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INDIAN FEDERALISM

CENTRE & STATE RELATIONS

CENTER STATE RELATIONS

- ❖ The Centre-State relations can be studied under three heads:
 1. Legislative relations
 2. Administrative relations
 3. Financial relations

LEGISLATIVE RELATIONS:

- ❖ Articles 245 to 255 in part XI of the Constitution deal with the legislative relations between the Centre and the states.

There are four aspects in the Centre-States Legislative relations.

Viz.,

1. Territorial extent of Central and state legislation (Article 245)
2. Distribution of legislative subjects (Article 246)
3. Parliamentary legislation in the state field (Article 249)
4. Centre's control over state legislation

Distribution of legislative subjects (Article 246)

- ❖ The Constitution divides the subject into the-
 1. Union List (100 subjects)
 2. State List (61 subjects)
 3. Concurrent List (52 subjects)

- ❖ Parliament has exclusive power on Union list (contains subjects like defence, foreign affairs, Currency, communication, citizenship, inter-state trade & commerce, banking, atomic energy, posts and telegraphs, etc).

- ❖ The State List contains subjects on which ordinarily the States alone can make laws, The include public order, police, administration of justice, prisons, local government agriculture, public health and sanitation, irrigation, etc. but under certain conditions the Constitution authorizes the Central

Government to extend its jurisdiction over matters formally included in the State list. In fact, when a proclamation of emergency is in operation, Parliament can legislate on matters enumerated in all the three lists.

- ❖ Both Parliament & State Legislature can legislate on subjects contained in the concurrent list. (contains subjects like criminal and civil law, forest, education, marriage & divorce, drugs, trade unions, labour welfare, newspapers, books & printing press, population control and family planning, etc).
- ❖ Residual powers (i.e. subjects not included in any of the lists) rest with union government.
- ❖ Article 200 directs the Governor to reserve a Bill passed by the State Legislature for the consideration of the President, if in his opinion, if 'passed into law, would derogate the powers of the High Court.

ADMINISTRATIVE RELATIONS:

Articles 256-263 in Part XI of the Constitution deal with the administrative relations between the Centre and the states.

- ❖ The Indian Constitution has a strong bias towards the Centre to make it strong. The Central administration prevails over the State administration.
- ❖ The executive powers of the State should be so exercised as to ensure compliance with the laws of the Union Parliament and not impede or prejudice the executive power of the Union.
- ❖ If the State does not comply with the directives of the Centre, the latter may invoke Art. 356 and take-over the administration of the State to itself.

FINANCIAL RELATIONS:

Articles 268-293 in Part XI of the Constitution deal with Centre-State Financial relations.

DISTRIBUTION OF TAX REVENUES:

- ❖ The 80th Amendment of 2000 and the 88th Amendment of 2003 have

introduced major changes in the scheme of the distribution of tax revenues between the centre and the states.

- ❖ The 88th Amendment has added a new Article 268-A dealing with service tax. It also added a new subject in the Union List – entry 92-C (taxes on services). Service tax is levied by the centre but collected and appropriated by both the centre and the states.

A. Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268): This category includes the following taxes and duties:

- i) Stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.
- ii) Excise duties on medicinal and toilet preparations containing alcohol and narcotics.

The proceeds of these duties levied within any state do not form a part of the Consolidated Fund of India, but are assigned to that state.

B. Service Tax Levied by the Centre but Collected and Appropriated by the Centre and the States (Article 268-A):

- i) Taxes on services are levied by the Centre. But, their proceeds are collected as well as appropriated by both the Centre and the states. The principles of their collection and appropriation are formulated by the Parliament.

C. Taxes levied and Collected by the Centre but Assigned to the States (Article 269): The following taxes fall under this category:

- i) Taxes on the sale or purchase of goods (other than newspapers) in the course of inter-state trade or commerce.
- ii) Taxes on the consignment of goods in the course of inter-state trade or commerce.
- iii)

The net proceeds of these taxes do not form a part of the Consolidated Fund of India. They are assigned to the concerned states in accordance with the principles laid down by the Parliament.

CONCURRENT LIST (LIST – III)

- Criminal Law and procedure, Civil procedure
- Marriage and divorce
- Population control and family planning
- Electricity
- Newspapers, books and printing presses, etc...

The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is,

- Education
- Forests
- Weights and measures
- Protection of wild animals and birds
- Administration of all courts except the Supreme Court and the high courts.

