

GOODS AND SERVICES TAX (GST): AN ANALYSIS OF THE INDIRECT TAX REFORM IN INDIA

A Thesis Submitted

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

IN

LAW

By

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2022

CANDIDATE’S DECLARATION

I hereby certify that the work which is being presented in the thesis, entitled “**Goods and Services Tax (GST): An Analysis of the Indirect Tax Reform in India**” in fulfilment of the requirements for the award of the degree of Doctor of Philosophy in Law and submitted in Galgotias University, Greater Noida is an authentic record of my own work carried out during a period from 2017 to 2022 under the supervision of Prof. Dr. Narendra Bahadur Singh.

The matter embodied in this thesis has not been submitted by me for the award of any other degree of this or any other University/Institute.

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This is to certify that the above statement made by the candidate is correct to the best of our knowledge.

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ABSTRACT

It is past time that we stop trying to carve off individual states from the land and instead work toward integrating into a common market. The 1950s marked the beginning of this debate. Indirect Taxes have made this a reality. The European Union is now a fully-fledged Economic Union, complete with a single currency and the unrestricted movement of labour, capital, and (men, money and materials). Since gaining independence, India has used a single currency throughout the country. To that end, on July 1, 2017, the government began collecting a new kind of indirect tax known as Goods and Services Tax (GST) from all businesses and consumers in the country.

Before Goods and Services Tax (GST), there was Value Added Tax (*hereinafter* VAT), but rates varied between states, and octroi or entrance tax slowed shipments. There was CENVAT, which stood for Central Value Added Tax, and MODVAT, which stood for Value Added Tax as Modified. Large inefficiencies, room for manipulation, and subjective judgments resulted from all this. Instead than focusing on improving productivity to better compete internationally, many of our largest corporations have instead been spending their time fighting the system's power to reduce productivity. However, it had the same effect on all public services. There are many people going hungry in states like Orissa because the Food Corporation of India cannot afford to transport the tonnes of wheat that would otherwise be harvested in Punjab and Haryana. A lot of taxes at every stop.

We can't just keep singing 'Vande Mataram' and calling it 'national integration'; instead, we need to think about the economy, the common market, and how to apply GST on a national scale. Fortunately, the new tax structure was first mentioned in the Union Budget Speech of 2006–2007. The country as a whole seems to be moving toward a national level GST that must be divided between the Union and the States, as stated by the country's former finance minister, Mr. P. Chidambaram. He suggested starting GST on April 1, 2010. The GST implementation plan has been assigned to the 13th Finance Commission. After several alterations and delays, GST went into effect on July 1, 2017.

In 2005, former Finance Minister Mr. P. Chidambaram conceived of the GST, a multi-stage consumption tax applied on a wide variety of products and services. As the name implies, this type of tax is levied on the final consumers of a product or service. Instead of the existing system, in which the federal government and individual states each add their own sales tax to the final price of a product, the Goods and Services Tax (GST) solely taxes manufacturers based on the value they add to the item. In this case, the local tax component of the shoemaker's purchase of processed leather from the leather factory is only Rs 10.

It is a tax imposed on the sale or supply of goods and services, collected at each point of sale or provision, and allows the seller or provider of services to deduct the amount of tax paid on the acquisition of the products or services as an input tax credit. Since GST is charged at every step of the supply chain, there is no price differential between goods and services. It's a streamlined way to get input tax credit from start to finish. Taxes are passed on to the end user and paid by them at every level of production and distribution. Essentially, this is the same as the value-added tax (VAT) that was implemented in many states and might be referred to as a VAT on products and services at the national level, with the exception that under this system, not only goods but also services are subject to taxation at the same rate.

Since the early 1990s, as part of the Structural Adjustment Programme, the commodities tax sector in India has been experiencing fundamental changes. From MODVAT, the system evolved into CENVAT, then a VAT at the state level, and eventually a unified Goods and Services Tax. As a novel experiment, India's GST grants both the central government and individual states the ability to impose a tax on the sale of goods and services. In order to implement the new tax regime, the Constitution was amended to significantly limit the authority of central and local governments over indirect taxation, and a new revenue sharing structure was drafted between them.

On May 6, 2015, Lok Sabha approved the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 (hereafter the 'Amendment Bill') to accomplish these goals. After a motion by the Minister of Finance, Corporate Affairs, and Information and Broadcasting, the Select Committee was given the authority to review the

aforementioned bill and was given until the end of the first week of the following Session to report back (Monsoon Session). One of the goals of the Amendment Bill is to allow the Union and the State Governments to impose GST on the supply of commodities or services, or both. State GST (SGST) and Central GST (CGST) on local transactions and Integrated GST (IGST) on interstate transactions and imports are all part of the GST regime, as outlined in the Amendment Bill. Some types of products are also selected to be outside of the GST's purview.

Four new articles, ten revised articles, and one repealed item were all planned under the Amendment Bill. In addition, one change is suggested for the Sixth Schedule, and seven are suggested for the Seventh Schedule. The revenue-sharing structure between the federal government and the states, as well as the ability for each to collect its own tax income, stand to be significantly altered by these developments. CGST will be levied and collected by the Union but will be included in the common divisible pool of the Central taxes and duties that are sharable with the States as recommended by the Finance Commission. SGST, on the other hand, would be levied, collected, and allocated by the States. However, the Union would be responsible for levying and collecting IGST, and the States will have the option of splitting the proceeds.

One definition of Goods and Services Tax is the massive indirect tax systems put in place to foster and encourage economic development inside a country. There are already more than 150 nations that have adopted the Goods and Services Tax. Goods and services tax was initially proposed in India in 1986, but it wasn't until 2015 that the Indian Parliament approved the necessary constitutional change to make it a reality. It went into effect across the country on July 1, 2017. However, there was a major uproar when it was proposed. Given that GST has only been in operation for over half a decade, it would be premature to make any assertions regarding the success or failure of the national implementation at this moment in view of the significant issues of the COVID Pandemic it has experienced.

Being a federal republic, India's central government and its constituent states each have the authority to levy taxes. Adopting GST, with its unusual feature of compensating to the State governments in case of income loss, poses an immediate threat to the federal structure of the constitution, but the funds in the form of compensation to State have

not been distributed to States in an equitable manner. As the whole GST process from registration to filing a return or an e-way bill is being moved online, legitimate privacy concerns have arisen. Recent reports in the media suggest that a hostile cyberattack has been launched against the GST Network, a dedicated information technology network for online GST transactions. When it comes to information about their customers and orders, GST Network is the one-stop shop for all businesses that have registered for GST. When personal information about a taxpayer can be sold for as little as one dollar on the Deep Web and Darknet, it is easy to imagine the havoc that a cyber-attack on the GST network, on which more than 30 lacs taxpayers are enrolled, may wreak. Accordingly, it is not obvious how the GST's cyber vulnerabilities will be handled if cyber-attacks of this type arise.

ACKNOWLEDGEMENT

To begin, I would want to express my gratitude to GOD, who is kind, for bestowing upon me the gifts of being able to think, read, hear, and write. I give thanks to HIM for creating this wonderful universe, which has been endowed with an astonishingly diverse array of living things. Human beings, in general, are not appreciative of the many gifts that are showered upon them. However, they are also the ones who are responsible for making steps to repair the damage that was inflicted. I owe a debt of gratitude to HIM for allowing me to be a part of the second group. Though only my name appears on the cover of this thesis, a great many people have contributed to its production. I owe my gratitude to all those people who have made this thesis possible and because of whom my doctorate experience has been one that I will cherish forever.

I owe a tremendous amount of gratitude to my supervisor, Professor (Dr.) Narendra Bahadur Singh, for the enormous assistance he provided and the tireless efforts he made during the entirety of the study. Without his skilful direction, this research never would have gotten off the ground. His tolerance and encouragement enabled me to triumph over a large number of unanticipated challenges and successfully complete this thesis. He has never failed to demonstrate to me the method to accomplish the task. I owe him an enormous debt of gratitude for the conversations we had, which assisted me in figuring out the logistical aspects of my profession. I am also grateful to him for urging me to utilise proper language and consistent notation in my writings. For this, I am very glad.

A special thanks goes to Professor (Dr.) Tabrez Ahmed, who not only guided and shaped my PhD thesis with his critical questions but also helped me identify the new insights from my PhD topic. He has always been an inspiration and a strong supporter of my academic endeavours and I am grateful for all of his help. He is one of my all-time favourite professors. He expects a lot from his learners, and he works hard to help them get there. At several points throughout my study, he provided insightful and helpful remarks that helped me concentrate my thoughts.

Prof. (Dr.) Partha Pratim Mitra, who has always showed me the road to finish the object, would not have been able to help me complete this thesis without his unwavering support. I am thankful to him for the conversations that helped me figure out the technical aspects of my research. As an added bonus, I can thank him for his encouragement of proper research methodology and a standardised notation style throughout my writings. In addition, please accept my sincere gratitude for Professor (Dr.) Kiran Gardner's initial inspiration and ongoing support, both of which have been crucial to this study's success. It wouldn't have been feasible without their aid.

I would want to express my admiration to Prof. (Dr.) Preeti Bajaj, the Hon'ble Vice-Chancellor of Galgotias University, for enabling me to do my study in a conducive environment and with first-rate resources. Thanks to her efforts, Galgotias University now has a thriving research culture, which I have personally benefited from. I owe Dr. Bajaj a profound debt of gratitude for what she has done for Galgotias University as she has guided the university's research efforts to new heights.

I would like to convey my appreciation to Prof. Dr. Naresh Kumar, Dean, PG & PhD of Galgotias University, for his unwavering encouragement and direction as I worked to complete and submit my thesis as well as for the countless times he has offered me excellent advice, gone above and beyond to assist me, and shown caring attitude and concern for my well-being.

When expressing gratitude to everyone, it would be quite unfair to exclude the name of Prof. Dr. Namita Singh Malik, Dean of the School of Law at Galgotias University. In all candour, I am pleased to have such a wonderful dean. I can't count the number of times she has given me sound advice, gone out of her way to help me, or showed genuine interest in how I am doing that. Whether it be in formal or informal occasions, she has always been a pillar of support.

In addition, the thesis is devoted to my late parents, Mr. Riyaz Ahmad Khan and Mrs. Farida Khatoon. Their selflessness, which dates back to when I was a child, can be seen in the prayers they have offered and the tolerance with which they have dealt with my sporadic absences at times when they have required my presence the most. I will never

be able to repay them, no matter how many lives I live. It is obvious that age has taken its toll on them. But that didn't stop them from fantasising about the day when their child would receive the doctoral degree. I will be eternally thankful to them for all of the help that they provided, and I am sorry that they did not survive to see me receive my PhD.

I owe an enormous debt of gratitude to my wife, Shama Nizam, whose words often cutting, but always forthright encouraged me to take my professional duties seriously. She is my most trusted friend and critic, and I have every reason to believe that she is just as pleased with the outcome of this thesis as I am. The reassuring nature of her presence kept me from sinking into a state of fear on several occasions. Also, I would be remiss if I did not make notice of the ray of light that shines the brightest in my life: my daughter Khirad Khan. Even though Shama made sure I didn't freak out, it was Khirad's presence that kept me going and smiling the whole time we were going through it.

The list of things for which we are grateful is not, of course, comprehensive. My deepest gratitude goes out to each and every person who has helped make this challenging but ultimately fruitful journey a success. My sincere wish is that, at some time in their lives, each and every one of them will find that my assistance was worthwhile.

Md. Nizam Ashraf Khan

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LIST OF ABBREVIATION

Art.	Article
ATF	Aviation Turbine Fuel
B.C.	Before Christ
BSNL	Bharat Sanchar Nigam Limited
C.I.F.	Cost, insurance, freight
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CENVAT	Central Value Added Tax
CGST	Central Goods and Services Tax
CST	Central Sales Tax
CVD	Countervailing duty
DGST	Director General (Services Tax)
DTA	Domestic Tariff Area
e. g.	That is
EC	Empowered Committee
EOU	Export Oriented Unit
etc.	Et cetera; and other similar things
EU	European Union
FDI	Foreign Direct Investment
FICCI	Federation of Indian Chambers of Commerce and Industry
FMCG	Fast Moving Consumer Goods
FRBM	Fiscal Responsibility and Budget Management
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GST	Goods and Services Tax
H.C.	High Court
HSD	High Speed Diesel
HSN	Harmonized System of Nomenclature

HST	Harmonized Sales Tax
I.T.	Information Technology
ICAI	Institute of Chartered Accountants of India
IGST	Integrated Goods and Services Tax
IMF	International Monetary Fund
ITC	Input Tax Credit
ITO	International Trade Organization
JWG	Joint Working Group
NSDL	National Securities Depository Limited
PAN	Permanent Account Number
SAD	Special Additional Duty
SC	Supreme Court
SEZ	Special Economic Zone
SGST	State Goods and Services Tax
Sl. No.	Serial Number
SST	State Services Tax
STT	Securities Transaction Tax
TIN	Tax Payer's Identification Number
TINXSYS	Tax Information Exchange System
UOI	Union of India
USA	United States of America
UT	Union Territory
UTGST	Union Territory Goods & Services Tax
VAT	Value Added Tax
vis-à-vis	In relation to
Viz	Namely
w.e.f	With effect from
WCO	World Customs Organization
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

"It was only for the good of his subjects that he collected taxes from them, just as the sun draws moisture from the earth to give it back a thousand-fold"

- Kalidas in Raghuvansh eulogizing KING DALIP¹

1.1 INTRODUCTION

The internal commerce of the nation, the inland and coasting industry, is nearly totally free thanks to the uniform system of taxes that takes place across the various portions of the British Commonwealth, with a few outliers of no great concern.² The majority of products may be transported from one side of the country to the other without a permission or let-pass, and tax agents rarely if ever inspect or interrogate merchants or their wares. Because any great country is inevitably the best and most comprehensive market for the majority of its own industrial goods, the freedom of interior trade that results from a uniform taxation system is likely one of the most important reasons for Britain's wealth. It is likely that the splendour of the state and the riches of every area of the empire might be even larger if the same freedom, as a result of the same conformity, could be extended to Irish and the colonies.³

The time has come when Indian economy needs to put together into a collective market rather than aiming on crafting dispersed states inside India that have befitted an

¹ An old Indian treatise in *Sanskrit* Language. Manu, the ancient sage and law giver in his book 'Manusmriti' has also expressed the similar opinion that the king could levy taxes according to *shashtras* that is religious texts. The wise sage advised that taxes should be related to the income and expenditure of the subject. He, however, cautioned the king against excessive taxation and stated that both extremes should be avoided, namely, either the complete absence of taxes or exorbitant taxation. According to Manu, the king should arrange the collection of taxes in such a manner that the subjects did not feel the pinch of paying taxes.

² Central Board of Indirect Taxes and Customs (CBIC), *Goods And Service Tax (GST): Concept & Status*, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA (Nov. 16, 2019, 10:55 PM), <https://www.cbic.gov.in/resources/htdocs-cbec/gst/GST-Concept%20and%20Status01072019n.pdf>.

³ Adam Smith in his book 'Wealth of Nations'.

extremely blistering deliberation since its independence which is doable through Indirect taxes. We can substantiate this standpoint by captivating the paradigm of Europe that has transformed its European Union into an economic union by floating single currency 'euro' for all its member nations along with free mobility of factors of production (men, money and materials). India has had a single currency since independence in 1947, but the country as a whole lack a unified economic market. It has been done by merging all of India's indirect taxes, known as the Goods and Services Tax, or GST, into a single tax, which was approved by the legislature after a long and arduous process and went into effect on July 1, 2017, taxing all goods and services sold in the nation.⁴

We can trace the origins of taxes in India back to the Vedic period. In India, the indirect tax system was a jumble of levies levied at the regional, provincial, and county levels before GST was implemented.⁵ Goods and services were levied separately by different legislation. For selling and purchasing of goods, Sales tax which was later on replaced by Value added Tax (hereinafter referred as VAT) had been charged at State level but the rate of VAT varies from State to State. There was octroi, a kind of entry tax, levied at the time of entering from one state to another state that was the root cause of delayed consignments. There were other taxes such as Central Value Added Tax (Hereinafter referred as CENVAT), Modified Value Added Tax (hereinafter referred as MODVAT) etc. resulting into massive inadequacies, span of handling and subjectivity. Businessmen were concerned in combating the aptitude of the system to obliterate the efficiency rather than to increase the efficiency of their products to compete globally. In the consequence of that, public services were equally affective. It is very shameful to say that tons of wheat rots away in Punjab & Haryana just because one of the highest authorities of food in India finds it very costly to transport it to less-produced states like Orissa where people are ravenous for want of food and the reason for the same is too many taxes along the route.⁶

⁴ Shubhomoy Mukherjee, *When will India be a Common Market?* THE SPECTATOR (Nov.18, 2019, 11:24 PM), <http://twistintheetail.blogspot.com/2006/04/when-will-india-be-common-market-gst.html>.

⁵ CBIC, *supra* note 1, at 3.

⁶ Shubhomoy, *supra* note 2.

1.1.1 Relationship Between Tax and Constitution

Article 265 of the Constitution of India, known as the ‘mother provision’ for the taxation laws in India, is one of the provisions that comes to mind when we discuss the connection between taxation and the constitution in India. According to Article 265⁷, ‘Nothing should be taxed or collected without the express permission of the people acting within the bounds of the law.’ To put it another way, there has to be a law, that legislation needs to permit the tax, and then the tax needs to be imposed and collected in accordance with the law.⁸ Hence, any tax charged arbitrarily and illegally must be compensated.

Another provision that talks about taxation is article 246 which says that parliament has exclusive power to make laws⁹ in respect of matters given in Union List¹⁰ and state legislatures have the exclusive power to enact laws¹¹ on the matters comprising in State List¹² and further both the parliament and state legislatures have concurrent power to enact laws¹³ in regard to the matters contained in Concurrent List¹⁴. In the layman’s language, it can be understood that the union and state governments cannot make any laws on the matters not mentioned in the three lists of constitution i.e., Union List, State List and Concurrent List. In case, any law is required to be made in the interest of the nation but subject matter is not mentioned in any of the lists of the seventh schedule of constitution, the relevant subject matter will be added by the constitutional amendment passed by the concerned parliament or legislature as we witnessed in the case of implementation of GST in India.

Before GST was implemented, the customs duty¹⁵, central excise duty¹⁶, and service tax¹⁷ were the most significant contributors to the Union's indirect tax collection. In

⁷ INDIA CONST. art. 265.

⁸ P.M. BAKSHI, THE CONSTITUTION OF INDIA, 256 (11th ed. 2012).

⁹ INDIA CONST. art. 246, cl. 1.

¹⁰ INDIA CONST. sch. 7, list I.

¹¹ INDIA CONST. art. 246 cl, 3.

¹² INDIA CONST. sch. 7, list II.

¹³ INDIA CONST. art. 246, cl. 2.

¹⁴ INDIA CONST. sch. 7, list III.

¹⁵ INDIA CONST. sch. 7, List I, entry 83.

¹⁶ INDIA CONST. sch. 7, List I, entry 84.

¹⁷ INDIA CONST. sch. 7, List I, entry 97.

spite of the fact that the Constitution (Eighty-eighth Amendment) Act, 2003 included item 92C in the Union List of the Seventh Schedule of the Constitution in order to allow for the imposition of taxes on services, this addition was never announced to the public. As a result, tax on services was continuing to be imposed until the Goods and Services Tax (GST) came into effect under the Union List's residual entry, i.e. entry 97. By virtue of entries 92A¹⁸ and 92B¹⁹, respectively, the Union was also authorised to levy a tax that was known as the Central Sales Tax (CST) on the sale and purchase of products between states as well as on inter-state consignments of commodities. However, according to the Central Sales Tax Act of 1956, which was enacted as a result of Article 269 of the Constitution, CST is given to the state of origin. Taxes on luxuries, entertainments, amusements, betting and gambling²⁰, octroi or entry tax²¹ and electricity tax²² were the most important sources of revenue for the State governments. Other important sources of revenue included taxes on sale and purchase²³, excise duty on alcoholic liquors, opium and narcotics.²⁴ Even though the CST was a tax that was collected by the Union, it was nonetheless a significant source of income.²⁵

1.1.2 Background of Reform

There was first clear evidence of an effort to implement a new tax system when the former Prime Minister Mr. Atal Bihari Vajpayee²⁶ suggested and established a committee to build a GST model for the nation.²⁷ In 2003, a central government task force on fiscal responsibility and budget management was constituted under his leadership. In 2004, the task force recommended that the present indirect tax system be replaced by the Goods and Services Tax (GST). This might be done by replacing the Central VAT and the State VAT with a single tax on all products and services. If all

¹⁸ INDIA CONST. sch. 7, List I.

¹⁹ INDIA CONST. sch. 7, List I.

²⁰ INDIA CONST. sch. 7, List II, entry 62.

²¹ INDIA CONST. sch. 7, List II, entry 52.

²² INDIA CONST. sch. 7, List II, entry 53.

²³ INDIA CONST. sch. 7, List II, entry 54.

²⁴ INDIA CONST. sch. 7, List II, entry 51.

²⁵ CBIC, *supra* note 1 at 4.

²⁶ Atal Bihari Vajpayee was the former Prime Minister of India and was elected to the position twice in 1996 and 1999. He was the prime minister till 2004.

²⁷ CBIC, *supra* note 1, at 10.

indirect taxes were replaced by a value-added tax on all products and services, with full deductions available at each level of the value chain, it was recommended.²⁸

The Empowered Committee would collaborate with the Union Govt to develop a strategy for implementing GST in India. This plan was first mentioned in the 2006-07 budget, which said that GST will be implemented in India on April 1, 2010.²⁹ It was decided to make this declaration in light of the fact that the GST would be implemented on April 1st, 2010. On May 10, 2007, the Empowered Committee (EC) decided to launch a Joint Working Group in response to this information. The former Adviser to the Union Finance Minister and the Member-Secretary of the Empowered Committee would serve as co-conveners of this body.³⁰ It would also include four Joint Secretaries of the Union Finance Ministry, as well as all of the State Finance Secretaries. Three sub-groups of the Joint Working Group were formed to discuss and interact with industry professionals and representatives from the chambers of commerce and industry. These conclusions were then incorporated into the Joint Working Group report following discussions and interactions between the various Sub-Groups.³¹

On November 28, 2007, Empowered Committee (EC) met to discuss this report in considerable detail, and the states were also asked to provide written responses. It was determined that some changes were necessary based on these discussions and written comments, and those changes were addressed with the Co-conveners and officials from the Union Finance Ministry's Department of Revenue. The EC's opinions on the model and road map for the GST were produced following the completion of the necessary changes. The EC's views were sent to the Indian government, which reacted on December 12th, 2008, with its own statements. Following an adequate appraisal by the EC, it was agreed to form a Committee consisting of Principal Secretaries/Secretaries of Finance/Taxation and Commissioners of Trade Taxes of the States to examine these remarks and give their perspectives. The EC was presented with these ideas, and they were generally accepted.³²

²⁸ *Id.* at 14.

²⁹ *Id.* at 19.

³⁰ *Id.* at 20.

³¹ *Id.* at 21.

³² *Id.* at 22.

In November 2009, the EC released a First Dialogue Paper about the Goods and Services Tax, based on discussions that had taken place both inside the EC and with the Central Government. Using this as a starting point for discussions between the federal government and the states, the proposed Goods and Services Tax (GST) was defined. From April of 2011, Pranab Babu³³, the former finance minister, stated that an endeavour will be launched to adopt GST in India.³⁴ However, in his Union Budget 2012-13 speech, Mr. Pranab Mukherjee indicated that GST will be operational by August of 2012, despite the fact that it was recommended in the Union Budget 2011-12.³⁵

In order to make the Goods and Services Tax (GST) operational, the Constitution (115th Amendment) Bill was presented to the Lok Sabha on March 22, 2011, and it was referred to the Standing Committee on Finance on March 29, 2011.³⁶ The purpose of the Constitution (115th Amendment) Bill was to enable Parliament and state legislatures to make laws for levying GST on every transaction of supply of goods or services or both. In August of 2013, the Standing Committee presented its findings on the Bill to the full committee. However, because the 15th Lok Sabha has now been dissolved, the bill, which had been pending in that chamber, has now become invalid.³⁷

The Goods & Services Tax (GST) is a multi-stage consumption tax that is levied on a wide variety of goods and services. It was conceived of by Mr. P. Chidambaram, who was the finance minister at the time, in 2005, when he implemented VAT. It is a tax on transactions as well as on ultimate consumers who use the products or services and so are responsible for the full cost of the tax.³⁸ Instead of the existing system, in which federal and state governments apply cascading taxes on the price of the end product,

³³ Mr. Pranab Mukherjee was the former Finance Minister of India and leader of the 15th Lok Sabha (Nov. 25, 2019, 11:53 PM) http://finmin.nic.in/fm_pranab_mukherjee.asp.

³⁴ Times Network News, *Union Budget 2012-13: GST to be operational by August 2012*, E. T., March 16, 2012 at A1 (Nov. 25, 2019, 12:15 AM) <http://economictimes.indiatimes.com/news/economy/policy/union-budget-2012/13-GST-to-be-operational-by-August-2012/articleshow/12288752.cms>.

³⁵ Amol Agrawal, *India's Goods and Services Tax-A Primer*, STCI Primary Dlr. Ltd, 1 (Nov. 25, 2019, 12:28 AM) <http://www.stcipd.com/UserFiles/File/Indias%20Goods%20and%20Services%20Tax%20%20A%20Primer.pdf>.

³⁶ TNN, *supra* note 21.

³⁷ CIBC, *supra* note 1 at 25.

³⁸ *New finance panel to draw GST road map*, Business Line, New Delhi, **Oct 4, 2007**

GST is effectively a value-added tax that forces producers to pay tax only on the value they add to the goods or service. This is in contrast to the current system.³⁹ For instance, a shoemaker may pay a leather company Rs 110 for processed leather, of which the component that accounts for local tax might be Rs 10.⁴⁰

The seller or service provider can claim the tax input credit that they paid while purchasing the products or receiving the service when they sell the items or offer the service. A tax on products and services collected at the time of sale or provision is what causes this. To be more precise, it's an excise tax applied at each and every point of sale or service.⁴¹ As a result of the fact that GST is collected at every step of the supply chain, there is no distinction made between taxable goods and taxable services. Throughout the entirety of the supply chain, it offers a smooth input tax credit. Taxes are passed through each level of production and distribution, and the end consumer is the one who is responsible for paying them.⁴² Just like VAT, which was implemented in most states and might be referred to as National level VAT on Products and Services, this system includes not only goods but also services, and the rate of tax on both is normally the same. This is a very similar system to VAT.⁴³

Since the beginning of the 1990s, the Indian commodities tax sector has been participating in the Structural Adjustment Programme, which has resulted in the sector experiencing fundamental changes. It began with MODVAT, which was eventually transformed into CENVAT. After that, a VAT at the state level was implemented, and finally, a full Goods and Services Tax was implemented. As a novel experiment in accordance with the Indian Constitution, the Products and Services Tax (GST) grants concurrent rights to both the Union and the States to cost consumers more money when they buy things or use services. The constitutional provisions governing the powers of the national and sub-national governments, as they relate to indirect taxation, have been substantially amended, and a new tax sharing arrangement between the national and

³⁹ *FM takes baby steps toward a unified GST*, Business Standard, New Delhi, **Feb 23, 2007**

⁴⁰ *Ibid.*

⁴¹ *GST – Not a utopian dream*, Business Standard, New Delhi November 30, 2007.

⁴² *Id.*

⁴³ *PwC Analysis: Indirect Tax*, Business Standard, New Delhi March 3, 2008.

sub-national governments has been developed as a condition precedent to the implementation of the new tax regime.⁴⁴

1.1.3 Constitutional Amendments

The constitutional arrangement allowed for the simultaneous levying of Central VAT and State VAT. Schedule VII⁴⁵ allocates the authority to levy taxes between the federal government and the states. Taxes can be levied at various stages of a product's life cycle, but only up to the point of manufacture or manufacturing. States lack the residuary rights necessary to levy a tax on services, but the Union does. It is expected that both the goods and services tax (GST) will be able to tax the whole supply chain from manufacturing to distribution. In order to implement a goods and services tax, the Constitution needed to be amended to provide Parliament and state legislatures the authority to enact legislation imposing a tax on all transactions involving the delivery of products or services, something that was not provided for in the original design.⁴⁶

In order to accomplish these goals, the Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 (*hereinafter* referred as the 'Amendment Bill') was approved by the Lok Sabha on May 6, 2015. On the basis of a motion put forward by the Minister of Finance, Corporate Affairs, and Information and Broadcasting, the aforementioned Bill was sent to the Select Committee for investigation, and the Committee was requested to submit its Report no later than the last day of the first week of the following Session (Monsoon Session). On July 22, 2015, the Select Committee transmitted their Report about the Bill. In August of 2016, the Bill was ultimately approved by the Rajya Sabha after undergoing a few rounds of modifications, and it was then approved by the Lok Sabha. In addition, the measure got the requisite number of state ratifications, as well as the assent of the President on September 8th, 2016, and it was subsequently enacted as the Constitution (101st Amendment) Act, 2016 with effect from September 16th, 2016.⁴⁷

⁴⁴ Dr. K. Gopa Kumar, *Constitution Amendment Bill for Goods and Services Tax in India: A Critical Analysis*, 1, Int. J. of GST (Dec. 07, 2019, 02:40 PM) http://gstjournal.in/files/documents/Gopakumar_article_00007-.pdf

⁴⁵ The Indian Constitution, 1950.

⁴⁶ CBIC, *supra* note 1 at 16

⁴⁷ *Id.*

The 101st Amendment Act made a number of significant amendments to the Constitution.⁴⁸

- i) Amendment 246A adds language for the Union and the States to pass GST legislation. It goes on to clarify that the laws governing GST on inter-state supply may only be enacted by Parliament.
- ii) Constitutional Amendment 268A was left out of the final draught. The Indian government was given the power to impose a tax on services by virtue of the aforementioned provision. Such a clause was no longer necessary with the introduction of the Goods and Services Tax (GST).
- iii) The Goods and Services Tax Council's recommendations have been included in Article 269A. This article establishes a goods and services tax on intrastate business or industry that is levied and accumulated on account of the Govt of India and is distributed in line with parliamentary law, as recommended by the GST Council. Furthermore, Parliament has the power to legislate standards for identifying where and when a supply of commodities or services or both is made as part of interstate trade or commerce.
- iv) In Article 270, the Union and the States are to share the proceeds of the goods and services tax collected by the Union.
- v) The amendment to Article 271 that limits Parliament's ability to levy a GST surcharge has been made. When goods and services are taxed under Article 246A, surcharge cannot be levied.
- vi) Article 279A of the GST Act has been introduced to allow for the GST Council's establishment and mission.
- vii) For human use, alcoholic beverages have been specifically defined in Article 366, which is now exempt from being subject to GST.

⁴⁸ Central Board of Indirect taxes and Custom, Goods and Services Tax, *The Constitution (One Hundred and First Amendment) Act, 2016* (Dec. 21, 2019, 09:43 PM) <https://cbic-gst.gov.in/constitution-amendment-act.html>.

- viii) As a result of this change, Article 368 now specifies an additional mechanism for amending the Constitution, requiring approval of the Bill by at least half of the state legislatures. As a result, the legislatures of at least half of the States must ratify any change to the GST Council.
- ix) In order to limit or eliminate the ability to tax products and services listed in List I and List II, or to remove the ability to tax products and commodities that have been absorbed by GST, some entries in these lists have been substituted or removed.
- x) For a period of five years, Parliament, following recommendations from the Goods and Services Tax Council, should pass a bill to reimburse the states for monetary losses resulting from their implementation of the goods and services tax.
- xi) Petroleum and petroleum products are exempt from the collection of GST until a date set by the Goods and Services Tax Council, which will be announced in due course.

