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SECTION 171 OF THE CGST ACT: DUTY WITHOUT A FORUM AND ARTICLE 14

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ABSTRACT :

With effect from 1 April 2025, the authority charged with anti-profiteering under the Central Goods and Services Tax Act 2017 stopped accepting fresh requests for examination. Section 171(1), which obliges suppliers to pass on any reduction in tax rate or benefit of input tax credit through a commensurate reduction in price, was left untouched. Five months later the GST Council carried out the largest downward rate revision in the history of the levy. This paper examines the resulting position, in which an unamended statutory duty continues to be enforced with interest and penalty against suppliers complained of before the cut-off, while identical conduct complained of afterwards has no forum at all. It argues that the arrangement is first a failure of legality in Lon Fuller's sense, a breach of congruence between declared rule and official action, and that this failure supplies the content of a challenge under Article 14 of the Constitution of India on grounds of unreasonable classification and manifest arbitrariness. The paper then confronts the remedy problem: a court cannot compel the constitution of an authority, and levelling down would reward profiteers and penalise purchasers who have already won refunds. It concludes that the most productive response lies in recognising that the duty survives the loss of its forum, which opens restitutionary and consumer-law routes, and that the legislature must choose between a time-bound revival of the authority and outright repeal.

Keywords: anti-profiteering; section 171; GST; sunset clause; Article 14; cut-off dates; manifest arbitrariness; congruence; consumer protection; unjust enrichment

I. INTRODUCTION

Consider two suppliers. Each received the benefit of a reduction in the rate of goods and services tax, and neither passed it on. Their breaches occurred in the same financial year, on the same facts and by the same margin. A purchaser complained about the first on 30 March 2025. Another purchaser complained about the second on 2 April 2025. The first supplier now faces investigation by the Directorate General of Anti-Profiteering (DGAP), an order to refund the profited amount, interest at eighteen per cent and a penalty of ten per cent of the profited sum.¹ The second faces nothing beyond a toll-free consumer helpline.

No provision of the Central Goods and Services Tax Act 2017 (CGST Act) distinguishes the two. Section 171(1) applies to each in identical terms, requiring that '[a]ny reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices'.² The section has not been amended, diluted or repealed. What separates the two suppliers is the date on which a third party chose to file an application. Explanation 1 to section 171(2) defines a 'request for examination' as the written application filed by an applicant, and Notification No 19/2024 appointed 1 April 2025 as the date from which the Authority would cease to accept such requests.³ The cut-off is therefore keyed to the conduct of a stranger to the supplier. The date of the profiteering and the date of the rate reduction play no part in it.

The commentary on the sunset has largely treated it as the end of anti-profiteering in India, a policy decision to let market forces determine prices.⁴ This paper contends that the description is inaccurate. The sunset left a statutory duty fully in force and withdrew the only machinery for enforcing it. The resulting arrangement is incoherent in a specific and identifiable way, and two lines of analysis converge on it. The first is jurisprudential. Lon Fuller treated congruence between the declared rule and official action as one of the conditions of a functioning legal order, and observed that a legal system

¹ Central Goods and Services Tax Act 2017 (CGST Act), s 171(1), (3A)

<https://taxinformation.cbic.gov.in/content/html/tax_repository/gst/acts/2017_CGST_act/active/chapter21/section171_v1.00.html> accessed 2 October 2026; Central Goods and Services Tax Rules 2017, r 133(3).

² CGST Act (n 1) s 171(1).

³ Notification No 19/2024—Central Tax (30 September 2024), issued under the proviso to CGST Act, s 171(2) <<https://taxguru.in/goods-and-service-tax/gst-authority-ceases-accepting-anti-profiteering-investigation-requests-april-1-2025.html>> accessed 2 October 2026.

⁴ Press Trust of India, 'Govt notifies Apr 1, 2025 as sunset date for GST anti-profiteering' *Business Standard* (New Delhi, 1 October 2024) <https://www.business-standard.com/economy/news/govt-notifies-apr-1-2025-as-sunset-date-for-gst-anti-profiteering-124100100814_1.html> accessed 2 October 2026, quoting Rajat Mohan to the effect that 'for the first time since the introduction of GST market forces will largely determine prices'.

can fail through administration alone, without anyone enacting an objectionable rule.⁵ The second is constitutional. A classification that separates identically placed suppliers by reference to the diligence or luck of a complainant must answer to Article 14 of the Constitution of India.

The two analyses are connected. The incongruence identified through Fuller is what makes the classification arbitrary, and the constitutional argument in turn exposes a practical difficulty that the jurisprudential account alone does not reach: even a successful challenge may produce no workable remedy. The paper proceeds as follows. Part II traces the dismantling of the anti-profiteering machinery and the 2025 rate revision. Part III examines the continuing enforcement of section 171 by the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT). Part IV sets out the legality argument. Part V develops the Article 14 challenge and meets the principal objections to it. Part VI confronts the remedy problem and the odd posture in which the challenge is likely to arise. Part VII argues that the duty survives the loss of its forum and identifies the routes through which it may still be vindicated. Part VIII concludes.

