

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

The Dynamics of Centre-State Relationship under GST Regime: A Case Study on One-Nation One-Tax in India

MIHIR SHYAM ASOLEKAR¹

ABSTRACT

The journey to finally establishing the country-wide regime of the GST in India has been rather a bumpy ride. Amidst the numerous political and legal approvals and disapprovals, the GST tax system was finally enacted on 1st July, 2017 in India under the authority promulgated through the 101st Constitutional Amendment Act 2017 by the Government of India under the leadership of Hon. Prime Minister, Narendra Modi. The basis for the enacting of the so-called “GST Law” was in the political and bureaucratic desire to avoid double taxation as well as tax on some levy or tax. In other words, the GST system aims at fair and consistent tax regime across the nation.

It is observed in this paper that the GST system has been unsuccessful for manifold reasons. It is hypothesized in this study that unless the legislative and administrative actions related to the concept of “one-nation one-tax” is implemented in a manner that the tax regime strengthens the federal structure of governance; the States will not be willing to accept the newly enacted GST regime happily in India. It is argued that the Centre-State relationship will remain estranged in case of at least those States where the State Governments are ruled by the different political parties than that at the Centre.

The importance of good governance cannot be ignored. The Constitutional principle of federalism has been the highlight of the paper in the Centre-State dynamic relationship. The author wishes to stress upon the growing concerns of the State Governments under the GST regime and also discuss the solutions and the structural changes that could be implemented to make the GST system more effective and efficient.

Keywords: GST, Centre-State Relationship, Good Governance, Federal Structure, One-Nation One-Tax

I. THE CONTEXT

The Goods and Service Tax (GST) is the indirect tax – which is supposed to be implemented uniformly in India in lieu of the other numerous indirect taxes including the excise duty, VAT,

¹ Author is a LLM Student at Maharashtra National Law University, Aurangabad, India.

various service taxes, etc. The GST system was introduced in India by the Goods and Service Tax Act in the year 2017 through the One Hundred and First Amendment (101) to the Constitution. This tax is levied on the goods and services that are provided. “The GST is a single domestic indirect tax for the entire country, and is a comprehensive, multi-staged, and destination-based tax levied on every value addition”². It is termed comprehensive since it has now replaced almost all the major taxes earlier levied, except for a few important ones. It is multi-staged since it is levied at all levels of production and sale but is also meant to be refunded at various production stages, except for the final stage of purchase, and is also a destination-based tax since it collected from the point of consumption and not from the point of its origin. GST forms a part of “indirect tax”. Indirect tax refers to the tax that is collected by an intermediary from the person who shall bear the ultimate economic burden of the tax³. It is later the responsibility of the intermediary collecting the taxes to file the tax returns and send it to the respective State Governments. An indirect tax increases the final amount of the product for the consumer, thereby used to generate surplus tax revenue⁴. However, although the taxpayer pays the tax, the ultimate burden is shifted to the consumer.

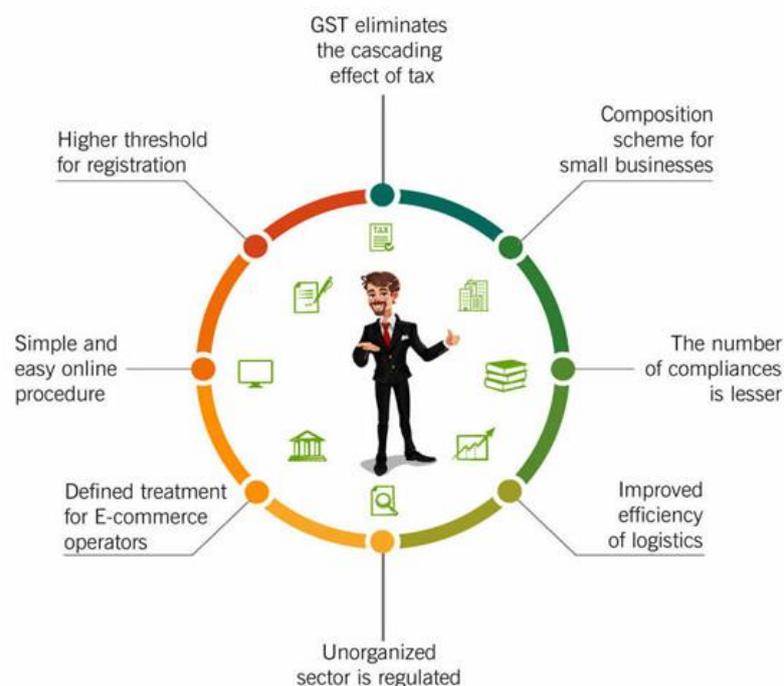


Figure 1: The salient advantages of the Indian GST system disseminated by the Government of India while launching the GST tax system in the Country ⁵

² GST Law; <https://cleartax.in/s/gst-law-goods-and-services-tax>, (Mar 10, 2021).

³ Wikipedia; https://en.wikipedia.org/wiki/Indirect_tax, (Mar 10, 2021).

⁴ Financial Dictionary Online, Article on Indirect taxes; <https://financial-dictionary.thefreedictionary.com/indirect+tax>, (Mar 05, 2021)

⁵ NewsGram, <https://www.newsgram.com>, (Apr 06, 2021)

As depicted in **Figure 1**, under the GST regime, the entire tax rates, monitoring of the taxes, and the governing of the rules and regulations is controlled by the GST Council, which shall consist of the Finance Minister of India, and also of each respective States. However strong the GST regime has declared itself to be, its governance and its implementation has received a lot of criticism and censure from various State Governments and financial experts.

The components of the Indian GST system can be represented as shown in **Table 1**⁶:

Table 1: The components of the Indian GST system related to the intra-State and inter-State transactions as practiced in India

Transaction	New Regime	Old Regime	Distribution of Revenue
Intra-State Sale	CGST+SGST	VAT + Central Excise + Service Tax	Both the Centre as well as the State shall share the revenue equally.
Inter-State Sale	IGST	Central Sales Tax + Excise/Service Tax	The Centre shall impose the taxes in case of Inter-State sales and shall divide and distribute the share of the taxes based on the destination of the goods.

The journey to finally establishing the country-wide regime of the GST in India has been rather a bumpy ride. Amidst the numerous political and legal approvals and disapprovals, the GST tax system was finally enacted on 1st July, 2017 in India under the authority promulgated through the 101st Constitutional Amendment Act 2017 by the Government of India under the leadership of Hon. Prime Minister, Narendra Modi.

The Hypothesis and Specific Objectives

It has been a presumption that the GST regime will accept and honour the primacy of the so-called federalism – which is the central doctrine in the Indian Constitution. The ad-hoc actions of the Central Government can be curtailed by implementing a uniform policy with respect to the distribution of the share of tax collected by the respective states in a manner to encourage the innovative and industrious traits of any State in the Union of India. Lately, however, more State Governments are joining hands while piling opposition to the newly enacted GST regime

⁶ Clear Tax; <https://cleartax.in/s/gst-law-goods-and-services-tax>. (Mar 12, 2020)

in India. Why is it happening? Is it merely a political issue and yet another opportunity for the opposition parties to grind their axes against the political party ruling the Central Government?

