that States this is what is the guiding principle for the GST Council.

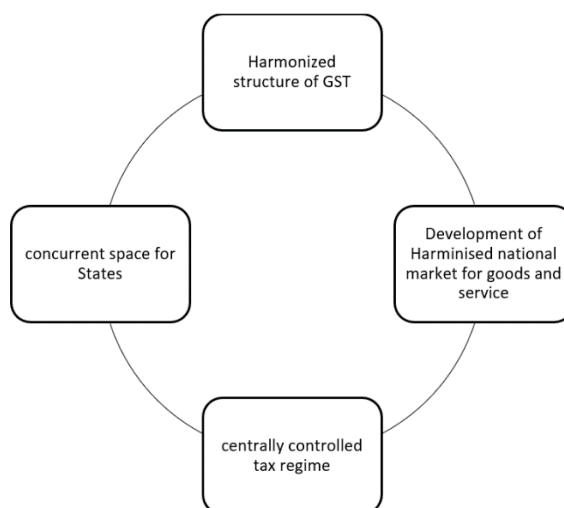


Figure 3 Article 279A (6), Guiding Principle

5.3. MEETING OF GST COUNCIL

The Constitutional Amendment also talks about the weightage of vote in the GST Council. It says that every decision of GST Council shall be taken by majority of not less than $\frac{3}{4}$ th of the weighted votes of members present and voting. The vote of the Central Government is $\frac{1}{3}$ rd of the total votes and the votes of all State Governments taken together shall have the votes of $\frac{2}{3}$ rd of the total vote. So, you can very well visualize that somewhere the arrangement has been done where upper hand has been prominence given to the central government, possibly in order to scatter the national interest. One may argue that is the reason why this kind of arrangement has been suggested under Article 279A because $\frac{1}{3}$ rd is there so in a way there is a veto available with the Union government. So, even if the states come together collectively, there is a possibility that Union Government may have block that kind of proposal from the State Government. But then when it comes to GST Council the functioning of GST Council, I believe what is to be kept in mind is not that kind of confrontation because the GST Council has come into existence by addressing those conflict and confrontation for a larger goal of making India a common National Market. Therefore, the functioning of council shall get driven by the idea of dialogue discussion and collaboration and not with confrontation on conflict.

6. EXCESSIVE LEGISLATION

Under Article 246 A where GST legislation also made the provisions on incidental matters of Investigation, Arrest, Penalty, Interest and Punishment because when you look at the language of Article 246 A it says "*laws relating to goods and service tax and matters incidental thereto*" so question is that whether Article 246 A also covers this issues of

Investigation, Arrest Penalty or not. the matter is pending for the Supreme Court in *Aditya Gupta v. Union of India*⁴ and before the Delhi High Court in this case of *Dhruv Krishan Maggu v. Union of India*⁵.

7. GST AND COOPERATIVE FEDERALISM

GST is based on the idea of cooperative federalism because earlier what was the kind of domain of the union and the State. it is suggested or it is to be always understood that both the Center and the State, they come together, they agree to share their taxing powers and the idea is to come together. However, the idea is not to compete on these issues of who shall be levying lesser tax or higher tax. Let the tax slab be the same in throughout the country on the indirect matter and the competition shall be on providing a better infrastructure. So, that industry gets attracted ED in one of the other States both the Union and the States. They have got a voting right in the GST Council which again manifest that there is a talk on cooperation is required on the matter of taxes. Thus, the GST Council plays a very significant role in facilitating a kind of collective decision making on the matter of levying tax on goods and services. Although, GST Council also suggest for a kind of dispute resolution mechanism between the Union and the State whenever some problem comes and then it is the council which is supposed to address that concern of different states by following the principle of cooperative approach and a kind of balance view between the Center and the States.

