

Constitution of India and GST

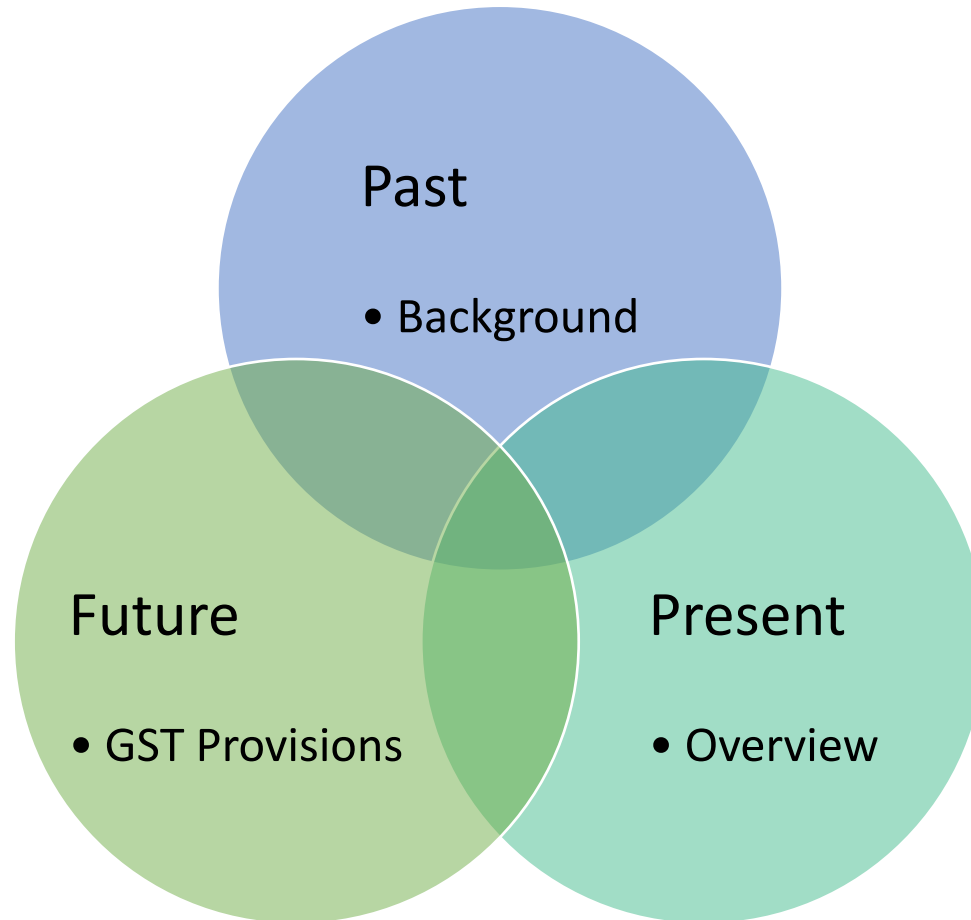
[October 2020]

CA Pritam Mahure and Associates

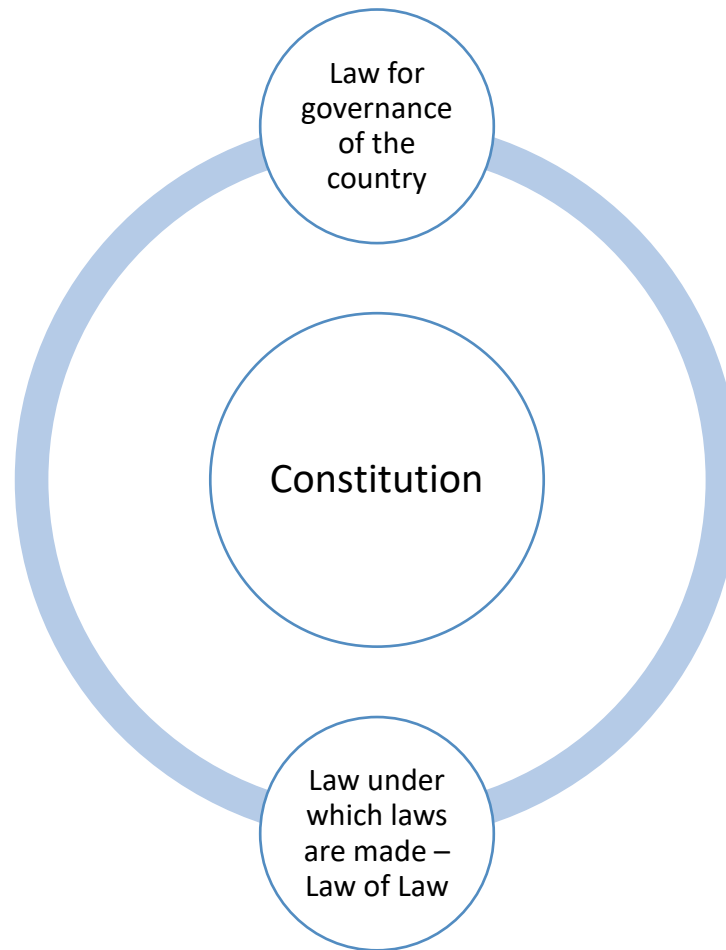
Why?

- Required?

Path to tread!



What is Constitution?



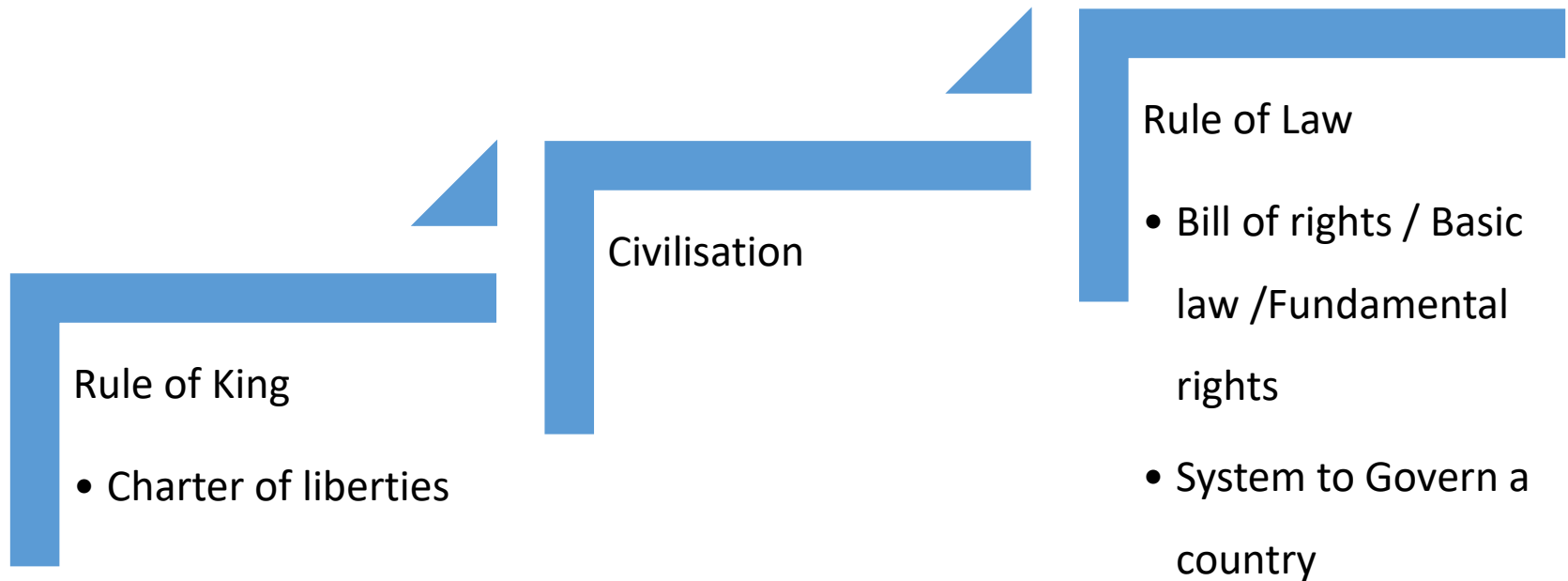
Origin - Constitution!

Origin!

Magna
Carta
Libertatum
(1215)

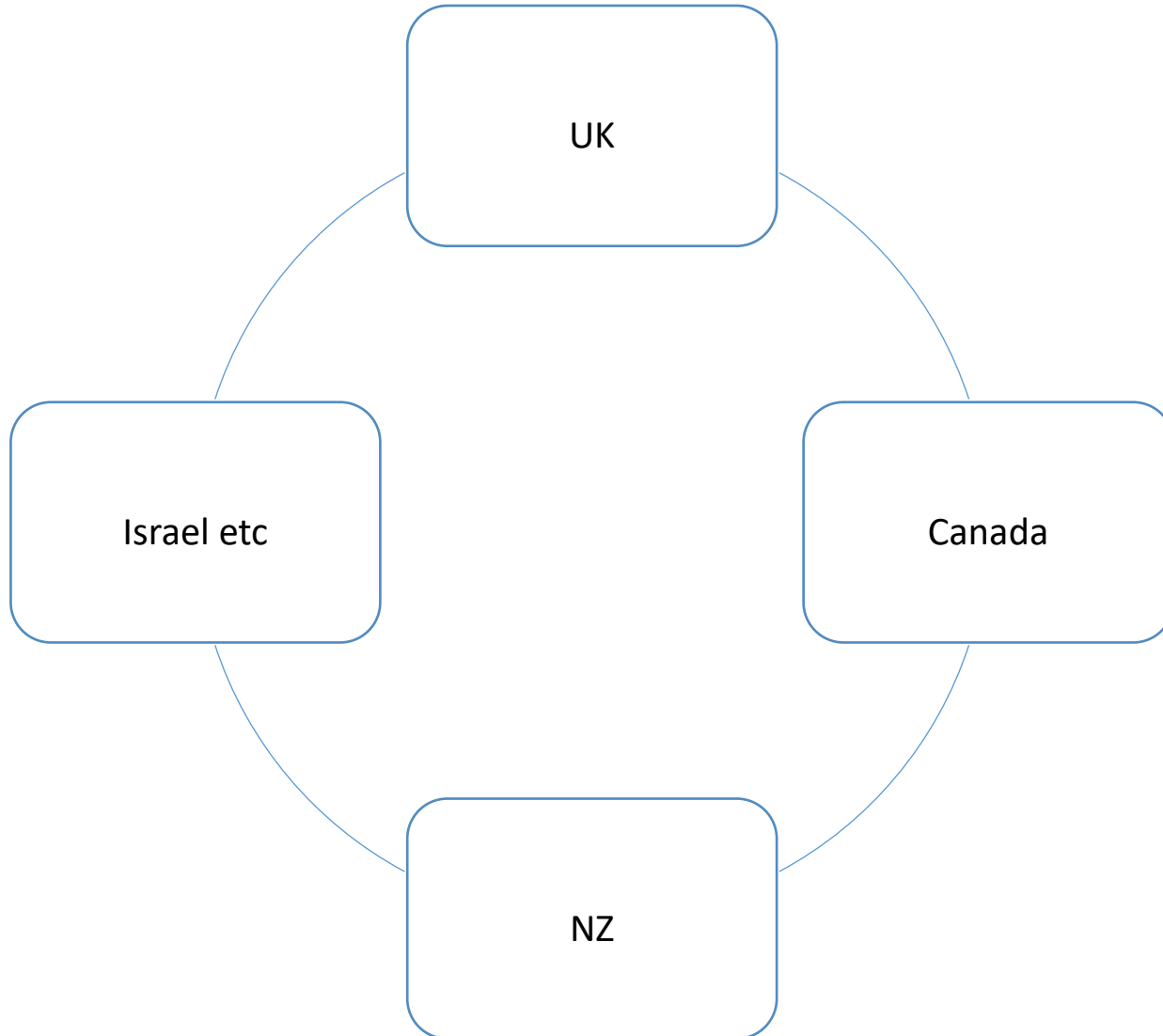
- Great Charter of Liberties
 - Agreed by King John of England
 - Purpose – Peace
- Completed 800 years after its first introduction in 1215

Why Constitution needed!



Countries without Constitution

Un-codified Constitution



Globally

UK

- Nothing is un-Constitutional
- Doesn't have a 'written' Constitution
 - Refer to various Acts, Judgments, Conventions etc
- Courts have full power except against Law made by Parliament
- Also, in the process of introducing Constitution

Constitution – How it was made!

How Col was made?

Pre-Independence

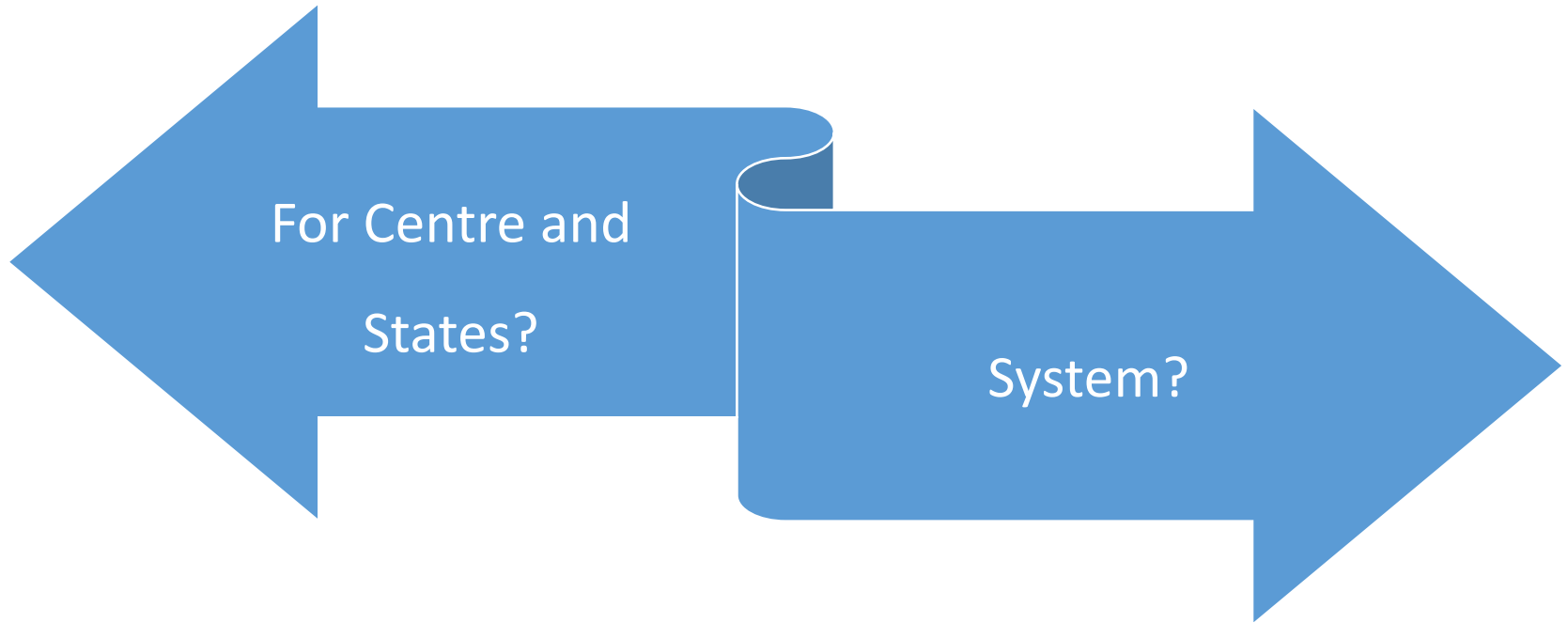
- 600 + States

Constituent Assembly

- 292 members – Nominated
- Chairman – Dr. Rajendra Prasad
- Chairman of Drafting Committee – Dr B R Ambedkar

Started - 9 December 1946

Key aspects



Globally

USA

- State can have own Constitution
 - Dual Citizenship

Constitution of India - For whom?