D. Taxes Levied and collected by the Centre but distributed between the Centre and the States (Article 270): This category includes all taxes and duties referred to in the Union List except the following:

- i) Duties and taxes referred to in Article 268, 268-A and 269 (mentioned above):
- ii) Surcharge on taxes and duties referred to in Article 271 (mentioned below); and
- iii) Any cess levied for specific purposes.

The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.

A. Surcharge on Certain Taxes and Duties for Purposes of the Centre (Article 271): The parliament can at any time levy the surcharges on taxes and duties referred to in Articles 269 and 270 (mentioned above). The proceeds of such surcharges go to the Centre exclusively. In other words, the states have no share in these surcharges.

B. Taxes Levied and Collected and Retained by the States: These are the taxes belonging to the states exclusively. They are enumerated in the state list and are 20 in number.

Administrative

Reforms

- ❖ All-India services (IAS, IPS and IFS) should be abolished.

Commission:

The Central government appointed a six-member administrative Reforms commission (ARC) in 1966 under the chairmanship of Morarji Desai

The important recommendations are:

- ❖ Establishment of an Inter-State Council under Article 263 of the Constitution.
- ❖ Appointment of persons having long experience in public life and administration and non-partisan attitude as governors.

Rajmanner Committee:

In 1969, the Tamil Nadu Government (DMK) appointed a three-member committee under the chairmanship of Dr P V Rajamanner to examine the entire question of Centre-state relations.

The Important recommendations of

- ❖ An Inter-State Council should be set up immediately
- ❖ Articles 356, 357 and 365 (dealing with President's Rule) should be totally omitted

Sarkaria Commission:

- ❖ In 1983, the Central government appointed a three-member Commission on Centre-state relations under the chairmanship of **R S Sarkaria**, Members – Sivaraman, S.R. Sen a retired judge of the Supreme Court.
- ❖ The final report was submitted in October 1987, the Important recommendations are mentioned below:
 - a) A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
 - b) The institution of All-India Services should be further strengthened and some more such services should be created.

Punchhi Commission

A new commission on Centre-State Relations was set-up by the Government of India in April 2007 under the Chairmanship of Madan Mohan Punchhi, former Chief Justice of India.

GST

Introduction

Goods and Services Tax is a comprehensive indirect tax which is to be levied on the manufacture, sale and consumption of goods and services in India. This is so far the biggest tax reform in the country. GST eliminates the cascading effect of taxes because it is taxed at every point of business and the input credit is available in the value chain.

Historical Background

France was the first country to introduce GST system in 1954. More than 140 countries have implemented the GST. Genesis of GST occurred during the previous NDA Government under Atal Bihari Vajpayee Government when it set up the *Asim Dasgupta committee* to design a model for GST. The UPA Government took the matter further and announced in 2006 that this tax would be introduced from April 1, 2010. However, so far it was not introduced. All the GST bills including Constitution (101st Amendment) Act have been passed now and GST is set to come into force from July 1, 2017.

Tax Replaced by GST

GST would replace almost all vital indirect taxes and cesses on Goods & services in the country. Among the taxes levied by centre, GST will subsume the following:

- ❖ Central Excise duty & Service Tax
- ❖ Duties of Excise (Medicinal and Toilet Preparations)
- ❖ Additional Duties of Excise (Goods of Special Importance)
- ❖ Additional Duties of Excise (Textiles and Textile Products)
- ❖ Additional Duties of Customs (commonly known as CVD)
- ❖ Special Additional Duty of Customs (SAD)
- ❖ Central Surcharges and Cesses so far as they relate to supply of goods and services

Among the state taxes that would be replaced by GST include:

- ❖ State VAT
- ❖ Central Sales Tax c. Luxury Tax
- ❖ Entry Tax (all forms)
- ❖ Entertainment and Amusement Tax (except when levied by the local bodies)
- ❖ Taxes on advertisements
- ❖ Purchase Tax

- ❖ Taxes on lotteries, betting and gambling. State Surcharges and Cesses so far as they relate to supply of goods and services.

Commodities Not Under GST

- ❖ Potable alcohol
- ❖ Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel
- ❖ Electricity

Constitution 101st Amendment Act, 2016

- ❖ This is the enabler act for GST and it amends several important articles and schedules of the constitution of India so that necessary constitutional. You can read in detail about this here. Here are important notes for your examinations.
- ❖ The *new articles* added by this amendment to Indian Constitution are Article 246-A (Special provision with respect to goods and services tax); Article 269-A ((Levy and collection of goods and services tax in course of inter-State trade or

commerce) and Article 279A (GST Council).

