Accountability for Goods and Services Tax Revenues

SYNOPSIS

Integrated Goods and Services Tax (IGST) is the pivot of the July 2017 Reform which seeks to replace select central and state indirect taxes with ***one*** integral structure of "goods and service taxes" (GSTs) including state GSTs (SGSTs), and central GSTs designated CGST, IGST UTGST and GST (Compensation to States) Cess. IGST is levied on the money "value" of every taxable inter-state "supply" so as to facilitate a ***unified*** digital governance of input GST credits which every registered supplier may avail in her/its returns in computing the amounts of various GSTs payable out of such amounts due on subsequent supplies. Central IGST statute provides for the "apportionment" of the IGST revenues among the Union and every State/UT. This paper examines if the statutes ensure the accountability of the GST authorities for collection of the amounts of various GSTs due and payable consistent with Adam Smith's norms for contriving tax regimes.

An official concept paper in *gstcouncil.gov.in* of the Government of India seeks to "educate" the readers about the concept of "*goods and services tax*", which has been formally defined in clause (12A) of Article 366 of the Constitution of India; and it prominently emphasizes the importance of the "freedom of commerce" as a means for securing "prosperity" through the *efficiency* of commercial enterprise referred to by Adam Smith in "The Wealth of Nations" in the following words:

> "The uniform system of taxation, which, with a few exceptions of no great consequence, takes place in all the different parts of the United Kingdom of Great Britain, leaves the interior commerce of the country, the inland and coasting trade, almost entirely free. The inland trade is almost perfectly free, and the greater part of goods may be carried from one end of the kingdom to the other, without requiring any permit or let-pass, without being subject to question, visit, or examination from the revenue officers. ……This freedom of interior commerce, the effect of uniformity of the system of taxation, is perhaps one of the principal causes of the prosperity of Great Britain; every great country being necessarily the best and most extensive market for the greater part of the productions of its own industry. If the same freedom, in consequence of the same uniformity, could be extended to Ireland and the plantations, both the grandeur of the state and the prosperity of every part of the empire, would probably be still greater than at present"

There can be no doubt that lack of freedom of movement from one location to another within a country and the consequent compliance burdens involved are impediments for the efficient value addition to the wealth of the nation. Such wealth is a resource of the community of Indians which will enable 'the State' to apply the principles as stipulated in Article 39, of sub-serving *the common good* and avoiding *common detriments* of the nature referred to therein. It is however important to note that when Adam Smith expressed the above idea, no tax was being levied in the United Kingdom of Great Britain on the *incomes* earned from its territory, supply of *services* did not count

in value addition to the wealth of the nation and there was no legal regime either for the levy of a tax similar to integrated goods and services tax or for the creation of artificial legal persons in the form of companies as entities to support risk-taking by business entrepreneurs. More importantly Adam Smith himself had also suggested the following norm of *fairness* for contriving tax regimes with *minimum price-distortions* in "The Wealth of Nation":

> "Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings to the public treasury of the state"

Goods and services taxes being "indirect" taxes, *which may be shifted by the supplier and included in the money price/consideration paid/payable* by her, have an *economic* incidence on the "pocket" of *every* domestic consumer. Such consumer is most likely to be an individual member of the collective designated "*the People of India*". Rulers believe that indirect taxes are "pleasing to the Gods, harmful to no one and not provocative of a rebellion" as long as every consumer (who may be a potential voter) is required to pay merely a "price" though the same may be implicitly, though clandestinely, tax-inclusive. Whether or not governance protocols ensure that *every* supply of goods/services is vouched by documentary evidence of true facts in a manner required by law, tax rebellion may be avoided as long as every domestic consumer is unaware of the incidence of the various GSTs on the "price" payable by her from her pocket on the value she seeks. Price (inclusive of GST incidence) is what she pays; value is what she gets.

In what follows, this paper proceeds to examine if the central and state statutes for the levy and collection of goods and services taxes which commenced on the 1st July 2017 secure the accountability, *consistent with the foregoing Adam Smith's norms of fairness and efficiency*, of the central and state GST authorities in accurately assessing and collecting the amounts of money due at the "destinations" of *final* consumption and payable by *every* supplier-and not "directly" by any consumer- as the applicable GST/GSTs. In section 2, some caveats circumscribing the subsequent analysis are stipulated in order to limit the inquiry. In section 3, the essential requirements of accountability of the central and state GST authorities to the Constitution (to which they owe allegiance) are discussed. In section 4, the relevant central and state enactments which regulate the procedure for the administration of, and compliance with, the GST law are examined in the light of the requirements of accountability consistent with the Adam Smith's norms of efficiency and fairness. Section 5 concludes.

2.LIMITING THE INQUIRY: SOME CAVEATS

The analysis in this paper will focus attention on the *procedural provisions of the central and state GST statutes as enacted and in force* and on the instruments of delegated legislation enacted by invoking those statutes and on the issues which arise from such provisions to the extent they relate to the accountability of the central and state GST authorities in general to the Constitution of India and in particular to the Adam Smith's norms of efficiency and fairness, to the extent those norms relate to the Constitution. There are many possible and serious arguments as to the constitutional legitimacy of some specific provisions enacted in the central and state GST statutes which will however *not* be considered in the subsequent sections in order to limit the inquiry. Those arguments are referred to in the subsequent paragraphs in this section.

Firstly, it is important to note that the phrase "goods and services tax" is defined in clause (12A) of Article 366 as under: -

> ""goods and services tax" means any tax on *supply* of *goods*, or *services* or both except taxes on the *supply* of the alcoholic liquor for human consumption" (italics added for emphasis)

The words "goods" and "services" used in the above definition have also been formally defined elsewhere in Article 366. On the other hand, in exercising its constituent power under Article 368 to amend the Constitution on behalf of the People of India, the Parliament acted by not inserting any formal definition of the word "supply" which has also been used in defining the phrase "goods and services tax" in clause (12A) of Article 366.

Prior to the commencement of the Constitution in 1950, legislative competences of the central government and the provincial governments to levy taxes on incomes were distinguished by excluding agricultural income from the legislative competence of the central government (Entry 54 of List I in the Seventh Schedule to the Government of India Act, 1935) and reserving the legislative competence to levy taxes on agricultural income to the provincial governments (Entry 41 of List II in the Seventh Schedule to the Government of India Act,1935). In defining "agricultural income" in Article 366, Parliament was empowered to redefine that term but the President was empowered in Article 274 to secure the revenue "interests" of the States (which succeeded the Provinces) with the Parliament being constrained by that Article to amend the definition of "agricultural income" only if the President recommended the legislation. In contrast,

Article 366 does not define the term "supply" and does not empower Parliament to define the term and to redefine the same from time to time. Thus, there is no possibility of jeopardy to the revenue interests of the States which may need safeguard under Article 274.

Supply of goods and/or services generally relate to an underlying *contract* between the supplier and recipient of that supply. In case of supply of goods (or "deemed" supply of goods) there may or may not be *movement of goods from one place of business to another*; and transfer of *property rights* in the goods from the supplier to the recipient may or may not be intended. In case of supply of services, the recipient may require the *delivery of the services of the supplier to multiple locations*. As for the meaning of the expression "supply" used in defining the most crucial expression "goods and services tax", clause (1) of Article 367 provides as under:

> "Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India"

Section 20 of the General Clauses Act, 1897 (which applies to the Acts of the Dominion Legislature, being Central Acts) provides as under:

> "Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have *the same respective meanings* as in the Act or Regulation conferring the power" (Italics added for emphasis)

Since the Acts of Parliament which invoke the relevant provisions of the Constitution commence only after being notified, it may be logically argued that the provisions defining the scope of the expression "supply" in the central GST statutes and the state GST statutes cannot have a meaning *different* from the meaning of that expression intended by Parliament in enacting clause (12A) of Article 366. The intention of the People of India on whose behalf Parliament inserted the definition of goods and services tax in clause (12A) of Article 366 was to leave the term "supply" undefined (unlike the terms "goods" and "services" which have been formally defined); and not to empower Parliament to define/redefine the expression "supply" and thereby to avoid the need for any safeguard for the "interests" of the States similar to that relating to the definition of the term "agricultural income" provided in Article 274.It may therefore be argued that the inclusion of any specific event within, or the exclusion of any event from, the scope of the term "supply" would

have to be consistent with *the meaning of the expression "supply" as intended by the People of India* who are the assumed authors of the Constitution, notwithstanding any provision to the contrary as to the scope of the expression "supply" enacted by Parliament elaborately in section 7 of the CGST Act,2017 read with the three Schedules to that Act. This argument will however not be considered in the subsequent sections of this paper.