8. GST AND COLLABORATIVE FEDERALISM

GST is also an example of collaborative federalism because states have surrendered their legislative power on the matter of tax to a body with GST Council because they are deciding collectively. So, in a way GST council is a kind of testament of a collaborative federalism where they have voluntarily decided to give up their jurisdiction, power in order to ensure that on the matter of indirect accession. let there be no fragmentation happening in India because otherwise when prior to GST it was appearing that one State was competing with another state on the matter of imposing taxes and which in a way was adversely impacting the growth of Industry. Thus, GST Council has got a mandate to discharge the responsibility in a collaborative way with an idea to promote harmony and with a kind of fulfillment of the goal based on mutual interest and because of that only it seems that it was decided that for the first 5 years after GST came into existence, that there shall be compensation to some of the states who may lose out or who might have lost in, because of this new tax regime coming into effect. So, the 5 years compensation scheme was been introduced which got over in 2019. The state governments are demanding that let the period get extended to another five years because of the pandemic which struck in 2020 though the Centre is not agreeing to this. Centre is saying that instead of extending it for 5 years let the State go for borrowing the financial requirements. So, the GST Council is a platform which works on negotiation, coordination in order to address the differences between the Union and the States so both the union and the states they rely on each other for the successful for effective functioning of GST Council.

9. GST AND FISCAL FEDERALISM

A new kind of experiment by bringing informed tax system across the country. It also talks about equitable revenue sharing as I said that compensation mechanism was introduced for the first 5 years. So, these are kind of changes which has been done in fiscal federalism. In the recent time we have seen that some of the states have objected to the point that Center has not been dispersing the required amount as it is claimed by the state under this compensation scheme though the center has been asserting that it has fulfilled the mandate as recommended by the GST Council.

10. SUPREME COURT ON GST

GST matter has gone to the court for example in the case of *Union of India v. VKC Footsteps India Pvt Ltd.*⁶, it was suggested that when it comes to GST Council Article 279A discharge of the function of GST is to be guided by the harmonized structure which is crucial to the cooperative federalism. That's what it says and court has said that there is

⁴ S.B. Criminal Miscellaneous 4th Bail Application No. 1535/2020

⁵ W.P. (C) 5454/2020

⁶ (2022) 2 SCC 603

nothing called supremacy of the Union over the State on the matter on the functioning of GST Council. It says that the entire idea is to see that how competing parties they come together and how they solve it. How they really work in the interest of the people, in the interest of economy, in the interest of Industry, that's what suggested. This is another phenomenal judgment which has created a sort of disturbances on the functioning of GST Council.

And, how the entire things may be unfolded in future on the matter of the functioning of GST Council or legitimacy of function GST Council. In the case of *Union of India v. Mohit Minerals*⁷ was decided in the year 2022, where the court has said that when it comes to bindingness of the decision of GST Council. The decision does not bind the legislature, it has just got a recommendatory power and because it has got a recommendatory power State Legislature or Parliament may decide contrary to what has been agreed upon in the GST Council. Further, one can imagine that the GST Council decides something and that decision has not been taken based on unanimity there is the division of votes and then one State or the other State going back to the legislature and passing a law contrary to what GST Council decides. Then the entire design of GST Council will collapse and the idea of unified taxes structuring on indirect matter will you know completely go here. Therefore, it is suggested that though the GST council is a recommendatory body but then when the legislature takes it to parliament or state there has to be a very strong and coant reason for differing with the GST Council unless and until that is there on a mere political kind of wish or will deviations from the recommendation should not be encouraged.

Though, it has to do with the sovereignty of the legislature it has to do with the power which is interested by the Constitution but then when it comes to conflict between Article 246 and Article 246A or Article 279A. Then, there is a larger goal laid down under the Constitution and the larger goal is to make India as a unified market for both movements of goods and services because when movement of goods and services. when you look at Article 19 where there is a right given to every citizen to go and settle to earn livelihood in any part of the country. So, there is a very well ingrained mandate under the Indian Constitution to create India into a common market and going by that whenever such kind of conflict comes in between Article 279A and the legislative authority. Every attempt should be made to go for a harmonious conciliation instead of resolving it by looking at a kind of hierarchical structure on power making.

11. IMPACT OF GST ON CENTRE STATE RELATIONS

The impact on GST on Central-State relation has been there as I said there has been centralization of tax regime. Now, it is unified tax structure where what you find is one tax slab on a particular set of goods for the entire country. Obviously, State legislative power has been eroded on the matter when you look at the weightage of voting given in the GST Council. Then horizontal effect on federalism is also there because when it comes to distribution of revenues. It has been suggested that the States which are having more population they may be eligible for better revenue sharing. So, these are the concerns again conflict should not become a kind of main feature of GST Council as it has been seen in recent time where some of the states have protested on non-release of the compensation amount. So, this is something which needs to be addressed in order to see the success of GST model and the fulfillment of constitutional goal of common market which is categorically given under the Indian Constitution.

⁷ (2022) 10 SCC 700