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Goods and Service Tax: A Transgression to the Principles of Federalism

DR. SAKSHI PATHAK¹

ABSTRACT

This article critically examines the impact of the Goods and Services Tax (GST) on the principles of federalism within the context of the Indian taxation system. GST, introduced in 2017, aimed to simplify the tax structure by unifying various indirect taxes levied by the central and state governments. While the GST promised economic efficiency and uniformity, this study delves into its repercussions on the federal structure of India.

The analysis begins by exploring the historical evolution of federalism in India and the constitutional framework that delineates the powers and responsibilities of the central and state governments. Subsequently, it scrutinizes the redistributive implications of GST, questioning whether the uniform tax rates and centralized administration erode the autonomy of states. The article also examines the decision-making process within the GST Council and its potential impact on the federal character of governance.

Furthermore, the article investigates the challenges faced by states in adapting to the GST regime, especially considering the diverse economic landscapes and fiscal capacities across different regions. It explores how the one-size-fits-all approach of GST may exacerbate existing economic disparities among states, thereby challenging the principles of cooperative federalism.

Through a comparative analysis with international models of federal taxation, the article aims to provide insights into whether the Indian GST model aligns with or deviates from global practices in maintaining a balance between centralized revenue generation and regional autonomy. The findings of this study contribute to the ongoing discourse on the effectiveness and fairness of the GST in upholding the principles of federalism, shedding light on the potential need for reforms in the Indian tax structure.

I. INTRODUCTION

The Indian constitution is unlike any other in the world and beautiful so, that it has helped maintain peace and serve the needs of all in such a diverse country. The Federal Structure adopted by our country is also uniquely so and it is contently placed in the 7th schedule of the constitution. Taxation has always been a matter shared by the state and the center but certain

¹ Author is an Assistant Professor of Law at Chotanagpur Law College, Namkum, Ranchi, India.

taxes have always been the prerogative of the state. It is their political power that they shall be eligible to fix the various taxes for their interstate needs. After the introduction of Goods and Services Tax Act the previously accepted norms came to hold and a whole new dimension of Federalism was introduced. Needless to say this change is much disputed and this paper seeks to explore the various aspects that may determine the constitutionality of the GST and seeks to establish that the same violates the Basic structure of the Constitution transgressing to the principles of Federalism. The goods and services council is a constitutional body and playing the role of the same it is integral that it should follow the scheme of shared power enunciated by our constitution by maintaining a balance between the center and the state to serve the needs of both. Furthermore, the act also poses a danger that if such transgression is allowed the constitution may become a plaything of the majority and thus there must be some changes made with reference to the powers conferred on the states no matter how good the purpose of the law be since there is an unavoidable need for the legislation to conform to constitutional ideals.

Independence didn't come easy to the country but even after independence there were a lot of problems before the people of India which made it seem impossible for India to stand united and sovereign. Our country is one with unique and incomparable situations and thus, no system of governance that was followed anywhere in the world could be directly followed here. Thus, the system of federalism that was adopted in India had to be unlike that seen in any other country. It's a grey area of law whether India is in fact Federal or not. But this question is of utmost importance and seeks an answer at many times. It is inevitable to have conflicts between the center and the state and hence, a clear demarcation of power is necessary.

II. CO-OPERATIVE FEDERALISM IS EMBODIED IN THE CONSTITUTION OF INDIA

“The supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity.”²

The constitution by itself says by Art.1,³ that India is a union of states and in interpreting the constitution one must keep in view the essential structure of a federal or quasi federal constitution, namely, that the units of the union have also certain powers as has the union itself.⁴

² *In re* Art.143, Special Reference 1 of 1964, (1961) 1 S.C.R. 413 (India).

³ IND. CONSTI., ART. 1.

⁴ *Automobile Transport v. State of Rajasthan*, A.I.R. 1962 S.C. 1406, ¶ 8 (India).

These words in themselves display that in India it has been for long cherished and well accepted that there is a certain distribution of power with reference to necessary attainments for both the state and the center and this distribution is *delicately placed* and hence, any transgression into the same may grossly result in inequality towards one and a bane for the policies for the whole country.