- ❖ Two schedules have been changed viz. 6th schedule and 7th
- ❖ As per article 246-A:
- ❖ Both Union and States in India now have “concurrent powers” to make law with respect to *goods & services*
- ❖ The intra-state trade now comes under the jurisdiction of both centre and state; while inter-state trade and commerce is “exclusively” under central government jurisdiction.

As per Article 269-A:

- ❖ In case of the inter-state trade, the tax will be levied and collected by the Government of India and shared between the Union and States as per recommendation of the GST Council.
- ❖ The article also makes it clear that the proceeds such collected *will not be credited to the consolidated fund of India or state* but respective share shall be assigned to that state or centre. The reason for the same is that under GST, where centre collects the tax, it assigns state's

share to state, while where state collects tax, it assigns centre's share to centre. If that proceed is deposited in Consolidated Fund of India or state, then, every time there will be a need to pass an appropriation tax. *Thus, under GST, the apportionment of the tax revenue will take place outside the Consolidated Funds.*

Article 279-A:

- ❖ There will be a GST council constituted by President, headed by finance minister as its chairman and one nominated member from each state who is in charge of finance or taxation. GST Council has been discussed in detail here.
- ❖ All decisions taken at the GST council will be taken based on voting. Process of voting is clearly articulated in detail in the constitutional amendment bill.

Other Changes

- ❖ The residuary power of legislation of Parliament under article 248 is now subject to article 246A.
- ❖ Article 249 has been changed so that if 2/3rd majority resolution is

passed by Rajya Sabha, the Parliament will have powers to make necessary laws with respect to GST in national interest.

- ❖ Article 250 has been amended so that parliament will have powers to make laws related to GST during emergency period.
- ❖ Article 268 has been amended so that excise duty on medicinal and toilet preparation will be omitted from the state list and will be subsumed in GST.
- ❖ Article 268A has been repealed so now service tax is subsumed in GST.
- ❖ Article 269 would empower the parliament to make GST related laws for inter-state trade / commerce.

Important Facts and Notes about GST

- ❖ GST is a Destination Based Tax
- ❖ In GST, CGST and SGST will be simultaneously levied
- ❖ Both States and Centre have a say in GST rates
- ❖ GSTN is the Special Purpose Vehicle for GST administration

- ❖ GST provides for a Compliance rating mechanism for tax payers
- ❖ GST Provides for an Anti-Profiteering measure
- ❖ For GST to be levied – there must be business and quid-pro-quid
- ❖ GST differentiates between composite supply and mixed supply

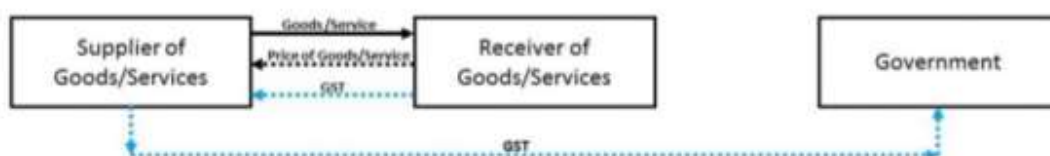
Reverse Charge Mechanism

- ❖ In Normal Charge Mechanism, generally service tax is payable by the provider of Service.
- ❖ For eg:- When a service is provided by an Accountant to his client then in this case the service provider i.e the Accountant is liable to pay Service tax
- ❖ The accountant collects the tax from the client and compensates. But nevertheless only the accountant is liable to pay Service

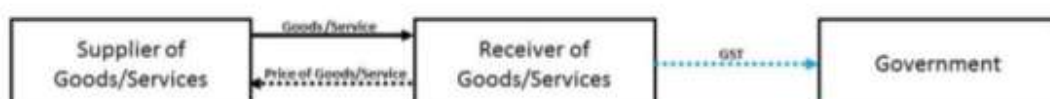
tax and comply with other general provisions of return filing etc.

- ❖ Similarly the GST has to be typically paid by the supplier of goods and services.
- ❖ But in some cases, the liability to pay the tax falls on the buyer.
- ❖ This reverse charge is applicable only under certain circumstances. Some are-
- ❖ The most common instance is when a business buys goods or services from a supplier who is not registered to pay GST.
- ❖ e.g Let's assume that business A that buys goods worth Rs.100 from business B that is not registered to pay GST.
- ❖ If the GST on the goods supplied is Rs.5, then business A, instead of business B, will have to pay Rs.5 to the Government.

NORMAL GST PAYMENT PROCESS



GST PAYMENT IN CASE OF REVERSE CHARGE



- ❖ Business A can, however, claim input tax credit of the GST payment of Rs.5, when it sells the goods to its client.
- ❖ An importer is also liable to pay the GST under the reverse charge mechanism.
- ❖ Also government departments making payments to vendors above a specified limit (Rs.2.5 lakh under one contract) are required to deduct tax (TDS) and e-commerce operators are required to collect tax (TCS) on the net value goods or services supplied through them.

to promote interstate cooperation and coordination.