Secondly, the Constitution(122nd Amendment) Bill, 2014 which was moved with the recommendation of the President as stipulated in Article 274 led to the eventual amendment of the Constitution in 2016; and that the Constitution does not provide either in Article 274 or elsewhere that the recommendation of the President to move the Constitution (122nd Amendment) Bill, 2014 seeking to redefine the legislative competences of the Union and the States to levy goods and services taxes in lieu of select pre-GST central and state indirect taxes may be subject to monetary "compensation" being paid by the Union (which presumably would somehow not be "loss-making") to States if any, which may be taken as loss-making as a consequence of the terms (e.g., inclusion/exclusion of pre-GST levies, principles of apportionment of IGST etc.) of transition to the new regimes. Sub-clause (c) of clause (4) of Article 279A which entrusts to the GST Council the duty of recommending principles of apportionment of goods and services tax levied on supplies in the course of inter-State trade or commerce under article 269A, also does not envisage any "loss" of revenue for the Union or any State to be made good. The "interest" of the States referred to in clause (2) of Article 274 is not included in the *public* interests to be served by 'the State' in lawmaking by applying the Directive Principles of State Policy stipulated as *fundamental in the governance of the country* in Article 37. Therefore, no determination of the President (which public authority is implicitly embedded in 'the State' as defined in Articles 12 and 36) to invoke Article 274 to recommend the moving of any Bill to safeguard the "interests" of the States *if it seeks to apply the Directive Principles of State Policy to serve the public interests* in lawmaking in compliance with Article 37 can be taken to be wrong. As such, it may be argued that there cannot be any justification for payment of any "compensation" since a legal requirement for the Government of India to pay compensation to any State Government would imply wrong-doing by the President.

While according to Parts III and IVA of the Constitution individuals have fundamental rights and fundamental duties, 'the State' has only the fundamental "duty" stipulated in Article 37. It does not include any duty of the Government of India to guarantee specific sums of tax revenues

to any State Government beyond complying with Article 275. 'The State' has no fundamental right to pre-determined amounts of moneys accruing to specific agencies embedded in 'the State' as taxes at all times or for any specific limited duration such as five years. This is because Article 265 unequivocally provides that no tax can be levied and collected without the authority of law; and Article 245 stipulates that law would have to be made subject to the provisions of the Constitution. It logically follows that every Government embedded in 'the State' has a legal, *and not a constitutional or fundamenta*l, right to tax revenues which would accrue only in accordance with specific provisions as and when enacted as tax law; and that if liable, every non-State entity including every citizen has only a legal, *and not a fundamental*, duty to pay the tax owed by her/it.

Even assuming that the Government of India somehow has an obligation to compensate, in a transition period, every State whose aggregate GST revenue in any period is found to be less than the aggregate amount of the pre-GST state tax revenues which may be normally expected to accrue, it may be argued logically that the aggregate of tax revenues under consideration would have to include revenues accruing as state taxes on sale of petroleum products and revenues accruing to the State by assignment of central GST revenues. More significantly, it may be argued that revenues from Cess levied by Parliament as provided in clause (1) of Article 270 would have to be earmarked by law to meet an *expenditure* charged to the Consolidated Fund of India, in compliance with clause (3) of Article 266, "for a purpose and in the manner provided in the Constitution"; and that *there is no provision in the Constitution (even after the 2016 Amendment) which defines what would constitute a "loss" of state tax revenues in transition to GST Regimes and which stipulates that such loss would have to be made good by the Government of India paying monetary compensation commensurate with such loss to the Government of every "loss-making" State*. Though section 18 of the Constitution (101st Amendment) Act,2016 refers to compensation, the enactment not being in the exercise of the *constituent* power of Parliament *it does not amend the Constitution by the insertion of a requirement for such commitment*. These arguments will once again not be considered in the analysis in the subsequent sections of this paper.

Thirdly, clause (6) of Article 279A stipulates the norm of "harmony" as under as constitutional guidance for deliberations in the GST Council referred to in, and constituted by invoking clause (1) of that Article, for recommending reformulation (i.e., "reform") of State Policy relating to its mandate:

> "While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a *harmonised structure of goods and services tax* and for the development of a *harmonised national market for goods and services*." (Italics added for emphasis)

The word "harmony" may be interpreted either expansively by analogy from the process of music production by a multi-artist orchestra or narrowly as consistence with the treaty law providing for a Harmonized System of Nomenclature of goods traded internationally. The stipulation in Part XII of the Constitution *outside Part IV*, of a *constitutional norm* such as "harmony" or a *constitutional goal* such as "apportionment of GST revenues contingent on the Union not making "losses" and by compensating "loss-making" States" significantly departs from the principle of *independence of the Executive from the Judiciary*. That principle is discernible from Article 37 in Part IV of the Constitution which *excludes the jurisdiction of the Courts in enforcing the norms and goals stipulated by the People of India as the Directive Principles of State Policy* in the following words:

> "The provisions contained in this Part (*Part IV*) *shall not be enforceable by any court*, but the principles (*Directive Principles of State Policy)* therein laid down are nevertheless fundamental in the *governance* of the country and it shall be the duty of the State to apply these principles in *making laws*." (Italics and matter in brackets added for emphasis and ready reference)

It is inevitable to foresee diverse interpretations of the expressions "harmonized structure of goods and services tax" and "harmonized national market for goods and services" being urged for acceptance in the cases brought before the Courts in the light of myriad facts and circumstances. In specific matters before the Courts, the *singular* noun "tax" (which occurs in the phrase "harmonized structure of goods and service *tax*") representing *multiple* state and central goods and services taxes would also need clearer unemotional logical elucidation than is possible from a merely emotive slogan such as "One Nation; One Tax" in the public discourse. Some interpreters would also seek to urge the relevance of the *Harmonized* System of Nomenclature of Goods recognized under treaty law *to the exclusion of any other interpretation*. It would be likely that after many years of controversy and consequent instability in administration and compliance, the Supreme Court in its authoritative interpretation, would eventually-

(a) defend as a basic structure of the Constitution, the independence of the Judiciary in providing access to litigants to seek constitutional remedies either to secure fundamental rights or for a judicial review of administrative action allegedly resulting in mis-governance; and

(b) interpret the norm of harmony stipulated in Article 279A as *balance*-

(i) in case of making tax law, between the application of the Principles stipulated in Part IV and compliance with the constitutional provisions *outside* Part IV; and

(ii) in case of making law regulating contracts, between the *autonomy* inhering in every contracting party in its 0-1 decision to participate in a given transaction and *the public interests of the fraternal community of Indians* to which any such contract may relate.

The foregoing arguments would also not be referred to in the discussion on accountability in the subsequent sections.

Fourthly, many arguments in favour of further reform such as-

(a)amending the Constitution further to provide, *similar to civil procedure and criminal procedure*, for concurrent legislative competence to the Union and the States limited only to the *procedure* for the administration of and compliance with the central and state goods and services tax statutes, thus securing Parliament and every State Legislature the requisite autonomy to act creatively in their respective collective judgments in making *substantive* law (i.e., specifying from time to time the rates of levy of SGST or CGST as the case may be) subject only to appropriate constitutional restraints and in particular, *securing Parliament the creative autonomy to act quickly if necessary* without having to seek and obtain the recommendations of the GST Council on the rates of levy; and

(b) creating a unique multi-member National Tax Board presided over by an eminent jurist of the rank of Attorney-General of India to guide and oversee the administration of and compliance with all the central and state direct and indirect tax statutes and to provide advance rulings on all tax law instead of multiple Advance Ruling Authorities and Appellate Advance Ruling Authorities,

may be thought of. Such arguments will however also not be referred to in the subsequent analysis.