1. Separate for
Centre and State

2. One for the
Country except one
State

3. One for entire
Country

Col – References

Gov Act (1858, 1919 and 1935)	• Federal, Administrative, Emergency provisions
USA	• Preamble, Fundamental Rights
UK	• Parliament, Writs
Ireland	• Directive Principles
Canada	• Strong Centre
Australia	• Concurrent List
Russia	• Fundamental Duties
South Africa	• Procedure for amendment to Constitution

System

Unitary

- All powers at Central level
- Eg. Japan, China
- More than 150 countries
- Better for smaller countries

Federal

- Power at both levels (Centre and State)
- Eg. USA
- More than 25 countries
- Better for larger countries

Confederal

- Laws mostly made by State
- Eg. EU

System

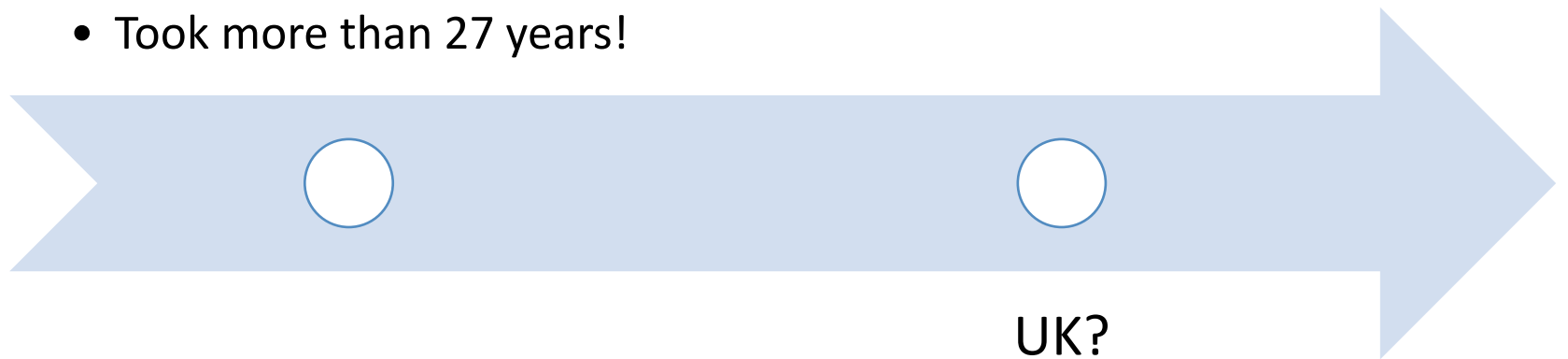
Quasi-Federal

- India
 - Federal in form but unitary in spirit
 - Unitary in spirit because has single Constitution
 - Central tendency
 - Apparent from Residuary power to Centre and Doctrine of repugnancy
 - In USA, States have right to make their own Constitution – Not in India

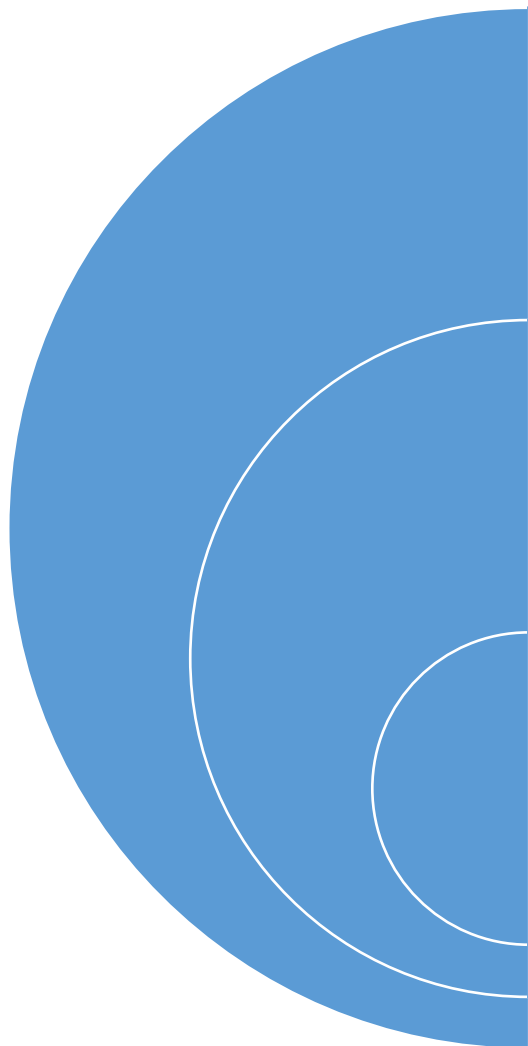
Other nations!

Pakistan

- Took more than 27 years!



Constitution of India



Came into force	<ul style="list-style-type: none">• 26.01.1950• 2 years, 11 months 17 days (11 session and 165 days)
Written?	<ul style="list-style-type: none">• Longest written Constitution!• 1,45,000+ words!
From 1950 to 2020 – 104 times amended!	<ul style="list-style-type: none">• USA – 230 Yrs!• Terms interpreted numerous times!

Constitution

1.

- Basic/ fundamental law - Also a law

2.

- For governance of India

3.

- It can be detailed
 - Too lengthy
 - It can be brief - Too much to interpret

4.

- Every organ owes their origin (including GSTC)
- Bestows powers as well as outlines limitations

Constitution

6.

- Power to levy tax emerges from Col (Article 265/ 246A etc)

7.

- Laws made can be declared by Judiciary as un-Constitutional

Supreme

Who is Supreme?

Country

UK

USA

India

Supremacy

Parliament

Judiciary

?

Col is Supreme

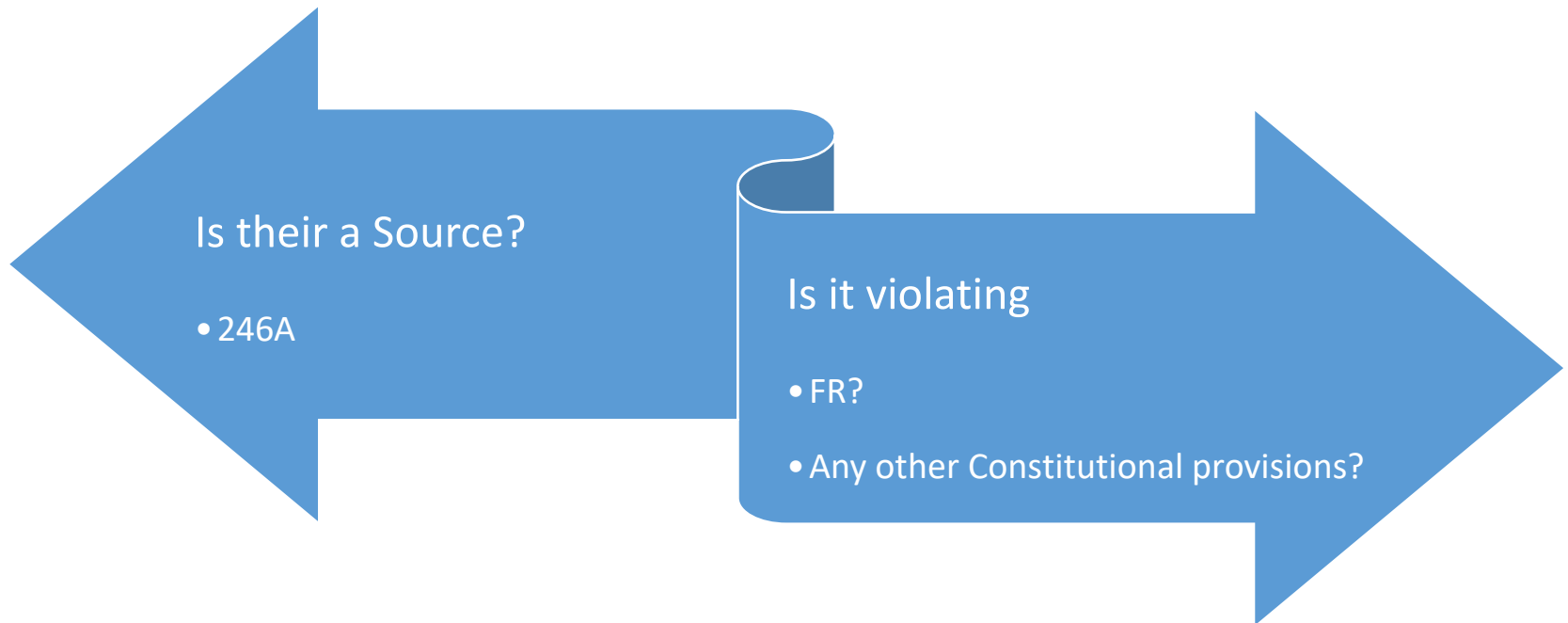
GVK Inds. Ltd.

[2017 (48) S.T.R.

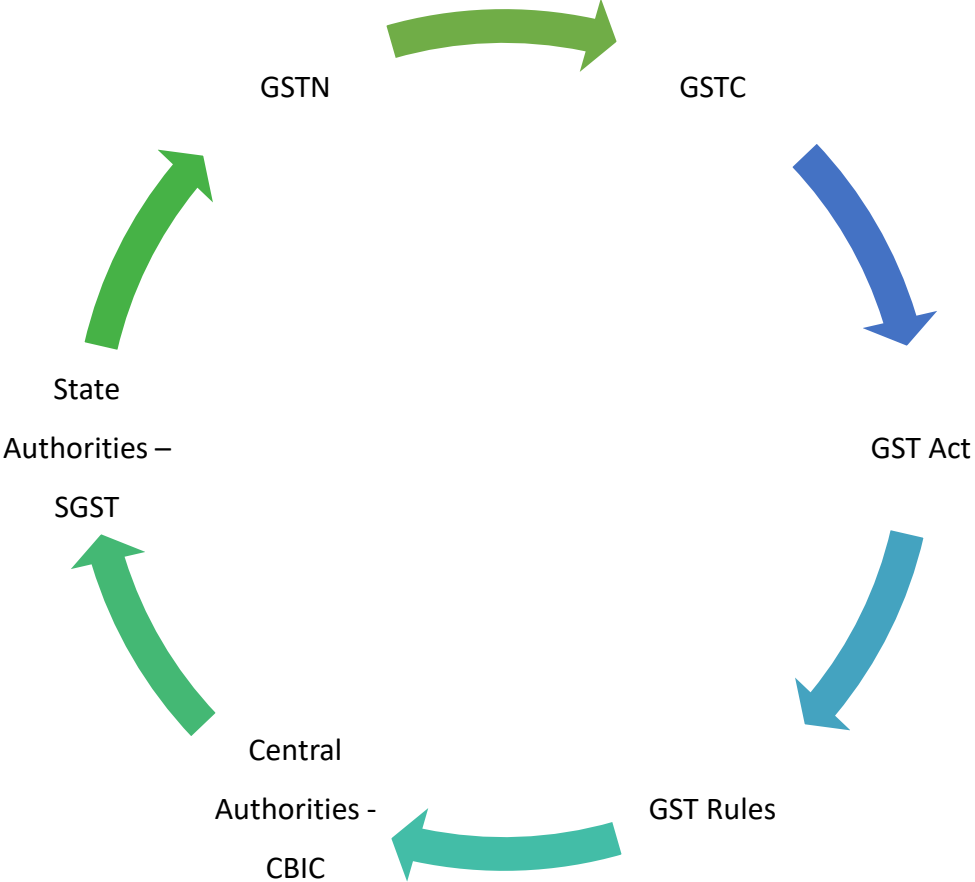
177 (S.C.)]

- It is the Constitution that is supreme, with true sovereignty vesting in the people

Why we need to read!

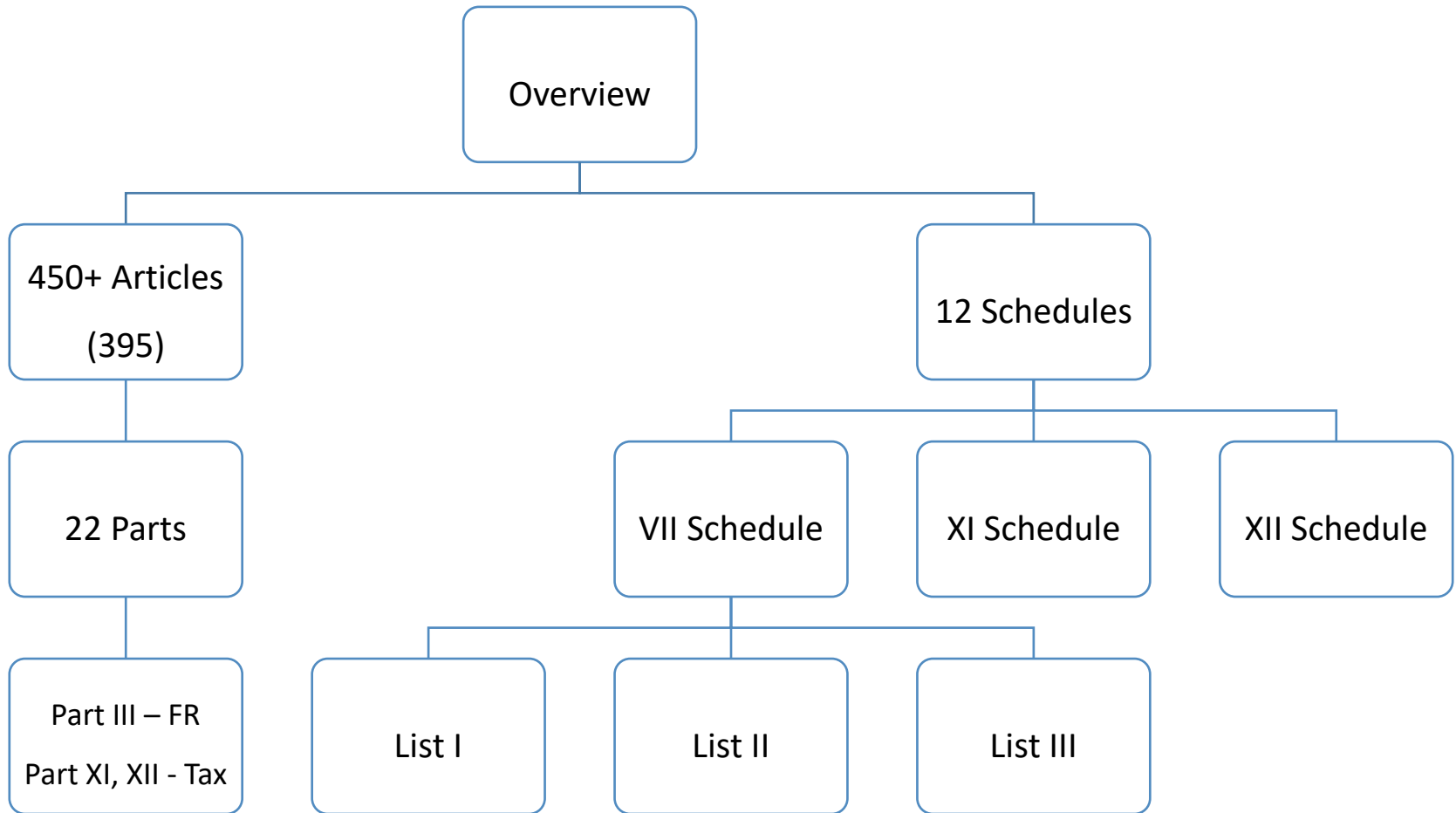


Who is Supreme – GST ?



Overview

Overview



Overview

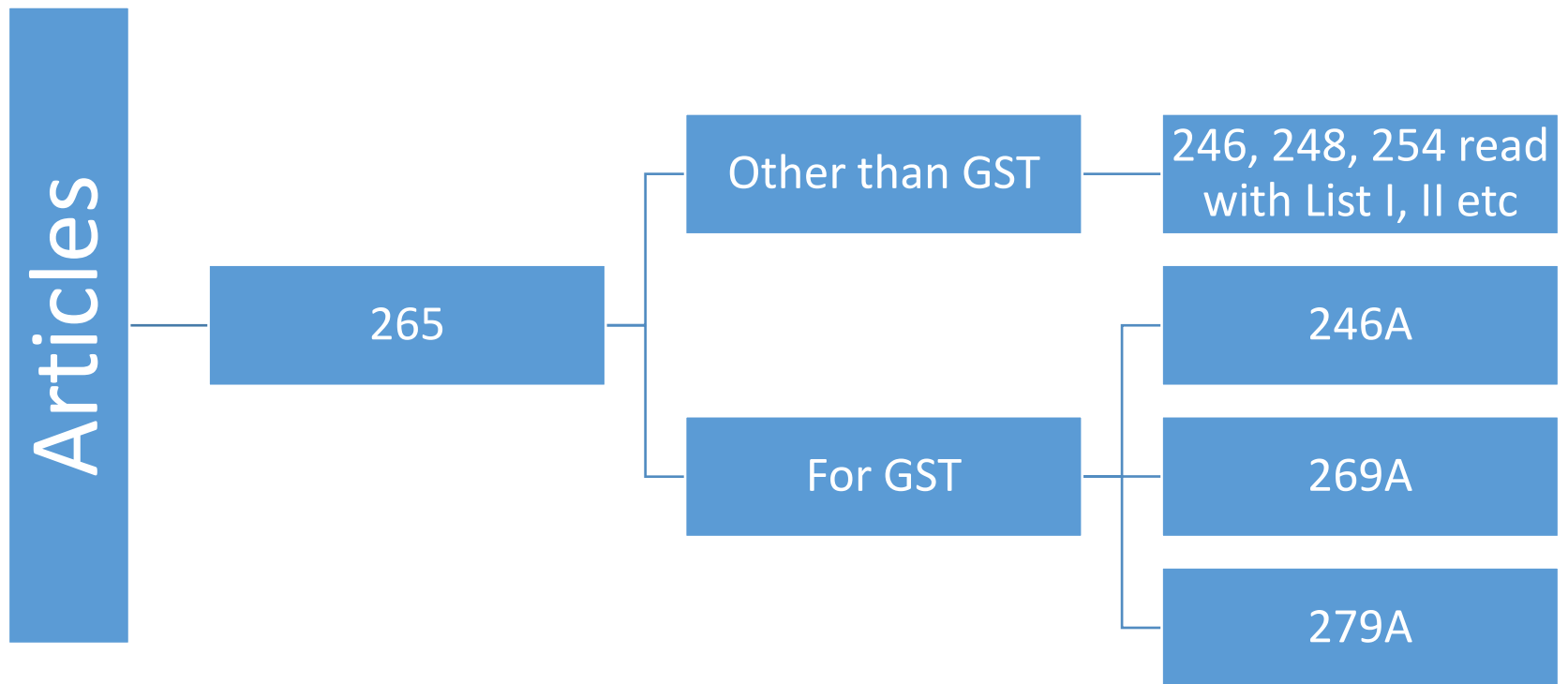
Preamble	Article 1	13	14
19	21	27	32
36-51	51A	131	136
	141	226	

Overview

243G	243W	245	246	246A
248	254	263	265	269A
270	279A	286	300A	300-304
	366	367	392	395

Taxation entries

Taxation



Primary Source - Text

**GVK Inds.
Ltd.**

[2017 (48)
S.T.R. 177
(S.C.)]

- *“In interpreting any law, including the Constitution, the **text of the provision** under consideration would be the **primary source** for discerning the meanings that (sic) in the enactment.*

Primary Source - Text

**GVK Inds.
Ltd.**

[2017 (48)
S.T.R. 177
(S.C.)]