It is **hypothesized** in this study that unless the legislative and administrative actions related to the concept of “one nation one tax” is implemented in a manner that the tax regime strengthens the federal structure of Indian governance; the States will not be willing to accept the newly enacted GST regime happily in India. It is argued that the Centre-State relationship will remain estranged in case of at least those States where the State Governments are ruled by the different political parties than that at the Centre.

Based on the above hypothesis, the following specific objectives have been articulated for this study:

- 1) To understand and study the meaning, nature, object, and scope of Goods and Service Tax, or the GST.
- 2) Throw light upon the philosophy of GST and highlight the advantages, disadvantages and philosophical weaknesses encountered by the system while implementing the taxing systems.
- 3) Study the major points of focus and the major gains from the effective implementation of such similar systems in USA and Europe.
- 4) In this research, efforts shall be made to identify and highlight those case examples and case studies, nationally as well as internationally, that can become the role models for fashioning India’s public law and public policy in favour of strengthening the Constitutional rights.

II. THE HISTORIC BACKGROUND

Historically, the first effort for rationalization of the “tax system” in India can be traced to the year 1986. Hon. Minister Vishwanath Pratap Singh, the then Finance Minister in the Rajiv Gandhi’s Cabinet, introduced the “Modified Value Added Tax” (MODVAT) after a lot of discussion with the State Governments. Subsequently, in 1991, Hon. Prime Minister Narsimha Rao and his then Finance Minister Manmohan Singh initiated the VAT at the State level ⁷.

The Aseem Dasgupta Committee was set up in the year 1999 to discuss a centralised tax regime for the entire country, modelling the first ever GST Scheme. Subsequently, the Vajpayee government formed a task force under the leadership of Mr Vijay Kelkar for the rolling out and

⁷ Shaji Vikraman, “Looking back at GST’s journey: How an idea is now near reality”, Indian Express, Mar 31, 2017

the implementation of the GST model proposed by the Aseem Dasgupta Committee.

In the year 2011, the United Progressive Alliance (UPA) government tabled the 115th Constitutional Amendment Bill in the Lok Sabha to bring about the GST policy. However, much surprisingly, it caught the voice of the opposition with the BJP and other parties signalling it hard on the democracy and the powers vested with the States under the Federal set-up. The Bill was later referred for scrutiny to a Standing Committee led by BJP Finance Minister Yashwant Sinha. The Committee submitted its report. But later in the year 2013, Gujarat's Chief Minister raised an objection which led to the Bill being indefinitely postponed⁸.

Soon after the Modi led BJP Government was sworn into power, the GST Bill which was approved by the Standing Committee to be re-introduced lapsed with the dissolution of the 15th Lok Sabha. Seven months after the Modi Government came to power, the Finance Minister Arun Jaitley introduced the GST in the Lok Sabha, setting April 1, 2017 as the deadline to implement the GST. Although the Bill was passed in the Lok Sabha in the 2016, the opposition led by the Congress demanded the Bill to be referred to the Rajya Sabha Committee due to differences and disagreements on the Bill. In August 2016, the Bill was passed in both the Houses of Legislature with 18 States ratifying the Bill and President Pranab Mukherjee giving his assent⁹.

A 21-Member Committee was subsequently formed to discuss and review the GST laws¹⁰¹¹. The Committee scrutinised the Bills and approved the Central Goods and Services Tax Bill 2017 (The CGST Bill), the Integrated Goods and Services Tax Bill 2017 (The IGST Bill), the Union Territory Goods and Services Tax Bill 2017 (The UTGST Bill), the Goods and Services Tax (Compensation to the States) Bill 2017 (The Compensation Bill). The Lok Sabha passed the Bills on 29th March 2017 and the Rajya Sabha on 6th April 2017. The Bills were enacted to comprise of a comprehensive Act on 12th April 2017.

On 1st July 2017, the President of India launched the GST. The opposition parties boycotted the launch of the GST due to their stand against the hardships the Act shall cause to average and lower strata of Indian society. The Congress were joined by the Trinamool Congress, Communist Party of India, and the DMK. They said that they did not find anything new in the GST regime and the existing tax system, rather the GST shall increase the rate on common

⁸ 17-year-long wait ends; know from where the GST dream started, India Today, 30 June 2017

⁹ Abhinav Ranjan, "Goods and Services Tax: History of India's biggest tax reform and people who made it possible", India TV, 29 June 2017

¹⁰ Nair, Remya; Live Mint, 8 June 2015; <https://www.livemint.com/>; (last visited 14.03.2021)

¹¹ *Id*

daily items, while reducing the rate on luxury items¹².

The GST as one tax has included many taxes. The GST now subsumes within it the central excise duty, services tax, additional customs duty, surcharges, state-level value added tax and Octroi, etc¹³. India being a Federation, it has adopted the dual model of GST. Under this model, the tax shall be administered by both the, the Central as well as the State Governments. Transactions of sales and purchases that are made in a State are governed by the Central GST (CGST) as well as State GST (SGST). For all Inter-State transactions and for the import and export of goods, there is a separate Inter-State GST (IGST) that is imposed by the Central Government.

Since GST is a consumption-based tax, taxes are paid to the State where the goods are consumed, and not to the State where the goods are produced¹⁴¹⁵. However, IGST creates an issue for the State government by “disallowing them from collecting the taxes directly owed to them by the Central Government. Under the previous system, a state would only have to deal with a single government in order to collect tax revenue”¹⁶.

To make the GST systematic and more acceptable, India has added two digits more to the HSN Number to make the HSN code precise. The HSN code, also called the “Harmonized Commodity Description and Coding Systems”, which is a harmonized system of nomenclature for the systematic calculation of all goods throughout the world. It brings in systematic classification and international recognition to all the products.

The Indian Parliament under the Modi Government introduced the GST system under the slogan “One Nation One Tax” by sloganizing that the system of GST would be the biggest indirect tax reform in free India. The GST would make the tax regime more transparent, and also remove the cascading effect of taxes. It shall also remove the double ladder taxes imposed on different products at different rates by the Centre and the State. The Government introduced the GST reforms in India stating the following benefits of the GST system, summarised as follows: ¹⁷

¹² Wikipedia; [https://en.wikipedia.org/wiki/Goods_and_Services_Tax_\(India\)](https://en.wikipedia.org/wiki/Goods_and_Services_Tax_(India)), (last visited, 16.03.2021)

¹³ Indivjal Dhasmana, "What is GST, how is it different from now: Decoding the indirect tax regime", Business Standard, April 17, 2017, retrieved 18 August 2019.