Fifthly, it may be observed from the amended Article 286 extracted below that after its amendment in 2016, the words "takes place" in clause (2) of Article 286 have been omitted presumably inadvertently:

> 286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or services or both where such supply takes place—
> (a) outside the State; or
> (b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.
> (2) Parliament may by law formulate principles for determining when a supply of goods or services or both (*takes place*) in any of the ways mentioned in clause (1). (*The words in italics and the brackets added to complete the sentence in clause (2) by correcting and inserting the drafting omission*)

It is also unclear if sections 4 and 5 of the Central Sales Tax Act,1956 which have not been repealed continue to be in force after 8th September 2016 since the word "supply" used in defining goods and services tax in clause (12A) of Article 366 has not been defined in the Constitution and the pre-2016 provisions enacted in Article 286 stand amended with effect from 8th September 2016 by using the word "supply" and avoiding the words "sale" and "purchase". However, these observations will also not be referred to in the subsequent sections.

Lastly, no reference will be made in the subsequent sections to the Market- "out-reach" roles of the many central and state Authorities of Advance Rulings and the Appellate Authorities of Advance Rulings whose (hopefully well-coordinated) "pre-primary" decisions are expected to guide risk-taking in the formation of contracts between prospective suppliers and the corresponding recipients of many a "supply" of goods and/or services.

3.ACCOUNTABILITY OF GST AUTHORITIES

Every public servant functioning as GST authority is required by law to swear/affirm his/her allegiance to the Constitution. The accountability of every primary/post-primary tax authority to the Constitution in-

(i) identifying taxable events which occur in her/its jurisdiction and the persons liable to pay goods and services taxes according to law administered by her/it;

(ii) accurately assessing the amount of tax due and payable by every such person in every accounting period; and

(iii) ensuring that the amounts of tax due and payable are paid or collected along with interest and/or penalty after notice or recovered by coercive process in case of default,

would have to be stipulated in law made subject, *inter alia*, to the constitutional requirements stipulated in Article 266. That Article provides as under for the creation of the Consolidated Fund of India and the Consolidated Fund of every State to which revenues accruing by way of any tax (including interest and penalty) would have to be credited promptly to ensure the *accountability of the GST authorities to the Constitution*:

> 266. (1) Subject to the provisions of article 267 (*relating to Contingency Funds*) and to the provisions of this Chapter with respect to the *assignment* of the whole or part of the net proceeds of certain taxes and duties to States, *all revenues* received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and

> all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and *all revenues* received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".
> (2) *All other public moneys* received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.
> (3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and *for the purposes and in the manner provided in this constitution.* (Matter in brackets and Italics added for reference and emphasis)

In the interest of ensuring accountability, the tax statutes would have to provide for the public notification of the jurisdiction of every primary tax authority with reference to a *territory* in which that authority with appropriate assistance would have "boots on the ground" at the expense of the Government for purposes of ground-truthing of reported and unreported transactions. In case of the administration of the central and state GST statutes, such conferment of *territorial* jurisdiction enables an appropriately empowered primary *central-cum-state* GST authority, subject to appropriate supervision by post-primary GST authorities located "higher" in the legal hierarchy and to the cooperation of local government and police authorities, to exercise due diligence honestly continuously and effectively on the use or abuse of every specific premises as a place of business located in her/its jurisdictional territory in complying with the applicable central and state GST statutes and ensure due compliance. By contrast, the legal jurisdiction of post-primary GST authorities (including Appellate Tribunals) would have to be *functional* (e.g., revisional, appellate etc.) with a view to correct errors of judgment (including errors of "*best judgment*"), if any, in the orders of primary GST authorities and to ensure accuracy in ascertaining the amounts of various GSTs (and of interest and/or penalty if any) due and payable respectively by accurately identified persons.

It is important to note that revenues accruing to the Union by the levy and payment/collection/recovery of taxes/interest/penalties are to be promptly credited to the Consolidated Fund of India (from which moneys, whether "charged" or "voted", can be appropriated only by an *explicit* act of Parliament) *and not to the Public Account of India*; and similarly, revenues accruing to a State by the levy and payment/collection/recovery of taxes/interest/penalties are to be promptly credited to the Consolidated Fund of the State (from which moneys, whether "charged" or "voted", can be appropriated only by an *explicit* act of the State Legislature) and *not to the Public Account of the State*. It is evident that there can be *no*

Concurrent Consolidated Fund to which the revenues accruing by way of the central IGST may be credited before it is "apportioned" to the Union and every State as provided in Article 269A. It is also evident that there is *no provision in the Constitution for the "assignment" to the Union of any SGST revenues* or by charging the Consolidated Fund of any State by the amounts of SGST credits even if the state GST statutes provide for such credits to be used to pay IGST dues thereby to be reflected as credits to the Consolidated Fund of India.

While Article 284 regulates the payment of moneys (of the nature referred to in clause (2) of Article 266) received or deposited into the Public Accounts, Article 283 provides as under for lawmaking to regulate the custody of the Public Accounts, Consolidated Funds, and the Contingency Funds established by law as provided in Article 267:

> "283. (1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by *rules* made by the President.
> (2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by *rules* made by the Governor" (Italics added for emphasis)

Even after the amendment of the Constitution in 2016, neither Article 266 nor Article 283 refers to the protocol designated as "apportionment" of IGST revenues net of the amount "used" as referred to in clause (3) of Article 269A inserted in the Constitution or augmented by the amount of SGST "used" as referred to in clause (4) of that Article as under:

> "269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be *apportioned* between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
> Explanation. —For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.
> (2) The amount *apportioned* to a State under clause (1) *shall not form part of the Consolidated Fund of India*.

(3) Where an amount collected as tax levied under clause (1) has been *used* for payment of the tax levied by a State under article 246A, such amount *shall not form part of the Consolidated Fund of India*.
(4) Where an amount collected as tax levied by a State under article 246A has been *used* for payment of the tax levied under clause (1), such amount *shall not form part of the Consolidated Fund of the State*.
(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce." (italics added for emphasis)

The provisions enacted in clauses (3) and (4) of Article 269A affecting the prompt credits of IGST and SGST revenues to the respective Consolidated Funds *prior* to the "use" referred to therein are also without any reference to Articles 266 and 283. They are also without reference to any other provision in the Constitution which could have provided for *lawmaking to authorize/regulate the use* by a supplier, of the credits of IGST and any SGST collected from her/it when she/it sourced the "input" supplies inter-state or intra-state. For example, Article 246A or Article 286 could have made appropriate provisions in the Constitution to the following effect:

(i) Neither Parliament nor any State Legislature may make law to levy any goods and services tax except by applying an *ad valorem* rate of tax on the money value of the supply of goods or services or both;

(ii) For purposes of compliance with sub-clause (g) of clause (3) of Article 112 and with sub-clause (f) of clause (3) of Article 202, law authorizing the levy of goods and services tax may provide that in computing the tax due and payable, a taxpayer liable to pay any goods and service tax levied under clause (1) of Article 246A on the value of the supply made by him may *use* the credit *chargeable* to the Consolidated Fund of India, of the amount of goods and services tax levied and collected under clause (1) of Article 269A from him on the input supplies made to him; and similarly in computing the tax due and payable a taxpayer liable to pay goods and services tax levied under clause (1) of Article 269A on the value of the inter-state supply made by him may use the credit *chargeable* to the Consolidated Fund of India or of a State, of the amount of the goods and services tax levied and collected under clause (1) of Article 246A from him on the input intra-state supplies made to him ; and

(iii) Law regulating the levy of goods and services tax may stipulate that in computing the state goods and services tax due and payable, a taxpayer liable to pay any state goods and services tax levied under clause (1) of Article 246A may *not use* any credit of the

central goods and services tax levied and collected from him on the input intra-state supplies made to him under the said clause; and similarly, in computing the central goods and services tax due and payable, a taxpayer liable to pay central goods and services tax levied under clause (1) of Article 246A may *not use* any credit of any state goods and services tax levied and collected from him on the input intra-state supplies made to him under the said clause.

Without such specific provision *enabling collection of goods and services taxes on a value-added basis*, the provisions enacted in clauses (3) and (4) of Article 269A are without any meaning as to what the word "use", which occurs in those clauses, refers to, or means or implies; and the Legislatures are also not formally constitutionally constrained from levying goods and services taxes at "specific" rates which rates would make the governance of the oversight of input GST credits very complicated.

Article 150 of the Constitution provides as under:

> "The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe".