II. THE DISMANTLING OF THE ANTI-PROFITEERING MACHINERY

A. From the National Anti-Profiteering Authority to the Appellate Tribunal

The architecture of anti-profiteering under the GST regime was taken apart in stages. The National Anti-Profiteering Authority (NAA) was constituted in November 2017 to examine whether suppliers had passed on rate reductions and input tax credit benefits, working alongside the DGAP across sectors as varied as fast-moving consumer goods, hospitality and real estate.⁶ The NAA was wound up in December 2022 and its functions transferred to the Competition Commission of India (CCI).⁷ The transfer never sat comfortably. The Commission exists to police cartels and the abuse of dominance, and its expertise does not extend to auditing whether a manufacturer reduced the price of a soap bar by the correct number of paise. Between December 2022 and June 2024 the Commission closed only twenty-seven cases while about one hundred and forty remained pending, and it acknowledged that anti-profiteering was outside its core function.⁸

On the recommendation of the 53rd meeting of the GST Council, the government moved the jurisdiction once more. Notification No 18/2024 empowered the Principal Bench of the GSTAT to examine anti-profiteering matters with effect from 1 October 2024, and Notification No 19/2024 fixed 1 April 2025 as the terminal date for fresh requests.⁹ Matters filed before the cut-off would continue to be decided by the Principal Bench. The docket numbers before that Bench, which have reached at least NAPA/238/PB/2025, indicate the size of the inherited backlog.¹⁰

B. The Narrow Reach of the Sunset Instrument

The legal form of the sunset deserves attention. The proviso to section 171(2), inserted by section 148 of the Finance (No 2) Act 2024, permits the government, on the recommendation of the Council, to ‘specify the date from which the said Authority shall not accept any request for examination’.¹¹ Notification No 19/2024 was issued under that proviso. Neither instrument touches section 171(1). The proviso addresses the Authority alone, and only its willingness to receive applications. Section 171(1) remains on the statute book in the form it took in 2017, and the penalty provision in section 171(3A) remains as it was inserted in 2020.¹² The Council and Parliament could have repealed the duty. They chose instead to close the door through which it was enforced.

C. The 2025 Rate Revision and the Executive Response

On the recommendation of the 56th meeting of the Council, the four-slab structure of 5, 12, 18 and 28 per cent was collapsed into two principal rates of 5 and 18 per cent with effect from 22 September 2025, reducing tax on a very large number of everyday goods, from dairy products and medicines to soaps and automobiles.¹³ It was the largest downward revision in the history of the levy, and it arrived less than six months after the forum for complaining about non-passage had closed. In the weeks before the announcement, the government was reported to be considering a revival of anti-profiteering provisions for a limited period of two years so that the benefit of restructured slabs would reach consumers.¹⁴ No revival followed.¹⁵

⁵ Lon L Fuller, *The Morality of Law* (rev edn, Yale University Press 1969) 33–41, 81–91.

⁶ Vasudha Mukherjee, ‘Explainer: Why govt disbanded the NAA and why GST 2.0 may revive it’ *Business Standard* (New Delhi, 20 August 2025) <https://www.business-standard.com/finance/news/explainer-anti-profiteering-return-naa-gst-2-0-125082000532_1.html> accessed 2 October 2026.

⁷ Vineet Suman Darda, ‘Sunset of Anti-Profiteering Rules under GST’ (2026) Chartered Secretary (July) 111 <<https://www.icsi.edu/media/webmodules/CSJ/July2026/25.pdf>> accessed 2 October 2026, discussing Notification No 24/2022–Central Tax (23 November 2022), which omitted rules 122, 124, 125, 134 and 137 of the Central Goods and Services Tax Rules 2017 with effect from 1 December 2022.

⁸ Mukherjee (n 6).

⁹ Notification No 18/2024–Central Tax (30 September 2024); Notification No 19/2024 (n 3); Press Trust of India (n 4).

¹⁰ Darda (n 7).

¹¹ Finance (No 2) Act 2024, s 148; CGST Act (n 1) s 171(2) proviso.

¹² CGST Act (n 1) s 171(3A), inserted with effect from 1 January 2020.

¹³ ‘GST rate cuts from September 22; Relief for Common Man, Boost for Businesses’ *News on AIR* (6 September 2025) <<https://www.newsonair.gov.in/gst-rate-cuts-from-september-22-relief-for-common-man-boost-for-businesses>> accessed 2 October 2026.

¹⁴ Mukherjee (n 6).

¹⁵ Darda (n 7).

The executive response was instead to direct aggrieved consumers to the National Consumer Helpline and the Integrated Grievance Redressal Mechanism (INGRAM) portal.¹⁶ Neither mechanism has power to compute profiteering, order a refund or impose a penalty under section 171. A senior official, addressing the accumulation of input tax credit produced by the rate cuts, observed that '[t]here can be many ways of passing on the benefit of price reduction', and that in the absence of an anti-profiteering law businesses had flexibility in how the benefit reached the consumer, including by increasing product weight in place of reducing price.¹⁷ The statement is revealing. It treats the absence of an enforcement forum as equivalent to the absence of a law, while section 171(1) continues to require that the benefit be passed on 'by way of commensurate reduction in prices'.