¹⁴ Wikipedia; [https://en.wikipedia.org/wiki/Goods_and_Services_Tax_\(India\)](https://en.wikipedia.org/wiki/Goods_and_Services_Tax_(India)), (Mar 12, 2021)

¹⁵ "GST: The illustrative guide to how transactions will take place after tax reform"; Money Control; <https://www.moneycontrol.com/news/business/economy/gst-the-illustrative-guide-to-how-transactions-will-take-place-after-2274785.html>, (Mar 08, 2021)

¹⁶ *Supra* at 11

¹⁷ <http://www.gstindiaexpert.com/Home/AboutGST/GST-and-its-Benefits>, (last visited, 11.03.2021)

- a) Removal of Cascading Effect: GST implementation will ensure that cascading effect of taxation is removed. Input tax credit can be availed smoothly under this GST regime,
- b) Regulation of unorganized sector: There are certain industries in India which are still unorganized. The GST provisions will help to streamline the process of online compliances and payments and thereby help in regulation of unorganized sector,
- c) Uniform tax structure: GST shall harmonize the laws, procedures and tax rates across the country resulting in a simplified tax structure,
- d) Online Procedure under GST: The entire process under GST regime starting from registration to return filling is online. This would be quite advantageous for start-up companies who do not have to opt for registration under various indirect tax regimes; and
- e) Increase in Revenue: Since GST is replacing 17 indirect taxes with single tax, it will lead to increase in product demand which will simultaneously lead to increase in revenue for the Central and the State Government.

However, the question of a greater significance needs to be studied and understood. Is the policy of “One Nation One Tax” really a unique policy? Has it never been tested before in other nations, and what kind of challenges and difficulties lie in such kind of tax systems!

The regime of “One Nation One Tax” is not a unique feature of the Indian governmental systems. This scheme has been tried and tested, and well implemented in various countries in the Europe, USA, Scandinavia, and also the Middle East. Many financial and economic analysts and scholars believe this system of GST in India to be faulty and at risk unless a strong political leadership is able to address these reforms efficiently and adequately. It shall also keep at stake the idea of “political federalism” championed by the Modi Government¹⁸. The core to the problem is the GST dues that the Central Government shall owe to the States. In the wake of COVID-19 pandemic, now the Central Government has the dual responsibility of clearing its dues along with setting up a full-proof mechanism to deal with the virus at the State level.

Under the GST Act, the Parliament owes full responsibility to compensate the loss to all the States in cases where the Centre fails to mitigate the loss caused from the GST. Hence, the faulty acts on part of the executive shall be burdened upon the legislature which shall bear the losses of respective States¹⁹.

¹⁸ Anil Padmanabhan, “*The Idea of One Nation One Tax is Under Siege*,” <https://www.livemint.com/opinion/columns/the-idea-of-one-nation-one-tax-is-under-siege-11598833786304.html>, (Mar 13, 2021)

¹⁹ One Nation, One Tax: Upasana Singh Bhagnani and Siddharth Addy: Indian Law Journal

As it stands now, under the GST regime in India, the tax shall be levied at each and every stage of sale and purchase. The GST has divided the tax collection into five columns, or groups, which are as follows:

- a) 0%, b) 5%, c) 12%, d) 18%; and e) 25%.

However, there is a tax of 0.3% levied on precious stones and 3% tax levied on gold. Certain other products and commodities like that petroleum products, alcohol products, and electricity are outside the ambit and purview of the GST, and are imposed by the respective State Governments, as was the prevailing practise under the old tax regime. Clearly, it would be useful to first understand the structure and the salient provisions made in the Act.

III. THE BASIC STRUCTURE OF THE INDIAN GST ACT

The Goods and Service Tax Act, 2017 was enacted by the Indian Parliament in the year 2016 and is enforced in the entire country, except for the State of Jammu and Kashmir. On 8th September 2016, the GST Bill was ratified by a number of States and received full assent of the President and enacted as the 101st Constitutional Amendment Act, 2016. Under the ambit of the GST Act, 2017, the Indian Parliament has also enacted four separate Acts to regulate the application of the taxes, the levy of taxes, and the distribution of the revenue collected from these taxes. The four Acts are as follows:

- a) The Integrated Goods and Services Tax Act, 2017,
- b) The Central Goods and Services Tax Act, 2017,
- c) The Goods and Services Tax Act of each respective State. For example: Maharashtra Goods and Services Tax Act, 2017; and
- d) The Union Territory Goods and Services Tax Act, 2017.

Section 3 of the GST Act, 2016 provides for the administration of the tax system and provides for the appointment of the following officers for the purposes of administration under the Act:

- a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax
- b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax
- d) Commissioners of Central Tax or Additional Directors General of Central Tax

- e) Additional Commissioners of Central Tax or Additional Directors of Central Tax
- f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax; and
- i) any other class of officers as it may deem fit.

The powers that are vested with the above-mentioned officers are defined under Section 5 of the Act as follows:

- a) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act,
- b) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him,
- c) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him; and
- d) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

The same hierarchy and division of role and power stands true for the State Government Council and administrative authorities as well as that of the Union Territory, subject to a clearance from the Central Government.

Section 7 of the Act defines the meaning of the term “Supply”. The term “supply” shall mean and include, “all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business”.

However, the “activities or transactions specified in Schedule III; or such activities or transactions undertaken by the Central Government, a State Government, or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council shall be treated neither as a supply of goods nor a supply of services. The activities specified in Schedule I, made or agreed to be made without a consideration; and the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

The Provisions Under Section 9 of the GST Act

The levy and the collection of the taxes is schemed under Section 9 of the Act which reads verbatim as follows:

“(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Central Goods and Services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of

paying tax and such person shall be liable to pay tax”.

The power to grant any exemption from the payment of taxes lies with the Central Government as specified under Section 11. This Section states that:²⁰

“(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.”

The Provisions Related to Electronic Record-keeping in the GST Act

Under this Act, every tax that is paid by the individual shall be credited to the “electronic cash ledger” of such a person which shall be maintained in a prescribed manner. On the other hand, all the inputs of tax credit that is self-assessed in the returns of the person shall be credited to his “electronic credit ledger”. The cash ledger shall be used for payment towards tax, interest, penalty, fees, or any other amount payable under the provisions of this Act or the rules made thereunder. On the other hand, the amount that is maintained under the electronic credit ledger shall be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

The balance in the respective electronic cash and credit ledger after payment of the tax, interest, penalty, fee, or other payable amount shall be refunded in accordance with Section 54. Section 54 of the Act provides for the procedure to claim a refund. This Section mandates that any

²⁰ *Supra* at 17

individual claiming refund must make an application in the prescribed format within two years from the relevant date, and any Organisation or specialized agency may make an application for the refund within six months from the last date of the quarter in which the supply was received in the prescribed format.

The application for the refund should be accompanied by all evidences and documents proving that such a refund is due to the applicant, and also that such documentary or other evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person. However, in cases where the amount of refund claimed is less than Rupees Two Lakh, it shall not be necessary for the applicant to submit any documentary evidence in support of his application. It shall be enough if he submits a declaration to the effect that the incidence of the tax paid by him has not passed on to any other person.

