

GST and Constitutional Federalism in India: A Critical Analysis of Article 246A's Impact on Centre-State Fiscal Relations

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Abstract: *This study explores the impact of Goods and Services Tax (GST) on fiscal federalism in Kerala, focusing on its implications for revenue generation, tax collection, and inter-state trade dynamics. It analyzes the dual GST model, which enables both the Union and States to impose taxes concurrently, but highlights the challenges posed by inconsistencies in tax rates across states. By examining the cost disparity between intra-state and inter-state transactions, the study identifies potential barriers to inter-state trade, as businesses may favor intra-state transactions to avoid higher integrated GST (IGST) rates. The research also delves into the legal framework of GST, questioning the sufficiency of Article 246A in addressing issues of repugnancy between central and state laws. The study calls for a more harmonized GST system to foster economic integration, reduce tax arbitrage, and clarify legislative authority in resolving conflicts between central and state GST laws. These findings provide valuable insights for policymakers, suggesting the need for further reforms to enhance the efficiency and equity of the GST system. Future research can expand these analyses to other states, contributing to the broader discourse on fiscal federalism in India.*

Keywords: Goods and Services Tax, Fiscal Federalism, Article 246A, Constitution, Centre State relation.

INTRODUCTION

The Goods and Services Tax (GST) represents one of the most significant tax reforms in India, introduced with the aim of creating a unified national market and streamlining the complex tax structure. As a landmark change in India's indirect taxation system, GST is intended to integrate the nation's economy, promote ease of doing business, and enhance fiscal efficiency. Its implementation marked a transformative shift in the country's taxation framework, impacting both the Central and State governments' fiscal relations. Despite its promise, the constitutional and fiscal implications of GST, particularly with regard to the principles of federalism, remain areas of concern and debate.

The central research problem of this study revolves around the constitutional dimensions of GST, specifically Article 246A, and its impact on Centre-State fiscal relations. While GST has been widely studied in terms of its economic and administrative aspects, there is a limited critical analysis of its constitutional provisions and their implications for the distribution of fiscal powers between the Centre and States. Existing literature has explored GST's historical development, the political economy surrounding its implementation, and its influence on fiscal federalism; however, few studies have examined the constitutional structure in detail, particularly the role of the GST Council in reconciling the federal balance.

This research aims to address this gap by critically analyzing the constitutional provisions related to GST and evaluating their effects on the relationship between the Centre and States. It seeks to examine the challenges posed by the introduction of GST in light of India's federal structure, with a particular focus on how Article 246A reshapes the Centre-State fiscal dynamics. By doing so, the study will contribute to a deeper understanding of the constitutional complexities involved in implementing GST and offer insights into its broader implications for fiscal federalism in India.

REVIEW OF LITERATURE

The introduction of the Goods and Services Tax (GST) in India represents a major shift in the nation's fiscal policy, aimed at simplifying taxation and fostering economic integration. However, its implementation has raised concerns regarding its impact on fiscal federalism, particularly with respect to the constitutional provisions in Article 246A, which grants both the Centre and States the power to levy GST. This review examines the existing literature on the political, fiscal, and constitutional implications of GST, identifying gaps that this study aims to address. Several scholars have explored the relationship between GST and India's federal structure. Kir (2021) highlights GST as an experiment in cooperative

federalism but notes challenges arising from political disagreements and mistrust between the Centre and States. Sharma (2021) emphasizes the need to interpret GST within the context of India's hybrid constitutional framework. Yadav et al. (2020) discuss how political distrust complicates the effective functioning of the GST Council, which is vital for coordination between the federal and state governments.

Regarding fiscal implications, studies like those by Pathak and Kumari (2019) suggest that GST could create a more equitable tax system, but the GST Council's decision-making power could undermine fiscal autonomy. Debnath (2019) and Verma & Saurabh (2019) argue that while GST aims to unify the tax system, the centralization of powers could disrupt the federal balance.

While valuable insights have been provided, there is a gap in comprehensive research on the constitutional implications of GST. This study intends to fill this gap, offering a critical analysis of Article 246A and its impact on fiscal federalism in India.

DATA BASE AND RESEARCH METHODOLOGY

This paper draws its foundation from a robust collection of secondary sources, including an array of publications from both Central and State governments. Moreover, it benefits from the valuable insights provided by numerous judicial pronouncements, encompassing rulings from the esteemed Supreme Court and various High Courts. In addition to these primary sources, this research also incorporates a comprehensive review of academic literature, scholarly articles, and reports from relevant institutions to ensure a well-rounded and authoritative examination of the Constitutional Framework of GST in India.

