
INDIAN CONSTITUTIONAL VIEW OF THE EFFECTS OF GST

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ABSTRACT

In India, taxation is broadly classified into two categories: direct taxes and indirect taxes. Direct taxes include those levied on income and profits, while indirect taxes encompass duties such as excise, customs, and more recently, the Goods and Services Tax (GST). The introduction of GST streamlined the complex system of indirect taxes by subsuming multiple levies under a unified framework. This comprehensive tax aims to simplify the structure and bring uniformity across the nation. The Goods and Services Tax was implemented following the 101st Constitutional Amendment Act of 2016 and officially came into effect on July 1, 2017. This amendment enabled both the Central and State Governments to levy and collect GST, necessitating uniform legislation across all Union Territories, States, and at the national level. As such, a constitutional revision was required to facilitate this change. The reform replaced various taxes, including excise duty, VAT, and service tax, with a consolidated tax regime. It also introduced key constitutional provisions—Article 279A, which established the GST Council and granted legislative authority over GST to both Parliament and state legislatures, and Article 246A, which empowered them to enact GST-related laws. Moreover, the amendment provided for a five-year compensation mechanism to support states in adjusting to potential revenue losses due to the GST transition.

Overall, the main objectives of GST were to create a unified national market, eliminate the cascading effect of taxes, and improve tax compliance. These goals were aimed at fostering economic development. This paper explores the background, objectives, types, benefits, drawbacks, and challenges associated with the Goods and Services Tax in India.

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INTRODUCTION

GST, or Goods and Services Tax, is a value-added tax levied on most goods and services intended for domestic consumption. It is collected by businesses at the point of sale and then paid to the government. The Indian Constitution divides taxation powers between the Union List and the State List, which allow the Central and State Governments to levy their own taxes. Under the GST framework, both the Centre and the States have the authority to impose and collect this tax. To facilitate this, a constitutional amendment was required so that all States, Union Territories, and the Central Government could operate under a common set of rules.

GST replaced multiple earlier forms of indirect taxes and is applied to the full value of goods and services produced and consumed within the country. As an indirect tax, it is paid by consumers at the time of purchase, with the seller acting as the intermediary who transfers it to the government.

Essentially, GST functions as a destination-based tax, meaning it is levied where the goods or services are consumed, not where they are produced. This is a key shift from the previous system, where taxes were applied at the manufacturing stage. Under the GST system, taxation is based on "supply" rather than "production," and it excludes exempted goods and services from its scope.³

HISTORY OF GST

The introduction of the Goods and Services Tax (GST) in July 2017 marked a major and widely acknowledged transformation in India's tax structure. Originally proposed over a decade earlier in the Kelkar Task Force report on indirect taxation, the GST aimed to unify the fragmented tax

³ <https://enterslice.com/learning/constitutional-amendment-gst/>

system. Prior to its implementation, both the central and state governments levied various separate taxes. GST was introduced to streamline the tax system, reduce instances of tax evasion, and consolidate the multiple layers of indirect taxes levied on the consumption of goods and services. Branded with the slogan “One Nation, One Tax,” GST has been hailed as a landmark in India’s indirect tax reform.

This unified tax replaced a complex network of federal and state taxes, including Value Added Tax (VAT), Central Excise Duty, Service Tax, and Central Sales Tax, among others. Its implementation was backed by the 122nd Constitutional Amendment Bill, which received approval in both the Lok Sabha and the Rajya Sabha.

OBJECTIVES OF GST IMPLEMENTATION

1. **Unified Market:** The primary objective of GST is to create a unified national market by applying a single tax rate across the country.
2. **Elimination of Cascading Taxes:** Like the Input Tax Credit (ITC) system, GST aims to eliminate the cascading effect of taxes on transactions.
3. **Boost to Exports:** GST removes taxes on exports by refunding taxes paid on inputs, encouraging international trade.
4. **Widening the Tax Base:** GST seeks to bring more businesses and individuals into the tax net, thereby increasing overall revenue.
5. **Simplified Filing Process:** Standardized formats for filing and returns are intended to make the tax process more efficient.
6. **Digital Payments:** Taxpayers can pay their dues and file returns through an online platform, improving ease of compliance.
7. **Technological Backbone:** The **Goods and Services Tax Network (GSTN)** serves as the digital infrastructure to support the seamless operation of GST.⁴

