

A Constitutional Study on GST and its Impact on Fiscal Federalism in India

Jitendra Yadav¹, Ashutosh Singh¹ and Swati Sawan²

¹Institute of Legal Studies and Research, Mangalayatan University, Aligarh, UP

²Faculty of Law, Usha Martin University, Ranchi, Jharkhand

E-mail: jitendra.yadav@mangalayatan.edu.in

Abstract:The government implemented the Goods and Services Tax (GST) under the 101st Amendment to implement a new indirect tax framework for collecting tax on the sale of goods and services. This legislation, which has already been in effect for more than a year, has significantly altered the way taxes are split between the federal government and the states. The new budgetary policy of the country is unquestionably based on it. This paper aims to provide a general overview of the GST Model and outline the advantages and disadvantages of the current structure in taxation policy. Second, it examines how the implementation of the Goods and Services Tax (GST) has affected the federal system of the United States. Also discussed is how double taxation can be avoided by interpreting the Seventh Schedule according to the notion of pith and substance, rather than using the double aspect theory in India's GST model.

Keywords:Fiscal Federalism, GST, Pith & Substance, Seventh Schedule, Double Taxation.

Introduction:

All goods and services produced in Canada and those imported from abroad are subject to the Goods and Services Tax (hereafter referred to as "GST"). As an alternative to the former system of taxing products and services separately, this new system combines several indirect taxes into a single broad-based tax on the economy's consumption of commodities and services. With the help of the 101st Amendment, commonly referred to as the "GST Amendment," the former indirect tax law framework was replaced with the GST Model [1]. For this reason, a new Constitutional amendment has been added to the Constitution and amendments in the Seventh Schedule containing the Union and State Lists to accommodate the monumental task of merging previously charged indirect taxes into a single tax [2].

A provision in Article 246A of the Constitution allows the Union and the States to simultaneously enact the goods & services tax. In contrast, intrastate trade is available to both the Union and the State governments, whereas interstate trade is only under the control of the Union. Article 269A follows in the same vein and explains that the Union government is responsible for collecting and remitting GST on interstate trade, which is then split between the Union and States⁷ following the GST Council's recommendations. Inter-state trade proceeds are not attributed to the Consolidated Fund of India or state, but are assigned to both the Centre and States in proportion to the amount collected. The GST Council is the subject of Article 279A. Any issues relating to the implementation, determination, and application of the GST, including but not limited to the amount of tax to be levied, exemptions to be offered, threshold limitations and allocation of inter-state trade tax [3]. In addition to the Union Finance Minister as Chairman, the Council also comprises the Union Minister of State and several State Ministers responsible for Finance or Taxation [4]. With a 3/4th majority, the council must make all decisions, with the central government holding 1/3rd votes and other state governments collectively holding 2/3rds. Because it is founded on the idea of "One Nation-One Tax," it was intended to tax all goods and services at the same rate, but Parliament ultimately decided to divide it into four tax brackets: 5%, 12%, 18%, and 28%.

Even though this goes against the idea of a single tax rate for GST, it has been justified based on protecting the interests of those who are less fortunate. It was decided to distribute these four tax brackets in such a way that they would best serve Indian expatriates living abroad:

Tax Rate	General Category
5%	Household necessities such as sugar, spices, tea etc.
12%	Items like computers and processed food.
18%	Hair oil, soaps, toothpaste, capital goods and industrial intermediaries.
28%	Luxury items like cars, AC, refrigerators, cigarettes and aerated drinks.

Items such as gasoline, booze, and electricity have not yet been included in the GST since doing so would jeopardise the new tax system's stability. It is worth noting that some products, such as cereals and vegetables and jute and contraception, are exempted from GST because of the nature of their products.

By charging tax only on the value-added to the sold item, this tax eliminates the cascading effect of taxes. Another advantage is that it can be applied according to the destination principle, i.e., the tax must be applied at every stage of the production chain, from distribution to sale, with the relevant setoffs for taxes imposed at prior levels. As a result of this, the method is easy and effective.