III. TWO FACES OF ONE SECTION: ENFORCEMENT AT THE PRINCIPAL BENCH

The withdrawal of the forum for new complaints has not slowed the Principal Bench in deciding old ones. In *DG Anti-Profiteering v Siddha Infradev LLP*, decided on 20 May 2026, homebuyers had complained that a real estate developer charged GST at twelve per cent without passing on the additional benefit of input tax credit.¹⁸ The developer resisted the proceedings on three grounds: limitation, the levy of interest and the inclusion of GST in the computation of the profiteered sum. The Tribunal rejected each. It held that the 'timelines prescribed under Rule 128 are directory and not mandatory', reasoning that section 171 is beneficial consumer welfare legislation and that administrative delay could not be permitted to defeat it. It upheld interest at eighteen per cent under rule 133(3)(b), holding the section wide enough to support interest and penalty as deterrents, and it directed a refund of Rs 63,93,233, inclusive of GST, to nine homebuyers.¹⁹

Two months later the Bench went further. In *DG Anti-Profiteering v Anuhar Homes Pvt Ltd*, the respondent asked for the proceedings to be held over because the constitutional validity of section 171 is pending before the Supreme Court in *Excel Rasayan Pvt Ltd v Union of India*.²⁰ The Supreme Court had issued notice in that matter in February 2024 on a challenge to the Delhi High Court's judgment upholding section 171 and the associated rules, but granted no interim stay.²¹ The Tribunal refused the adjournment, observing that the respondent had neither mounted its own challenge nor obtained a stay, and that the mere pendency of a challenge was no ground to keep an anti-profiteering case pending. It proceeded on a computed profiteering of Rs 95,13,829.²²

These decisions apply a reading of section 171 that the Delhi High Court laid down in *Reckitt Benckiser India Pvt Ltd v Union of India*. Upholding the provision against challenges under Articles 14, 19(1)(g) and 265, the Court held that '[s]ection 171 of the Act, 2017 incorporates the principle of unjust enrichment' and that 'it has a flavor of consumer welfare regulatory measure'.²³ It held that the section 'mandates that whatever is saved in tax must be reduced in price', and that it is 'not to be looked at as a price control measure but is to be seen to be directly connected with the objectives of the Goods and Services Tax regime'.²⁴ The Court acknowledged the risk that the absence of a fixed methodology could produce arbitrary determinations, but held that the remedy lay in setting aside individual orders on their merits, leaving the provision intact.²⁵

Set the two halves of the present position side by side. For conduct complained of before 1 April 2025, the State characterises section 171 as welfare legislation, reads procedural safeguards down in order to keep proceedings alive, adds interest at eighteen per cent and declines to pause even for a

¹⁶ Press Trust of India, 'Non-reduction of prices post GST cut? Consumers can file complaints via toll-free number, WhatsApp' *Deccan Herald* (Bengaluru, 23 September 2025) <<https://www.deccanherald.com/business/non-reduction-of-prices-post-gst-cut-consumers-can-file-complaints-via-toll-free-number-whatsapp-3740504>> accessed 2 October 2026.

¹⁷ Monika Yadav, 'Industry has room to factor in costs in terms of ITC accumulation: Official' *Business Standard* (New Delhi, 24 September 2025) <https://www.business-standard.com/amp/finance/news/industry-can-factor-in-justifiable-accumulated-its-under-gst-2-0-govt-125092301293_1.html> accessed 2 October 2026.

¹⁸ *Director General of Anti-Profiteering v Siddha Infradev LLP* (GSTAT Principal Bench, 20 May 2026), reported as 2026 Taxo.online 1393 <<https://taxo.online/latest-news/25-05-2026-anti-profiteering-provisions-under-section-171-are-treated-as-beneficial-consumer-welfare-legislation-and-procedural-timelines-under-rule-128-are-directory-in-nature-gstat-delhi/>> accessed 2 October 2026.

¹⁹ *Siddha Infradev* (n 18).

²⁰ *Director General of Anti-Profiteering v Anuhar Homes Pvt Ltd* NAPA/65/PB/2025 (GSTAT Principal Bench, 30 July 2026), reported as 2026 TAXSCAN (GSTAT) 132; Kavi Priya, 'Mere Pendency of Challenge to GST S.171 before SC no Ground to Stay Anti-Profiteering Proceedings: GSTAT' (*Taxscan*, 8 August 2026) <<https://www.taxscan.in/top-stories/mere-pendency-of-challenge-to-gst-s-171-before-sc-no-ground-to-stay-anti-profiteering-proceedings-gstat-1449824>> accessed 2 October 2026.

²¹ *Excel Rasayan Pvt Ltd v Union of India* SLP (C) No 3112 of 2024 (SC, order dated 12 February 2024); see 'Supreme Court Seeks Union's Response On Plea Against HC Judgment Upholding Anti-Profiteering Provisions Under CGST Act' (*LiveLaw*, 12 February 2024) <<https://www.livelaw.in/top-stories/supreme-court-cgst-act-anti-profiteering-provisions-validity-notice-issued-249630>> accessed 2 October 2026.