It is imperative that the form of treasury accounts prescribed in accordance with Article 150 would have to be consistent with the law referred to in Article 283. Rule 85 of the General Financial Rules 2017 made by the President recognizes the treasury role for the Reserve Bank of India as under:

> "The Reserve Bank of India (RBI) shall be the banker to the Government. It shall maintain cash balance of the Government and provide banking facilities to the Ministries and subordinate or attached offices either directly through its own offices or through its agent banks. For this purpose, RBI shall, in consultation with the Controller General of Accounts, nominate a bank to function as Accredited Bank of a Ministry or Department. Pay & Accounts offices and Cheque Drawing and Disbursing Officer shall have assignment accounts with the identified branches of the Accredited Bank of the Ministry. All payments shall be made through these identified bank branches. These branches shall also collect departmental and other receipts. Tax revenues of the Government shall be collected by the RBI through its own offices or through the nominated branches of its agent banks.
> Note: Detailed procedure to be followed for remittance of Government receipts into Government cash balance and reimbursement of payments made on behalf of Government by the banks are laid down in the Memoranda of Instructions issued by the Reserve Bank of India."

As the banker to the Government, the Reserve Bank of India would, among other functions, have to serve the Government of India and every State Government in maintaining accurate

constitutionally valid accounts of the deposits into and the appropriations from every Consolidated Fund. Also, since even though revenues accruing by way of CGST and IGST are both required to be credited to the Consolidated Fund of India, legally revenues accruing to the Government of India by levy of CGST are somehow required to be treated different from revenues accruing to the same Government by levy of IGST in enabling the computation of any SGST due and payable by availing input GST credit. The law made for purposes of Articles 150 and 283 and the General Financial Rules, 2017, would have to provide guidance to the banker keeping such accounts, appropriately to account for CGST and IGST revenues separately for purposes of legally permissible/impermissible transfers from one account to the other. Such accounting would have to be without jeopardizing *the basic structure of the Constitution* which envisages each Consolidated Fund as *an integral whole* subject to moneys being withdrawn only after the *democratically elected lawmakers serving the Union or any State as the case may be collectively make law to appropriate moneys chargeable to or voted from the respective Consolidated Fund*.

Logically, a tax on the "supply" of goods and/or services is *socially* relevant only if the tax, being an "indirect" tax, is efficiently collected at the *destination of final domestic consumption* beyond which its economic incidence cannot be *shifted* to any other person. In collecting tax at such *final* destinations, there would no doubt be practical difficulties in the administration of, and compliance with, the goods and service tax regimes owing to lack of capacity to comply/digital illiteracy of large numbers of small suppliers and inter-state and intra-state movement of limited-value consignments of goods, which would call for exemption regimes. ***Exemption from rigorous governance protocols cannot however mean abdication of the responsibility of the governance of the exempted events***. Every inherently *public act* affecting the wealth of the community of Indians, of every person related to any such event as an identifiable supplier, by which the economic incidence of the indirect taxes such as goods and services taxes is shifted partly or wholly by such supplier to an identifiable/unidentifiable recipient in respect of a transaction, would have to be precisely known to public authorities authorized and deployed to collect goods and services taxes fairly and efficiently. For example, even though some (or many) persons may be exempted from the rigor of registration and some (or many) registered suppliers may be exempted from the rigor of furnishing periodical returns, such exemption regimes would have to be *conditional*. While the state governments and trade associations may establish service centers to help small suppliers to comply with law, *the conditions of exemption would have to be enforced strictly*.

Without such strict enforcement, compliance with the following *public* law provision in sub-section (9) of section 49 of the Central Goods and Services Tax Act,2017 (and similar provisions in other GST statutes), which cannot but relate to final consumers also, would not be practical, and the fairness of the structure of goods and services taxes as a legitimate and integral structure of destination-of-final-domestic-consumption-based levies will be questionable: -

> "Every person who has paid the tax (*as part of the price/consideration*) on goods or services or both (*received as inputs*) under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both (*when subsequent supply is made by him*)" (Matter in italics added to aid in interpretation)

As a minimum, no supplier (whether registered or not) would have to be allowed freedom to make supplies to any recipient without *publicly* vouching the *true* particulars of every transaction, big or small, by printing or writing in a document and issuing the voucher to the recipient. The contents of such document would have to be recognizable by any one from its legally prescribed format and design in all States and Union Territories all over India as *primary presumptive documentary evidence of the supply of the goods and/or services by the supplier to the recipient*, if any, as vouched therein so as to command full faith and credit in accordance with law made/to be made for purposes of clause (2) of Article 261which provides as under:

> "261. (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
> (2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.
> (3) …"

In section 114 of the Indian Evidence Act, 1872 it is provided as under:

> "The Court *may presume* the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case." (Italics added for emphasis)

Section 4 of the Indian Evidence Act 1872 defines "may presume" to mean: "*whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it*". To be eligible to a "may presume"-status under section 114 of the Evidence Act, 1872, the prescribed formats, design and colour schemes of the supply vouchers ought to distinguish between suppliers who are-

(i) registered and are liable to furnish periodical returns,

(ii) registered but exempted from furnishing periodical returns, and

(iii) *licensed for identity and linkage to one verifiable place of business or more*, but exempted from registration.

The prescribed formats would have to require registered suppliers liable to furnish returns to state the amounts of *goods-and-services-tax-exclusive value of the supply* and every applicable goods and services tax separately; and to require other suppliers to state only the *goods-and-services-tax-incidence-inclusive value of the supply* along with a declaration that the value vouched is inclusive of such incidence. The prescribed formats ought to distinguish between B2B supplies and B2C supplies also, with B2B suppliers being obliged to indicate the place of each supply to which it is next destined for value-addition and subsequent supply (and not for final consumption). Ideally, the central and state GST statutes would have to provide monetary *incentives* to induce the domestic consumer recipients of goods/services in B2C transactions to demand the issue of supply vouchers in the legally prescribed format with *true* statements of the prescribed particulars and additional incentives even to induce provision of formal declaratory evidence of transactions leading to supplies for which supply vouchers were not issued in the prescribed manner. The incentives may be in the form of *tax credits* or *raffle winnings* directly transferred to their linked bank accounts without the beneficiaries having to visit any GST office, with tax credits being charged to the respective Consolidated Funds and raffle winnings being debited to specific Public Accounts.

Since the issue of supply vouchers relating to B2C supplies will be paper-based and not digital, it would be necessary to have a protocol for manual issue of supply vouchers only on securely printed stationary duly personalized to the supplier duly pre-numbered and electronically pre-authenticated by the office of the primary GST authority with the requisite territorial jurisdiction. Printed stationary may be avoided by suitably embedding SIM cards with appropriate and secure codes for issue of supply vouchers printed on rolled paper from desk-top or hand-held electronic equipment. It may also be possible in case of suitably enabled electronic equipment to remotely link the issue of B2C supply vouchers for automatic recording at a central database to facilitate oversight. This may be supplemented by protocols requiring periodical uploading from service centers to central database of data from supply vouchers issued manually. Physical presence of suppliers in the offices of primary GST authorities may be avoided by having an on-

line electronic procedure for applying for stationary/SIM card to be delivered at the premises of the licensed place of business.

Ideally every small B2C supplier exempted from registration would have to be required by law-

(i) to prepay before every accounting period a moderate fixed sum estimated (by periodical surveys by GST research units) to account for the CGST and SGST due and payable by suppliers of the same *type* duly considering that they would not be able to claim input GST credit; and

(ii) to formally state/declare in the supply voucher issued in respect of every supply that the money consideration for the supply vouched therein is inclusive of the incidence of the applicable goods and services taxes which has been estimated and prepaid into the respective Consolidated Funds.

Similarly, every other supplier who is registered but exempted from furnishing periodical returns would have to be required by law-

(i) to provide adequate security in a joint bank account to the primary GST authority having the requisite territorial jurisdiction and to deposit into the respective Consolidated Funds from time to time the amounts of composition money determined by that authority as payable according to law within the period notified by that authority in lieu of the various goods and services taxes due and payable for every accounting period; and

(ii) to be legally bound to state/declare in every supply voucher issued by her/it that the money consideration for the supply vouched therein is inclusive of the incidence of all applicable goods and services taxes for the payment of which the supplier has furnished the requisite security till the payment is made into the respective Consolidated Funds.

