

The New Age of Cooperative Federalism: Judicial and Political Dimensions in India's Fiscal Federalism

UMANSHI PANDEY

“Federalism is not a matter of sentiment but of necessity. It is the outcome of our political and economic needs.”¹

- Granville Austin

1. INTRODUCTION

Federalism in India represents not just an **administrative arrangement**, but rather a living **constitutional promise**. It seeks to reconcile the **demand of unity** with the *imperatives of diversity*. Unlike **classical federations**, India's design in *sui generis*, that is **quasi-federal** in form, but *unitary* in spirit during *exigencies*.² In the **ideal form**, this equilibrium is maintained through “**cooperative federalism**”. This principle transforms competition between the Union and the States into constitutionally guided **collaboration**. This idea of “*cooperative federalism*” emerged as a guiding philosophy rather than a rigid **constitutional provision**. It sought to harmonize **centripetal**, that is **national integration** and **centrifugal**, that is **state autonomy** forces through *dialogue* and not *domination*.

However, with the rise of **fiscal centralization**, this balance has gradually tilted towards the Union. The **Goods and Services Tax (GST)**, introduced by the **101st Constitutional Amendment** (2017), restructured India's **fiscal architecture**.³ By creating a **unified indirect tax regime** and the **GST Council (Article 279A)**, it redefined the flow of **financial power** between the *Centre* and *States*.⁴ Earlier on, the GST Council was envisioned as a **consensus building body**, which embodied the **cooperative ethos** participation of both level of governments as equals in **fiscal decision-making**. In theory, this mechanism was meant to prevent **fiscal fragmentation** and ensure *harmonization* across India's **complex tax**

¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 186 (Oxford Univ. Press 1966).

² K.C. Wheare, *Federal Government* 28–30 (4th ed., Oxford Univ. Press 1963).

³ The Constitution (One Hundred and First Amendment) Act, No. 101 of 2016, INDIA CONST. amend. 101.

⁴ INDIA CONST. art. 279A.

landscape. Yet, in practice, the **balance of power** within the **Council** has often leaned towards the Union, owing to its superior **political leverage** and **financial capacity**.

For instance, the **compensation cess controversy** during the COVID-19 pandemic exposed the **fragility** of this arrangement, as several States accused the Centre of breaching **fiscal trust**.⁵ These disputes revealed that though cooperative federalism is constitutionally cherished, it can still be rendered **conditional** when **fiscal dependency** replaces genuine **collaboration**.

Yet, the **persistence of political asymmetries**, vertical **fiscal imbalances**, and **conditional transfers** continue to test the **resilience** of this **constitutional ideal**. Against this backdrop, the present paper examines how **judicial reasoning** and **political economy** together are reconfiguring the *federal bargain* in post-GST India.

2. CONSTITUTIONAL ARCHITECTURE OF FISCAL FEDERALISM

The framework of fiscal federalism in India is constitutionally entrenched. It defines how legislative and financial powers are distributed between the Union and the States. The framers intended to create an arrangement that ensured both national unity and fiscal autonomy. This design, placed mainly under Part XII of the Constitution, outlines the sources of revenue, the mechanisms of sharing, and the limits of fiscal authority. Over time, this architecture has evolved from a dual system of taxation to a more integrated model shaped by constitutional amendments and judicial interpretation.

2.1. *Evolution from Dual to Shared Fiscal Sovereignty*

The Indian allocation of political power over revenues originates from Article 246 along with the Seventh Schedule, which details the distribution of competencies between the Union and the States.⁶ The Union List empowers Parliament to impose taxes that have national significance—such as customs, excise on non-alcoholic products, and corporate income—whereas the State List contains matters like land revenue, stamp duties, and taxes on agricultural income. The

⁵ Press Trust of India, *States Accuse Centre of Breaching Fiscal Trust over GST Compensation*, The Hindu (Aug. 28, 2020)

⁶ INDIA CONST. art. 246 & sch. VII.

model was a “*quasi-federal model*,” according to **K.C. Wheare**, where the power was centralized in terms of financial resources but the form was federal.⁷

To address vertical imbalance, the constitution makers inserted Articles 268–281, which established a mechanism for tax assignment and revenue sharing.⁸ Articles 270 and 275 formed shared taxes and grants-in-aid, while Article 280 made the Finance Commission whose task was to recommend distribution formulas for different periods.⁹ This arrangement by the constitution recognizes fiscal equality as one of the conditions for the political equality of the units of the federation.

