

A Critical Analysis of the Goods and Services Tax in Respect to Indian Federalism

Abstract

After the 101st amendment to the Indian Constitution on the 8th of September, 2016 and the notification of the GST Council on 15th September of 2016, a revolutionary step and an important reform was initiated – that of the GST which has rolled out on 1st of May, 2017. But several questions regarding the federal structure has cropped up, for example the weightage given to the central government's vote, the dictating attitude of the centre, the power of the centre to allocate funds to projects, the audit power of the centre and so on. This paper tries to focus on the important points where proposed GST structure threatens the federal fabric of the nation and offers some relevant suggestions.

Keywords: GST Council, State Governments, GST Tax Rate

Introduction

India has a very ancient history of taxation system. In the past also, different kings and feudal chieftains of India collected tax from their subjects. When the colonial powers left the Indian shores, independent India developed a complex taxation system where power to collect tax was simultaneously delegated to the central and state governments.¹ In this complex tax structure, the most recent addition is the Goods and Services Tax (GST) that is a form of Value Added Tax (VAT). Already, in around 160 countries the GST or the VAT has already been implemented.² It is being thought that the GST models being followed in different countries are going to have a long-term effect on the world business. So, it can be said without any hesitation that the GST of India is going to chart a path-breaking trajectory in the Indian taxation scenario that will ultimately convert the whole country into a single market.

Table 1

A List Of Various Regions/Countries Where GST/VAT is Prevalent (2015)

S. No.	Regions	No. of Countries
1.	ASEAN	1
2.	Asia	19
3.	Europe	53
4.	Oceania	7
5.	Africa	44
6.	South America	11
7.	Central and North America with Carrabin islands	19

Source: www.gst.customs.gov.my³

Since the change of guard at the centre in 2014, a lot of major reforms has been orchestrated. For example, Voluntary Income Declaration Scheme of 2016, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act of 2015, Benami Transactions (Prohibition) Amended Acts of 2016 and so on. Among all of these reforms, the GST is considered one of the most important. The GST is an important step as it will decrease the cost of capital in the long run, will attract foreign investors, will generate employment, will increase the collection of tax and in an overall way, will lead to the development of the Indian economy.⁴

Aim of Study

Whenever a new tax law concerning trade, commerce and business is enacted, the implementation problems are felt the most. Since GST, coming on the heels of the other tax laws, is counted as one of the most important tax laws of this country that will have a long-term impact

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On the Indian economy, the implementation issues' regarding GST is considered to be of significant importance and any research in this field is very beneficial to the national planners. Arguably, the most controversial issue that has been raised its head in respect to GST is whether it poses a threat to Indian federal structure. This paper is a sincere attempt to shed some light on whether the GST structure. Threatens the federal fabric of the nation.

Indian Federal Structure at Stake?

'A federation, simply defined, implies a division in sovereign power between the union and constituent provincial governments. Very often, the nature of a federalism practiced by a country is understood in terms of its resemblance to the American system of federalism. Although India does not possess a perfect federal system of government (when compared to the classical western understanding of federalism), it is basically a federation "marked by the traditional characteristics of a federal system, namely, supremacy of the Constitution, division of power between the Union and States and existence of an independent judiciary."- Ganga Ram Moolchandani v. State of Rajasthan (2001). India is, thus, often understood to be 'quasi federal' in nature with a union government more powerful than the states.'

After the 101st amendment to the Indian Constitution on the 8th of September, 2016 and the notification of the GST Council on 15th September of 2016, a revolutionary step and an important reform was initiated. With the proper implementation of the GST, tax will henceforth be collected at each step of the process right from its manufacture upto the ultimate consumer where the tax paid earlier will be allowed as credit. Upon the full implementation of the GST from 1st of May, 2017 tax will be paid on every step on the amount of value where value which is added. In the GST scheme of things, there will be no negative things like tax charged on tax which will result in decreasing the tax burden on the consumers. This will ultimately result in increasing the competitiveness of goods and services and at the same time increase the tax base and improve tax incidence.

In keeping with the federal structure of the country, a GST Council was set up with representatives from both centre and state to formulate a GST structure where both the central and state governments will have the power of levying and collecting tax in the GST regime. The Central Finance Minister, the Central Revenue Minister (State) and the Finance Ministers of the various state governments constitute the GST Council which are giving important suggestions based on which the rate of GST tax are being modified, decided and implemented. It is exactly here, where debate and controversy has risen. According to the 101st amendment to the Constitution in 2016, at least 3/4th majority is required for any decision making the GST Council. In every meeting of the GST Council, the value of the Central Government vote is 1/3rd of the total vote cast and the value of the votes of the State governments is 2/3rd of the total votes cast. The natural question that springs readily to

the mind is why is there this discrepancy in the value of the votes of the Central and State governments in a federal structure? Where there is provision for quorum of only 50% attendance to grant validity for any GST Council Meeting and adopting resolutions, then it is seen that the Central Government derives special advantage and important states, like West Bengal can do precious little other than remaining absent as a sign of token protest.

Jayanta Roy Choudhuri (2016) had made a thorough and relevant study which pointed out that the GST Council, that has been constitutionally created, has the power to levy and collect taxes on the whole country by giving weightage in the internal voting in their meetings. The GST Council has emerged as the overall decision maker in deciding the GST tax rate in the whole country where the elected members of the Parliament and different state legislative bodies will have no role to play. The GST Constitutional Amendment and the finance liability and preparation of budget is such that the different state governments will ultimately turn into mere political administrators. Their duties will be confined to developing and implementing projects in their own respective states. But the State Government will no longer have the freedom to decide on how to collect funds to implement the different state projects and without the central government affirmation; the state governments will no longer be able to expand their pet projects.