The discussions in the next section examine the extent to which the provisions enacted in the central and state GST statutes in force from July 2017 and in the legal instruments of delegated legislation made thereunder enable the GST authorities to account at all times to Parliament and/or every State Legislature through the GST Council or otherwise for-

(i) the amounts of revenues by way of goods and services taxes and related dues accurately assessed in respect of every exempted and other transaction to the best of the judgment of the GST authorities having the requisite jurisdiction to be owed according to law to the Government of

India and/or to a State Government but *in legal dispute* being partly or wholly secured but not abandoned by the Government concerned; and

(ii) the amounts of revenues of the Government of India or of a State Government *realized without any pending legal dispute*, by way of goods and service taxes and related dues consisting of every amount of money if any-

(a) pre-paid by unregistered suppliers to meet typical official prior estimates; or

(b) post-paid by registered suppliers exempted from furnishing returns, as composition in lieu of goods and services taxes due and payable; or

(c) paid by registered suppliers in compliance along with prescribed returns; or

(d) collected in compliance with notices of additional demand arising from accurate assessment of the amounts of goods and services taxes and related dues to the best of the judgment of every GST authority with the requisite jurisdiction; or

(e) recovered by legally valid coercive processes from defaulters; or

(f) collected/recovered as interest for delayed credits of tax dues; or

(g) collected/recovered as civil penalties for non-compliance,

and duly accounted for by the Reserve Bank of India as deposits in the respective Consolidated Funds, in due compliance with the constitutional requirement stipulated in Article 266.

4. GST PROCEDURE AND THE NORMS OF EFFICIENCY AND FAIRNESS

Adam Smith's tax-law-making norms for efficiency (in the allocation of resources for *best use* in value addition/final consumption) and for fairness (in the form of a *fair choice architecture* for the market participants to source their supplies) are implied by the following provisions stipulating some of the Directive Principles of State Policy which are required by Article 37 of the Constitution to be applied by 'the State' in making laws by enacting tax statutes and creating legal instruments of delegated legislation thereunder:

> "Article 39. The State shall, in particular, direct its policy towards *securing*—
> (a) …
> (b) that the ownership and control of the material *resources of the community* are so distributed as best to *sub serve the common good*;
> (c) that the operation of the economic system does not result in the concentration of wealth and means of production to *the common detriment*;
> (d) …

(e) …
(f) …" (Italics added for emphasis)

"Article 38 (1) The State shall strive to promote the *welfare* of the people by *securing and protecting as effectively as it may a social order* in which *justice*, social, economic and political, shall inform all the *institutions* of the *national life.*
(2) …" (Italics added for emphasis)

While the concepts of "national life", fraternal "community" of Indian nationals, "welfare" and "institutions" occurring in Articles 38 and 39 are not referred to explicitly by Adam Smith whose field of inquiry in the 18th century was the wealth of nations and political economy in general, the Constituent Assembly which drafted the Constitution of India was well-informed on the later theories relating to political economy and good governance. It was also prescient in envisaging a significant uncertainty-reducing role for the "*institutions*" of national life in promoting welfare with minimum uncertainty in as much as many years later Douglass North earned the Nobel Prize for his work on the *uncertainty-reducing role of institutions* in economic change.

To understand the relevance of the concepts referred to in Articles 38 and 39 extracted above, it needs to be noted that Article 38 is intimately related to the primary virtue of *justice* sought by the People of India and to the valuable *national life* expected to be experienced and cherished by the fraternal *community of Indians* and referred to by them in their resolve incorporated in the following Preamble to the Constitution:

"WE, THE PEOPLE OF INDIA, having solemnly *resolved* to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION" (italics added for emphasis)

Taking *justice* to be synonymous with *fairness* in social interactions as suggested by John Rawls, 'the State' is duty-bound as stipulated in Article 38, to strive for the welfare of the people by "securing and protecting" a *fair social order* to prevail in the environment of the "institutions" of "national life". This would ensure that justice is not reduced to being a mere *commodity* which would have to be dispensed only by the black-robed gentlemen in all formality; and that *litigation in Courts is minimized*.

In making law to levy taxes on the supplies of goods and/or services, the institutions which would be relevant for purposes of applying Article 38 include-

(i) the institution (designated 'the Market') for the *discovery of "prices"* by balancing the demand for and supply of specific *commodities* from time to time duly *preserving the privacy* of every potential/actual market-participant as to the *information* relating to her/its *type*, which denotes her/its characteristics including her/its *endowments* and *preferences*;

(ii) the institution (designated "property rights") for *delineation of the legal rights, titles and interests* of individuals, other persons and Governments in *the wealth of the nation*;

(iii) the institution (designated "contracts") for *regulating promises and performance* and for building *legal capacity to enforce* mutual commitments made voluntarily after duly balancing the requisites of *autonomy* of every party and of the fraternal *community* of Indians.

In conceiving goods and services as "commodities" (referred to at (i) above), the special sense attributed to the term "commodity" by Gerard Debreu in Chapter 2 of his "*Theory of Value*" would have to be kept in mind since the resources of the community of Indians would have to be put to the *most valuable* uses.

The institution of 'the State' referred to in Articles12 and 36 is by definition an institution of national life; and owing to Article 37, the State Policy is discernible at all times by an accurate interpretation of the applicable provisions of law relating not only to the levy of goods and services taxes but also to many other matters including-

(i) levy of direct taxes on agricultural and other *incomes* and of *other central and state indirect taxes*;

(ii) regulation of *the use of specific premises* as places of business or otherwise, located within the territory in which any rural/urban local body has jurisdiction to enforce bye-laws to prevent illegal use and to secure and protect public health and safety;

(iii) *evidence*;

(iv) *contracts*, *sale of goods* and *specific performance*; and

(v) *transfer of property rights*.

As stipulated in Article 37, 'the State' is legitimately expected to be an institution to provide *good governance in serving the public interests* in accordance with the "*rule of law*", being duty-bound in lawmaking to apply the Directive Principles of State Policy *which help identify such public interests*. The efficiency of the functioning of 'the State' depends largely on the accountable

functioning of another institution (designated 'the Bureaucracy') for the efficient oversight, *in the interests of justice*, of the requisite compliance with law in force in *every territory* to which, and by *every person* to whom, the law applies, for the administration of the law with due regard to the principles of natural justice and of administrative law, and for ensuring the accountability (not limited to accurate and efficient realization of tax revenues only) of every bureaucrat embedded in it to the Constitution.

National life relates to social interactions within/relating to the fraternal *community* of Indian nationals referred to in the resolution of the People of India in the Preamble to the Constitution. Unless the law made impedes the foregoing institutions from functioning as institutions of national life in any way, it would be possible for the institutions of 'the Bureaucracy', 'the Market', 'property rights' and 'contracts' to be able to function as institutions of national life, making it possible for 'the State' to secure and protect a fair social order in the environments of those institutions. In particular, it is logical to observe that-

(i) the institution of 'the Market' would not be able to function as an institution of national life if 'the State' stipulates sub-classification of every business-to-business (B2B) and business-to-consumer (B2C) transaction/supply as "inter-state" or "intra-state" with reference to *sub-national* boundaries as inevitable for purposes of compliance with law; and

(ii) the institution of the Bureaucracy would not be able to function as an institution of national life in efficiently collecting the revenues accruing to the Government of India as well as every State Government by way of levy of goods and services taxes unless-

(a) the bureaucrats responsible for collection and accounting of direct and indirect taxes from suppliers who may shift the economic incidence of central and state indirect taxes ultimately to the domestic consumers and earn *incomes* (by way *profits*, taken as the excess of *gross revenues* over genuine *losses* and *business expenses*), are reorganized *in the national interest* as an All-India Service *common to the Union and the States* appropriately by creatively invoking Article 312; and

(b) the bureaucrats serving the Union and every State for collecting revenues accruing by way of levy of central and state goods and services taxes are deployed legally across the *administrative divide* between the Union and the States (implicit *vide* Articles 73 and 162) by creatively invoking Articles 258 and 258A appropriately notwithstanding such divide.

The Articles 258 and 258A referred to above, provide as under to regulate *administrative relations* between the Union and the States for purposes of the Constitution:

> "258. (1) *Notwithstanding anything in this Constitution*, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.
> (2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.
> (3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.
> 258A. *Notwithstanding anything in this Constitution*, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the State extends" (Italics added for emphasis).