The court explanation in *State of West Bengal v. Union of India (1963)* declared that Parliament prevails in national taxation matters and, at the same time, that fiscal unity is the basis of territorial integrity.¹⁰ The judges’ decision in *Rai Ramkrishna v. State of Bihar* (1963) allowed different state taxation, as they saw the necessity for the shared sovereignty model to have some flexibility.¹¹ The 101st Amendment (2017) and the insertion of Article 246A signify a constitutional change from separate to joint tax jurisdiction, a third sphere in which both levels can legislate on the Goods and Services Tax. India’s movement from a strict division to a dialogic model of shared sovereignty, where control is not absolute but rather a matter of constitutional negotiation, is reflected by this progress.

2.2. Finance Commission and GST Council as Structural Innovations

There are two main ways in which the Indian Constitution ensures financial balance at the institutional level. The first is through the Finance Commission as per article 280 and the second one is through the GST Council created after 2017 as per article 279A. Both these institutions are the government’s efforts to financially implement the spirit of cooperative federalism but at the same time, they work on totally different principles.

⁷ K.C. Wheare, *Federal Government* 27–29 (4th ed., Oxford Univ. Press 1963).

⁸ INDIA CONST. arts. 268–281.

⁹ INDIA CONST. arts. 270, 275 & 280.

¹⁰ *State of W. Bengal v. Union of India*, AIR 1963 SC 1241 (India)

¹¹ *Rai Ramkrishna v. State of Bihar*, AIR 1963 SC 1667 (India).

Every five years, the Finance Commission appointed by the President, determines the basis on which the taxes collected by the Union will be shared with the States and the share of each State respectively.¹² The Commission's role here is to make the resources of the Centre which are substantial and easily mobilized available to the States that are short of funds and yet have heavy expenditure obligations. For example, the recommendations of the Fifteenth Finance Commission (2021–26) charted the modalities of distributing the shares of Le. 41% of divisible taxes to the States, but controversies over performance-based grants showed that conditional transfers can restrict fiscal autonomy.¹³

On the other hand, the GST Council was supposed to be a "permanent federal negotiating forum" where the Union and States, can decide together over the indirect taxes to be levied. To take any decision, there must be a three-fourths majority and the Centre which has one-third of the votes can influence the final outcome. In the wake of the COVID-19 compensation cess dispute (2020–21), the delay in payments was protested, among others, by Kerala and Punjab, the Council's consensus principle was argued to be a façade.¹⁴

We can learn from the court case ***Union of India v. Mohit Minerals Pvt. Ltd.*** (2022), that the Council's recommendations are not obligatory and cooperation has to be consensual and not forced.¹⁵ These two institutions together show how dialogue is being progressively institutionalized in the Indian fiscal federalism system, a unique experiment in the balancing of autonomy and accountability.

2.3. The Conceptual Promise v. Institutional Realities of “Cooperation”

The promise of cooperative federalism as a conceptual framework is in changing the constitutional division to constitutional dialogue. It does not consider the union and the state as competitors for the authority but as partners in governance, sharing the fiscal space for the development of the country. This concept is supported by Granville Austin's idea of "cooperative federalism", which referred to the Indian Constitution as a "seamless web of

¹² INDIA CONST. art. 280(1).

¹³ *Fifteenth Finance Commission Report (2021–26)*, Government of India, Vol. I, at 43–44 (2021).