- *While indeed **dynamic interpretation** is necessary, if the meaning necessary to fit the changed circumstances could be found in the text itself, we would always be better served by **treading a path as close as possible to the text**, by gathering the plain ordinary meaning, and by sweeping our vision and comprehension across the entire document to see whether that meaning is validated by constitutional values and scheme.”*

Taxation

Art. 265

- **Article 265. Taxes not to be imposed save by authority of law.**—*No tax shall be levied or collected except by authority of law.*
- Key points
 - *No tax*
 - *Shall be*
 - *Levied or collected*
 - *Except*
 - *By Authority of Law*

Article 265 – Bar is absolute!

- **“Article 265 forbids the State from making an unlawful levy or collecting taxes unlawfully. The bar is absolute.** It protects the citizens from any unlawful exaction of tax.
 - Mafatlal Industries Ltd 1997 (89) E.L.T. 247 (S.C.)
- **A tax must be levied having regard to the provisions contained in Article 265 of the Constitution of India, i.e., by authority of law. The power to impose tax must be express and no equity can be claimed** in the matter of levy of tax. One has to look merely at what is clearly stated in the statute.
 - S.S. Ayodhya Distillery 2009 (233) E.L.T. 146 (S.C.)

Article 265

‘...except by authority of law’

- Fundamental guarantee - Being taken away by Notifications/ Circulars
- Rulings
 - Director remuneration or on penalties/ damages
- Diluting the Parliamentary authority?

Increase in powers

- Changes in rules – 10%/20%
- Citizen has no right – Costly to go to Court
- Rule of Law vs Ruled by Law

Parliamentary debates about the changes?

Article 265 – ‘Levy’ and ‘collection’

- *In taxing statute the words ‘levy’ and ‘collect’ are not synonymous terms, (refer to Assistant Collector of Central Excise, Calcutta Division v. National Tobacco Co. of India Ltd. - 1978 (2) E.L.T. (J 416) (S.C.)= (1972) 2 SCC 560 at page 572, while ‘levy’ would mean the assessment or charging or imposing tax, ‘collect’ in Article 265 would mean the physical realisation of the tax which is levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same. The **enforcement of levy could only mean realisation of the tax imposed or demanded.**”*

Article 265 – Retrospective and double taxation

- In this regard legislative power to impose tax also includes within itself the power to tax **retrospectively** [PRO LAB. 2015 (321) ELT 366 (SC)]
 - Must expressly provide or clearly imply retrospective operation
 - Must be reasonable and not excessive or harsh
 - Cannot be used to subvert the decision without removing the statutory basis
- *“It may also be noted that there is nothing in Article 265 of the Constitution from which one can spin out the constitutional vice called **double taxation.**”*
 - Avinder Singh and others (1979) 1 SCC 137
 - Real Estate - Triple Taxation?

TEEN GUNA LAGAAN



DENA PAREGA

memegenerator.net

101st Constitutional Amendment Act

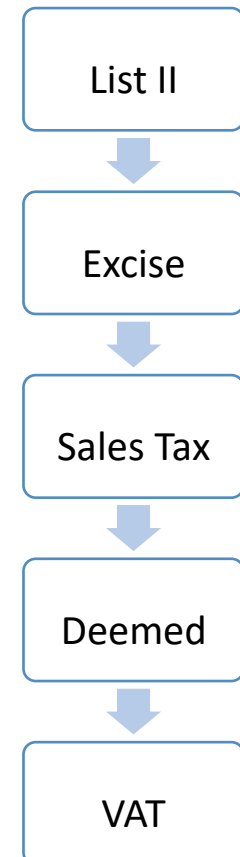
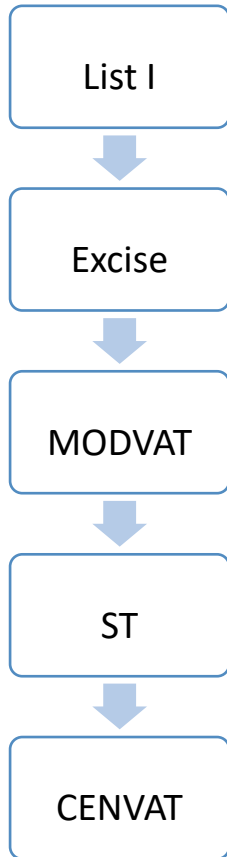
Mutually exclusive!

Why Constituent
Assembly gave
mutually exclusive
powers
(List I and List II)

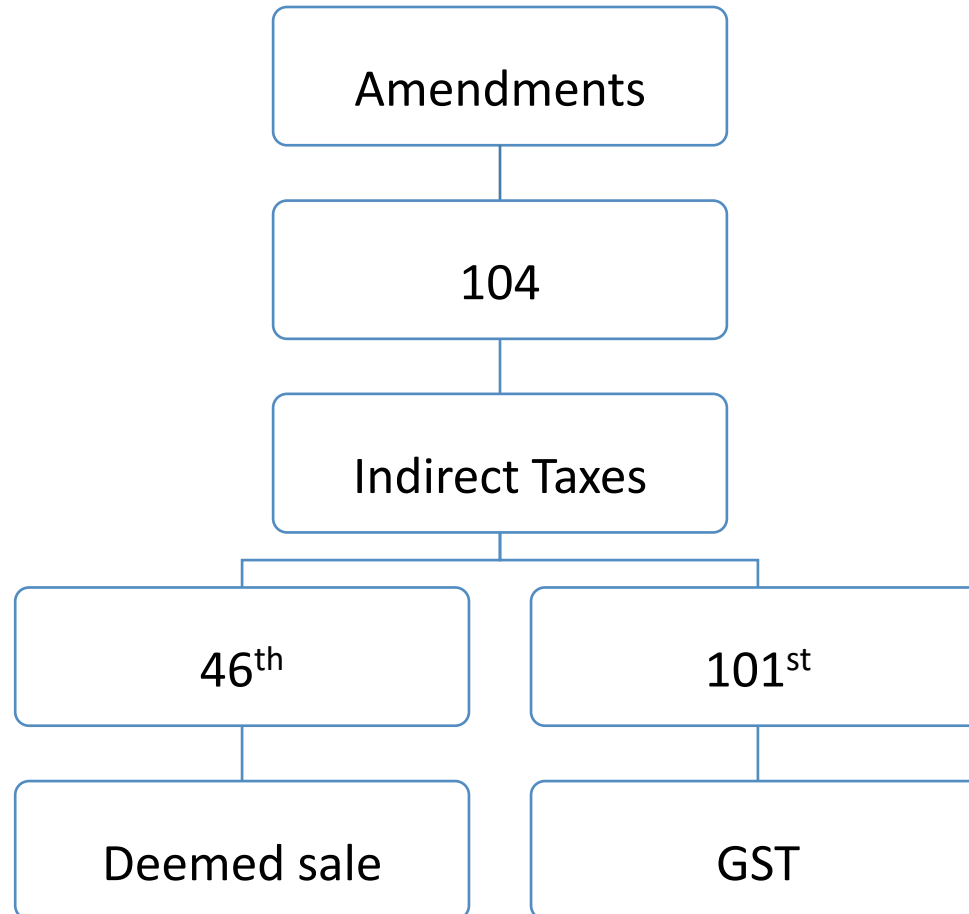
Why?



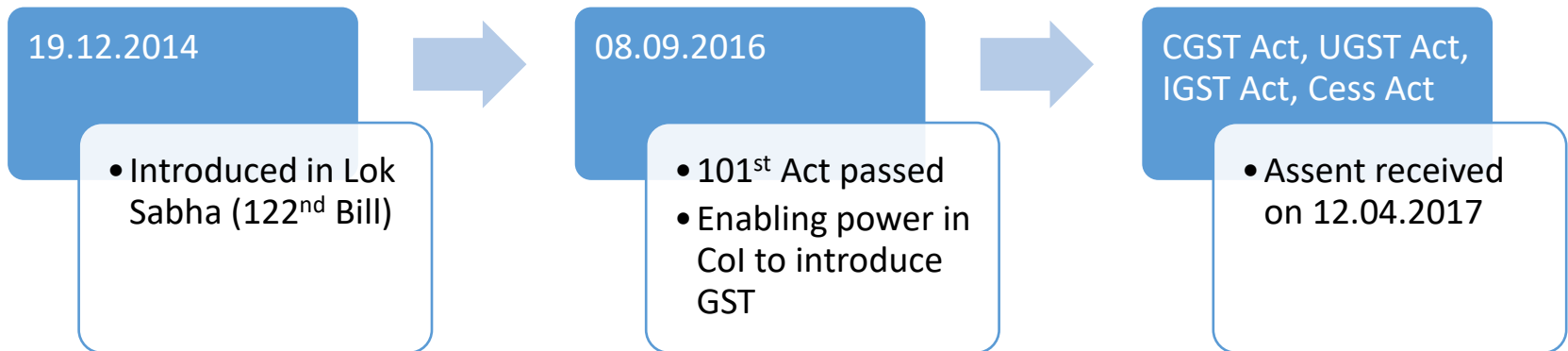
Evolution



Amended!



101st Act



Object – To provide for

Subsuming of various
Central indirect taxes and
levies

Subsuming of State AT,
Entertainment Tax etc

Conferring concurrent
power upon Parliament
and the State Legislatures
to make

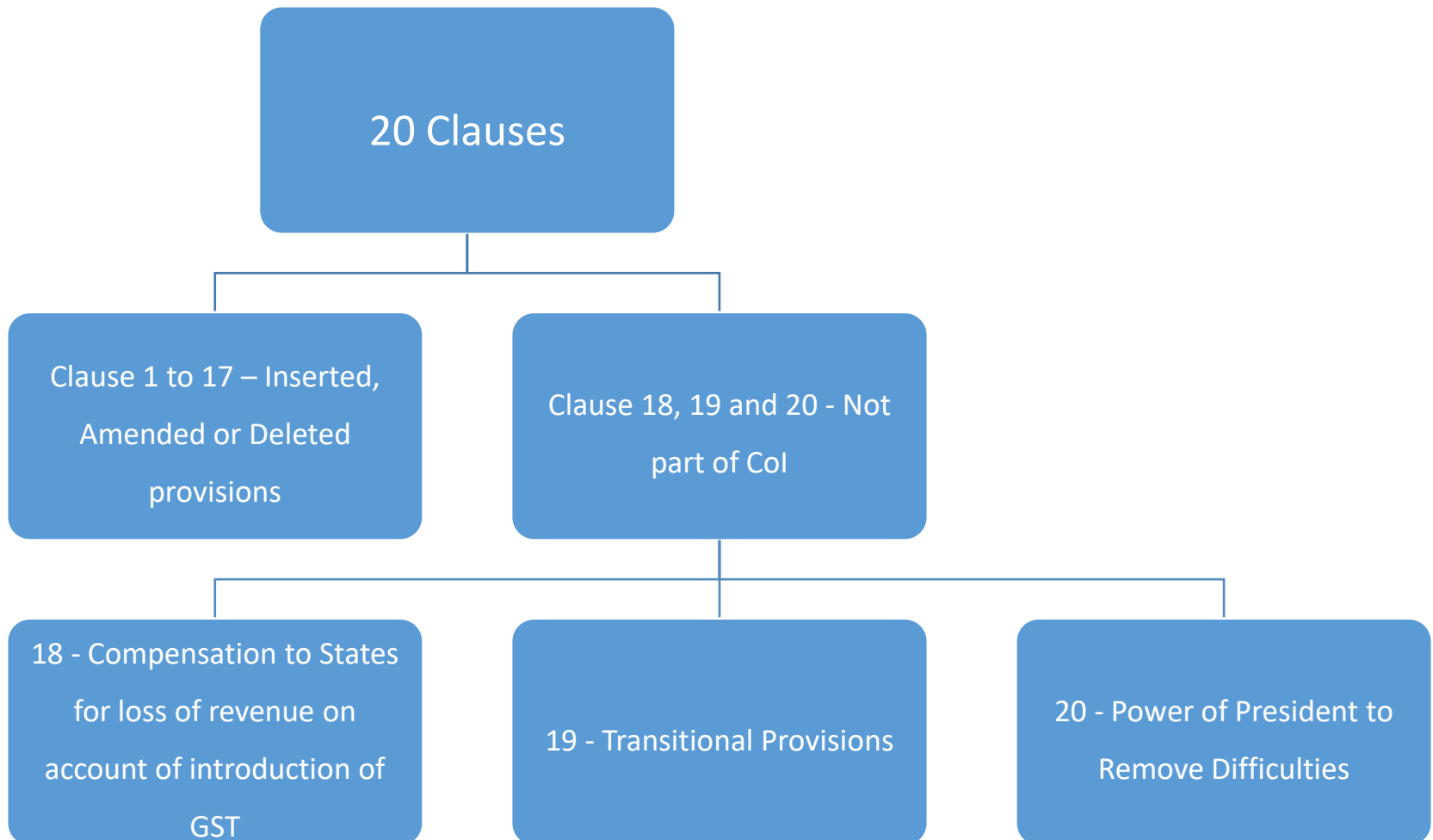
Levy IGST

All goods except ALHC and
specified petroleum
products

Compensation to States for
loss of revenue for five
years

Creation of Goods and
Services Tax Council and
every decision shall be
taken by majority of 3/4th

101st Act



101st Act

Article 246A, 269A and 279A	Inserted	Article 248, 249, 250, 268, 269, 270, 271, 286, 366 and 368	Amended	List I and List II of Seventh Schedule	Amended	268A (Service Tax levied by Union)	Omitted
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Impact on List I

82

- Taxes on income other than agricultural income

83

- Duties of customs including export duties

84

- Duties of excise on the following goods manufactured or produced in India, **namely**:—
 - (a) Petroleum crude;
 - (b) High speed diesel;
 - (c) Motor spirit (commonly known as petrol);
 - (d) Natural gas;
 - (e) Aviation turbine fuel; and
 - (f) Tobacco and tobacco products

97

- Any other **matter not enumerated in List II or List III** including any tax not mentioned in either of those Lists

Schedule VII - List II

51

- Duties of **excise** on the **following goods** manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—
 - (a) **alcoholic** liquors for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in subparagraph (b) of this entry

53

- Taxes on the consumption or sale of electricity

54

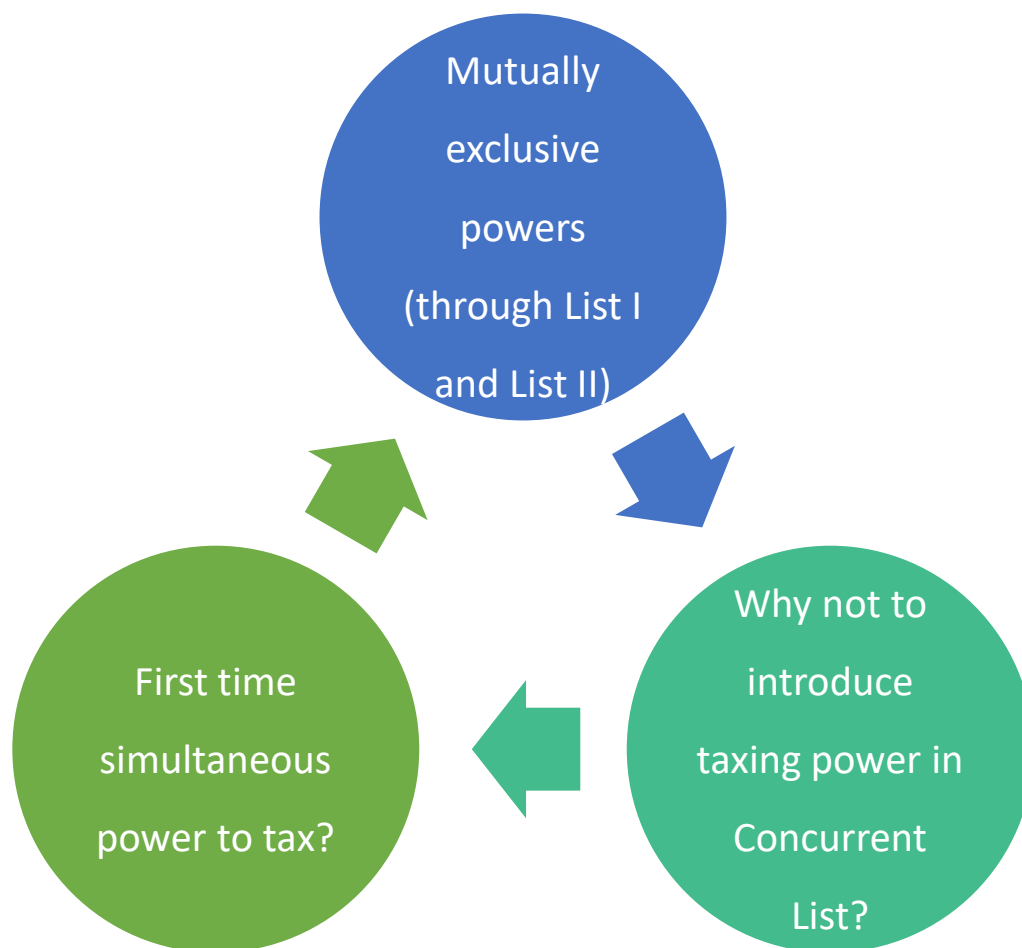
- Taxes on the **sale** of **petroleum** crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and **alcoholic liquor** for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods

Status!