Upon receiving the application, if the authorised Officer deems the refund amount and application fit, he may order the refund to be made to the “Welfare Fund”. However, the refund shall be paid to the applicant instead of the Fund in cases where the incidence of the tax paid has not been passed to any other person. The Commissioner or the Officer in-charge can withhold the return or the refund of the tax in cases where any dispute with regards to the order of the refund and such a dispute is pending and the Commissioner opines that the refund is likely to have an adverse impact on the pending dispute. In case such a refund is withheld by the Officer, the applicant shall be entitled to an interest not exceeding six per cent if the results of the appeal declares him entitled to the refund.

Under Section 57, the Act provides for the creation of a “Consumer Welfare Fund”. The Government shall be responsible to constitute such a Fund, and the amount credited to the Fund shall be the investment income of any individual along with other monies received by him. The amount that is credited in the Fund shall be utilised by the Government for the welfare of the consumers and this Fund shall be maintained by the Government and an annual statement of accounts shall be prepared in consultation with the Comptroller and Auditor General (CAG) of India.

The Provisions Related to the Auditing in the GST Act

Sections 65 and 66 deals with the audit of the tax paid by any individual. Section 65 vests the power of conducting the audit with the Commissioner, or any other Officer appointed by him. The individual whose statements are to be audited shall be notified 15 working days prior by

notice. The Audit has to be completed within three months from the date of the Audit commencement. However, in cases where the Commissioner is satisfied that the period needs to be extended beyond three months, he may, for reasons recorded in writing, extend the period not beyond six months.

During the audit, the Officer or the Commissioner may require the person to furnish such information as may be necessary for the conduct of the audit. The Commissioner or the Officer may require the person to:

- a) Afford him the necessary facility to verify the books of account or other documents as he may require and
- b) Furnish such information as he may require and render assistance for timely completion of the audit.

The decision regarding the findings, results, and the rights and obligations of the person shall be conveyed to him within thirty days on completing the audit. Where the results of the audit conducted suggests that the tax is not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or Section 74.

Under Section 66, any Officer not below the rank of Assistant Commissioner, having regards to the nature and the complexity of the case and the interest in revenue, is of the opinion that the value is not declared correctly, or that the credit availed is not within the limits, he may, with the approval of the Commissioner, “direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner. The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified”. The said period of ninety days may be extended by the Assistant Commissioner by a further period of a maximum of ninety day.

The Provisions Related to Appeals and Revisions in the GST Act

Section 107 of the Act provides for the provisions related to appeals. The Sections states that any person who is aggrieved by the decision taken or order passed under the Act or the State Goods and Service Tax Act, or the Union Territory Goods and Service Tax Act by the adjudicating authority may prefer an appeal to the Appellate Authority within a period of three months from the date on which the order is communicated to the individual.

The Commissioner may examine the order passed to satisfy himself about its legality and propriety and may direct any subordinate officer to apply to the Appellate Authority within six months from the date of communication of such order for the determination of points that may arise from the said order. Such an application made to the Appellate Authority shall be dealt like an appeal by the Authority and it shall hear and dispose the appeal within one year from the date on which it was filed, provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

Further, Section 108 states the powers of the Revisional Authority. This Section states that, “Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General (CAG) of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order”.

Section 109 deals with the Constitution of Appellate Tribunal and Benches thereof. According to this Section, based on the recommendation of the GST Council, the Central Government shall constitute a Goods and Service Tax Appellate Tribunal (GSTAT) for hearing the appeals from the orders passed by the Appellate or Revisional Authority.

Section 117 makes provisions for the appeal to the High Courts from the orders of any of the State Benches or the Area Benches of the Tribunal, within 180 days from the date of order of the Tribunal. The appeal shall be heard by not less than 2 Judges of the High Court and all decisions shall be based on majority. “Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it”.

Section 118 of the Act provides for appeals to the Supreme Court of India from any judgment and order passed by the National or the Regional Benches of the Appellate Tribunal, or from any order passed by the High Court, or on its own motion, or when the High Court certifies that the case is fit for appeal to the Supreme Court.

IV. THE STRENGTHS AND WEAKNESSES OF INDIAN GST REGIME

The GST regime was introduced as a comprehensive and path changing system in the Indian taxation system. The idea behind enacting the GST system was to ensure that the tax system is not lagging, it is beneficial to all States, big and small, irrespective of their revenue collection, and ensure free, fair, and transparent distribution of the shares by the Centre to the State.

Although the GST system was introduced with a lot of zeal and fervour, it did have its own disadvantages. Technicalities and complications in the implementation process of the GST system was critically scrutinized and criticised by many financial institutions, economic and financial scholars, the opposition parties, as well as a section of the Indian media. The World Bank in its 2018 report has criticised the Indian GST model as being too complex, while comparing it to similar systems in other parts of the world²¹.

The strengths and weaknesses of the Indian GST Regime are depicted in **Table 2** and the weaknesses and disadvantages of the GST Regime is depicted in **Table 3**.

Table 2: The strengths and the advantages of the Indian GST Regime as practiced in India^{22 23}

Sr No.	Strengths	Description
1.	The Indian GST system tries to remove the cascading effect of the tax system	The input tax credit can be obtained smoothly under the GST system. The falling and the tumbling effect of the tax on the consumer shall be reduced.
2.	Simpler online facilities for efficient GST compliance	Under the new GST regime, the Government has been proactively working to ensure that the taxpayers do not have any additional burden on account of lack of

²¹ Economic Times; <https://economictimes.indiatimes.com>, (Feb 10, 2021)

²² *Benefits of GST*, GST India; <http://www.gstindiaexpert.com/Home/AboutGST/GST-and-its-Benefits>, (Mar 11, 2021)

²³ *Strengths and Advantages of GST in India*, Bajaj FinServe, <https://www.bajajfinserv.in>, (Mar 16, 2021)

Sr No.	Strengths	Description
		infrastructure and online mechanisms. Simpler and modified online facilities ensure that all are aware about the tax schemes and can effectively comply to the rules.
3.	Maintenance of a uniform tax structure	The GST system harmonizes all the laws, procedures, regulations, and rules to create a uniform and a simpler taxing system for the entire country.
4.	Increase in the revenue.	The GST system replaces almost around 17 indirect taxes with one single tax system, thereby leading to an increase in the product demand which shall lead to an increase in the revenue for both Centre as well as the State Government.
5.	Reduction in overall cost of the product	It is believed that with the introduction of the GST, the overall cost of a product at its market price shall be reduced over a period of time. This is mainly because the charges applicable on the product under the VAT, or the excise charges have now been replaced by a single GST.
6.	Advantageous and Beneficial to smaller companies.	Companies that have a turnover lower than Rs. 20 lakh are exempted from paying the GST, whereas companies having a turnover up to Rs. 75 lakh shall pay only 1% of the GST on their turnover. This shall help the companies to save on tax amount and focus on increasing their business without unnecessary hassle.