The G&S tax's advantages and disadvantages:

The tax system in India has undergone a sea change since GST was implemented [5]. When it comes to tax reform, the most significant advantages of the GST are as follows:

- As a result, the country's tax code has been made more straightforward. As a result, all indirect taxes on goods and services have been consolidated into a single tax, known as the goods and services tax.
- Second, the cascading impact of taxes, known as 'tax on tax', is eliminated. There is no cascading effect in the GST model because the tax only applies to the value added to the product.
- In the former regime, tax compliance and return requirements differed for each tax. A unified return is required in the GST Model, which requires only one form to fill out.
- The GST Model has a specific treatment for E-Commerce firms. Online marketplaces hadn't previously been subjected to this punishment.
- Industries like real estate and textiles were mainly unregulated in the former system. The introduction of the GST has put them in the crosshairs of tax officials.
- The introduction of the Goods and Services Tax (GST) has resulted in greater openness and stricter restrictions to prevent tax avoidance.
- It has developed a consistent taxation structure throughout the country.
- The GST Model eliminates the hassle of paying taxes and waiting in line at checkpoints at state borders by bringing interstate commerce under the control of the Union government.

However, despite the benefits provided by GST, the rapid installation and implementation, which began in the middle of the financial year, has raised numerous concerns for the Indian economy.

Among the many flaws:

- The MSME sector is sure to experience difficulties in adapting to the difficulties of digital filing spanning from registration to return filing online if this policy is implemented suddenly.
- Businesses must upgrade their accounting software to be GST-compliant to maintain an uninterrupted business. However, purchasing new software and educating people afterward adds up to additional costs for firms.
- The tax rate has risen from 15% to 18-20% because services have been included in the GST system. This raises the cost of goods and services for consumers.
- This will be a problem for small enterprises in the manufacturing sector under the GST model. GST has been imposed on all businesses with more than 20 lakh annual sales. Previously, excise duty was only levied on companies with more than 1.5 crores yearly revenue.
- Petroleum and diesel products, which are not subject to GST, cannot claim input tax credits. In this way, manufacturers are prevented from claiming a set-off when paying their output tax credit.

With time, these difficulties in India's GST model should fade away. The long-term benefits of the GST are expected to outweigh the short-term drawbacks, making it a progressive move for the Indian economy.

In India, the impact of GST on fiscal federalism:

A fundamental aspect of the Indian Constitution is that a federal structure exists. Powers are divided amongst the Union and the States, with both being supreme within their own zones of influence, and drawing their authority from the Constitution of India [6]. However, a fundamental principle of federalism can't be applied in the Indian federal structure because it has several unitary characteristics and federal characteristics that tilt power toward the Union government and are responsible for the term "quasi-federal" being used for the country. Unitary characteristics also include the existence of a strong Centre, emergency provisions that override the authority of the State governments, a single citizenship representation and an integrated audit machinery and judiciary, and the supremacy of the Centre when it comes residuary powers. Fiscal Federalism, which refers to the distribution of authorities between the Centre and States

for collecting and administering revenue in their respective areas, is an example of how these elements make India quasi-federal in nature [7]. The Seventh Schedule of a Constitution contains the basis of this distribution, with three detailed lists dividing the legislative subjects between the Central and State administrations. There are 97 entries on the Union List, all of which are of national significance. The State List contains 66 items, all of which fall under the legislative jurisdiction of the state legislature since they pertain to issues of local or state importance. Concurrent List covers 47 issues that can be judged simultaneously by the federal government and the states. This is an attempt to lessen the excessive rigidity of the two-fold division of powers.

Taxpayers' rights advocates have warned that the GST will stifle fiscal federalism and make it difficult for states to pursue their autonomous policies. States will be restricted in raising funds to address problems that only they can solve. When different political parties & ideologies are allowed to form governments in different states and pursue their policies, a federal polity is born. For example, the southern states have traditionally performed better than the rest of the country in terms of social and health metrics. "Kerala and Tamil Nadu consistently come at — or near — the top in rankings of summary development measures. They also beat other States in terms of the speed of advancement," says economist Jean Dreze. As a result, the state government will be constrained in its ability to spend its money as it sees fit, and the ability to raise taxes for such programmes will be restricted [8][9].