⁴ <https://getlegalindia.com/constitutional-amendment/>

CATEGORIES OF GST IN INDIA

India's Goods and Services Tax (GST) system is divided into four distinct types:

1. **Central Goods and Services Tax (CGST):**

CGST is imposed by the central government on the supply of goods and services within a single state (intrastate transactions). Governed by the **Central Goods and Services Tax Act, 2017**, the revenue from this tax goes directly to the central government. The rate is determined in coordination between the central and state governments, with a cap of 14%. CGST replaced several earlier central taxes, including service tax, central excise duty, additional customs duties, and special additional duties.

2. **State Goods and Services Tax (SGST):**

SGST is applied by individual state governments on intrastate transactions—the sale of goods and services within the same state. The tax revenue from SGST goes to the state in which the sale is made. It replaced taxes such as **VAT, luxury tax, entertainment tax, octroi, lottery tax, and purchase tax**. In union territories like Delhi and Puducherry, SGST is applied based on the laws passed by their legislative assemblies.

3. **Integrated Goods and Services Tax (IGST):**

IGST is charged on the movement of goods and services across state borders (interstate transactions), as well as on imports and exports. Governed by the **Integrated Goods and Services Tax Act, 2017**, IGST is collected by the central government and later shared with the respective state governments as per an agreed formula. This system ensures seamless tax flow in cross-border transactions within the country.

4. **Union Territory Goods and Services Tax (UTGST):**

UTGST is applicable to the supply of goods and services within Union Territories that do not have a legislature. Imposed alongside CGST, it ensures parity in tax treatment across union territories and states. Governed by the **Union Territory Goods and Services Tax Act, 2017**, it applies in territories such as **Chandigarh, Ladakh, Lakshadweep, Andaman and Nicobar**

Islands, and Dadra and Nagar Haveli & Daman and Diu. It functions similarly to SGST but is specific to Union Territories.⁵

TAXES INCLUDED IN THE GST

When the Goods and Services Tax (GST) was implemented, it subsumed a total of **13 cesses** and **17 significant taxes** previously levied at both central and state levels.

1. Major central taxes merged into GST:

- Central Excise Duty
- Additional Excise Duties
- Service Tax
- Countervailing Duty (CVD) or Additional Customs Duty
- Special Additional Duty of Customs (SAD)

2. Important state taxes integrated into GST:

- Value Added Tax (VAT)
- Sales Tax and Entertainment Tax (excluding those levied by local bodies)
- Central Sales Tax (collected by states but imposed by the Centre)
- Entry Tax and Octroi
- Purchase Tax

GOODS AND SERVICES TAX (GST) COUNCIL

The GST Council serves as the collaborative body through which the central and state governments make decisions on Goods and Services Tax (GST) matters. It provides recommendations to both the Union and the states on issues related to GST. Any decision made within the Council requires a 75% majority of the weighted votes from members who are present and voting.

⁵ <https://getlegalindia.com/constitution-amendment/>

The composition of the GST Council includes:

- The Union Finance Minister, who acts as the Chairperson.
- The Union Minister of State for Finance, specifically handling revenue, as a member.
- A minister nominated by each state government, typically the minister in charge of finance or taxation, as a member.

Who is liable to pay GST?

Businesses are required to pay GST if their annual turnover exceeds ₹20 lakhs. For companies operating in northeastern or special category states, the threshold is ₹10 lakhs. Regardless of turnover, all businesses involved in interstate trade are obligated to register for and pay GST.

