



GST and Cooperative Federalism

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Abstract

India is federal country. The essence of federalism is concerned with Centre and States and distribution of power among them. Cooperative federalism means a philosophy in which sovereignty is shared by Centre and State Governments and they work together in some areas sharing their functions and finally power. GST is based on dual tax system due to federal structure and is levied and administered by Centre and different States. GST is an example of cooperative federalism where the Central Government and State Governments jointly uses the taxing power to adopt and implement GST.

Keywords: GST, Cooperative Federalism, CGST, IGST, SGST, UTGST

I. Introduction

Today, India is now becoming one of the most powerful economies of the global world. To meet this expectation, there are various steps which are being taken to give its final shape GST has been implemented in India keeping all the points into consideration. GST is considered the largest step in the field of tax reforms in India. Though India is not the first country to introduce GST, there are various countries in the world that have already implemented. GST was first introduced in France in the year 1954. After its successful implementation, other countries have followed it. The implementation of GST in India may also be considered important because India is a country as well as a sub-continent and she has a huge federal system. It makes India different from other countries adopting GST.

II. GST – Its Background

After 1947, the basic features of Indian economy compelled India to adopt the mixed economy. In 1991, the Government of India adopted economic reforms at the recommendations of Narasimham Committee. The policy of liberalisation was adopted to make changes in economic sector. These situations also changed the way of doing business. Before reforms, there was no competition in global market. After reforms, our industries started facing global challenges. To make India more efficient in the field of production and robust in economic sector, GST was implemented in India on 1 July 2017. The Prime Minister of India announced the implementation of GST in the meeting of Niti Ayog which shows the strength of its federal system and strong desire of a country.

The introduction of GST in India was made in various steps with some political obstacles. Many amendment bills were brought into action. In 2011, 115th Amendment Bill was also introduced in Parliament but nothing could be done. The bill was again introduced in 2014 for discussion in Parliament but that time the Parliament was dissolved and finally the bill was also lapsed.

In December 2014, the Constitution (122nd Amendment) Bill was introduced in the Lok Sabha and it was passed from there in May 2015. The Bill was then taken up in Rajya Sabha and was referred to the Joint Committee of Rajya Sabha and Lok Sabha in May 2015. On 22nd July, 2015, the Select Committee submitted its report and thereafter, the Constitutional Amendment Bill was moved for political consensus on August 1, 2016. The Bill was passed by the Rajya Sabha on 3rd August 2016 and by the Lok Sabha on 8th August 2016. The Constitutional Amendment Bill was notified on 8th September, 2016 as Constitutional (101st Amendment) Act 2016 after ratification by required number of state legislatures and assent of the President. This amendment created opportunity for introduction of Goods and Services Tax in India.

Later on, the Central Goods and Services Tax Bill, 2017 (CGST Bill), the Integrated Goods and Services Tax Bill 2017 (IGST Bill), The Union Territory Goods and Services Tax Bill 2017 (UTGST Bill), the Goods and Services Tax (Compensation to the States) Bill 2017

(The Compensation Bill) were passed by the Lok Sabha on 29th March 2017 after approval from GST Council. These Bills were passed by the Rajya Sabha on 6th April 2017 and were enacted as Acts on 12th April 2017. Thereafter, the different states through State Legislatures passed State Goods and Services Tax Bills. After the enactment of GST Laws, Hon'ble Prime Minister of India, Shri Narendra Modi launched GST in India with effect from 1st July 2017 in the presence of Shri Pranab Mukherjee, the then President of India at Central Hall of Parliament of India.¹

The implementation of GST in India is the best example of federal system. India is a country of 29 states and 7 Union Territories in which more than half of the states have BJP led governments and other states led by opposition parties for example, Delhi and West Bengal have governments of parties opposite to each other. In such a situation, there was a need to make coordination between all the states and that is why much thrust is given on cooperative federation. Under this system, the powers of centre and the states have been defined which will strengthen the relation between centre and the states in terms of tax reforms. The fundamental principle of federal system is that there must not be any law which creates differences between centre and states. Cooperative federation is a philosophy in which sovereignty is shared by centre and state governments and they work together in some areas share their functions and finally power. Prior to GST, there were complications/problems between centre and states in terms of tax system. Taking all the disputable points into consideration the GST has been introduced on the basis of "One Tax, One Nation" so that India may move towards development.