India might have benefited from studying the GST implementation practises of its federal peers in Australia and Canada. The federal government controls all indirect taxes, but the provinces in Canada have control over all direct taxes, which helps them preserve a federal framework and state autonomy first and foremost. Secondly, it assures that no statutory trespass is committed. Both direct taxes and much more than half of the GST money are collected by the Indian government, which has a significant financial advantage. All taxes are collected by the commonwealth in Australia and disbursed very complexly. One tax on the consumer instead of two, yet each state retains its role in the GST framework.

The Doctrine of Pith & Substance and GST:

As previously indicated, the GST Law established a clear separation of powers between the federal government and states regarding taxation. According to Articles 24558 and 24659 of the

Constitution, the legislative powers are divided between government units. The Concurrent List does not include numerous tax entries to minimise overlapping and multiple-taxation issues. On the other hand, the GST regime is a considerable divergence from this constitutional scheme. Over the years, the judiciary has evolved a variety of rules for determining legislative competence. The most common test in India is the doctrine of pith and substance, which states that the genuine nature and character of the levy, i.e., the taxable event and the incidence of the levy, must be taken into account while determining the validity of a charge. Before any other considerations, the Court must determine the true nature of the tax imposed, regardless of its official name. Second, the taxable event or incidence of levy on which the tax is levied, in legal terms. An essential part of a tax statute is the imposition's nature or the taxable event for which the levy is intended. Rules that apply to non-tax entries apply *mutatis mutandis* when it comes to the interpretation of tax entries, Tax entries should be scrutinised for legislative trespass using the same principles of pith and substance. Because there is no explicit legislative entry under Schedule VII for GST, the Union and States are free to charge taxes "concurrently," making the pith-and-substance requirement irrelevant. According to the Canadian Doctrine of the double aspect theory, which holds that legislation can have two aspects — for the federal government and each state—subjects listed under Union List can also be listed under State List under a different aspect. ⁶⁶ Regardless of the Double Aspect theory, a discrete taxable event is still required to be present.

The GST regime does not have a specific taxable event defined.

Taxable events under GST are defined as "supply of goods and services," and it is made clear in this act that GST can be levied by both the State and Union simultaneously on both intra-state and international sales.

Even though the Constitution does not explicitly prohibit double taxation, the taxable event must be distinct. ⁶⁸ The term 'supply' does not have a specific meaning. A definition of 'supply' is needed to establish the taxable event, as the statutes still define 'goods' and 'services'. In light of this sweeping definition, the primary taxable event would include supplying any goods or services. It is well-established that a tax's legitimacy might be jeopardised if a component's definition is unclear.

Consequently, the current GST regime is fundamentally a drastic shift from the former constitutional structure of taxing entry. It is well-established legislation that the state has

unlimited taxing authority. In the event of a conflict between the federal units, will the GST council, as a "recommendatory" body, enforce state compliance or will we have 29 rates of GST, contradicting the principle of "One Nation One Tax?"

Conclusion:

When a new tax system is implemented, the goal is to fix what went wrong in the past. Under the old VAT regime, several tax rates and tax administration and compliance costs created a lot of confusion. As a result of the new GST regime, a single tax rate will be applied to a specific commodity or service in all states, making it less complicated. By making it easier to enforce and increasing the likelihood of voluntary compliance, a GST with a standard rate paid across the board would benefit sellers. Even though the GST is beneficial to the economy, it burdens consumers with two taxes: the federal and state versions. As the states' powers are reduced under the GST regime, the question of whether the federal structure is being breached will loom large. GST Council must be flexible enough to accept adjustments as per the needs of the state to maintain the federal framework. The success of the GST would depend on a vast level of coordination between the federal government and the states. The operation of the GST Council is in jeopardy because of the distrust amongst political parties in the Council. The regime's interpretation of lists departs drastically from standard judicial rules. There is no longer any judicial test of pith & substance because a new Constitutional clause has been added to the law. Perhaps the debate over GST isn't even over yet? To better understand the potential consequences of a phased-in introduction of the GST, the government should have sought to implement the tax gradually.

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