BENEFITS OF GST

- Simplified compliance process
- Uniformity in tax structures and rates across the country
- Boost in market competitiveness
- Benefits to manufacturers and exporters
- User-friendly and efficient system
- Better control over tax evasion
- Higher efficiency in revenue collection
- A unified and transparent tax aligned with the actual cost of goods and services
- Lower overall tax burden on consumers.⁶

CONSTITUTIONAL PERSPECTIVES FOR GST

- The 101st Constitutional Amendment Act of 2016 was introduced to revise the Indian Constitution and facilitate the rollout of the Goods and Services Tax

⁶ <https://housing.com/news/gst-goods-and-services-tax/>

(GST). This amendment brought about several critical changes to ensure cooperative functioning between the Center and the States:

- Article 246A: This provision granted both the Union and State governments concurrent powers to legislate on GST. It also empowered Parliament exclusively to legislate on interstate trade, leading to the implementation of the Integrated GST (IGST). This article marked a shift toward cooperative federalism by overriding the exclusive powers previously granted to the Union under Articles 246 and 254.
- Amendment to Article 268: This change removed excise duties on medicinal and toilet products from the State List and integrated them under the broader GST framework.
- Article 269A – Revenue Distribution: This article defined how revenue from interstate commerce would be shared between the Center and the States. As per GST Council recommendations, taxes collected from interstate trade are distributed to both the Union and the respective States based on an agreed formula.
- Article 279A – GST Council Formation: The amendment established the GST Council, tasked with making decisions on GST-related issues. The Council is chaired by the Union Finance Minister and includes finance or taxation ministers from each State, ensuring balanced representation of both central and state interests.
- Article 286 – Taxation Restrictions: This article was revised to prevent states from imposing taxes on the supply of goods and services across borders or during import transactions. Unlike the earlier regime, which only barred state taxes on sales, the revised article now covers the supply of goods and services as well.
- Changes to Lists and Definitions: To align with the new GST regime, adjustments were also made to the definitions under Article 366, and

amendments were carried out in the entries of Lists I and II of the Seventh Schedule.⁷

MERITS

1) For Industries and Businesses

- **Simplified Compliance:** The GST framework in India is supported by a robust digital infrastructure, enabling taxpayers to access services like registration, return filing, and payments entirely online, ensuring convenience and transparency.
- **Uniform Tax Structure:** GST brings standardized tax rates and a consistent framework across the country, removing regional tax disparities. This means that tax treatment remains consistent regardless of business location.
- **Avoidance of Tax Cascading:** With smooth credit flow across state lines and the entire value chain, GST helps minimize the cascading effect of taxes, reducing hidden operational costs.
- **Enhanced Competitiveness:** Lower transactional costs improve business efficiency, helping Indian enterprises become more competitive.
- **Support for Manufacturers and Exporters:** By unifying major central and state taxes into GST and eliminating Central Sales Tax (CST), the cost of domestically produced goods and services drops. This, combined with full input tax credit, makes Indian exports more globally competitive. National standardization of taxes also lowers compliance complexity.

2) For Central and State Governments

- **Simplified Administration:** Replacing a multitude of indirect taxes at both levels, GST is more streamlined and easier to manage, especially with its comprehensive IT-based system.

⁷ <https://enterslice.com/learning/constitutional-amendment-gst/>

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- **Better Tax Control:** The IT-driven structure of GST boosts compliance and discourages evasion. Since the input tax credit depends on documentation at each transaction level, businesses are more inclined to comply.
 - **Improved Revenue Efficiency:** With reduced collection costs and better compliance, GST is expected to enhance the overall efficiency of revenue generation.

3) For Consumers

- **Transparent Taxation Aligned to Actual Cost:** Earlier, consumers unknowingly paid various hidden taxes built into the price of goods and services. Under GST, a single, clear tax applies from production to final sale, making the tax burden more visible and fairer.
- **Lower Tax Incidence:** With more efficient processes and fewer leakages, the overall tax load on most goods is expected to decrease, offering financial relief to consumers.⁸

DEMERITS

1. **Increased Costs Due to Software Purchases:** Businesses now face higher expenses due to the need to either acquire GST-compliant software or upgrade their existing accounting or ERP systems. Both options result in additional costs for software acquisition and the training of staff to effectively operate the new billing systems.
2. **Ensuring GST Compliance:** Small and medium-sized businesses (SMEs) that haven't registered for GST must quickly familiarize themselves with the complexities of the tax system. They need to ensure they submit returns on time, maintain digital records, and issue invoices that align with GST regulations.
3. **Rising Operational Costs Due to GST:** The GST is changing the way taxes are paid, leading to increased operational costs for businesses. Companies will need to hire tax

⁸ <https://byjus.com/free-ias-prep/gst-constitutional-amendment-cleared-whats-road-ahead/>

professionals to ensure compliance, resulting in additional expenses, especially for small businesses.