III. Constitutional Amendments for GST

There are several articles in the Constitution of India which define the financial relations between Union and States. Since GST bills involve a huge interest of the state governments, such a historic tax reform cannot take place without making suitable changes in the Constitution. For this purpose, 101st Amendment of the Constitution was passed. This Act received the assent of the President of India on the September, 2016. The important changes made in Constitution (new articles/amended articles) via this law are as follows:²

IIIA. Article 246 (A)

This is a new article inserted in the constitution. It says that (1) Notwithstanding anything contained in article 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, has power to make laws with respect to goods and services tax imposed by the Union or by such State. (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or services, or both taxes place in the course of inter-State trade or commerce.

Notable Points from Article 246A

- (a) Both Union and States in India now have "concurrent powers" to make law with respect to goods & services.
- (b) The intra-state trade now comes under the jurisdiction of both centre and state; while inter-state trade and commerce is "exclusively" under central government jurisdiction.

IIIB. Article 269 A

This is a new article which reads as follows:

269 A (1) Goods and services tax on supplies in the course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendation of the Goods and Services Tax Council.

Explanation- For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade of commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been

used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Notable Points from Article 269A

- This article says that in case of the inter-state trade, the tax will be levied and collected by the Government of India and shared between the Union and States as per recommendation of the GST Council.
- The article also makes it clear that the proceeds such collected will not be credited to the consolidated fund of India or state but respective share shall be assigned to that state or centre. The reason for the same is that under GST, where centre collects the tax, it assigns state's share to state, while where State collects tax, it assigns centre's share to centre. If that proceed is deposited in Consolidated Fund of India or state, then, every time there will be a need to pass an appropriation tax. Thus, under GST, the apportionment of the tax revenue will take place outside the Consolidated Funds.

IIIC. Article 279-A

This article provides for constitution of a GST Council by president within sixty days from this act coming into force. The GST council will constitute the following members:

- Union Finance Minister as chairman of the council.
- Union Minister of State in charge of Revenue or Finance.
- One nominated member from each state who is in charge of finance or taxation.

The GST Council will be empowered to take decision on the following:

- The taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
- The goods and services that may be subjected to, or exempted from, the goods and services tax;
- Model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;
- The threshold limit of turnover below which goods and services may be exempted from goods and services tax;
- The rates including floor rates with bands of goods and services tax;
- Any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- Any other matter relating to the goods and services tax, as the Council may decide.

All decisions taken at the GST Council will be taken based on voting. Process of voting is clearly articulated in detail in the constitutional amendment bill.

IIID. Changes in the 7th Schedule

This amendment has made following changes in 7th schedule of the constitution:

A. Union List

The entry 84 of Union List earlier comprised the duties on tobacco, alcoholic liquors, opium, Indian hemp, narcotic drugs and narcotics, medical and toilet preparations. After this amendment, it will comprise of Petroleum crude, high speed diesel, motor spirit (petrol), natural gas, and aviation turbine fuel, tobacco and tobacco products. Thus, these are now out of ambit of GST and subject to Union Jurisdiction.

Entry 92 (newspapers and on advertisements published therein) has been deleted thus, they are now under GST.

Entry 92-C (Service Tax) has been now deleted from union list.

B. State List

Under State list, entry 52 (entry tax for sale in state) has been deleted.

In Entry 54, Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I; has been now replaced by Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods."

Entry 55 (advertisement taxes) have been deleted.

Entry 62 (Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling) has been replaced by these taxes only to be levied by local governments (panchayats, municipality, regional council or district council).

III.E. Other Important Amendments in Existing Articles

- The residuary power of legislation of Parliament under article 248 is now subject to article 246A.
- Article 249 has been changed so that if 2/3rd majority resolution is passed by Rajya Sabha, the Parliament will have powers to make necessary laws with respect to GST in national interest.
- Article 250 has been amended so that parliament will have powers to make laws related to GST during emergency period.
- Article 268 has been amended so that excise duty on medicinal and toilet preparation will be omitted from the state list and will be subsumed in GST.
- Article 268A has been repealed so now service tax is subsumed in GST.
- Article 269 would empower the parliament to make GST related laws for inter-state trade commerce.
- Further, the amendment also provided that Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to

the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years. This resulted into the Compensation Cess Bill.

IV. GST and Federalism

The essence of federalism is concerned with the centre and states and distribution of power among them. The term federation has a strong centralising tendency which is not based on 'traditional federalism' supported and based on the US Constitution. It is different from others. For the first time in India, the 101st Amendment to the constitution has provided the concurrent taxing. A new concept has been evolved in which the centre and the states will levy tax on goods and services both. The new system also gave certain powers to the centre with the framework of our constitution.

