

GST AND ITS EFFECT ON THE FEDERAL NATURE OF THE INDIAN CONSTITUTION

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ABSTRACT

Tax is a mandatory contribution to state revenue levied by the government on worker's income and business profits, or added to the cost of goods, services or transactions. The current taxation system in India is a very complex one. To understand it in simple words, the system has been divided into two broad categories:

In direct tax the person paying the tax and making the payment of tax is the same. Income tax, corporate tax are examples of this. Indirect tax is when the person paying the tax and person on whom the burden of payment lies are different. In other words, the tax we need to pay sales tax in addition to the original cost at a shop. But the burden of payment of that tax lies on the shopkeeper. Wealth tax and securities tax are examples of indirect tax. This system of taxation is important to understand because there are some major flaws in the system and perhaps to make it a more effective system, GST bill has been passed.

A common man in India has to transfer a large part of his hard earned money to various taxes due to this complex system where the state and center both get their own benefits. In order to reform this taxation system the current government took steps in to amalgamate several central and state taxes into a single tax so that it would decrease the problems of double taxation, by introduction of GST which is the goods and services tax.

This paper focuses on several important aspects of the new GST act that has been passed and will be enacted from 2017, as well as GST's effect on the relationship of centre and state. GST is likely to affect the federal structure of India as it takes us towards a uniform tax system where states will lose their financial autonomy. With reference to its constitutionality, an amendment into the constitution has already been made with respect to GST. This paper focuses on the

possible disputes that may arise in the federal nature of Indian Constitution as well as some of the major advantages of GST.

INTRODUCTION

As we move towards globalization, it is not just crucial for India to open its economy to outside exchange but at the same time is similarly critical to make an effort towards tightening the Indian national market as one. The framers of the constitution understood the importance of free trade and part XIII of the Indian constitution deals with country's internal trade. In spite of the fact that constitution accommodates parliament and state councils to impose necessary and reasonable restrictions on trade if it is in national interest, it must also not be neglected that it is because of Articles 302 to 304 that such powers are practiced with the most extreme carefulness and in remarkable conditions only.

The tax structure in India is most apparently the biggest reason as to why the intention of the framers of the constitution to have a free and single domestic market is not being fulfilled. Even though the intentions behind all the tax legislations currently present in the country was logical, it has disturbed the free movement of goods and services within the country. In simple words, the taxes paid on taxes has accelerated the cost for all the traders and is leading to a distorted market in the country.

The documents required in conforming to the different administrative methodology and controls, the consistence cost required as far as time and assets are concerned and the unavoidable corruption practices have served as large delay to the productivity of trading operations in the nation. There is a critical need to investigate the hindrances that disturb productive trading.¹

As a result the biggest fiscal reformation in India i.e Goods and Services Tax which has waited for 11 long years is all set to be implemented and create a 'one tax, one nation environment'. As the introduction of a one tax system is greatly going to affect state's and center's individual

¹ http://circ.in/pdf/GST_&_Single_National_Market.pdf

autonomies, GST is expected to lead towards greater cooperative federalism for the benefit of all.

This research paper is an analysis of the current tax system in India and the major problems associated with it as well as the challenges and positive outcomes that GST is hopefully to create soon in the country.

PRESENT TAX SYSTEM

During the time when India had a controlled monetary administration, a few tax laws were authorized by Parliament and State lawmaking bodies under Articles 246 of the Constitution utilizing the flexibility given in Articles 302 and 304 of the constitution. These led to discontinuity of Indian Market into little provincial markets. India at present has a very mind boggling and multilayered indirect tax structure under which various duties are demanded by the elected and State Governments at various levels of trade network.

In the current Indian constitution system, taxes on merchandise are demanded by the Central Government at the assembling level as extract obligation, on administrations through the Finance Act, and on between state offer of products by means of the Central Sales Tax Act. States require charges on the offer of merchandise inside a state autonomously under their separate State laws and particular assessments on specific divisions. There are other minor aberrant charges by both focus and states.²

CONSTITUTIONAL PERSPECTIVE

In perspective of this flexibility under Article 302, Parliament instituted origin based Central Sales Tax Act in 1956 which is imposed on interstate movement of products. This came about into distortion of the market and urged extensive producers to depend on stock exchanges by setting up state situated stockrooms to keep away from such taxes.

The state councils have the power to legislate on trade and commerce and on matters that are in the state list. The arrangements of Article 301 are likewise material to trade inside the State.