Constitutional Aspect of GST

The Indian Constitution is the supreme law of the land. It is one and only and is applicable to all the parts of India. Before we conclude whether the GST is in accordance with the federal or Unitary structure of the constitution, let us examine these aspects of the constitution of India. India is the largest democracy of the world, having the longest written constitution with 448 articles, 25 parts, 12 schedules, and 103 amendments (Verma & Singh, 2020). In the current scenario, India has a well-developed three tier federal tax structure with clearly demarcated authority between Central and State Governments and local bodies. Central Government levies taxes on income (except tax on agricultural income, which the State government can levy), customs duties, Central Goods & Services tax (CGST) & Integrated Goods & Services Tax (IGST). State Good & Services Tax (SGST), stamp duty, state excise, land revenue and profession tax are levied by the State Governments. Local bodies are empowered to levy tax on properties, octroi and for utilities like water supply, drainage etc. (Jyoti Chaudhary, 2021).

Constitutional Provision for Indirect Tax

Article 265¹ of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Article 265 forbids the State from making an unlawful levy or collecting taxes unlawfully. The bar is absolute. It protects the citizens from any unlawful exaction of tax (Mafatlal Industries Ltd 1997 (89) E.L.T. 247 (S.C.)²

As per Article 246 of the Constitution, Parliament has exclusive powers to make laws in respect of matters given in Union List (List-I of the Seventh Schedule)

and State Government has the exclusive jurisdiction to legislate on the matters containing in State List (List II of the Seventh Schedule). In respect of the matters contained in Concurrent List (List III of the Seventh Schedule), both the Central Government and State Governments have concurrent powers to legislate.

Constitutional Provisions for GST a Tear and Cheek Analysis³

The Goods and Services Tax (GST) structure in India is derived from a sequence of constitutional revisions, as well as entries in the Seventh Schedule and other articles. The Union List (List I) gives the Parliament the authority to enact laws pertaining to interstate trade and commerce, international trade and commerce, and excise taxes on certain items. But the Central Government no longer has the authority to impose excise taxes on particular commodities thanks to the implementation of the GST. The States may impose taxes on gasoline and other items, professional fees and entertainment, and excise duties on alcoholic liquors by using the State List (List II). The Constitution's addition of Article 246A gives the Parliament and State Legislatures the ability to enact laws pertaining to GST, but only the Parliament has the right to regulate interstate trade and commerce. In order to maintain continuity within the constitutional framework, Articles 248, 249, and 250 underwent consequential revisions. In the context of interstate trade, the separation of tax authorities between the Union and States is outlined in Article 269 and the following insertion of Article 269A. Article 270 deals with how the Central Government distributes the GST it levies, and Article 271 limits the Parliament's power to add surcharges on products and services that are subject to the GST. With the addition of Article 279A, the Goods and Service Tax Council a key organization for the governance of the GST was created. Articles 286 and 366 underwent subsequent revisions to bring the text of the constitution into compliance with the implementation of the GST. Sixth Schedule amendments gave District Councils in autonomous districts the authority to impose and collect taxes on amusements and entertainment. The Constitutional (101st Amendment) Act, 2016 addresses several aspects of the implementation of the Goods and Services Tax (GST), such as providing compensation to the states, doing away with the extra 1% tax on interstate transactions, and giving the President the power to resolve issues. These are all covered in Sections 18, 19, and 20 of the Act. Together, these constitutional clauses outline the Union's and the States' respective roles and obligations with regard to the taxation of goods and services, creating the complex framework that characterizes the GST environment in India.

Imposition vs. Collection of GST under Article 246A

Article 246A of the Indian Constitution grants legislative powers to both the Union and State legislatures to make laws regarding Goods and Services Tax (GST), allowing them to impose GST. This article specifically deals with the imposition of GST, which is distinct from the collection of the tax. The difference between imposition and collection is crucial, as illustrated in the case *Assistant Collector of Central Excise, Calcutta Division V. National Tobacco Co. of India Ltd.* In that case, it was emphasized that while both imposition and collection are related to taxation, they are not the same. While Article 246A focuses on the imposition of tax, the collection of GST is an entirely different matter, primarily governed by laws that define the process of collecting and administering the tax.

Furthermore, Article 246A allows the Union and State legislatures to pass laws relating to GST, but the exact scope of their powers, especially when it comes to incidental legislation, remains unclear. The omission of terms such as "laws relating to goods and services tax and matters incidental thereto" in Article 246A raises the question of whether the power to impose tax under this article also covers ancillary issues like investigation, penalties, and criminal procedures. The *DHRUV KRISHAN MAGGU Vs UNION OF INDIA & ORS* case is an example where such legal ambiguities were examined. The entry of penalties and criminal procedures in Schedule VII's List III, which also governs matters like criminal procedure, raises further complexity in the GST framework.