1.1.4 GST Council As Dispute Redressal Mechanism

The Goods and Services Tax Council (the Council) was established on September 12, 2016, in accordance with Article 279A of the Constitution. Each state's finance and taxation ministers are invited to join this council, which will be chaired by Union Finance Minister Arun Jaitley. In addition to the taxes, cesses, and surcharges currently levied by the Centre, States, and local governments, they'll provide suggestions to the Union and States for items and services that may or may not be subject to GST, model GST laws, levies and distribution of IGST, among other things and a threshold turnover below which the GST is not levied.⁴⁹

The Council will provide a recommendation if and when a GST is implemented on petrochemical oil, slightly elevated petroleum, motor spirit (also known as gasoline), natural gas, and aircraft turbine fuel. The Goods and Services Tax Council must be

⁴⁹ Tarun Jain, *Goods and Services Tax: An Overview*, SCC ONLINE.

directed by the need for a harmonised goods and services tax system and the creation of a harmonised national market for goods and services while performing the duties granted by this article.⁵⁰

Goods and Services Tax Council sessions require half the council's membership in order to proceed. The Goods and Services Tax Council must determine its own procedures for accomplishing its goals.⁵¹ In order to be considered by the Goods and Services Tax Council, three-quarters of those present and voting are needed for approval, with the Union Government's voting results for one-third and the Regional Governments' voting counted for the remaining two-thirds. This means that no decision can be made without the support of three-fourths of the members present and voting.⁵²

On July 1, 2022, the ambitious Goods and Services Tax (GST) law in India had been in effect for five years. The 47th GST Council met in Chandigarh, India, on June 28 and 29, 2022. In the 47 sessions of the GST Council, there has not been a single incident in which a vote was required to make a decision. The GST Implementation Council (GIC) has made more than three two hundred decisions for the GST Council. More than thousand decisions have been implemented to date, with just more than fifty remaining in different stages of implementation (of which 39 are unique issues) at the DoR, CBIC and GSTN. That's a remarkable feat, given how complicated and wide-ranging the subject matter and concerns were, as well as the fact that all decisions were unanimously taken, by the GST Council.⁵³

Listed here are the GST Council's most important suggestions⁵⁴:

⁵⁰ TARUN JAIN, GOODS AND SERVICES TAX: CONSTITUTIONAL LAW AND POLICY 79 (1st ed. 2018).

⁵¹ Tanvi Kini and Chirag Naik, *GST in India: Two Steps Forward or One Step Back*, 1 HNLU SBJ 2, 14-15 (2018).

⁵² Rakesh Joshi, *How GST Was Lost Again*, Business India.

⁵³ Naina Bhardwaj, *What Are the Outcomes of India's 47th GST Council Meeting? Rate Revisions, Withdrawal of Exemptions, Easing Compliance*, Dezan Shira & Associates (Dec. 22, 11:15 PM, 2019) <https://www.india-briefing.com/news/indias-47th-gst-council-meeting-outcomes-rate-revisions-streamlining-compliance-25447.html/>

⁵⁴ Govinda Rao, Goods and Services Tax: Some Progress Towards Clarity, XLIV EPW, 49, 53-55 (2009).

1.1.4.1 Legal Rules

For the purpose of making it easier to implement the Goods and Services Tax (GST), the council has recommended certain pieces of legislation to help get things moving in that direction. For this reason, the council has proposed alterations to the regulations governing, among other things, structure, certification, input tax credit, billing, value of supply identification, accounts and records, disbursement, refund, assessment and verification, advance ruling, objections and revision, transient clauses, anti-profiteering, E-way Bill auditing, search and seizure, claims for recovery, and sanctions.

1.1.4.2 Registration and Threshold

Providers of services in Manipur, Mizoram, Nagaland, and Tripura shall be excluded from GST registration and payment if their combined annual revenue exceeds Rs. 20 lakhs or Rs. 10 lakhs. The threshold of aggregate turnover for goods and services suppliers to avoid GST enrolment and payment would be Rs. 40 lakhs and Rs. 20 lakhs effective from 01.04.2019 in the States of Arunachal Pradesh, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Uttarakhand.⁵⁵ Taxpayers in the following categories will not be required to register:

- i. companies with revenues up to Rs 20 lakh that provide services interstate;
- ii. companies with revenues up to Rs 20 lakh that provide services via e-commerce platforms.

In the event that a taxpayer has many places of business in the same state or union territory, he or she may choose to register each of those locations separately. Only those e-commerce businesses needed to collect tax at source must be registered. To relieve the taxpayer of further compliance with the law, registration will be temporarily halted while the cancellation of registration is being processed. The reversal of registration cancellations until March 31, 2019, has been allowed by a Removal of Difficulty order. The revocation application must be submitted by July 22, 2019.

⁵⁵ CBIC, *supra* note 1 at 21.

1.1.4.3 Migration

Another window has been opened to allow the migration process to be completed. On December 31, 2017, a provisional identification number (PID) was issued to those taxpayers who had not yet filed the full FORM GST REG-26, but who had obtained a Provisional ID (PID) by that date. The deadline for completing FORM GSTR-3B and FORM GSTR-1 for taxpayers who owe taxes from July 2017 to December 2018 has been extended to March 31, 2019.

1.1.4.4 Composition Scheme

To help small business owners, Composition Scheme has been designed to include both commodity suppliers and restaurants. Businesses having a yearly income of up to Rs. 1.5 crore are subject to taxes ranging from 1 percent to 5 percent (Rs. 75 million in the Indian provinces of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, and Uttarakhand). Customers who do not qualify for the current Composition Scheme have the option of switching to a Composition Scheme that has a tax rate of 6 percent (comprising 3 CGST and 3 SGST). They would be required to submit a single yearly return and pay taxes every three months. Policy effective as of April 1, 2019, in force. Quarterly tax payments can be made up to the 18th day following each quarter, as long as they are made in line with Composition Scheme, and yearly returns can be filed up to April 30th before each quarter.

Composition Scheme participants must complete Form GST CMP-02 if they plan on participating for a full financial year or part of a financial year. July 27, 2019, the GST Council extended the deadline for filing FORM GST CMP-02 to take advantage of the option of paying tax under Notification No. 2/2019-Central Tax (Rate) dated March 7, 2019, from July 31, 2019, to September 30, 2019. Submission of FORM GST CMP-08 for self-assessed tax for the April-June 2019 quarter has been extended from July 31 to August 31 for those taxpayers using the composition system. The composition system will be inaccessible to interstate suppliers and some manufacturers.

1.1.4.5 E-way bill system

If a supplier or receiver fails to file GST returns for two consecutive tax periods, the creation of an e-way bill is prohibited. This will take effect on August 21, 2019.

1.1.4.6 Tax Administration

To ensure a single point of contact, the state tax administration would have administrative authority over 90 per cent of taxpayers with a threshold below Rs. one crore fifty lakhs, while the central tax administration will have administrative control over 10% of taxpayers. In addition, all administrative power over taxpayers with a turnover of more than Rs.1.5 crore would be split 50/50 between the Central and State tax administrations, respectively. As with the CGST and SGST Acts, powers under the Integrated GST Act would likewise be shared authority on the same terms. The federal government will delegate authority to the states to collect GST in territorial seas. All tax enforcement powers would be shared by both central and state tax administrations.

1.1.4.7 Reverse Charge Mechanism (RCM)

It is recommended that a RCM be implemented when goods or services are purchased from unlicensed vendors, but only in the event of notified classes of registered individuals. Notification No. 07/2019-Central Tax (Rate) dated March 29, 2019, mandates a reverse charge on the following supplies acquired from unregistered providers beginning on April 1, 2019:

- a. In order to build a project, a promoter must acquire a certain minimum amount of goods and services, as specified in Central Tax (Rate) Notification No. 11/2017, on or before June 28, 2017.
- b. items that do not meet the minimum value required to be bought by a promoter for the construction of a project, as detailed in notice No. 11/2017- Central Tax (Rate) dated 28.06.2017.
- c. Under notification No. 11/2017-Central Tax, taxable supplies are defined as any supplies delivered to a promoter in connection with the construction of a project.

Previous to this, it was put on hold until September 30, 2019, per subsection 4 of section 9 of the CGST Act, 2017 and section 5 of the IGST Act, 2017.

1.1.4.8 Payment of Tax

For all taxpayers, there will be no obligation to pay tax on advance payments made for the supply of goods received. A group of ministers tasked with promoting digital payment has advised that cash back be given to customers who use BHIM or Repay cards to pay for goods and services. The required infrastructure is being built, and the pilot programme will shortly be launched in the State of Assam and other states that have expressed interest in participating. There is general consensus that section 50 of the CGST Act has to be revised so that interest is only levied on payments payable through the electronic cash ledger, and only on the taxpayer's net tax burden after the acceptable input tax credit has been applied. It would go into effect when the legislation is revised.

1.1.4.9 Refunds

The refund sum will soon be distributed by a centralised authority. Specifics of the plan's implementation are currently being discussed and developed. To have your FORM GST RFD-01A refund application processed faster, attach any relevant invoices or supporting documents to your submission on the common portal at the time you file your application. A fully automated system for issuing refunds is planned for the near future.

1.1.4.10 Return

With the exception of taxpayers enrolled under the Composition Scheme, everyone must file Form GSTR-3B and pay tax on a quarterly basis rather than a monthly basis starting in 2018. On a quarterly basis, tax payers with a revenue of less than Rs. 1.5 crore must file FORM GSTR-1. Monthly filing of FORM GSTR-1 is required for all other taxpayers. It is now 31.08.2019, the last day to file Form GSTR-9, Form GSTR-9A, and Form GSTR-9C, the annual returns for the 2017-2018 fiscal year.

1.1.4.11 Late Fees

All taxpayers who submit FORM GSTR-1, FORM GSTR-3B & FORM GSTR-4 for the quarters of July 2017 through September 2018 beginning after 22.12.2018 and

ending before 31.03.2019 will be totally exempt from the late fee. A registered person's late charge for late submission of GSTR-3B is as follows as of October 2017:

- a. Instead of paying Rs. 200/day in taxes, taxpayers whose tax burden was zero for the month in question will pay Rs. 20/day instead.
- b. individuals whoever tax due for the month was not 'NIL' (zero) would be Rs. 50/- each day rather than Rs. 200/- each day.

1.1.4.12 New Return System

There are just two primary annexures to the new return system. FORM GST ANX-1 is used to record outward supply information, and FORM GST ANX-2 is used to claim input tax credit on invoices, etc. that the supplier has filed. The provider may continually post invoices, and the recipient can continuously monitor and freeze invoices for input tax credit. The customer and supplier's invoices would be used to populate a major portion of the return using this method. To help taxpayers better understand the nature of the goods and services they purchase, they will be able to develop their own profile. According to a person's profile, he or she would be presented and expected to fill out the return with information that is tailored to that person's needs and circumstances. No purchase and no sale return filers will be able to file a return through SMS. Small taxpayers with a revenue of less than Rs. 5 crore would be able to file quarterly returns as an alternative. For two types of registered individuals – small merchants producing solely B2C supply or making B2B + B2C supply – the quarterly return will be comparable to the main return with monthly payment facility. Simplified returns have been created for these taxpayers, known as Sahaj and Sugam. The amount of information that must be included on these forms is smaller than on a standard tax return.

Amendment of invoices and other return information is possible with the new design. In order to make an amendment, you must file a form called an amendment return. Taxpayers can save money on interest by making their payment through an amendment return. The GST Council, in its 35th meeting on June 21, 2019, resolved to phase in the new return structure, as stated below, to provide taxpayers and the system adequate time to adapt.

- a. Taxpayers will be able to test the new return system (for GST ANX-1 and GST ANX-2 only) from July 2019 through September 2019. Forms GSTR-1 and GSTR-3B will be required to be filed by taxpayers in the same manner as before.
- b. Test versions of the new return forms (GST ANX-1 & GST ANX-2) will be made available to taxpayers from July 2019 through September 2019. Forms GSTR-1 and GSTR-3B should be filed by taxpayers as usual.
- c. For the months of October and November 2019, large taxpayers will continue to submit monthly FORM GSTR-3B filings until submitting their first quarterly FORM GST RET-01 filing in January 2020. From October 2019, both big and small taxpayers will be able to continuously submit invoices and other documents in FORM GST ANX-1. In order to see this form, no action may be taken on it during this time period; FORM GST ANX-2 cannot be used for any purpose.
- d. Form GSTR-3B will continue to be filed monthly for October and November, 2019 by big taxpayers, and Form GST RET-01 will be filed in January 2020 for December, 2019. From October 2019, both big and small taxpayers will be able to continuously submit FORM GST ANX-1 documents, such as invoices and other supporting documents. However, no action may be taken on such forms during this time period. FORM GST ANX-2
- e. FORM GSTR-3B will be totally phased out beginning in January 2020.

1.1.4.13 *Input Tax Credit*

Depending on the circumstances, the receiver may be able to claim ITC on invoices issued by the supplier in FY 2017-18 up until the due date for submitting FORM GSTR-3B for the month of March 2019. Since July 2017, The new due date for submitting a FORM GST ITC-04 is August 31, 2019.

1.1.4.14 *TDS/TCS*

Conditions must be met before the receiver can take advantage of ITC related to supplier-issued invoices from FY 2017-2018 to the deadline for submitting FORM GSTR-3B for the month of March, 2019. There has been an extension to the 31st of

August 2019 for the submission of ITC-04 GST Form, Valid From July 1, 2017, Through March 31, 2019.

1.1.4.15 *Export*

The E-Wallet Scheme for exporters was established on April 1, 2020, and until then exporters received assistance in the shape of existing practise. Input tax credit would be available to suppliers of services to Nepal and Bhutan, even if they have not yet received payment in foreign currency. If the Reserve Bank of India (RBI) gives its blessing, services rendered in exchange for Indian Rupees might be considered exports.

1.1.4.16 *Rate of Interest*

The GST Council has suggested a rate of interest for missed payments and delayed refunds.

1.1.4.17 *Micro Small Medium Enterprises (MSME)*

It has been suggested by the GST Council to impose a rate of interest on late payments and refunds.

1.1.4.18 *Revenue Mobilization*

It was decided to set up a group of ministers to look at the state of tax collection, including the reasons for structural patterns that impact revenue collecting in some states. An analysis of the underlying causes of revenue collection deviations from the initial assumptions established during GST system design, implementation, and related structural difficulties will be included in the research. An advisory council made up of professionals from the federal administration, state administrations, and the National Institute for Public Policy and Practice will support the Group of Ministers in conducting and disseminating research. The GST Council would then make a decision based on the GoM's suggestion.

According to Council recommendations, IGST that has not yet been allocated to the Centre or States/UTs may be apportioned on an ad-hoc basis to the Central Government at a rate of 50 percent and to State Governments or Union Territories, if applicable, at a rate of 50 percent. During the transition phase, 50% of such sum, as may be specified

by the Council, shall be transmitted to the Consolidated Fund of India as the quota of Centre, and 50% shall be distributed among the States in the ratio of their base year revenue.

If the amount collected in the Fund is less than what is suggested by the Council for a two-month period, the Centre will be responsible for paying the difference and the States will be responsible for paying their fair share based on their earnings from the previous year's basis.

1.1.4.19 Real Estate

At its 33rd and 34th sessions, which took place on February 24th and March 19th of 2019, the GST Council adopted the following decisions regarding the real estate sector: Residential properties outside the affordable housing category will be taxed at a rate of 5% while those in the affordable housing segment will be taxed at 1%.

Affordability in housing is defined as: Up to 90 square metre carpet area in non-metropolitan cities/towns and 60 square metre carpet area in metropolitan areas, with a price tag of up to Rs 45 lakh (the same holds true for both megalopolis and nonmetropolis). India's six major metropolises are Delhi NCR (which includes the cities of Delhi, Noida, Ghaziabad, Gurgaon, and Faridabad), Bengaluru, Chennai, Hyderabad, Kolkata, and Mumbai, respectively (whole of MMR).

Conditions for new tax rate:

- a. It is not going to be possible to get a tax credit for your input
- b. Any non-capital inputs or input services (such as TDR/JDA, FSI, or a long-term lease) must be obtained from a registered party (premiums), and long-term lease (premiums). If purchases are less than 80%, the builder is responsible for paying tax at an 18% rate on an RCM basis. The RCM, on the other hand, imposes a 28 percent tax on cement purchased from an unregistered party and the comparable rates on assets..

Excluded from GST are TDR/JDA, long-term leasing premiums, and FSI. The intermediate tax on development rights, such TDR, JDA, lease (premium), and FSI,

will not apply to residential properties that have paid GST. There is a new rate that takes effect on April 1, 2019. A one-time transition option allows for taxes on ongoing projects (buildings where construction and actual booking began before 01.04.2019) to be paid at the old rates (effective rate of 8% or 13% with ITC) until 31.03.2019. The deadline for real estate companies to notify the relevant authorities of their decision is May 20, 2019.

1.1.4.20 Lottery

During its 32nd meeting, held on January 10, 2019, the GST Council assembled a group of ministers to examine the GST Rate Structure for Lotteries.

1.1.4.21 Natural Calamity Cess

During the 32nd meeting of the GST Council, held on January 10, 2019, the Council authorised a 1% Tax levied for two years on the sale of products and provision of services inside Kerala.. The state of Kerala has thus decided to impose a 1% tax. A ‘Kerala Flood Cess’ on the value of commodities supplied to an unregistered party within the state by a taxable individual is imposed by the Kerala Finance Bill, 2019 under clause 14 sub-clause (2). The aforementioned cess has now gone into effect. A 10% amusement tax on cinema tickets has also been approved by Kerala’s government, which would empower local authorities to collect the tax.

1.1.4.22 Electronic Invoicing

The 35th meeting of the Council on June 21st, 2019 voted to implement an electronic invoicing system for B2B transactions in a phased way. Phase 1 will be optional, and it will begin in January 2020.

1.1.4.23 Electric Vehicles

Electric cars will get a reduction in GST of 12 percent, while chargers and charging stations will see a reduction of 18 percent, effective as of the start of the next fiscal year on August 1, 2019. Since August 1, 2019, local governments can hire electric buses (with a capacity of more than 12 people) without paying GST.

1.1.4.24 *Recent Law amendments*

The scope of the input tax credit has been broadened to include the following items:

1. Schedule III includes a wide range of activities and transactions.;
2. Vehicles capable of transporting more than thirteen passengers (including the driver), ships, and aeroplanes;
3. Repair and maintenance services for automobiles, watercraft, and aeroplanes that may be financed; insurance services.
4. Goods or services that an employer must supply to its employees in accordance with any currently in effect legislation.
5. A set of goods or services that an employer is required by law to offer to its employees.
6. For inputs and capital sent on job work, the Commissioner has the authority to extend the time restriction for return up to one year and two years, respectively.
7. In the case of any treatment or procedure done on items that were brought into India for a short period of time and subsequently returned to their country of origin, the supply location would be outside India.

Under Schedule III, the following transactions will be considered as zero supply (zero tax):

1. Without entering India, the supply of commodities from a non-taxable region to another non-taxable territory
2. The distribution of commodities from a warehouse to anybody before they are cleared for home use;
3. High seas sales may necessitate a large supply of items

Credit/debit notes may be issued for numerous invoices issued throughout a Financial Year by registered people. The Appellate Authority and the Appellate Tribunal have pre-deposit limits of Rs. 25 crore and Rs. 50 crore, respectively, that must be paid before submitting an appeal. It is possible to recover from many individuals, even if they are located in separate states/territories.

1.1.4.25 Others

Centralized Appellate Authority for Advance Ruling (AAAR) has been approved in principle to handle situations when two or more State Appellate Advance Ruling authorities have issued conflicting judgements on the same topic. It would go into effect when the legislation is revised. Through the budgetary approach, governments might continue to repay existing tax incentives from the federal or state level of government. Schemes as they currently exist will be repealed under GST. CSD will receive a 50% reimbursement of the GST it paid (Défense Canteens).

A centrally issued UIN will be provided to every Foreign Diplomatic Mission or UN Organization by the Central Government to process their reimbursement requests. Each tax category would have its own cash ledger. GSTN and the accounting authorities will be consulted on the final details of the implementation. GSTN will give free accounting and billing software to small taxpayers. When an outgoing international visitor purchases indigenous items from retail establishments located in the international airport departure area outside immigration controls, they are eligible for a tax return under a new programme that takes effect on July 1, 2019.

1.1.5 The Design of Indian GST

The Indian GST was largely shaped by the input and advice of the GST Council, which was established by a unanimous resolution by the Central Government and all State Governments. The following are some of them:

1.1.5.1 Concurrent dual model of GST

Because of the country's federal structure, India has implemented a dual GST approach.⁵⁶ The central government and the states each levy taxes on the same common basis, which is the provision of commodities and services, or a combination of the two.⁵⁷ The Central GST (CGST) and the State GST (SGST) would be the two types of taxes that would be imposed by the federal government⁵⁸ and the states⁵⁹, respectively.

⁵⁶ Thirteenth Finance Commission, *Report of the task force on Goods and Services Tax*, (Jan. 05, 2020) https://fincomindia.nic.in/writereaddata/html_en_files/oldcommission_html/fincom13/discussion/report291209.pdf.

⁵⁷ *Id.* at 5.

⁵⁸ This refers to a single National level GST to be levied and collected by the Central Government.

⁵⁹ This refers to Provincial level GST to be levied and collected by the State Government.

Under no legislative authority, UTGST (Union territory tax) would be referred to as the state GST (State Tax / SGST). On all taxable intra-State supplies, the CGST and SGST/UTGST must be imposed.

1.1.5.2 The IGST Model

The integrated GST (Integrated tax / IGST) would be applied to all interstate sales of goods and services. India's IGST model is a one-of-a-kind contribution to the field of value-added tax. The proposed system calls for a federal 'Integrated Goods and Service Tax' to be applied to all sales made between states. When an inter-State vendor acquires goods and services, he or she is responsible for paying any applicable taxes on such goods or services. The exporting state will send the SGST credit utilised to pay IGST to the central government. The individual who is based in the destination state will be able to claim credit for IGST when he or she pays his or her home state's output tax. The credit for IGST utilised to pay SGST would be transferred to the importing State by the Centre. As a clearinghouse mechanism, the Central Agency will validate the claims, and tell the appropriate governments to transfer the monies, according to the relevant information provided.⁶⁰

The IGST Model has the following significant advantages:

- a) Maintaining a continuous ITC chain for cross-border transactions.
- b) The interstate provider or recipient does not have to pay any taxes up front, and there is no significant blocking of cash.
- c) In the exporting state, there is no refund claim because the ITC is already used up while paying the tax.
- d) Self-monitoring model.
- e) Business to business and business to consumer transactions are taken into consideration in the model.

1.1.5.3 Tax Rates

Four rates, namely 5%, 12%, 18%, and 28% have been established because to the unique socio-economic backdrop in India. The tax is also not applied to a large number

⁶⁰ Upender Gupta, *Integrated Goods and Services Tax (IGST)*, 28.2 NLSI Rev 134, 135-36 (2016).

of goods and services. Since precious metals and inexpensive housing are exempt from the “four-tax-slab rule,” their tax rates are set at 3 percent and 1 percent, respectively. An additional 0.25 percent premium applies to uncut diamonds, precious gemstones and the like. Taxes on some high-end and low-end goods, including as tobacco and tobacco products, pan masala, aerated water, and motor vehicles, are raised above the 28% top rate in order to make up for any revenue lost by the states as a result of the implementation of the Goods and Services Tax.⁶¹ In addition, the public now has access to a list of items and services for which a reverse charge will be applied.

1.1.5.4 Compensation to States

State governments will be compensated under the Goods and Services Tax (Compensation to States) Act, 2017 for the revenues they lost due to the introduction of the tax. Five years of compensation will be paid to a state after it enacts its state sales tax act. It is believed that the year 2015-16 will be used as the “base year” for determining compensation amounts in any given financial year. The five-year revenue growth rate for a state is expected to be 14 percent each year. Revenues from state taxes, such as VAT, CST, entrance tax, municipality tax, and taxes on the luxury are included in the base year’s tax revenue.⁶² Revenue from taxes on the sale of alcoholic beverages for human use and five petroleum products specifically identified for this purpose will be excluded from the calculation of the base year income. There are some items and services that are subject to a GST Compensation Cess in order to raise money for the compensation cess.

1.1.5.5 E-Way Bill System

Electronic way legislation is a radical departure from the Sectoral Enforcement System that had previously been in place. A single e-way bill will be issued for all shipments across the country, making it easier for carriers to transfer products across the country. As of April 1, 2018, all interstate shipments of commodities must use the e-way bill system. States were given the option of selecting a date between 03.06.2018 and

⁶¹ B.M. Munde, *Perspective of GST (Goods and Service Tax) in India*, 5 Int. J.I.R.S.E.T. 45, 49-50 (2016).

⁶² Harvinder Bhalla, *Goods and Services Tax (GST): Impact, Challenges and Opportunities*, Int.J.B.M.S. R. 189, 192-94 (2017).

03.06.2018 for intra-state shipments. Last but not least, NCT of Delhi implemented intra-State e-way bill laws starting on June 16, 2018. For example, distance may now be automatically calculated for e-way bill creation using PIN numbers, and multiple e-way bills can no longer be generated against a single invoice.

1.1.5.6 Anti-Profiteering Mechanism

Increased inflation and commodity prices have been linked to the introduction of GST in a number of nations throughout the world. This occurred despite the fact that a tax credit was available.⁶³ This was taking place as a result of the supplier engaging in illicit profiteering by failing to pass on the advantage to the customer. Any reduction in the tax rate or increase in input tax credit should have been passed on to the receiver in the form of a price reduction.⁶⁴

The Central Government has established the National Anti-profiteering Authority (NAA) under GST to investigate allegations of non-passing of the advantage of decreased tax incidence.⁶⁵ After two years, unless the Council advises differently, the Authority will come to an end when the Chairman takes up his post in his new position. Tax rate reductions and input tax credit benefits may be assessed by the Authority to see if they have been passed on to the receiver through a decrease in pricing. After an investigation, it can require price reductions, impose penalties, revoke registrations, or take any other action it deems appropriate.⁶⁶

1.1.5.7 Concept of Supply

In contrast to the current notion of taxing the production of commodities, the sale of goods, or the provision of services, GST would be imposed on the supply of goods or services. Manufacturing, selling, bartering, exchanging and transferring are all part of

⁶³ Wan Heng Choon, GST and Anti-Profiteering-Tackling the Pricing Issue, *The Edge Malaysia* 79, 86-87 (2014).

⁶⁴ Sara Jain and Swapnil Singh, *The GST Anti-Profiteering Clause: Current Scenario and Way Forward*, 6.1 RFMLR 103, 106-07 (2019).

⁶⁵ R. Nair Sthanu, *Price Monitoring and Control under GST*, 52 EPW 1141, 1145-47 (2017).

⁶⁶ Dhanshree Sharma, *A Second Bite at the Anti-Profiteering Apple Under Goods and Service Tax*, RFMLR GST Spl. Ed. 88 (2020).

it. In addition, it contains supplies that are created without thought when they are made in certain circumstances.

1.1.5.8 Threshold Exemption

If the combined annual revenue of North-east India, Telangana and Uttarakhand is less than Rs. Forty millions and Rs. Twenty millions respectively, those states would be exempt from GST registration and funding (in the other states). The GST registration and payment thresholds for service providers are Rs. twenty millions and Rs. ten millions, respectively (in case of States of north-east). Both the CGST and the SGST benefit from a single threshold exemption. The threshold exemption, on the other hand, does not apply to commodities supplied between states.

1.1.5.9 Zero rated Supplies

Products and services exported are not taxed. SEZ developers and SEZ units are exempt from sales tax on any goods and services provided to them. Zero rating can be obtained either by paying integrated tax, or by issuing a bond or a Letter of Undertaking that guarantees payment of integrated tax.

1.1.5.10 Cross-utilization of Input Tax Credit (ITC)

All taxes can be paid using IGST credit. Only CGST and IGST may be paid with CGST credit. If you have SGST credit, you can only use it to pay SGST or IGST. The following are the possible uses for the credit:

- a) Payment of CGST and IGST in such sequence was permitted under the ITC of CGST.
- b) Payment of SGST and IGST in such sequence was permitted by SGST ITC.
- c) Payment of UTGST and IGST in that sequence was made possible thanks to the ITC for UTGST.
- d) IGST, CGST, and SGST/UTGST were all eligible for ITC under IGST.

SGST/UTGST cannot be paid using CGST ITC, and the reverse is true for CGST ITC. It has been stipulated that IGST balances must be emptied before the use of CGST and/or SGST can take place.

1.1.5.11 Settlement of Government Accounts

Payment of IGST is made from the credit of SGST, which is remitted back to the State from whence it was collected. This process would be repeated on a regular basis. The IGST utilised to pay the SGST will be transferred to the destination state in the same way by the Centre. In addition, the Centre will transmit to the consumption state the State GST part of Integrated GST collected on business to consumer supplies. Payments are made according on the data included in tax returns submitted by individuals.

1.1.5.12 Modes of Payment

The Centre and the State will settle their accounts on a regular basis to ensure that the credit of SGST utilised to pay IGST is transferred to the Centre by the originating State. As with SGST, the Centre will send the IGST used to pay it on to the State receiving it. SGST collected on business to consumer supplies would also be distributed to the consumption state by the Centre. A taxpayer's tax return would be used to determine how much money should be sent.

1.1.5.13 Tax Deduction at Source (TDS)

Recipients of supplies are required to deduct 1% tax from the payment or credit they make to the provider when their supply exceeds two lakh fifty thousand rupees in value under a contract, which is defined as the entire value of supply. The TDS provision has come into effect as of October 1, 2018. Certain Ministry of Défense agencies have been granted exemption from the TDS regulations.

1.1.5.14 Refunds

A tax refund can be requested by a person who has paid the tax, or by anybody else who has been affected by the tax, within two years of the date of the tax bill. Additionally, zero-rated supplies and an inverted tax structure both offer a way to get back any unused ITC credits.

1.1.5.15 *Tax Collection at Source (TCS)*

Payments made to suppliers supplying goods or services through e-commerce portals are subject to withholding of tax at a percentage not to exceed 2% of the total profit of chargeable supplies by the platform providers. Since October 1, 2018, the Tax Collection at Source provision has been in force.

1.1.5.16 *Assessment by assessee*

Assessment of levy by assessee owed by taxable individuals has been the new standard practise. On a case-by-case basis, audits of registered individuals will be carried out. Short-payment or non-payment of tax or an incorrect refund can be raised within three years after the deadline for filing the yearly return or the deadline of the faulted refund in typical instances. The time limit for raising a claim for short-payment or non-payment of tax or erroneous refund and its adjudication in the case of fraud, suppression, or wilful misstatement is five (5) years from the date of the erroneous refund.

1.1.5.17 *Recovery of Arrears*

Detainment and sale of commodities, mobile and immovable property of the delinquent taxable person can be used to recoup tax arrears.

1.1.5.18 *Appellate Tribunal*

For appeals against decisions made by the Appellate Authority or the Revisional Authority, the Central Government will set up the Goods and Services Tax Appellate Tribunal. The SGST Act would be amended by each state to include the provisions pertaining to the Tribunal.

1.1.5.19 *Advance Ruling Authority (AAR)*

States would establish an Advance Ruling Authority to allow taxpayers to get a binding answer from the tax department on tax issues. Under the CGST Act, the government would have the power to do so.

1.1.5.20 Transitional Provisions

To ensure a seamless transition for existing taxpayers, extensive transitional arrangements have been made.

1.1.5.21 Assimilation of all levies

The Union levies and collects a variety of taxes and duties, such as an import duty, duties of distillation (drugs and sanitary treatments), supplementary obligation (goods of particular importance), added duty (textile materials and textile products), and a service tax. The list included contained service taxes, as well as other taxes and fees that were tied to the delivery of products or services. Central Excise duty was included in this list of taxes and charges. Among the state taxes imposed and collected by the state governments: State VAT, Central Sales and Purchase tax, Luxury and Entrance tax, Entertainment tax (save for those charged by municipal authorities), Taxes on Advertising, and Taxes on Lotteries, Betting, and Gambling.

1.1.6 GST Legislations

There were five major pieces of legislation adopted by the Parliament: the Central Goods and Services Tax Act, 2017 (CGST Act, 2017), the State Goods and Services Tax Act, 2017 (SGST Act, 2017) the Union Territory Goods and Services Tax Act, 2017 (UTGST Act, 2017) The Integrated Goods and Services Tax Act, 2017 (IGST Act, 2017) and the GST (Compensation to States) Act, 2017. All other provinces and territories with legislatures have enacted the SGST Acts (excluding J&K). J&K approved the SGST Act on July 8, 2018 and the CGST Act extended to J&K, resulting in economic unity of India. There were several proposals made by the GST Council at its 28th meeting, which took place on July 21, 2018 in New Delhi. Now, these changes are referred to as “the Central Goods and Services Tax (Amendment) Act, 2018,” “the Integrated Goods and Services Tax (Amendment), 2018,” “the Union Territories (Goods and Services Tax) Amendment Act, 2018,” and “the Compensation to States (GST) Amendment Act, 2018,” as of February 1, 2019.