¹⁴ Press Trust of India, *Kerala, Punjab Protest Delay in GST Compensation*, The Hindu (Oct. 5, 2020)

¹⁵ *Union of India v. Mohit Minerals Pvt. Ltd.*, (2022) 4 SCC 321 (India)

interdependence.”¹⁶ In reality, through consultation and consensus, the Finance Commission and the GST Council were expected to implement this interdependence.

Yet, the difference between the institutional reality and the cooperative ideal is quite substantial as the reality is often dominated by one party, i.e., the Union, and not symmetrical cooperation. The Union’s control over crucial tax bases—such as corporate and customs duties—and its discretion in granting funds through centrally sponsored schemes (CSS) have strengthened what scholars call “fiscal centralization within federalism.”¹⁷ For instance, the transition from the Planning Commission to NITI Aayog in 2015 signaled a move from cooperative planning to the performance-linked conditionality, wherein fiscal transfers are becoming increasingly tied to central priorities.

At times, judicial interpretation also supports this tilt towards the centre. In *State of Rajasthan v. Union of India* (1977), the Supreme Court ruled in favor of the Centre’s control in implementing national policies, giving more weight to political cooperation than to financial autonomy.¹⁸ Still, later judgments, especially the decision in *S.R. Bommai v. Union of India* (1994), have confirmed that federalism is an integral part of the basic structure of the Constitution and the Centre’s power to undermine the authority of the States is thus limited.¹⁹

As a result, even though there is a constitutional aspiration for cooperation, its practice is influenced by political asymmetry and institutional imbalance. The clash between constitutional idealism and administrative pragmatism shapes India’s fiscal federal experience.²⁰

3. JUDICIAL INTERVENTIONS AND DOCTRINAL SHIFTS

The judiciary dominated the course of India’s fiscal federalism. The Supreme Court, through its constructions, has laid down the outlines of collaboration, independence, and constitutional

¹⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 190 (Oxford Univ. Press 1966).

¹⁷ M. Govinda Rao & Nirvikar Singh, *The Political Economy of Federalism in India* 73–76 (Oxford Univ. Press 2005).

¹⁸ *State of Rajasthan v. Union of India*, (1977) 3 SCC 592 (India).

¹⁹ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1 (India).

²⁰ M.P. Jain, *Indian Constitutional Law* 821–23 (8th ed., LexisNexis 2018).

equilibrium between the Union and the States. It is clear that, after the earliest episodes of the parliament's absolute power, and also the latest imputations of federated democracy, an eclectic notion of federalism as a political matter and as a constitutional guarantee is reflected in judicial logic. These changes in the law show that judges' role in the negotiation of India's fiscal dialogue has become that of co-intermediaries.

3.1. Early Constitutional Understanding

During the early years of the Republic, the courts broadly applied federalism principles albeit with a strong emphasis on the central predominance.²¹ For instance, in the cited case, the Supreme Court declared that the Parliament had the authority to take over state properties as the Constitution had not outlined the creation of "sovereign units" but a union of states under the national authority.²² Consequently, the recourse to fiscal centralization was seen as a necessary measure to maintain economic unity and administrative efficiency.

The Supreme Court later in *State of Rajasthan v. Union of India* (1977) characterized such Centre–State conflicts as issues of political negotiation rather than legal battles and thus, court intervention in federal disputes should be minimal.²³ These judicial decisions show an approach that is based on practical considerations — on the one hand, fiscal coordination and national planning on the other requiring the strong central hand.²⁴ At that time, federalism was not outrightly a constitutional guarantee, rather, it was seen as a mutually beneficial framework.

3.2. Post- GST Jurisprudence

One of the reasons for the shift in the line of thought from the use of the hierarchy to the deliberative federalism is recent judicial decisions.²⁵ The Supreme Court has now started to consider cooperation not as compliance but as discussion with coequal constitutional entities. The Supreme Court in *S.R. Bommai v. Union of India* (1994) has recognized that federalism

²¹ *State of W. Bengal v. Union of India*, AIR 1963 SC 1241 (India).

²² Id.

²³ *State of Rajasthan v. Union of India*, (1977) 3 SCC 592 (India)

²⁴ H.M. Seervai, *Constitutional Law of India* 2135–37 (4th ed., Universal Law Publ'g 2013).