²² *Anuhar Homes* (n 20).

²³ *Reckitt Benckiser India Pvt Ltd v Union of India* 2024 SCC OnLine Del 588 (DB), W.P.(C) 7743 of 2019, decided 29 January 2024; see 'Beneficial Legislation, Promotes Consumer Welfare: Delhi High Court Upholds Anti-Profiteering Provisions Under CGST Act And Rules' (*LiveLaw*, 30 January 2024) <<https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-upholds-anti-profiteering-provisions-cgst-act-247928>> accessed 2 October 2026.

²⁴ *Reckitt Benckiser* (n 23).

²⁵ *ibid.* For a critique of this aspect of the judgment, see Kartheek Vegesana, 'Manifest Arbitrariness in Anti-Profiteering Determination Methodologies: Lessons from Reckitt Benckiser' (*Indian Constitutional Law and Philosophy*, 9 September 2024) <<https://indconlawphil.wordpress.com/2024/09/09/guest-post-manifest-arbitrariness-in-anti-profiteering-determination-methodologies-lessons-from-rickett-benckiser/>> accessed 2 October 2026.

pending constitutional challenge. For identical conduct complained of afterwards, the same State treats the same section as a matter for market forces and a helpline. Both positions are held at once, under a single unamended text.

IV. CONGRUENCE AND THE FAILURE OF LEGALITY

Fuller identified eight ways in which the enterprise of subjecting human conduct to the governance of rules can miscarry. The eighth is a failure of congruence between the rules as announced and their actual administration.²⁶ He described this as ‘the most complex of all the desiderata that make up the internal morality of the law’, precisely because congruence can be destroyed in so many undramatic ways: through mistaken interpretation, through inaccessible procedure, through bribery, prejudice or indifference, and through simple inertia in the offices that are supposed to apply the rule.²⁷ His claim was that a legal order can fail through administration alone, without anybody having drafted an objectionable rule.

Joseph Raz, writing in a related tradition, made the point concrete by treating the accessibility of courts as one of the principles derivable from the basic idea of the rule of law. A rule whose breach cannot be brought before any body competent to apply it cannot guide conduct in the manner a law is meant to guide it, since the subject’s calculation will turn on the probability of enforcement and the content of the rule will drop out of it.²⁸ The official statement quoted in Part II, that businesses enjoy flexibility in the absence of an anti-profiteering law, is a precise illustration. The rule is still on the statute book, and the official treats it as though it were absent because its forum is.

The present case is unusual because the incongruence runs in two directions at once. The familiar complaint about incongruence concerns under-enforcement: a rule announced and then ignored. Here the same provision is enforced with unusual vigour against one set of respondents and not at all against another, and the principle that sorts them has nothing to do with the subject matter of the rule. A supplier asked what section 171(1) requires of it in October 2025 would receive two incompatible answers from the State. The statute says that the benefit must be passed on in full. The official position says that the supplier has flexibility. The Tribunal, meanwhile, imposes interest on suppliers who exercised that flexibility before the cut-off.

The incongruence also distorts the conduct of those who comply. A supplier that reduced its prices in full after 22 September 2025 did what the statute required. A competitor that retained the benefit did what the official position tolerated. The compliant supplier bears the cost of compliance in its margins, while the non-compliant supplier faces no liability and gains a pricing advantage. Fuller’s concern with congruence was in part a concern with this kind of effect: when official action departs from the declared rule, the persons who orient their conduct by the rule are placed at a disadvantage against those who orient their conduct by the likelihood of enforcement.²⁹ A legal order that rewards the second group over the first gives its subjects a reason to stop consulting the rule at all.

A legislature may repeal a duty. It may equally decline to create one, and there is a respectable argument, made by G Jayaprakash, that a simplified two-rate structure removes most of the occasions for price policing and that residual disputes belong to competition and consumer law. In his view ‘[a] mature GST must rely on transparency, competition, and consumer choice’, and anti-profiteering ‘should not outlive its relevance’.³⁰ That argument deserves an answer, and its natural conclusion is repeal. What Parliament and the Council have done is to retain the words of the obligation while withdrawing the means of vindicating it. Neither the case for anti-profiteering nor the case against it supports that course. Those who favour the duty lose its enforcement, and those who oppose it are left with a liability that may still be visited upon them for conduct that predates the cut-off.

V. THE ARTICLE 14 CHALLENGE

A. Why the Vires Route Fails

The most obvious objection to the sunset is that a notification has defeated its parent section, and that executive action under section 171(2) cannot neutralise the substantive duty in section 171(1). The argument is weaker than it looks. Before Notification No 19/2024 was issued, Parliament inserted the enabling proviso into section 171(2) through the Finance (No 2) Act 2024.³¹ The notification is squarely within the delegated power, and specifies precisely the kind of date that the proviso authorises. Any challenge must therefore be directed at the proviso itself, which is a provision of primary legislation. Ultra vires has nothing to bite on. The relevant ground is Article 14.

B. Classification: Differentia and Nexus

The classification test requires, first, that the classification be founded on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and secondly, that the differentia have a rational relation to the object sought to be achieved by the statute.³² The sunset fails at both stages.