On June 22nd, 2017, the first notifications of the GST and CGST were made available. There have been a number of notifications since then, including alerts to sections,

notification of regulations, amendments to rules, and requests to waive fines. These notifications are included in the UTGST, the IGST, and GST (Compensation to States) acts, respectively. A total of 94 rate notifications are included in the Integrated GST Act, Union Territories GST Act, and GST (Compensation to States Act). All States have served identical notices in compliance with their respective SGST Acts. There have been 114 circulars, 18 orders and 14 Removal of Difficulty Orders issued by CBIC, covering themes such as the appointment of appropriate authorities, the exports cases and the extra deadlines for filling out different forms, among others.⁶⁷

1.1.7 Role of Central Board of Indirect Tax and Custom (CBIC)

The CGST and IGST laws, which would fall solely under the purview of the federal government, have been drafted by the CBIC. Aside from that, the CBIC is well-prepared to handle the daunting implementation issues. Increases in the number of taxpayers have been substantial. For such massive data sets, CBIC's current IT infrastructure has been appropriately scaled up. Work-flow software like ACES (Automated Central Excise & Service Tax) will need to be re-engineered in light of the legislative regulations and procedures for GST. An increase in human resources is required to deal with a huge GST taxpayer base spread over the country's length and breadth. It is imperative that departmental officers have extensive training in areas such as accounting and information technology. Under NACIN's direction, a major four-tier training programme was implemented. More than 60,000 CBIC and state commercial tax officials will get GST law and procedural training as part of this programme.

CBIC would be in charge of enforcing the CGST and IGST legislation. Tobacco goods and five certain petroleum products would continue to be subject to a central excise duty, which would be handled by the CBIC. Customs duties' levy and collection would likewise be handled by the CBIC, which would continue to operate. All anti-profiteering matters shall be thoroughly investigated by the Director General of Anti-Profiteering, CBIC and his advice should be submitted to the National Anti-Profiteering Agency. CBIC has been a key player in the implementation of GST. Feedback and

⁶⁷ Eva Van Leemput and Ellen A. Wiencek, The Effect of the GST on Indian Growth, Board of Governors of the Federal Reserve System (Feb. 25, 2020, 10:54 AM) <http://www.gsthelplineindia.com/blog/wp-content/uploads/2017/06/Impact-of-GST-on-Indian-GDP.pdf>.

Action Room was established up to monitor the difficulties experienced by taxpayers in implementing GST, and to serve as a direct link between the taxpayer and government.

1.1.8 Goods and Service Tax Network (GSTN)

Section 25 of the Companies Act, 1956 was used by the Government to set up the Goods and Service Tax Network (GSTN) as a private business. In order to assist taxpayers, GSTN plans to offer three primary services: registration, payment, and tax return. Additionally, the GSTN will be constructing back-end IT modules for the 27 states that have chosen to implement GST. As a Managed Service Provider, Infosys has been selected (MSP). A Commissioner of Commercial Taxes (CCT, Karnataka) and 73 IT, ITES, and financial technology enterprises have joined the GST Suvidha Providers (GSPs). GSPs would create apps that taxpayers could use to interact with the GSTN.⁶⁸

The federal government owns twenty four and half percent of GST Network, while the province government has twenty four and half percent. HDFC and HDFC Bank account for twenty percent; ICICI Bank accounts for ten percent; NSE Strategic Investment accounts for ten percent; and LIC Housing Finance accounts for ten percent of non-government financial institutions' share. GSTN's ownership structure was altered during its 27th meeting, held on May 4th of 2019. In light of the 'state service' that GSTN delivers, the GST Council determined that GSTN should become a government-owned corporation (GOC). A total of Rs. 5.1 crore worth of equity owned by non-governmental organisations was therefore authorised for purchase by both the Central and State Governments, totalling 51% of all shares. Based on role-based access, GST systems are designed. The tax official with jurisdiction, as per GST legislation, can access the data by identifying apps such as registration, return, view ledger, etc. The taxpayer has access to his own data through these applications. In accordance with the legislation, audit agencies have access to data. No one else has access to the data that GSTN has.⁶⁹

⁶⁸ Karthik Sundaram, *GSTN-The New Network*, 28.2 NLSI Rev 114, 119-120 (2016).

⁶⁹ SUMIT DUTT MAJUMDER, *GST IN INDIA* 419-420 (2nd ed., 2016).

1.1.9 GST: A Game Changer For Indian Economy

A wide range of economic sectors would gain from the introduction of a new tax on goods and services. Few of them are as follows:⁷⁰

1.1.9.1 Benefits to the exporters

Reducing the cost of locally produced products and services would be made possible by the inclusion of key central and state taxes in the GST, the complete and thorough setoff of input goods and services, and the eventual elimination of the Central Sales Tax (CST). Exports from India will benefit from the increased competitiveness of their products and services on the global market. The cost of compliance will be reduced significantly due to the universality of tax rates and processes across the country.

1.1.9.2 Benefits to small traders and entrepreneurs

Small enterprises can now apply for GST registration under the new GST threshold. For service providers, the threshold is Rs. 20 lakhs (\$10 lakhs) and for goods suppliers, it is Rs. 40 lakhs (\$20 lakhs) before they must register under the Goods and Services Tax (GST). Previously, various tax systems necessitated several registrations; with GST, just one registration is required in a single state. Businesses having a combined annual revenue of up to Rs one crore and fifty lac i.e. Rs. Seventy five lac in some situations) as a supplier of products and restaurant services, or Rs 50 lakhs as a service provider, are also eligible for an extra benefit under the Composition Scheme. Small businesses will be able to increase their reach across the country with minimum expenditure if a single national market is established across the country.

1.1.9.3 Benefits to agriculture and Industry

Industry, trade, and agriculture will benefit from a bigger and more comprehensive set-off for input taxes and service taxes under the new GST, as well as a gradual phase-out of the CST. As a consequence of a wider tax base and improved tax compliance, an ordinary industry, trade, and agricultural dealer may see a reduction in their tax burden as a result.

⁷⁰ Dinesh Kumar Agrawal, *Goods and Services Tax in India: A Roadmap*, PL (CL), 28, 33-34 (2010).

1.1.9.4 Benefits for common consumers

More completely than was previously feasible under the CENVAT/VAT regime with a consecutive chain of set-off from the manufacturer's point to the trader's point will be abolished with the implementation of GST of CENVAT, State VAT and service tax cascading effects. The Central Sales Tax (CST) is being phased out in favour of the Goods and Services Tax (GST). Assuming nothing else changes, consumers would see a reduction in the tax burden on products as a result of the GST.

1.1.9.5 Promote Make in India

The Make in India campaign and foreign investment will benefit from a unified single national market created by the GST. It will keep taxes from cascading and make things more affordable, which will lead to an increase in aggregate demand. Laws, processes, and tax rates will all be standardised as a consequence. Increased export and industrial activity, more jobs, and higher GDP are all expected as a result of this policy. In the long run, this will aid in the eradication of poverty by creating more jobs and financial resources. Increasing the competitiveness of Indian exports by more effectively neutralising taxes, in particular on exports, is one way to do this. A more favourable investment climate will help spur economic growth throughout the country. E-commerce evasion is reduced by reducing pricing arbitrage between neighbouring states, as well as between intra and interstate supply. Since lower prices lead to greater consumption and increased consumption results in more output, the average tax burden on businesses is likely to decrease as well. This should help spur economic development across many industries. India will become a manufacturing powerhouse as a result of this.

1.1.9.6 Ease of Doing Business

The Make in India campaign and foreign investment will benefit from a unified single national market created by the GST. It will keep taxes from cascading and make things more affordable, which will lead to an increase in aggregate demand. Laws, processes, and tax rates will all be standardised as a consequence. Increased export and industrial activity, more jobs, and higher GDP are all expected as a result of this policy. In the long run, this will aid in the eradication of poverty by creating more jobs and financial

resources. Increasing the competitiveness of Indian exports by more effectively neutralising taxes, in particular on exports, is one way to do this. A more favourable investment climate will help spur economic growth throughout the country. E-commerce evasion is reduced by reducing pricing arbitrage between neighbouring states, as well as between intra and interstate supply. Since lower prices lead to greater consumption and increased consumption results in more output, the average tax burden on businesses is likely to decrease as well. This should help spur economic development across many industries. India will become a manufacturing powerhouse as a result of this.

1.1.10 Challenges & Future Ahead

There will always be difficulties and problems with every new change. The government, business community, tax administration, and even the average citizen of the country would all face new issues as a result of the GST. A few of these issues include adjusting to the new administration's policies and IT systems, as well as the need to file and reconcile tax returns and pass along transition credit to employees. Taxpayers face difficulties in complying with the law because of inadequate IT infrastructure and system delays. MSME are unfamiliar with GST's routines and procedures, such as the need to file returns regularly and electronically.

It has been a priority to include proposals from businesses, consumers, and taxpayers around the country, as well as devise short-term and long term solutions. On April 1st, 2018, the E-way bill system for interstate transportation of products was effectively launched. States were given the option of selecting a date between 03.06.2018 and 03.06.2018 for intra-State deliveries. Too far, all states have announced e-way bill rules for intrastate goods, with the exception of the National Capital Territory of Delhi, which implemented them on June 16, 2018. E-way bills for interstate and intrastate transportation have produced 37.12 crore and 3.17 crore, respectively, as of the 31st of May 2019. The NAA has begun investigations into a number of anti-profiteering allegations and has issued orders in some cases to safeguard the interests of consumers.

Refunds may now be filed electronically, together with any supporting documents/invoices, via the same site in order to speed the approval process. The CBIC

and the States have issued clarifying Circulars and notices in this respect. Taxpayers who have had difficulty using the GST portal because of technological issues have been given access to an IT grievance redressal procedure. Because it has succeeded a convoluted indirect tax system by one that is straightforward, open, and supported by modern technology, GST is certainly a game changer for the Indian economy. By removing obstacles to cross-border trade and business, it would help unite India as a single market. It would improve the ease of doing business in India and give a boost to the Make in India drive by removing cascading taxes and decreasing transaction costs. GST will lead to a single tax, a single market, and a single country.

In this backdrop, this thesis mainly focuses on how this tax system will work, and discusses the problems likely to be faced by the Governments while introducing and implementing this tax. It also briefly touches upon the present regime of indirect tax especially State level VAT and Central Service Tax. It further, makes an attempt to understand the impact of GST on Indian economy and various sectors such as food industries, housing and construction industries, shipping industries, IT enabled services etc. This research also highlights on Constitution (One Hundred and First Amendment) Act, 2015 for the Goods and Services Tax in India.

1.2 STATEMENT OF PROBLEM

The massive indirect tax systems aimed for fostering a country's economic development are known as the Goods and Services Tax (GST). Till date, the Goods and Services Tax has been adopted in more than 150 nations. In India, in 2000, the administration of the Vajpayee government proposed the notion of a Goods and Services Tax in India as an indirect tax reform which was ratified by the Parliament in 2015 and went into effect on July 1, 2017. But there is a strong backlash against its execution. There is one school of thought who considers implementing GST as an indirect tax reform would be a threat for federal structure of the constitution in the form of fiscal relationship between union and states and another school of thought takes it in a good spirit. By making most of the things online under GST from registration to return, there may be cyber issues under its preview. It would be fascinating to learn whether or not this new GST policy helps or hinders the country's progress. As a result, this title was chosen by the researcher for the aim of the study.

1.3 REVIEW OF LITERATURE

In a study on the economic effects of the current VAT rates structure, Bikas The authors have investigated the correlation between the VAT rate and the EU economy, as well as the impact of the VAT rate on macroeconomic indices. The authors draw the conclusion that the rate of value-added tax is positively correlated with several measures of the economy like GDP, per capita income and consumption, exports, imports, etc.

In GST Ready Reckoner, ‘V. S. Datey’⁷¹ provides entire gamut of GST starting from Charge of Tax, Composition Scheme, Exemptions, Input Tax Credit, Refunds Demand and Recovery, Offence/Penalties and Appeals etc. with the statutory provisions, relevant case laws and ample solved practical questions and practical examples.

In GST in India, ‘Sumit Dutt Majumder’⁷² discusses the laborious efforts and great troubles of the concerned authorities who had played a pivotal role in implementing and framing GST. It also talks about the challenges ahead in various sectors and how the state governments will accept the new indirect tax reform by the name of GST in their states.

In Goods and Service Tax – New Face of Indirect Taxes in India, ‘Abhishek A. Rastogi and Aditya Kumar’⁷³ provide the proper understanding of the new concept of Goods and Service Tax in India and discusses about the whole indirect taxes in India. The current indirect tax structure is needed to be reformed by a comprehensive Goods and Service Tax in India.

In Indirect Tax in 2011 (A Review of Global Tax Developments and Issues), ‘Philip Robinson’⁷⁴ describes the indirect taxes structures applicable in India with respect to the needed reforms in it. This book further compares the existing indirect tax system in

⁷¹ V. S. DATEY, “GST READY RECKONER”, Taxmann, 6th ed., 2018.

⁷² SUMIT DUTT MAJUMDER, GST IN INDIA, EBC, 2nd ed. 2016.

⁷³ ABHISHEK A. RASTOGI & ADITYA KUMAR, “GOODS AND SERVICE TAX – NEW FACE OF INDIRECT TAXES IN INDIA”, Taxmann, 2nd ed, 2017.

⁷⁴ PHILIP ROBINSON, “INDIRECT TAX IN 2011 (A REVIEW OF GLOBAL TAX DEVELOPMENTS AND ISSUES)”, E & Y, 3rd ed. 2012.

India with the taxes applicable in foreign countries and reforms that is needed in Indian indirect tax.

Ian Murray-Jones⁷⁵ provides a thorough explanation of the GST and how it interacts with other taxes, such as income tax and the Fringe Benefit Tax, in the Australian GST Handbook. Readers will be able to better understand the GST system and avoid common blunders and traps with the help of this manual. Explains how businesses may benefit from GST, as well as how they can adhere to the rules set out by that tax. For the first time, the Handbook is written in an instructional tone and covers a wide variety of issues in more depth than any earlier GST guide. This book examines how the GST system works in the real world, as well as relevant legislation, court rulings, and other precedents. Students benefit from having a full understanding of all areas of a subject by studying overviews and working examples.

Author Philip McCouat⁷⁶ provides a comprehensive and practical explanation of how GST works as well as how to cope with it in practice in his book, Australian Master GST Guide. It's chock-full of real-world examples, checklists, and techniques for navigating the complex world of GST. Including new information on how to get a GST refund, doing business online, and dealing with Tax Office audits, this revised version is a go-to resource for anybody dealing with GST concerns.

In Time to prepare for GST, 'Amrita Mitra'⁷⁷ discusses the introduction of GST in India and notes the key taxes likely to merge into the GST. It considers the operation of the proposed GST regime, including regarding taxable events, the types of levy, rates and incentive schemes. It further lists steps for companies to take in preparation for the introduction of GST. It also highlights areas of concern relating to the proposed GST regime and includes a diagram illustrating the operation of the integrated GST (IGST) levied on inter-state transactions of goods and services.

In the road ahead for the GST, 'Satya Poddar and Shalini Mathur'⁷⁸ discusses the introduction of an Indian Goods and Services Tax and considers the aims of the tax,

⁷⁵ IAN MURRAY-JONES, AUSTRALIAN GST HANDBOOK, Thomson Reuters (Professional), 1st ed. 2014.

⁷⁶ PHILIP MCCOUAT, AUSTRALIAN MASTER GST GUIDE 2015, CCH, 16th ed. 2015.

⁷⁷ Amrita Mitra, *Time to prepare for GST*, Int. Tax R., November Supp. (India Quarterly), 31-32, 2010.

⁷⁸ Satya Poddar and Shalini Mathur, *The road ahead for the GST*, Int. Tax R., 23-24, 2010.

how it will operate as a dual levy and the effect of tax cascading. It highlights issues which remain to be addressed, looking at: (1) the fiscal autonomy of Indian states from the central Government; (2) whether the GST regime should apply to real property, petroleum products and financial services; (3) the treatment of the supply of intangible assets; and (4) the adoption of a single rate for the food and agricultural sectors.

In India's Goods and Services Tax – A Primer, 'Amol Agrawal'⁷⁹ has attempted to understand the impact of GST on Indian economy. It will start with a snapshot of the current taxation system in India and how GST will change the taxation system. It then looks at the GST design in India which has been adapted to suit the Indian taxation system and ends with the probable impact of GST on Indian economy and also touches on experience of GST in other international economies.

In India on the threshold of major indirect tax reform, Nihal Kothari⁸⁰ provides an overview of India's indirect tax system, highlighting key issues, and discusses the key elements of the proposed goods and services tax (GST) regime. This article further explains the operation of GST and considers the feasibility of its implementation in India, the proposed dual GST model, the extent of progress on the GST structure and obstacles to its implementation in India, and the benefits of GST for the Indian economy and for stake holders.

In GST: An Overview, 'Pritam Mahure'⁸¹ discusses to make an attempt to demystify FAQs regarding GST and further provides that it is a matter of few months before GST becomes a reality.

In National-Level GST (VAT) will be introduced from April 1, 2010, 'Sitaram Agarwal'⁸² provides an overview of Goods and Services Tax in India and how it will be implemented in India. It further discusses about its practical problem in the area of indirect taxes.

⁷⁹ Amol Agrawal, *India's Goods and Services Tax – A Primer*, STCI Primary Dealer Ltd.

⁸⁰ Nihal Kothari, *India on the threshold of major indirect tax reform*, Int. Tax R., 9-13, 2011.

⁸¹ Pritam Mahure, *GST: An Overview*, GST Cases, 31-36, 2010.

⁸² Sitaram Agarwal, *National-Level GST (VAT) will be introduced from April 1, 2010*, 37, TCR, 301-307, 2006.

In *Sensible Tax moves for GST*, ‘Mahesh C. Purohit’⁸³ talks about a small negative list of services that is in order, but treats healthcare and education as exports. Service tax is fraught with ambiguities on the definition of taxable services, leading to disputes and complexities.

1.4 OBJECTIVE OF THE RESEARCH

This study set out to accomplish the following goals:

1. To learn about the history of India’s GST and how it came to be.
2. To compare Value Added Tax with GST and analyze the need for GST.
3. To analyze Constitutional Amendment for Goods and Services Tax.
4. To examine the legal framework of Indirect taxes with special focus on GST.
5. To compare the single and dual Goods and Services Tax as implemented in France and Canada and to draw inference regarding the suitability for Goods and Services Tax in India.
6. To analyze the issues and challenges in implementation of Goods and Services Tax in India and evaluate the impact of Goods and Services Tax on Indian economy and how it is going to be benefitted.
7. To do litmus testing of the federal structure of the constitution after the implementation of GST in India.
8. To analyze the cyber issues involved under GST that may increase in due course of time.
9. To suggest amendments in present Goods and Services Tax for better impact on Indian economy.

1.5 RESEARCH QUESTIONS

The following queries have been addressed by the research:

1. Why is GST measured as the most Preferred Tax Structure across the globe as well as India?

⁸³ Mahesh C. Purohit, *Sensible Tax moves for GST*, ET, 1-4, 2011.

2. How GST is going to remove cascading effect of tax under indirect taxes in India where VAT is already in existence?
3. How the GDP of country is going to be raised by the implementation of GST in India especially Make in India?
4. What is single and dual GST and what are the merits and demerits of both?
5. What are the nations that has implemented single and dual GST successfully in their countries?
6. What will be the impact on Consumers, Manufacturers, Revenues and Indian economy due to the implementation of Goods and Services Tax in India?
7. Will there be any cyber threat by making most of the things online under new GST regime starting from registration till return and refund?
8. How will the contemporary challenges be regulated under GST like crypto currency etc.?

1.6 HYPOTHESIS

- In principle GST is an ideal indirect tax and will boost the economy of the country but like most of the laws have their implementation problems so is the case with GST.
- GST is an extended version of VAT and aims to cover all goods and services. VAT covers mostly goods and GST covers all goods and services. GST will get rid of weaknesses in the VAT structure.
- With a GST in place, all the indirect taxes should be merged into one tax that is GST. Ideally, these taxes will be collected by the Centre which will then be transferred to the States via a rule/formula. This will require changes in the constitution as Centre can only tax goods at production stage and on Services. The States can only tax sale of goods.
- States cannot tax services and Centre cannot tax sales of goods. The States cannot also tax imports. All this needs to be changed with the GST and hence would require amendments in the Indian Constitution. That is the reason why the 122nd Constitution Amendment Bill has been introduced and passed in the form of Constitution (One Hundred and first Amendment) Act 2015.

1.7 RESEARCH METHODOLOGY

The entire work of this research is **Doctrinal** which includes secondary sources. The research is conceptual in nature. The data for the present study has been collected through reliable sources, to ascertain the impact of GST. It has been analyzed logically and chronologically on qualitative and quantitative basis. It has followed by interpretation of data with examples and case studies. The present research is a combination of following research methods:

1.7.1 Evolutive/ Historical Study

The researcher was able to grasp the idea behind Goods and Services Tax as an Indirect Tax reform in India by employing the evolutionary approach. This method was useful in pinpointing the exact location of the reform in India. Looking back at how taxes, and GST in particular, have changed throughout time might provide light on why they're needed.

1.7.2 Descriptive and Exploratory Study

The goal of the descriptive method is to learn exactly what took place. This process entails figuring out where things stand with regards to a certain problem, issue, or query. With the ultimate goal of identifying any flaws or holes in the legal and administrative process, the researcher has detailed the type of mechanism that has been developed to safeguard taxpayers. The researcher also found it useful to learn and detail the official stance on how statutes are to be interpreted. In a similar vein, the researcher in the current thesis has discussed the various notions of tax law.

1.7.3 Comparative Study

The researcher also wanted to examine the differences between value-added tax (VAT) and goods and services tax (GST) and between the respective legislation in developed and developing countries. The researcher has analyzed both the old GST constitutional amendment bill and the new GST constitutional amendment legislation. With this goal in mind, a comparison is conducted between the current VAT and the proposed GST in order to get insight into the strategies and procedures that will be used by authorities.

1.8 DATA COLLECTION TOOLS

Primary and secondary references have been used to acquire information. In order to better comprehend how tax law addresses the indirect tax problem, the researcher has looked other relevant statutes. The judicial tendencies while dealing the constitutional aspect of GST will be studied through a close examination of the courts' interpretations.

Primary Source of data includes the Statutes, Codes, Rules, Regulations and Bye Laws.

Secondary Source of data includes Scholarly Articles, Books, Law Journals, Committee Reports, Working Papers, Original Judgment and other materials from the web sources.

1.9 SCOPE OF THE STUDY

This study has revolved around the existing indirect taxes and steps taken by central government with regard to implement the Goods and Services Tax in India and its impact on GDP and Economy of India. It has also focused on the various committee reports, working papers and their recommendations, economic surveys, constitutional amendment to implement the Goods and Services Tax in a federal country, India and the current developments in this area. It has further emphasized on the impact upon France and Canada's economy.

1.10 SIGNIFICANCE OF RESEARCH

Our country's economy has benefitted greatly from the implementation of the Goods and Services Tax (GST). In addition, it has helped to promote compliance, reduce tax outflow, and boost tax revenue while making the export market more competitive, making the taxation system easier. In fact, some believe that the administration has been able to establish a new course now that GST has been implemented. GST was a long-delayed reform that was already in the works. This tax reform aims to eliminate all of the inconsistencies that was existed in the Indian tax system. According to the projections, this comprehensive tax reform has a substantial impact on India's economic development.

CHAPTER 2

CONCEPT AND ORIGIN OF GST

2.1 INTRODUCTION

When we have VAT in nearly every section of the nation and the system of central excise and service tax is well equipped with the CENVAT credit, the question of why we needed GST may surface at that point. This was necessary in order to conform to the globally observed phenomenon. It was necessary in order to alleviate the pressure that was being placed on the Central Excise. The introduction of a goods and services tax (GST) has almost certainly resulted in significant changes to the federal system of government that currently exists in our country. Under this system, individual states are also permitted to levy taxes on a variety of goods. Taxation is necessary in all civilized countries for a variety of reasons, including the funding of development initiatives, the financing of day-to-day activities necessary to preserve a democratic and egalitarian society, the management of the economy via fiscal policy, and the modification of consumer habits. The ability of national governments to collect income from taxpayers is contingent upon recognizing a balance between the rights of taxpayers and the authority of nations to levy taxes. As a direct result, the most significant challenge for nations is ensuring that taxpayers are treated with respect, righteously, and consistently whenever nation states use their power to charge taxes. When you consider that VAT is already in place across the country and that our national excise and commercial tax regime includes a Central VAT credit, you might question why we need GST. This was necessary in order to reflect the event on a global scale. The burden imposed by Central Excise needs to be lessened. The implementation of the goods and services tax (GST) has undoubtedly had an effect on the federal form of government that our nation maintains, according to which the states retain the authority to collect commodity taxes.

In this chapter, the researcher focused mostly on the idea of taxes, both direct and indirect taxes, as well as the Goods and Services Tax (GST), the difference between direct and indirect taxes, the global and Indian growth predictions, and the indirect tax system in India. Keeping all of this in mind, the researcher who worked on this chapter

conducted his research with two distinct goals in mind: (1) to teach a tax professional as well as a layman what a tax is, and (2) to educate people on the history of taxes and the Indian indirect tax system, including GST. Both of these goals were accomplished through the research that was conducted in this chapter. The purpose of this chapter is for the researcher to establish an overview of the Goods and Services Tax (GST) in India, as well as a full knowledge of this new tax, its origins, and some proposals from Indian specialists for how to implement it effectively. The researcher did his investigation in this chapter with the evident purpose of getting practical information regarding GST while keeping all of this in mind. In terms of the topics covered in this chapter, the researcher focused mostly on the concept of GST, as well as its history and context in India, in addition to providing some comments from industry professionals. The researcher has articulated the need for a successfully implemented Goods and Services Tax (GST) in India in a manner that is both short and very well written.

2.2 MEANING OF TAX

One of the first issues that comes to mind when we discuss taxation is, ‘What does tax mean?’ As a result, before digging into this taxation system, particularly the Goods and Services Tax, it is vital to understand what the term ‘tax’ actually means. The term tax comes from the Middle French word ‘taxer,’ which means ‘to condemn,’ and the Medieval Latin word ‘taxare,’ which means ‘to charge, value, compute, estimate.’⁸⁴

“As per Black’s Legal Dictionary, taxes are neither voluntary nor charitable contributions; rather, they are "any contribution that the government imposes under the name of toll, tribute, impost, duty, custom, excise, subsidy, help, supply, or other designation.”⁸⁵

Oxford’s Law Dictionary defines it as “a mandatory payment to the State’s coffers, imposed by the Government either directly on a taxpayer, such as income tax, capital gains or by various types of duty (e.g., road taxes, stump charges, and casino levies).”⁸⁶

⁸⁴ Webster’s New Encyclopaedic Dictionary 1062 (Revised ed. 1995).

⁸⁵ BRYAN A. GARNER, BLACK’S LAW DICTIONARY, 1594 (9th ed. 2009).

⁸⁶ ONATHAN LAW & ELIZABETH A. MARTIN, OXFORD DICTIONARY OF LAW 541 (7th ed. 2009).

In layman's terms, it refers to a compulsory contribution to state revenue levied by the government on personal income and corporate earnings, or added to the cost of certain products, services, and transactions.⁸⁷ Throughout history, governments and their functional counterparts have utilized taxation funds to carry out a variety of duties. Some examples include money spent on things like war and other forms of military action, public works projects, social engineering, and the like.⁸⁸ It denotes a tax levied by the government on personal income and corporate revenues that is applied to numerous items, services, and transactions.

According to a Judicial Dictionary, "tax is payable exclusively in respect of the income or gains of the assessee's business or profession, and would include interest as well."⁸⁹ In ***Matthews v Chicory Marketing Board***,⁹⁰ Latham Chief Justice of the High Court of Australia provided a concise explanation of the term "tax." According to the erudite Chief Justice, a "tax" is a mandatory exaction of money by a public body for public purposes that is enforceable by law and is not remuneration for services given.⁹¹

Taxation is also used by most modern governments to support welfare and public services. Education systems, health care systems, pensions for the aged, unemployment benefits, and public transit are examples of such services. Common public utilities include energy, water, and waste management systems. Governments utilize many types of taxes and alter the tax rates. This is done to disperse the tax burden among individuals or groups of people engaged in taxable activities, such as business, or to transfer resources among individuals or groups of people. Taxation serves four main purposes or effects: collection, transit, valuation, and political influence.⁹²

The primary objective is to create revenue, which is then used to fund infrastructure like roads, schools, and hospitals, in addition to more peripheral functions of government like market regulation and legal systems. Second, we want to redistribute

⁸⁷ Concise Oxford Dictionary of the English Language, 1134 (11th ed. 2006).

⁸⁸ Rajkumar S. Adukia, *A Study on proposed Goods and Services Tax framework in India*, SIMPLE TAX INDIA (JULY 25, 2020, 04:30 PM) <http://www.simpletaxindia.net/2009/11/e-book-on-gst-goods-service-tax-by-ca.html>.

⁸⁹ K. J. AIYAR, JUDICIAL DICTIONARY, 595-96 (15th ed. 2011).

⁹⁰ [60 CLR 263] p 276.

⁹¹ AIYER, *supra* note 88 at 596.

⁹² ADUKIA, *supra* note 87 at 15.

wealth from the wealthy to the less well-off. A third function of taxes is to raise or decrease the consumption of specific products. To discourage the use of particular products, such as cigarettes, taxes are imposed. A fourth impact of taxation has been representation, in which citizens expect responsibility from rulers or governments in exchange for paying taxes. There has been a lot of research done on the topic of taxation, and the results consistently show that income taxes and other forms of direct taxation led to greater accountability and better government than do other forms of taxation.⁹³

2.3 MEANING OF DIRECT AND INDIRECT TAX

According to the definition of tax, a tax is a financial burden imposed on individuals or property owners to sustain the government, a payment exacted by legislative power⁹⁴. A tax is not a voluntary payment or donation, but an imposed contribution exacted by legislative power.⁹⁵ According to the above-mentioned definition of Oxford's Law Dictionary, there is some confusion over what constitutes direct and indirect taxation, as well as the distinction between the two. Taxes can be either direct or indirect, and they can be paid in cash or in labor equivalents (often but not always unpaid labor).⁹⁶

A direct tax is a type of levy that is placed directly on the taxpayer and paid directly to the government by the people (legal or natural) who are subject to it. A direct tax is one that the taxpayer cannot transfer to someone else. Income tax, Corporation tax, Property tax, Inheritance (estate) tax, Gift tax, and other direct taxes are levied in India. While an indirect tax is one that is collected by an intermediary (such as a retail business) from the person who bears the final economic cost of the tax (such as the consumer), it can be passed to someone else by the taxpayer. An indirect tax may raise the price of goods, causing customers to pay the tax by paying more for the items. Prior to GST, indirect taxes in India included Customs Duty, Central Excise Duty, Service Tax, Sales Tax,

⁹³ *Id* at 9.

⁹⁴ India: an overview, *Direct and Indirect tax in India*, STATISTICAL YEAR BOOK, 71 (Aug. 12, 2020, 11:05 PM) http://mospi.nic.in/Mospi_New/upload/statistical_year_book_2011/SECTOR-1-INDIA%20AN%20OVERVIEW/CH-06-DIRECT%20&%20INDIRECT%20TAXES/DIRECT-INDIRECT%20TAX WRITEUP.pdf.

⁹⁵ *Id.*

⁹⁶ *Id.*

Value Added Tax (hereinafter VAT), and Securities Transaction Tax (hereinafter STT), among others.

When you pay directly Income Returns and Tax thereof etc. at your will, it is called Direct Tax and its failure makes you a law-breaker. When Tax Deducted at Source (TDS), Professional Tax, Sales Tax on Purchase of Goods, or Cess/surcharge etc. is deducted from you without your consent, by the seller and submitted to the Government, it is called Indirect Tax.⁹⁷

2.4 MEANING OF GST

When goods or services are sold or provided, the seller or service provider can claim an input tax credit for the tax he paid when acquiring the products or obtaining the service, under the GST (Goods and Services Tax) system.⁹⁸ An all-inclusive and broad-based tax on products and services is known as the Goods and Services Tax (GST). In essence, it's a tax on the final product that consumers buy. Each stage of the production-distribution chain is subject to GST, with the appropriate deductions for tax paid at earlier stages.⁹⁹

The tax rate on the majority of products and services remains the same, however depending on the needs of the country, some commodities or services have been deemed "exempt" or "zero rated." The entire system is designed in such a manner that the cascading effect is avoided, and the ultimate consumer suffers the burden of all taxes. Exports are often zero-rated in such a system, and all taxes paid when acquiring and manufacturing the items, including taxes paid on raw materials and services, are refunded to the exporter to make the exports competitive¹⁰⁰.

The vendors or service providers collect the tax from their consumer, who may or may not be the ultimate customer, and subtract the tax they have already paid before depositing it with the exchequer. This is quite similar to the VAT that is now in place

⁹⁷ Kaira, *what is the difference between Direct Tax and Indirect Tax*, Yahoo Inc. (Aug. 17, 2020, 11:52 PM) <http://in.answers.yahoo.com/question/index?qid=20080816004649AAanzwea>.

⁹⁸ Sudhir Halakhandi, *Goods and Service Tax - An Introductory Study*, THE CHARTERED ACCOUNTANT, 1595 (Aug. 18, 2020, 01:20 PM), http://icai.org/resource_file/96521595-1601.pdf.