Table 3: The weaknesses and limitations of the Indian GST Regime as practiced in India ²⁴ ²⁵

Sr No	Weaknesses	Description
1	Implied exclusion of Judicial Review	The GST Act acts as an implied shield to protect the GST Regulatory Body, or the Council from the eyes of the Judiciary. There is a full-proof mechanism to deal with any vacancy or defect in the constitution of the council, any defect in the appointment of the members of the council, or any procedural irregularity not affecting the merits of the case.
2	Sharp decline in the collection of revenue	The major problem arising out of the lack of implementation of the GST procedure is the decline in the collection of revenue. The impact of lowering the tax rate has been seen on the overall economy of India. As a consequence, the investment in the Indian market has significantly reduced because investors do not desire to invest in a low capital market.
3	Uncertainty of the dues owed to the States	The major defect of this GST system is the dependence of the State Government on the Central Government for distribution of the revenue. This is partly a result of frequent changes in the

²⁴ India Law Journal; <https://www.indialawjournal.org/one-nation-one-tax.php>, (last visited, 20.03.2021)

²⁵ *Items Not Covered Under GST*, Clear Tax, <https://cleartax.in/s/items-not-covered-under-gst>, (Mar 20, 2021)

Sr No	Weaknesses	Description
		GST rates and the lack of financial infrastructure to manage the distribution of wealth.
4	Lack of consensus on important issues	The partial failure of the taxing system in India under the GST regime can be attributed to the lack of consensus and unanimity between the Central and the State Government. While the implementation of the GST system has resulted in many problems, the balancing of State interest has not been up to the mark. Although the Central Government claims the economy to be growing, recent statistics and data reports do not support the statement.
5	Unification of Commodities missing from the GST system	The unification of commodity, which was earlier envisaged to be the crux of the GST system is missing. Many products do not form a part of the GST taxing list and are exempted from the taxation scheme. Petrochemical products, diesel, alcohol for human consumptions, dairy products, etc. The list of these products is given under Schedule III of the GST Act.

V. THE CONSTITUTIONAL BASIS OF GST ACT AND THE NEED FOR STRENGTHENING FEDERALISM IN INDIA

India's Constitution is a federal Constitution. Federal Constitution refers to a Constitution that creates a "dual polity", or a "two-tier Government" system. It consists of the Central Government and the State Government. The Constitution formulates a scheme to divide and distribute the legislative, administrative, and the financial powers between the Centre and the

State Government. However, the Indian Constitution does not abide and follow the strict federal or the orthodox federal pattern. Instead of the word “federal”, the Drafting Committee deliberately chose the word “Union” to indicate two things²⁶:

- a) The Indian Union is not a consequence of any agreement between the States.
- b) The States forming the Union do not have the power to secede from the Union.

Though the country may be divided on the basis of languages, culture, and different States, for the convenience of administration, the country is one integral whole, its people living under a single imperium derived from a single source²⁷.

Finance is one of the most important and significant aspect of a federal system. The correct distribution and division of financial powers is a must to maintain all inter-governmental schemes and transactions. Each of the Government must have enough powers to raise resources all by themselves. A correct balance needs to be maintained between the resources available with the Government and the responsibilities and the functions vested with the Government.

It is often seen that the Centre is more powerful financially than the different States, which are often left open handed to make their resources meet the correct balance to discharge the functions and the responsibilities vested with them. It is therefore important to devise a scheme for distribution of the resources and the wealth from the Centre to the States to maintain a balance between the resources of both units.

Keeping the above points in mind, the framers of our Constitution envisaged a scheme guaranteeing a strong financial relation between the Centre and the State. While ensuring that the drawbacks of other federal systems does not hamper the Indian framework, the Constitution of India envisages two important features of the Indian financial scheme²⁸:

- a) Complete separation of the Centre-State taxing powers and
- b) Massive transfer of funds from the Centre to the State.

The Constitution also does not contain anything against the concept of “double taxation”. Article 265 does not contain anything which prohibits the double taxation policy²⁹. Double taxation refers to the same tax being levied twice on the same tax base either under the same

²⁶ 8 MP Jain, *The Constitution of India*, 20

²⁷ *Hinsa Virodhak Sangh v Mirzapur Moti Juresh Jamat*; 2008 5 SCC 33; AIR 2008 SC 1892

²⁸ *Supra* at 23

²⁹ Article 265; No Tax shall be levied or collected except by the authority of the law. This bar is absolute, protecting the citizens from any unlawful levy of taxes. Thus, a tax can only be collected by the executive only if there is a law supporting the actions of the executive.

name or different names³⁰. If the legislature wants, it can enact necessary legislation for this purpose³¹. There has to be a nexus between the subjects of taxation and the legislative competency of the authorities for levying the taxes and for the taxes to be justified and valid³².

Entries 1 to 81 in the Union List confers legislative powers on the Parliament, while entries 82 to 92B lists the taxes which the Parliament is entitled to levy, whereas entries 1 to 44 in the State list confers legislative powers on the State legislatures while entries 45 to 63 confers taxing powers on the above-mentioned entries.

The GST was enacted by the Parliament of India in such a way that it envisaged equal taxing powers on goods and services for both the Centre and the State. The 101st Constitutional Amendment Act of 2016 made certain special provisions for the incorporation of the GST as a new addition to the taxing powers of the Centre and the State. Article 246A was inserted in the Constitution as a result of the 101st Constitutional Amendment Act 2016. This Article gives powers to the Centre and the State respectively to enact their separate legislations for taxing of goods and services and also levy, charge, and collect the taxes.

However, the Centre has exclusive powers to levy and collect taxes with respect to inter-State supplies³³. The exclusive powers to deal with such inter-State supplies shall vest with the Centre, with the enactment of the IGST Act.

Article 269A specifically deals with the levy and collection of the GST. The manner of distribution of each supply between the Centre and the State is dealt comprehensively under this Article. Import of the goods and services shall also fall under inter-State supplies and hence levied by the Centre.

Under this new Amendment, the residuary powers of the Union shall not affect the powers of the States to make their separate enactments for levying and collecting the taxes. However, prior to the Amendment, the Parliament had exclusive powers of enacting legislations on subjects that were not mentioned in the Concurrent List or the State List.

The major development in the taxing structure under the Amendment is the insertion of Article 279A. This Article tries to maintain the balance between the distribution of the powers and responsibility of both, the Centre as well as the State. It says that the President can call upon and constitute the GST Council, common for both the Centre and the State. However, any

³⁰ *Supra* at 23

³¹ *Jain Bros v UOI*, AIR 1970 SC 778

³² *State of Karnataka v Drive-in Enterprise*, AIR 2001 SC 1328

³³ “*Amendment of Indian Constitution for GST*”, Clear Tax, [https://cleartax.in/s/constitution-amendment-gst#:~:text=The%20Constitution%20contains%20the%20Union,to%20levy%20and%20collect%20it,\(Mar%2018,2021\)](https://cleartax.in/s/constitution-amendment-gst#:~:text=The%20Constitution%20contains%20the%20Union,to%20levy%20and%20collect%20it,(Mar%2018,2021))

change that is sought to be made in that Council shall be effected only after ratification of not less than 50% of the States.