In the case of *Union of India v. Sankalchand*,⁵ Justice P.N. Bhagwati described the Indian Constitution as a “Federal or Quasi-Federal” Constitution. During Normal times, the court would not be justified in its giving its verdict in favour of the union upon any a priori theory of general paramountcy of the Union.⁶ In spite of the exceptions, our constitution, with its distribution and duty of the Courts to guard that, remains normally and basically, a Federal Constitution.⁷ Apart from the exceptional cases, the constitution would not permit any of the units of the federation to subvert the federal structure set up by the Constitution, even by the consent. Nor would this be possible by delegation of powers by one legislature in favour of another.⁸ Therefore, the Constitution of India is federal in character and clearly demarcates the legislative field between the Union and the erstwhile States.

In *State of West Bengal v Union of India*⁹, the apex court held that decentralization of authority in India was primarily to facilitate smooth governance of a large nation and therefore, it contains many centralizing features also. Indian Constitution is not a ‘*traditional federal constitution*.’ In *S.R. Bommai v Union of India*¹⁰, Justice Ahmadi opined that the essence of federation is the existence of distribution of power between the Union and the States. However, the absence of the terms ‘federal’ or ‘federation’ and the presence of unitary features such as residuary powers, single citizenship, integrated judiciary, etc can help us conclude that the Constitution of India is more ‘quasi federal’ than ‘federal’ or ‘unitary’. Similar was held in the case of *Sat Pal v State of Punjab*.

The Chairman of Drafting Committee, Dr. Ambedkar had thus rightly said that, “Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances”. The Drafting Committee wanted to clarify that though India was a federation, it was not the result of any voluntary agreement between the States.

Though the country is divided into many States, it is basically for administrative purposes

⁵ A.I.R. 1977 S.C. 2328 (India).

⁶ 8 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 1950 (10th ed., Lexis Nexis).

⁷ *Atiabari Tea Co. v. Union of India*, (1961) 1 S.C.R. 809 (India).

⁸ *In re, Delhi Laws Act, 1912*, (1951) S.C.R. 747, pp. 941; *A.G. of Nova Scotia v. A.G of Canada*, (1951) S.C.R. 31 (India).

⁹ *State of West Bengal v Union of India*, AIR 1963 SC 1241 (India).

¹⁰ *S.R. Bommai v Union of India*, AIR 1994 SC 1918 (India).

which do not in any way affect its functioning as an integrated unit.¹¹ Finally, on a careful analysis of the federal and unitary features of the constitution, this aspect is not hard to miss that in every federal feature, there was an ultimate centralizing force which is existing. Therefore, it would not be wrong to conclude that the Constitution of India is federal in structure and unitary in spirit i.e. it is quasi- federal in nature.¹²

III. CLEAR DEMARCATION OF LEGISLATIVE POWER, AN ESSENTIAL FEATURE OF FEDERALISM

It is the essence of the Federalism that there should be a division of powers between the union and the states.¹³ In the case of *International Tourist Corporation v. State of Haryana*,¹⁴ "Before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislature must be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III and in the case of a tax if it is not mentioned in either of those lists.

In a Federal Constitution like ours where there is a division of legislative subjects but the residuary power is vested in Parliament, such residuary power cannot be so expansively interpreted, as to whittle down the power of the State legislature. That might affect and jeopardize the very federal principle.¹⁵

IV. STATES ARE NOT MERE APPENDAGES OF THE CENTRE

The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-a-vis the States does not mean that States are mere appendages of the Centre.¹⁶ Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States..... must put the Court on guard against any conscious whittling down of the powers of the States."¹⁷ In *ITC v. Agricultural Produce Market Committee*,¹⁸ this Court emphasized that in interpreting the

¹¹ Harshad Mane, What They Are Fighting For? The Maharashtra-Belgaum Border Dispute, Prabodhak for Mumbai.in, Dec. 21, 2015 at , <http://www.prabodhakformumbai.in/maharashtra-belgaum-border-dispute/>.

¹² Krishnadas Rajagopal, SC Bench Strikes Down NJAC Act As 'unconstitutional and Void', The Hindu, May 23, 2016 at, <http://www.thehindu.com/news/national/supreme-court-verdict-on-njac-and-collegium-system/article7769266.ece>.

¹³ *Offshore Holdings (P) Ltd. v. Bangalore Development Authority*, (2011) 3 S.C.C. 139, ¶ 73 (India).