Also, aspects of civic life which may be taken as sub-serving "the *common* good" or avoiding "the *common* detriment" as referred to in clauses (b) and (c) of Article 39 relate to *the social commons of the fraternal* community *of Indian nationals* envisaged in the resolution of the People of India in the Preamble. It is implicit that the principles stipulated in clauses (b) and (c) of Article 39 are founded on the beliefs that-

(i) if the resources of the community of Indians are allocated optimally to individuals and other persons who are capable of putting those resources to *the most valuable uses*, it is likely that "the common good" would be sub-served; and

(ii) if in the process of capital accumulation in the economy, *undue* concentration of wealth and means of production is avoided, it is unlikely that there would be significant detriment to the prevalence of *justice* as *fairness in the choice architecture* obtaining in the social commons.

It follows that as long as 'the State' is able to apply the principles stipulated in Articles 38 and 39 referred to above in lawmaking and "nudge" (in the manner referred to by Thaler and Sunstein in their book "*Nudge*") the potential market-participants appropriately to make intelligent choices, commensurate with their respective "*types*", in *sourcing the supplies of goods/services respectively needed by them for value-addition or for final consumption*, Adam Smith's norms of efficiency and fairness would be adhered to.

Do the provisions enacted in the various central and state GST statutes and in the instruments of delegated legislation made thereunder to regulate the *procedure* for compliance with, and for the administration of, those statutes enable the bureaucrats deployed to collect revenues accruing by way of goods and services taxes to be accountable to the Constitution as stipulated in Article 266 *with due regard to the norms of efficiency and fairness stipulated in Articles 38 and 39*? Assuming *somehow* that the accountability requirements for the GST authorities serving the Union and every State as provided in those statutes modify the law referred to in clauses (1) and (2) of Article 283, it is inevitable to note that-

(i) according to Article 283, *Parliament does not derive any authority to make law to regulate the custody and operation of the Consolidated Fund of any State and no State Legislature derives any authority to make law to regulate the custody and operation of the Consolidated Fund of India*; and

(ii) according to Article 266, *revenues accruing by way of GST dues to the Government of India or to the Government of any State cannot be credited to any Public Account, but would have to be deposited promptly* only *in the Consolidated Fund of India or the Consolidated Fund of the respective State, as the case may be to await eventual appropriation.*

It is also inevitable to note that Article 268A inserted in Part XII of the Constitution by amendment to the Constitution in 2003 to enable the collection of service taxes by the Union *as well as* the States "*concurrently*" had provided as under:

> "268A. (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and *appropriated* by the Government of India and the States in the manner provided in clause (2).
> (2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—
> (a) collected by the Government of India and the States;
> (b) *appropriated* by the Government of India and the States, in accordance with such principles of collection and *appropriation* as may be formulated by Parliament by law" (italics added for emphasis);

and the provision in Article 268A was supported by inserting Entry 92C in the Union List (instead of inserting any Entry in the Concurrent List and without any overlapping Entry in the State List). But *lawmaking by invoking Article 268A to levy such concurrent service taxes would have beeen found to be inconsistent with democratic practice and as such in complying with Article 245*. Eventually Article 268A and Entry 92C in the Union List had to be omitted by enacting sections

7 and 17 of the Constitution (101st Amendment) Act, 2016. From the constitutional scheme of allocation of legislative competences between the Union and the States, it is evident that *substantive law to levy any tax cannot be enacted by invoking any Entry in the Concurrent List*; and that Parliament cannot be taken to have constitutional authority to make law to lay down any *prior* principles for "appropriation" which would negate the *democracy-emphasizing* constitutional provisions regulating appropriation which culminate in Article 114 and in Article 204 respectively in case of the Union and the States. In democratic practice, appropriation of moneys from the respective Consolidated Funds is envisaged as an *autonomous* and *collective* act of the elected lawmakers serving the *respective* Legislature to authorize *expenditure* to be incurred by legally appropriating moneys from every such Fund as provided in Article 114 and in Article 204 respectively.

After the scheme of levy of concurrent service taxes envisaged in Article 268A failed to take off, Article 286 in Part XII has been amended along with Chapter I of Part XI of the Constitution. Article 246A and Article 269A have been inserted in Chapter I of Part XI so as to redefine, *without reference to any Entry in the Union List or State List or the Concurrent List in the Seventh Schedule*, the respective legislative competences of the Union and the States providing for-

(i) legislative competence to Parliament to enact *principles* for determining "the place of supply", and when a supply of goods, or of services, or both takes place "outside a state" or "in the course of inter-State trade or commerce" or "in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India";

(ii) subject to Parliament *somehow* providing by law for the "apportionment" among the Union and every State of the revenues accruing to the Union as "Integrated Goods and Services Tax (IGST)", legislative competence to Parliament to levy goods and services tax on all supplies of goods or services or both including "intra-state" supplies of goods or services or both; and

(iii) again, subject to Parliament providing by law for the "apportionment" among the Union and every State of the revenues accruing to the Union as "Integrated Goods and Services Tax (IGST)", *overlapping* legislative competence to every State Legislature also to levy goods and services tax on intra-state supplies of goods or services or both.

It is also significant to note that even though Article 269 had been amended as long ago as in 1982 and Entry 92B had been inserted in the Union List to facilitate the levy of a central

consignment tax on the goods transported from a given location in a State to a different location in another State without there being an underlying contract for the transfer of property rights from the consignor to the consignee, *it has not been possible during the past period exceeding three decades for the lawmakers to make law authorizing the levy of a central consignment tax*. Ideally, the Government of India would need to be well-informed at all times about the terms of trade and commerce in international transactions so as to be able to provide *unbiassed guidance to tax authorities by way of the estimated fob and cif value of every well-defined good/service likely to prevail at every customs station*. It would then be possible for the nominal value of every inter-state consignment at the origin of the consignment to be ascertained with reference to the guidance fob value applicable at a relevant customs station. Somehow, in spite of the Constitution as amended in 1982 not having enabled the levy of central consignment tax thus, the amendments made in 1982 to Article 269 and to the Union List (by inserting Entry 92B) have not been given up in the law made in 2016 to amend the Constitution. This may be because the pre-GST regimes continue to apply for levy of central and state sales taxes on sales of petroleum products and alcohol. But no central consignment tax has so far been levied on the inter-state consignments of goods to which the GST regimes are yet to be extended.

Even though the legally valid "nexus principle" enabled (and continues to enable) every State to collect the tax levied by the State Legislature from out-of-state dealers also, Parliament enacted the Central Sales Tax Act, 1956 to disable every State from collecting its sales tax outside its territory as part of the legal infrastructure in support of central planning and import-substitution as instruments of State Policy. Unlike sections 3,4 and 5 of the Central Sales Tax Act,1956 enacted for purposes of Article 269 and the pre-2016 version of Article 286, which did not relate to supply of services and relied on the concept of "*movement*" of goods from a given location in one State to a different location in another State, the provisions enacted in the central Integrated Goods and Services Tax Act, 2017 relate to supplies of services also and formally avoid *explicit* reliance on the concept of movement of goods from one location to another (though logically goods cannot reach the place of supply, if different from the place of business of the supplier, without physical movement). Instead the provisions enacted in the Integrated Goods and Services Tax Act,2017 formally provide in case of every supply of goods or services or both, for the determination of "*the place of supply*" and define the concepts of "*location of the supplier of services*" and "*location of the recipient of services*".

Article 286 does not refer to "inter-state" supply and "intra-state" supply. For characterizing any given supply of goods or services or both respectively as "inter-state supply" and "intra-state supply" the Integrated Goods and Services Act, 2017 makes provisions *implicitly excluding "supply outside a state" from the scope of "intra-state supply"* without any safeguard for the States as enacted in Article 274 in case of the definition of "agricultural income" ; and the provisions also define the concepts of "*export of goods*", "*export of services*", "*import of goods*" and "*import of services*" for purposes of applying the restrictions on the legislative competences of the States enacted in Article 286 with effect from 2016. Section 9 of the Integrated Goods and Services Tax Act,2017 carves out a relaxation of the effect of such restrictions in support of the legal fiction enacted in the *Explanation* below clause (1) of Article 269A, as under:

> "Notwithstanding anything contained in this Act, —
> (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
> (b) where the place of supply is in the territorial waters, the place of supply,
> shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located"

A possibly inadvertent drafting mistake in clauses (64) of section 2 of the CGST Act, 2017 in which reference to the definition of "inter-state" supply would have been provided with reference to section 7 of the IGST Act,2017 is ignored in this paper with the belief that the same would be corrected by legislation.