Particulars	Central Excise	Service Tax	State Excise	State VAT	GST
Petroleum products	Yes (Entry 84)	-	No	Yes (Entry 54)	Excluded
Tobacco	Yes (Entry 84)	-	No	No	Yes
ALHC	No	-	Yes (Entry 51)	Yes (Entry 54)	Excluded
Services	-	No	-	-	Yes

Article 246A

Article 246A



CAB – ‘Concurrent’ taxing powers

- *The Constitution is proposed to be amended to introduce the goods and services tax for conferring **concurrent taxing powers** on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both.*
- *2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for— ...*
 - (f) conferring **concurrent power** upon Parliament and the State Legislatures to make laws governing goods and services tax;*

'Concurrent' vs 'Simultaneous' powers

- *“Indeed, **concurrency** yields to the doctrine of repugnancy, but **simultaneous** legislative power does not.”*
 - **Sheen Golden Jewels (I) P. Ltd. [2019 (23) G.S.T.L. 4 (Ker.)]**

246A. Special provision with respect to goods and services tax.—

- (1) **Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.**
- (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place **in the course of inter-State trade or commerce.**

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

Article 366 (12A) 'Goods and services tax'

- '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
- Key points
 - Supply
 - 70 yrs – Manufacture/sale
 - Goods or services or both
 - Both?

What it means!



- Manufacturer
- Trader
- **Services provider**
- **Both** (Works contractor)

Article 366 (12A) 'Goods and services tax'

- Burdon of proof?
 - Bai Mamubai Trust

- Actual supply or advances?
 - Levy and collection?

Teesta Distributors 2018 (19) G.S.T.L. 29 (Cal.)

- *Article 246A of the Constitution of India makes **special provision** with respect to Goods and Services Tax. It empowers the Parliament and the Legislature of every State subject to Article 246A(2) and notwithstanding anything contained in Articles 246 and 254, to make laws with respect to Goods and Services Tax imposed by the Union or the State. **Article 246A (2)** recognises the **exclusive power** of the Parliament to make laws with respect to Goods and Services Tax where the supply of goods, or of services, or both takes place in course of **inter-State** trade or commerce.*

Article 366 (12) 'Goods'

- 'Goods' includes all materials, commodities, and articles
- *"The definition of 'goods' in the Constitution is an **inclusive** definition. It has a very wide sweep. All materials, commodities and articles are included in the definition. The definition, to my reading, is not limited to tangible materials, commodities and articles. **An intangible product such as a software** would come within the definition of **'goods'** appearing in Article 366(12) of the Constitution of India."*
 - Teesta Distributors 2018 (19) G.S.T.L. 29 (Cal.)

Article 366 (26A) 'Services'

'Services' means anything other than goods

Certainty vs flexibility

'Means'

Context of the Act

- Earlier statutes can help

Meaning of anything?

- Read in context?

'Service'

Excise

- (f) "**manufacture**" **includes** any process, -
 - which is specified in relation to any goods in the Section or Chapter notes of the Fourth Schedule as amounting to manufacture; or ...

VAT

- 366 (29A) tax on the **sale** or purchase of **goods** **includes**...
 - ...
 - (b) a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;
- Sale – Sec. (24) -
Explanation.— For the purposes of this clause,-... shall be **deemed** to be a sale.

ST Law

- (44) "**service**" means any activity carried out by a person for another for consideration, and **includes** a declared service, but **shall not include** – (a) an activity which constitutes merely,-
 - ...

Skipper Ltd 2019 (20) G.S.T.L. 110 (A.A.R. - GST)

- *“After 101st Amendment of the Constitution, even the legal fiction for segregation of works contract into contracts for the sale of goods and for service is no longer necessary for the purpose of taxation. Clause (12A) to Art. 366 defines tax on supply of goods and services. Tax on the supply of goods includes a tax on the sale of goods as defined in Clause (29A) of Art. 366. However, GST being a tax on the supply of both goods and services, it is **no longer necessary to segregate** the supply of goods in an indivisible composite contract for the purpose of taxation. GST can be levied on the entire value chain, which is the bundled supply of goods and services for execution of an indivisible composite contract for construction, erection, commissioning, etc., of an immovable property.”*

Article 269A

CAB - Objects

- 2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for—

...

(d) levy of Integrated Goods and Services Tax on **inter- State** transactions of goods and services;

269A. Levy and collection of goods and services tax in course of inter-State trade or commerce

- (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.

269A. Levy and collection of goods and services tax in course of inter-State trade or commerce

- (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.]

Teesta Distributors 2018 (19) G.S.T.L. 29 (Cal.)

- *“Article 269A deals with levy and collection of Goods and Services Tax in course of inter-State trade or commerce. Essentially, **Article 269A recognises the Government of India to collect Goods and Services Tax on supplies in the course of inter-State trade or commerce.** It allows the apportionment of the tax levied and collected between the Union and the States as may be provided by Parliament by law. It recognises the authority of the Parliament by law to 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.”*

Article 269A

Article 366 (26B)

- **“State”** with reference to articles 246A, 268, 269, **269A** and article 279A includes a Union territory with Legislature

Earlier laws

- Excise
 - ‘...manufactured In India’
- Service Tax
 - Taxable Territory

Extent of Laws!

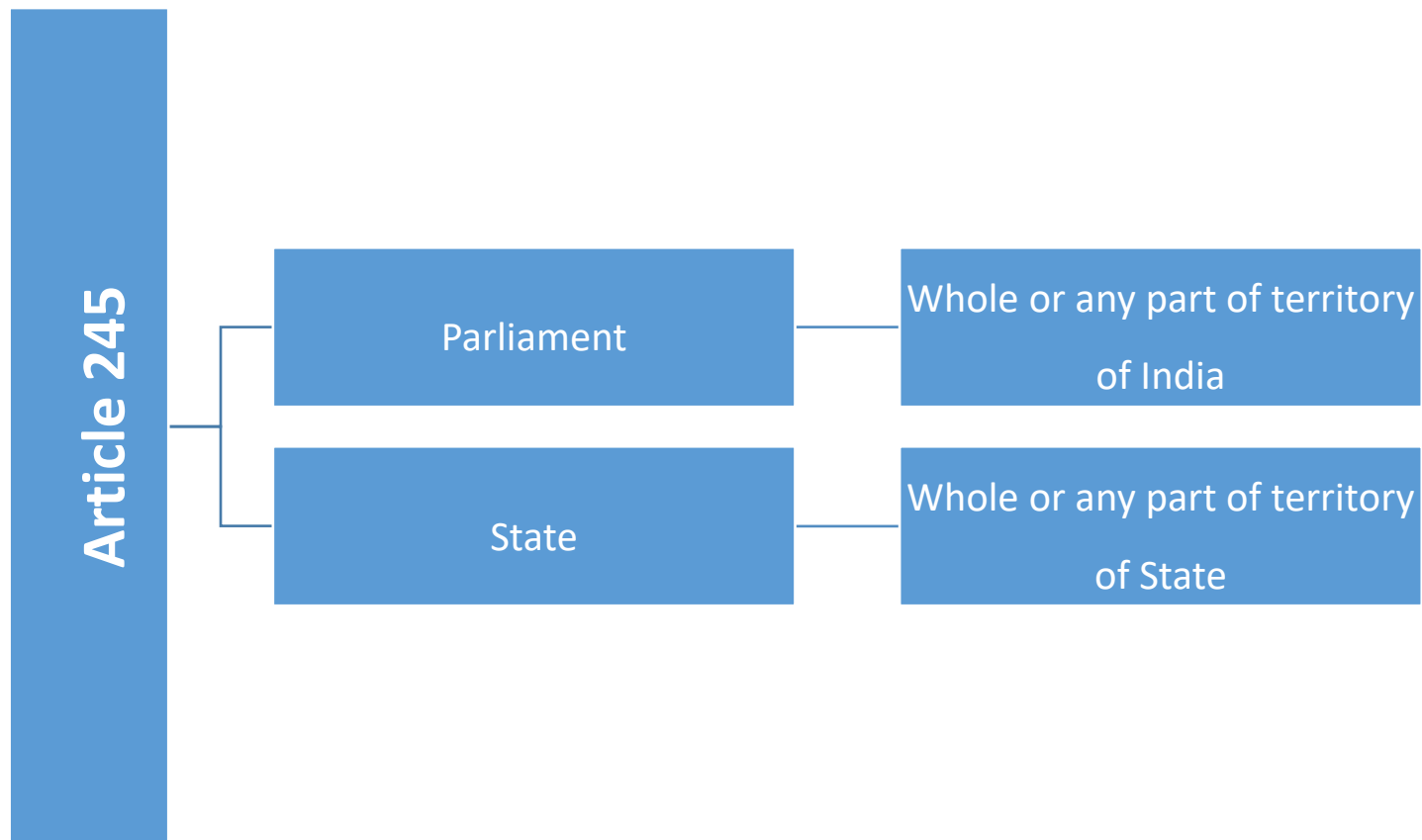
Article 245

245. Extent of laws made by Parliament and by the Legislatures of States.—

*(1) Subject to the provisions of this Constitution, Parliament may make laws **for the whole or any part of the territory of India**, and the Legislature of a State may make laws for the whole or any part of the State.*

*(2) **No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.***”

Article 245



IGST Act

- **SECTION 1. Short title, extent and commencement.** —

- (1) This Act may be called the Integrated Goods and Services Tax Act, 2017.

- (2) It shall extend to the whole of India

- **SECTION 7. Inter-State supply.** — (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in -

- (a) two different States;

- (b) two different Union territories; or

- (c) a State and a Union territory,

- shall be treated as a supply of goods in the course of inter-State trade or commerce.

- (5) Supply of goods or services or both, -

IGST Act

(5) Supply of goods or services or both, -

(a) when the **supplier is located in India** and the **place of supply is outside India**;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both **in the course of inter-State** trade or commerce.

Power to tax exports?

GVK Industries

(2011) 332 ITR 130

- *Situs* of the tax would be **where the taxable event occurs** and not where the effect or the consequence thereof is felt.

All India Fedn. of Tax Practitioners

2007 (7) S.T.R. 625 (S.C.)

- ... it is a value added tax which is a **destination based consumption tax**

Article 279A

CAB - Object

2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for—

....

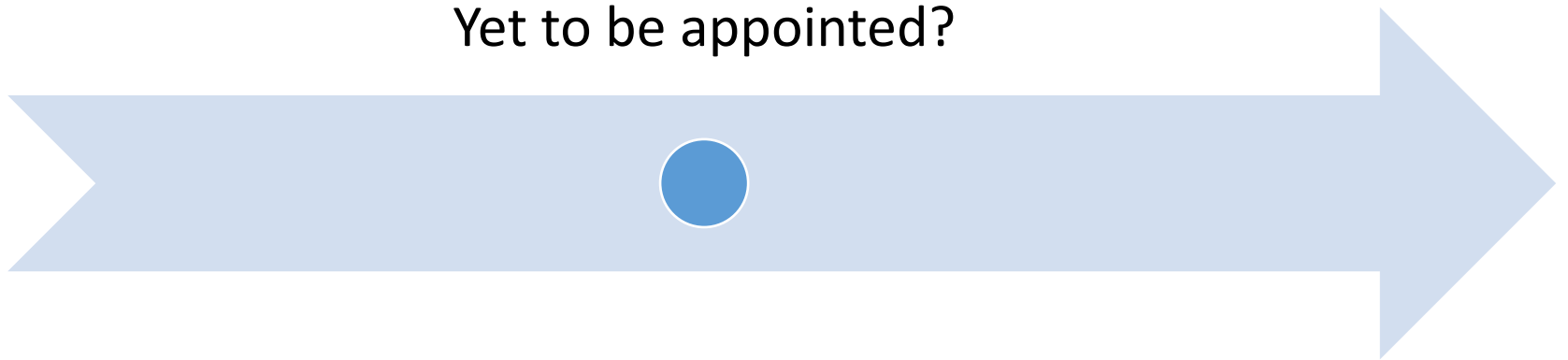
- (i) creation of Goods and Services Tax **Council to examine issues** relating to goods and services tax **and make recommendations** to the Union and the States on parameters like rates, exemption list and threshold limits. ...

279A. Goods and Services Tax Council.—

- (1) *The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, **constitute a Council** to be called the Goods and Services Tax Council.*
- (2) *The Goods and Services Tax Council shall **consist** of the following members, namely:-*
- (a) the Union Finance Minister—**Chairperson**;*
 - (b) the Union Minister of State in charge of Revenue or Finance- **Member**;*
 - (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government—**Members**.*
- (3) *The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, **as soon as may be**, choose one amongst themselves to be the **Vice-Chairperson** of the Council for such period as they may decide.*

Vice-Chairperson

Yet to be appointed?



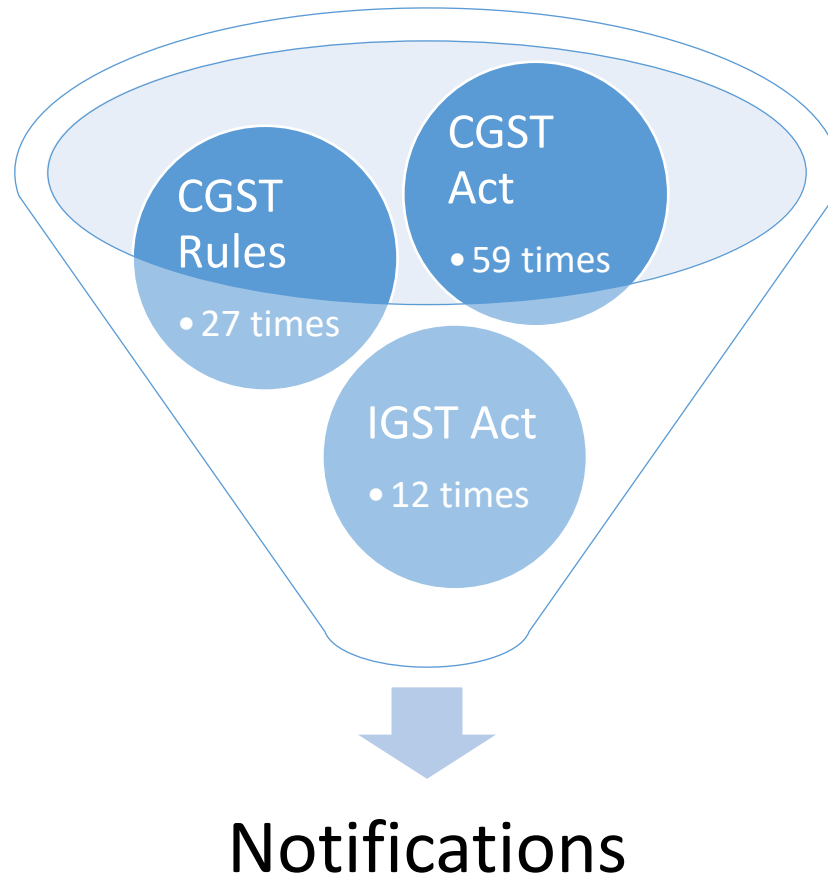
279A. Goods and Services Tax Council.—

(4) *The Goods and Services Tax Council **shall** make **recommendations** to the Union and the States **on**—*

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

*(b) the **goods and services** that may be subjected to, or exempted from the goods and services tax;*

Recommendations



Col - Recommendations

Petroleum

- Art. 246A - ...*Explanation.*—*The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the **date recommended** by the Goods and Services Tax Council.*
- Art. 279 – (5) *The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.*

IGST apportionment

- 269A – (1) ...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

Act - Recommendations

Authorisation

• Sec. 6 - *Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers ... subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*

Neither goods nor service

• Sec. 7 - *... such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

Classification

• Sec. 7 - *...Specify, by notification, the transactions that are to be treated as (a) a supply of goods and not supply of services ...*

Rate

• Sec. 9 - *...as may be notified by the Government on the recommendations the Council*

Act - Recommendations

Levy (Petroleum)

- Sec. 9 - ..shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council

Who should pay?

- Sec. 9 - ...specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge
- ... specify a class of registered persons who ...shall, in respect of supply of specified categories of goods or services or both received from an **unregistered supplier**, pay the tax on reverse
- ...specify categories of services the tax on intra- State supplies of which shall be paid by the **electronic commerce operator**

Exempt

- Sec. 11 – (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, **exempt...**

Act - Recommendations

Value

- Sec. 15 - ...*value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed*

Registration – Exemption

- Sec. 23 - ...*Government may, on the recommendations of the Council, by notification, specify the category of persons who **may be exempted** from obtaining registration under this such other person or class of persons as may be notified by the Government on the recommendations of the Council*

Registration - Compulsory

- Section 24 - ... *Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons **shall be required** to be registered under this Act,: ... (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.*

Act - Recommendations

Interest

- Sec. 50 - *...interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council*
- *... at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*

TDS

- Sec. 51 - *such persons or category of persons as may be notified by the Government on the recommendations of the Council...*

Refund

- Section 54 - *... except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council*

Rules - Recommendations

Rules

- Sec. 2 (87) ... *“prescribed” means prescribed by rules made under this Act on the recommendations of the Council*
- 164 - (1) *The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act*

Government 'may', on 'recommendation' of the Council...