4. **Higher Tax Burden for SMEs:** The implementation of GST will increase the tax burden on smaller businesses, especially those in manufacturing. Previously, businesses only had to pay excise duty if their revenue exceeded Rs. 1.5 crore. Now, any business with revenue above Rs. 20 lakh is required to pay GST.
5. **GST as an Online Tax System:** Unlike before, businesses are now required to file their returns and make payments online, shifting from traditional paper-based invoicing. This change could present challenges for smaller businesses as they adjust to the digital tax system.
6. **Exemptions from GST for Certain Goods and Services:** Many goods and services, such as petroleum products like diesel and gasoline, are exempt from GST. This has created difficulties for oil companies, as they cannot claim input tax credits on these exempt items, which puts them at a disadvantage.⁹

GSTEXEMPTIONS

The IGST on imported goods will still be applied alongside the collection of customs duties. Currently, certain items such as tobacco and petroleum are exempt from GST, and stamp duties, power taxes, and liquor excise duties are also waived.

CHALLENGES

1. **Inability to Cross-Utilize Credits:** Input credits for CGST and SGST cannot be used interchangeably.
2. **Manufacturing-Based States Losing Revenue:** States that are more focused on manufacturing are experiencing greater revenue loss overall.

⁹ www.jetir.org (Journal of Emerging Technologies and Innovative Research)

3. **High Revenue Neutral Rate:** The high tax rate is intended to make up for the revenue currently generated by various existing taxes.
4. **Reduced Financial Autonomy for States:** The financial independence of states has been significantly reduced under the new system.
5. **Concerns from Banks and Insurance:** Banks and insurance companies have raised concerns about the need for multiple GST registrations.
6. **Additional Cess:** The imposition of additional cess is a point of contention.
7. **State Tax Authorities' Preparedness:** It remains uncertain whether state tax authorities are adequately prepared to handle services, as they were previously only responsible for taxing products.
8. **Dependency on Political, Technological, and Administrative Factors:** For GST to succeed, political consensus, technological advancements, and the capacity of tax authorities to adapt to the new system are all crucial.¹⁰

RELATED CASE LAWS

The following significant case laws about GST in India are

1. **Mohit Mineral Private Ltd. v. Union of India and Others:** In this 2019 ruling, the Supreme Court interpreted the phrase “with respect to” in Article 246-A of the Constitution as having an expansive meaning. The court also concluded that the legislative power under Article 246-A is limited to the Goods and Services Tax (GST). Additionally, the court held that it was unlawful to impose the Integrated Goods and Services Tax (IGST) on ocean freight paid by a foreign seller to a foreign shipping line under the reverse charge mechanism.¹¹
2. **Amit Pandey v. Union of India & Ors:** In this 2024 case, the Supreme Court upheld the Patna High Court's decision, which had dismissed a lawyer's public interest

¹⁰ <https://www.drishtiias.com/to-the-ponits/paper3/goods-and-services-tax-gst-1>

¹¹ Mohit Mineral Private Ltd. v. Union of India and others

litigation (PIL). The Supreme Court refused to grant a special leave plea. The Patna High Court ruled that the lawyer did not have the standing to file the writ petition. The court also determined that traders who transitioned from VAT to GST could not be considered a disadvantaged group. The GST system was introduced through the 101st Amendment to the Indian Constitution, which stipulates that the central government must compensate the states for any revenue losses incurred due to the implementation of GST for a period of five years.¹²