VI. LESSONS FROM THE TAX REGIMES OPERATED IN THE EUROPEAN UNION

The European Union has been consistently harping on the agenda of making the tax system fair, efficient, and growth friendly. The European Union (EU) does not mandate any rules for the collection, distribution, and the expenditure of the Government on taxes. Each country is free and competent to enact their own separate legislation for imposing taxes and are also empowered to decide on the revenue distribution and are not accountable to the Union for its expenditure.

This does not however mean that the EU does not have any role to play in the tax policies of the member nations. The Union oversees the national tax rules, particularly in relation to its consumer and business policies to ensure that there is a free flow of goods, services, and capital in the EU, and that the taxes in one country does not work to the disadvantage of consumers, businesses, and workers from other EU countries.

The EU sets up a mechanism to effectively handle and fight the tax related issues of evasions, fraud, cross border tax issues, etc. The tax policy all over the European sub-continent is the “single market” policy. This system of taxing permits free flow of goods and services throughout the continent in all the EU countries. Thus, tax policy in the EU has two major components:

a) Direct Taxes:

Direct taxation is the sole responsibility of all the member countries of the EU. European Union seeks a balance between the national sovereignty of its Member States and the goal of a harmonized internal market³⁴. Originally, any difference that arose between member countries in relation to the taxes was dealt with in a manner so as to optimize the productivity within the entire³⁵. Under the terms that established the European community, the power to levy direct taxes vests with the member countries.

The taxing system is based upon the principle of subsidiarity, whereby the EU is permitted and authorised to intervene with the taxing system only in cases where the primary objectives are not being met by the member countries by themselves. There is an additional mutual assistance directive that enables tax authorities to assist each other in the collection of tax claims³⁶. The

³⁴ Tracy A. Kaye, Commentary Europe's Balancing Act: Trends in Taxation, 62 TAX L. REV. 193, 193 (2008)

³⁵ EU (TAX COMPETITION IN EUROPE 4 (Wolfgang SchOn, ed., 2003)

³⁶ Council Directive, 2008/55, 2008 O.J. (L150) 28 (Recovery of Tax Claims Directive)

Commission has also proposed a new directive to replace the existing Recovery of Tax Claims Directive, Proposal for a Council Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, Brussels, Belgium (Feb. 2, 2009).

Under the provisions of the Direct Taxes regulations, in 2005, Laszlo Kovacs, the Commissioner for Taxation and Customs Union, requested the European Economic and Social Committee to consider a “common consolidated corporate tax base”. “The goal is to improve the efficiency of the internal market and create a business-friendly tax environment by minimizing compliance costs with respect to cross-border activity”³⁷.

The CCCTB creates a single tax base for all European group economic activity in an effort to eliminate tax differences among Member States. The EU’s Code of Conduct for Business Taxation is one of the first examples of “soft law” in the area of corporate taxation. It tries to eliminate unfair and harmful tax competition within the EU. This Code is not binding on the member countries. However, those who abide by it has to undertake measures to curb unfair tax competition and not use similar taxing measures in the future.

b) Indirect Taxes:

The imposition of the indirect taxes affects the free movement of goods and the freedom of providing for services in the single market. These taxes are levied on the product and the consumption. The tax is paid on behalf of the Government and is levied as the final consumable price. The EU validates and coordinates in the application of a VAT (Value Added Tax) and excise duty all throughout the EU. The EU ensures that the inflating and deflating tax rates in one country does not affect the free route and movement of goods and services in another State. “It ensures that competition on the internal market is not distorted by variations in indirect taxation rates and systems giving businesses in one country an unfair advantage over others”³⁸.

The objective of the EU to become an Economic and Monetary Union has turned into a reality. The EU levies VAT and excise duties on various products. VAT is the tax that is levied directly proportional to the price of the goods or the services. VAT forms one of the most comprehensive taxes in the EU. It also makes up for the most important source of revenue for the EU.

³⁷ Keynote Address in the UK Houses of Parliament (Sept. 28, 2006), available at http://ec.europa.eu/commissionbarroso/kovacs/speeches/SpeechLondon_280906.pdf, (Mar 1, 2021)

³⁸ *Indirect Taxes in the European Union*, Lex Europa, https://eur-lex.europa.eu/summary/chapter/taxation.html?root_default=SUM_1_CODED=21, (Mar 18, 2021)

The EU seeks to harmonize and blend the indirect taxes. The basis for such an action is Ar. 93 of the European Commission Treaty which provide that, “the Council is authorized to adopt provisions for the harmonization of legislation concerning turnover taxes (VAT), excise duties and other forms of indirect taxation”. However, for such a harmonization, all member countries have to be unanimous and can use their veto powers over the directions of the European Commission. Thus, any country that opposes the proposal of the European Council shall be at the liberty to debate over the necessity of such a proposal. One of the primary reasons for such harmonization is because a percentage of indirect taxes forms a part of the European Commission’s budget.

The member countries of the EU also impose and levy excise duty charges on the consumption of certain products, which also forms a substantial part of the country’s revenue. The rate of such excise duties is dependent not only on the economy of country, but also culture, traditions, consumer habits, etc³⁹. The reason for such harmonization of excise duty is to ensure that taxation indirectly benefitting national production is discarded.

VII. LESSONS FROM THE TAX REGIMES OPERATED IN THE USA

The taxing system in the USA is similar to India, with the Federal, State, and local Governments competent to impose taxes at their own level. The Federal and the State taxes are differently levied and both Governments can regulate their own taxing policy. Complete autonomy and independence is maintained between the two Governments while regulating the taxing policies. The Federal Government does not interfere with the taxing by the State Government.

Taxes are thus imposed on the net income of the individuals and the corporates⁴⁰. The income that is to be taxed is determined under the “tax accounting rule”. USA is one of the two country that taxes its non-residents on worldwide income. This form of taxation was also upheld by the United States Supreme Court in the case of *Cook v Tait*⁴¹.

Taxes are thus imposed to fund the Government revenue fully or partly. The direct tax policy in the USA is apportioned in a manner so as to ensure distribution of the revenue amongst the States on the basis of their population. Article 1, Section 2, Clause 3 of the Constitution of USA mandates that the taxes be apportioned on the basis of State population. In the case of

³⁹ Vladimir Tyc, *Harmonization of indirect taxes in the European Union*, 50 No 2 Intl J of Law and Management, 87-92

⁴⁰ Taxation in the United States, Wikipedia; <https://en.wikipedia.org> (Mar 22, 2021)

⁴¹ *Cook v Tait*, 265 U.S. 47 (1924)

Fernandez v. Wiener⁴², the Court went to define “direct tax” as the tax which falls upon the owner merely because he is owner, regardless of his use or disposition of the property.