Subject to complex finetuning, with reference to the varying legal statuses of the suppliers and to possible refunds to taxpayers, the apportionment of the IGST revenues between the Union and every "destination"-State (in which by definition the place of supply is located) as under, the principles enacted in section 17 of the Integrated Goods and Services Tax Act, 2017 mainly provide that the Union is entitled for "apportionment" of the share of revenue by way of levy of IGST on every inter-state supply, to *what would have accrued to it by way of CGST had the same supply been intra-state* :-

> "17. (1) Out of the integrated tax paid to the Central Government, —
> (a) in respect of inter-State supply of goods or services or both to an unregistered person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
> (b) in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;
> (c) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and

thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;
(d) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
(e) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;
(f) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received, *the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply* shall be apportioned to the Central Government.
(2) The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the, —
(a) State where such supply takes place; and
(b) Central Government where such supply takes place in a Union territory:
Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —
(a) each of the States; and
(b) Central Government in relation to Union territories, in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:
Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.
(3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, mutatis mutandis, apply to the apportionment of interest, penalty and compounding amount realised in connection with the tax so apportioned.
(4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the *central tax account* or *Union territory tax account*, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the *State tax account* of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.
(5) *Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed*" (Italics added for emphasis).

This implies that the ratio of apportionment of IGST revenues accruing on inter-state supplies among the Union and the States would generally be the same as the ratio of CGST revenues to SGST revenues had the same supplies been intra-state. For example, *if the ratio of CGST to SGST is 1:1 in case the supply in question is intra-state,* the apportionment of IGST between the Union and the State would also, *subject to compliance with the IGST Rules*, be 1:1 in case of similar inter-

state supply. Consistent with the goal of "One Nation, One Tax", apportionment of IGST revenues is expected to obliterate *de facto,* the *de jure* distinction between "inter-state" and "intra-state" supplies and ensure that *de facto* IGST is the *sum* of CGST and (destination)SGST.

Logically, it would have been possible to ensure accountability in business-to-business transactions by connecting every supplier functioning from a place of business anywhere in India with a recipient functioning from a place of business anywhere *else* in the country by-
(i) requiring the recipient to have the requisite money to pay the applicable GSTs as part of money consideration, in an *escrow account in a Bank held jointly with her/its primary GST authority* and
(ii) requiring her/it to place an order on her/its supplier only after *authorizing the chosen supplier by a mandate to debit that escrow account, the amounts payable as part of consideration as various GSTs duly credited to the Reserve Bank of India for deposit in the relevant Consolidated Funds*;
(iii) requiring the supplier to issue a prescribed *supply voucher* only with a prescribed endorsement from the same Bank near the supplier's location *linked by core-banking protocols*; and
(iv) requiring the supplier to make a business-to-business supply of goods and/or services *only after obtaining an endorsement along with a transaction number from the Reserve Bank of India, of the deposit of the applicable GSTs to the respective Consolidated Fund*, at any location in the country in partial or full compliance of the order placed by the recipient to source her/its supply for value-addition before subsequent supply.
Somehow, instead of building upon or linking the digital infrastructure already available by way of core-banking solutions with the Banks regulated by the Reserve Bank of India, which keeps the treasury accounts of deposits made in, and appropriation of moneys from, the respective Consolidated Funds, central and state GST statutes envisage the creation of *another independent digital governance infrastructure*. It is built upon a new organization called the Goods and Services Tax Network (GSTN) which was established in 2013 to help manage *the transition of the pre-GST taxpayers to comply somehow with a single structure* of *multiple* central and state GST Regimes *common to the Union and the States*. As such the governance of various digital protocols regulating compliance by "registered" suppliers based critically upon identifying and matching allowable "input GST credits" in computing the amounts of various GSTs *payable* on a value-added basis according to law out of the amounts of various GSTs *due* on the supplies of output by the suppliers, is done through a GST Electronic *Portal* common to the Union and the States provided *vide* section 146 of the CGST Act,2017 as under:

> "146. The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed".

Except for the mention of its name as the beneficiary of the remittance of the amounts of GSTs due and payable in Form GST PMT-06, the Reserve Bank of India has no function according to the central and state GST statutes in the processes-

(i) of ascertaining and allowing input GST credit to every eligible taxpayer against an eligible Challan Identification Number (duly ensuring that *multiple credits are not allowed against a single count of eligibility*); and

(ii) of *somehow* complying with clauses (3) and (4) of Article 269A in addition to Article266, in "apportioning" IGST revenues among the Union and the appropriate States.

It would thus be for the GSTN as the common portal to keep accounts designated "central tax account", "integrated tax account", "Union Territory tax account" and "tax account of State" for every State, for purposes of section 18 of the IGST Act 2017 which provides as under:

> "18. On *utilisation of credit of integrated tax* availed under this Act for payment of, —
> (a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the *integrated tax account* to the *central tax account* in such manner and within such time as may be prescribed;
> (b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the *integrated tax account* to the *Union territory tax account* in such manner and within such time as may be prescribed;
> (c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and shall be *apportioned* to the appropriate State Government and the Central Government shall transfer the amount so apportioned to *the account of the appropriate State Government* in such manner and within such time as may be prescribed.
> Explanation. — For the purposes of this Chapter, *"appropriate State" in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act*" (Italics added for emphasis)

The GSTN would also be the repository of the information culled out from the *electronic cash ledgers* and the *electronic credit ledgers* referred to in section 49 of the CGST Act, 2017 which provides as under:

"49. (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the *electronic cash ledger* of such person to be maintained in such manner as may be prescribed.
(2) *The input tax credit as self-assessed in the return of a registered person shall be credited* to his *electronic credit ledger*, in accordance with section 41, to be maintained in such manner as may be prescribed.
(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
(4) *The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act, 2017 in such manner and subject to such conditions and within such time as may be prescribed*.
(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of, -
(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union Territory tax, in that order;
(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any. may be utilised towards the payment of integrated tax;
(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.
(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.
(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.
(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely: -
(a) self-assessed tax, and other dues related to returns of previous tax periods;
(b) self-assessed tax, and other dues related to the return of the current tax period;
(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.
(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.
Explanation: - For the purposes of this section, -
(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger.
(b) The expression, -
(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and
(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder"

5. CONCLUSIONS ON ACCOUNTABILITY IN A DEMOCRACY

India being a Union of States, the basic structure of the Constitution of India as a democratic Republic requires the accounting of every amount of money paid/collected/ recovered as revenue by way of any tax, interest for delayed payment and penalty for non-compliance by prompt deposit in the *respective* Consolidated Funds. ***Accounting of revenues by deposit in the respective Consolidated Funds is a strict* prior *requirement to ensure that no appropriation of any money from any of those Funds takes place without a formal collective act by the representatives of the People (democratically elected to serve the Union or any given State as the case may be) of making law authorizing such appropriation***. The provisions enacted in Articles 107 to 117 or elsewhere in the Constitution do not envisage any partition of the *Consolidated* Fund of India into subsidiary "accounts" such as "central tax account", "union territory tax account" and "integrated tax account" for purposes of appropriation to incur "tax-expenditure" in the form of input tax credits or otherwise. This is why that Fund is characterized as a "*Consolidated*" Fund and is differentiated from a Public Account. Also, even if a Public Account designated "Account of the (appropriate) State Government" is created by law, compliance with Article 266 would imply that GST revenues are not deposited in such Public Account but are deposited promptly to the Consolidated Fund of the appropriate State.

According to the division of legislative competences between the Union and the States in the Constitution, the Government of India has more significant sources of tax revenues than the States; and the Governments of the States do not have access to sources of tax-revenues of similar significance other than the competence to levy taxes on the purchases and sales of goods which are outside the reach of GST regimes. The Constitution provides for protocols of "assignment" of central tax revenues in Articles 268, 269 and 270 and for grants-in-aid in support of own-revenue-deficient States in Article 275. Clauses (2) respectively in each of Articles 268, 269 and 270 which stipulate that some moneys which accrue to the Government of India as taxes shall not form part of the Consolidated Fund of India *simultaneously provide for the manner of identifying the State whose Consolidated Fund they would form part of by "assignment"*. Clause (1) of Article 266 clearly excludes such moneys which are assigned to any other Consolidated Fund from the rigor of the appropriation process in Parliament. Grants-in-aid payable in accordance with Article 275 to own-revenue-deficient States are *charged* to the Consolidated Fund of India as *expenditure* after

due appropriation; and in case of the State of Assam and the autonomous State within it, the grant-in-aid so appropriated is further "*apportioned*" by an order of the President between the State and the autonomous State formed within Assam as provided in Article 244A. It is very important to note that-

(i) *the protocol of "apportionment" does not exempt any moneys from the requirement of appropriation by an act of Parliament*; and

(ii) *there is no provision in the Constitution for the "assignment" of any state tax revenues (such as SGST revenues) to the Union*.

