Issues with Co-operative Federalism in Taxation

What is the issue?

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Co-operative federalism is yet to be tested on issues related to the Goods and Services Tax.

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What is co-operative federalism?

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- Federalism is basically the division of power between the government at centre and the state.
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- Their powers are divided equally in the constitution of India as centre list, state list and concurrent list, but in the concurrent list both has equal powers and the power struggle occurs.
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- Cooperative federalism is a concept of federalism in which national, state, and local governments interact cooperatively and collectively to solve common problems.
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- Co-operative Federalism is also called as Quasi Federalism where a State (like India), shares the powers between the Union/Centre and the States, while inclining towards the strong Centre.
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What are the concerns with co-operative federalism in India?

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- In S.R. Bommai v. Union of India (1994), the limitation laid down by the Supreme Court might have placed gentle breaks on exercise legislative power by the union government.
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- But the Centre continues to wield superior legislative powers, including residuary powers and legislative precedence.
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- These are powers the Central government enjoys under the Constitution and States' legislative powers have routinely yielded to the Centre.
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- Given this constitutional framework the concept of cooperative federalism is dubious in India.
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- Recently, in Govt. of NCT of Delhi v. Union of India , the Supreme Court gently tilted the balance of executive power in favour of the Government of the National Capital Territory vis-à-vis the Lieutenant Governor (and by extension, the Centre).
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- However, the court's observations on cooperative federalism were stating the obvious considering members of both cabinets take an oath to uphold the Constitution.
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- The facts behind the case and the acrimonious litigation, which the Supreme Court did not examine in a recent ruling, clearly bring out the yawning gap between the Constitution's intent and political reality.
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What are issues with co-operative federalism in Taxation?

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- Taxation powers are another contentious issue and the Central government has won most of the disputes purely due to express provisions in the Constitution.
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- In the Goods and Services Tax (GST) scenario, States have foregone some taxation powers (octroi, entry tax, luxury and entertainment taxes, etc.) but have powers to levy taxes through panchayats and municipalities.
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- Such powers can result in an anomalous situation of a transaction being taxed under GST laws and a local law, and this is yet to be tested in court.
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- After the GST amendments to the Constitution, States have power to levy tax on sale of petrol, diesel, etc. and these would be revenues of the respective States.
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- However, the GST Council is yet to recommend inclusion of these items under GST.
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- The southern States have been vocal about the false positives and negatives from tax sharing and this mechanism is largely subject to the recommendations of the Finance Commission (FC) and action by Parliament.
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What are the anomalous situation in GST Structure?

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- State levies and State GST form part of a State's revenue. Under Article 269A (1) the GST Council and not the FC has the powers to make recommendations in relation to sharing of taxes from inter-State trade.
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- This is important since States have a vote in the GST Council.
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- However, Articles 270(1A) and 270(2) provide that taxes levied under the GST laws will be shared in the manner 'prescribed' in Article 270(2) which takes us to the FC, and not the GST Council.
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- The possible anomaly between roles and powers of the FC and the GST Council has not been tested but it may make sharing of these revenues subject matter of the FC and Parliament rather than the GST Council, where States have more power.
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- Recommendations of the FC are placed before Parliament and States have no role in the debate.
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- There is no provision for an aggrieved State to challenge the FC report or seek its enforcement.
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- If the Centre refuses to make allocations as per the GST Council, or if a State is aggrieved by the recommendations itself, an aggrieved State would have to litigate in the Supreme Court.
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- But it appears that the GST Council is yet to establish a mechanism for resolving differences in terms of Article 279A(11).
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Source: The Hindu

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