²⁵ *Union of India v. Mohit Minerals Pvt. Ltd.*, (2022) 4 SCC 321 (India)

is a feature of the basic structure of the Constitution thereby restricting the Centre from utilizing political power to overrule State authority. The ruling brought about the legal basis put forward today fiscal decisions which had the characteristics of autonomy within unity.²⁶

Mohit Minerals (2022) has not only endorsed the above-mentioned ideology but also redefined the whole GST system showing it as an area of the ongoing negotiation rather than that of the centralized control.²⁷ Now the judiciary understands that a fiscal concert must be facilitated through the processes of conviction, openness, and confidence rather than a mere compliance. These developments represent a fresh judicial outlook where the Constitution envisages the Union and the States not as opponents but as partners in governance, thereby jointly accountable for maintaining both economic integration and democratic pluralism.

3.3. Emerging Judicial Philosophy

Recent judicial reasoning has signaled a gradual change from a hierarchical to a deliberative federalism. The Supreme Court's perspective has changed cooperation from an obedient response to a conversation with other constitutional units of equal status. In *S.R. Bommai v. Union of India* (1994), the Court declared that federalism is the basic structure of the Constitution and that the Centre is restrained from exercising political power to foil State authority. This decision has become the doctrinal basis for later financial measures that move from a centrally controlled system to a decentralized one, thus confirming the balance between the two.

Subsequently, Mohit Minerals (2022) went beyond that concept and changed the idea of the GST structure as an area of constant bargaining rather than one of control by the central authority. The court now acknowledges that fiscal consonance should be established by means of argument, disclosure, and confidence. Their approach to law is different—a new understanding of the Constitution which sees the Union and the States not as rivals but as partners cooperating for the sake of the both economic and democratic integration.²⁸

²⁶ M.P. Jain, *Indian Constitutional Law* 823–25 (8th ed., LexisNexis 2018).

²⁷ *Union of India v. Mohit Minerals Pvt. Ltd.*, (2022) 4 SCC 321 (India).

²⁸ Sujit Choudhry, *Deliberative Democracy and the Indian Constitution*, in *The Oxford Handbook of the Indian Constitution* 765–67 (Sujit Choudhry et al. eds., Oxford Univ. Press 2016).

4. POLITICAL ECONOMY AND COOPERATIVE BREAKDOWN

The constitutional design of fiscal federalism, which is the wish to combine the autonomy and the coordination, its political economy is often different. The workings of India's fiscal system on the ground provide a fascinating illustration of the extent to which political asymmetry and economic dependence reshape cooperative ideals. Over time, the three features of centralized revenue control, conditional grants, and partisan governance have been working to change the fiscal relationship from one of cooperation to that of hierarchy. Here we look at these three factors – structural imbalances, intergovernmental negotiations, and political incentives – and their combined effect in opposing a constitutional promise of genuine cooperative federalism.

4.1. Fiscal Realities and Vertical Imbalances

India's fiscal framework, while theoretically cooperative, has been vertically divided between the Union and the States from the outset.²⁹ The Centre has control over revenues that are more adaptable like corporate tax and customs duties, whereas the States are mostly reliant on consumption-based and less productive taxes.³⁰ The Fourteenth and Fifteenth Finance Commissions have tried to remedy this imbalance by raising the States' share in divisible taxes from 32% to 41%, though at the same time, increases in cesses and surcharges that are excluded from divisible pools have played havoc with these advances.³¹

This difference in power is supported by the attractively designed CSS and conditional grants through which the Union can command the spending priorities of even the State subjects. The pandemic of COVID-19 revealed the susceptibility to crisis when compensation cess payments under the GST were delayed, thereby several States forced to borrow independently.³² The fiscal dependence of this nature changes the character of cooperative federalism into a

²⁹ M. Govinda Rao & Nirvikar Singh, *The Political Economy of Federalism in India* 55–58 (Oxford Univ. Press 2005).