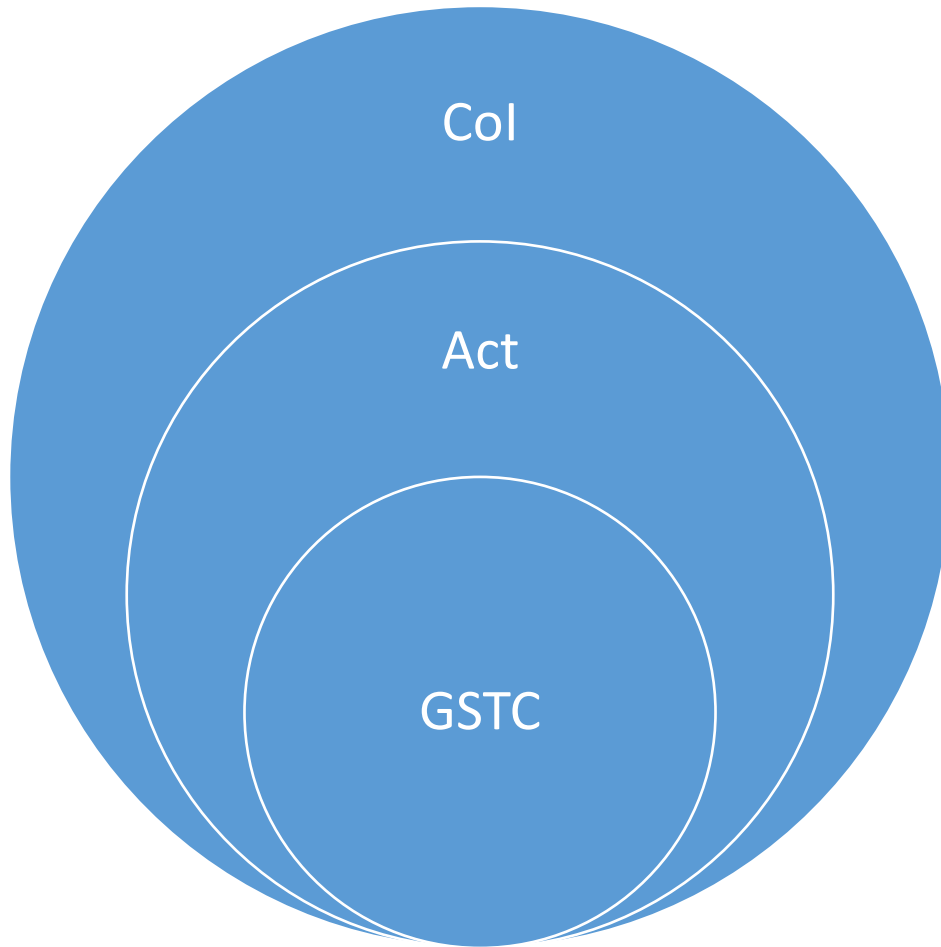
**Instructions/
directions**

- Sec. 168 - (1) *The Board may, if it considers it necessary or expedient so to do for the purpose of **uniformity in the implementation of this Act**, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*

Recommendations

- Not. 57/2020-CT
 - *“G.S.R.....(E). — In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, **on the recommendations of the Council**, hereby makes the following further amendments...”*

Recommendations



Recommendations – Few aspects

- ‘(4) The Goods and Services Tax Council shall make **recommendations** to the Union and the States **on...**’
 - ‘on’
 - Violation of FR permissible?
- Goods and services that may be subjected to or exempted from
 - Not. No. 3/2009-GST (R) - Discriminates existing and new projects – Existing and new buyers?
- Can tax be levied through notifications by GSTC?
 - Tata Sky Ltd 2013 (30) STR 337 (SC) - It is elementary that a notification issued in exercise of powers under the Act cannot amend the Act. The notification cannot enlarge either the charging section or amend the provision of collection under Section 4 of the Act read with the 1942 Rules.

Recommendations – Few aspects

- Can recommendation override Act?
 - Only consistent with Act?
 - Order without power to result in nullity
- Rule of Law
 - Minimum standard of fairness both substantive and procedural

279A. Goods and Services Tax Council.—

(4) *The Goods and Services Tax Council **shall** make **recommendations** to the Union and the States **on**—*

...

(c) *model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;*

(d) *the **threshold limit** of turnover below which **goods and services** may be exempted from goods and services tax;*

279A. Goods and Services Tax Council.—

- (e) the rates including floor rates with bands of goods and services tax;*
- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;*
- (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and*
- (h) **any other matter relating to the goods and services tax**, as the Council may decide.*

Recommendations – Few aspects

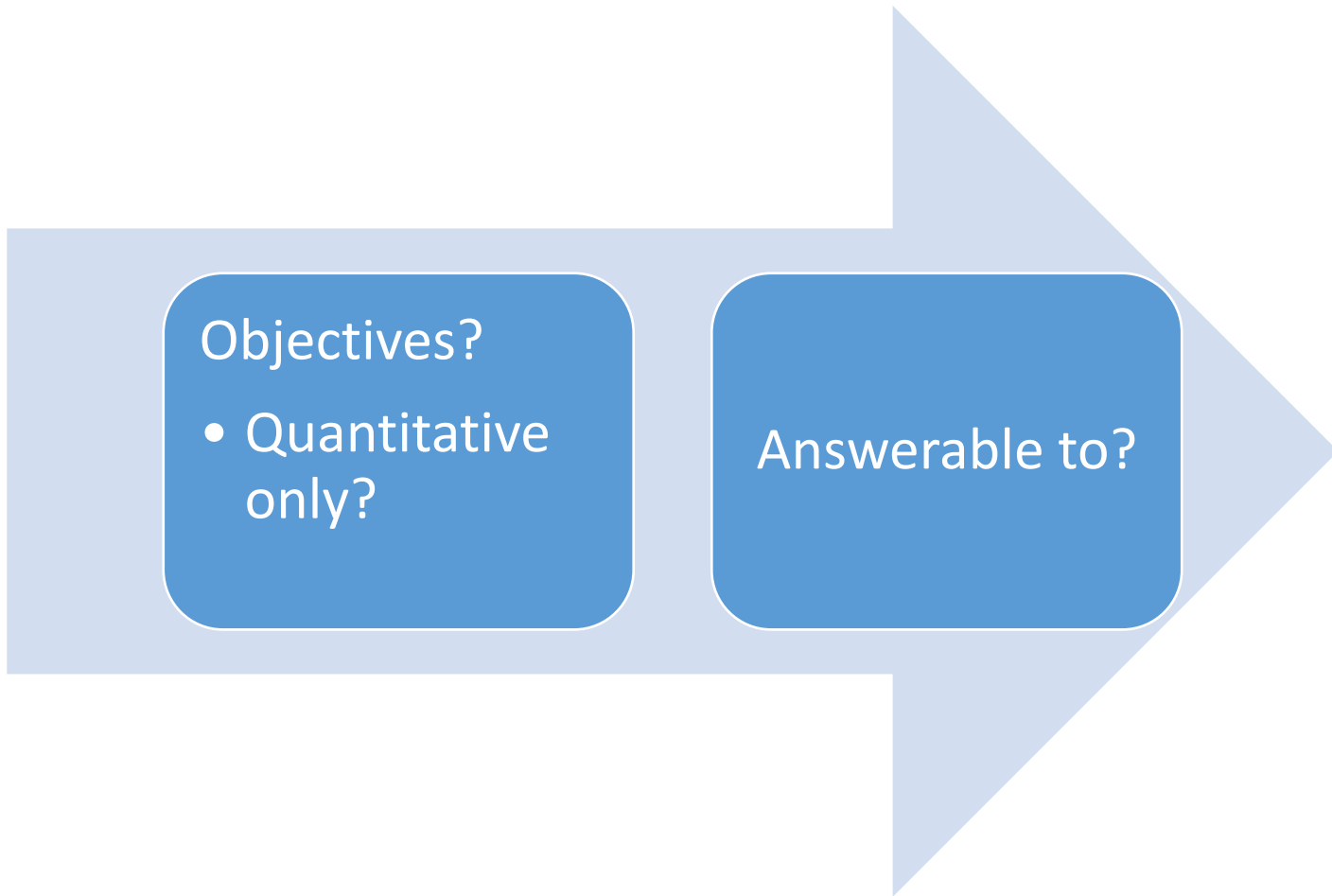
- Teesta Distributors 2018 (9) G.S.T.L. 363 (Guj.)
 - *“...State Government cannot challenge its own notification as unconstitutional ... Such States were present in the GST Council meetings. The resolution was carried by requisite majority. Article 279A contemplates establishment of a mechanism to **adjudicate any dispute** between one or more States or between the Government of India and any State or States on one side and one or more States on the other side or between two or more States”*

279A. Goods and Services Tax Council.—

(5) *The Goods and Services Tax Council shall **recommend the date** on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.*

(6) *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.***

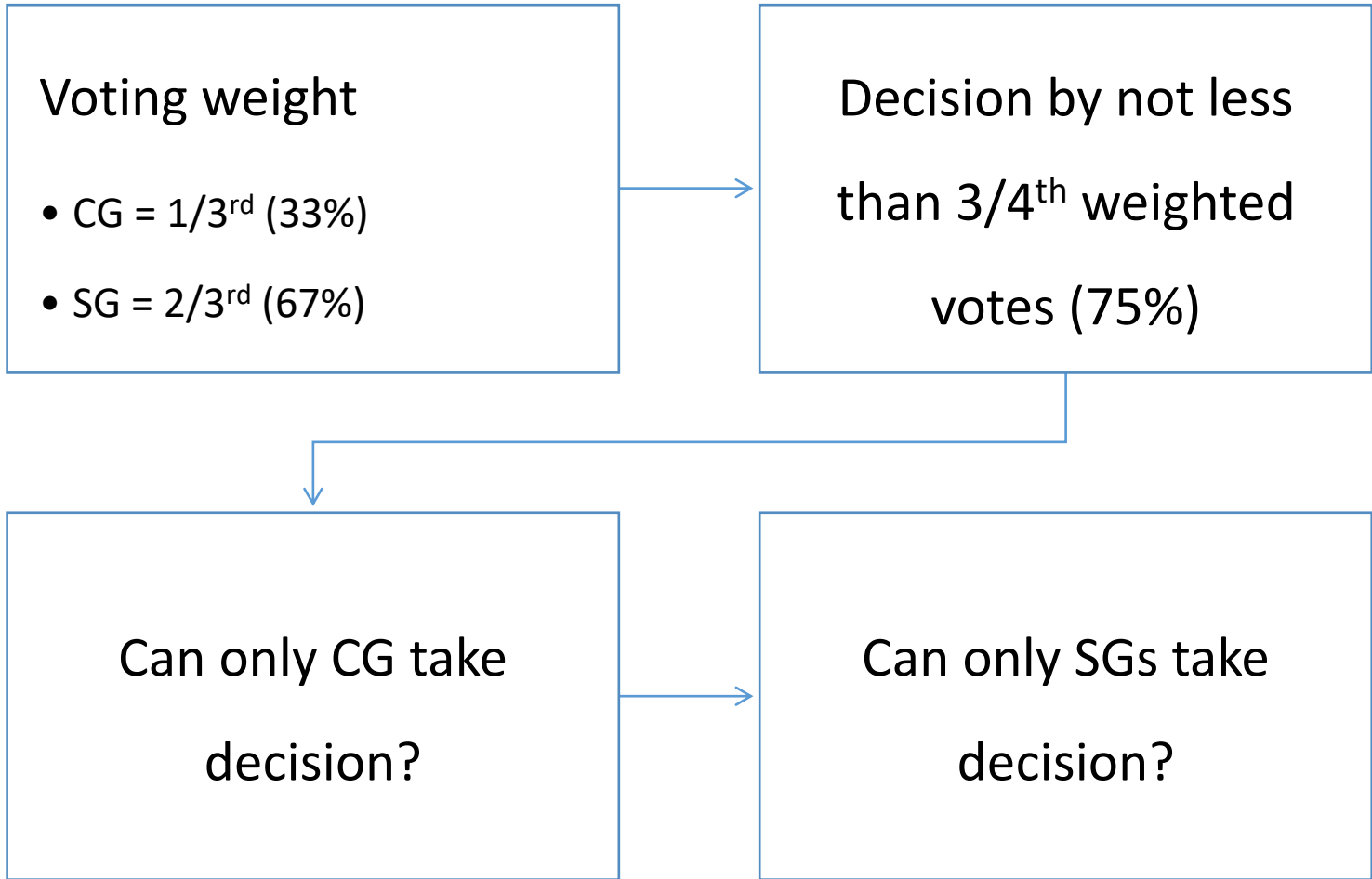
Rule of Law?



279A. Goods and Services Tax Council.—

- (7) *One-half of the total number of Members of the Goods and Services Tax Council shall constitute the **quorum** at its meetings.*
- (8) *The Goods and Services Tax Council shall **determine the procedure** in the performance of its functions.*
- (9) *Every decision of the Goods and Services Tax Council shall be taken **at a meeting**, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—*
- (a) *the vote of the Central Government shall have a weightage of **one-third** of the total votes cast, and*
- (b) *the votes of all the State Governments taken together shall have a weightage of **two-thirds** of the total votes cast, in that meeting.*

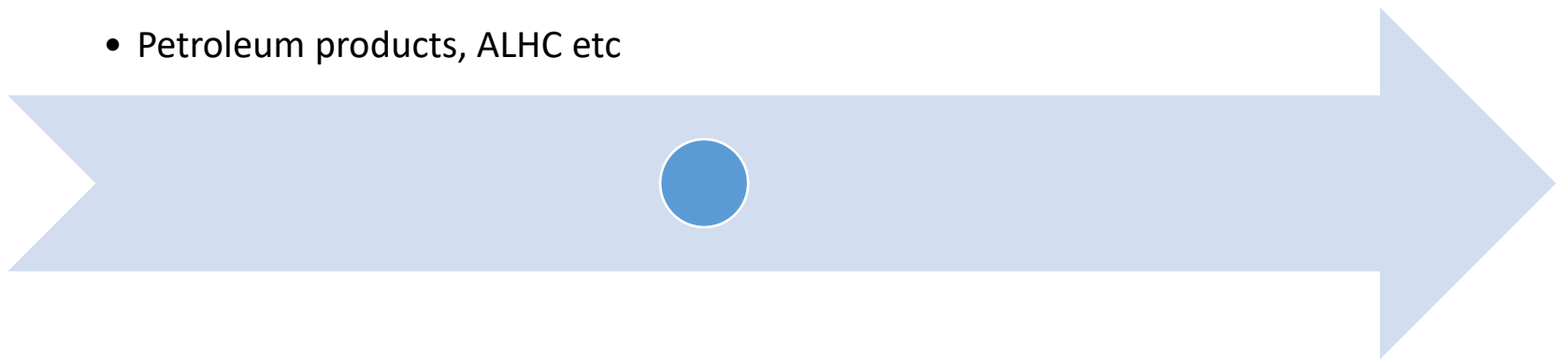
Separation of Powers?



Fiscal independence?

Whether GSTC taken away Autonomy of States completely?

- Mixing of powers through GSTC mechanism?
- Petroleum products, ALHC etc



279A. Goods and Services Tax Council.—

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall **establish a mechanism to adjudicate any dispute**—

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States, arising out of the recommendations of the Council or implementation thereof.

Teesta Distributors 2018 (19) G.S.T.L. 29 (Cal.)

- **Article 279A** deals with Goods and Services Tax Council. It envisages the Constitution of a Goods and Services Tax Council. It enumerates the powers and functions of such Council, the decision making process therein and the **establishment of a mechanism to adjudicate any disputes.**

Redressal mechanism?



41 meetings

- Almost unanimously
- Lottery – By Vote

Original jurisdiction of SC

131. Original jurisdiction of the Supreme Court.—

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

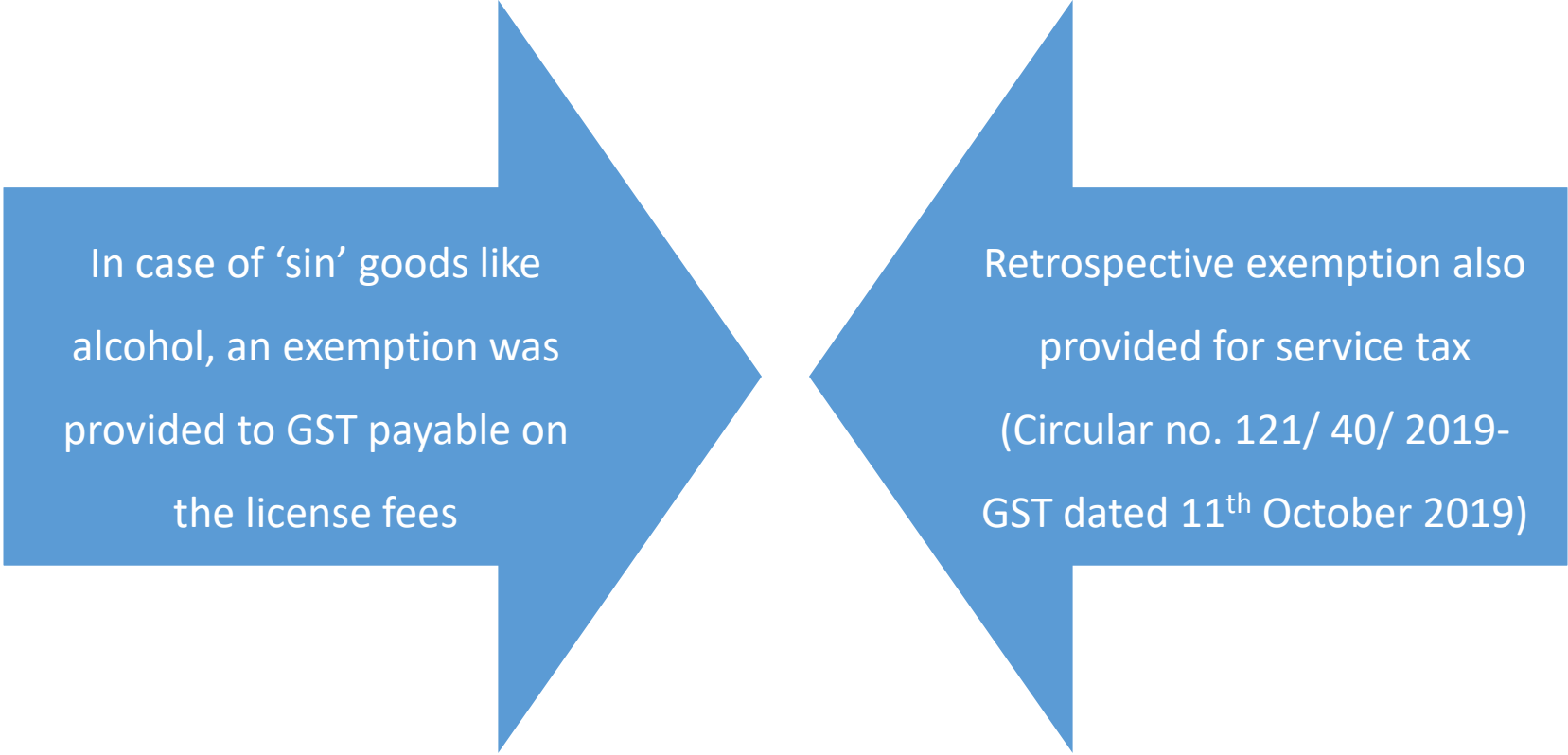
Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

**Can GSTC adjudicate
grievances of public?**

Shiyaad 2019-TIOL-888-HC-KERALA-GST

- *“10. On a perusal of the aforesaid provisions, it is evident that there is **no mechanism provided in the Constitution or any other statute for the Goods and Services Tax Council to adjudicate the grievances raised by the general public. There is no mechanism for consideration and disposal of representations made by the general public to the Council after conducting personal hearing of the parties who make such representations.***

Sin goods!