⁹⁹ ADUKIA, *supra* note 87 at 25.

¹⁰⁰ *Id.* at 26.

in most states and may be referred to as National level VAT on Products and Services, with the exception that in this system not only goods but also services are included, and the tax rates on goods and services are typically the same.¹⁰¹

2.5 HISTORICAL CONTEXT OF TAX SYSTEM

In order to explain the evolution of GST, the researcher would want to first explore the history of taxes.

2.5.1 Origin of Taxation

As mankind learned to live in groupings and communities after the emergence of civilization, a need developed to generate cash for their shared well-being. They needed to develop a system in which men living in villages with joint families could all work and contribute to their safety, security, and well-being. People began travelling in search of food and pastures as a result of natural disasters such as floods, starvation, and cyclones, and they settled near valleys and rivers to build new cultures and civilizations¹⁰². Men developed a sense of brotherhood, which gave rise to a political system in which the powerful and strong became the defenders of the weak. It fell to the strong to collect a sum or an amount from every earning member of society, either in the form of cash or in a material pool, which became known as the Treasury. Tax was the term used to describe the contribution made by individuals of society to the general well-being of everyone. As a result, tax was considered in antiquity as a duty carried by each member of the community to contribute to the society's well-being and to take care of the common needs of the people.¹⁰³

2.5.1.1 Global Scenario

History of taxes may be summarized as follows country-by-country:

¹⁰¹ *Id.*

¹⁰² Dr. S. L. Peeran, "*Origin and Historical Development of Taxation*", MANUPATRA (Aug. 25, 2020, 02:35 AM) <http://www.manupatrafast.in/pers/viewdoctoc.aspx?sPath=Corporate%20Law%20and%20Taxation/andp4/indirecttax/articlescce/originandhistoricaldevelopment.htm&col=TX>.

¹⁰³ *Id.* at 28.

2.5.1.1.1 *Egypt*

Between 300 and 280 BC, the first dynasty of the Old Kingdom had a taxation system in place.¹⁰⁴ Pharaohs¹⁰⁵ of the ancient Egyptian dynasty would travel the country twice a year to collect taxes, according to historical documents.¹⁰⁶ Throughout Egyptian history, cooking oil was one of the most often taxed things in the ancient world because of its scarcity.¹⁰⁷ Finally, Egyptian taxes were mentioned in the Bible because they had become so well-known.¹⁰⁸ Other records include granary receipts written on limestone flakes and papyrus.

2.5.1.1.2 *Athens, Greece*

War was a way of life for the Athenians in Greece, and a costly one at that. As a result, the Athenians levied a levy known as ‘epiphora’ on their citizenry to cover the costs of war. The fact that no one was spared from paying it made it widely regarded as the first truly democratic taxing system, especially because the funds were often returned to the populace following wars.¹⁰⁹ There is also record of a tax called ‘metoikion’ levied on outsiders (or anybody without an Athenian mother and parent).¹¹⁰

2.5.1.1.3 *Rome*

Portoria duties were originally levied on Rome-bound imports and exports.¹¹¹ The foremost tax thinker of his day, Caesar Augustus, outsourced tax collection to local

¹⁰⁴ Taxes in the Ancient World, University of Pennsylvania Almanac (Aug. 27, 2020, 10:49 PM) <http://www.upenn.edu/almanac/v48/n28/AncientTaxes.html>.

¹⁰⁵ Pharaoh is a title used in many modern discussions of the ancient Egyptian rulers of all periods. The title originates in the term "pr-aa" which means "great house" and describes the royal palace. The title of Pharaoh started being used for the king during the New Kingdom, specifically during the middle of the eighteenth dynasty.

¹⁰⁶ Olmert, *Michael Milton's Teeth and Ovid's Umbrella: Curiouser & Curiouser Adventures in History*, Simon & Schuster 41, 35-48 (2nd 1996).

¹⁰⁷ *A History of Taxation*, TAX WORLD (Aug. 27, 2020, 11:05 PM) <http://www.taxworld.org/History/TaxHistory.htm>

¹⁰⁸ In Genesis (Chapter 47, verse 24 - the New International Version), it states "*But when the crop comes in, give a fifth of it to Pharaoh. The other four-fifths you may keep as seed for the fields and as food for yourselves and your households and your children.*" Joseph was telling the people of Egypt how to divide their crop, providing a portion to the Pharaoh. A share (20%) of the crop was the tax.

¹⁰⁹ Roni Deutch, *The World History of Taxation*, EZINE ARTICLES (Aug. 28, 2020, 12:47 AM) <http://ezinearticles.com/?The-World-History-of-Taxation&id=1876557>.

¹¹⁰ ADAMS & CHARLES, *FOR GOOD AND EVIL: THE IMPACT OF TAXES ON THE COURSE OF CIVILIZATION*, 205-206 (1st ed. 1993).

¹¹¹ *Id.* at 209.

municipalities. The tax rate on slaves was raised to 4 percent, and an additional fee was added to help pay for army retirees' pensions.¹¹²

2.5.1.1.4 *United Kingdom*

The Roman Empire's presence may have kindled the flame for the first taxes in England. During the 11th century, Lady Godiva's husband, Leofric, Earl of Mercia, offered to lower the excessive taxes he charged on Coventry inhabitants if she consented to ride nude through the town's streets.¹¹³

2.5.1.1.5 *The French Revolution*

Social unrest prior to the French Revolution was compounded by hefty taxes levied on the poorest members of the society. Ordinary citizens, unlike clergy and nobles, were subject to taxation. Because of the widening tax disparity, only the wealthiest citizens could afford to pay court expenses. No one knows exactly what sparked the French Revolution, but historians generally agree on one thing: the government's excessive and unjust taxes had a crucial part.¹¹⁴

2.5.1.1.6 *The United States*

Throughout the country's history, taxes have been imposed by the British Empire, French Empire, and Spanish Empire, among others. The United States introduced poll taxes, tariffs, and excise taxes upon its independence from Europe. Until 1895, the United States only imposed sporadic income taxes due to the legality of unapportioned taxes on interest, profits, and rent. It wasn't until 1913's 16th Amendment to the U.S. Constitution that the income tax began to play a role in the federal budget.

¹¹² ADUKIA, *supra* note 87 at 38.

¹¹³ Tax World, *supra* note 106 at 15.

¹¹⁴ *Id.* at 16.

2.5.1.2 *Indian Scenario*

Taxation has been a part of Indian culture since ancient times. It is mentioned in several ancient literature, including 'Manusmriti'¹¹⁵ and 'Arthashastra.'¹¹⁶ There was a great combination of direct and indirect taxes and they varied in kind. Tax records provide evidence of a sizable and varied taxable population in India's past. India's tax system was drastically altered when the Mughal Empire arrived. Although they followed the same taxes rules, their structures and collections were more uniform.

Jizya¹¹⁷ was imposed by the Islamic monarchs. It was later repealed by Akbar. In 1679, however, Aurangzeb imposed jizya primarily on his Hindu people. Financial restraint and personal predilection on the side of the emperor, as well as a petition by the ulema,¹¹⁸ are given as reasons for this. His subjects were taxed based on the property they held. Government employees, as well as the blind, disabled, and impoverished, were excluded. Its implementation was met with strong protest however it was eventually repealed.

According to Muslim rulers, non-Muslims' willingness to pay jizya was a visible sign that they accepted enslavement to the state and its norms, 'just as for the locals it was a tangible continuation of the taxes paid to earlier regimes.' In return, non-Muslim residents enjoyed freedom of religion, limited community autonomy, protection from foreign invasion by the Muslim state, exemption from military service, and the Zakat.¹¹⁹

¹¹⁵ Manusmṛiti also known as Mānava-Dharmaśāstra is the most important and earliest metrical work of the Dharmaśāstra textual tradition of Hinduism. Generally known in English as the Laws of Manu, it was first translated into English in 1794 by Sir William Jones, an English Orientalist and judge of the British Supreme Court of Judicature in Calcutta.

¹¹⁶ The Arthashastra is an ancient Indian treatise on statecraft, economic policy and military strategy which identifies its author by the names 'Kautilya' and 'Viṣṇugupta', both names that are traditionally identified with Chanakya who was a scholar at Takshashila and the teacher and guardian of Emperor Chandragupta Maurya, the founder of Mauryan Empire.

¹¹⁷ Jizya is a per capita tax levied on a section of an Islamic state's non-Muslim citizens who meet certain criteria.

¹¹⁸ Concise Oxford Dictionary of the English Language, Oxford University, 2006, entry *ulema*. The word ulema means 'a body of Muslim scholars recognized as expert in Islamic sacred law and theology.' The word ulema are derived from the Arabic word 'alim' which means 'learned.'

¹¹⁹ Concise Oxford Dictionary of the English Language, Oxford University, 2006, entry *zakat*. The word zakat means 'an obligatory payment upon Muslim citizens made annually under Islamic Law and used for charitable and religious purposes.' The word zakat is derived from Persian and Urdu word 'Zaka' which means 'giving'.

The time of British control in India saw some notable changes in India's whole taxation structure. Although it favoured the British government and its exchequer, it also included sophisticated and scientific taxing instruments and processes. The country saw a paradigm shift in the whole Indian taxation structure in 1922. The British were the first to establish an administrative and taxing structure.

The Central Government and the State Governments levy taxes in India. Local governments, such as the Municipality or the Local Council, levy modest taxes as well. The authority to charge a tax is derived from the Indian Constitution, which divides the ability to levy different taxes between the Centre and the States. Significant restrictions on this power may be found in Article 265, which states that 'no tax shall be levied or collected unless by the authority of law.' As a result, any tax imposed or collected must be accompanied by an associated statute enacted by either the Parliament or the State Legislature.

The Indian Constitution, under Article 246, divides legislative functions, including taxes, between the Parliament and the State Legislature.¹²⁰ The subjects are included in three lists in Schedule VII of the Indian Constitution.¹²¹ Lists I and II each have their own taxation headings. The Concurrent List has no taxation headings (Union and the States have no concurrent power of taxation).

Prior to the introduction of GST, the Union's primary sources of indirect tax income were customs duty (entry 83 of the Union List), central excise duty (entry 84 of the

¹²⁰ Article 246 of Constitution of India deals with the subject-matter of laws made by Parliament and by the Legislatures of States-

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

¹²¹ List - I entailing the areas on which only the parliament is competent to makes laws, List - II entailing the areas on which only the state legislature can make laws, and List - III listing the areas on which both the Parliament and the State Legislature can make laws upon concurrently.

Union List), and service tax (entry 97 of Union List). Although the Constitution (Eighty-eighth Amendment) Act of 2003 added entry 92C to the Union List of the Seventh Schedule of the Constitution for the assessment of taxes on services, it was not announced. So, until the implementation of GST, tax on services was imposed under the residual entry, i.e. entry 97 of the Union List. By virtue of entries 92A and 92B, the Union also collected a tax known as the Central Sales Tax (CST) on inter-state sales and purchases of products as well as inter-state consignments of commodities. The Central Sales Tax Act, 1956, created under Article 269 of the Constitution, however, assigns CST to the state of origin.¹²²

Revenue was derived primarily from taxes on goods sold or purchased (entry 54 of the State List), excise duties on alcohol and drugs (entry 51 of the State List), taxes on entertainment, amusement, betting and gambling (entry 62 of the State List), the entry tax (entry 52 of the State List), and the electricity tax (entry 53 of the State List). These taxes were the most significant revenue sources for the state (entry 53 of the State List). However, the Union imposed the CST, which was a considerable source of revenue.¹²³

2.5.1.2.1 *Indirect Tax System in Post-Independence India Till GST*

Tax policies play an essential part in the development of any nation, and they have an immediate bearing on the economy of any nation in terms of both its efficiency and its fairness. A good taxation policy is one that not only takes care of the overall distribution of income but also generates tax revenues in such a way for both the Central Government and the State Governments that can lead to an overall benefit in the nation's infrastructure, defence, public amenities, people's security, and a country's exports. If a policy can accomplish both of these goals, then it is a good taxation policy. The provisions of India's Constitution lay forth the whole foundation for imposing indirect taxes on businesses and individuals. The ability to impose taxes and collect indirect taxes on the basis of transactions involving goods and services is granted to both the Central Government and the State Governments under Article 246, Seventh Schedule. The method of taxes can differ from one manufacturer to another depending on the volume of imports or exports, as well as the point of sale. Systems of indirect

¹²² CBIC, *supra* note 1 at 3.

¹²³ *Id* at 4.

taxation and collection are designed to impose tax and collect the same amount of tax in the event that any taxable activity takes place. These systems are based on the origin of the taxable activity.

The people of India are subject to numerous taxes, such as Central Excise, Service Tax, Value-Added Tax, and others, which are levied on them by both the Central and State governments. Before the implementation of VAT in Sales Tax and CENVAT in Central Excise and Service Tax, the taxation system in India was extremely complicated, which resulted in cascading consequences. Both of these taxes were based on value-added taxes. The tax that was levied against one destination was also levied against another destination. On the other hand, the method of levying taxes has undergone significant changes in more recent years. There have been many modifications made to taxation, including the introduction of value-added tax and the central government's application of service tax. The government implemented the Central Excise Value Added Tax (CEVAT) as part of the Central Excise taxation system by writing off taxes paid on inputs as they produced output items. In India, the groundwork for the implementation of the Goods and Services Tax (GST) was initially set with the adoption of a taxing system based on VAT.

The following points emphasised the fundamental and severe concerns pertaining in Indian indirect tax structure system:

- The CENVAT (excise duty) was imposed on the items manufactured in India. The CENVAT was imposed on the products manufactured in India. However, problems started occurring with the product valuations. The problem of implementing CENVAT only at the production level constituted a significant obstacle to the free and unobstructed flow of tax credit. As a result, value-added tax (VAT) was supplanted by the goods and services tax as one single indirect tax.
- The Indian Constitution splits the responsibility for collecting taxes between the Central Government and the individual state governments. The state government has the authority to levy any kind of tax on any subject or thing that falls under its jurisdiction. In the area of Service Tax, the Central government possesses the authority to levy taxes; however, in the area of Work Contracts,

the State government holds the upper hand. This kind of arrangement causes distortions in the government's ability to generate income and in how that revenue is distributed.

- Copyrights, patents, and software are just few of the things that are exempt from the taxation system that the government has in place. Therefore, the process of identifying these items in accordance with the policies governing taxation became more complicated.
- As a result of the rapid expansion of the service industry, the Central government now has the monopolistic power to impose taxes. The failure of state governments to levy any taxes on the service industry, on the other hand, results in a loss of revenue for those governments.
- In the case of the CST applied to the sale of products between states, there was no provision for a set-off, which made the cascading impact much more pronounced.
- It is necessary to make significant technological advancements in order to improve the monitoring and administration of taxation, which is both time-consuming and expensive and must be compensated for in some way.
- A large number of inconsistencies were caused by the absence of cross verification of tax returns submitted to the Central and State taxation systems.
- Within the framework of the indirect taxation system, there were in excess of 15 distinct taxes that needed to be filed according to a variety of criteria. As a result, rapid regulation of the filling out and computation of taxes via a single system was essential.
- The Indian taxation system was complicated and full of burdens, and the fact that different states imposed different taxes on the same things contributed to India's high rate of inflation, which needed to be corrected.

The gross domestic product (GDP) of India was significantly lower when compared to the GDP of other countries such as the United States (13.84 percent), China (6.99 percent), Japan (4.3 percent), and France (2.05 percent), despite the existence of multiple taxes in the Indian economy such as the excise tax, custom duty, and service tax, among others. Therefore, the statistics on GDP from a number of different countries

revealed that there was an extreme requirement for tax reform, specifically the introduction of the Goods and Services Tax in India.

During the post-independence period, central excise duty was charged on a few items that were in the nature of raw materials and intermediate inputs, whereas consumer products were mostly excluded from the net. The Taxation Enquiry Commission (1955–54), chaired by Dr. John Matthai, proposed the first set of reforms. The Commission suggested that sales taxes be utilised solely by states as a source of income, with Union administrations intervening only in cases of inter-state sales. It also suggested levying a tax on interstate sales with a 1% cap, which the states would administer and retain the proceeds.¹²⁴

The Constitution (Sixth Amendment) Act of 1956 granted the Union the authority to charge taxes on the sale and purchase of products in the course of inter-State trade and commerce. By the mid-1970s, most produced items were subject to central excise duty. Central excise duty was collected on both units (specific duty) and value (ad valorem duty). There were too many rates, and there was no balancing of taxes paid on inputs, resulting in severe cascading and categorization conflicts.¹²⁵

The Indirect Taxation Enquiry Committee, chaired by Shri L K Jha in 1976, advocated, among other things, converting special rates to ad valorem rates, rate consolidation, and a value added tax input tax credit system at the industrial level (MANVAT). The Jha Committee's suggestion to impose a value-added tax in manufacturing was partially adopted in 1986. This was known as modified value added tax (MODVAT). In principle, duty was charged on value addition, but at first it was confined to certain inputs and manufactured items with a one-to-one connection for eligibility to collect input tax credit. MODVAT's entire coverage was realised by 1996-97.¹²⁶

The New Economic Policy of 1991 brought the next phase of indirect tax reform. The Tax Reforms Committee, chaired by Prof. Raja J Chelliah, was formed in 1991. This Committee advocated widening the tax base by taxing services and eliminating

¹²⁴ CBIC, *supra* note 1, at 4.

¹²⁵ *Id.* at 5.

¹²⁶ *Id.*

exemptions, consolidating and decreasing rates, and expanding MODVAT to include capital items. It was claimed that if full advantages were to be extracted from tax changes, tax structure reform must be complemented with tax administration reform. Many of the Chelliah Committee's recommendations were adopted. Tax rates were unified into three rates in 1999-2000, with extra taxes on a select premium products. In 2000-01, three rates were combined into a single rate known as the Central Value Added Tax (CENVAT). A few items were subject to a specific excise charge.

The Union established service taxation in 1994, including only three services: general insurance, telecommunications, and stock brokerage. More and more services were gradually added to the mix. Over the next decade, an increasing number of services were taxed. The tax rate on three services was 5% in 1994 and steadily grew to 15% in 2017. (including cess). Prior to 2012, services were taxed using a 'positive list' method. This method was prone to 'tax evasion.' In the 2012 budget, a negative list method was used, with 17 services being exempt from taxes while all other services were taxed. The input tax credit scheme for CENVAT and Service Tax was integrated in 2004 to allow credits to be used for both taxes.

Prior to the introduction of state-level VAT by states in the first half of the first decade of this century, states have imposed sales tax since their independence. Sales tax had several severe faults, including the fact that it was imposed by states in an uncoordinated way, resulting in various rates of sales tax on different items in different states. Some states had more than 10 sales tax rates, and they varied for the same goods between states. The Central Sales Tax was levied on interstate sales. Credit was not given by the dealer in the importing State since this tax was appropriated by the exporting State. This led in tax exporting from wealthy to poorer governments, as well as tax cascading. Surprisingly, states have always had the authority to tax services. Advertisements, luxuries, entertainments, amusements, betting, and gambling were all taxed by the states.

In 1994, the National Institute of Public Finance and Policy, chaired by Dr. Amaresh Bagchi, issued a paper titled "Reform of Domestic Trade Taxes in India" on revising indirect taxes, particularly state sales taxes. This Report laid the groundwork for state-level VAT adoption. Some of the key recommendations included: replacing sales tax

with VAT by transitioning to a multistage taxation system; allowing input tax credits for all inputs, including machinery and equipment; harmonisation and rationalisation of tax rates across states with two or three rates within specified bands; pruning of exemptions and concessions except for a basic threshold limit and items such as unprocessed food; and zero rating of exports, inter-State sales, and consignment transshipments.

In 1995, the Union Finance Minister organised a conference of Chief Ministers to discuss the transition from the sales tax regime to the VAT regime. As a consequence of a meeting of Union Finance Ministers and Chief Ministers in November 1999, a standing Committee of State Finance Ministers was formed to debate on the design of VAT, which was later renamed the Empowered Committee of State Finance Ministers (EC). In 2003, Haryana became the first state to introduce VAT. VAT was imposed in the majority of states in 2005. Uttar Pradesh was the final state to impose VAT, beginning on January 1, 2008.

Indirect taxes are levied on products or services and, before to the implementation of GST, included taxes such as Excise Duty, Customs Duty, Service Tax, and Securities Transaction Tax. Prior to July 2017, India had a variety of tax rules and regulations that were implemented by the national or state governments in order to manage indirect taxation.¹²⁷ The Centre imposed indirect taxes such as Customs, Excise, and Central Sales Tax, while the States and Civic authorities charged taxes such as passenger and goods tax, power duty, and octroi. Indirect taxes apply to nearly all activities, from production to those necessary for final consumption. This section also includes activities connected to commerce, imports, and services. As a result, Indirect Tax affects all business sectors.¹²⁸

Due to the Indian government's altering fiscal reforms, indirect taxes in India have been changed into a single indirect tax, i.e. GST. There is no need to examine all of India's indirect taxes because they have been consolidated into a single indirect tax i.e. GST.

¹²⁷ V.S. DATEY, *INDIRECT TAXES LAW AND PRACTICE* 17 (25th ed. 2010).

¹²⁸ *Id.* at 19.

As of today, GST has been implemented throughout India. As a result, tracing the origins of GST is critical.

2.5.2 Origin of GST

Over two centuries ago, a German economist came up with the idea for what is now usually referred to as VAT or HST. On the other hand, he proposed a sales tax on goods that did not affect the manufacturing or distribution expenses but was collected on the final price charged to the customer. Tax was always a predetermined percentage of the final selling price, regardless of how many transactions the items underwent. In 1954, France finally put the tax into effect. To begin with, the French Tax Authority, the Direction générale des impôts (DGI), was led by Maurice Lauré who implemented VAT on April 10, 1954. Since its inception, it has expanded its scope to include all types of businesses.¹²⁹

It is not possible to recoup VAT paid by a company on purchases made by an individual customer for personal use, but firms are eligible to do so for purchases of raw materials and services used in the production of goods and services offered to consumers. Businesses pay most of the costs associated with tax collection, and tax rates are uniform throughout all stages of the economic supply chain as a percentage of the value added by the firm to its products. Smuggling and price-fixing flourished as a result of excessive tariffs and retail levies.

A value added tax (VAT) prevents the escalation of tax burdens by charging just the final product, rather than the whole production process. Regular sales taxes are being replaced with value-added taxes over the world. For the most part, the production, distribution, and provision of goods and services are exempt from value added taxes. Value added to goods and services is the basis for calculating and collecting VAT in every economic transaction. According to this theory, the government levies a tax on the gross margin of each transaction.

¹²⁹ ADUKIA, *supra* note 87, at 13.

2.5.2.1 Global Scenario

The unified tax system, which, with a few minor exceptions, applies to all portions of the United Kingdom of Great Britain, makes it possible for the country's internal commerce, including inland and coasting trade, to be nearly fully free. This is the case because the unified tax system applies to all parts of the country. The majority of goods can be transported from one end of the kingdom to the other without the need for a permit or let-pass, and without being subject to interrogation, visit, or investigation by tax authorities. The inland commerce is practically totally free, and the tax authorities do not have the authority to question, visit, or investigate businesses. This flexibility of internal commerce, which is the product of a consistent taxation structure, is undoubtedly one of the fundamental drivers of Big Britain's prosperity; every great country is unavoidably the best and widest market for the majority of the output of its own industry. If the same freedom could be extended to Ireland and the plantations as a consequence of the same uniformity, the state's majesty and the richness of every part of the empire would very likely be greater than they are at the present time.

The phrases value-added tax (VAT) and goods and services tax (GST) are synonymous since the GST represents the all-encompassing nature of VAT by include both products and services. France was the first nation to implement a value-added tax in 1954. The Goods and Services Tax or Value-Added Tax has been adopted in some form or another by about 160 countries as of right now. The most typical kind of value-added tax (VAT) is the one in which taxes already paid on inputs can be deducted from the responsibility for outputs. In point of fact, the value-added tax (VAT) or goods and services tax (GST) system utilised in each country varies in regard to certain technical aspects. These aspects include supply means the territory of scope of products and services, handling of free from GST and many others. On a more macro scale, however, there is a fundamental similarity between the two: the tax is a destination-based consumption tax. For the purpose of taxing consumption, a value-added tax, or VAT, is generally seen as a more desirable system than sales taxes due to the fact that VAT does not influence the distribution of available resources in the same way that sales taxes do. In addition, there are particular benefits that are exclusive to the VAT. This results in a tax system that is both more transparent and less likely to cause inflation because there is less

cascade involved. The creation of transaction traces, which leads to improved compliance, causes an increase in tax revenue from value-added tax.¹³⁰

When compared on a global scale, VAT structures are either excessively centralised, in which the tax is levied and administered by the central government (Germany, Switzerland, and Austria), or dual GST structures, in which the tax is administered independently by the Centre and States (Canada), or with some degree of coordination between national and subnational entities (Brazil, Russia). While a decentralised system makes it more expensive for taxpayers to comply with the law, a centralised system restricts the fiscal liberty of individual governments. The taxation system in Canada is one of a kind due to the country's federal structure and the fact that certain provinces have adopted the federal GST while others have not. Non-participating provinces are referred to as "non-participating provinces," while participating provinces are provinces that have partnered with the federal government to administer taxes jointly. Non-participating provinces are known as "non-participating provinces," and participating provinces are known as "participating provinces."¹³¹

The rate of the GST varies from nation to country. Hungary has one among the highest rates, at 27 percent, whereas Malaysia has a lower rate of 6 percent (however Malaysia repealed GST in 2018 due to popular resistance). In contrast, the rate in Malaysia has been reduced. In contrast to Canada's several tax brackets, the goods and services tax (GST) in Australia is only ten percent. In general, the value-added tax rate in the EU is at about 19.5 percent. Black's Law Dictionary defines a tax as any contribution imposed by government, which includes any contribution exacted pursuant to legislative power and any contribution deemed necessary by the government. This definition describes taxes as not a voluntary payment or donation.¹³²

2.5.2.2 Indian Scenario

According to the Kelkar Task Force on the Implementation of the Fiscal Responsibility and Budget Management (hereinafter referred to FRBM) Act, 2003, the existing system of taxing products and services has a number of faults, despite the fact that India's

¹³⁰ CBIC, *supra* note 1, at 7

¹³¹ *Id.* at 8.

¹³² *Id.* at 9.

indirect taxation policy has been gradually developing in the straight path of the VAT notion since 1986.¹³³ The federal government and the state governments each get a portion of the tax base. The services sector, which accounts for half of GDP, is not taxed to its full potential. The existing system of taxes has repercussions that can cascade outward in a variety of different situations. In addition to causing a wide variety of economic inefficiencies, these factors are responsible for the low tax-to-GDP ratio that exists today. In this particular setting, the Kelkar Task Force had advocated for the implementation of a comprehensive Goods and Services Tax that would be modelled after the VAT.

A speech somewhat similar to this one was given during the budget for 2007-2008. The value-added tax, or VAT, is a modern sales tax system that is progressive. It uses a process of self-evaluation, which ultimately leads to openness and mutual trust among participants. The fee is based on the amount that the customer pays, and the dealer charges and collects it accordingly. A White Paper on value-added tax was published by the authorised committee on January 17, 2005. This was the common ground upon which the states came to an understanding to avoid competition with one another. On January 4, 2005, VAT was introduced as an alternative to sales tax. The Empowered Committee of the Govt. of India developed the essential framework for universal VAT rules across the nation. However, the provinces are allowed to choose their own values for the amount of VAT that is levied in their respective areas.

During his statement to the Union Budget Committee in 2006–2007, who was then serving as the Union Finance Minister, first floated the idea of shifting to the GST. At first, it was planned that the Goods and Services Tax (GST) would be put into effect on April 1, 2010.¹³⁴ The Empowered Committee of State Finance Ministers, which was responsible for designing State VAT, was requested to create a roadmap and structure for GST. Joint Working Groups comprised of officials from the centre and the states were established in order to explore various aspects of the Goods and Services Tax (GST) and produce reports, mainly on exclusions and thresholds, taxation of services,

¹³³ Press Trust of India, *Kelkar task force for single GST*, BUSINESS STANDARD (Sept. 17, 2020, 07:39 AM) <http://www.business-standard.com/india/news/kelkar-task-force-for-single-gst/190021/>.

¹³⁴ Sitaram Agarwal, *National Level GST (VAT) will be Introduced from April 1, 2012*, 37 TCR, 302, 301-07 (2006).

and taxation on inter-state supplies.¹³⁵ Following both internal and external talks with the Union Govt, the Empowered Committee published its First Discussion Paper on the Goods and Services Tax in November, 2009. This laid out the components of the proposed GST and has been the basis for negotiations between the Central Government and the states up to this point.¹³⁶

The introduction of the Goods and Services Tax, or GST, marks a significant breakthrough in India's efforts to modernise its indirect tax system. The Goods and Services Tax (GST) would greatly decrease the negative consequences of cascading or double taxation and pave the path for a shared national market by consolidating a large number of different Central and State levies into a single tax. The primary benefit that would accrue to end users is a lessening of the overall tax burden that is currently placed on goods, which is estimated to be anywhere between 25 and 30 percent. Additionally, it would imply that the full cost of indirect taxes that are placed on products and services would be far more evident to the consumer. The introduction of the Goods and Services Tax (GST) in India will increase the competitiveness of Indian goods on both domestic and international markets by eliminating all taxes incurred throughout the manufacture and distribution of goods along the value chain. According to the findings of research, this would have a beneficial effect on the expansion of the economy. Lastly, but certainly not least, the administration of this tax would be simplified as a result of its open character and inherent capacity for self-regulation. Additionally, it would encourage a shift from the unofficial to the official sector of the economy.

At the moment, the Constitution has the effect of clearly separating the budgetary authorities into those of the Centre and those of the States, with almost little overlap between the two realms. The ability to charge taxes on commodities that are created belongs to the Central Government, while the ability to levy taxes on goods that are sold belongs to the individual states. Exceptions to this rule include alcoholic beverages intended for human use, opium, and other narcotics. The Central Government is empowered to collect a tax, known as the CST, on sales that occur between different

¹³⁵ Finance Ministry, *First Discussion Paper on Goods and Services Tax in India*, The Empowered Committee of State Finance Ministers Sept. 17, 2009, 08:17 AM) <http://finmin.nic.in/GST/Empowered%20Committee%20of%20SFM%20%20First%20Discussion%20paper.pdf>.

¹³⁶ *Id.* at 2.

states, but it is the home states who are responsible for collecting and keeping the revenue from this tax. When it comes to services, the Centre is the only organisation that has the right to levy Service Tax. The Central Government is responsible for assessing and collecting this tax additionally to the Basic Customs Duty. This is due to the fact that the individual states do not have the jurisdiction to levy taxes on the sale or purchase of items during their importation or exportation from India. The excise duty, sales tax, state VAT, and other taxes that are levied on equivalent domestic items are partially offset by this customs charge, which is also known as CVD and SAD. Adjustments to the constitution were required in order to accommodate the simultaneous taxation and collection of GST by both the central government and the states, which was made possible by the implementation of the GST.

When it comes to concurrent jurisdiction for the levy of GST, a one-of-a-kind institutional architecture is required to ensure that decisions about the structure, design, and operation of GST are taken jointly by the Centre and the States. In order to address all of these issues as well as a number of other concerns, on December 19, 2014, a bill called the Constitution (122nd Amendment) Bill was introduced into the 16th Lok Sabha. The proposed legislation would impose a goods and services tax (GST) of five percent on all goods and services, with the exception of alcoholic beverages intended for human use. Dual GST is the name given to the tax that will be levied simultaneously by both the central government (CGST) and the individual states (SGST). The exclusive power to levy the Goods and Services Tax (IGST) on inter-state trade or commerce in goods and services would rest with the Parliament (including imports). In addition to having the ability to levy GST, the Central Government would also have the jurisdiction to levy excise tax on cigarettes and items containing tobacco.

In May of 2015, the Lok Sabha voted in favour of passing the Constitution Amendment Bill. In the end, the Bill was approved in the Rajya Sabha with minor amendments, and then it was approved in the Lok Sabha in August of 2016. In addition, the Bill was approved by the required states, it has subsequently been given approval of the President on September 8, 2016, and it has been enacted as the *101st Constitution Amendment Act, 2016*. As of the 12th of September in 2016, the GST Council was also notified of the situation. The GST Council receives assistance from a Secretariat.

GST Council is comprised of the central Finance Minister, the MoS (Revenue), and the State Finance Ministers. Its purpose is to make recommendations on rates of GST, exemption and threshold levels, required subsumed taxes, and other topics. Half of the total number of GST Council members is required for quorum to be present at meetings of the GST Council. The three-fourths majority of the weighted votes cast is required for decisions to be taken by the GSTC. While the other states receive two-thirds of the total votes cast, the Centre only obtains one-third of the total votes cast.