¹⁴ (1981) 2 S.C.C. 318, ¶ 6A, *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 S.C.C. 184, ¶ 22 (India).

¹⁵ *Robert L. Hardgrave and Stanley A. Koachanek, India: Government and politics in a developing nation 146, TsJ 2008.*

¹⁶ *UCO Bank v. Dipak Debbarma*, (2017) 2 S.C.C (India).

¹⁷ *S. R. Bommai v. Union of India*, (1994) 3 S.C.C. 1 (India).

¹⁸ (2002) 9 S.C.C. 232 (India).

text of the Constitution the Court should ensure, where the language permits that the powers of the state legislatures are not diluted and that the principles of federalism are preserved.

Therefore, it must be made sure that by having a majority government the center does not have the power to overthrow the state of its basic functions as this would prove fatal to the constitution of the country and the principles that it seeks to confer, apply and forever protect.

V. STATE POWER TO LEVY TAX: A SOVEREIGN FUNCTION

The power to impose sales tax is conferred by Art. 246(3), read with entry 54 of List II of Sch. VII to the constitution.¹⁹ The power to levy tax is a sovereign power and is legislative in character and it has to be exercised within the constitutional limitations.²⁰ The legislature of any state has, under these provisions has the exclusive power to make laws “for such state or any part thereof” with respect to “taxes on the sale or purchase of goods other than newspapers”.²¹ When a power is conferred on the legislature to levy a tax, that power itself must be widely construed; it must include the power to impose a tax and select the articles or commodities for the exercise of such power.²² The power to levy taxes, being a sovereign power controlled only by the Constitution, any limitation on that power must be express.²³ In order that a taxing law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature imposing the tax and authorizing the collection thereof.²⁴

*“Tax has always been treated as a distinct entity and is kept on a pedestal separate from all the other legislative fields of the Seventh Schedule. It is worth repeating that the power of taxation is an inherent attribute of sovereignty emanating from necessity. As noted earlier, the exaction is not merely fundamental for existence of the State but also to support the welfare activities, therefore, it forms a pre-condition for exercise of other legislative power.”*²⁵

In a federal system, the legislative power is exercised by distribution of powers between the Union and the States; both are supreme in their respective spheres. Taxation is a sovereign power exercised by the State to realize revenue to enable it to discharge its obligations.²⁶ It is essential that as a sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds and this consideration emphasizes the necessity and the wisdom of

¹⁹ Bengal Immunity Co. Ltd, .

²⁰ Yadlapati Ventakeswarlu v. State of AP, (1992) Supp (1) S.C.C. 74 (India).

²¹ State of Bombay v. United Motors (India) Ltd., 1953 S.C.R. 1069 (India).

²² Khyebari Tea Co. v. State of Assam, (1964) 5 S.C.R. 975 (India).

²³ Firm Bansidhar Premasukhdas v. State of Rajasthan, A.I.R. 1967 S.C. 40 (India).

²⁴ Kunnathat Thathunni Moopil Nair v. The State of Kerala, A.I.R. 1961 S.C. 552 (India).

²⁵ Jindal Stainless Co. v. State of Haryana, 2017 S.C.C. OnLine S.C. 1260 (India).

²⁶ Amrit Banaspati Co. Ltd. v. State of Punjab, (1992) 2 S.C.C. 411 (India).

conceding to the State, the right to claim priority in respect of its tax dues.²⁷ The provisions of the Constitution which indicate a tilt in favour of the Union do not detract from the principle that in the fields which are assigned to them, the states are intended to be integral elements of a federal structure. They are sovereign within their competence, subject to constitutional limitations.²⁸

Power to tax is an essential attribute of government

The power to tax has been considered to be an essential attribute of government and a sovereign power vesting in the state.²⁹ It is for the state to decide and in what manner it will raise the revenue and to determine which particular transactions of sale or purchase of goods taking place within that state should be taxed and at what rates.³⁰ It is, of course, true that the power of taxing the people and their property is an essential attribute of the Government.³¹ The power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it.³² States must have revenue to carry out their administration and the States are entitled to raise revenue by exercising its power to tax. Such an important power of taxation expressly granted under the Constitution cannot be allowed to be whittled down and made subservient to trade, commerce and intercourse.³³

VI. INTERPRETATION WITH REGARDS TO POWER TO LEVY TAX

Taxes being the lifeblood of the State, they cannot be decimated by implication.

The legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any provision in the Constitution expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the State Legislature enjoys to legislate on the topics enumerated in the Lists II & III of the Seventh Schedule to the Constitution.³⁴ “Under Article 246 the State Legislature was invested with the power to legislate on the topics enumerated in Lists II & III of the Seventh Schedule to the Constitution and this power was by virtue of Article 245(1) subject to the provisions of the Constitution.”³⁵

²⁷ Dena Bank v. Bhikhabhai Prabhudas Parekh & Co, (2000) 5 S.C.C. 694 (India).

²⁸ Jindal Stainless Co. v. State of Haryana, 2017 S.C.C. OnLine S.C. 1260 (India).

²⁹ Jindal Stainless Co. v. State of Haryana, 2017 S.C.C. OnLine S.C. 1260 (India).

³⁰ Khazan Chand v. State of Jammu Kashmir and Others, (1984) 2 S.C.C. 456 (India).

³¹ Rai Ramkrishna v. State of Bihar, A.I.R. 1963 S.C. 1667 (India).

³² Raja Jagannath Baksh Singh v. State of U.P, (1963) 1 S.C.R. 220 (India).

³³ *Id.*

³⁴ Maharaj Umeg Singh v. The State of Bombay, (1955) 2 S.C.R. 164 (India).

³⁵ *Id.*

In the case of *State of Karnataka v. Union of India*,³⁶ Justice Kailasam, in his minority judgment has stated that, “there is no overriding power with the Union Government. It cannot deal with the state Government as its delegate, for the source of power for the Union as well as the state, is the constitution and the Union Govt. cannot claim any powers over the state which are not found in the Constitution.”

In the case of *State of Karnataka v. Union of India*,³⁷ Justice Beg Cautioned that the courts acting under the guise of a judicial power can nullify, defeat or distort the reasonably clear meaning of any part of the constitution and that the Union is not supreme. The final determination as to whether the Union will be given an absolute power to legislate with respect to the matters enumerated in third list is that of courts.³⁸ There were numerous stances in the past 67 (Sixty-seven) years of the working of Constitution of India where Union legislature has been attributed solely to the residuary powers.³⁹ State's power despite the limited width of its field is plenary in nature. Except where the constitutional intent is express and clear, the State's plenary power ought not to be whittled down by interpretation.⁴⁰

Centre and State Power to tax are Exclusive to Each other

In the case of *Hoechst Pharmaceuticals Ltd. v. State of Bihar*,⁴¹ it was held that the, “a scrutiny of lists I and II of the VII Schedule would show that there is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the union and the states.”

Taxing entries must be construed with clarity and precision to maintain such exclusivity must be eschewed. If the taxation entry which may lead to overlapping must be eschewed. If taxing powers is within a legislative field, it would follow that other fields in the legislative lists must be construed to exclude this field so that there is no possibility of legislative trespass.⁴²

Power to tax is not an incidental and ancillary power under Our Constitution

According to Seervai, although legislative power includes all incidental and subsidiary power, the power to impose a tax is not such a power under our Constitution. Entry 97 in List I also militated against the contention that the power to tax is an incidental power under our

³⁶ A.I.R. 1978 S.C. 68 (India).

³⁷ *Id.*

³⁸ *Union of India v. H.S. Dhillon*, A.I.R. 1972 S.C. 1061 (India).

³⁹ *Mithan v. State of Delhi*, (1959) S.C.R. 445 (India); *Diamond Mills v. State of UP*, A.I.R. 1961 S.C. 652 (India); *Hare Krishna v. Union of India*, A.I.R. 1966 S.C. 619 (India); *Sable v. Union of India*, A.I.R. 1975 S.C. 1172, ¶ 13 (India).

⁴⁰ *Jindal Stainless Co. v. State of Haryana*, 2016 S.C.C. Online S.C. 1260 (India).

⁴¹ (1983) 4 S.C.C. 45 (India).

⁴² *Godfrey Phillips India Pvt. Ltd. v. State of U.P.*, (2005) 2 S.C.C. 515, ¶ 46 (India).