³⁰ R. Kavita Rao & Pinaki Chakraborty, *Understanding Fiscal Federalism in India* 14–16 (National Institute of Public Finance and Policy 2012).

³¹ *Fifteenth Finance Commission Report (2021–26)*, Government of India, Vol. I, at 35–36 (2021).

³² Press Trust of India, *States Forced to Borrow as Centre Delays GST Compensation*, *The Hindu* (Aug. 30, 2020).

hierarchical relationship, where the coordination that takes place is within the limits set by financial necessity rather than those of constitutional parity.³³

4.2. Rise of Conditional Federalism

The changes in India's fiscal system over time have clearly shown the aspect which economists like Richard Musgrave called "fiscal centralization within a federal framework."³⁴ My interpretation of the Musgrave's concept is that the functions of stabilization and redistribution are kept centralized, whereas the allocation ones are decentralized — a practice visible in India very clearly.³⁵ The balancing of revenue distribution, fair in nature, was the prime idea behind India's Constitution but due to economic crisis and political consolidation, the Centre has been able to extend its control towards it through conditional transfers and performance-based grants.

The impact of this development is the emergence of the type of conditional federalism in which the States possess the theoretical autonomy but are reliant on financial discretion led by the Union.³⁶ For example, the NITI Aayog's aspirational district programme links funding to adherence and performance indicators, thus lowering the scope of independent fiscal choice.³⁷ Likewise, during the GST compensation conflict, the borrowing alternatives were subject to the acceptance of the central repayment frameworks.³⁸ The outcome is a federation where cooperation is possible through the use of fiscal compulsion, not constitutional equality which is a process that changes partnership into dependency in a subtle way.

4.3. Political Dynamics and Constitutional Morality

The political dynamics deeply influence the practice of fiscal federalism in India.³⁹ The idea of constitutional morality, as put forward by Dr. B. R. Ambedkar, requires that the

³³ Bibek Debroy, *Fiscal Federalism and the Limits of Cooperation*, *Economic Times* (Sept. 5, 2020)

³⁴ Richard A. Musgrave, *The Theory of Public Finance: A Study in Public Economy* 5–8 (McGraw-Hill 1959).

³⁵ Id.

³⁶ R. Sudarshan, *Fiscal Decentralization and Conditional Federalism in India*, 47(4) *Indian Econ. J.* 12, 18 (1999).

³⁷ NITI Aayog, *Aspirational Districts Programme: Annual Report 2021–22*, at 10–12 (2022).

³⁸ Press Trust of India, *GST Compensation Row: Centre Offers Borrowing Options to States*, *The Hindu* (Oct. 1, 2020)

³⁹ A.P. Prasad, *Politics of Fiscal Federalism in India* 25–27 (Rawat Publ'ns 2006).

constitutional institutions not only follow the law but also the spirit of the Constitution.⁴⁰ Whereas in fiscal affairs, the political majorities are very often to see this line being indistinct. The Central governments have indifferently resorted to discretionary grants and centrally sponsored schemes to distribute benefits among the states that were politically inclined to them and, conversely, to deprive the ones that had an opposition - a phenomenon that was very conspicuous during the 13th and 15th Finance Commissions' meetings of the Revenue-Sharing Incentives discussion.⁴¹

Such politicization is at odds with the ethical essence of cooperative federalism.⁴² The judiciary, to some extent, has thrown its weight behind this assertion when it said the federalism feature is the basic structure of the Constitution—for example in the case of *S.R. Bommai v. Union of India* (1994)—but still, fiscal morality largely rests on political behavior. In fact, the genuine cooperative governance is the one which operates on the principles of constitutional morality when the power is exercised in good faith thus financial coordination being the vehicle that facilitates the flourishing of democratic pluralism rather than its destruction.⁴³

5. COMPARATIVE PERSPECTIVES AND REFORM PATHWAYS

The difficulties that India faces in financial cooperation are reflections of the same conflicts that can also be found in other federations with similar structures.⁴⁴ Looking at different federal systems around the world helps one to understand how factors such as the design of institutions, the openness of the fiscal system and the existence of negotiation provisions in

⁴⁰ Constituent Assembly Debates, Vol. VII, 38–39 (Nov. 4, 1948) (statement of Dr. B.R. Ambedkar).