Every decision that the GST Council made was arrived at by unanimous vote. To this date, the opportunity to cast a vote has not been taken advantage of. In order to make the implementation of the Goods and Services Tax (GST) as smooth as possible, many committees and sectoral groups made up of members from both the central government and the states have been established. Within The Joint Working Group (JWG) presented its conclusions about the Goods and Services Tax (GST) to the Empowered Committee in November 2007, after having been in operation for a total of seven months. The Committee has decided to move forward with the recommendations outlined in this report from the Joint Working Group (JWG). As of the 30th of April in the year 2008, the Committee has delivered to the Government of India its recommendations to the Govt. of India as an overview of the proposed design for the GST. The Committee has requested that the Ministry of Finance conduct an analysis of the views expressed by EC in order to provide a response to the Committee that would help enable the further development of details.

Among the recommendations about the Goods and Services Tax offered by the Joint Working Group are the following:

- The Goods and Services Tax (GST) should include both a central tax and a single uniform state tax.
- In addition to the GST, a state may levy its own extra tax on tobacco products, gasoline, and alcoholic drinks. This tax may be in addition to the GST.
- It is possible that rather of a dual VAT framework, there will be a quadruple tax structure. In general, it is made up of the following four components:
- a centralised sales tax on items that is applied all the way through the retail level;

- a central service tax;
- a value-added tax (VAT) imposed by the state on all items,
- a value-added tax (VAT) imposed by the state on services.

On the basis of the 4-fold structure, there are at least 4 different rate categories, one for each of the components that have been stated above. In this structure, taxpayers may be forced to calculate their tax responsibilities independently for each of the several tax rates that are in effect.

According to the findings of the JWG research, the states should be the ones to levy taxes on services provided inside their own borders, while the federal government should tax services provided between states. It is probable that items derived from petroleum, such as crude oil, high-speed diesel, and gasoline, will not be subject to the Goods and Services Tax (GST). In addition to this, the study recommended doing away with the exemptions from excise duty that are now provided by the government on a regional and industry-specific basis. There is a possibility that education and oil cess may not be subject to the new dual-GST system when it goes into force in April of 2010. The Goods and Services Tax (GST) shouldn't include state and local taxes like the input tax and octroi, which are levied and raised at the state and municipal levels.

According to the proposals made by the working group, taxes at both the federal and state levels should incorporate cess and surcharges, which are additional fees levied in order to fund certain initiatives. According to a study that was published at that time, states should be allowed to opt out of having their stamp duty included in the GST. Stamp duty is a tax that must be paid on certain real estate transactions, including the sale of homes and land. According to the report, further, the idea would not apply to road taxes, tolls, or environmental fees. It would also exempt tolls. Due to the fact that there are service fees, they are free from GST. According to the findings of a draught study that has been made public, a planned tax on the extraction of minerals should not apply to levies of this kind because of the reasons stated above. The tireless efforts of the Indian government to implement the Goods and Services Tax (GST) are evident from the myriad of tax reforms that have recently taken place in the country.

In the beginning, Indian specialists suggested various GST models. In view of the fact that there is complete consensus among the specialists on three options i.e. to begin, the Centre will have complete authority to levy, collect, and disperse taxes, and it will do so in accordance with a set of guidelines that have been established in advance. It is also a possibility to have two distinct levies in place, with the basis for both taxes being shared by the state and the Central government. The moment has come to divide the power that determines how much money each state is allowed to spend on taxes.

The following is a list of some of the models that have been established and are backed by a variety of different experts: -

2.5.2.2.1 *The Kelkar-Shah model*¹³⁷

The Kelkar-Shah model is the most often used one. The Kelkar-Shah Model suggested implementing the GST in phases over the course of four years. –

In the first stage, in order to put information technology systems into operation. In the second phase, establishment of a Central Goods and Services Tax Office. Further, in the third phase, the negotiation of the “grand agreement” constitutes and the fourth stage is composed of interactions with the states.

2.5.2.2.2 *Podda and Bagchi's design*

In addition, it proposes the imposition and collection of a mixed tax regime consisting of a service tax, an excise tax, and a value-added tax (VAT) by both the federal government and the individual states.

2.5.2.2.3 *The Indian Institute of Chartered Accountants*¹³⁸

The Institute of Chartered Accountants of India (ICAI) proposed that the Goods and Services Tax (GST) have dual tax systems at the national and state levels. It is recommended that there be two levels working concurrently, one at the union level,

¹³⁷ CPI, *The Kelkar-Shah model*, *INDLAW* (SEPT 25, 2020, 08:11 AM) <http://www.indlawnews.com/display.aspx?4018>.

¹³⁸ Recommendations on Goods and Services Tax (GST) In India, The Institute Of Chartered Accountants Of India 4 (Sept 25, 2020, 11:15 PM) www.icai.org/resource_file/17848icairecomgst.pdf.

and the other at the state level. According to the budget address for 2006-2007, the Empowered Committee was tasked with recommending the model that would best suit India's federal system after conducting an analysis of both existing global models and Indian models already in use.¹³⁹ The suggestions that were offered by Indian industry professionals for the aforementioned proposed models were represented in the same way in the budget address that was given by Union Finance Minister Mr. Pranab Mukherjee in 2009-10.¹⁴⁰ Dr. Asim K. Dasgupta, the Chairman of the Empowered Committee, and Mr. P. V. Bhide, the Revenue Secretary, have both reaffirmed that the Goods and Services Tax (GST) will be implemented beginning on April 1, 2010.

¹³⁹ *Id.* at 6.

¹⁴⁰ The Budget speech, 2009-10 of the then finance minister Mr. Pranab Mukherjee states in Para 85, "I have been informed that the Empowered Committee of State Finance Ministers has made considerable progress in preparing the roadmap and the design of GST. Officials from the Central Government have also been associated in this exercise. I am glad to inform the House that, through their collaborative efforts, they have reached an agreement on the basic structure in keeping with the principles of fiscal federalism enshrined in the Constitution. I compliment the Empowered Committee of State Finance Ministers for their untiring efforts. The broad contour of the GST Model is that it will be a dual GST comprising of a central GST and a state GST. The Centre and States will each legislative, levy and administer the Central GST and State GST, respectively. I will enforce the Central Government's catalytic role to facilitate the introduction of GST by 1st April, 2010 after due consultations with all stakeholders."

CHAPTER 3

COMPARATIVE STUDY OF VAT WITH GST

3.1 INTRODUCTION

Today's legal systems are difficult to understand since they are so intricately intertwined. It's not uncommon for sophisticated laws to result in legal uncertainty. As a result, companies may incur unnecessary expenditures and people whose lives are affected by the law may find it more difficult to understand their legal rights and duties as a result. India's Goods and Services Tax (GST) is frequently cited as one of the world's most difficult pieces of legislation. In this context, a comparison of VAT legislation with the newly adopted GST may be useful. Tax system simplification requires a key step: creating an index to quantify and monitor levels of tax complication. Using a series of such an index may be used to trace the evolution of a country's tax system complexity over time since it can be viewed as a summary of the total complexity of a tax system at a given moment in time.¹⁴¹

The Office of Tax Simplification (OTS) released the first iteration of the Complexity Index in December of 2012. One goal of the index is to provide an overall evaluation of how complicated tax laws are across various pieces of legislation by analysing the relative complexity in each area of tax law. Ongoing work on refining and increasing OTS's difficulty index has been going on since the OTS revealed its algorithm in December 2012. A third version was made accessible to the public in 2015 as well.

In the second iteration of the procedure, the index has been split down into two separate components. One way focuses on finding out how difficult a situation is, and the other focuses on finding out how complicated it is to deal with. Underlying There is a distinction between the terms "complexity" (as in the form of the tax) and "complexity effect," which describes the combined cost of compliance for an individual taxpayer and the aggregated cost for all taxpayers. Complexity can be found in the tax code.

¹⁴¹ Shwetha S, *A Comparative study of the VAT/GST Complexity in India, Singapore, Australia, Korea and New Zealand*, ICBME (Oct. 06, 2020, 10:53 PM) <https://www.dpublication.com/wp-content/uploads/2020/12/38-638.pdf>.

India, Singapore, Korea, Australia, and New Zealand are among the countries whose laws and policies have been scrutinised to see if they have an unusually high level of underlying complexity. For this reason, the four nations chosen to test the application of the Complexity Index in diverse jurisdictions are a good starting point for analysing the index's applicability in other jurisdictions. Calculating policy complexity relies on the Gunning-Fog readability index, whereas analysing policy complexity relies on the number of exclusions and financial acts passed to alter the original statute. Legislative and policy complexity are both measured using two measures.¹⁴²

Taxation's complexity may be conceptualised in a variety of ways and divided into several subcategories. People appear to ascribe diverse interpretations to this term based on their biases, points of view or study interests. According to this debate, the level of difficulty in reading, understanding, and implementing a body of tax regulations to various real-world events is known as "tax complexity". As a tax attorney, for example, you may define "tax complexity" in terms of difficulty. For a tax accountant, the term "tax complexity" denotes the amount of time required to either prepare a tax return or offer tax advice (which may include tax planning or assistance with tax objections or appeals). In the eyes of a business owner, tax complexity refers to the amount of effort and money needed to comply with all of the many business tax legislation. There are literally many instances. According to many viewpoints, the complexity of the tax system appears to be a complicated concept in its own right.¹⁴³

Predictability, enforceability, difficulty, and manipulability are all factors that have been identified as contributing to the tax system's complexity, according to the research. Predictability and enforceability, on the other hand, refer to the tax law as a whole, whereas difficulty and manipulability refer to how people respond to the tax legislation.¹⁴⁴ It is possible to find similar discussions in literature, although with different terminology or more comprehensive explanations. According to McCaffery,¹⁴⁵ this phenomenon may be divided into three main categories: technical complexity, structural complexity, and compliance complexity. Using Slemrod's

¹⁴² Evans & Tran-Nam, *Towards the Development of a Tax System*, 123, *Fiscal Studies*, 2013.

¹⁴³ G. Jones et. Al, *developing a Tax Complexity Index for the UK*, UK: Office of Tax Simplification 345-354, 2014.

¹⁴⁴ See Slemrod (1989) in the 'Complexity, Compliance Costs, and Tax Evasion'

¹⁴⁵ Both authors have offered some input to the methodology of the OTS tax complexity index.

notion as a framework, Cooper argues that tax complexity has all of the traits of predictability, proportionality, consistency, compliance, administration, coordination, and expressiveness. The need for political debate before tax systems may be streamlined is mostly driven by the complexity of their tax systems. It's difficult to accomplish simplicity in an already-complicated socioeconomic environment.¹⁴⁶

Critics are taking issue with the complicated procedure used to establish VAT or GST law as well as the rate at which modifications are being made to the original act via an excessive amount of notices, schedules, and rules. A streamlined VAT or GST policy is needed because of this. Nations like Australia and New Zealand have made some steps to streamline their tax systems, but they have met with very limited success. A discussion has been raging for a long time now over the complexity of India's GST legislation. One strategy for streamlining the tax system is to reduce the overall number of taxes and keep just those that are easier to pay and collect. This would necessitate the creation of rules that are easy to understand, reduce distortions, and harmonise taxation at the federal and municipal levels. The number of points of contact between businesses and tax authorities is reduced when there is a simple tax system in place. Errors have decreased and the cost of compliance has decreased as a result of the improved level of openness and accountability. Additional benefits include the following. Therefore, a summary indication of the entire complexity of a tax system at a given moment in time is necessary. Furthermore, in the future, it would be feasible to compare the complexity of tax systems between nations by using an index like this one to analyse how the complexity of a country's tax system has changed over time.

Some jurisdictions, including the United States, have devised an empirical method for estimating the relative difficulty of the legal system in each country. This approach is based on the idea of knowledge acquisition, which is at the intersection of psychology and computer science. Legal systems' structure, terminology, and interrelationship may all be taken into account when developing a knowledge acquisition strategy. The three elements of complexity that this technique takes into account are structure, language, and interconnection. Accordingly, a research on the readability of Brazilian tax law was

¹⁴⁶ T. Budak & S. James, *The Level of Tax Complexity: A Comparative Analysis Between the UK and Turkey Based on the OTS Index*, 79, 2018.

carried out because of the complexity of Brazilian tax legislation. Brazil's tax laws may be difficult to understand because of their low readability. Flesch Readability Ease Score (FRES) and average sentence length were employed in the study to determine readability (ASL). Reading comprehension was found to be inadequate owing to the use of long phrases and words, which necessitates a high level of knowledge for the reader.¹⁴⁷

There has been an investigation in Germany on the structural and syntactical factors that contribute to the complexity of legal documents. The readability of the text was evaluated based on its lexical and structural qualities, as assessed by techniques such as Flesch Reading Ease (FRE). The formula for calculating the FRE is as follows: In German, FRE is equal to $180ASL - (58.5 * ASW)$ (ASL: Average Sentence Length, ASW: Average Number of Syllables Per Word) Readability metrics naturally signal a lot more textual properties than the algorithm truly takes into consideration, which is important to observe.¹⁴⁸ Textual aspects such as word, frequency, variety of vocabulary, ambiguity in lexical meaning and other phonetic characteristics all contribute to this.

Australia's government launched the Tax Law Improvement Effort (TLIP) in 1993, a housekeeping effort designed to re-phrase but not amend the existing legislation. The project's main objective was to make improvements to Australia's tax legislation. Similar to other nations' programmes, the Legal Improvement Program (TLIP) contributed to a change in the wording and look of legal documents. Main objectives of this project were to restructure and simplify the legislation to make it more understandable to the general public. In contrast, there has been no comprehensive examination of the project to this point. Unfortunately, like the programmes in the UK and New Zealand, the TLIP was completed by the end of 2013, but there had been some notable advancements.

According to the Office of Tax Simplification (OTS) in the United Kingdom, the complexity of various tax components is being measured in order to generate a "tax complexity index" for the United Kingdom. In order to help tax administrations better understand and address the issue of tax complexity, a new initiative has been launched.

¹⁴⁷ D. M. Katz & M.J. Bommarito, *Measuring the Complexity of the Law: The United States Code*, 2013.

¹⁴⁸ A. L. Martinez & R. d. Silva, *Tax law readability and tax complexity*, 75-89, SSRN, 2019.

When it comes to simplifying the HMRC tax code, the Office of Tax Simplification (OTS) is looking for a technology that will help them prioritise which portions of the tax code should be streamlined and which ones should be left as they are. There are many different types of people who can work in this profession, including economists in the public sector, tax practitioners and the authorities at the very end, all of whom are tasked with making sure the correct amount of tax is collected.¹⁴⁹

To conduct a comparative analysis of the complexity of Turkish and British tax systems, OTS employed this technique, which has been accepted by the organisation. Research contrasted the tax regimes in both nations for people and businesses. By far, the most difficult tax in both nations is the income tax; thus, it has the most potential to be simplified through various ways.¹⁵⁰ Analysis and comparison of VAT/GST regulations in other nations, such as Australia, New Zealand and South Korea are carried out using the same technique as in the previous research. An index of policy and legislative complexity was constructed as the basis for this study.

3.2 INDIRECT TAX SYSTEM IN INDIA

These taxes include excise duties, customs duties and service taxes, as well as the securities transaction tax (STT). When a tax is applied against products or services rather than individuals, it is called an indirect tax. There are number of laws and regulations governing taxes that are implemented by either the national or state governments in India in order to manage indirect taxation.¹⁵¹ Direct taxes like customs, excise, and the value-added tax (VAT) are collected by the federal government, but taxes like passenger and goods taxes, electricity charges, and octroi are collected by the various state and municipal governments. Indirect taxes are collected on nearly every aspect of economic activity, from the first stages of production to the last stages of consumption. Also included are trade, import, and service-related operations. As a result, indirect taxes have ramifications for every aspect of corporate life.¹⁵²

¹⁴⁹ B. Waltl, & F. Matthes, Towards Measures of Complexity: Applying Structural and Linguistic Metrics to German Laws, 153 - 162. OTS, 2013.

¹⁵⁰ Budak and James, A Comparison of the OTS Tax Complexity Index between the United Kingdom and Turkey, 2018.

¹⁵¹ DATEY, *supra* note 127, at 47.

¹⁵² *Id.* at 48.

As a result of the government's ongoing fiscal reforms, India's indirect taxes are now through a period of upheaval. Many new acts and laws are being enacted, and they are replacing a lot of old laws and their accompanying challenges, which have become obsolete. India's government has made significant changes to the country's indirect taxes structure in the last few years. Value-added tax (VAT) on goods will be implemented at the regional and state levels. Inter-state commerce and the provision of goods and services necessitate additional reforms, including the consolidation of all indirect taxes already in place in India at both the central and state levels, as well as the creation of a more robust indirect tax system in India. This is an option for a policy change. The integrated Indirect Tax should preserve its neutrality at all levels in order to reduce the risk of fraudulent conduct. CST, which makes it more difficult to trade between states, should be abolished in order to boost commerce between states.

Accordingly, the government of India has set a target date of August 2012 for the implementation of the Goods and Services Tax, which would be referred to as GST from this point forward. Either a national VAT or a system that can accommodate a state-level or a centralized VAT can be implemented by the government. They are free to choose either one. Additionally, fraud will be minimized to the greatest extent possible if the government is able to impose a central VAT on all transactions that cross international borders. The following is a list of different currently in effect indirect taxes.

3.2.1 Customs Duty

In India, customs are governed by the Customs Act.¹⁵³ A system known as the License Quota Permit Raj was in effect in 1962 when the Customs Act was passed, and it was implemented throughout this time. It was put in place to keep tabs on the flow of contraband into and out of the nation. In order to safeguard Indian enterprises, control import volume, and preserve the country's currency exchange rate stability, it was determined that all imports entering the country would be subject to a tax. Customs duties are levied on goods entering or leaving India in accordance with the 1975 Tariff Act.¹⁵⁴ Imports are tracked by notifying the ports and airports responsible for unloading

¹⁵³ Customs Act, 1962 (52 of 1962).

¹⁵⁴ The Customs Tariff Act, 1975 (51 of 1975).

and loading imported goods, as well as the locations responsible for clearance, and the routes by land or water that these goods may use to enter or exit Indian ports. The central government has the authority to do this.¹⁵⁵

Customs duties include both import and export charges. However, export levies generate only a little amount of revenue, but import charges account for a major share, in order to improve the competitiveness of exports. According to customs laws, the following is a list of the many types of duties that can be imposed.

3.2.1.1 *Basic Customs Duty*

For every item imported into India, the basic customs tax is charged at a predetermined amount. There are periodic changes to these rates as a result of Finance Acts, which may be found in the First Schedule of the Customs Tariff Act, 1975. The duty might be calculated either on a fixed rate or an ad valorem basis. There are two ways to calculate the duty: a flat rate or a percentage of the total product value. The Central Government has the authority to reduce or abolish the tax on any item it sees fit.

3.2.1.2 *Additional Custom Duty*

Products made in India incur an excise tax is equivalent of a customs charge on imported goods from other countries. Under the Customs Tariff Act of 1975, Section 3 imposes this levy.¹⁵⁶ In the business world, this is referred to as countervailing obligation (hereinafter CVD). It's still better to refer to this levy as Additional Duty of Customs. If you want to figure out what the final tax rate will be, you'll need to use the Central Excise Tariff Act of 1986 to classify the products.¹⁵⁷ The duties that must be paid are calculated using an ad valorem formula under the Central Excise Tariff.

¹⁵⁵ Adukia, *supra* note 87, at 91.

¹⁵⁶ Section 3 of Custom Tariff Act, 1957 deals with levy of additional duty equal to excise duty, sales tax, local taxes and other charges. This section was substituted by Sec.72 of the Finance Bill, 2005(No.35 of 2005).

¹⁵⁷ The correct classification of goods has been given in the first Schedule of Central Excise Tariff Act, 1985. According to this Schedule, the titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the Section 3 of the Act.

On the other hand, there are some items for which specific pricing have been determined. As long as an identical product isn't produced or manufactured in India, the excise tax that must be paid is the amount that would have been payable had it been manufactured or produced in India. There may be more than one "applicable rate" for a product, but the highest one is regarded the applicable rate. In addition to the standard customs charge, this duty is determined based on the value of the goods. For example, if the customs value of the products is Rs. 5000, the basic customs duty rate is 10%, and the excise duty on equivalent Indian goods is 20%, then the CVD will be Rs. 1100/.

The total of the assessable value (which is generally the transaction value and is roughly similar to the Cost, Insurance, and Freight (c.i.f.) value) and the basic customs duty is utilized in the computation of extra customs taxes.

It is common for an importer to be entitled for a credit for the excess customs duty paid on imported goods if the items are intended to be used as inputs in the manufacturing of other commodities. CENVAT is the name given to this type of credit. Under the Central Excise Rules, 1944, which govern input duty, this amount of duty is eligible for a credit. The product's central excise duties can be paid with this credit.

3.2.1.3 Additional Customs Duty of a Special Nature

A law known as Section 3A of the Customs Tariff Act of 1975 outlines the Special Additional Duty, or SAD for short.¹⁵⁸ The Central Government specifies the rate of

¹⁵⁸ S. 3A - Special additional duty (1) Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India:

Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent of the value of the article imported into India.

Explanation – In this sub-section, the expression "maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India" means the maximum sales-tax, local tax, other charges for the time being in force, which shall be leviable on a like article, if sold or purchased in India, or if a like article is not so sold or purchased which shall be leviable on the class or description of articles to which the imported article belongs.

(2) For the purpose of calculating under this section the special additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 or section 3 of this Act, be the aggregate of -

(i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be;

special extra duty and publishes it in the Official Gazette as a notification. A similar item offered or purchased in India will be subject to the highest possible rates of sales tax, local tax, and any other applicable fees. At this moment, the rate is 4%. Adding the assessable value, basic customs duty, and the previously indicated additional customs duty together yields the total amount of Special Additional Duty. This is calculated by multiplying this rate by the value.

3.2.1.4 Duties for export

Commodities exported from India are subject to export duties imposed by the Customs Tariff Act, 1975, which stipulates the export duty rates. The Finance Acts allow for periodic adjustments to these rates.¹⁵⁹

3.2.1.5 Customs' Auxiliary duties

In line with the Finance Act, this tax is imposed on all goods imported into the nation at a rate equivalent to fifty percent of their value. Depending on the basic duty paid on individual items, the statutory rate has been reduced into a variety of separate slab rates for various categories of commodities. This is the case for all goods.

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- (ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not includes -
- (a) the safeguard duty referred to in sections 8B and 8C;
 - (b) the countervailing duty referred to in section 9;
 - (c) the anti-dumping duty referred to in section 9A;
 - (d) the special additional duty referred to in sub-section (1); and
- (iii) The additional duty of customs chargeable on that article under section 3 of this Act.
- (3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.
- (4) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.
- (5) Nothing contained in this section shall apply to any article, which is chargeable to additional duties levied under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

¹⁵⁹ Sub-Section (1) of Section 8 of the Customs Tariff Act, 1975 says, 'Where, in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be levied, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.' Sub-Section (2) says, 'The provisions of sub-section (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.'

3.2.1.6 Cess

An extra tax known as a cess is levied on the export of commodities such as cocoa, coir, lac, talc, unprocessed tobacco, marine goods, cashew kernels, black pepper, cardamom, iron ore, oil cakes and meals, animal feed, and turmeric. Cesses are a component of customs duties that are collected and redistributed to governing bodies for certain goods.

3.2.1.7 Anti-Dumping Duty

Vendors from other countries may often export products to India at a discount from what they charge in their native market. As a result, India has become a developing market for imported goods. It is in the best interest of the Indian manufacturing sector to have a higher market share, which is counterproductive. Dumping is a term used to describe this practice, and the Central Government has the ability to levy anti-dumping duties on such commodities under section 9A of the Customs Tariff Act if the items are sold for less than their normal worth. This is done in order to keep dumping at bay in the future.¹⁶⁰

Anti-dumping duties can be imposed by the World Trade Organization (hereinafter WTO) and its members. Foreign companies can only be targeted for anti-dumping measures where an Indian business is already manufacturing “comparable commodities”. Dumping duties cannot be imposed on countries that are members of the GATT¹⁶¹ or countries that have “Most Favored Nation” status. Customs levies for education are another example; they are levied in addition to the ordinary tax. In addition to this, customs charges may also include:

- Protection Obligations

¹⁶⁰ Sub-section (2A) of Section 9A of Customs Tariff Act, 1975 says, ‘Notwithstanding anything contained in sub-section (1) and sub-section (2) of this section, a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent, export-oriented undertaking or a unit in a free trade zone or in a special economic zone.’

¹⁶¹ General Agreement on Tariffs and Trade was the outcome of the failure of negotiating governments to create the International Trade Organization (ITO). The GATT was a treaty, not an organization. The functions of the GATT were taken over by the World Trade Organization which was established during the final round of negotiations in early 1990s.

- countervailing duties are imposed on items that have been subsidized
- Responsibility to Protect
- countervailing duties are imposed on items that have been subsidized

3.2.2 Excise Duty

Such items made in India and intended for domestic use are subject to central excise duty, an indirect tax. Taxable activity is ‘manufacturing’ and central excise duty is levied after the items are made. When a product is made, the manufacturer pays a tax, which is passed on to the consumer. The commodities included in the Central Excise Tariff Act of 1985’s first and second schedules are referred to as ‘excisable goods’.¹⁶² To say something is “manufactured” is a broad phrase. –

- pertaining to or serving as an addition to a manufactured good’s combination;
- References to the First Schedule of the Central Excise Tariff Act of 1985 may be found in any items that are referred to as manufactured or
- Packaging or repackaging of products in a unit container, or labelling or re-labelling containers, including the declaration or adjustment of retail selling price on it, or adoption of any other treatment on the goods to make the product marketable to the customer, is included in the Third Schedule.¹⁶³

Central excise duties in India may be divided into three categories. Below is a list of them.

3.2.2.1 *Standard Indian Excise Tax Rates*

All ad valorem commodities, save salt, made or created in India are subject to excise tax at the rates specified in the appendix to the Central Excise Tariff Act, 1985, as per section 3 of the Central Excises and Salt Act of 1944.

¹⁶² DATEY, *supra* note 127, at 178.

¹⁶³ *Id.* at 181.

3.2.2.2 *Additional Duty of Excise*

To assess and collect excise tax on the items mentioned in the Schedule to the Additional Duties of Excise Act of 1957, Section 3 was enacted.¹⁶⁴ In place of sales tax, this fee is levied jointly by the federal and state governments.

3.2.2.3 *Special Excise Rate*

Under the Central Excises and Salt Act of 1944, which was amended in 1978, a Special Excise Duty is collected on all excisable commodities that are subject to taxation. As a result, the Finance Act specifies each year whether or not the Special Excise Duty will be imposed and, if so, how much will be collected.

3.2.3 **Sales Tax**

In India, the government levies a tax on the sale or purchase of specific goods inside the country. The central government and state government legislation both apply sales tax. Since each state has its own sales tax law, varied tax rates are applied.¹⁶⁵ Additional taxes, such as the tax on labor contracts, the tax on turnover, and the tax on purchasers, are levied by several states in addition to the standard sales tax. The various state governments rely heavily on sales tax income to fund their operations.¹⁶⁶

Sales tax is a type of indirect tax in which the seller of the item is responsible for collecting and recouping the tax from the buyer. Sales of imported goods and exports are often not included in the list of goods for which a sales tax is due. In addition, higher

¹⁶⁴ S. 3 – Levy and collection of Additional Duties – (1) There shall be levied and collected in respect of the goods described in column (3) of the First Schedule produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto duties of excise at the rate or rates specified in column (4) of the said Schedule.

(2) The duties of excise referred to in sub-section (1) in respect of the goods specified therein shall be in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944), or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944 (1 of 1944), and the rules made thereunder, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1)

¹⁶⁵ V. S. DATEY, *SERVICE TAX AND VAT* 11 (2nd ed. 2007)

¹⁶⁶ *Id.* at 12.

sales taxes are applied on high-end purchases (such as cosmetics). All interstate sales of commodities are taken into consideration by the Central Government's CST Act.

Since sales tax must be paid by every dealer regardless of whether or not he is liable to pay tax on items sold in interstate commerce or interstate trade, he is required to do so under the rules of his home state. he must pay sales tax to the state's sales tax authority from whence the transit of the goods began.¹⁶⁷

Most Indian states have now added a Value Added Tax to the sales tax from April 1, 2005. (VAT). VAT is imposed at every stage of the sale, with a specific credit system for the input VAT paid by the State Governments. The following tax slabs apply to Indian VAT:

- 0 percent for consumption commodities
- 1 percent on golds and expensive stones
- 4 percent on business inputs, capital goods, consumer goods
- 12.5 percent on other items
- Petroleum, cigarettes, and booze all have state-dependent variable rates.

3.2.4 Service Tax

For many years now, products have been taxed in our country, but services haven't. Dr. Manmohan Singh, former Finance Minister and Prime Minister, implemented a service tax in 1994.¹⁶⁸ It was argued that if products were taxed, why not services? Taxes such as CENVAT can be claimed as CENVAT credits against central excise and services taxes, or the other way around, depending on the circumstances.¹⁶⁹ In India, taxes on services are administered by provisions of the Finance Act of 1994 and the Service Tax Rules of 1994, and the department responsible is the Central Excise department. There is no distinct Service Tax Act or Service Tax Department in India. In our nation, just a portion of the service industry is subject to the service tax, rather than the entire industry

¹⁶⁷ *Id.* at 13.

¹⁶⁸ HALAKHANDI, *supra* note 97, at 1599.

¹⁶⁹ *Id.* at 1600.

as a whole. Every year since 1994, the number of services subject to the service tax has increased.¹⁷⁰

3.2.4.1 Constitutional Provision

Art. 265 of the Constitution states that no tax can be levied in India unless it is done so by an authority delegated by the government.¹⁷¹ There are three sections in Schedule VII devoted to this topic –

1. List I (only Central government has power of legislation).
2. List II (only State government has power of legislation).
3. List III (both central and state government can pass legislation).

In 2003, a change (the 95th amendment) was introduced to allow the federal government to select how service tax is charged and how the federal and state governments collect the profits. A new article 268 A has been enacted by the central government to impose service tax.¹⁷²

3.2.4.2 Creation of Director General (Service Tax)

As the importance of service tax grew, a new agency, known as the Directorate General (Service Tax), or DGST, was established in 1997 to handle the influx of work. The

¹⁷⁰ *Id.*

¹⁷¹ As discussed above, Article 265 of the Constitution lays down that no tax shall be levied or collected except by the authority of law. Therefore, every taxing activity should be backed by proper legislation. Service tax was introduced in India for the first time in 1994 under Finance Act, 1994. The Act was enacted by Union under Article 246 and under Article 248 of Constitution of India read along with Entry 97 of List I in Seventh Schedule of Constitution and was made applicable whole of India except State of Jammu & Kashmir. The Entry 97 mentions, 'Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.' Therefore, taxes on services, not being under any entry in List II and III, was the subject matter covered by Entry 97 of List I, which is also called 'Residuary Entry'. However, later, the Union felt to give a strong constitutional backing to the levy and collection of service tax and hence, Article 268A has been inserted into the Constitution of India for Service Tax levy by Union Government, and collected and appropriated by the Union Government and the State Government as prescribed under the law made by the Parliament. Similarly, Entry 92C has been introduced in the Constitution in Entry – I of Seventh Schedule whereby Union is empowered to enact law on taxation of services. These Constitutional amendments were brought by the Constitution 88th Amendment Act, which came in effect from 15th January, 2004. Not only for the taxes but for cesses which are imposed on amount of service tax collected by Union, constitutional amendments were brought in Article 270 authorizing the levy of collection of cesses on service tax vide 88th Amendment of Constitution.

¹⁷² The Constitution (Eighty-Eighth Amendment) Act, 2003 enforced on 15th January, 2004.

department is overseen by the Director General (Service Tax), whose responsibilities and powers include:

- Monitor service tax collection and assessment by establishing an effective infrastructure and organization under several central excise commissions.
- To assess the number of workers required to carry out the service tax in a proper and efficient manner.
- Service tax collection and revenue collection are to be documented in a database.
- To check on the correct operation of the service tax cells and to carry out any additional duties as needed.

When the service tax was implemented on July 1, 1994, a new way of doing business was established. Only Jammu and Kashmir was exempted from this rule. Since then, consecutive Finance Acts have steadily broadened the scope of the service tax, and as of today, 109 different services are subject to it.

3.2.5 VAT

The VAT is an indirect tax on the consumption of the commodities, which is paid by the original producers when the items are changed or transferred to their ultimate users. In this case, the transferor adds value to the products. In other words, it's a tax on the value contributed by the transferor, not merely on the profit itself. The commodities and services that make up a country's GDP are subject to VAT in all countries throughout the world. This means that tax is charged at each level of the items' value addition.¹⁷³

3.2.5.1 VAT In India

India's Value Added Tax (VAT)¹⁷⁴ is a key part of the country's tax policies since liberalization. There are many ways to describe VAT, but one of the most common is that it is a "multi-point destination-based system of taxes." Due to Entry 54's inclusion

¹⁷³ DATEY, *supra* note 166 at 344.