Constitution.⁴³

Taxation is considered to be a distinct matter for purposes of legislative competence. There is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. Unlike general entries power to levy tax cannot be deduced from another entry as ancillary exercise of power.⁴⁴

Centre cannot encroach upon the State Power to Tax

*The power to tax cannot be deduced from a general legislative entry as an ancillary power.*⁴⁵ Although a liberal construction of a State entry is desirable but at the same time the court should guard against extending the meaning of the word beyond a reasonable limit.⁴⁶ The courts while interpreting the statutes should avoid such construction whereby the State Legislature would be encroaching upon the areas covered by the parliamentary Act indirectly which they could not do directly.⁴⁷ It would, therefore, not be correct for the superior courts to advocate the theory that while interpreting the Constitution, courts should lean in favour of the State.⁴⁸ Therefore, The North state cannot contend that there has been only an incidental encroachment by imposing a tax on income.

In the case of *KT Plantation Pvt. Ltd. v. State of Karnataka*,⁴⁹ it was held that in the Constitution of India, a conflict of taxing powers of the Union and the State cannot arise and so there cannot be any intrusion by a law made by parliament under Entry 33, List III into the forbidden field, viz. the state's exclusive power to make law with respect to the levy and imposition of tax on sale or purchase of goods relating to entry 54 of List II of the VII Schedule.

In the case of *State of West Bengal v. Kesoram Industry*,⁵⁰ the constitution bench while reiterating the principal laid down in *Hoechst's Case*,⁵¹ held that while reading the three lists, List I has priority over Lists III and II and List III has priority over List II. However, still the predominance of the Union list would not prevent the state legislature from dealing with any matter within List II though it may incidentally affect any item in List I.

⁴³ 3 SEERVAI, H.M., CONSTITUTIONAL LAW OF INDIA, ¶ 22.20 (4th Silver Jubilee ed.) (India).

⁴⁴ State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 S.C.C. 139, ¶ 44 (India).

⁴⁵ Hoechst Pharmaceuticals v. State of Bihar, 1983 S.C.C. (Tax) 248, ¶ 74 (India).

⁴⁶ State of W.B. v. Kesoram Industries Ltd., (2004) 10 S.C.C. 201, ¶ 274 (India).

⁴⁷ *Id.* at ¶ 227.

⁴⁸ *Id.* at ¶ 228.

⁴⁹ (2011) 9 S.C.C. 1, ¶ 186 & 187 (India).

⁵⁰ State of W.B. v. Kesoram Industries Ltd, (2004) 10 S.C.C. 201, ¶ 31 (India).

⁵¹ *Id.*

VII. LOSS OF RESOURCES OF THE STATES

The States have complete autonomy over levy of sales taxes, which, on average, accounted for 80 per cent of their revenue. But with the GST, which mandates a uniform rate, even this limited autonomy would be gone. States should have independent taxing powers is a necessary feature of a federal polity and mere plenary legislative powers in the absence of the power to impose taxes and raise revenue would be meaningless.⁵² Tamil Nadu government will lose ₹. 3,500 Crores annually due to abolition of CST and wants compensation from the Centre. Maharashtra government is set to lose ₹ 14,000 Crores that it collects as Octroi.⁵³

Therefore, the 66th Constitutional Amendment 2017 violates the Principle of federalism embodied under the doctrine of Basic Structure as it reduces the states to mere appendages of the Union and further make them totally dependent on the Union for the revenue and also the recommendations of the Imperial Council of which all the states are part of, are subject to the whim and fancies of the Union.

VIII. FEDERALISM AS A PART OF THE BASIC STRUCTURE DOCTRINE

In the landmark case of *Kesavananda Bharati v. State of Kerala*,⁵⁴ the Hon'ble Supreme Court while laying the foundation of the basic structure doctrine held that, "*Federalism is the part of the basic structure.*" The principle then further reiterated in numerous no. of cases and it was expressly declared in *S.R. Bommai v. Union of India*,⁵⁵ that Federalism is the basic feature of the Constitution of India.⁵⁶

Basic Structure Doctrine cannot be violated

Supreme Court in *Kesavananda's* after inventing the basic structure, stated that any amendment under Art.368 of the Constitution violating the basic structure will be ultra vires of the Constitution. In the case of *I R Coelho v. State of Tamil Nadu*,⁵⁷ it has been very categorically mentioned by Hon'ble Supreme Court that by the way of an Amendment to the Constitution, the Basic Structure Doctrine cannot be violated. The Doctrine of the violation of the basic structure must be applied when there is any amendment in the constitution which violates the

⁵² NIRVIKAR SINGH, FISCAL FEDERALISM, OXFORD HANDBOOK OF THE INDIAN CONSTITUTION, 521.