²⁶ Fuller (n 5) 39.

²⁷ *ibid* 81.

²⁸ Joseph Raz, ‘The Rule of Law and its Virtue’ (1977) 93 LQR 195, 200–01.

²⁹ Fuller (n 5) 38–39, 81–82.

³⁰ G Jayaprakash, ‘The Future of Anti-Profiteering in a Two-Rate GST Regime’ (*TaxTMI*, 6 September 2025)

<<https://www.taxtmi.com/article/detailed?id=15054>> accessed 2 October 2026. Jayaprakash relies on the experience of Australia and Malaysia, where comparable provisions were withdrawn after the transition to a consumption tax.

³¹ Finance (No 2) Act 2024 (n 11).

³² *Ram Krishna Dalmia v Justice S R Tendolkar* AIR 1958 SC 538 [11].

As to the first limb, the differentia is not located in the conduct of the person classified. Two suppliers whose conduct is indistinguishable in period, quantum and culpability are separated by the date on which a stranger filed an application, a fact the supplier could neither influence nor anticipate. The supplier cannot conform to the line, cannot plan around it and cannot be said to have earned either outcome. There is arguably no differentia within the class of suppliers at all, only a differentia within the population of complainants. The line is drawn by reference to the diligence, awareness or luck of someone else entirely.

As to the second limb, the object of section 171, as the Delhi High Court identified it, is that the consumer captures the tax forgone.³³ A cut-off keyed to the date of complaint bears no rational relation to that object. It does not sort by gravity, amount, sector, culpability or anything else that could plausibly matter to the statutory purpose. The nexus in fact runs in the wrong direction. The largest rate revision in the history of the levy came five months after the forum closed, and the classification therefore defeats the object of section 171 at the very moment that object was most engaged.

C. The Cut-Off Date Problem: *Nakara* and *Parameswaran Match Works*

Cut-off dates have ordinarily been treated with considerable deference. In *Union of India v Parameswaran Match Works* the Supreme Court held that '[t]he choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances'.³⁴ The premise is that any date is arbitrary at the margin, and that judicial line-drawing would be no improvement on legislative line-drawing.

The countervailing authority is *D S Nakara v Union of India*, where a Constitution Bench struck down a cut-off that divided an otherwise homogeneous class of pensioners into those who retired before a specified date and those who retired after it, notwithstanding the government's fiscal justification for the line.³⁵ The Court held that where the persons on either side of the date form a single class for the purposes of the measure, the date cannot be used to give them unequal treatment unless the division itself serves the object of the measure. Later decisions confined *Nakara* to cases in which the benefit in question was a continuation of the same scheme and the date carried no independent justification.³⁶

The tension between the two lines of authority is the doctrinal centre of the challenge, and it should not be resolved too quickly. *Parameswaran* concerned a fiscal concession tied to a declaration made by the manufacturer itself, and its deference rests on the assumption that the classified person had some relation to the date. *Nakara* rests on the opposite situation: a class homogeneous in every respect relevant to the measure, split by a date that served no purpose of the measure. The sunset is closer to *Nakara*, and is in one respect harder to defend. In *Nakara* the date at least attached to a fact about the pensioner, namely when he retired. Under Notification No 19/2024 the date attaches to nothing the supplier did. The *Parameswaran* standard of capriciousness is also satisfied on its own terms. A date which the regulated person cannot know, cannot control and cannot respond to, and which bears no relation to when the regulated conduct occurred, is capricious in the circumstances, whatever reason may be offered for choosing 1 April 2025 over some other day.

The strongest response for the State would be that the date was not chosen to classify suppliers at all. It was chosen to wind down an institution, and any winding down requires a cut-off somewhere. This response has force in respect of the institution, and it would justify transitional arrangements for pending matters. It does not explain why the substantive duty was left in place for conduct the institution would no longer examine. The classification flows from the combination of a retained duty and a closed forum, and it is that combination which requires justification.

D. Manifest Arbitrariness

The same analysis may be run under the doctrine of manifest arbitrariness. In *Shayara Bano v Union of India* the Supreme Court held that legislation may be struck down under Article 14 where it is manifestly arbitrary, and explained that '[m]anifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle'.³⁷ The target is the proviso to section 171(2), read with the notification.

The argument in its strongest form is this. A legislature may repeal a duty and may decline to create one. Sustaining a subsisting statutory duty while extinguishing the only forum in which it may be vindicated is a provision without adequate determining principle. Section 171(1) was never touched. The Tribunal continues to enforce it in expansive terms, describing it as beneficial consumer welfare legislation and treating procedural timelines as directory in order to save proceedings. A duty simultaneously characterised as beneficial welfare legislation and rendered unenforceable for most of the people it was designed to benefit lacks a determining principle in the sense *Shayara Bano* requires. The Fullerian incongruence described in Part IV is the factual content of that conclusion.

E. The Fiscal Latitude Objection

The most substantial objection to the challenge is *R K Garg v Union of India*, in which the Supreme Court held that 'laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc', and that the legislature must be allowed play in the joints.³⁸ If the sunset is economic legislation, the courts will be slow to examine the fit between its classification and its object.