² <http://www.epw.in/journal/2016/31/web-exclusives/gst-and-states-sharing-tax-administration.html>

As per Article 303(1) neither the State lawmaking body nor Parliament might have power to make any law, which changes between States with respect to trade and business in any of the lists in the Seventh Schedule. Notwithstanding, there is also provision in Article 304 (b) under which reasonable restrictions can be imposed in public interest.

Article 304(b) applies just if the restriction is "reasonable". The term 'public interest' however can be utilized as a part of such a way which leads to fracture of the market or makes uncompetitive environment. Many states had ordered entry charge, some of which were later struck around separate high courts.

The Indian states for the most part impose taxes and different measures on imports of items from different States and Union Territories. Hence, these arrangements go about as a boundary on inter-state development on products, the degree of which relies on upon the measure of tax assessment. Because of the Constitutional overlap, the Center can't overrule the State Governments. This kind of overlapping in the constitution has lead to a fragmentation in the trade market. It is likewise imperative to note that Parliament alone has powers to enact on matters identifying with inter-state exchange and trade (item 42 of Union List in VII Schedule)

The taxation rivalry has expanded among states to draw in revenue. Diverse states give distinctive area based/substance based exclusions along these lines constraining the degree for rivalry. The elements which are entitled for avilment of such area based/element based exception are put at better position when contrasted with substances which couldn't profit such exclusion. For example, State of Maharashtra has given exception from payment of tax in excess of 4% on sale of motor soul made by certain list of oil companies. Just like that Kerala has granted exemption from levy of charges on specific commodities to some traders and thus separating one class of dealers from another.

These are noteworthy obstructions initiating rivalry bends in India, separating India into different parts and in this manner confining free or seamless trade in the country.

NEED ANALYSIS: GST

There is wide national understanding that the current tax system which involves indirect taxing and is extremely complex should be replaced with GST having an ultimate aim of unifying the domestic market of India. The establishment for the same has as of now been laid by the presentation of the Constitution Amendment Bill in the Parliament in March 2011. An across the country GST is proposed to introduce a uniform market for products and ventures, cut business expenses and help government incomes.

GST is an exhaustive value added tax on goods and services which is gathered on every phase of sale and purchase in a tax jurisdiction. There is no distinction in taxing the goods and the services. In GST administration, as the products and ventures travel through the store network, GST is gathered on the value added at every level of the inventory network. A major component of GST is the capacity of citizens to claim a full credit for 'input tax'.³

As a constitutional amendment is necessary for the GST to be introduced in order to give powers to both state and center to make laws on taxation there is an ongoing debate regarding GST being a threat to the federal nature of the Indian constitution. One the major reasons GST has been objected is because it is to take control over state's autonomy on tax-levying powers. In order to understand whether GST would be a threat to federalism or would rather create cooperative federalism, we first need to understand what exactly a federal constitution means.⁴

FEDERALISM – THE INDIAN WAY

Federal Nature of Constitution

Supremacy Of The Constitution - In India constitution is considered to be the supreme and both state and center get their powers from the constitution.

Dual Quality – In a federal constitution both there are two governments i.e center and the state and both the governments derive their power from the same source which is the constitution. Constitution must be written – There is a possibility of conflict on the question of interpretation and so for clarity constitution must be written. India has a written constitution

³ <http://www.epw.in/journal/2016/31/web-exclusives/gst-and-states-sharing-tax-administration.html>

⁴ <http://serialsjournals.com/serialjournalmanager/pdf/1466060577.pdf>

Supreme Court Must Be There – India has a supreme court and there is also independence of judiciary

Rigid In Nature- It has to be rigid in terms of amendments. When both governments have power to alter it is a rigid constitution.

Unitary Nature of Constitution

India, on the other hand also incorporate many unitary features such as The Indian constitution sets up an intense union Government. A survey of the division of powers in the Indian constitution obviously demonstrates solid inclination for the union Government and a few restrictions on the independence of state Governments. For instance, amid the declaration of a national emergency the union government can administer on the subjects in the state list and can control the official powers of the state government.

It is not just amidst an emergency that the Indian constitution gets to be distinctly unitary in character. Indeed, even in its typical working, the union Parliament can revamp the states or modify the limits by a simple majority vote, even without the assent of the lawmaking body of the state so influenced.⁵

The state and center both have the powers to make laws on certain subject matters mentioned in the concurrent list, however if both center and state make law on the same subject matter which is of conflicting nature then the union law shall prevail.