¹⁷⁴ VAT first introduced by 'Chelliah Tax Reforms Committee' in 1991 and the model accepted by the states, which replaced their Sales Tax legislations with VAT enactments.

on the state list, VAT in India is really a state topic over which states have full decision-making authority.¹⁷⁵ State governments guarantee that VAT is collected by enlisting the services of tax authorities in their respective jurisdictions.¹⁷⁶ The federal government has an important role in providing direction to the states on how to carry out the VAT.

Two legal boards, the CBDT and the CBCE, have been granted the authority to oversee both direct and indirect taxes under the Ministry of Finance (hereinafter CBEC). The department of revenue's sales tax section is in charge of collecting VAT. Double taxation was a concern in India. The goods were taxed once before they were made and once after they were made. Value-added tax (VAT) was enacted to avoid the economic harm caused by this type of double taxing.

3.2.5.2 *Method of Collecting VAT*

There are two ways in which VAT can be collected. Tax is levied on both the purchase tax and sale tax in method one, which is referred to as a double taxation (shown separately in the invoice). Finally, VAT is the tax paid on the difference between the purchase price and the invoice price.¹⁷⁷ Another technique of collecting and charging VAT is to apply the rate of tax applicable to the items, which implies that the difference in selling price and purchase price is VAT in the other method of collection.

3.2.5.3 *Benefit of VAT*

The main advantages of VAT implementation are as follows:

- Reduces tax evasion.
- To put an end to multiple taxes such as sales tax extra surcharges and turnover taxes.
- Advocated an internal system of self-assessment for VAT liability.
- Tax structure becomes easier and more visible.
- In favour of an internal VAT self-assessment system.

¹⁷⁵ ADUKIA, *supra* note 87, at 15.

¹⁷⁶ *Id.* at 25.

¹⁷⁷ DATEY, *supra* note 166, at 88.

- Encourages competitiveness of exports.

A value-added tax (VAT) is a tax based on the amount of value contributed to a product or service. An indirect tax on a business means a tax on the value added by the firm. Value contributed by the firm must be determined in order for a business to calculate its tax base. A variety of models can be used to arrive at this conclusion.¹⁷⁸ All of these models have one thing in common i.e. the value of the supplies utilised by the firm is not included in the calculation of the tax, whether through a deduction technique, a credit method, or another approach. It is therefore possible to avoid the cascading impact of taxes using the VAT model, which excludes taxes paid by a firm on its raw materials from determining the rate on its finished goods.¹⁷⁹

Another important feature of the VAT model is the taxation of all levels of value addition. Value addition at every step of the supply chain is liable to tax under the VAT model, with the exception of circumstances that are explicitly exempt (due to the de minimis threshold or for other policy reasons). Multiple contrast to a single-point tax, which only applies at a pre-identified point of supply, this fee is applied in stages. According to these factors, a VAT model has a lot in common with other tax models. In the first place, tax credits and deductions on input suppliers keep the company tax-neutral. Thus, the tax system has little impact on a company's ability to choose the source of a product or service.

The term "fiscal neutrality" refers to this attribute. A conventional VAT system allows tax to be collected from the recipient of output supply, i.e., the consumer; as a result, it is the customer who is responsible for determining the tax incidence. To put it another way, most people think of the VAT system when they think of consumption-based taxes. And lastly, in order for VAT to function properly, it must be able to "refund these taxes on exports and apply them on imports."¹⁸⁰ In this way, a VAT model is sometimes accompanied with a "destination-based" notion of taxes, but not as a necessary requirement.

¹⁷⁸ Aastha Pandey & Ritesh Kumar, *Application of Value Added Tax in Goods & Services Tax: Issues & Concerns*, 1 ILR, 1, 3-4 (2020).

¹⁷⁹ *Id.* at 5.

¹⁸⁰ Alan Schenk & Oliver Oldman, *Value Added Tax- A Comparative Approach*, 18 2007.

3.2.5.4 *Appraising the Policy Rationale for Adoption of VAT Model in GST Design*

In India, the indirect tax system, the VAT model looks to be the preferred option. Before moving from a state-levying sales tax/purchase tax model to a state-levying VAT model, the White Paper on Value Added Tax (VAT) said that the latter was the preferable approach by expressing the following.¹⁸¹ Additionally, the VAT will not only contain the entire set-off for input tax and tax on prior purchases, but it will also lessen the burden of a number of current taxes, such as turnover tax and sales tax surcharge. As a result, the Central Sales Tax will eventually be eliminated. Consequently, taxation and expenditures will be more rationalised and reduced as a consequence. A new self-assessment system for dealers and manufacturers would replace the current inspection system under VAT. In the future, the tax system will be simpler and more transparent. The state's revenue will rise as a result of the increased tax compliance and transparency.

GST was envisioned as a value-added tax from the outset. The argument for GST was laid out in the first Discussion Paper in this manner. In addition, the production of any commodity is generally based on physical inputs and services, and VAT on commodities should be interrogated with state taxes on services as well; at the same time, the cascading impact of service tax should be deleted. There is a continuous set-off chain built from the original manufacturer and the service provider up to the level of the retailer in GST, which decreases the burden of all cascading consequences. In GST, both CENVAT and service tax are gone. As such, GST is more than a VAT and a service tax. It is an improvement above either the previous VAT or the haphazard service tax system.

Taxes on goods and services have a long and continuous chain of set-off benefits, starting with manufacturers and specialist organisations and continuing all the way up to retailers. An expense credit device may be used to deduct GST paid on the purchase of the goods or initiatives that qualify for a set-off at each step, which is basically a duty on esteem growth at each stage. A consumer will only be responsible for paying

¹⁸¹ Empowered Committee, A White Paper on State-level Value Added Tax, 2005.

the GST that has been collected from all previous vendors before them, with no further set-off benefits.

According to the Task Force on GST's report, it also examined the tiniest details of the value-added tax regime.¹⁸² The value-added tax system is based on tax collection in a structured cycle, where a company in the supply chain is involved in the process of managing and collecting tax, turning over the proportion of tax relating to the sales profit, or the disparity between the VAT paid to distributors and the VAT charged to consumers. As a matter of fact, the vast majority of countries that use the value added taxation system impose taxes at every stage of production, requiring everyone save the ultimate consumer to deduct taxes at the point of sale. Value-added taxes have a major economic advantage because of these characteristics: neutrality. In the absence of a customer at the end of the supply chain, tax transparency is guaranteed (independent of the quality of the item), a chain of distribution and the techniques used to disseminate it.

To ensure the tax's independence in global trade, VAT is based on the notion of destination. There are certain nations where the payment of this VAT on products is postponed until the importer's next VAT return; however, in most countries, it is paid immediately. Input tax deductions on domestic supply, as well as the ability to deduct international VAT, provide equity and do not obstruct global commerce. A value-added tax on all services, regardless of their origin, was recommended by the GST Task Force after considering the various alternatives. The Task Force stated that "the most sophisticated way for eliminating inequalities and regulating demand is a value-added tax on every service" Additional reasons given by the Task Force on GST were its capacity to bring the informal sector into mainstream commerce by creating disincentives for interactions with the informal economy. According to their findings, the following was said on this topic:

All goods and services in the formal sector will be taxed as part of the transition to GST. No input tax credit would be available for purchases made by producers in the formal sector from the informal sector. As a result, the informal sector's value addition to these

¹⁸² 13th Finance Commission, Report of the 'Task Force on GST' (Dec. 15, 2009).

inputs will be recovered when they are utilised in the formal sector. Furthermore, when the informal sector acquires goods from the formal sector, they will be subject to GST, and since the informal sector will not be taxed, the tax will be levied on the manufacturer. As a result, the informal economy will have a larger tax burden under a GST that is both consumption-oriented and destination-based. As a result, moving to a GST that is “flawless” will enhance horizontal equity.

Without officially mentioning it, the Parliamentary Standing Committee on Finance did recognise the following important elements of the GST model as a value-added tax in its report.¹⁸³ GST is a natural culmination of the reform of taxation process that began with the introduction of CENVAT, a service tax, and the establishment of state VAT from sales taxes. Many taxes levied by both the Centre and the States would be eliminated, allowing input tax credit to flow freely across the value chain of products and services. The indirect taxation structure would be completely streamlined by eliminating several levies and tax cascading. Because of the input tax credit, products and services will always be more affordable. Although it did not endorse a proposal to legally describe GST as a “multi-stage destination-based value-added tax on supply of products, or services, or both, and levied in accordance with the framework suggested by the GST Council,” the Rajya Sabha Select Committee recognised this GST architecture.¹⁸⁴

At a policy level, there was unanimous support for a value-added tax mechanism for the GST, as evidenced by the above discussion. In addition, there was broad agreement on the key characteristics of the VAT model for the GST system. As a result, there is no explanation of what a “tax on supply” is in the new legislative area of a “goods and services tax” incorporated into the constitution, nor is there any explanation in the text of either the 2011 Amendment Bill or the 2014 Amendment Bill. The characteristics of the GST are not specified. Is it life-threatening or not? In other words, does this mean that the Goods and Services Tax (GST) isn’t a VAT? The answer to your question is no. Legislation is the primary function of the legislature. Judges are responsible for

¹⁸³ Parliament’s Standing Committee on Finance, 73rd Report (Aug. 7, 2013)

¹⁸⁴ GST will broaden the tax base, and result in better tax compliance due to robust IT infrastructure. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of GST that would incentivize tax compliance by traders.

determining the legality and constitutionality of legislation, as well as their ability to implement laws.¹⁸⁵

As long as the customer is responsible for paying the final tax, a proper tax credit system assures that no taxes are repeated. GST will bring all taxes under one umbrella, eliminating the need for several tax systems at the federal and state levels, such as excise tax, sales tax, and value-added tax (VAT). Incorporating various taxes into the GST system will result in an efficient credit cross-use. Taxing consumption is the goal of today's tax production system and the GST. The value-added supply chain is taxed at every point of sale and purchase. Tariffs don't differentiate between products and services in this regard. In addition, it gives full credit for the input tax. On the provision of goods and services, a consumption-based tax is imposed. When a person receives things or services, he or she acquires a right to use and benefit from the commodities or services. Addition of values is taxed.

To put it another way, tax is computed on the overall value of the products or services, after which a credit of input tax is paid, and it is granted until the final product or services are delivered to a person who does not even profit from the input and pays the full cost of goods or services. As the greatest single indirect tax reform in India's history, the GST is expected to provide a simpler tax structure, as well as an integrated credit chain. When it comes to the concept of "One Levy, One Market," it should be welcomed by online marketplaces. To ensure that transactions in the online marketplace are treated fairly, sector-specific GST laws must be implemented. However, this is only the first of two measurements. The government must now comply with these demands as the next critical step. Tax consulting teams will be required to work together with businesses to provide customers with a simplified solution that incorporates all of their business needs in the GST effect assessment and implementation process.

An Indirect Tax Enquiry Committee, headed by Sri L.K. Jha of the Indian government, was established on July 19, 1976 in order to investigate all aspects of the Indian Indirect Tax Process system. In order to combat the cascading effects of excise taxation, the committee conducted a thorough investigation into the prevalence of Indian indirect

¹⁸⁵ Federation of Hotels & Restaurants Assn. of India v. Union of India, (1989) 3 SCC 634.

taxes, the issue of rate multiplicity, and so on. They came up with the idea of MANVAT, a collection of four excise rates and the implementation of VAT at the manufacturing level.¹⁸⁶

3.2.5.5 *Deriving the Principles from European Community's VAT Regime*

The European Community's VAT regime thoroughly addresses the notion of VAT. A system of value-added tax achieves the highest degree of simplicity and neutrality when the tax is levied in as general a manner as possible, and when its scope covers all stages of production, distribution, and the provision of services,¹⁸⁷ according to the First Council Directive "on the harmonisation of legislation of Member States concerning turnover taxes."¹⁸⁸ In light of this context, the First Council Directive outlined the following specifics.¹⁸⁹

Value added tax systems are based on the premise that a general tax on consumption of goods and services should be applied, independent of the number of transactions that take place prior to a tax being levied. On each purchase, the amount of value-added tax (VAT) incurred by each cost component must be deducted from the price of the products or services to determine how much VAT must be paid. The aforementioned is a key example of two fundamental VAT concepts. The following are examples:

- It is essential that the tax be based on the number of transactions which take place in the production and distribution process before the point at which tax is levied.
- After deducting the amount of value-added tax paid directly by the various cost components, the precise proportion principle is reached by charging VAT.
- The Council Directive on the uniform system of VAT utilises the same concepts to illustrate this feature even further when it states as follows: When it comes to achieving the aim of creating an insider market, it is essential that Member States have implemented an anti-trade and anti-free-flowing-of-goods tax law.

¹⁸⁶ Indirect Tax Enquiry Committee, 1976.

¹⁸⁷ Preamble, Goods & Services Tax Act, 2017

¹⁸⁸ Harmonization of legislation of member states concerning turnover taxes, First Council Directive 67/227/EEC (1967).

¹⁸⁹ Tarun, *supra* note 48, at 307.

Consequently, a system (VAT) that eliminates elements that might impact market circumstances, whether at a national or local level, is necessary in order to achieve such congruity with respect to the legislation of turnover taxes.

- When the tax is applied as widely as feasible and when similar products and services in each Member State are taxed at the same rate, the VAT system is most efficient and equitable.
- No of how disparate the tax rates and exemptions are, the standard VAT system should keep prices level throughout all EU countries, regardless of where a product or service is produced or distributed, even if the rates and exemptions differ.

With respect to VAT, the European Court stated, inter alia, as follows:¹⁹⁰

“VAT generally applies to transactions involving goods or services; it is proportionate to the price of those goods or services, regardless of the number of transactions taking place; it is charged at each stage of production and distribution; and finally, it imposes on the value added of goods and services.”

It is thus possible to list the design’s features here.:

- Essentially, this tax is imposed on the sale of goods and services.
- The tax is proportional to the price of such products or services and such proportionality is not disrupted by the number of transactions that take place.
- The tax is imposed at each stage of the manufacturing and distribution process, but in reality, only on the value added to products or services provided by suppliers, as the tax is paid by suppliers after deducting the tax paid on preceding amount.

Because of this, the capacity to deduct the tax paid on a prior transaction determines whether or not a firm is liable to VAT. Using the deduction technique or the input-tax credit mechanism, which is critical to the operation of VAT, this may be accomplished. The VAT system prohibits the application of a taxation arrangement where VAT is

¹⁹⁰ Fazenda Publica v. Solisnor- Estaleiros Navais SA, (1997) ECR I-05053

determined only once on the first market stage because of the fundamental principle which underlines the VAT system that VAT applies to each transaction by way of production or distribution after deducting the VAT which had been levied directly on transactions relating to inputs.¹⁹¹

In the European setting, firms have been deemed eligible to deduct the tax paid on input supplies even if the provider is later exempted from taxes since the goal is to levy tax solely on the value contributed by the supplier. Removing tax rights retrospectively would be “contrary to the idea of legal clarity w.r.t. the rights and responsibilities of taxable individuals” and, more crucially, would be “contrary to the notion that VAT should be neutral with regard to the tax burden on enterprises”.¹⁹²

The European Court has determined that a tax that is only applied once in a supply chain, does not have a right to deduction, and is a part of the supply chain is not a value-added tax based on these and similar factors.¹⁹³ According to this, a tax that is imposed just once and only applies to a “particular service” does not display the features of a VAT since it was “not meant to attach to all economic activities.”¹⁹⁴ A system of exemption does not mean, however, that the provider does not have the right to deduct input tax. Exemptions are legitimate and cannot be blamed for the VAT regime, even though they are “contrary to the concept of fiscal neutrality” since they “break the chain of deductions and increase the tax charge,”¹⁹⁵ according to the European Court of Justice¹⁹⁶.

3.3 GST: A TAX BASED ON A VAT MODEL

However, Indian courts have not repeated the aforementioned thoughts under the EEC VAT scheme as loudly. VAT means “an all-encompassing tax on economic activity including the production of products and the provision of services,” according to the

¹⁹¹ BP Supergas Anonimos Etairia Geniki Emporiki- Viomichaniki kai Antiprossopeion v. Greek State, ECLI:EU:C:1995:223.

¹⁹² Intercommunale voor zeewaterontzilting (INZO) v. Belgian State, ECLI: EU:1996:67.

¹⁹³ Wissenlink en Co. BV v. Finanzant Paderborn, ECLI:EU:C:1989:324.

¹⁹⁴ GIL Insurance Ltd. v. Commissioners of Customs & Excise, ECLI:EU:C:2004:252.

¹⁹⁵ The input tax credit is in the nature of ‘concession’ granted. Jayam & Company v. Comm, (2016) 15 SCC 125.

¹⁹⁶ Belgocodex SA v. Belgian State, ECLI:EU:C1998:589.

Supreme Court ruling. VAT is a consumption tax since it is paid by the end user.”¹⁹⁷ Several High Courts have upheld the fundamental structure of a VAT model after considering the justification for changing from a sales tax/purchase tax regime in state legislation.¹⁹⁸ Value added tax (VAT) is characterised by the Supreme Court in terms of its economic understanding as compared to turnover tax (TT).¹⁹⁹

‘Value Added Tax,’ also known as VAT, is applied in several Western nations in addition to sales tax, which is rather interesting. ‘Value Added Tax’ or income and consumption tax on revenue is explained by Professor Paul A. Samuelson in his novel²⁰⁰ as follows; A turnover tax is applied to each and every transaction. As a result, the miller does not pay VAT on the flour he produces because VAT does not charge tax on wheat purchased directly from the farmer.²⁰¹ Taxes on wages and salaries are not levied, but only on expenses related to the grinding stage of production (interest on loans, royalties paid, etc.). By subtracting the miller’s selling price from the ‘value added’ value and the VAT tax on that value, the raw material costs from the earlier steps are deducted.

On the basis of equivalence,²⁰² the VAT model is said to be based on the imposition of VAT on products and services, “just as exercise duty is a tax on value addition on items, service tax is on value addition by rendition of services”.²⁰³ Value added tax (VAT) models do not separate products and services from one other in their definitions, therefore VATs are applied to both. Following the “credit system” of the VAT, the GST law aimed to alleviate businesses from paying taxes on their input supply by adopting the VAT model.²⁰⁴ A business’s value addition is determined by offering credit for taxes on the value added to built-in input supplies used to produce its output supplies in accordance with the provisions of GST legislation. According to the government,

¹⁹⁷ All-India Federation of Tax Practitioners v. Union of India, (2007) 7 SCC 527.

¹⁹⁸ Sony India (P) Ltd. v. CTT, 2015 SCC Online Del 10811

¹⁹⁹ State of Karnataka v. B. Raghuram Shetty, (1981) 2 SCC 564.

²⁰⁰ Economics 168 (10th ed., 1976)

²⁰¹ State of Karnataka v. B. Raghurama Shetty, 1981 AIR 1206.

²⁰² All India Federation of Tax Practitioners v. Union of India, (2007) 7 SCC 527; Assn. of Leasing & Financial Service Companies v. Union of India, (2011) 2 SCC 352.

²⁰³ Service tax is a “consumption tax is being not a charge on business but on consumer and is leviable on service provided and thus it is a value added tax.” ShubhTimb Steels Ltd. v. Union of India, 2010 SCC Online P&H 1186.

²⁰⁴ Central Goods & Service Tax Act, 2017, Section 16 illustration.

GST “follows a multi-stage collection process” in which the “tax is collected at every stage of transaction”. Since the availability of input tax credit is specified when a firm “is in possession of tax invoice or debit note issued by a supplier registered under this Act,” the GST law has adopted a “invoice-based” VAT system.²⁰⁵

A tax credit system is used to ensure that only the GST charged by the final dealer in the supply chain is taxed. This mechanism aims to achieve the global principle enshrined in the First Discussion Paper, i.e., that the GST would “essentially be a tax on value addition to each stage” where the “supplier can, at each point, set the GST charged on the purchase of goods as available for set-off on the GST payable on the supply of goods and services through the use of a tax credit system.” A variety of “conditions and limits” apply to the entitlement to deduction, i.e. the credit of input taxes under GST legislation.²⁰⁶

As a multi-stage tax that includes value addition and zero-rated exports, GST retains the avowed VAT characteristic by including all suppliers of goods and services except those who are specifically excluded (due to tax thresholds or other policy reasons).²⁰⁷ As a result, the GST legislation adopts the destination-based principle commonly associated with VAT models. Due to constraints and conditions placed on input taxes, the GST tax cannot be levied in a fashion that is “perfectly proportionate” to the value contributed at each level of the supply chain. However, this does not change the conclusion that the GST tax is a value-added tax.

3.4 CONSIDERING THE REQUIREMENT OF GST IN INDIA

According to a proverb that may be found in Kautilya’s Arthashastra, which is considered to be the earliest book ever written on the subject of economics, the most effective method of taxation is one that is “liberal in assessment and brutal in collecting.” It would appear that the proposed Goods and Services Tax would be founded on this precise idea. The Goods and Services Tax (GST) has provided India

²⁰⁵ Central Goods & Services Tax Act, 2017, Section 16 (2) (a).

²⁰⁶ *Id.*

²⁰⁷ Integrated Goods & Services Act, 2017, Section 5(1), 7(2) & 7(4).

with a variety of advantages.²⁰⁸ The Central Government presents the Goods and Services Tax (GST) as a solution to all of the structural and administrative problems that are currently being experienced by the indirect tax system by stating,

*“The GST is a straightforward, open, and effective method of indirect taxation. The method of taxing both commodities and services may be merged much more easily thanks to this approach. This helps to eliminate taxed-induced economic inefficiencies and provides a boost to the economy. The system makes it feasible to grant input tax credit across the board for all goods and services as well as the whole chain of transactions. The costs associated with administration and regulatory compliance for such a system are significantly reduced. India has the potential to become a truly national common market and a highly attractive investment destination if this system is put into place.”*²⁰⁹

To begin, although the current system permits a plurality of taxes to be collected through a system that is both inefficient and opaque, the introduction of GST is likely to rationalise it and, as a result, close the loop holes that exist in this system. This will provide the government the ability to put an end to wasteful spending and streamline the entire taxation system. The Goods and Services Tax (GST) will assist lower the total tax burden of many enterprises, despite the fact that many regions are either under-taxed, non-taxed, or over-taxed.²¹⁰

In the current political and economic climate, the implementation of an integrated Goods and Services Tax to replace the several tax systems now in existence, which are comprised of Centre and State taxes, is not only desirable but also necessary.²¹¹ As time goes on, more and more services are being employed or consumed in the manufacturing and distribution of commodities, and the opposite is also true. When products and services are subject to separate taxes, the value of the transaction must typically be

²⁰⁸ Tarun Jain, *Harmonized Goods and Service Tax in India: Setting the Foundation*, SSRN (April 23, 2021, 09:35 AM) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1267066.

²⁰⁹ Rajya Sabha, Unstarred Question No. 1524, dated March 13, 2007 (April 23, 2021, 09:58 AM) <http://164.100.47.5:8080/rsq/quest.asp?qref=124345>.

²¹⁰ First Discussion Paper on Goods and Services Tax in India (April 23, 2021, 10:15 AM) <http://pib.nic.in/archieve/others/2009/nov/gst.pdf>.

²¹¹ MITRA, *supra* note 75, at 31.

broken down into the respective values of the items and services for the purposes of taxation. This results in an increase in the amount of complexity, administration, and compliance expenses.

In addition to this, the economy of India is becoming increasingly globalised. The recent signing of a number of free trade agreements (*hereafter* referred to as FTAs) would make it possible for India to import goods without paying tariffs on them or at extremely low rates of duty.²¹² Therefore, it is necessary to have a taxation system that is straightforward and open to the public across the whole nation in order to make it possible for the Indian industry to compete in both the home market and the international market. It would be able to grant full credit for inputs taxes collected if a variety of federal and state taxes were integrated into a system for the goods and services tax (GST). The Goods and Services Tax (GST), which is a consumption tax that is based on the VAT principle and that is destination-based, would also be of great assistance in removing economic distortions that are caused by the present complex tax structure, and it will assist in the development of a common national market.

Existing taxes like Excise, State Sales Tax/VAT, CST, Entry Tax, and any other cascading-type Central/State levies on goods and services need to be replaced in order for the Goods and Services Tax (GST) to be implemented in a meaningful way.²¹³ This is a fundamental requirement that must be met before the GST can be implemented. It is quite likely that any losses incurred as a result of the elimination of various taxes would be compensated for by an increase in the amount of GST income collected from the taxation of services and from access to GST on imports. In addition to this, India would be able to keep its federal system while yet benefiting fully from the efficiencies of a single national VAT. This would also be the natural conclusion that should be drawn from the efforts that have been made in the country over the course of the previous two decades in working towards implementing a VAT.

There will be more uniformity in the laws across the board as a result of the Goods and Services Tax (GST) legislation, as well as greater transparency, neutrality in tax rates on various products, the availability of credits on interstate purchases, and a reduction

²¹² Matthew Gilleard, *Destination India*, ITR 15, 14-16 (2012).

²¹³ MITRA, *supra* note 75, at 32.

in the number of requirements for noncompliance. If the Goods and Services Tax (GST) is implemented in accordance with its original intentions, it would result in a more favourable tax environment and bring with it a number of benefits for the many stakeholders.²¹⁴ The implementation of the GST will have more of an effect than merely shifting the burden of taxation from one part of the economy or population to another. The implementation of the GST results in a dividend for the macroeconomy because it lowers the overall incidence of indirect taxation and, as a result, the overall tax burden. This is accomplished by doing away with the numerous distortionary features that are present in the existing sales tax system.²¹⁵ This occurs through four significant macroeconomic pathways, which are as follows:

- Consumption decisions are distorted as a result of the inability to tax all commodities and services, which also reduces the effectiveness of relative pricing as a signalling mechanism. These distortions are mitigated by the GST, which also makes it possible for all economic agents to respond more effectively to price signals.
- A tax on capital goods that does not provide a refund discourages saving and investment, which in turn slows the increase of productivity. This is undoubtedly the most significant benefit that has come about as a result of the implementation of GST in a developing economy like India.
- A breach of the destination principle places local producers at a competitive disadvantage when compared to producers in other jurisdictions for a particular constellation of exchange rates and price levels.
- The differences in the tax bases that exist between the states and the federal government contribute significantly to the rise in company costs. The reform of taxes based on the GST presents a real opportunity for policymakers to take action to address this issue without having to first wait for more fundamental shifts in the political economy.

When compared to that of India, the GDPs of nations such as the United States of America, China, and Japan are substantially, much greater. In point of fact, the gross

²¹⁴ Nihal Kothari, *India on the threshold of major indirect tax reform*, 9 I.T.R. 11, 9-13 (2011).

²¹⁵ *Id.* at 12.

domestic product (GDP) of a select few countries implies that India has a long way to go before reaching the level of that of industrialised nations. Average GDP per Country is:

GDP of Nations²¹⁶	
Country	GDP in Trillion US Dollars
USA	22.94
China	16.86
Japan	5.1
Germany	4.23
UK	3.1
India	2.95
France	2.94
Italy	2.12
Canada	2.01

Source: International Monetary Fund (IMF)

India has been presented with a once-in-a-lifetime chance to establish its claim and obtain a cushioned seat in the international order as a result of the continuing economic downturn and recession of economies around the globe. However, in order to do this, the country will have to bring its GDP up to a level that is at least twice as high as the current one.²¹⁷ The direct taxation system has, for the most part, been subjected to yearly fine tuning, and as a consequence, the amount of revenue collected and deposited into this account has significantly grown.

²¹⁶ Data refer to the year 2021 World Economic Outlook Database-April 2021, IMF (April 25, 2021, 06:34 PM)
https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEO_WORLD/CHN.

²¹⁷ Jose Sebastian, *India's experience with VAT*, 22 Int. VAT Monitor 31, 28-33 (2011).

However, there has not been any reform on this size implemented in indirect taxes as of yet. Therefore, there is an immediate need for the rationalisation and unification of indirect taxation. If the GST were to be implemented in both text and spirit, it would almost likely result in an increase in the total amount of tax revenue collected. This will serve as a significant impetus for the expansion of our economy, which has, as of late, reached a point where it can compete on an equal footing with the majority of the world's leading economies.²¹⁸

3.5 GST: THE MOST PREFERRED TAX STRUCTURE

The structure of India's consumption tax is convoluted and intricate, with taxes imposed at both the federal and state levels of government. At the level of production, taxes on products are collected by the Centre via CENVAT. Taxes on services are charged via the Finance Act, while taxes on sale of goods are levied via the CST Act. Independently and in accordance with their respective legislation, the states impose sales taxes on the sale of products.²¹⁹ Even though there has been considerable progress made toward consistency as a result of the implementation of the Value Added Tax (VAT), variances still remain.

The Goods and Services Tax (GST) is an element of the planned tax changes that are centred on the development of an effective and standardised consumption tax system in the nation. The Goods and Services Tax (GST) will replace the existing several taxes with a single tax that will be applicable across the board of the supply chain.²²⁰ The domino effect that results from several taxes would be eliminated as a result of this. In addition, the Products and Services Tax (GST) is based on a negative list, which means that all goods and services are subject to GST unless they are expressly exempted from it. Although the system of sales tax is based on a similar idea, the system of service tax is based on a different foundation. In this system, the only services that are taxable are those that are explicitly prescribed under the Finance Act. The operation of the GST regime will be different, which will result in a broader tax base. At the same time, the Commodities and Services Tax (GST) would cut down significantly on the wide

²¹⁸ *Id.* at 32.

²¹⁹ Mr S. Madhavan, Executive Director, PwC Pvt. Ltd.

²²⁰ *Govt for strategic partnership with taxpayers, GST by 2010*, Business Line, Nov. 20, 2007.

number of goods that are exempt from taxation, so halting tax evasion and guaranteeing a reasonable tax rate.²²¹

In addition to this, the Goods and Services Tax would put an end to the long-standing distortions that have been caused by the disparate taxation of the industrial and service sectors. When compared to the task of administering exemptions and identifying taxable goods and services under the current sales tax and service tax regimes, the GST promises simplicity, which will result in a significant reduction in the cost of compliance. In addition, the GST will significantly reduce compliance costs.²²² we may summarise the primary reasons that make the GST the preferable tax system by saying that they are as follows:²²³

- A straightforward fiscal plan with no more than a couple of different tax brackets.
- a single tax rate that is consistent and uniform across the supply chain.
- Taxpayers will incur less costs as a result of reduced transaction volume.
- Enhanced tax revenue collection as a result of a broader tax base and improved compliance.
- Enhancement of the cost competitiveness of indigenous goods and services on the international market
- The realisation of cost savings through increased production and distribution brought about by economies of scale.
- The Goods and Services Tax (GST) promotes the adoption of a tax system that is impartial and unaffected by business procedures, business models, organisational structures, product alternatives, and geographic locations.

If India were to adopt the Goods and Services Tax (GST), then its tax system would become essentially identical to those of other countries across the globe. Additionally, it will increase the cost competitiveness of domestic goods and services on the foreign market. In addition to this, it will promote the development of a tax system that is not biased against particular business procedures or geographic regions. In addition, the

²²¹ MADHAVAN, *supra* note 220.

²²² *States agree to dual GST by 2010*, Business Standard Reporter, Nov. 29, 2007.

²²³ *FICCI's report on Goods & Services Tax-2010*, July 2007.

implementation of GST would make it possible to bypass a number of obstacles that now exist inside India's pre-existing taxes structure. Among them are the following:

3.5.1 Tax Cascading

By instituting systems for input tax credits, the Goods and Services Tax Act will make it possible to solve the problem of tax cascading. Tax credits can be claimed by qualifying sellers or vendors of goods and services under this system, and the credits will be applied to the amount of GST that was paid for eligible procurements. Credits can be claimed by manufacturers for the value-added tax (GST) that was paid on inputs, capital items, and services that are used in the manufacturing process. Wholesalers and retailers both have the ability to claim credits for the value-added tax that they paid when they purchased merchandise. However, the ultimate client who acquires the product for the purpose of consumption will not be able to take advantage of and make use of any tax credit.

The following illustration might help illustrate the concept of tax cascading. If a tax is applied to a specific product at each stage and there is no possibility of receiving a credit for the tax, then tax will be levied at each stage whenever a thing or service changes hands. In other words, taxes are imposed many times, and further taxes are levied even on taxes themselves, as taxes are considered inputs. The product will be subject to the applicable taxes listed below:

- The sales tax is paid by the producer when they purchase the inputs, also known as the raw materials, for the product.
- When a wholesaler receives a product from the manufacturer, the wholesaler is responsible for paying the tax on the product's acquisition.
- Tax is levied once more by the wholesaler on the commodity after it has been purchased by the retailer from that entity.
- The final step is for the customer to purchase the item from the shop, who will then charge the client another tax.