Clause (3) of Article 269A refers to the "use" of some moneys collected by way of levy of IGST on "inputs" for paying SGST due on the supply of output and excludes such moneys from being deposited in the Consolidated Fund of India *without specifying the manner of identifying any other Consolidated Fund in which they would have to be deposited*. Similarly, clause (4) of Article 269A refers to the "use" of some moneys collected by way of any SGST on "inputs" for paying IGST due on the supply of output and merely excludes such moneys from being deposited in the Consolidated Fund of the appropriate State *without specifying that they would have to be deposited in the Consolidated Fund of India*. The analysis in sections 3 and 4 in this paper therefore leads to the conclusion that -

(a) clauses (3) and (4) of Article 269A inserted in the Constitution in 2016 second-guess the provisions of a possible law on the use of input GST credits as the method of collection of GSTs on a value-added basis when such law was *yet to be made on the date when the Constitution (101st Amendment) Act, 2016 commenced;* and the insertion as such amounts to non-compliance with the stipulation of the *basic constitutional structure* regulating lawmaking (even though in exercise of the "constituent" power of Parliament) made in Article 245 since *instead of making law subject to the Constitution, Constitution was being amended subject to law (on the user of input GST credit) yet to be made*; and

(b) the new protocol designated "apportionment" in Article 269A -

(i) cannot be interpreted as different from the protocol designated "apportionment" in Article 275 in relation to the division of grant-in-aid between the State of Assam and the autonomous State within that State in case input GST credits are conceived of as "*tax-expenditures*" chargeable to a Consolidated Fund in the same way that grants-in-aid made under Article 275 are conceived as expenditures chargeable to the Consolidated Fund of India; and

(ii) is unlike the constitutional protocol of "assignment" referred to in clause (1) of Article 266, and is unenforceable and vague in omitting to specify in the Constitution itself how to identify any other Consolidated Fund to which the moneys not forming part of the Consolidated Funds respectively referred to in clauses (2), (3) and (4) of Article 269A, would have to form part of.

If the GST law in force from July 2017 is to be constitutionally valid, there would also be need for the banker to the Government viz., the Reserve Bank of India, to keep constitutionally valid subsidiary accounts; and for the rules made for purposes of Articles 150, 283 and 284 to be amended to provide for a basic structure of accounting to enable accuracy in the acts of Parliament and State Legislatures appropriating moneys for expenditure in serving the public interests. If input GST credits are considered as expenditure to be charged to the Consolidated Fund of India or the Consolidated Fund of a State as the case may be, then the beneficiary of such tax credit would be the taxpayer and not the government to which the credit of input tax would accrue by way of routing of the deposit of GST revenue *as such* to the Consolidated Fund to which that government relates. On the other hand, there is no provision in the Constitution for the "assignment" of state tax revenue *as such* to the Union; and allowing input SGST credit to pay for IGST dues which along with input CGST credits against IGST dues *augments* the IGST account cannot be termed as "apportionment" of IGST revenues. It is thus also logically not possible-

(i) to designate the augmentation of IGST account as "apportionment" of IGST revenues; and

(ii) to treat the "apportionment" of IGST revenues as provided in clause (1) of Article 269A as "assignment" for purposes of compliance with clause (1) of Article 266.

While clauses (1A) and (1B) of Article 270 provide for the assignment of central tax revenues referred to therein to the States after considering the recommendations of the Finance Commission and are consistent with clause (1) of Article 266, actual distribution of such assigned revenues would somehow have to rely on the accuracy of the central tax account and integrated tax account stipulated in section 18 of the IGST Act,2017 ***in the books of the Reserve Bank of India*** which is required to perform the treasury functions be keeping the records of moneys deposited in, and legally appropriated from, every Consolidated Fund.

The foregoing analysis leads to the conclusion that reliance on the legal instrument of IGST as the pivot of the reform leading to the commencement of central and state GST regimes from the 1st July 2017 *does not facilitate* ***accountability*** *of the Bureaucracy as the constitutionally requisite*

prelude to appropriation. This conclusion is essentially the same as the conclusion of lawmakers on the reliance on the legal instruments of concurrent service taxes envisaged by the Constitution (88th Amendment) Act,2003 which provided for the collection of such taxes by the Union as well as by the States by invoking Article 268A and which *did not ensure such accountability as a prelude to appropriation*. This had led to Article 268A and Entry 92C in the Union List being omitted. Any further reform of the mode of levy and collection of central and state indirect taxes would have to keep in mind the following imperatives of democracy stipulated as part of the basic structure of the Constitution of India which is a Union of States:

(i) *according to Article 283*, *Parliament does not derive any authority to make law to regulate the custody and operation of the Consolidated Fund of any State and no State Legislature derives any authority to make law to regulate the custody and operation of the Consolidated Fund of India*; and

(ii) *according to Article 266*, *revenues accruing by way of tax dues to the Government of India or to the Government of any State cannot be credited to any Public Account, but would have to be deposited directly and promptly* only *in the Consolidated Fund of India or the Consolidated Fund of the respective State as the case may be, to await eventual appropriation by the respective collective acts of democratically elected lawmakers serving the Union and every such State.*

It is also inevitable to note that the GST Council has been constituted by invoking Article 279A in Chapter I relating to "Finance" in Part XII of the Constitution dealing with "Finance, Property, Contracts and Suits". Its mandate is narrow and is aimed mainly at arbitering the terms of *the transfer of political space from the States to the Union in the levy of central indirect taxes on the supply of goods*. Unlike the invoking of Article 263 enacted in Chapter II relating to "Administrative Relations" of Part XI dealing with "Relations between the Union and the States" (in which Part "Legislative Relations" are dealt in Chapter I), invoking of Article 279A-

(i) *is not premised on the President being satisfied that the constitution of the GST Council would serve the public interests*; and

(ii) does not provide for the coordination, in pursuit of *common* interests such as applying Articles 38 and 39 in lawmaking (instead of merely reconciling *varied* revenue outcomes) by the Union and the States, of policy and action focused <u>*generally*</u> on a ***"subject" of social relevance*** (e.g., "*securing and protecting a* ***fair choice architecture*** *for the domestic consumers, producers and exporters to source the supplies of goods and/or services needed by them either for final*

consumption or for value-addition before the subsequent supply") pre-identified by the President, but provides for the Council making recommendations <u>*specifically*</u> related to the ***"matter" of legislative competence*** referred to in Article 246A on the levy of "goods and services tax", to be allocated to the Union and the States, such allocation not being limited to *procedural lawmaking*, but ***unduly constraining democratic practice in Parliament on substantive lawmaking***.

As already noted, the duty of 'the State' as stipulated by the People in Article 37 requires that in lawmaking 'the State' would have to apply the Directive Principles of State Policy. This stipulation implies that if those Principles are so applied, the interests of the People (a k a "the public interests") would be served. If instead of the constituting a Council without invoking Article 263, the reform had been based on a Union-States Council established by the President by invoking Article 263 in serving the public interests to make its recommendations for the coordination of policy and action focused on an appropriate subject of social relevance, it is likely that the public interests implied by Articles 38 and 39 would have been served and as such Adam Smith's norms for efficiency and fairness would have been adhered to, ***without unduly constraining the autonomy of Parliament and the State Legislatures in making substantive law***.

Political enterprise is risky. A political commitment made on behalf of the Government of India to "compensate" the States which fail in the transition from pre-GST regimes to collect GST revenues as per norms of growth beyond a base year is based on the risky assumption that *the Government of India itself would not fail according to the same norms*. The arguments referred to in section 2 in this paper if considered are likely to reinforce the conclusions reached in this paper but would have to be subjects for further research.

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