Indirect taxes are paid by the consumer when they utilise the goods and services afforded by others. The ultimate burden of paying the tax is borne by the consumer, however, it is the intermediary like the salesman, or any service provider, who shall be responsible for collecting the taxes from the consumer. Indirect taxes are imposed on a sub-National level⁴³. This means that every State is at its own liberty to impose the taxes. Depending on the jurisdiction, every individual may be subjected to a variety of indirect tax policies. A few examples of indirect taxes being imposed on individuals can be property taxes, excise duties, business license tax, *etc.*

Where is the Shoe Pinching to Some State Governments India?

Many States, especially those who are not governed by the same party ruling at the Centre has had a rough time dealing with the system of GST. Many States are facing serious revenue deficit as the collection of taxes from the GST system remains meagre and the Centre has been delaying the transfer of the State’s shares of the taxes collected.

A major problem pinching certain States is that the GST is a “consuming tax”, meaning thereby that the consuming State gains at the cost and expense of the manufacturing State⁴⁴. The Centre is due to compensate to all States any loss incurred by the States due to the implementation of the GST for the first years. However, as is evident, for a variety of reasons, the Centre has been delaying the payment of dues to the States.

The GST compensation to States are made from the IGST and the compensation cess that is exclusively meant for the compensation to States from any revenue losses and deficit that the States are facing. However, many States do not agree to the compensation cess being the only fund for State losses. According to the letter addressed to the Finance Minister Mrs. Sitharaman by Tamil Nadu’s Deputy Chief Minister O. Pannerselvam, the Union is Constitutionally under an obligation to provide compensation to all States facing losses. If the Union complains of lack of funds, the GST Council should find out other ways to meet the requirements of the States⁴⁵.

Under the roll-out scheme of the GST, the States were required to give up 50% of their taxing

⁴² Fernandez v. Wiener, 326 U.S. 340, 66,(1945)

⁴³ KPMG; <https://home.kpmg/xx/en/home/insights/2018/10/united-states-indirect-tax-guide.html>, (Mar 15, 2021)

⁴⁴ Dipak Mondal, *GST Shock for the States*, Business Today, <https://www.businesstoday.in/magazine/cover-story/gst-shock-for-states/story/392562.html>, (Mar 22, 2021)

⁴⁵ *Id*

power while the Centre gave up nearly 37% of its power. Unrealistic compensation schemes, backend ran by the GST Network monitoring the different transactions, and the premature reduction in tax rates are all resulting in State financial deterioration⁴⁶. Many States even went to the extent of rejecting the proposal by the Centre to allow State borrowings from the RBI to make up for the deficit in compensation.

As of April 2020, the GST compensation for the States fell short by Rs. 30,000 crore. The Union Finance Minister has very conveniently shifted the blame from the GST roll-out to the “Act of God”, and factors like COVID-19, not within the control of the Centre. The Finance Minister of Kerala Thomas Isaac vehemently rejected the GST Council’s proposition that the States can borrow from the RBI. Instead, he suggests that the Centre should borrow from the RBI and repay the money from the compensation cess⁴⁷. The COVID-19 pandemic halted the country’s revenue collection. Neither the States nor the Centre was able to generate revenue and collect the taxes. The effect of the pandemic was especially hard on the States who were asked to bear the entire burden under the new tax regime. They had to bear a disproportionate share of expenditure and constrained by stringent borrowing limits⁴⁸.

With the pandemic hitting the country hard, the compensation fund was seeing a loss and there were no surplus in the cess fund to cover the difference in compensation required to meet the demands of the States. The Centre made an approach to the Attorney General of India to seek his opinion on whether it was the responsibility of the State to compensate all the States fully during the times of such crisis⁴⁹. The Attorney General held that the States need to be compensated, but the manner in which such compensation shall be made has to be decided by the GST Council. The Centre has now taken the stand to roll-out two options for the States:

- a) The Centre would coordinate a combined borrowing by the States through a special window to the tune of Rs. 97,000 crore to cover the shortfall of the distribution of the revenue and
- b) The States can together choose to borrow from the market Rs. 2.35 lakh crore shortfall in the GST compensation, but cannot consider this borrowing as being outside the “debt finance” programme of the State.

⁴⁶ Sanjiv Shankaran, *GST’s problems are worsened by shoddy planning and poor implementation at the start*, Times of India, <https://timesofindia.indiatimes.com/blogs/cash-flow/gsts-problems-are-worsened-by-shoddy-planning-and-poor-implementation-at-the-start>, (Mar 21, 2021)

⁴⁷ Shoaib Daniyal, *With the Centre refusing to pay compensation to states, is GST nearing an end?* Scroll, <https://scroll.in/article/971657/with-the-centre-refusing-to-pay-compensation-to-states-is-gst-nearing-an-end>, (Mar 21, 2021)

⁴⁸ C.P. Chandrasekhar, *The Great GST Impasse Threatens India’s Federal Structure* The Wire, <https://thewire.in/economy/india-gst-tax-states-centre-federalism>, (Mar 22, 2021)

⁴⁹ *Supra at 45*

Thus, the major shoe pinching for the States is that not only has the States been forced to cede their taxing powers to the Centre, but also compromise their future revenue to meet the current shortfall of revenue which were to be covered by the Centre. Further, under the so-called “one nation one tax” regime, the Centre shall not bear the burden of reviving the States economy resulting from faulty implementation mechanism of the Centre. Further, in cases where the States are required to borrow the funds from the RBI and the financial market, the rates are going to be high, forcing the States to reduce its expenditure on certain social welfare and developmental schemes, which are the need of the hour, especially when States are reviving from the pandemic.

The States were forced to accept the GST regime as being “game changer”. However, none realised that the 14% growth plan was assured only for the initial five years, with the Centre compensating for the losses faced by the States. The States, in response, have given up their taxing powers. The question as to what happens after the five-year period has lapsed is pushed under the carpet. As the notable Professor of Economics, Professor CP Chandrasekhar observes in his column, “If the federal system of governance must hold, perhaps the GST must go”⁵⁰.

VIII. WHAT STRUCTURAL CHANGES IN THE GST ACT AND WHICH SAFEGUARDS CAN POSSIBLY REMEDIATE THE PROBLEM?

The implementation process of the GST has been a failure as is being evident during the times of the COVID-19 pandemic. Although the Central Government gave high assurances at the time of rolling-out of the GST, the subsequent developments have made it amply clear that the States are not particularly happy with the new GST tax regime.

To remediate the problem that is faced by States, particularly the non-BJP run States, the Centre should make certain structural changes in the GST regime and its implementation. First and foremost, the Centre should ascertain the tax rates and make the rates static, at least for a certain initial period of time. This move shall ease the confusion and chaos that has been created in the taxpayers and the State Governments taxing process. There needs to be a simplified mechanism for tax collection. In the times of such economic recession, increasing the tax rates is not a solution. Rather, the Centre should make efforts to reduce and simplify the taxing structure by merging the different tax rates into one.

Many products and substances are outside the umbrella of GST. Items such as petroleum,

⁵⁰ *Id*

alcohol for consumption, real estate market, electricity, etc, are still kept outside the ambit of the GST. This creates a huge loss on the overall Government revenue and invariably affects the State Governments.