³³ *Reckitt Benckiser* (n 23).

³⁴ *Union of India v Parameswaran Match Works* (1975) 1 SCC 305 [10].

³⁵ *D S Nakara v Union of India* (1983) 1 SCC 305.

³⁶ *Indian Ex-Services League v Union of India* (1991) 2 SCC 104; see also *Union of India v SPS Vains* (2008) 9 SCC 125.

³⁷ *Shayara Bano v Union of India* (2017) 9 SCC 1 [101] (Nariman J).

³⁸ *R K Garg v Union of India* (1981) 4 SCC 675 [8].

The response is to contest the premise. The latitude in *R K Garg* is claimed for fiscal and economic measures, and section 171 is a provision of a different character. It raises no revenue. Its beneficiary is the purchaser; the exchequer gains nothing from it. The Delhi High Court in *Reckitt Benckiser* rejected the argument that section 171 is a price control measure and located it in the principle of unjust enrichment.³⁹ The Principal Bench in *Siddha Infradev* went further and classified it as consumer welfare legislation, doing so in order to justify reading a procedural rule down.⁴⁰ The State, through its own tribunal, has adopted a characterisation that expands the section's reach against one class of respondents. It should not be permitted to discard that characterisation when it becomes inconvenient for the purposes of equality review.

F. The Absence of a Vested Right in a Forum

The State may further argue that no person has a vested right in any particular forum or course of procedure, so that the closure of the Authority to new complaints is a procedural change which Article 14 does not reach.⁴¹ As a general proposition this is correct. Its application here is doubtful, for two reasons. The first is that the rule has always been understood to yield where a change in forum affects substantive rights; a right of appeal, for instance, has been treated as a vested substantive right since *Garikapati Veeraya v N Subbiah Choudhry*.⁴² The second is that section 171(1) creates a substantive entitlement in the recipient. The Delhi High Court treated the benefit as belonging in substance to the consumer and its retention by the supplier as unjust enrichment. If the benefit is the consumer's in substance, the removal of the only mechanism for recovering it is a change to the substance of the entitlement, and the procedural label does not alter that.

VI. THE REMEDY PROBLEM

A. Levelling Up and the Limits of Mandamus

Suppose the challenge succeeds and the proviso and the notification are struck down. Section 171(2) would continue to provide that the Central Government 'may' constitute or empower an Authority on the Council's recommendation. The power is permissive. The Supreme Court has repeatedly held that no court can direct a legislature to enact a particular law, and that a writ of mandamus will not issue to compel a rule-making authority to exercise a legislative function.⁴³ Striking down the proviso would restore the government's power to receive complaints through the Principal Bench, but could not oblige the Council to recommend, or the government to maintain, any particular machinery.

This matters because the conventional remedy for an under-inclusive classification is to extend the benefit to the excluded class. In *Nakara* the Court achieved that result by severing the date, so that the liberalised pension formula applied to all pensioners.⁴⁴ Levelling up was available in *Nakara* because the scheme already existed and the only obstacle to its extension was the cut-off. In the present case, removal of the cut-off restores only a power, and a power may lie unused. Levelling up may therefore be structurally foreclosed.

B. Levelling Down and the Negative Equality Bar

The alternative is levelling down: relieving the pending respondents of liability on the footing that identically placed suppliers escape. That result is doctrinally available in principle, since an equality violation may be cured by withdrawing the benefit or burden from everyone, and the literature on equality remedies recognises that levelling down satisfies the formal demand of equal treatment while leaving everyone worse off.⁴⁵ Here it would be perverse. It would hand the windfall back to the profiteers and take refunds away from homebuyers who have already obtained them, as in *Siddha Infradev*.

Indian equality law also presents a doctrinal obstacle. The Supreme Court has held that Article 14 is a positive concept which cannot be enforced in a negative manner, so that a person against whom the law has been applied cannot claim relief merely because others similarly situated have escaped it.⁴⁶ A respondent before the Principal Bench who argues that it should be released because post-cut-off profiteers go unpunished is asking for exactly that. The negative equality bar does not dispose of the challenge to the proviso, which is a challenge to the classification itself. It does mean that the most likely litigant will have difficulty converting a finding of unconstitutionality into relief for itself.

³⁹ *Reckitt Benckiser* (n 23).

⁴⁰ *Siddha Infradev* (n 18).

⁴¹ *Anant Gopal Sheorey v State of Bombay* AIR 1958 SC 915.

⁴² *Garikapati Veeraya v N Subbiah Choudhry* AIR 1957 SC 540.

⁴³ *Supreme Court Employees' Welfare Association v Union of India* (1989) 4 SCC 187 [51]; *State of Jammu and Kashmir v A R Zakki* 1992 Supp (1) SCC 548.

⁴⁴ *D S Nakara* (n 35).

⁴⁵ Deborah L Brake, 'When Equality Leaves Everyone Worse Off: The Problem of Leveling Down in Equality Law' (2004) 46 William and Mary Law Review 513.