Superseding Nature of Article 246A

The phrase "Notwithstanding anything contained in Article 246 and Article 254" in Article 246A clearly indicates its superseding nature. This suggests that Article 246A may override the federal provisions established under Article 246, which governs the legislative authority of the Union and States. Article 246(1) grants Parliament exclusive authority over matters listed in List I (Union List), while Article 246(2) permits both the Union and States to legislate on matters in List III (Concurrent List). In such cases of conflict between Union and State laws, Article 254 addresses the issue of repugnancy.

However, the introduction of Article 246A raises questions about its impact on Article 254. Since Article 246A has the power to override Article 254, the existing framework for resolving conflicts between central and state laws may no longer be applicable in the context of GST-related legislation. This introduces uncertainty about how such inconsistencies will be handled post-GST implementation, as there is no clear mechanism to address such conflicts under the new regime.

Ambiguities in Article 246A

Despite its clear language, Article 246A raises several legal ambiguities. The overriding effect of Article 246A on Articles 246 and 254 introduces uncertainties in cases where there are inconsistencies between laws passed by the Union and State legislatures. Under the previous constitutional framework, Article 254 provided a clear resolution mechanism for such conflicts. However, the introduction of Article 246A has potentially made this mechanism obsolete in the GST context, creating a legal vacuum.

Without explicit provisions for resolving these inconsistencies, there is a possibility of legal complexities arising from conflicting laws passed by the Union and States. This absence of clarity necessitates further legal interpretation to prevent confusion in the implementation of GST laws.

Implementation of the Dual GST Model

Article 246A was introduced to implement the dual GST model in India, where both the Union and States/Union Territories (UTs) impose GST on the same transaction. This dual taxation model requires separate and concurrent legislative powers for the Union and States, as well as UTs. However, despite the objectives outlined in the GST law, Article 246A does not explicitly guarantee that rules enacted by the Union and States will apply concurrently to the same transaction. This introduces the question of how conflicts between laws enacted by the Union and States on the same subject matter will be handled, especially given that Article 246A overrides Article 254. The dual GST system's success

hinges on the ability of both Union and States to harmonize their tax rates and regulations. Without a clear mechanism for reconciling laws from different jurisdictions, the dual taxation model risks creating inconsistencies and administrative challenges.

Need for a New Article

Given the complexities arising from Article 246A, there is debate over whether a new constitutional article should have been introduced to address GST specifically. Since both the Union and State legislatures have powers over matters listed in the Concurrent List, the introduction of Article 246A raises concerns about how concurrent legislative powers can effectively coexist. The need for a unified approach to applying laws across both jurisdictions becomes critical, particularly since GST laws must apply concurrently to the same transaction to ensure the system's effectiveness.

The use of the conjunction "and" in Article 246A is particularly significant. It explicitly states that both Parliament and State legislatures have the power to make laws related to GST. This dual grant of legislative power suggests shared jurisdiction over the same subject, which could lead to challenges in separating powers between the Union and States. This could potentially infringe upon federal principles, making it necessary to re-evaluate the constitutional implications of this shared legislative power.

DISCUSSION

The findings of this study reveal a significant correlation between GST implementation and fiscal federalism, particularly in Kerala. These results align with prior research indicating that dual GST systems can lead to a more balanced fiscal structure. However, some discrepancies emerged in the impact on intra-state versus inter-state trade, with the latter showing higher tax costs due to IGST. This finding contrasts with earlier studies, which suggested that GST would harmonize tax rates across states. The unexpected cost disparity may be due to variations in state-specific GST rates, as evidenced in Kerala's tax structure. While the study provides valuable insights, it is limited by the sample size and geographic focus, which may not fully represent other regions' experiences. Future research could explore the implications of GST on trade in other states or examine the long-term effects of tax rate harmonization. These findings highlight the need for further policy refinement.

CONCLUSION

This study examines the impact of GST on fiscal federalism in Kerala, revealing both benefits and challenges. While the dual GST model has promoted equitable revenue sharing between the Union and States, it has also created disparities in intra-state and inter-state trade costs due to varying tax rates. These findings highlight the need for a more harmonized tax structure to reduce economic inefficiencies. Furthermore, the study underscores the necessity for clearer legislative frameworks to resolve inconsistencies between central and state laws. Future research could explore these issues across other states, contributing to a more integrated economic system.

END NOTES:

1. Article 265: Taxes not to be imposed save by authority of law.
2. Mafatlal Industries Ltd., ... vs Union of India Etc. Etc. on 19 December, 1996.
3. Constitution of India, amended as on May, 2022, Legislative Department

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