⁴¹ Nirvikar Singh & M. Govinda Rao, *Political Economy of Center-State Fiscal Transfers in India*, 29(2) *Pub. Fin. Rev.* 139, 141 (2001).

⁴² Madhav Khosla, *Constitutional Morality and the Spirit of the Indian Constitution*, 2(1) *Indian J. Const. L.* 1, 5 (2008).

⁴³ Sujit Choudhry, *Deliberative Democracy and the Indian Constitution*, in *The Oxford Handbook of the Indian Constitution* 765–67 (Sujit Choudhry et al. eds., Oxford Univ. Press 2016).

⁴⁴ Ronald L. Watts, *Comparing Federal Systems* 2–4 (3d ed., McGill-Queen's Univ. Press 2008).

constitutions can turn the relationship between the central and state governments from one of political dependence into a collaboration that is organized.⁴⁵

- **Australia:** The Council on Federal Financial Relations (CFFR) serves as the platform for the negotiation of fiscal policies by the states with complete transparency.⁴⁶ The equalization grants are based on a formula, which limits the discretion of the central authority.⁴⁷
- **Germany:** The Bundesrat guarantees that the states will be involved in the national taxation laws, which is a system for joint decision-making and thus, it prevents any kind of fiscal dominance by Berlin.⁴⁸
- **Canada:** One of the ways the country manages to maintain fiscal parity is through equalization payments which are constitutionally established under Section 36(2) thus, no province will be inferior in terms of structural revenue limits.⁴⁹
- **India (Contrast):** The fiscal dialogue is still executive-led and there are no constitutionally established negotiation forums.⁵⁰ The GST Council operates based on consensus, however, there are no enforceable parity safeguards.⁵¹

Reform Pathways:

- ❖ Make Article 279A a platform for binding fiscal coordination protocols.
- ❖ Set up an Inter-State Fiscal Ombudsman for open and fair dispute resolution.⁵²
- ❖ Give the Finance Commission the authority to oversee cesses and surcharges.
- ❖ Create the tax transfers and grants data transparency dashboards as an institutional arrangement.

⁴⁵ Cheryl Saunders, *Intergovernmental Relations in Comparative Perspective*, in *Intergovernmental Relations in Federal Countries* 5–8 (Nico Steytler ed., Oxford Univ. Press 2005).

⁴⁶ Council on Federal Financial Relations, *About the CFFR* (Austl. Treasury 2023)

⁴⁷ Commonwealth Grants Commission, *Report on Horizontal Fiscal Equalisation 2022*, at 9–11 (2022).

⁴⁸ *Grundgesetz* [GG] [Basic Law], art. 105(3)

⁴⁹ *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982*, c. 11 (U.K.), § 36(2).

⁵⁰ INDIA CONST. art. 279A.

⁵¹ *Union of India v. Mohit Minerals Pvt. Ltd.*, (2022) 4 SCC 321 (India).

⁵² M.P. Singh, *Reconstructing Fiscal Federalism in India: Lessons from Comparative Experience*, 12(3) *Indian J. Const. L.* 45, 68 (2020).

- ❖ These changes can make the title of cooperative federalism not only a political slogan but also a constitutional norm deeply embedded with fiscal trust.

6. CONCLUSION

India's fiscal federalism stands at the intersection of constitutional aspiration and political reality. While the judiciary has reaffirmed federalism as a structural guarantee, persistent fiscal asymmetries continue to constrain genuine cooperation. The evolution from cooperative to conditional federalism reflects not constitutional failure but institutional inertia. Strengthening intergovernmental trust, codifying fiscal dialogue, and embedding transparency within financial transfers remain imperative. Only through such structural recalibration can cooperative federalism mature into a truly deliberative and enduring constitutional practice.