⁴⁶ *State of Bihar v Kameshwar Prasad Singh* (2000) 9 SCC 94 [30]; *Chandigarh Administration v Jagjit Singh* (1995) 1 SCC 745 [8].

C. The Asymmetry of Standing

That observation points to the odd posture in which the argument will arise. A consumer complaining about post-cut-off profiteering has the most direct interest in the challenge but the weakest practical position. A consumer's petition seeking a direction to constitute an Authority faces the mandamus difficulty, and a public interest petition by a consumer organisation faces the further question of what relief a court can frame.

The litigant most likely to raise the classification argument is a respondent in pending proceedings before the Principal Bench, pleading selective treatment as a defence. *Anuhaar Homes* shows that the Tribunal will not stay its proceedings for a pending constitutional challenge, so the argument will have to be carried to a High Court under Article 226.⁴⁷ The equality argument is therefore available mainly to the party who least deserves it, and the party who most deserves a remedy cannot easily obtain one through it. The pending reference in *Excel Rasayan* complicates the timing. If the Supreme Court were to strike down section 171 as a whole, the classification problem would disappear along with the duty, and the respondents in pending matters would be relieved on that ground. If the Court upholds the provision, as the Delhi High Court did, the sunset problem becomes sharper, since the duty will then have been confirmed as a valid and subsisting obligation at the highest level while remaining unenforceable for most of the conduct it governs. In either event, a High Court hearing a selective-treatment challenge may be inclined to await the Supreme Court's decision, and the respondents' liability to interest will continue to accrue in the meantime.⁴⁸

The asymmetry of standing is itself a symptom of the incongruence. A rule-system that enforces a duty against some and not others, on a basis unrelated to their conduct, generates claims of unfairness from those burdened while leaving the intended beneficiaries without recourse.

VII. WHAT SURVIVES THE SUNSET: THE NORM WITHOUT THE FORUM

A. The Time-Barred Debt Analogy

The constitutional analysis leads to a remedial dead end. A more productive inquiry asks what the sunset actually removed, and the answer is narrower than the trade commentary suggests. The obligation in section 171(1) is untouched. What has gone is the recipient's power to set the statutory machinery in motion, together with any assurance that the machinery exists.

Indian law is familiar with obligations in this condition. The law of limitation bars the remedy without extinguishing the right, save where the Limitation Act 1963 expressly provides otherwise in respect of property.⁴⁹ Section 25(3) of the Indian Contract Act 1872 makes a written promise to pay a time-barred debt enforceable, which would be incoherent if the underlying obligation died with the remedy.⁵⁰ A creditor may also appropriate an unspecified payment towards a time-barred debt. Section 171(1) after 1 April 2025 has the same shape. The duty subsists. One route to its enforcement has been closed.

B. Restitution and the Jurisdiction of Civil Courts

Three consequences follow, and each is of more immediate use to a practitioner than the constitutional argument. The first concerns characterisation. A supplier who reduces price after a rate cut is discharging a statutory obligation, and that affects how the reduction, and any voluntary deposit into the Consumer Welfare Fund, ought to be treated in its accounts and disclosures.

The second concerns restitution. A supplier who does not pass on the benefit is enriched at the expense of an identifiable class of purchasers, on a basis the statute itself declares improper. The Supreme Court's treatment of unjust enrichment in the context of indirect tax refunds proceeds on the footing that a person who has passed the burden of tax on to another cannot retain the benefit of its reversal, since the money belongs in equity to the person who bore it.⁵¹ Section 171 applies the same principle in the converse direction, and the Delhi High Court has expressly located the provision in it.⁵² A purchaser's claim to recover the benefit wrongly retained is therefore the ordinary subject of a civil action for money had and received.

Such a claim must reckon with section 162 of the CGST Act, which bars the jurisdiction of civil courts in respect of anything done or purported to be done under the Act.⁵³ Two answers are available. A purchaser's suit for restitution questions nothing done under the Act. Its object is a private obligation whose standard the Act supplies. And the principles in *Dhulabhai v State of Madhya Pradesh* hold that where a statute gives finality to the orders of special tribunals, the jurisdiction of civil courts is excluded only 'if there is adequate remedy to do what the civil courts would normally do in a suit'.⁵⁴ After 1 April 2025 there is no statutory remedy at all for a fresh complaint. The ouster clause cannot sensibly be read to bar the only remaining route to vindicate a right the same statute confers.

⁴⁷ *Anuhaar Homes* (n 20).

⁴⁸ *Excel Rasayan* (n 21); *Anuhaar Homes* (n 20).

⁴⁹ Limitation Act 1963, ss 3, 27; *Bombay Dyeing and Manufacturing Co Ltd v State of Bombay* AIR 1958 SC 328; *Punjab National Bank v Surendra Prasad Sinha* 1993 Supp (1) SCC 499.

⁵⁰ Indian Contract Act 1872, ss 25(3), 60.

⁵¹ *Mafatlal Industries Ltd v Union of India* (1997) 5 SCC 536; *Sahakari Khand Udyog Mandal Ltd v Commissioner of Central Excise and Customs* (2005) 3 SCC 738.