Cooperative federalism means a philosophy in which sovereignty is shared by centre and state government and they work together in same areas sharing functional and therefore power. The concept of cooperative federalism was introduced by A.H. Birch as the practice of administrative cooperation between general and regional government, the practical dependence of the regional governments upon payments from general governments. The concept of cooperative federalism has also been given as "the general and regional governments of the country shall be independent each of the other within its sphere. The federal structure of India is the most suitable example of cooperative federalism with objective of India constitution as enshrined in the preamble not to maintain a concrete or traditional federal structure but also to constitute India into a sovereign, socialist, secular and democratic republic. The scheme of Indian constitution also envisages that the union and the state will meet and interact with each other of different levels to achieve the goal of cooperative federalism.

GST is based on dual tax system due to federal structure and is levied and administrated by different states. The union levies central goods and services tax (CGST) while state levy state goods and services tax (SGST) with their boundaries. The union government has power to collect GST in interstate trade, comprises, imports known as Integrated GST (IGST) and the amount so collected is appropriated both the centre and state governments. The rates

regarding CGST, SGST and IGST are determined and administered by GST council. This GST Council is neither the agent of union nor the states. This council is represented by the representatives of Union as well as states who make laws in respect to goods and services tax applicable by the Union or such states. This law cannot be superseded by a state made GST law. Hence, GST is an example of cooperative federalism where the Central Government and State Governments jointly use the taxing power to adopt and implement GST.

IV. Finance Commissions in India

The Finance Commission of India was formed on 22nd November, 1951 which was established under the provision of Article 280 of Indian Constitution by the President of India. The Commission was formed to define the financial relations between Centre and state and also for the specific purpose of devolution of non-plan revenue. On the basis of constitutional provision, the Finance Commission of India is appointed for every five years which consists of a Chairman and four other members. Indian economy experienced lot of changes in the macro economic scenario since the institutionalization of First Finance Commission. Till now, fourteen Finance Commissions have already submitted their reports while fifteenth Finance Commission has been constituted.³

List of Finance Commissions in India

Finance Commission	Year of Establishment	Chairman	Operational Duration
First	1951	K. C. Neogy	1952–57
Second	1956	K. Santhanam	1957–62
Third	1960	A. K. Chanda	1962–66
Fourth	1964	P. V. Rajamannar	1966–69
Fifth	1968	Mahaveer Tyagi	1969–74
Sixth	1972	K. Brahmananda Reddy	1974–79
Seventh	1977	J. M. Shelat	1979–84
Eighth	1983	Y. B. Chavan	1984–89
Ninth	1987	N. K. P. Salve	1989–95
Tenth	1992	K. C. Pant	1995–00
Eleventh	1998	A. M. Khusro	2000–05
Twelfth	2002	C. Rangarajan	2005–10
Thirteenth	2007	Dr. Vijay L. Kelkar	2010–15
Fourteenth	2013	Dr. Y. V Reddy	2015–20
Fifteenth	2017	N. K. Singh	2020–25

Source: Dhar, P.K. (2015), Indian Economy – Its Growing Dimensions,

Kalyani Publishers, Ludhiana, p. 1096

: <https://en.wikipedia.org>

Fifteenth Finance Commission

The Finance Commission was set up in 1951 under the Article 280 of the Indian Constitution. It basically decides the distribution of revenue between Centre and States. Apart from this, it also decides the principles on which grants-in aid is given to the states. The Fifteenth Finance Commission was constituted by the Government of India on November 27, 2017 after the approval from the President of India. The 15th Finance Commission is headed by former Revenue Secretary and former Rajya Sabha Member, Shri N.K. Singh.⁴

The Fifteenth Finance Commission is an Indian Finance Commission and has to give its recommendations for the devolution of taxes and other fiscal matters for the five years, starting from April 1, 2020. The Commission has slated to submit its recommendations by October 31, 2019. In Terms of References, it has been mentioned that the Commission will use the population data of 2011 while making its recommendations.⁵

VI. Conclusion

Thus, it is clear from the study that our Constitution makers have always focused on a system of governance to meet the needs of the people and challenges of the changing world. It was Mr. C. Rangarajan who supported federal framework of our country in expectation that it will meet and tackle the forces of globalization and international competition. The Finance Commissions in India have also been formed every five year to define the financial relations between Centre and States. The need of required growth and development has compelled India to introduce GST which will meet the challenges and again strengthen the cooperative federalism in the country.

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