The governors of a state are also appointed by the President who the executive head.⁶ The Indian constitution not only consists of federal features but also has some unitary features. The intention of the law makers was not only to give powers to the states but also to give exclusive powers to the union in times of crisis. It is therefore concluded that the nature of Indian constitution is not federal, rather it can be called as quasi federal. And thus, when the initial

⁵ [http://www.ey.com/Publication/vwLUAssets/EY-gst-a-new-era-of-cooperative-federalism-in-india/\\$FILE/EY-gst-a-new-era-of-cooperative-federalism-in-india.pdf](http://www.ey.com/Publication/vwLUAssets/EY-gst-a-new-era-of-cooperative-federalism-in-india/$FILE/EY-gst-a-new-era-of-cooperative-federalism-in-india.pdf)

⁶ <http://www.importantindia.com/16678/nature-of-indian-constitution-federal-or-unitary-or-quasi-federal/>

intention of the law makers was never to make this constitution a purely federal one how can GST affect the federalist nature of the constitution.⁷

GST- IMPACT ON FEDERAL STRUCTURE

It has been contended again and again that GST will subsume State Value Added Tax/Sales Tax, Entertainment Tax (other than the expense required by the nearby bodies), Central Sales Tax (imposed by the Center and gathered by the States), Octroi and Entry charge, Purchase Tax, Luxury assess, Taxes on lottery, wagering and betting; and State cesses and additional charges in so far as they identify with supply of goods and services. Along these lines, even the neighborhood bodies will be influenced by the GST and in this manner, it purportedly attacks on the so called federal structure of our nation.

However, to think about it GST would rather increase the tax base and decrease the non transparent system that exists in terms of tax collection. There will a major decrease in economic distortions across states and a free and smooth movement of goods and services within the country will be promoted greatly.

Repeated tax assessment of similar items by various levels of government makes more extensive gaps amongst maker and buyer costs. This is especially valid as the Center collects the duty at the assembling stage and the States demand the business assess transcendently at the principal purpose of offer. Octroi assessment is registration based and gathered at the caution of the faculty dealing with the registration and has been an extremely proficient of defilement and in this way a noteworthy deterrent to free development of products the nation over.

Keeping in this mind, all those who oppose GST on the basis of it being a threat to a federalist nation must also be answerable as to whether controlling corruption and making the entire tax system a transparent one will weaken the states or boost the Indian economy as a whole.

⁷ [http://www.ey.com/Publication/vwLUAssets/EY-gst-a-new-era-of-cooperative-federalism-in-india/\\$FILE/EY-gst-a-new-era-of-cooperative-federalism-in-india.pdf](http://www.ey.com/Publication/vwLUAssets/EY-gst-a-new-era-of-cooperative-federalism-in-india/$FILE/EY-gst-a-new-era-of-cooperative-federalism-in-india.pdf)

POLITICAL EGO OF STATES

GST in India is going to have a different procedure of implementation as compared to GST system in other countries around the world. Even though the purpose of GST is to have one tax one nation, it still upholds the political ego of the states by having a dual GST system owing to our federal nature. Center would levy and gather Central Goods and Services Tax (CGST), and States would levy and gather the State Goods and Services Tax (SGST) on all exchanges inside a State. Furthermore, the rates for CGST and SGST will be directed by the GST board which is neither an operator of States nor of Center. In addition to this, items that are of the greatest revenue to the state will also be excluded from the GST regime till the council decides on them. These items include alcohol liquor for human consumption and some petroleum products as they have undoubtedly led to greatest revenue collection by states. Moreover, the losses that states are likely to incur due to introduction of GST will be compensated for the next 5 years by the central government.⁸

The members of the GST council will have the following members:

1. Chairman – Union Finance Minister
2. The union minister of state in charge of revenue
3. The minister in charge of finance and taxation or any other minister nominated by each state government.

The purpose of such a composition in the GST council is to furnish to the opinions of state councils adding to the federal essence of the constitution.

In the meantime, when we move to a GST administration in a government set-up like our own, some reduction of the State's political autonomy is unavoidable however monetary flexibility and development is no place to be hampered rather, economy of the States and also of the Nation in general will be fortified. Likewise in the Bill, it is nowhere said how the GST will work and on what premise it'll settle on its choices in regards to exclusions for States and appropriate the income gathered however, presence of States' delegates in the Council guarantees us that the requirements of the individual States will be taken care of.