⁵³ Rajesh Nangia and Rajat Mohan, *GST Impact and the States*, MONDAQ.COM., <http://www.mondaq.com/india/x/533716/sales+taxes+VAT+GST/GST+Impact+And+The+States> (last accessed on Sept 2, 2017).

⁵⁴ (1973) 4 S.C.C. 225 (India).

⁵⁵ *S.R. Bommai v Union of India*, AIR 1994 SC 1918 (India).

⁵⁶ *Jammu and Kashmir National Panthers Party v. Union of India*, (2011) 1 S.C.C. 228 (India); *M. Nagaraj v. Union of India*, (2006) 8 S.C.C. 212 (India).

⁵⁷ (2007) 2 S.C.C. 1; *Union of India v. Madras Bar Assn.*, (2010) 11 S.C.C. 1 (India).

Basic Structure.⁵⁸

The implementation of the Goods and Services Tax would mean that the states would have absolutely no power in deciding what tax rates to impose on what commodities, a right that was given to them under the Constitution of India. After GST, the freedom of the states to pursue alternative strategies goes, and you have an enormous centralization of power. If you want any change in the rates, you have to go to the GST council, in which the centre has a substantial voice. Consequently the states would become completely dependent on the centre. It is violative of the federal structure of the Constitution and is against the basic structure of the Constitution.

Kavita Rao, professor at the National Institute of Public Finance and Policy (NIPFP) and member of one of the Working Groups constituted on GST by the Empowered Committee of State Finance Ministers, points out, when you move to a GST regime in a federal set-up, some curtailment of the State's freedom is inevitable. "All goods and services will be divided into certain categories. The rates will be fixed by category, and if I am a state, I cannot shift a commodity from a lower to a higher rate, or put it in the exempt category."⁵⁹

This is not the only limitation. The rates for both, the CGST and the SGST, will be fixed by the GST Council, whose members will be State finance/revenue ministers and chairman will be the Union finance minister. Once the rates are set by the GST Council, individual States will lose their right to tax whichever commodities they want at the rates they want.

This development needs to be viewed in the context of a steady erosion in the states' freedom to decide on taxes and tax rates. The economist Prabhat Patnaik points out, "According to the Constitution, the States have complete autonomy over levy of sales taxes, which, on average, accounted for 80 per cent of their revenue. An attempt was made to curtail this autonomy with the introduction of VAT. But it did not totally succeed because the VAT still had four different rates that states could play with. But with the GST, which mandates a uniform rate, even this limited autonomy would be gone." In other words, while the loss in revenue of the States may well be compensated by the Centre, a State's loss of the political right to fix its own tax rates can not be.

OBJECT OF THE LEGISLATION BECOMES IRRELEVANT, WHEN THERE IS NO

⁵⁸ V.C. Shukla v. State (Delhi Admin), 1980 S.C.C. (Cri) 849 (India); R.S. Garg v. State of UP, (2006) 6 S.C.C. 430 (India).

⁵⁹ Aseema Sinha, *The Regional Roots Of Developmental Politics In India: A Divided Leviathan* 144, Indiana University Press, 2005.

SANCTION OF LAW

It is no doubt true that in taxing legislation, legislature deserves greater latitude and greater play in joints. This principle, however, cannot be extended so as to validate a levy which has no sanction of law, however, laudable may have been the object to introduce it and howsoever laudable may have been the purpose for which the amount so collected may have been spent.⁶⁰ The source of power which does not specifically speak of taxation cannot be so interpreted by expanding its width as to include therein the power to tax by implication. There must be a charging section empowering the state to levy the tax.⁶¹ While exercising the constituent power to amend constitution, it cannot exercise the power to legislature especially of the states.⁶²