⁵² *Reckitt Benckiser* (n 23).

⁵³ CGST Act (n 1) s 162.

⁵⁴ *Dhulabhai v State of Madhya Pradesh* AIR 1969 SC 78 [32].

C. Consumer Fora and the Central Consumer Protection Authority

The third consequence concerns consumer law. The Consumer Protection Act 2019 defines ‘unfair trade practice’ in open terms to include any unfair method or deceptive practice adopted for the purpose of promoting the sale of goods or services.⁵⁵ The standard is open-textured, and the consumer fora have no settled measure of fair pricing. The subsisting duty in section 171(1) supplies one. The fora would be applying the commensurate reduction standard that the CGST Act already lays down, for which nine years of computation practice before the DGAP, the NAA and its successors provide a worked methodology, and which the Delhi High Court has construed as requiring that ‘whatever is saved in tax must be reduced in price’.⁵⁶ The official’s suggestion that the benefit may be passed on by increasing product weight sits uneasily with this standard, and may itself be examined as a deceptive practice where the purchaser is not told that the price has been held steady.⁵⁷

The Central Consumer Protection Authority (CCPA) is the most promising institutional vehicle. It may inquire into violations of consumer rights and unfair trade practices on its own motion, on a complaint or on a direction from the Central Government, and it may order the discontinuation of the practice and the reimbursement of prices paid.⁵⁸ Its jurisdiction runs to a class of consumers, which addresses the main practical difficulty of individual consumer complaints about small sums. The routing of complaints to the National Consumer Helpline after September 2025 places those complaints within reach of a body that could act on them, if the CCPA chose to treat non-passage of a rate reduction as an unfair trade practice informed by section 171(1).⁵⁹

These routes are imperfect. Restitution suits are slow and individually small. The consumer fora lack the DGAP’s investigative apparatus and its access to suppliers’ cost data. The CCPA has no power to levy the penalty in section 171(3A). They nonetheless demonstrate that the vacuum created by the sunset concerns the forum. The norm remains in force.

D. The Case for Repeal Considered

None of this answers Jayaprakash’s argument that the duty should be repealed. His concerns are serious. The absence of a prescribed methodology has been a persistent source of litigation, the Delhi High Court’s answer that arbitrary determinations may be corrected individually is costly to apply, and a two-rate structure reduces the frequency of the rate changes that trigger the duty.⁶⁰ A legislature persuaded by those concerns may legitimately repeal section 171(1). The argument of this paper is that it must do so openly. A repeal would end the incongruence, terminate the classification problem for future conduct and leave the transitional treatment of pending matters to be justified on its own terms. The present arrangement achieves the practical effect of repeal for most suppliers while preserving full liability for a few, and it does so without anyone having taken responsibility for the choice.

VIII. CONCLUSION

The anti-profiteering sunset is commonly described as the end of anti-profiteering in India. This paper has argued that the description is mistaken. The duty in section 171(1) survives, unamended, and continues to be enforced with interest and penalty against suppliers complained of before 1 April 2025. Identical conduct complained of afterwards, including conduct following the largest rate revision in the history of the levy, has no statutory forum.

Read through Fuller, the arrangement is a failure of congruence: the State declares one rule and administers two. Read through Article 14, the same incongruence produces a classification that separates identically placed suppliers by reference to a stranger’s filing date, a differentia that bears no rational relation to the object of section 171 and is harder to defend than the line struck down in *Nakara*. The fiscal latitude of *R K Garg* is unavailable for a provision that raises no revenue and which the State’s own tribunal has called consumer welfare legislation. The argument that no one has a vested right in a forum fails where the forum is the only means of recovering a benefit the statute treats as belonging to the consumer.

The equality argument runs into a remedial wall. Courts cannot compel the constitution of an Authority, levelling down would reward the profiteers, and the negative equality bar limits the relief available to the respondents most likely to raise the point. That dead end is instructive. It shows that the problem cannot be solved by constitutional litigation alone and that the more durable answer lies elsewhere.

Two courses are open in the meantime. The first is legislative. The Council may recommend the constitution of an Authority for a limited period tied to the 2025 rate revision, as was reportedly under consideration before the rate cuts were announced, or Parliament may repeal section 171(1) and accept the consequences of doing so. A time-bound revival is the better course, because it addresses the transition in which non-passage was most likely and then allows the duty to lapse by an honest legislative act. The second course is available now. Purchasers and the CCPA may treat section 171(1) as a subsisting statutory standard, to be vindicated through restitution and the law of unfair trade practices, until the legislature chooses. The present arrangement takes neither course. Its cost falls on the consumers who cannot complain, and also on the respondents now paying interest at eighteen per cent for conduct that a competitor, more fortunately timed, remains free to repeat.

⁵⁵ Consumer Protection Act 2019, s 2(47).

⁵⁶ *Reckitt Benckiser* (n 23).

⁵⁷ *Yadav* (n 17).

⁵⁸ Consumer Protection Act 2019, ss 18(2)(a), 19, 20.

⁵⁹ *Press Trust of India* (n 16).

⁶⁰ *Jayaprakash* (n 30); *Vegesana* (n 25).