As a result of this layered sales tax, the ultimate sales price will be much higher than it would have been otherwise since every participant in the supply chain will have to raise

the price of the product in order to recoup the tax that they have already paid. When tax is paid on tax, the cascading impact will become more pronounced. There is a significant number of goods as well as a variety of services that are not subject to CENVAT or service tax. It is forbidden for the exempted industries to claim any credit for the input tax they paid. In a similar manner, under the state VAT, there is no provision for allowing credits to be claimed for inputs that are purchased and then utilised for exempted industries. The inability to take advantage of available tax credits results in an accumulation of additional taxes. The effect of tax cascading in India is extremely high because of the enormous number of exemptions that are available.

3.5.2 Complexity

At the moment, there is a Central Sales Tax (CST) as well as specific VAT Acts for each state and Union territory in India for taxing the sale of commodities. This issue will be eliminated when the Goods and Services Tax is put into place since it will have a consistent code for the application of State GST in each state. The Goods and Services Tax (GST) will not only consolidate a huge number of indirect taxes but will also resolve concerns relating to categorization by imposing only one or two tax rates. Aside from this, there would also be groups that are exempted from the tax or are not taxed at all. At the moment, a number of taxes can be applied to the processes that occur inside a supply chain. For instance: - the excise tax that applies to the manufacturing of a thing does not apply to the sale of the produced item; rather, the sale of the manufactured good is subject to either state VAT or CST. The Goods and Services Levy (GST) will guarantee that all stages of the supply chain adhere to a single standard tax.

3.5.3 Double Taxation

Indirect taxation had never been caught up in a controversy before, but quite recently a couple of High Court judgments, one delivered by Karnataka HC²²⁴ and the other by

²²⁴ Bharti Airtel Limited (formerly Bharti Televentures Limited) rep. by its Head Legal and regulatory Shri Suresh Kumar KG vs. State of Karnataka through its Principal Secretary, Finance Department and others, MANU/KA/0065/2009.

Kerala HC²²⁵ need a special mention and discussion, particularly when the issue is centred on “double taxation.”²²⁶ Because the GST would be levied at every step of the supply chain, there will be no distinction between the commodities and services that are subject to the tax. This will assist in resolving the issue of double taxation that has been occurring. Not only are there conflicts between excise charges, customs duties, and the service tax, but there are also conflicts between the VAT and the service tax.

The problem of double taxation was brought up before the Honorable Supreme Court of India in the case of *Bharat Sanchar Nigam Limited (BSNL) and another vs. Union of India and others*.²²⁷ In that case, the Court held that the same activity cannot be regarded as both goods and services, and as a result, service tax and VAT should not be applicable on the same set of transactions at the same time. This was the Court’s response to the problem of double taxation. The introduction of the Goods and Services Tax (GST) will solve the problem faced by a significant number of assessors who are uncertain about the type of tax that should be applied to certain types of transactions. These types of transactions include the creation of software, the sale of sim cards by telecom operators, the online subscription of newspapers, value-added services offered by telecom operators, and the right to distribute movies.

3.5.4 Contracts That Are Composite

There are a huge number of works contracts that entail the provision of products and services to customers in accordance with a variety of supply chain arrangements. These goods and services are made accessible to consumers. Because the states do not have the authority to levy taxes on services and the federal government does not have the authority to levy taxes on the sale of goods within a state, situations like these can arise when there is a gap in the taxation of goods and services or when there is an overlap between the two. In circumstances like these, the application of GST is the only thing that can give a comprehensive answer. The implementation of the Goods and Services Tax (GST), combined with the implementation of conservative accounting procedures,

²²⁵ Commissioner of Central Excise and Customs vs. Idea Mobile Communications Ltd., MANU/KE/0460/2008.

²²⁶ Yashwardhan Bandi, *Double Taxation in Indirect Tax Laws: A move towards a uniform Goods and Services Tax (GST) regime*, J.I.B.L 92, 90-102 (2010).

²²⁷ AIR 2006 SC 1383.

transparency, and the backing of effective electronic controls, will bring about a reduction in the peak tax rates and an increase in revenue growth.

The following table compares the previous tax rates with the newly implemented GST, which clarifies this.

Goods from Manufacturer to wholesaler		Earlier taxes (Rs.)	GST (Rs.)
Cost of production		80,000	80,000
·	Producers margin of profit	20,000	20,000
Producer's price		1,00,000	1,00,000
·	Central Excise duty at 14%	14,000	Nil
·	VAT at 12.5%	14,250	Nil
·	Central GST at 12%	Nil	12,000
·	State GST at 5%	Nil	8,000
Total price		1,28,250	1,20,000
Goods from wholesaler to retailer		Earlier taxes (Rs.)	GST (Rs.)
Cost of goods to wholesaler		1,14,000	1,00,000
·	Profit margin at 5%	5,700	5,000
Total		1,19,700	1,05,000
·	VAT at 12.5%	712.5	Nil
·	Central GST at 12%	Nil	600
·	State GST at 5%	Nil	400
Total price		1,20,412.50	1,06,000
Goods from retailer to final consumer		Earlier taxes (Rs.)	GST (Rs.)
Cost of goods to retailer		1,20,412.50	1,06,000
·	Profit margin at 10%	12,041.25	10,500
Total		1,32,453.75	1,16,500
·	VAT at 12.5%	1,505.15	Nil
·	Central GST at 12%	Nil	1,050
·	State GST at 8%	Nil	840
Total price to the final consumer		1,33,958.90	1,18,390
Tax component in the price to the final consumer		30,467.65	22,890
Final price exclusive of taxes		1,03,491.25	95,500

The example shown above illustrates how much higher the ultimate cost to the consumer is as a result of the many taxes that are imposed on the product. As a result, the application of GST will ultimately benefit consumers, manufacturers, wholesalers, and retailers alike.

3.6 FINANCIAL NEUTRALITY: BORROWING A KEY IDEA FROM THE VAT SYSTEM OF THE EUROPEAN UNION

It's clear that parliament has changed its mind about VAT, as seen by the passage of the GST bill. Input tax credits have for the first time been enacted into law by a legislative act. Prior to this act, the executive branch was free to decide whether or not to allow the deduction of tax paid on inbound supplies.²²⁸ As opposed to this, the notion of input tax deduction has been actively pursued by state legislatures for more than a decade and has been based on the White Paper on VAT.²²⁹ Taxpayers, however, have never had a statutory entitlement to such a deduction under parliamentary legislation before Section 16 of the Central Goods and Services Tax Act, 2017. The evolution of jurisprudence on the topic in India does not indicate a consistent policy-laden approach due to the many regulations and distinct establishing of credit rules under the current law. Although the European Court has laid forth a legal stance on the matter, it is necessary to assess the current condition of affairs as a result of that legal position.

According to the Sixth Council Directive, the taxable person is entitled to deduct from the tax which he is liable to pay” the “value-added tax due or paid within the territory of the country in respect of goods and services supplied or to be supplied” in the Common System of value-added tax, which is a uniform basis of assessment for all member states. A taxpayer has a legal right to deductions under EU law, which is enshrined in the Council Directive, which stipulates that “the single system of value-added tax.”

Thus, these rules have been given such importance that they have been defined as “a basic concept of the common system of VAT established by EU legislation,” which is

²²⁸ CENVAT Credit Rules, 2004

²²⁹ Empowered Committee, White paper on State-level Value Added Tax (2005).

“an intrinsic feature of the VAT scheme and, in theory, cannot be restricted.”²³⁰ Due to this protection of the right, which stems from its basis in the “deduction system,” the “trader is supposed to be completely exempt from any VAT owed or paid during all his business operations.”²³¹ A taxable person’s entitlement to claim a deduction for input VAT has been deemed unrelated to the “question whether the VAT paid to the public purse.” European Union legislation states that the concept of fiscal neutrality prohibits treating equivalent goods and services that compete with each other differently for VAT purposes because of the principle of fiscal neutrality.²³²

Several important characteristics of this style are highlighted in the European Court’s ruling in *Rompelman*.²³³ To ensure that the tax is paid by the end user, the European Union’s Value Added Tax (VAT) system permits levy only after the deduction of the tax on various components of the supply, and the right to deduction is limited to taxable persons, thus ensuring that the tax is paid by the end user, this decision affirms that the right of deduction is fundamental to the EU VAT regime. Value added tax “ensures that they are themselves subject to VAT and are... taxed in a totally neutral fashion” as a result of these principles, and the notion of fiscal neutrality develops as a core feature of the tax system.

Since “the principle that VAT should be neutral as regards the tax burden on a business requires that the first investment expenditure incurred with a view to renting out such premises requires that the first investment expenditure incurred for the purpose of the future transfer of property rights in part of a building yet to be constructed,” the European Court upheld this input tax deduction claim in this case. To put it simply, in order to preserve the right to deduct pre-commissioning input supply, the European Court used the principle of fiscal neutrality.

The judgement in *Fini*²³⁴ sheds light on the broadened scope of the privilege to deduct in tax cases. To manage a restaurant, *Fini* was formed as a partnership business. In

²³⁰ *Compass Contract Services Ltd. v. Commissioners for Her Majesty’s Revenue and Customs*, ECLI: EU: C: 2017: 454.

²³¹ *Bonik Eood v. Direktor*, ECLI: EU: C: 2012: 774.

²³² *Commissioners for Her Majesty’s Revenue and Customs v. Ranks Group Plc.* ECLI: EU: C: 2011:608.

²³³ *D.A. Rompelman v. Minister van Financien*, ECLI: EU: C: 1985:74.

²³⁴ *Fini H. S. Skatteministeriet*, ECLI: EU: C: 2005:128.

1988, it signed a 10-year lease for a premise in the area. The restaurant was shut down in 1993, but the lease didn't expire until 1998 because of the conditions of the agreement. It continues to deduct input taxes paid by it on the expenditures incurred in relation to the lease in question, such as the rent and heating and electricity and telephone charges, Fini said in a statement. There was a disagreement with the tax authorities over the deduction. Preparatory acts must be viewed as economic activities, and therefore, any person performing such preparatory acts would be regarded as a taxable person, and the entitlement to deduct is retained, even if the company is later decided, in light of the profitability study results, that it should not proceed to operational phase but instead liquidate.

Notably, the notion of fiscal neutrality does not obstruct the setting of supply-side differential rates. The European Court acknowledges that the principle of fiscal neutrality precludes treating similar supplies of services, which are, thus, in competition with each other, differently for VAT purposes but, as the Court has repeatedly made clear, that the principle does not extend the scope of a reduced rate in the absence of a clear wording to that effect".²³⁵ In other words, persons who are taxed at a higher rate because of a disparity in tax rates cannot use the concept of fiscal neutrality to claim a lower tax burden.

In concluding point, on the comparative analysis between VAT and GST, the researcher would like to state here that GST is a superior type of VAT since it benefits consumers as well as the government. It was implemented five years ago. In order to achieve a win-win situation, the Government enacted tax laws. Unlike VAT, which had a cascading impact, the GST tax was based on the supply of goods and services, eliminating the cascading effect. Different VAT schemes produced a lot of uncertainty and didn't benefit everyone equally. Using the GST model, which is a superior version of VAT, the European taxation system has discovered that it eliminates the cascading effect or the repeating of taxes. Rather of having to pay taxes in many locations, this tax is based solely on where you are going. In India, the GST is modelled after the VAT and utilises a credit system. As a result, India's GST model includes the use of VAT

²³⁵ *Etat Belge v. Oxygure Belgium SA*, ECLI: EU: C: 2017:189.

since the VAT model has been upgraded and provided in a more effective method to collect indirect taxes.

CHAPTER 4

GST AND CONSTITUTIONAL AMENDMENT

4.1 INTRODUCTION

Since the start of the structural adjustment program in the early 1990s, the Indian commodities tax sector has been experiencing structural changes. After MODVAT, CENVAT, a State VAT and eventually a full Goods and Services Tax, it all began. A novel experiment under the Indian Constitution, GST would allow the Union and the States to charge taxes on the supply of goods and/or services simultaneously.²³⁶ It is a condition antecedent to the new tax regime that national and subnational governments' rights over indirect taxes under the constitution be amended and a new tax-sharing mechanism be devised. The ability to impose separate taxes is delegated to the federal and state governments in the Constitution's Union and State lists. Both the federal government and state governments would have the ability to impose and collect the GST. In addition, the law had to be uniform among the different state and union territory legislatures as well as the Centre. A constitutional amendment was required to make this possible.²³⁷

The constitutional arrangement allowed for the merging of the central and state VATs in the form of a dual levy. Schedule VII of the Constitution divides the taxing authority between the Union and the States. Taxes can be levied at various stages of a product's life cycle, but only up to the point of manufacture or manufacturing. States lack the residuary rights necessary to levy a tax on services, but the Union does. Both should be able to tax the whole supply chain, from manufacturing to distribution, and both commodities and services, under a single Goods and Services Tax. In order to implement a goods and services tax, the constitution needed to be amended to provide Parliament and state legislatures the authority to enact legislation imposing a tax on all

²³⁶ Dr. K. Gopa Kumar, *Constitution Amendment Bill for Goods and Services Tax in India: A Critical Analysis*, Int. J.G.S.T. (June 11, 2021, 07:03 AM) http://gstjournal.in/files/documents/Gopakumar_article_00007-.pdf.

²³⁷ *Id.*

transactions involving the delivery of products or services, something that was not provided for in the original design.²³⁸

For the implementation of GST, the Constitution (115th Amendment) Bill, 2011, appeared in the Lok Sabha on March 11, 2011. On March 29, 2011, the bill was sent to the Standing Committee on Finance. In August of 2013, the Bill's Standing Committee issued its report. The Lok Sabha's 15th session adjourned, and the Bill that had been pending there was declared void. Amendment (122nd) Bill, 2014 was introduced in the 16th Lok Sabha on December 19, 2014. In May of 2015, the Lok Sabha approved the Constitution Amendment Bill. Bill was sent to the Rajya Sabha's Select Committee on May 12th, 2015. The bill was ultimately enacted by the Rajya Sabha and Lok Sabha in August 2016 after the Select Committee's report was presented on 22.07.2015. After being passed by all necessary states and receiving presidential assent on September 8th, 2016, the measure became law as the Constitution (101st Amendment) Act, 2016 with effect from September 16, 2016.

The 101st Amendment Act made significant modifications to the Constitution, including the following:

- Additional provisions were made for both the Union and States in Article 246A by inserting it. In addition, it states that Parliament has the only authority to create legislation pertaining to inter-State sales of goods and services.
- Article 268A of the Constitution was omitted from the original text. The Government of India was given the authority to tax services under the provisions of the aforementioned article. An exception for services has been eliminated with the implementation of the Goods and Services Tax (GST).
- On inter-State trade or commerce, goods and services tax on supplies shall be charged by the Government of India, and such tax shall be apportioned in accordance with Parliament's law, based on recommendations made by the Goods and Services Tax Council, in accordance with Article 269A. There is also an allowance for Parliament to develop standards for regulating where and

²³⁸ CBIC, *supra* note 1, at 15.

when commodities or services or both are supplied in the course of inter-state trade or commerce by legislation.

- In Article 270, the Union and the States are to share the proceeds of the goods and services tax collected by the Union.
- Article 271 was changed to limit Parliament's ability to levy GST surcharges. Article 246A prohibits the imposition of a surcharge on products and services that are subject to taxation.
- Article 279A of the GST Act was added to provide for the GST Council's formation and mission.
- Alcohol for human use has been excluded from GST's scope, and services have been defined in Article 366 of the GST Act.
- As a result of this change, Article 368 now specifies an additional mechanism for amending the Constitution, requiring approval of the Bill by at least half of the state legislatures. As a result, any change to the GST Council must be ratified by the legislatures of at least half of the States.
- List I and List II entries have either been substituted or removed in order to limit or remove the ability to tax products and services that have been absorbed in the GST.
- Upon the suggestion of the Goods and Services Tax Council, Parliament should provide for compensation to the States for a period of five years for the loss of revenue resulting as a result of the implementation of the GST.
- Until a date announced on the advice of the Goods and Services Tax Council, petroleum and petroleum products will be exempt from Goods and Services Tax.

According to the amendments, the GST would be able to be levied on both commodities and services provided by the federal and state governments. Local transactions will be taxed at SSGST and CGST, while interstate and imported goods would be taxed at IGST. Additionally, some commodities will be exempt from the GST's jurisdiction. Four articles will be added, eleven will be changed, and one will be removed from the Constitution as a result of the Amendment Bill. The Sixth Schedule has one amendment, and the Seventh Schedule has seven amendments. It is possible that these

adjustments will have a major impact on both individual tax income and revenue sharing between the federal and state governments. The States will levy, collect, and appropriate SGST, while the Union will levy and collect CGST, which, in accordance with the Finance Commission's recommendations, will be included in a single divisible pool of Central taxes and duties that may be shared with the States.

However, the Union will levy and collect IGST, which the States may choose to share. Wider conversations are needed among policymakers, scholars, business leaders, tax payers, and other stakeholders since the Amendment Bill's proposed reforms to the tax system have the potential to fundamentally alter the ideas of fiscal federalism under the Indian Constitution. Understanding the constitutional framework for distributing legislative powers between the federal and state governments and the concepts of fiscal federalism is essential to comprehending the breadth of proposed modifications and their ramifications. According to the Constitution, the federalism in fiscal matters is basically tripartite, namely (i) distribution of revenue resources, (ii) sharing of tax income, (iii) Grants-in-aid. In this section, you'll find an overview of the relevant sections of the Constitution and the proposed Amendment Bill, as well as an examination of the changes they would bring.

One may broadly classify proposed constitutional changes in the Amendment Bill according to their impact on legislative powers, revenue resources, taxation authority, and institutional/procedural concerns into four broad categories. The first category includes the addition of Art 246A and revisions to Articles 248, 249, and 250. In the second category are adjustments to Articles 268, 269, 270, and 271, as well as the elimination of Article 268A and changes to the Sixth and Seventh Schedules. The addition of Articles 279A and 279B and the modification of Article 368 will fall under the third and fourth categories, respectively.

4.2 DISTRIBUTION OF LEGISLATIVE POWERS

Union and state legislatures are given varying degrees of authority to pass legislation in the United States. Seventh-schedule items in the Constitution allocate a wide range of legislative responsibilities between the federal and state governments. Union Parliament has exclusive ability to legislate in Union List matters while State

legislatures have power to pass legislation in State List subjects, as laid forth in Art. 246, which outlines these governments' legislative capacity. On the Concurrent List, both the Union Parliament and the State legislatures are able to adopt legislation simultaneously.

Principles and processes for resolving disputes between federal law and state law on the same subject matter are contained in Art 254. Although Parliament and State Legislatures have concurrent legislative authority in this area, the Union Law has a guiding impact on both. In the event that a state law is in conflict with a Union law on a concurrent topic, the Union legislation will prevail and the State statute, to the extent of that conflict, will be invalid. Clause (2) of Art 254 provides that if a state law on a matter in the Concurrent List is in conflict with an existing central law, the state law will be valid in the state concerned if the law has been reserved for the consideration of the President and received his assent. This general principle of supremacy of central law is relaxed in this clause.

President Obama has signed on to a state legislation, but it is only applicable to the degree that it is in conflict with the state's primary statute. The proviso of Art 254 (2), on the other hand, gives Parliament the authority to make a legislation that is incompatible with the existing state law, in which case the central law will take precedence over the state law provisions. Art. 248 read with Entry 97 of List I gives the Union Parliament residuary legislative authority. Of legislate on any topic not listed in the seventh schedule to the constitution, only the Union parliament has jurisdiction.

According to the Union Parliament, it has the authority to legislate on any issue that is not listed in List II and this authority is exclusive and overriding. Article 246A, a separate article dealing solely with goods and service tax, is proposed to be inserted as part of the Amendment Bill. Under Articles 246 and 254 of the Constitution, the general principles of legislation are not relevant to this article. Legislation to charge GST is given to Parliament and the legislatures of every state, but only if Parliament is able to impose GST on goods and services that are transferred between states in interstate commerce or trade. It is the goal of the Amendment Bill to alter Art 248 such that the residuary authority of legislation following the amendment is subject to Art 246A. As

a result of the amendment, the Union Parliament will no longer be able to act on issues not included in Lists II and III.

The Union Parliament is also given the authority to create legislation on List II issues in certain extraordinary circumstances, according to the constitution. Because Art. 249 states that the Parliament can legislate for the whole or part of India's territory if the Council of States has declared that it is necessary or expedient to do so in the national interest of any matter listed in the State List specified in the resolution, it can do so while the resolution is in effect. After one year, the resolution is no longer in effect, and the law adopted as a result of this resolution is only in effect for six months. When the country has declared an internal emergency under Art. 352, the Parliament has the right to legislate on subjects in the State List under Art. 250. According to Article 252, the Parliament can legislate on state topics for those states if two or more states agree that the Union Parliament should do so and a resolution to that effect has been enacted by each state's legislative assembly.

A treaty, accord, or convention can be implemented by legislation by the Parliament under Art 253. Article 356 of the Constitution grants the right to enact laws for a state when the President dismisses the administration of that state. In order to deal with specific situations, Articles 249 and 250 were created. The Amendment Bill intends to alter these articles. Amendment of Art 249 is designed to provide Parliament the authority to enact SGST legislation if the Council of States approves a resolution to that effect. When an internal emergency is proclaimed under Art 352, the modification of Art 250 allows Parliament to legislate on SGST.

4.3 DISTRIBUTION OF TAXING POWERS BETWEEN UNION AND STATE GOVERNMENTS

Union and State governments have the authority to tax or levy duties on the topics listed under Entries 82 to 92C and under Entry 97 in their respective lists of tax and duty enumerations. As far as revenue is concerned, there are just three tax-related entries in the third list. The management of tribal territories in the states of Assam, Meghalaya, Tripura, and Mizoram is addressed under the Constitution's Sixth Schedule. Certain

taxes can be levied and collected by the District Council of an independent district of one of these states. Both of these Schedules are to be changed by the Amendment Bill.

A district council in an autonomous district of Assam, Meghalaya, Tripura, and Mizoram will now be able to collect ‘taxes on entertainment and amusements’ within the authority of the District Council. Three changes to the Union List are included in the Constitution’s Seventh Schedule. Entries 84 and 92 and 92C are to be changed and removed. An excise tax on all manufactured goods excluding alcoholic beverages for human consumption and substances such as heroin and cocaine is discussed in entry 84.

It is suggested to limit the Union Government’s ability to charge excise duties on only six commodities, including I petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, and (iii) tobacco and tobacco products. Tobacco and tobacco products appear to be subject to both GST and excise levies in the United States. An amendment would eliminate entry 92, titled ‘taxes on the sale or purchase of publications and on ads within.’ Supply of newspapers and advertisements placed in them would be subject to GST if Entry 92 of List I is removed. ‘Tax on Services’ entry 92C would be eliminated. Both the Union and the States will have the ability to tax the supply of goods and services under the GST framework. As a result of this revision, no state can charge the tax without the removal of this Union List entry from the list.

Entry 55 of the State List is to be removed from the Amendment Bill’s proposed changes. ‘Tax on products entering a local region for consumption, use, or sale therein’ is the topic of entry 52 in the table. Taxes can be collected on items brought into a state for consumption, use, or sale within the state. Entry tax laws were subject to Art.304 (a) limits on tax rates and Art.304 (b) prior presidential permission. However, the Supreme Court ruled in *Jindal Stainless Ltd. V. State of Haryana and Ors*²³⁹ that a state’s entry tax cannot be upheld unless it can be shown to be compensating in nature. Many state laws levying an admission tax were found invalid as a result of this judgement. ‘Taxes on the entrance of products into a local area for consumption use or

²³⁹ 2006 (7) SCC 241; (2006) 14 KTR 215.

sale therein to the extent imposed and collected by a Panchayat or a Municipality' is recommended to be changed for entry 52.

Entries 54 and 92A of List I govern taxes on the sale or acquisition of products other than newspapers. Except for newspapers and transactions involving interstate commerce, states do not have the authority to tax the sale or purchase of products. Changes proposed by the Amendment Bill include the following: Petroleum crude, high-speed diesel, natural gas, motor spirit (often referred to as petrol), aviation turbine fuel, and alcoholic liquor for human use are subject to taxation when sold outside of inter-State or international trade. As a result of this modification, state governments will only be able to tax local sales of above-mentioned alcoholic liquors and petroleum products. The GST will be levied on the sale of all other items.

Entry 55 imposes a fee on all forms of advertising other than those seen in newspapers and on radio or television. Amendment Bill proposes to remove this entry from the record. Entry 92 of List I designated taxes on newspaper ads to the Union. It's also been suggested that we remove this entry. There will be no constraint on the States' ability to impose GST as a result of the deletion of Entry 92 from List I as well as Entry 55 from List II. Taxes on pleasures, such as entertainment, amusement, betting, and gambling, are the subject of entry 62. Taxes on entertainment and amusements, imposed and collected by a Panchayat, a Municipality, a Regional Council, or a District Council, are being considered as a possible replacement. For entertainment and amusement tax purposes, the state's taxing authority is limited to the degree that local governments can collect and levy such taxes, as proposed in this amendment.

4.4 DISTRIBUTION OF CENTRAL TAX REVENUE BETWEEN UNION AND STATES

Tax income collected by the federal government is distributed across the states in Chapter I of the Constitution's Part XII.²⁴⁰ It is the Union's responsibility to collect and use the excise taxes and stamp duties on ten instruments, but the States are in charge of

²⁴⁰ Article 264 to 291 of the Constitution of India, 1950.

collecting and using them.²⁴¹ A proposed amendment to this Article would eliminate excise charges on medical and toilet products from its scope. As a result of the change, the Union will only be able to levy stamp duties on items listed on the Union List, and the States will be responsible for collecting and appropriating those fees. It was only in 2003 that the Constitution was amended to include Art 268A, which stipulated that the Union might charge and collect service taxes on behalf of the States, as well as use those funds for Union purposes. Proposals for removing Article 268A from the Amendment Bill argue that it contradicts Article 246A, which states that only the federal government may impose service taxes.

With regard to taxes imposed and collected by the Union, but devolved to States, Article 269 addresses. The CST and the Consignment Tax are the only two taxes that fall under this umbrella. Legislation from the central government was necessary to impose these levies. In light of the fact that the Union Parliament has only passed legislation allowing for the imposition of taxes on products sold or purchased in the course of interstate trade or commerce, the only tax authorized under this article is the Central Sales Tax. A tax on the consignment of goods could not be levied or collected without a central law.

To clarify that taxes imposed and collected by the Union, but allocated to the States, are not included in the taxes defined under Article 269A, an amendment to Art. 269 has been proposed. Proposed under Article 269A, which would be added to the Constitution, IGST will be levied on products and services that are exchanged between states in interstate commerce. According to the legislation, the Union is responsible for levying and collecting these taxes, which are then split between the Union and the State in the manner determined solely by Parliament. Imports into India's territory are considered to be supplies of products and services in the course of interstate trade or commerce, according to this provision.

With regard to Article 366's clause(12A) of Section 366, items that are not subject to the goods and services tax shall be subject to tax on interstate sales. According to Art

²⁴¹ Bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies, and receipts. *See* Entry 91 of List I given above.

269, tax revenues from interstate trade and commerce, including tax revenues from sales of goods and services in the course of import, are not included in sharable revenue.

Prior to the Constitution (Eightieth Amendment) Act, 2000, tax on income other than agricultural revenue was compelled to be shared between the Union and the States, and the Union's obligations were imposed on the States as a result of this obligation. Excise was optionally shared if Parliament by legislation provided for it to be so. The Eighteenth Amendment completely transformed this arrangement, eliminating the distinction between mandatory and voluntary taxation. Taxes and duties were pooled into a single, apportioned pool that had to be shared between the federal government and the individual states. Under Art 270, all taxes and duties on the Union List are to be collected and disbursed by the Union Government, and the Finance Commission's suggestions are to be taken into consideration.

The CGST is now divided equally between the Union and the States, thanks to the change suggested in Art 270. In contrast, the IGST will not be included in the tax and duty pool that might be divided among different jurisdictions. Article 271 gives the Union Parliament the authority to levy a surcharge on any of the charges or levies listed in Articles 269 or 270, with the revenues going solely to the Union government. It will not be included in the pool of Union taxes and tariffs that can be divided. The Amendment Bill intends to alter Art 271 so that Parliament cannot impose a surcharge on IGST and CGST, as proposed in the amendment.

4.5 AMENDMENTS RESTRICTING THE TAXING POWERS

States cannot impose taxes on items that are sold or purchased outside their jurisdiction or while they are being exported or imported out of or into India. The taxation rights of the states are limited to the sale or purchase of declared products,²⁴² including the sale or purchase of items defined in sub-clauses (b), (c), and (d) of clause (29A) of Art. 366. Parliament may by legislation impose limitations and conditions on the tax system, levy, rates, and other aspects of the tax. The proposed changes to Article 286 keep governments from taxing transactions that take place beyond their borders or during

²⁴² Goods declared as having special importance in the interstate trade or commerce. The list of such goods are given under section 14 of the Central Sales Tax Act, 1956.

the course of export or import. There will, however, be a substitution for transactions that are unable to take place due to a lack of products or services. Legislators will need to establish guidelines for when products or services are supplied outside of a state's borders or when they are being exported. A parliamentary statute amends Clause (3) so that only the sale or purchase of stated commodities is affected by limitations and requirements. This prohibition will not apply to state laws that impose or permit the imposition of GST, as stated in the proposed Clause (4).

Only crude petroleum has been declared as being exempt from GST. For all other stated items, GST will be applied, and Clause (3)'s limits will only apply to the sale or purchase of crude oil. The constitution's defining section is Art 366. In the 46th Amendment to the Constitution, a new clause (29-A) was introduced to Art 366 of the Constitution to expand the meaning of "selling or purchase of commodities." Clause (29A) of Art 366 extended the definition of "selling or purchase of goods" to cover six acts that are not normally considered to be sales or purchases.

In the Amending Bill, Clause (29A) is proposed to be deleted and Clause (12A) is proposed to be included for defining GST. All other taxes, including taxes on the supply of (I) Petroleum crude; High-speed diesel; (II) Motor spirit (often referred to as petrol); (III) Natural Gas; Aviation turbine fuel; and (IV) alcoholic liquor for human use, are not included in the proposed definition of GST. These are the commodities that would be exempt from the GST, if passed into law as planned. Instead of taxing the goods themselves, the government will continue to tax the people who buy and sell them.

4.6 INSTITUTIONAL AND PROCEDURAL ISSUES

According to Art. 279A, a "Goods and Services Tax Council" (hereafter the Council) and a "Goods and Services Tax Dispute Settlement Authority" (hence the Settlement Authority) are proposed by the Amendment Bill. To the Union and States, the Council shall be able to make recommendations in relation to the following matters:

- (a) Government levies such as GST include those imposed by the federal government, state governments, and municipal governments.;
- (b) GST-eligible and GST-exempt products and services;

- (c) The maximum amount of turnover that can be excused from paying GST; and
- (d) Rates of GST.

Any additional GST-related matters can be referred to the Council, if it so chooses, by the Union and State Governments. This committee will include the Union's Minister of State for Revenue, as well as the finance ministers from every state or the replacement state, as members. Every decision made during a meeting of the Council must be supported by all of its members. Chairman: a former Supreme Court or High Court judge or Chief Justice; two additional members with demonstrated competence and skill in fields of law, economics or public affairs; a third member to be appointed by the President.

Appointing the Chairperson and members is the responsibility of the President, who is guided by the Chief Justice of India's recommendations. The Council's suggestions can be referred to the Settlement Authority if they differ from the Council's recommendations, resulting in a loss of income for the government of India or any state, or if the harmonized structure of the GST is affected. The disputes or complaints brought to the Settlement Authority shall only be heard by the Supreme Court of India.

Art. 368 outlines the Parliament's authority and procedure for amending the Constitution. This article specifies two kinds of amendments. They've been ratified by at least half of the state legislatures and have the support of a special majority in Parliament. Article 368 of the Constitution would be amended to include the addition of Articles 279A and 279B, as proposed in the Amendment Bill.