3. **State of Kerala v. Caltech Polymers Pvt. Ltd (2018):** In this case, the Kerala High Court ruled that if an employer provides meal expenses to employees as part of a contractual obligation, Goods and Services Tax (GST) is applicable on the meal expenses.¹³
4. **Union of India v. VKC Footsteps India Pvt. Ltd. (2021):** In this case, the Supreme Court clarified that there was no discriminatory intent and upheld the distinction between input services and inputs when it comes to refunding input tax credits under the inverted duty structure.¹⁴
5. **AAAR In Re: TATA Motors Limited (2021):** The Maharashtra Appellate Authority for Advance Ruling (AAAR) ruled that free services provided to customers during the warranty period are not subject to GST.¹⁵
6. **Columbia Asia Hospitals Pvt Ltd. v. Commissioner of Central Taxes (2019):** The Karnataka Appellate Authority for Advance Ruling stated that services provided by workers to their employers during the course of employment do not qualify as a supply of service under GST.¹⁶

¹² Amit Pandey v. Union of India & Ors, 2024

¹³ State of Kerala v. Caltech Polymers Pvt. Ltd (2018)

¹⁴ Union of India v. VKC Footsteps India Pvt. Ltd. (2021) SC 706

¹⁵ AAAR In Re: TATA Motors Limited (2021)

¹⁶ Columbia Asia Hospitals Pvt Ltd. v. Commissioner of Central Taxes, 2019

These cases highlight essential concepts in the GST framework, including the taxability of services and constitutional issues related to the tax structure.

RECENT VERSION FOR GST

In February 2024, the gross GST collection showed a 12.5% year-on-year increase, reaching Rs 1,68,337 crore. This represents a healthy growth of 12.5% compared to February 2023. The surge was primarily driven by a 13.9% increase in GST from domestic transactions and an 8.5% rise in GST from goods imports. The net GST revenue for February 2024, after accounting for refunds, amounted to Rs 1.51 lakh crore, reflecting a 13.6% increase from the same month in the previous year.

Strong and Consistent Performance in FY 2023–2024: As of February 2024, the total gross GST collection for the current fiscal year stands at Rs 18.40 lakh crore, marking an 11.7% increase over the same period in FY 2022–2023. The average monthly gross GST collection for FY 2023–2024 is ₹1.67 lakh crore, surpassing the ₹1.5 lakh crore collected during the same period in the previous year. The GST revenue for the current fiscal year, net of refunds, as of February 2024, is Rs 16.36 lakh crore, which is a 13.0% increase compared to the same period last year.¹⁷

CONCLUSION

The 101st Constitution Amendment Act of 2016 aimed to establish a unified indirect taxation system and create a single market in India. This reform provides consumers with a clear tax structure based on the price of goods and services they purchase. To streamline the Goods and Services Tax (GST) and facilitate the distribution of funds between the federal and state governments, the tax is divided into four slabs: 5%, 12%, 18%, and 28%.

The maximum rate for IGST is capped at 40%, while the highest rate for CGST is 20%. Certain goods, services, and transactions are exempt from GST, including gifts from employers to

¹⁷ <https://housing.com/news/gst-goods-and-services-tax/>

employees, agricultural services like harvesting, machinery rentals or leases, court and tribunal services, and sales of land or buildings as outlined in Schedule II, Paragraph 5(b). Under the GST system, input tax credits can be claimed at the stage of value addition, making them applicable at the final stage of value addition.

The introduction of GST has simplified the indirect tax structure and made it easier to understand. The GST Council, which is responsible for overseeing India's indirect tax system, meets regularly to review and implement necessary changes to improve the tax framework. The Council is also highly responsive to emerging needs.

The implementation of GST marks an important step toward formalizing the Indian economy and reducing its reliance on informal sectors. To tackle the challenges ahead, India can benefit from the experiences of other countries that have already adopted GST.

SUGGESTION

In simpler terms, the GST system was created to simplify India's complex indirect tax structure. A well-designed GST is an effective way to eliminate the distortion caused by the previous system of multiple taxes. Moreover, the government has assured that GST will reduce the compliance burden. Both domestic and imported goods will be taxed at the same rates, with no distinction between the two. While the implementation of GST will present challenges, it will also bring numerous benefits. Ultimately, GST is a positive force contributing to the growth and development of our nation.

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