Inter-State Water Disputes:

Article 262 of the Constitution provides for the adjudication of inter-state water disputes.

Inter-State Councils:

Article 263 contemplates the establishment of an Inter-State Council to effect coordination between the states and between Centre and states.

Establishment of Inter-State Council:

INTER – STATE RELATIONS

The Constitution makes the following provisions with regard to interstate community:

- ❖ Adjudication of inter-state water disputes.
- ❖ Coordination through inter-state councils.
- ❖ Mutual recognition of public acts, records and judicial proceedings
- ❖ Freedom of inter-state trade, commerce and intercourse
- ❖ In addition, the zonal councils have been established by the Parliament

❖ The Janata Dal Government headed by V.P. Singh established the Inter-State council in 1990. It consists of

- a) Prime Minister as the chairman
- b) Chief Ministers of all the states
- c) Chief Ministers of union territories having legislative assemblies
- d) Administrators of union territories not having legislative assemblies.
- e) Six Central cabinet ministers, including the home minister to be nominated by the Prime Minister.

Sl. No	Name	Members	Headquarters
1	Northern Zonal Council	Punjab, Rajasthan, Haryana, J&K, Uttarakhand, Himachal Pradesh, Chandigarh & National Capital Territory of Delhi	New Delhi
2	Central Zonal Council	Uttar Pradesh, Uttarakhand, Chhattisgarh and MP.	Allahabad
3	Eastern Zonal Council	Bihar, Jharkhand, West Bengal, Orissa	Kolkata
4	Western Zonal Council	Goa, Gujarat and UTs of Dadar and Nagar Haveli and Daman Diu	Mumbai
5	Southern Zonal Council	Andhra Pradesh, Tamil Nadu, Karnataka, Kerala and UT of Pondicherry	Chennai

❖ The Council is a recommendatory body on issues relating to inter-state, Centre-state and Centre-union territories relations. The council may meet at least thrice in a year

Zonal Councils:

❖ The zonal councils are the statutory (and not the constitutional) bodies. They are established by an Act of the Parliament, that is, States Reorganisation Act of 1956. The act divided the country into five zones (Northern, Central Eastern, Western and Southern) and provided a zonal council for each zone.

Inter – State Trade and Commerce:

Articles 301 to 307 in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India.

- ❖ The home minister of Central government is the common chairman of the five zonal councils. Each chief minister acts as a vice-chairman of the council by rotation, holding office for a period of one year at a time.
- ❖ The zonal councils aim at promoting cooperation and coordination between states, union territories and the Centre.

North Eastern Council:

- ❖ In addition to the above Zonal Councils, a North-Eastern Council was created by a separate Act of Parliament the North-Eastern Council Act of 1971. Its members include Assam, Manipur, Mizoram, Arunachal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim.

SPECIAL STATUS OF JAMMU & KASHMIR

- ❖ The special status guaranteed in Article 370.
- ❖ This status has been provided on the basis of an agreement concluded at the time of Jammu

and Kashmir accession to the Indian Union.

- ❖ The following are some of the special features of the special relationship between the Union of India and Jammu and Kashmir :
 1. J&K has its own constitution, apart from the Indian Constitution. Its constitution was framed by a Constituent Assembly of its own and came into being on the 26th January, 1957.
 2. The Parliament cannot make law with regard to J & K on subjects in the State List.
 3. The residuary powers lie with the legislatures of J & K and not with the Parliament.
 4. It follows dual citizenship. Only the citizens of J & K can take part in the elections to the State Assembly and acquire, own and dispose immovable property in J & K.
 5. Only National Emergency proclaimed on grounds of war and external aggression shall have automatic extension to J & K. National Emergency proclaimed on the basis of armed rebellion shall

not be automatically extended to J & K.

6. Apart from the President's Rule, the Governor's Rule can also be imposed for a maximum period of six months, in case of constitutional breakdown in the State.
7. The Parliament cannot change the name, boundary or territory of J & K, without the concurrence of State Legislature.
8. The State Government shall be consulted by the Centre before appointing a person as the Governor of J & K.
9. No preventive detention law made by the Parliament can have automatic extension to J & K.
10. The Union has no power to proclaim a Financial Emergency to J & K.
11. J & K autonomy Resolution – June 26, 2000 but rejected on July 14, 2000 by Central Government.