In case of 'sin' goods like alcohol, an exemption was provided to GST payable on the license fees

Retrospective exemption also provided for service tax (Circular no. 121/ 40/ 2019-GST dated 11th October 2019)

Sin goods vs other Goods/Services



Article 366

366. Definitions.—

(29A) "tax on the sale or purchase of goods" includes—

- (a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;*
- (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
- (c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;*
- (d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;*
- (e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;*
- (f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"*

366 (29A)

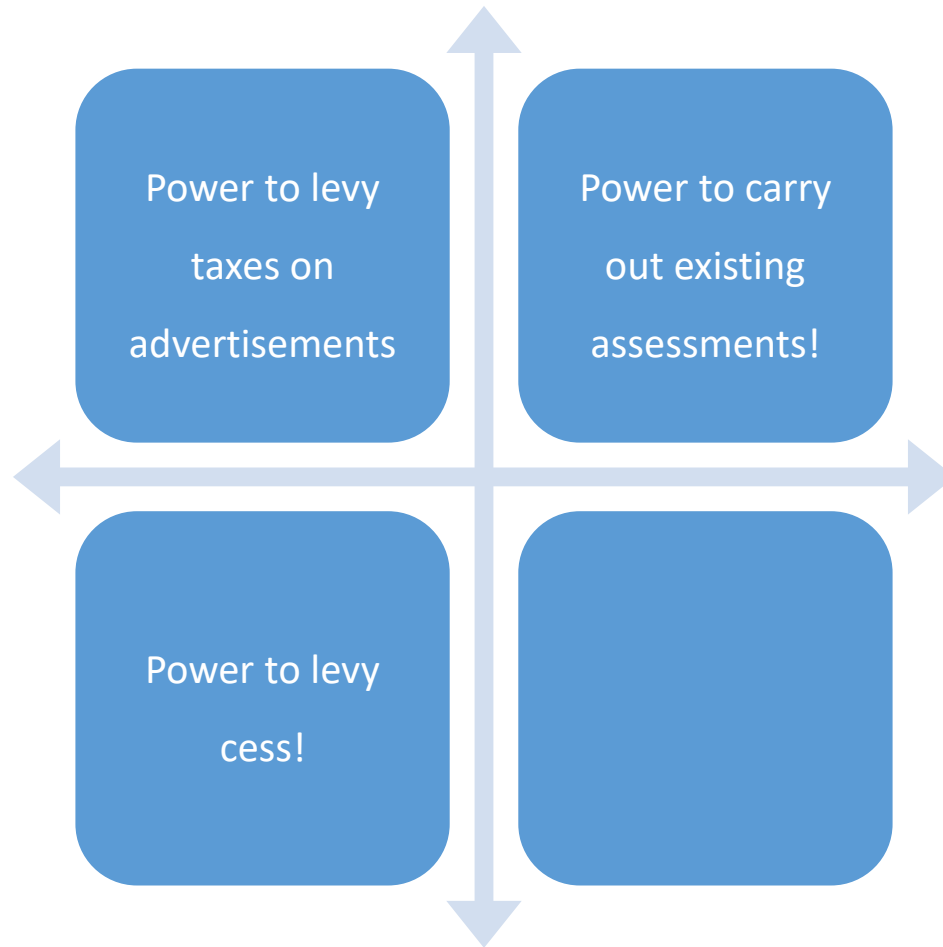
- Relevance
 - Power to levy VAT on Petrol and Liquor continues?
- ‘Sale’ is covered under supply?
- Legal fiction, which is applicable to Entry 54 of List II, is not for the purpose of Entry 53 [Para 145]
 - *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO*, (2007) 5 SCC 447

366 (29A)

- Before GST compulsory split in WC and Restaurant supply?
 - After GST?

Recent developments

Litigates issues - key issues!

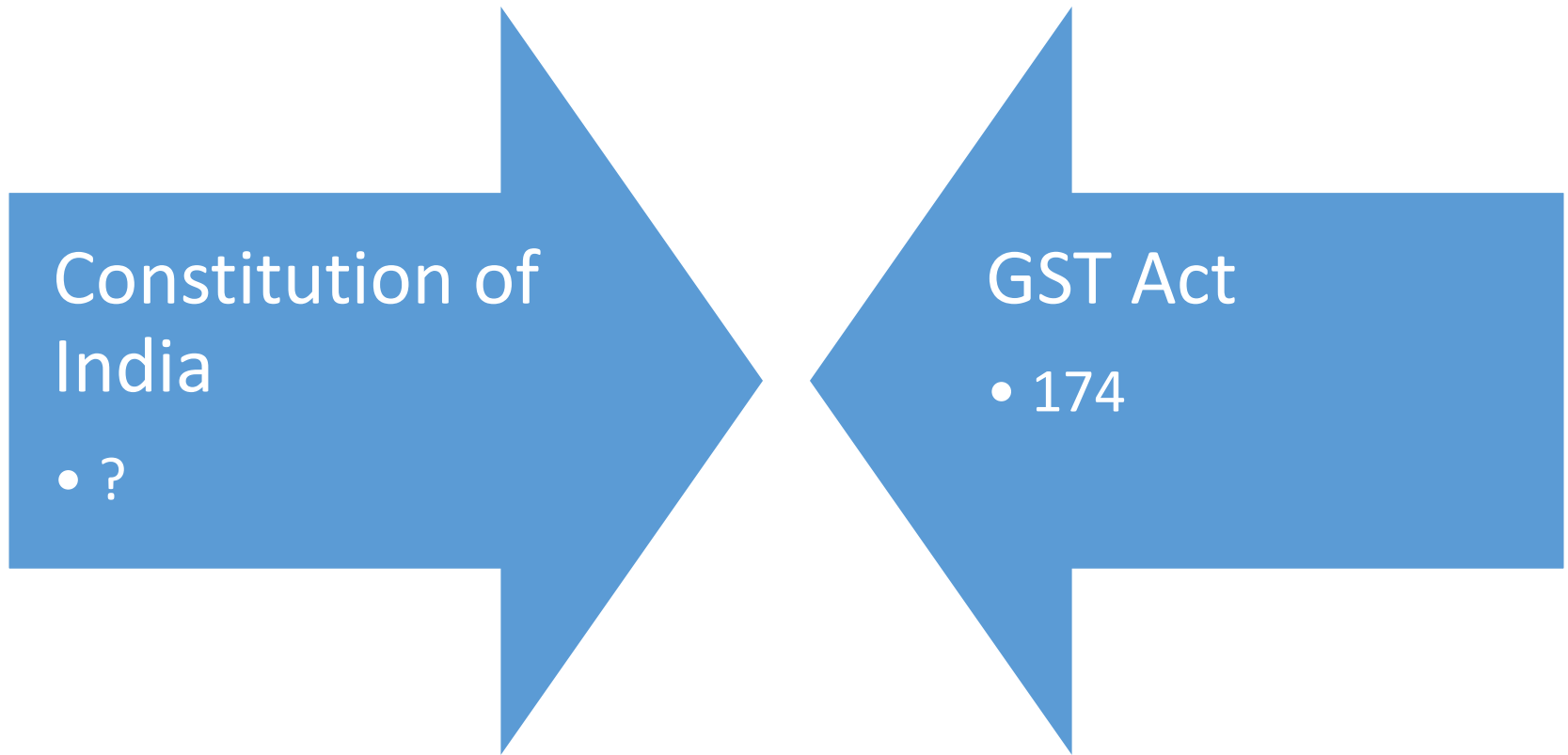


Can State levy taxes on advertisement?

- State List – Entry 55 omitted
 - 55. **Taxes on advertisements** other than advertisements published in the newspapers and advertisements broadcast by radio or television
- *“... we hold that the Mathura Vrindavan Nagar Nigam (**Vigyapan Kar Ka Nirdharan and Wasuli Viniyaman**) Upvidhi, 2017 to be **ultra-vires, in as much as, Entry 55 of list II of the VII Schedule to the Constitution empowering the State Government to make bye-laws in respect of tax on advertisement stood **deleted** vide Section 17 of the Constitution 101st (Amendment) Act w.e.f. 16.9.2016 and at the same time Section 172 (2) (h) of the **U.P. Municipal Corporation Act** authorizing framing of bye-laws in respect to the tax on advertisement also stood omitted by virtue of Section 173 of the U.P. GST Act w.e.f. 1.7.2017.***
 - DM Advertisers Agency [2019-TIOL-675-HC-ALL-GST]

Can State continue assessments?

101 Act - Curious case of missing 'savings'!



Sheen Golden Jewels [2019-TIOL-37-HC-KERALA-GST]

- 143. So I must hold that **Section 19 of the CA Act is- transitional** as it may have been-a repealing clause simpliciter, not a saving clause. Nothing more. **That job of saving is done by Section 174 of the KSGST Act.** Well and truly. **So the repeal has not, as Section 174 elaborates, affected "the previous operation of the amended Acts or repealed Acts and orders or anything duly done or suffered thereunder."** In other words, the repeal has not affected "any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Acts or repealed Acts or orders under such repealed or amended Acts." Nor has it affected "any tax, surcharge, penalty, fine, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Acts or repealed Acts".

Sheen Golden Jewels [2019-TIOL-37-HC-KERALA-GST]

- 144. In other words, the repeal has not affected *"any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication, and any other legal proceedings or recovery arrears or remedy in respect of any such tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed."*

Sheen Golden Jewels [2019-TIOL-37-HC-KERALA-GST]

- *“178. What does Section 19 of the CA Act do? It repeals or omits, for instance, a congeries of state statutes. **And, indeed, the whole Amendment Act is prospective.** So these repealed state acts failed to survive beyond the date mentioned in Section 19. They perished. ...*
- *180. First, the State's legislative powers have not been taken away; they have been, on the contrary, constitutionally permitted to be shared with the Union Government. What is gone is the State's exclusivity. To the legislative fields of exclusivity and concurrency, what has been added is the simultaneity-novel as it may sound.*

101st Act

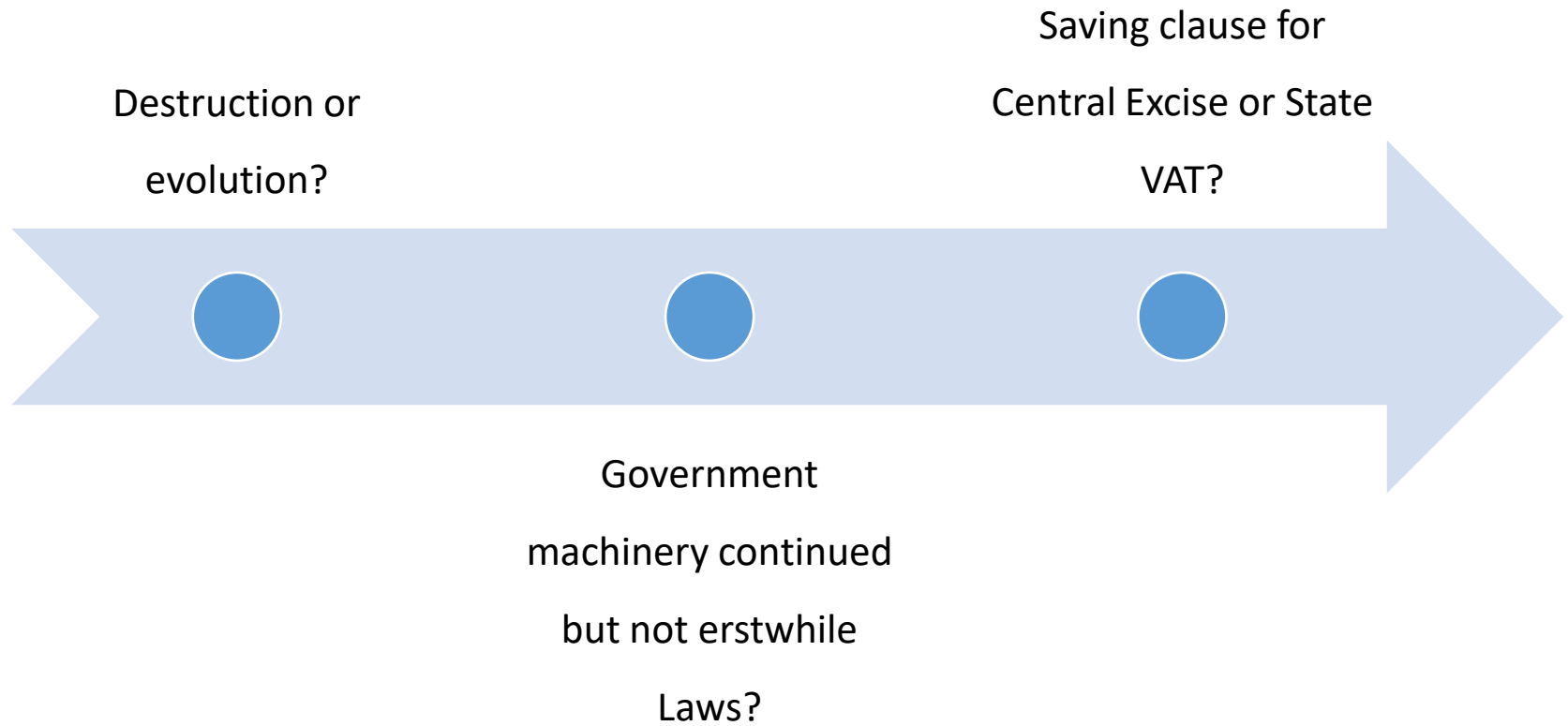
- **19. Transitional Provisions**

- Notwithstanding anything in this Act, **any provision of any law relating to tax on goods or services or on both in force in any State** immediately before the commencement of this Act, **which is inconsistent** with the provisions of the Constitution as amended by this Act **shall continue** to be in force **until amended or repealed** by a competent Legislature or other competent authority **or until expiration of one year** from such commencement, whichever is earlier.

Savings!

- **277. Savings.**—Any taxes, duties, cesses or fees which, **immediately before the commencement of this Constitution**, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, **continue to be levied and to be applied** to the same purposes **until provision to the contrary is made by Parliament** by law.
- **372. Continuance in force of existing laws and their adaptation.**—(1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, **all the law in force** in the territory of India **immediately before the commencement of this Constitution** shall continue in force therein **until altered or repealed or amended** by a competent Legislature or other competent authority ...

101st Act



Maharashtra GCA, 1904

- **7. Effect of repeal** - Where this Act, or any Bombay Act 1[or Maharashtra Act], made after the commencement of this Act, repeals any enactment thereto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—
 - (a) Revive anything not in force or existing at the time at which the repeal takes effect; or**
 - (b) Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
 - (c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;
or
 - (d) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
 - (e) Affect any investigation, legal proceeding or remedy** in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Can State VAT Act?

Reliance Industries Ltd [2020-TIOL-837- HC-AHM-VAT]

- Hence period commencing from date of decision of this court upto the date of decision of the Apex Court being in favor of Revenue, was sought to be excluded. Hence fresh notice for revision was issued for **revising assessment for the FY 2008-09** for reducing the ITC to the extent of 8% u/s 11(3)(b)(ii) and 11(3)(b)(iii) of the GVAT Act. Presently, the original limitation u/s 75 for **issuing notice is 3 years** from date of assessment order & by virtue of Section 84A, the period from 18.01.2013 till 22.09.2017 was sought to be excluded in computing such three year period.

Reliance Industries Ltd [2020-TIOL-837-HC-AHM-VAT]

- 88. The Entry 54 in List II in Schedule VII of the Constitution of India was amended to extinguish the power of states to levy taxes on sale or purchase of goods except taxes on the sale of petroleum products and alcoholic liquor for human consumption. Therefore, the power to amend any law with respect to levy of tax on the sale or purchase of goods such as “Gujarat VAT Act” could be said to have been abolished with the aforesaid amendment in the Entry 54 in List II in Schedule VII of the Constitution of India.
- 98. ...It is sought to be argued by the learned Advocate General that the amendments in such entries like the amendment in Entry 54 of List II in the present case would not make any difference to the legislative competence of the State Legislature to make any laws, which otherwise flows from the substantive provisions under the Constitution.