⁸ [http://www.ey.com/Publication/vwLUAssets/EY-gst-a-new-era-of-cooperative-federalism-in-india/\\$FILE/EY-gst-a-new-era-of-cooperative-federalism-in-india.pdf](http://www.ey.com/Publication/vwLUAssets/EY-gst-a-new-era-of-cooperative-federalism-in-india/$FILE/EY-gst-a-new-era-of-cooperative-federalism-in-india.pdf)

Further, both, Parliament and State governing bodies will have the ability to make laws on the tax collection of products and services. A law made by Parliament in connection to GST won't supersede a state law on GST. This again stresses on the need of not agonizing over federalism being undermined.⁹

NEED FOR PUBLIC INTEREST.

Regardless of high monetary development, India positions 130th in the Human Development Index of 2015, beneath Malaysia (62), Sri Lanka (73), Mexico (74), China (90), Egypt (108), Indonesia (110), Philippines (115), South Africa (116) and Namibia (126).

It is said that there will be an increase in GDP development of 1% to 1.5% on account of the proposed GST. Adjusted development underway and also utilization could prompt to manageable development. Without expanding the utilization force of a greater part of the populace, India can't accomplish practical monetary development. In this manner, assess changes ought not be pointed just at expanding creation. Rather, the changes ought to be gone for enlarging income to guarantee easing of neediness and making a more fair society.¹⁰

IMPACTS OF GST

Positive impacts of GST

Uniform taxation across the entire supply chain will be easier and will reduce a lot of costs that the tax payers currently have to bear.

GST is a more organized and straightforward type of aberrant tax collection. It has demonstrated itself in more than 140 nations as the most productive and successful technique for giving incomes to the administration, while empowering monetary development and effectiveness. Thusly, it will enhance profitability and is relied upon to diminish cost of

⁹ http://circ.in/pdf/GST_&_Single_National_Market.pdf

¹⁰ <http://www.epw.in/journal/2016/31/web-exclusives/gst-and-states-sharing-tax-administration.html>

merchandise and ventures for the Indian buyers. When it is actualized, it will make India one regular market which is at present divided by expense obstructions.¹¹

GST will supplant a large portion of the current numerous charges, for example, extract obligation, benefit impose, VAT with a solitary assessment. The states and the union government will force the duty on all merchandise and ventures created in India or imported. Fares won't pull in GST. Wiping out an assortment of existing aberrant duties will rearrange the expense structure, expand the assessment base, and make a typical market crosswise over states and governmentally regulated areas.

Shortcomings of GST

1. The normal advantages and picks up may get decreased if all the current expenses on tradable merchandise and enterprises are not supplanted by GST. There is resistance by the middle and states to consolidation all such circuitous charges. For example unrefined petroleum, characteristic gas and power which are contribution to an extensive number of ventures are proposed to be kept out of GST. This will keep on having negative effect on cost of item in India where these are utilized.¹²

Neighborhood charges are proposed to be kept out of GST. Such non vat-capable charges like passage expense, octroi, nearby stimulation impose and so on if kept out these will make assess obstruction in making India a typical market furthermore add to the generation cost if these are demanded on information sources. At the appropriate time the current rates of such neighborhood expenses can be expanded by states prompting to fracture of market and case under Article 301 for making charge hindrance.¹³

CONCLUSION

The intention of the law makers while framing the constitution was to give powers to both center and state so that both individual state's as well as the nation as whole needs could be

¹¹ <http://letspedia.com/gst-threat-indian-federalism/>

¹² <http://letspedia.com/gst-threat-indian-federalism/>

¹³ <http://letspedia.com/gst-threat-indian-federalism/>

taken care of. However, the increased and developed trade and business requires a very strong internal domestic market in the nation which will allow a free and easy movement of goods across the country. GST has thus been proposed to firstly curb corruption that exists in the non-transparent system that exists presently and also to simplify the tax paying procedure for tax payers and cut down on their costs. However the biggest threat that comes in the way of this implementation is the contention that GST is likely to negatively affect the federal structure of the country, but in response to this as we have discussed in this research paper above, can India's constitution be affected if it is not of a purely federal nature in the first place? In fact, in my opinion GST requires cooperative federalism and the objectives that it is to achieve will benefit individual states eventually. Furthermore, with respect to the exemptions that states require would continue adding to the fragmentation in markets and create barriers in serving to the purposes of GST. In my opinion, public interest as a whole is much more important than a state's autonomy. It is high time that the nation becomes one in terms of financial matters as it is the hardworking classes that give away more than half of their hard earned money in paying different taxes that currently prevail.

The introduction of GST is going to be the biggest and the most crucial tax reform that the country has long needed.