Some Suggestions

From the above discussions and the different points raised, the following relevant suggestions have been proposed:-

1. The quorum value can be raised from the current 50% to a higher limit, like say 75% which will entail a higher participation of the states in any GST Council meeting for granting validity and legitimacy to the deliberations, proceedings and decisions taken.
2. The value of the central government vote can be decreased from the current 1/3rd to a lesser value, say 1/5th, which will result in increasing the value of the votes of the states.

Taking Lessons from International Experience

Looking at the world scenario, it is seen that in most cases the GST tax rate is relatively less. But, even as recent GST Councils have witnessed much debate and heat burn regarding fixing of the GST tax rates, leading to states like West Bengal to boycott some meetings of the Council, a relatively high GST tax rate has been decided in the Indian scenario as compared to some other countries. To gain a clear picture of the GST tax rate in the international scenario, the following Table 2 has been prepared to present the GST tax rates in some countries.

Table 2
GST Tax Rates in Some Countries

Countries	GST Tax Rate
Japan	5%
Canada	5%
Singapore	7%
Australia	10%
Newzeland	15%
Germany	1%
France	19.6%
Sweden	25%

Source: Akhansya Khurana & Astha Sharma (2016) ⁷

The GST tax rate is going to be determining factor in the Indian economy as the GST regime will have direct effect on the people residing below the poverty line, like the Indian farmers. ⁸ A past Finance Commission Chairman Vijay Kelkar had voiced fears that after the promulgation of the GST Act, the prices of the agricultural goods are going to increase. This is not good prediction, for an agriculturally dependent country like India even though much hype surrounds India being among the top ten manufacturing nations in the world. By drawing lessons from international experience, India should focus on constructing a flexible and inclusive GST structure in the country where the inputs of the different states will be given due weightage.

Table 3
The GST Tax Rate Structure in India

The percentage of GST	The GST tax rate
7%	3%
14%	5%
17%	12%
43%	18%
19%	28%

Source: The Telegraph (2017) ⁹

The Question of Indian Federalism Continues...

'Given that post implementation of GST- the freedom of the states to determine their own indirect tax policy shall be compromised and that the union can (already) override the states in the GST Council, one may validly conclude that the states shall lose considerable federal powers. GST promises apparent economic gains – increased private investment, spur in economic growth apart from a much-needed economic unity among Indian states. Much like the Indian constitution which being a living, breathing document, adapts to the ever-changing times and circumstances, the understanding of federalism too should adapt to make room for a more cooperative understanding. For true cooperative federalism to prevail, however, there is a need to strike a balance between the powers of the union and the states and regard the elected state governments as rightful equal partners in deciding policy direction.' ¹⁰

As has been decided in the famous case law Kesavananda Bharti versus Union of India (1973), federalism lies at the very heart of the Indian Constitution and no constitutional amendment can violate the sacred tenets of federalism. Then can the 101st amendment to the Indian Constitution violate the structure of Indian federalism by giving more weightage to the centre at the expense of the states?

As the empowered GST Council goes on taking decisions on GST tax rates, the risk that always lies nascent that the central government can push for decisions that will harm the interests of the states; like charging higher tax rates for essential items that are important to the various states. Many such instances have already occurred. In one previous GST Council Meeting held on 18-19 May, 2017 at Srinagar in Jammu and Kashmir, the GST tax rates had been decided which was afterwards implemented from July 2017 onwards and they have been categorically presented in earlier in Table 3. It has been seen that the luxury items have attracted the highest GST tax rate, which is 28%. But several lacunae still persists. Like in case of vermilion, puja items, etc. tax exemption has been extended, while at the same time, for important health items like sanitary napkin, tax has been levied. Why should it be so? Then against the Swacch Bharat backdrop, why should health issue of India women take a back seat in comparison to symbolic goods? Again comparing the GST tax rates of the different countries from the Table 2 with the Indian GST tax rates, it is seen that the Indian tax rate is comparatively higher. Why should it be so?

That is why, when the issue of Indian federalism is at stake, a previously affirmative state like West Bengal had afterwards taken the leading role in protesting against such moves, by boycotting a few GST Council meetings in the earlier half of the year keeping the interests of the small and medium businessmen and preserving the federal structure in the form of audit powers to be devolved on the states, instead of being concentrated with the centre. ¹¹ In the GST Council's 16th Meeting on June 10, 2017, out of 166 representations made to it, the tax rates of only 66 items were reduced, even as the dichotomy continued as tax rate on agarbatti being reduced to 5% being accompanied by school bags and sanitary napkins continuing in attracting 28% tax rate. ¹² Interestingly, in the GST Council's previous 15th Meeting on June 3, 2017, although a consensus was reached for rolling out the GST regime on July 1, 2017 (which it ultimately did so), the process had met with resistance from the West Bengal Finance Minister who was not willing to usher the indirect tax system in its present form. ¹³ So, the centre should put all its efforts towards building a more humane and more universally acceptable GST structure that will eventually help in all-round inclusive development of the whole nation and promote cooperative federalism.

Conclusions

It has been seen that the issue of the threat to Indian federalism by the GST mechanism has emerged as a major issue that is being debated on various forum. So, the centre should put all its efforts towards building a more humane and more universally acceptable GST structure that will eventually help in the all-round inclusive development of the whole nation and promote cooperative federalism. Future modification to the GST mechanism must be adopted in order to strike a delicate balance between all the stakeholders and the central government must be more sensitive to the needs and wishes of all the

respective state governments in a federal structure of a diverse and vast country like India.

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