In *Union of India v. H.S. Dhillon*⁶³, the Apex Court held; Reading Article 246 with the three lists in the Seventh Schedule, it is quite clear that Parliament has exclusive power to make laws with respect to all the matters enumerated in List I and this notwithstanding anything in clauses (2) and (3) of Article 246. The State Legislatures have exclusive powers to make laws with respect to any of the matters enumerated in List II, but this is subject to clauses (1) and (2) of Article 246. The object of this subjection is to make Parliamentary legislation on matters in Lists I and III paramount. In *Chhotabhai Jethabhai Patel and Co. v. Union of India*⁶⁴, if by reason of Article 265 every tax has to be imposed by “law” it would appear to follow that it could only be imposed by a law which is valid by conformity to the criteria laid down in the relevant Articles of the Constitution.

These are that the law should be (1) within the legislative competence of the legislature being covered by the legislative entries in Schedule VII of the Constitution; (2) the law should not be prohibited by any particular provision of the Constitution such as for example, Articles 276(2), 286 etc., and (3) the law or the relevant portion thereof should not be invalid under Article 13 for repugnancy to those freedom which are guaranteed by Part III of the Constitution which are relevant to the subject-matter of the law.

IX. GRADUAL REFORMS AND MATHEMATICAL NICETY

On behalf of the Union of India, it must also be remembered that in the context of economic and tax matters, the decision of the legislature is almost always sustained since the court lacks

⁶⁰ *Shree Digvijay Cement Co. Ltd. and Anr. v. Union of India (UOI) and Anr*, 2003 2 S.C.C. 614 (India).

⁶¹ *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 S.C.C. 2011 (India).

⁶² *K. Damodaraswamy Naidu & Bros. v. State of Tamil Nadu*, A.I.R. 1999 S.C. 3909 (India).

⁶³ (1971) 2 S.C.C. 779.

⁶⁴ A.I.R. 1962 S.C. 1006.

both expertise and familiarity with the local problems.⁶⁵ This is to imply the doctrine of political question in application. The problems of the government are practical ones and may justify, if they do not require rough accommodation-illogically, it may be, and unscientific...what is best is not always discernable: the *wisdoms of any choice may be disputed or condemned*.⁶⁶

Furthermore, does not prevent a legislature from introducing a reform gradually, that is to say, at first applying the legislation to some of the institutions or objects⁶⁷ having common characteristics or to particular areas only⁶⁸, according to the exigencies of the situation⁶⁹. Therefore, the law need not cover the entire field of proper legislation in a single enactment.⁷⁰

X. CONCLUSION AND SUGGESTIONS

After a careful analysis of the aforementioned legal as well as situational dilemmas, it would not be wrong to conclude that by transgressing to the principles of Federalism embodied in our constitution, the parliament was well out of its boundaries in enacting the Goods and Services Tax. Even though it may so be that there is no real or apparent loss to the state in terms of money but the political rights and decision making power of the state has definitely been encroached upon. It is a harsh reality that even after so many years of Federalism when the view of the constitution maker was to strengthen the same, the principles of Federalism have only weakened subsequent to its enactment. No excuse such as a strong center bias can ever be entertained because Taxation was the only power the states were conferred with and allowing transgression to the same would be to imply that the Basic Structure Doctrine is a plaything of the majority and it yields scope for further dissemination of the rights of the state.

Furthermore, it is suggested that to safeguard against the same the view of the Goods and Services Tax which was to ease the flow of goods and services thereby allowing facilitating business should be carried out without transgressing into the political rights of the state. For the same there may either be measures to increase the representation of states in the decision making or to allow certain important taxes to be the prerogative of the states only. It must be kept in mind that it is the most important power of the state to levy taxes and the same is necessary for the performance of its duties as well and hence this power must not be encroached upon.

⁶⁵ State of Karnataka v. D.P. Sharma, (1976) 1 S.C.C. 391 (India).

⁶⁶ 2 D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 1405 (8th ed. 2012).

⁶⁷ Biswambha v. State of Orissa, 1952 S.C.R. 842 (845) (India) ¶23.

⁶⁸ Ramchandra v. State of Orissa, 1954 S.C.A. 346 (354) (India) ¶25.

⁶⁹ 2 D.D. Basu, Commentary on the Constitution of India 1409 (8th ed. 2012).

⁷⁰ 2 D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 1408 (8th ed. 2012).