Reliance Industries Ltd [2020-TIOL-837-HC-AHM-VAT]

- 98. ...It has been argued by Mr. Trivedi that by enacting Section 84A in the VAT Act, the State Legislature has not proposed to levy any fresh tax, but merely allowed the department to enlarge the period of limitation under the provisions of Section 75 of the VAT Act, if permissible, so as to collect the legitimate tax already levied but could not be collected in view of the pendency of litigation before the Supreme Court.
- 99. In the case on hand, the State seeks to uphold the validity of Section 84A of the VAT Act **by placing reliance upon Article 246A** of the Constitution **and not on the list of seventh schedule** to the Constitution of India.

Reliance Industries Ltd [2020-TIOL-837-HC-AHM-VAT]

- *170. Our final conclusions may be summarized as under;*
 - (i) Section 84A of the Gujarat VAT Act is ultra vires and beyond the legislative competence of the State Legislature.*
 - (ii) Section 84A of the Gujarat VAT Act is manifestly arbitrary, unreasonable and therefore, violative of the Articles 14 and 19(1)(g) of the Constitution of India.*
 - (iii) Section 84A of the Gujarat VAT Act is not a validating Act.*

Power to Levy Cess

CAB and CAA – 101st

CAB – Object

- 2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for—... (h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

CAA – 101st

- 18. Parliament shall, ***by law***, on the recommendation of the Goods and Services Tax Council, ***provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.***

Mohit Minerals [2018-TIOL-462-SC-GST]

*“47. After Constitution (One Hundred and First Amendment) Act, 2016, as per Article 270, Parliament can levy cess for a specific purpose under a law made by it. **Article 270, thus, specifically empowers Parliament to levy any cess by law.** Lastly, **Section 18** of the Constitution (One Hundred and First Amendment) Act, 2016 **expressly empowers** Parliament shall, **"by law"** on the recommendation of the Goods and Services Tax Council, **provide for compensation** to the states for loss of revenue arising on account of implementation of the goods and services tax....”* When Constitution provision empowers the Parliament to provide for Compensation to the States for loss of revenue by law, the **expression "law" used therein is of wide import which includes levy of any cess for the above purpose.**

Mohit Minerals [2018-TIOL-462-SC-GST]

55. ... True, that Constitution (One Hundred and First Amendment) Act, 2016 was passed to subsume various taxes, surcharges and cesses into one tax but the constitutional provision does not indicate that henceforth no surcharge or cess shall be levied.”

270. Taxes levied and distributed between the Union and the States.—

(1) **All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles [268, 269 and 269A], respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause.**

(2). [(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

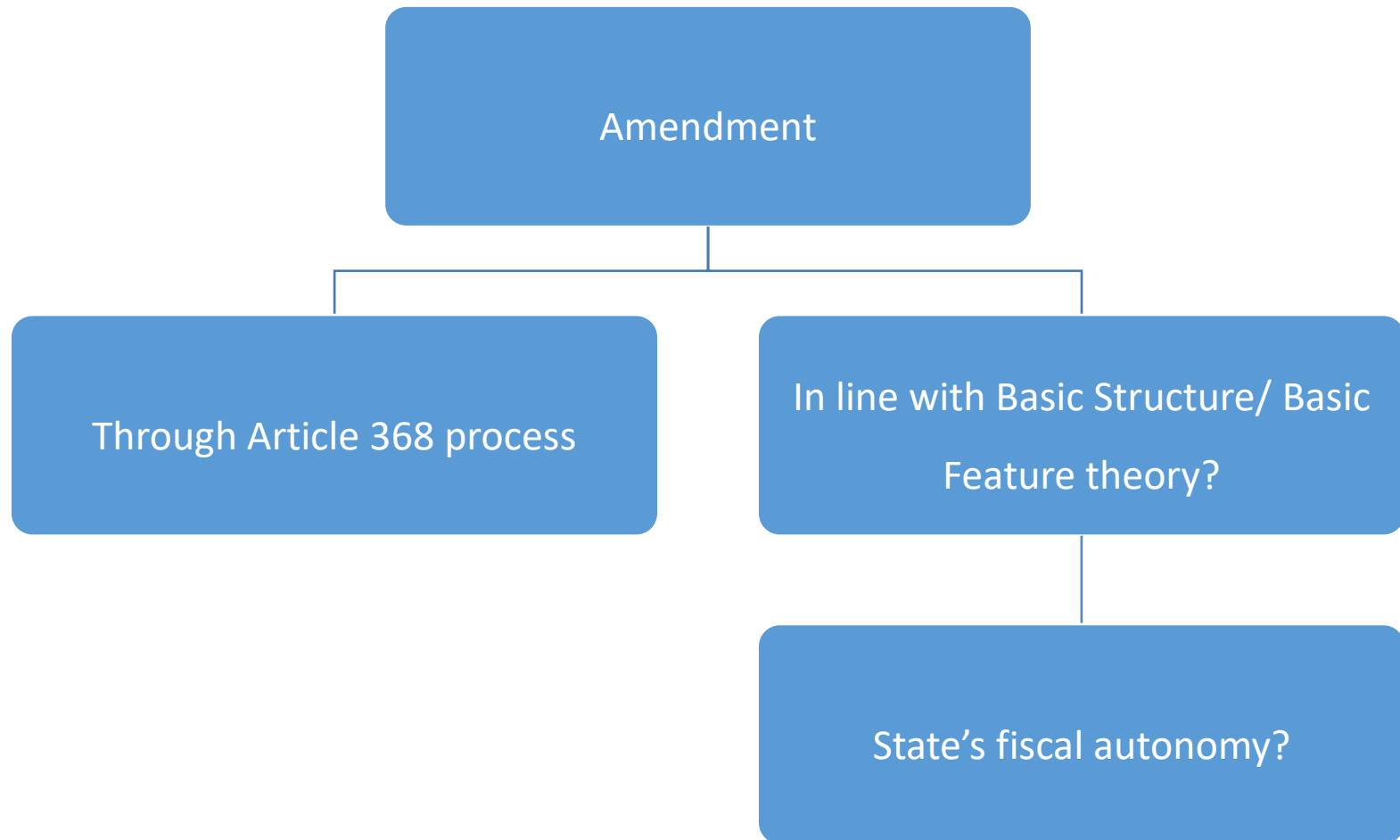
...

Mohit Mineral Pvt Ltd 2018 (17) G.S.T.L. 561 (S.C.)

- After Constitution (One Hundred and First Amendment) Act, 2016, as per Article 270, Parliament can levy cess for a specific purpose under a law made by it. Article 270, thus, specifically empowers Parliament to levy any cess by law.

Basic structure/ Feature

Amendment



Basic Structure

Supremacy of
Constitution

Separation of
Powers

Judicial review

Democracy

Parliamentary
system

Federal with
Central tilt

Independent
Judiciary

Single
citizenship



GVK Inds. Ltd 2017 (48) S.T.R. 177 (S.C.)

- *“Under our Constitution, while some features are capable of being amended by Parliament, pursuant to the amending power granted by Article 368, the essential features – **the basic structure** – of the Constitution **is beyond such powers of Parliament**. The power to make changes to the basic structure of the Constitution **vests only in the people sitting, as a nation, through its representatives in a Constituent Assembly**. (See **Keshavanadna Bharati v. State of Kerala - (1973) 4 SCC 225** and **I.R. Coelho v. State of Tamil Nadu - (2007) 2 SCC 1**).”*

GVK Inds. Ltd 2017 (48) S.T.R. 177 (S.C.)

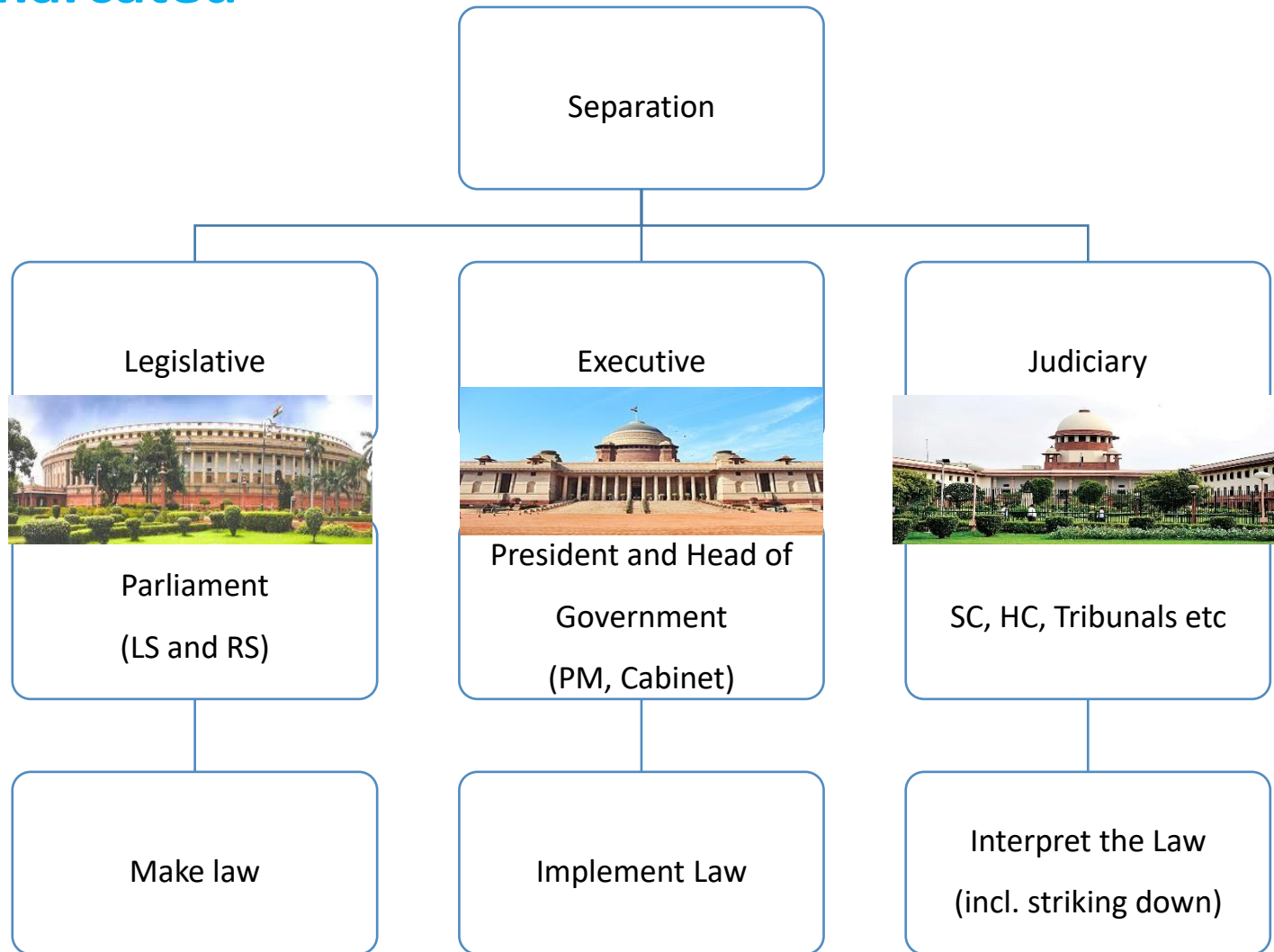
- *While there may be some overlap of functions, the essential cores of the functions delineated by the meanings of the phrases “**make laws**” “**operation of laws**” and “**invalidate laws**” are ordinarily and essentially associated with separate organs of the State – **the legislature, the executive and the judiciary respectively**, unless the context or specific text, in the Constitution, unambiguously points to some other association”*

GVK Inds. Ltd 2017 (48) S.T.R. 177 (S.C.)

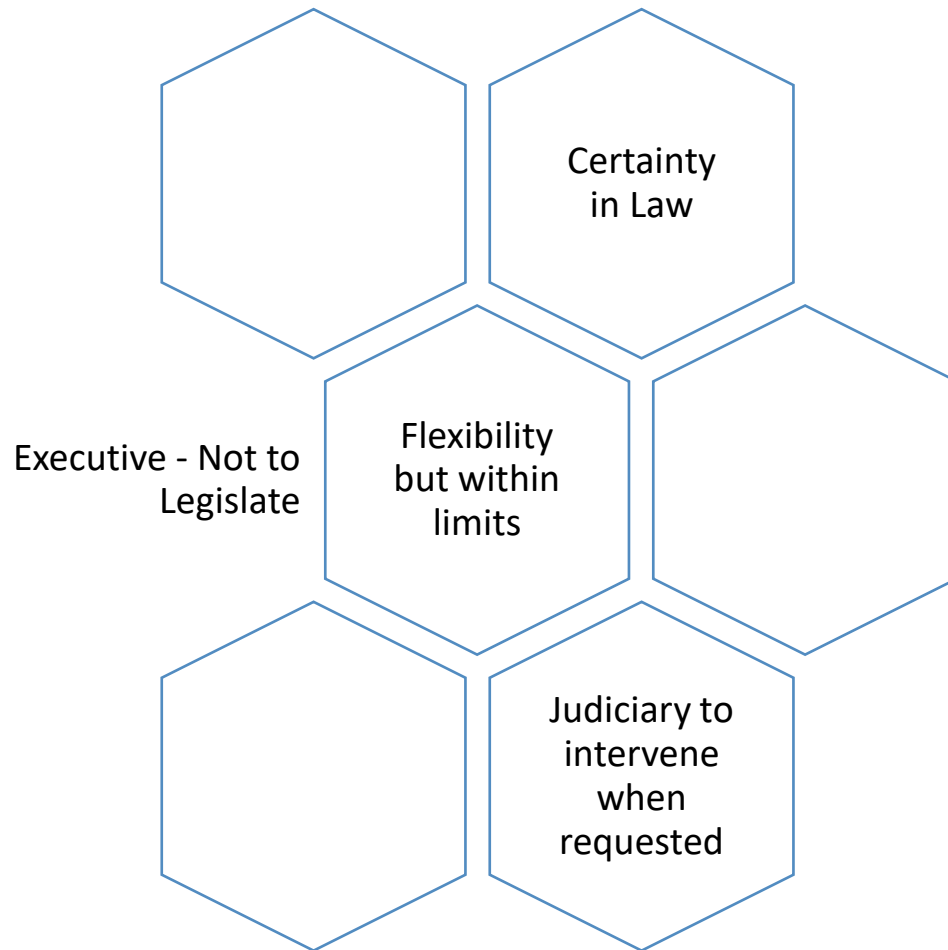
- *Written constitutions seek to **delineate the spheres of actions** of, with more or less strictness, and the extent of **powers exercisable** therein **by, various organs of the State**. Such institutional arrangements, though political at the time they were made, are also **legal** once made. They are legal, *inter alia*, in the sense that they are **susceptible to judicial review** with regard to determination of vires of any of the actions of the organs of the State constituted.*

Separation of Powers

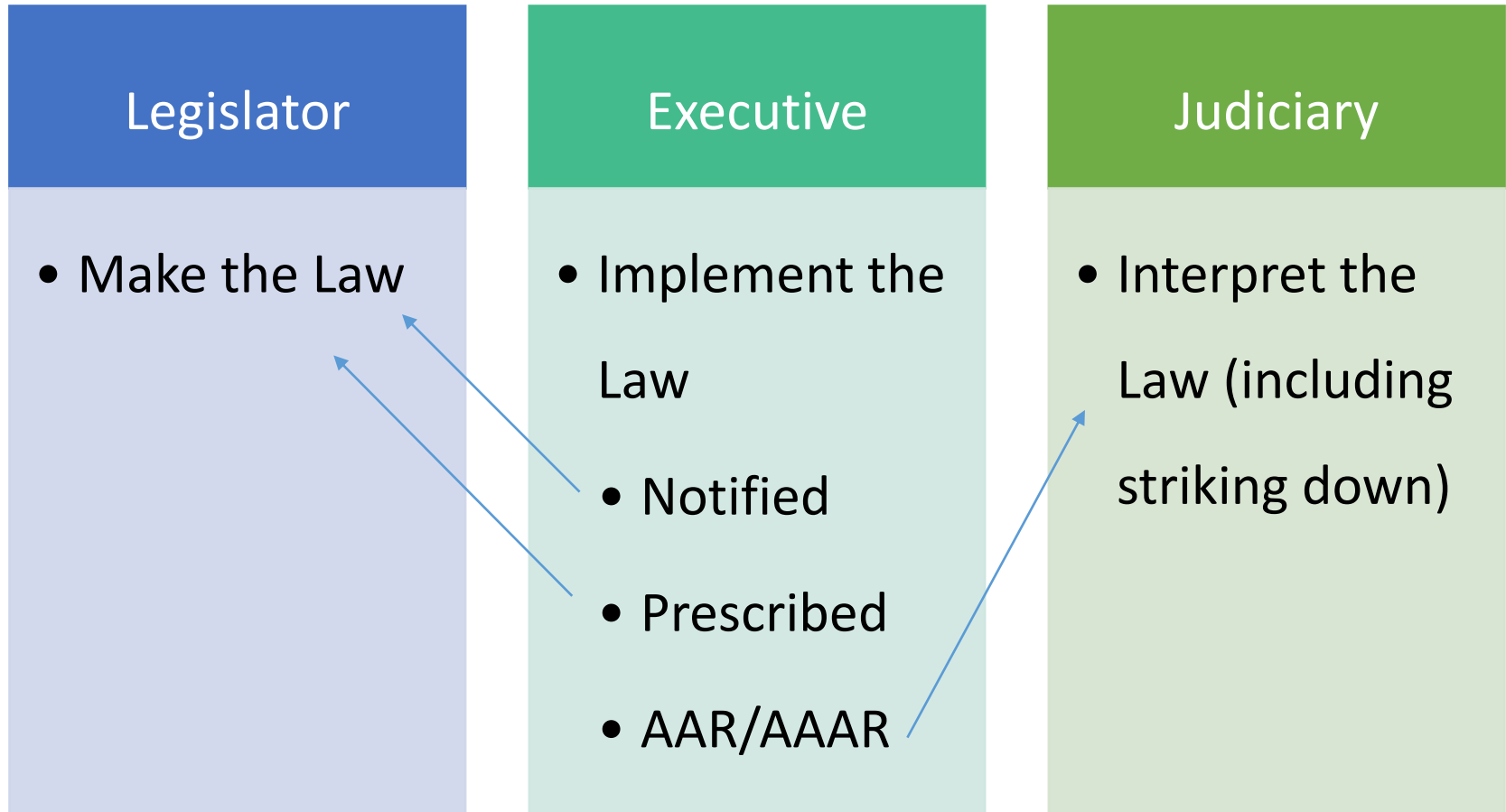
Three Pillars - Roles and responsibilities – Demarcated



Concept!