The borrowing powers of the States must be increased. In cases of crisis, the States are not at the liberty to borrow fund from the compensation cess beyond a minimum limit without the prior consent of the Centre Government. This further hampers the powers of the State Government to maintain the administration and efficient working of their State. During the COVID-19 pandemic, many States, such as Chattisgarh, Assam, Tamil Nadu, Orissa, etc, were forced to stop spending on various social welfare and development schemes due to the crunch in resources.

There has to be a mutual and coordinated effort on the part of the Centre as well as the State Government to ensure that the resources due to the States from the taxes collected under various heads are paid in advance and that no balance or difference is maintained. There needs to be a relation of trust between the Centre and the State Governments for the effective implementation of the tax regime.

The Constitutional values of federalism has to be maintained. The Centre too is accountable to the States for all its actions. Although, under federalism, the separation of powers between the Union and the States is a key principle of governance, the Centre does not have a free hand to act at its own whims and fancies. It is the responsibility of the Centre to ensure that the States have enough resources at their disposal to effectively carry out their Constitutional responsibilities and obligations. It is also the responsibility of the Centre to step up and help the State Government facing any challenges or difficulties.

IX. SUMMARY AND CONCLUSIONS

The Goods and Service Tax (GST) is an indirect tax replacing other numerous indirect taxes in India such as the excise duty, VAT, various service taxes, etc. The GST system was introduced in India by the Goods and Service Tax Act in the year 2017 through the One Hundred and First Amendment (101) to the Constitution. “The GST is a single domestic indirect tax for the entire country, and is a comprehensive, multi-staged, and destination-based tax levied on every value addition”⁵¹. It is multi-staged since it is levied at all levels of production and sale but is also meant to be refunded at various production stages, except for the final stage of purchase, and is also a destination-based tax since it collected from the point of consumption and not from

⁵¹ *Goods & Services Tax GST (India) What is GST? Indirect Tax Law Explained*, ClearTax, <https://cleartax.in/s/gst-law-goods-and-services-tax>, (Mar 18, 2021)

the point of its origin.

GST forms a part of “indirect tax”. Indirect tax refers to the tax that is collected by an intermediary from the person who shall bear the ultimate economic burden of the tax⁵². Under the GST regime, the entire tax rates, monitoring of the taxes, and the governing of the rules and regulations is controlled by the GST Council, which shall consist of the Finance Minister of India, and also of each respective States.

Some of the salient concluding points are:

- 1) India being a Federation, it has adopted the dual model of GST. Under this model, the tax shall be administered by both the, the Central as well as the State Governments. Transactions of sales and purchases that are made in a State are governed by the Central GST (CGST) as well as State GST (SGST). For all Inter-State transactions and for the import and export of goods, there is a separate Inter-State GST (IGST) that is imposed by the Central Government.
- 2) The Government introduced the GST reforms in India stating the following benefits of the GST system, such as the removal of cascading effects of the taxes, regulation of the unorganised sector, creating a uniform tax structure, etc. The Goods and Service Tax Act, 2017 was enacted by the Indian Parliament in the year 2016 and is enforced in the entire country, except for the State of Jammu and Kashmir. On 8th September 2016, the GST Bill was ratified by a number of States and received full assent of the President and enacted as the 101st Constitutional Amendment Act, 2016. Under the ambit of the GST Act, 2017, the Indian Parliament has also enacted four separate Acts to regulate the application of the taxes, the levy of taxes, and the distribution of the revenue collected from these taxes.
- 3) Finance is one of the most important and significant aspect of a federal system. The correct distribution and division of financial powers is a must to maintain all inter-governmental schemes and transactions. Each of the Government must have enough powers to raise resources all by themselves.
- 4) A correct balance needs to be maintained between the resources available with the Government and the responsibilities and the functions vested with the Government. The Constitution provides for an elaborate taxing scheme under the Union and the State list, vested exclusive powers with the Centre and the State respectively to tax. Taxes of local nature are allotted to the State while taxes extending over more than one State, or which can be levied

⁵² *Indirect Taxes*, Wikipedia, https://en.wikipedia.org/wiki/Indirect_tax, (Mar 19, 2021)

uniformly throughout the entire country are allotted to the Centre. This avoids the multiplicity of taxes and avoids confusion between the Centre and the State.

5) In comparison to the Indian GST system, the European Union has been consistently harping on the agenda of making the tax system fair, efficient, and growth friendly. The European Union (EU) does not mandate any rules for the collection, distribution, and the expenditure of the Government on taxes. Each country is free and competent to enact their own separate legislation for imposing taxes and are also empowered to decide on the revenue distribution and are not accountable to the Union for its expenditure. The EU sets up a mechanism to effectively handle and fight the tax related issues of evasions, fraud, cross border tax issues, etc. The tax policy all over the European sub-continent is the “single market” policy. This system of taxing permits free flow of goods and services throughout the continent in all the EU countries.

6) The taxing system in the USA is similar to India, with the Federal, State, and local Governments competent to impose taxes at their own level. The Federal and the State taxes are differently levied and both Governments can regulate their own taxing policy. Complete autonomy and independence is maintained between the two Governments while regulating the taxing policies. The Federal Government does not interfere with the taxing by the State Government.

7) Taxes are thus imposed on the net income of the individuals and the corporates⁵³. The income that is to be taxed is determined under the “tax accounting rule”. USA is one of the two country that taxes its non-residents on worldwide income. This form of taxation was also upheld by the United States Supreme Court in the case of *Cook v Tait*.

8) The Indian GST system has been giving a rough time to certain States as well. A major problem pinching certain States is that the GST is a “consuming tax”, meaning thereby that the consuming State gains at the cost and expense of the manufacturing State⁵⁴. The Centre is due to compensate to all States any loss incurred by the States due to the implementation of the GST for the first years. However, as is evident, for a variety of reasons, the Centre has been delaying the payment of dues to the States.

9) States is that not only has the States been forced to cede their taxing powers to the Centre, but also compromise their future revenue to meet the current shortfall of revenue which were to be covered by the Centre. Further, under the so-called “one nation one tax” regime,

⁵³ *Taxation in the United States*, Wikipedia; <https://en.wikipedia.org>, (Mar 20, 2021)

⁵⁴ *Supra at 41*

the Centre shall not bear the burden of reviving the State's economy resulting from faulty implementation mechanism of the Centre.

10) To remediate the problems faced by the States today, the Centre should make certain changes and amend the implementation of the GST. Schemes and effective measures need to be taken to ensure that the States do not face any such similar problems in the near future, especially with the pandemic hovering over our head.

At last, the Constitutional values of federalism has to be maintained. The Centre too is accountable to the States for all its actions. Although, under federalism, the separation of powers between the Union and the States is a key principle of governance, the Centre does not have a free hand to act at its own whims and fancies. It is the responsibility of the Centre to ensure that the States have enough resources at their disposal to effectively carry out their Constitutional responsibilities and obligations.