What's happening?



What's happening?

Particulars	Prescribed	Notified	Special provisions (Sec. 148)	Modified (Sec. 172)	AAR/AAAR
Act	210 times	45 times	67 times	15 times	1,000+
Rules	-	70 times	-	1 time	

Article 50

- **Article 50. Separation of judiciary from executive**
 - *The State shall take steps to separate the judiciary from the executive in the public services of the State.*
- Separation should be till lowest strata?

Fundamental Rights

13. Laws inconsistent with or in derogation of the fundamental rights

- (1) *All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.*
- (2) *The State **shall not make any law** which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.*

***12. Definition.**—*In this Part, unless the context otherwise requires, ‘the State’ includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.*

14 - Equality before law

- *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*
- Three principles:
 - Cannot treat equals as non-equals
 - Nexus between basis of classification and object
 - No manifest arbitrariness

14 - Equality before law

- Two judgments on same facts of the case by same Authority (say AAR) permissible?
- Jai Vijay Metal Udyog 2010 (253) ELT 161 (SC)
 - *Nonetheless, in our opinion, two different interpretations of a particular entry by the same authority on same set of facts, **cannot be immunised from the equality** clause under Article 14 of the Constitution. It would be a case of operating law unequally, attracting Article 14 of the Constitution.”*

19 - Protection of certain rights regarding freedom of speech, etc

(1) All citizens shall have the right—

(a) to freedom of speech and expression

...

~~(f)~~

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law **imposes reasonable restrictions** on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

19 - Protection of certain rights regarding freedom of speech, etc

- ***“A taxing statute is not per se, a restriction of the freedom under Article 19(1)(g).***
 - Madras Hire Purchase Association [2009 (16) S.T.R. 3 (Mad.) - Affirmed in 2010 (20) STR 417 (SC)]

- ***“Mere excessiveness of a tax is not, by itself, violative of Article 19(1)(g).”***
 - Pankaj Jain Agencies 1994 (72) ELT 805 (SC))

21 - Protection of life and personal liberty

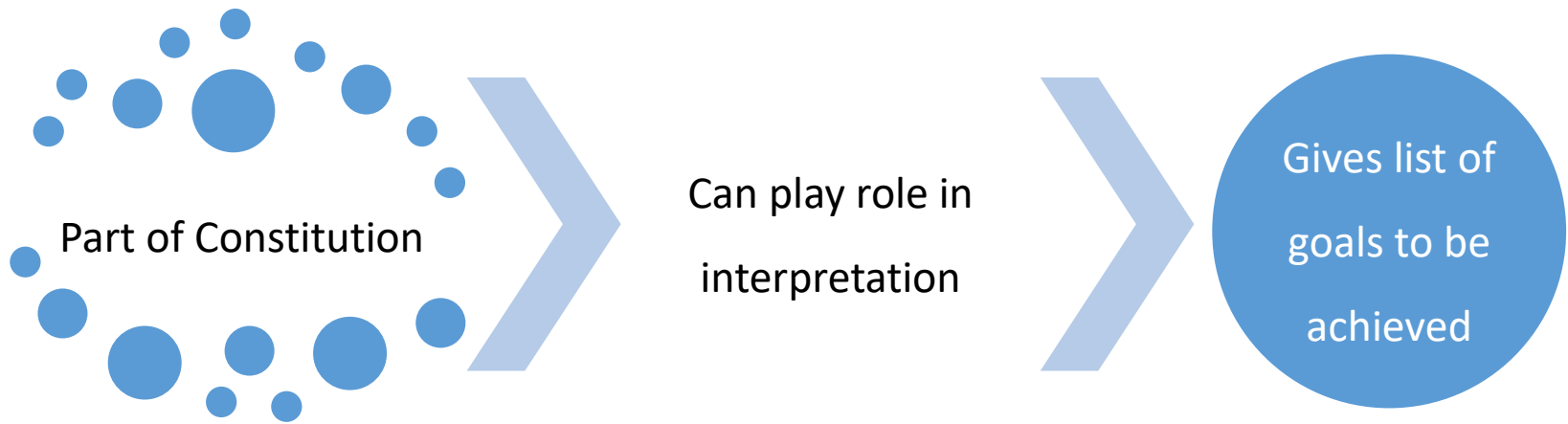
- *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

300A. Persons not to be deprived of property save by authority of law.

- No person shall be deprived of his property save by authority of law.
- Section 16 (4)
- Section 174

Preamble

Preamble



Preamble

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.

Preamble

P A Inamdar
[AIR 2005
SC]

- Golden goals set out in Preamble are to be achieved

Way Forward

Thank you!

CA Pritam Mahure and Associates

Happy to Discuss

For suggestions: info@lawgical.in / +91 9920644648 / 020-27293425

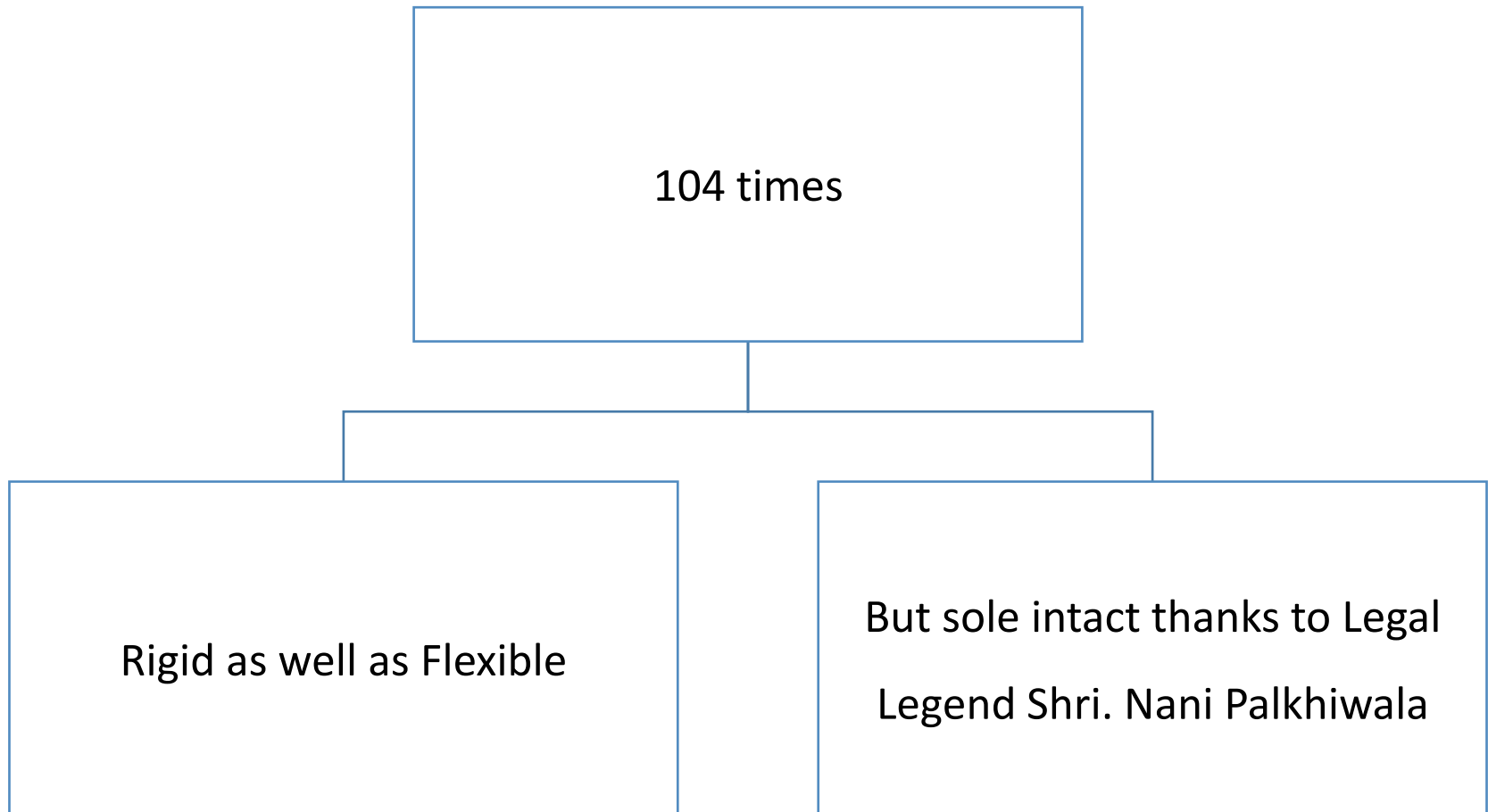
E-books on GST

E-books on How to be Future Proof

Smile please 😊

Annexure -
Whether Parliament has
unlimited power including
power to amend FR?

Amended!



Kesavananda Bharti

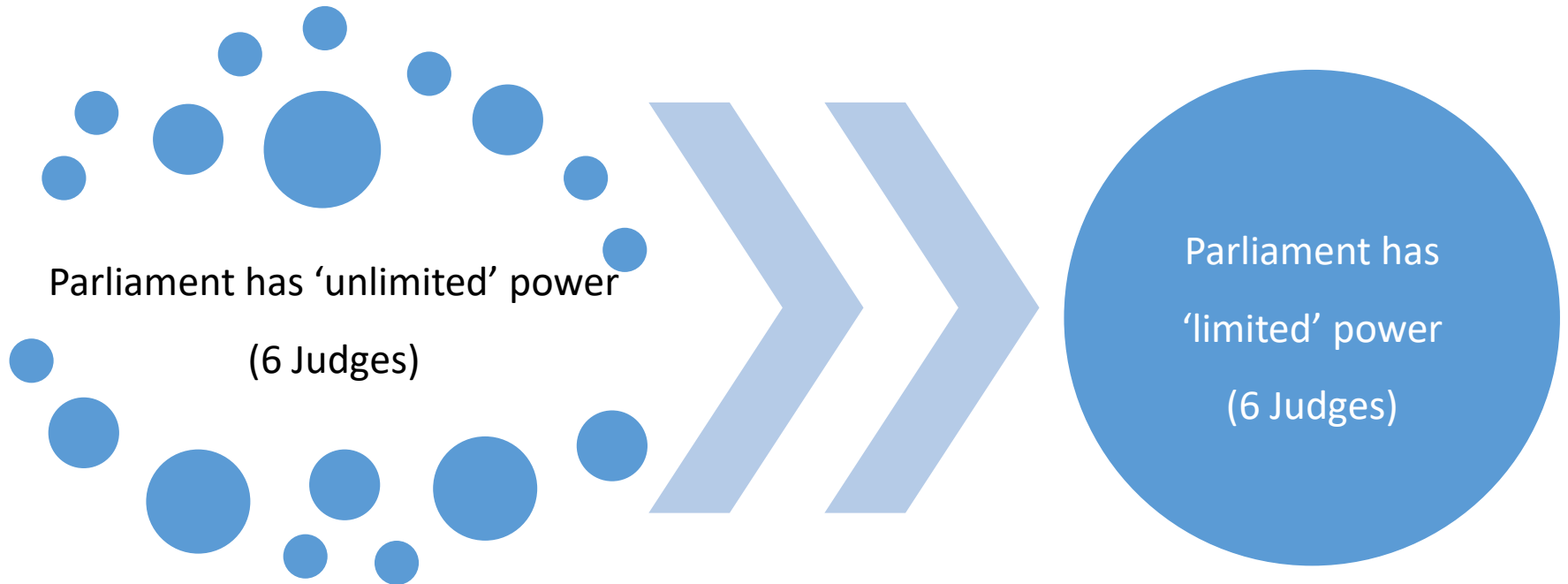
13 judges

More than 5 Months – Arguments
for 60 days

700+ pages

More than 30 amendments had
been passed till KB and 70
afterwords

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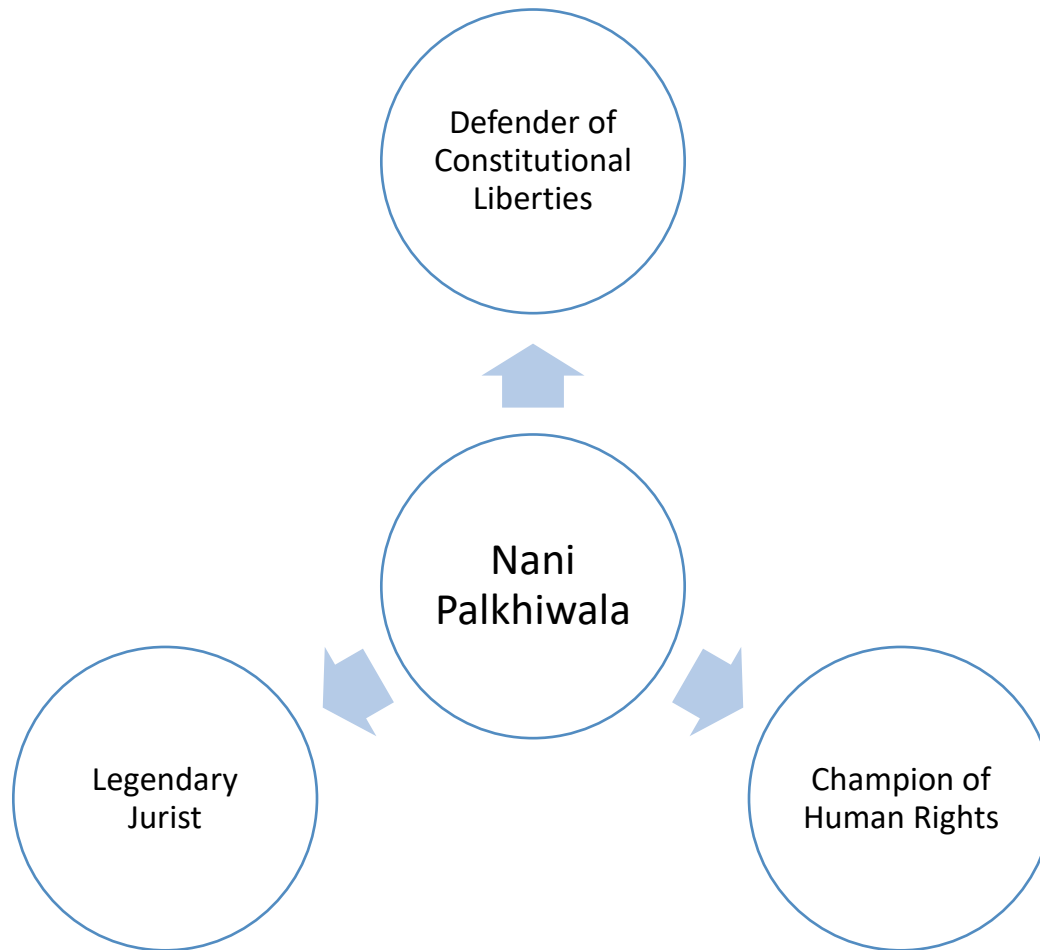
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368 - Power of Parliament to amend the Constitution and procedure therefor

'Parliament' given rights by 'We the people' - Donee cannot convert them to unlimited power

Parliament is neither creator nor master nor liquidator of Constitution

Citation from Princeton University



Six Fundamental Rights

- Right to equality (Articles. 14-18)
- Right to Freedom (Articles. 19-22)
- Right Against exploitation (Articles. 23-24)
- Right to Freedom of Religion (Articles. 25- 28)
- Cultural and Educational Rights (Articles. 29-30), and
- Right to Constitutional remedies (Articles. 32-35)

Power to Levy

ED and State VAT!

246. Subject-matter of laws made by Parliament and by the Legislatures of States.—

- (1) Notwithstanding anything in clauses (2) and (3), **Parliament has exclusive power** to make laws **with respect to** any of the matters enumerated in List I in the **Seventh** Schedule (in this Constitution referred to as the “**Union List**”).
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “**Concurrent List**”).
- (3) Subject to clauses (1) and (2), the Legislature of any **State has exclusive power** to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “**State List**”).

246. Subject-matter of laws made by Parliament and by the Legislatures of States.—

(4) Parliament has power to make laws with respect to any matter **for any part of the territory of India not included in a State** notwithstanding that such matter is a matter enumerated in the State List.”

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—

- (1) If any provision of a law made by the Legislature of a State **is repugnant** to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated **in the Concurrent List**, then, subject to the provisions of clause (2), the **law made by Parliament**, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, **to the extent of the repugnancy, be void.**
- (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

International Tourist Corporation v. State of Haryana (1981) 2 SCC 319

- *“...before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislature must be clearly established. **Entry 97** itself is specific in that a matter **can be brought under that Entry only if it is not enumerated in List II or List III** and in the case of a tax if it is not mentioned in either of those Lists.”*

R. Gandhi 2010 (261) E.L.T. 3 (S.C.)

- *The legislation can be declared unconstitutional or invalid only on **two grounds** namely*
 - (i) lack of legislative competence and*
 - (ii) violation of any fundamental rights or any provision of the Constitution*
- Also, should not violate any article of Col
 - Such as 286, 301 etc
- Presumption of constitutionality
 - Unless clear provision to the contrary