4.7 CONSTITUTIONAL AMENDMENT ACT OF 2016

4.7.1 Historical background

The Fiscal Responsibility and Budget Management Act of 2003 Task Force has recommended that consumption taxes be implemented as soon as feasible in 2004 in order to boost production efficiency and improve the international competitiveness of Indian goods and services. As a result of several taxes, taxable events, compliance requirements, and taxing agencies, the previous indirect tax system had to be restructured. For example, the sales tax and value-added tax rates applied to certain

commodities in India vary by region.²⁴³ Some states impose an entry tax on goods before they leave their boundaries. As stated in the First Discussion Paper of the Empowered Committee on Goods and Services Tax (GST) in India produced in November 2009, the following reasons were offered for establishing GST:²⁴⁴

“This will allow the central government to gain revenue by expanding the dealer base by capturing the value added in the distribution trade and increasing compliance under the Central GST, which will not only include more indirect taxes but will also integrate goods and service taxes for set-off relief purposes. The following faults exist in the current state-level VAT arrangements. A few taxes, such as luxury and entertainment taxes, which are in fact indirect taxes on goods and services, are not yet included in the VAT. If an item is taxed at the state and federal level, a cascade effect occurs, as it does with present VAT structures. If at all possible, relieve yourself of the CENVAT responsibilities.”

“State taxing authority over all goods and services is required before this GST may be implemented at that level. For the longest time, only the Centre had the authority to charge service taxes. This authority will be given to the States through a Constitutional Amendment. Aside from these two major benefits, a new tax system called GST would eliminate the Central Sales Tax (CST). There are several good reasons to have a State-level GST, such as: (1) giving the States more authority to tax services; (2) providing comprehensive set-off relief, including offsets for the cascading burden of CENVAT and services taxes; (3) combining several levies into one tax; and (4) alleviating CST burdens. It is expected that the burden

²⁴³ Union of India & Anr. V. M/s Mohit Minerals Pvt. Ltd. Through Director, Civil Appeal No. 1390 of 2022.

²⁴⁴ Empowered Committee, First Discussion Paper on Goods and Services Tax, (2009) Pars 1.13-1.14.

of taxation on goods in general would decrease as a result of the elimination of taxes in the GST.”

Constitution (One Hundred and Fifteenth Amendment) Bill 2011²⁴⁵ was tabled in Parliament to change constitutional provisions in order to implement the GST system. To the Parliamentary Standing Committee on Finance, Lok Sabha Speaker referred the 2011 Amendment Bill. The Standing Committee’s recommendations were included into the Constitution (One Hundred and Twenty-Second Amendment) Bill 2014,²⁴⁶ which was then tabled into Parliament. It was proposed in 2014 that a single tax system be implemented to replace practically all of what had previously been a variety of indirect taxes imposed by state and federal governments, in order to minimise the ripple effect of various taxes and create a single national market.

As stated in the 2014 Amendment Bill’s objective statement,

“The Constitution is proposed to be amended to introduce a goods and services tax for conferring concurrent taxing powers on the Union and States including Union territory with legislative powers to make laws for levying a goods and services tax on every transaction of supply of goods or services or both. Indirect taxes charged by the Union and the States will be replaced by the goods and services tax, which aims to eliminate tax cascading and create a unified national market for products and services. There will be no exemptions from the planned Central and State goods and services tax, which would be applied to all transactions involving the delivery of goods and services.”

In submitting the 2014 Amendment Bill in Parliament, the Finance Minister stated that the goal of the constitutional amendment is to bring about “*a certain level of convergence between various taxes so that the taxing process becomes exceedingly straightforward*”. Also, there was no uniformity in tax rates and structures throughout

²⁴⁵ “2011 Amendment Bill”.

²⁴⁶ “2014 Amendment Bill”.

the States, as he mentioned.²⁴⁷ The purpose of the Bill's introduction may be deduced from its Objectives and Reasons, as well as from the statements and discussions that took place in Congress. Articles 246A and 279A to the Constitution attempted to cure the damage that Articles 246A and 279A to the Constitution intended to correct, which is to streamline the indirect tax system to prevent the complications inherent and the cascading impact of a multitude of taxes.

4.7.2 Simultaneous Legislative distribution

Article 246 of the Constitution, when combined with the Seventh Schedule, gives Parliament and the State Legislatures the authority to enact legislation on the topics enumerated therein. On taxes, until the Constitution Amendment Act 2016 introduced Articles 246A and 279A, Union and State legislative functions were exclusive. Both the Union List (numbers 1–81) and the State List have a section devoted to broad legislative topics (entries 1 to 44). Union and state listings categorise taxation as a single topic (entries 82 to 92B in the Union list and entries 45 to 63 in the State list). There is no taxation-related entry on the concurrent list. 46 Agricultural revenue, on the other hand, can be taxed by either state or union, even though the Union has the primary authority to do so. Both the federal government and individual states have a distinct and exclusive jurisdiction over some tax categories. Since taxes were not included in the concurrent list, neither the Union nor the State could levy taxes under the same heading. A ruling by this Court in *Hoechst Pharmaceuticals Ltd. v. State of Bihar*²⁴⁸ recognised the Union and the State's exclusive taxing rights, as stated in the case. Legislative relations between the Union and the States inter se with reference to the three Lists in Schedule VII cannot be fully understood without examination of the general features revealed by the items included in those Lists," said the three-judge bench.²⁴⁹ An examination of Seventh Schedule lists I and II reveals no overlap in any taxing jurisdiction, as well as separate sources of taxes for federal and state-wide governments. To prevent problems that have developed in previous federal constitutions because of overlapping taxation

²⁴⁷ Speech by Arun Jaitley in Lok Sabha on 24.4.2015; Tarun Jain, Goods and Services Tax: Constitutional Law and Policy 16 (EBC 2018).

²⁴⁸ (1983) 4 SCC 45.

²⁴⁹ H.M SEERVAI, CONSTITUTIONAL LAW OF INDIA, 1, 81-82, (4th ed. 2003).

authorities, the Constitution has rendered taxing powers of the Union and States mutually exclusive in accordance with the Government of India Act, 1935.

Therefore, it appears that there are two different areas of law: general law and tax law. In a distinct series of items, the broad issue of legislation and the power of taxes are discussed. In *M.P.V. Sundararamier & Co. v. State of A.P.*,²⁵⁰ this court dealt with the idea of the division of taxing authorities between the Union and the States through mutually exclusive lists. In List I, entries 1 to 81 cover broad legislative topics, whereas entries 82 to 92-A include taxes; both lists are arranged alphabetically. Taxes are the focus of entries 45-63 in List II, whereas broader legislative topics are covered by entries 1 to 44. List III, the Concurrent Legislative List, has only an entry referring to the assessment of fees in respect of subjects listed in that list other than court fees, which further emphasises their mutual exclusivity.

Consequently, there is no contradiction between the federal and state treasuries under our Constitution. Given this, the argument that a law passed by Parliament under Entry 33 of List III has the power to enter a prohibited field, namely the State's exclusive power to pass legislation on taxation of goods sold or purchased in accordance with Entry 54 of the Seventh Schedule's List II, is difficult to understand. Sections 5 and 21 of the Control Order issued by the Central Government under Section 3 are two unique and distinct laws that can both be obeyed, implying that both can be interpreted in the same manner. As far as I can see, there is no conflict between the two statutes, and repugnancy is not an issue.

For indirect taxes, such as customs duty, service tax, and excise duty, the Union held sole authority prior to the implementation of the Goods and Services Tax (GST). Taxes on intra-state sales of products, luxury taxes, entertainment taxes, purchase taxes, and taxes on gaming and betting could only be imposed by the states. All indirect taxes have been absorbed into the GST system. The Constitution Amendment Act of 2016 included Article 246A, which grants the Parliament and the State legislatures concurrent authority to adopt laws relating to GST.

²⁵⁰ AIR 1958 SC 468; 1958 SCR 1422; (1958) 9 STC 298.

Articles 246 and 254 of the Indian Constitution have played a significant role in the argument over its federal structure.²⁵¹ With a non-obstante clause that pre-empts both Articles 246 and 254, Article 246A is designated as a “special provision” with respect to the goods and service tax. The legislative competence of Parliament and state legislatures is defined in Article 246 of the Constitution. On the Concurrent list, Article 254 establishes a framework for resolving inconsistencies between federal and state legislation Article 246A gives the ability to act on the goods and services tax to Parliament and state legislatures. There are limits, however, on the States’ ability to impose the goods and services tax on interstate transactions because Parliament has been granted an exclusive jurisdiction to do so.

The Supreme Court highlighted in *Union of India v. Mohit Mineral Pvt. Ltd.*²⁵² that the Constitution Amendment Act 2016 changed the legislative powers of Parliament and State legislatures in relation to indirect taxes when it decided the constitutional validity of GST (Compensation to States) Act. “*Concurrent taxing authorities for the Union and States to levy GST on transactions of supply of goods or services or both*” was noted by the amendment, according to the report. Legal questions were raised in *Baiku v. State Tax Officer*,²⁵³ GST over the validity of notifications and assessment orders issued under Kerala Value-added Tax Act 2003 for the assessment years 2010-11 and 2011-12. Because Section 25(1) of the KVAT Act was amended by the Kerala Finance Acts 2017 and 2018, the notices and orders issued by the authorities were challenged on the basis that the authorities did not have the power to issue them. After the adoption of Article 246A to the Constitution and the abolition of KVAT, the Kerala High Court had to assess whether the Kerala State Assembly had the legislative competence to change the KVAT Act. Article 246A gives Parliament and state legislatures the ability to “simultaneously” pass legislation, according to the Supreme Court. While discussing the “simultaneous” character of Parliament and State legislature’s authority, it was noticed that the power under Article 246A can be employed simultaneously by the State legislature and Parliament, and none wield any “unilateral or exclusive” legislative power. Consequently,

²⁵¹ SEERVAI, *supra* note 251, at 289; SR Bommai v. Union of India, (1994) 3 SCC 1.

²⁵² (2019) 2 SCC 599.

²⁵³ 2019 SCC ONLINE Ker 5362.

Legislation on the GST can be enacted simultaneously by both Parliament and the State assembly under Article 246A of the Constitution. Despite Article 254, Article 246A includes a non-obstante provision. The repugnancy phrase is not included in Article 246 A. This mismatch between Parliament's and the State's legislation on GST is not addressed by Article 246A's constitutional architecture, unlike Article 254's mandate that the law established by Parliament on a Concurrent List issue should prevail over conflicting laws made by States. Lawmakers have a "simultaneous power" under Article 246A to distinguish it from the constitutional design of concurrent powers under Article 246, which are subject to Article 254's repugnancy clause. Understanding the GST Council's constitutional status and activities in the context of concurrent legislative powers granted to Parliament and the State legislatures is crucial. In light of this, the GST Council's function has significance.

4.7.3 Role of the GST Council

The GST Task Force was established by the Thirteenth Finance Commission. An empowered committee of state finance ministers might be turned into a permanent constitutional body known as the "Council of Finance Ministers," as advocated by the Task Force. According to the Task Force's recommendations:

1. It would be up to the Council to make changes to the architecture of the dual GST in order to better regulate the indirect tax system.;
2. Rather than requiring unanimity, the Council would rule by a simple majority. The Union and three-fourths of the States would have to agree to the first decision. The United States and two-thirds of the states must agree to any further revisions to the ruling.
3. Since both the Union and the States would relinquish their fiscal autonomy if the GST system were implemented, the body would maintain the "current balance of federal fiscal authorities";
4. States and the Union must agree on a common basis for levying taxes. As in Australia, where both the federal and state governments must agree before any change in the rate or base of GST can be enacted, this might be on the lines of the GST statute.

5. A system for penalising states that depart from the agreed-upon GST rate position should be implemented.

Article 279A of the Constitution, which established the GST Council, was proposed for inclusion in the 2011 Amendment Bill. The clause outlined the Council's duty, the quorum needed to make decisions, and the Council's constitution:

“279-A. Goods and Services Tax Council.— (1) The Goods and Services Tax Council will be established by the President within sixty days after the enactment of the Constitution (One Hundred and First Amendment) Act, 2016.

(2) A council for goods and services tax should be composed of the following individuals:

(a) the Union Finance Minister – Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance – Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government- Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice- Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on

(a) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to or exempted from the goods and services tax;

(c) the threshold limit of turnover below which goods and services tax may be exempted;

(d) the rates of goods and services tax; and

(e) any other matter relating to the goods and services tax, as the Council may decide.

(5) A unified national market for goods and services is a primary goal of the Goods and Services Tax Council, which is mandated by this article to carry out its duties in that regard..

(6) The quorum for meetings of the Goods and Services Tax Council shall be one-third of the total number of council members..

(7) The Goods and Services Tax Council is in charge of establishing the operational procedures for the council.

(8) Members of the Goods and Services Tax Council must agree on every decision that is made at a meeting.

(9) The Goods and Services Tax Council's actions and procedures will not be invalidated by reason of the council's existence.

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Explanation.— the purposes of this article, "State" includes a Union territory with Legislature."

Article 279A, as it appeared in the 2011 Amendment Bill, stated that the GST Council required to agree on all of its decisions before they could be implemented. In addition, the bill established a GST Dispute Settlement Authority to adjudicate on any complaint referred to it by a State Government or the Union Government, resulting from any deviation from the Council's recommendations that resulted in the loss of revenue or affected the harmonised structure of the GST. In addition, the draught clause said that Parliament might by legislation mandate that no other court but the Supreme Court be allowed to hear the matter at hand. Article 279B is drafted as follows, as it appears in the 2011 Amendment Bill:

"279B. First, Parliament has the power to set up an ombudsman to adjudicate any disputes or complaints brought by the State

Government or the Government of India regarding a deviation from the recommendations of Article 279A of the Goods and Services Tax Council, which is constituted under Article 279A by law.

Second, the Goods and Services Tax Dispute Settlement Authority should have a Chairperson and two additional members. If the Chief Justice recommends him or her, the President will nominate a former Supreme Court judge or chief justice of a high court to chair the Goods and Services Tax Dispute Settlement Authority.

Third, the President must nominate two more members of the Goods and Services Tax Dispute Settlement Authority, each of whom shall have demonstrated competence and knowledge in the field of law, economics or public affairs.

Interim orders may be issued by the Goods and Services Tax Dispute Settlement Authority.

It is possible for the Goods and Services Tax Dispute Settlement Authority to have its powers and procedures specified in a statute established under section (1).

Any such adjudication, disagreement, or complaint referred to in paragraph (7) of this Constitution may be handled only by the Supreme Court, and no other court may have jurisdiction over such matters. (a) (1).

Explanation.— The term “State” includes a federally recognised territory with its own legislature for the purposes of this article.”

Minister of Finance Standing Committee on Finance, in its 73rd report on the 2011 Amendment Bill, detailed the most important aspects of a bill that would implement GST.²⁵⁴ As stated, the GST Council will serve as a venue for the Union and States to address GST-related problems, and the GST Council’s recommendations will serve as an example and a compass for the Union and States. That’s why it was noted that the legislative branch can exercise its authority over any recommendation from the Council.

²⁵⁴ Standing Committee on Finance, The Constitution (One Hundred and Fifteenth Amendment) 2011 (73rd report, 2013).

A Goods and Services Tax Council (Article 279A), a collaborative forum for the Centre and the States to address critical matters pertaining to GST, would be established, so that the goal of having a harmonised framework for GST and a harmonised national market may be attained. Ministers in charge of Finance/Taxation or Ministers who have been nominated by each of the States and UTs that have legislatures shall be members of this Council. Important criteria including as rates, exemptions, and thresholds will be recommended to the Union and the States by the Council. This Council's suggestions will serve as a standard or guide for both the Union and the States. All of the Council's recommendations will be left up to the Parliament and individual state legislatures. Quorum for the GST council will be one-third of the total number of members. In addition, the GST Council's decisions must be reached by a majority vote of all members present. When the Council makes a decision, this safeguards the interests of all states and the centre.

As a result, these legislative bodies have the authority to break from the Council's recommendations and act in a manner that is detrimental to the functioning of GST or that negatively affects the revenue of another State/Central Government. A shared national market and the seamless operation of the GST can only be realised if such deviations or actions are maintained to an absolute minimum. For this reason, Article 279B of the GST (Goods and Services Tax Dispute Settlement Authority) is proposed, which may be approached by any affected Government (whether at the Centre or in a state) seeking redress for any loss caused by any action that deviates from the recommendations made by the Goods and Services Tax Council or adversely affects the harmonious structure and implementation of GST.

As part of its investigation into whether or not the GST Council's proposals would weaken the legislative branch's authority, the Committee spoke with the Attorney General's Office. While the GST Council can offer suggestions, both Parliament and state legislatures can either accept or reject such proposals, according to the Attorney General's statement. An important issue has been brought up, and the simple response to it is: Parliament has the power to accept any suggestion. However, this does not rule out the usefulness of the GSTC's recommendations. This Council would have played an important part in producing recommendations because of the GSTC's constitution,

but the final authority over whether these suggestions are accepted or not belongs only to our legislative bodies: Parliament and State Legislatures. GSTC's establishment does not get to the heart of legislative control over Finance in this perspective. The legislature's authority over Finance is unaffected by the establishment of the GSTC.

On the basis that the GST Dispute Settlement Authority would have the capacity to overturn the supremacy of Parliament and State Legislatures, the States expressed their reservations about the creation of the GST Dispute Settlement Authority. Concerned about the impact on the States' budgetary sovereignty, the Committee suggested eliminating the section creating the GST Dispute Settlement Authority. In addition, it was suggested that Article 279A itself should include a provision that allows the GST Council to address conflicts resulting from its recommendations.

On the GST Dispute Settlement Authority, majority of the States have voiced their view that this body should be omitted since this authority will possess the capacity to override the supremacy of both the Parliament and the State Legislatures. States' budgetary sovereignty will be impacted.

A statute passed by a legislative body that has the authority to legislate, but which deviates from the recommendations of an essentially executive body, is seen as undermining the supremacy of the Legislature, which is guaranteed to Parliament and state legislatures under the Constitution. The proposed Article 279B providing for the GST Dispute Settlement Authority may be eliminated in light of the concerns voiced by the States and the fact that the proposed provision will impair the fiscal autonomy of the Parliament and the State Legislatures.

However, a process for resolving disagreements is necessary in any dispensation involving numerous partners. In Article 279A, the GST Council has the authority to decide how to handle disputes resulting from its recommendations.

According to the Committee's conclusions, only a 'constructive, and facilitating role' would be played by the GST Council when it comes to the legislative process. Accordingly, the GST Council is expected to uphold the ideals of democratic federalism by the Committee. To put it simply, the Legislature will remain supreme in all aspects

of legislation, including taxation, and this body will be able to play a constructive and facilitating role. Article 279A of the Constitution (Amendment) Bill, as suggested by the Committee, does not modify the existing constitutional system in regard to the Legislature, both Union and State,” according to the Committee’s opinion.

After considering the suggestions of the Standing Committee, Parliament introduced the 2014 Amendment Bill, which removed Article 279B and gave the GST Council the authority to establish a process for resolving disputes. Among the members of the GST Council are the Union Finance Minister, the Union Minister of State in charge of Revenue or Finance, and any other Minister nominated by the State Government. There are seven different areas in which the GST Council makes recommendations to the Union and the States, including the principles for levying and allocating GST. Section (h) of Article 279A(1) allows the Council to make recommendations on “any other subject connected to GST” as the Council sees fit. According to subsection (6), “the requirement for a harmonised framework of goods and services tax” must influence the GST Council’s recommendations. The quorum for council meetings is half of the total number of council members. A three-quarters majority of council members present and voting is required to make a final decision, according to Clause (9) of the Constitution. There is a weighting of one-third of the votes cast in favour of the Union Government and a weighting of two-thirds of the votes cast in favour of the state governments.

With Article 279A, the GST Council may essentially overrule the legislative authority of Parliament and State legislatures; and second, the States’ budgetary autonomy would be compromised since they have the right to obstruct an agreement reached by all of them. The GST Council, as suggested in the Amendment, would offer recommendations on a wide range of matters pertaining to the subsumption of taxes, cesses, and surcharges under GST, exemptions for goods and services, model GST legislation, and so on, said a Member of Parliament from Tamil Nadu on May 5, 2015. Both the federal and state legislatures will no longer have authority over tax policy. State and Union Territories have a two-thirds vote weighting in the GST Council, compared to the Union Government’s one-third. States and Union Territories have the same voting rights, no matter how big or small they are. Our opposition to the GST Council is based on the fact that it undermines state sovereignty, notably in fiscal affairs.

He responded by stating:²⁵⁵ *“Once you enter into the GST pipeline, States and Centre would have to engage; and once they interact, Tamil Nadu will be involved in determining and taking decisions pertaining to States.”* As a result, no one among us is willing to cede any of his or her power or independence. In order to come up with a new taxing system, we’re going to combine our powers together.

The Rajya Sabha’s Select Committee on 279A analysed the proposed legislation. To resolve problems originating from non-compliance with the recommendations of the GST Council, a ‘dispute settlement body’ should be established, according to the Select Committee’s report. Article 279B, as it appeared in the 2011 Amendment Bill, has been suggested to be reintroduced. When it comes to resolving disputes, the GST Council has broad authority under Article 279A(11), according to which it can choose from a variety of “modalities,” from mediation to arbitration to even court adjudication.

Furthermore, Article 279A (11) only allows the GST Council to decide on the ‘modalities’ for resolving disputes arising from its recommendations, which is a limitation that should be taken into consideration. It is possible for the GST Council to use any type of dispute resolution procedure, including but not limited to: negotiation, mediation, arbitration, or even the courts, depending on the type of issue at hand. As a result, the GST Council will not be settling disputes but rather deciding on the methods for doing so under the proposed legislation.

The Union and the States’ voting patterns, according to the government, do not provide any of the constituent entities an unfair advantage:

The GST Council’s organisational structure reflects the federal form of governance in this nation. This was done in accordance with the Empowered Committee’s and Parliamentary Standing Committee’s recommendations following their meetings in Bhubaneswar in January 2013. The purpose of this clause is to maintain a federal balance within the GST Council’s operations while also enhancing cooperative federalism. The current voting arrangement in the GST Council assures that no decision can be adopted by the Council either by the Centre or the States acting on their own. It

²⁵⁵ Speech of Mr. Arun Jaitley in Lok Sabha on 08.08.2016.

is thus impossible to make a resolution in the Council by the States or the Centre alone. Offering three-fourths of a vote to each state would throw the federal system into disarray. The Central legislation now wins over the State law on the concurrent list in the event of a discrepancy. State and federal governments would be powerless to act on their own if current GST Council voting rules were in place. A veto would be granted to both parties.

With only a third of the votes, a resolution would need the backing of 20 States/Union Territories to succeed if the Centre had the majority. “This demonstrates that the Centre will require the cooperation of States in order to obtain any GST Council resolution.

Courts can now utilise legislative history to comprehend the entire meaning of a law’s language and the harm it is attempting to correct, notwithstanding the conventional view of interpretation of laws that legislative history is not readily employed in reading a law. In *K.P Varghese v. ITO*²⁵⁶ SC stated that the speech made by the mover of the Bill can certainly be referred to in order to ascertain the mischief sought to be remedied by legislation and the object and purpose for which the legislation is enacted, which can be used to determine “the mischief sought to be remedied by legislation.” In *Kalpna Mehta v. Union of India*,²⁵⁷ Chief Justice Dipak Misra ruled that the reports and speeches of Parliamentary Committees and the Parliament itself can be used to determine the circumstances that led to the enacting of law and the legislative intent.

These authorities were used to demonstrate that reports and speeches were cited, omitted, or otherwise omitted from consideration for the objectives stated, and that where the intent of legislators is unclear, the circumstances leading up to passage of legislation can be examined. Before legislation is drafted, the reports take on greater relevance and become more important.

Articles 246A and 279A committee reports, as well as the history of debates in the parliament and legislation related to the constitutional amendment, show that:

²⁵⁶ (1981) 4 SCC 173.

²⁵⁷ (2017) 7 SCC 295.

- If a disagreement arises from a divergence from the recommendations of the GST Council in Article 279B of the 2011 Amendment Bill, the proposed GST Dispute Settlement Authority will not be established. (ii) If a disagreement ‘arises’ from suggestions made by the GST Council, the present Article 279A(11) requires the GST Council to develop a method for adjudicating. As a result of Article 279B’s deletion and the inclusion of Article 279(11), two significant changes have occurred: first, the Council is now empowered to decide on ‘modalities’ of dispute resolution, rather than a dispute settlement authority; and second, Article 279B stated that the authority would adjudicate on ‘disputes that arise as a result of deviation from recommendation.’ You missed the word “deviation” there. The government had indicated that disagreements will be handled through methods like as mediation and arbitration in front of the Rajya Sabha Select Committee. Concerns expressed by the States led the Standing Committee on Finance to suggest that Article 279B be deleted;
- The 2011 Amendment Bill limited the GST Council’s ability to make recommendations until a majority conclusion was reached. Although it was advised by the Standing Committee on Finance that recommendations be made with a majority rather than unanimity because of the socio-economic difference among the States, this was not accepted. An advantage of having the GST Council operate like the current Empowered Committee, where disagreements are settled peacefully and in an institutional setting, is that it would encourage a sense of cooperative federalism in the United States.

4.8 THE NATURE OF THE RECOMMENDATIONS OF THE GST COUNCIL

4.8.1 Indian federalism: Dialogue of cooperative federalism

There will be no issue to be addressed under Article 279(11) if the GST Council is unable to make binding recommendations since each State will impose and collect a conflicting tax.²⁵⁸ Firstly, if suggestions are non-binding, there will be no dispute to be resolved. Secondly, Parliament and state legislatures have the power to legislate on GST

²⁵⁸ Alok Prasanna, *For a mess of Potage: The GST’s promise of increased revenue to states comes at the cost of the federal structure of the Constitution*, 28, N.L.S.I.Rev., 97-113 (2016).

at the same time, and thirdly, the states have a two-thirds share of the vote due to the Centre's one-third vote share and the states' two-thirds share of the vote. These three arguments make it difficult to treat GST Council recommendations as binding. Since this is the case, the central government must approve any three-fourths majority suggestion before it can become law.²⁵⁹

With the federal system, the United States and the individual states each have a role in the legislative process. While arguing that India is a federal republic, Mr. H. M. Seervai referred to the unique power of taxation possessed by the States to prove that the States were not simply granted the right to act on "subordinate" matters: he said:

"Professor Wheare's appraisal of the State List is incorrect if "subordinate" means "not important," according to the current writer. A wide range of issues are critical to maintaining public safety and security; these include public health and sanitation, the administration of justice in local jurisdictions, and the allocation of taxes between federal and state governments. Agricultural and water resources (subject to Union control over inter-State rivers) are also important; and so are land, fisheries (subject to Union control over inter-State rivers), water, and land use. As India's consecutive five-year plans gradually industrialise the country, sales tax income is growing. Approximately Rs. 1,580 million was generated by Maharashtra's sales tax in 1971-72, and an additional Rs. 1,780 million was expected in 1972-3, according to the industrialised state. In light of the very important subjects assigned to the States in List II, the view that unimportant matters were assigned to them cannot be sustained, and the same applies to the taxing powers of the States which are mutually exclusive of the taxing powers of the Union so that normally the States have their own independent source of revenue. List II's legislative entries on taxes illustrate that the States' sources of income are large and will continue to grow. For the

²⁵⁹ Ajitesh Kir, *India's Goods and Services Tax: A Unique Experiment in Cooperative Federalism and a Constitutional Crisis in Waiting*, 69:2, *Canadian Tax Jour.*, 391-445 (2021).

first time ever, the States are entitled to a part of the revenues collected by the Union, as well as the exclusive taxing rights of the States.”

To prove that the Indian Constitution is federal, Justice PB Sawant and Justice Kuldeep Singh resorted to the exclusive and equal legislative allocation of taxation heads in the case of **S.R. Bommai v. Union of India**.²⁶⁰ Thus, India’s federal politics was viewed as vital because of the States’ and the Centre’s unique taxing rights. Parliament and state legislatures are given ‘simultaneous powers’ and there is no provision for repugnancy in the Constitution Amendment Act 2016 on indirect taxes. According to Article 246A, both the Parliament and the State Legislature have equal legislative authority over GST issues. Since Parliament and the State Legislatures have equal power, the Union believes that the GST Council’s advice should be obligatory on both. A situation in which multiple Central and State laws might guide the same subject would result if the recommendations were not binding, according to the Union.

Parliament and the State Legislatures have a unique, simultaneous law-making jurisdiction on GST under Article 246A. The GST Council’s position becomes more important in this situation. Rather than a unanimous decision, the GST Council relies on a three-quarters majority of the members present and voting, with the Union’s vote accounting for one-third of the total votes cast, and the States’ votes accounting for two-thirds of the votes. The GST Council’s voting procedure has two noteworthy effects. When the GST Council was formed, the States each had a two-thirds voting share, while the Union had a one-third voting share; and as India has a multi-party system it is likely that the party in power at the Centre may or may not have control over individual States. Consequently, the GST Council serves as a place for both cooperative federalism and cross-party political debate. Federalism and democracy are at stake in the GST Council’s deliberations. Constitution Amendment Act 2016’s federalism characteristics are a first in the history of the United States. Article 246A ensures that the federal and state governments are treated equally by giving each of them the ability to adopt GST legislation at the same time. As stated in Article 279A, the GST Council was created so

²⁶⁰ (1994) 3 SCC 1.

that neither the federal government nor the state governments may operate independently.

Those who advocate for a system based on dual federalism or autonomy believe that the federal and state governments are two separate, competing entities. Competitive federalism is another moniker for this form, in which the component entities “compete” against each other for power. According to those who advocate cooperative federalism, each unit should not be seen as an autonomous entity.²⁶¹ Integration, not autonomy, is the goal of federalism, according to the ideology of cooperative federalism. Cooperative federalism, on the other hand, is referred to as ‘marble cake federalism’ because of the federal entities’ integrated approach to power demarcation.²⁶² Cooperative federalism is the norm in India, according to the Supreme Court in *State (NCT of Delhi) v. Union of India*.²⁶³ The two governments need to work out their disagreements in order to go forward. Supreme Court Chief Justice Dipak Mishra explained how cooperative federalism works:

“Negotiation and coordination are therefore central to the notion of collaborative federalism, which aims to resolve any disputes that may occur between the federal government and state governments as they work toward common goals. If we want to find a solution, we need statesmanship, coordinated effort, and genuine cooperation between the federal government and state governments. In a federal system based on cooperative federalism, the federal government and the states must demonstrate their willingness to work together toward a shared goal. Under order to minimise conflict, the authorities in a functioning constitution should show genuine care. In the event that any party intends to rely on the constitutional provision for power, this should be kept in mind. We are unambiguous in our belief that both the federal government and the states must operate within their respective domains of influence. Nonetheless, there should be a perception of mature statesmanship in the

²⁶¹ Robert A. Schapiro, *Justice Steven’s theory of Interactive Federalism*, 74 Fordham L. Rev. 2133 (2006).

²⁶² Jessica Bulman-Pozen and Heather K. Gerken, *Uncooperative Federalism*, 118: 7, Yale L. J., 1256-1310 (2009).

²⁶³ (2018) 8 SCC 501.

exercise of authority in their respective sectors, so that the constitutionally assigned obligations are shared by them.. The Union and the States must work together in concert in order for this strategy to work.”

Quasi-federal or with a “centralising trend,” the Indian Constitution has been called as such in the past. As a result, when the Constitution is read in its whole, the Union is given a higher portion of the authority. Articles 254, 248 and 353 are examples of this centralising trend. Article 246A, on the other hand, grants equal power to the federal government and the states. There can be no justification for construing Constitutional provisions in which federal entities are to have equal authority in favour of the Union because a few articles of the Constitution give the Union more power. The federal government and the states both have the ability to legislate on GST at the same time. On a wide range of topics, the GST Council has the authority to offer recommendations. Due to the absence of a repugnancy clause in the Constitution, the GST Council must ideally operate in a harmonised manner, as stipulated by Article 279A(6), in order to create a workable fiscal model by cooperation and collaboration.

The federal system is designed to meet the diverse demands of a democratic society. It tries to bring together the yearning for unity and commonality with the desire for individuality and freedom. Because democracy and federalism are intertwined, only well-functioning democracies can support federalism. To prevent one group from gaining too much influence, the component parts of a federal polity keep an eye on each other’s activities. In order to maintain order and safeguard national security, the Indian Constitution, which is by its nature federal, grants a greater proportion of authority to the Union. Even if the federal units aren’t as independent as they were under the old federal system, they nevertheless have some authority in the new structure.

Collaborative or cooperative relationships between two non-autonomous components that rely on each other for their operation are not necessarily the norm. By constitutional design, even though the States have been given less authority, they can nevertheless reject the Union’s demands by engaging in various types of political contestation that are authorised by law. This type of debate is good for democracy and for federalism. Because of the uneven power distribution within the federal government, cooperation is not always cooperative. In order to achieve a more unified decision-making process,

both collaboration and conflict are necessary. With Indian federalism, states and the central government are always talking to one another. Both the collaborative conversations fostered by cooperative federalism and the interstitial contestation they engender might be seen as being on opposite extremes of the spectrum.

In their piece, Jessica Bulman and Heather K refer to ‘uncooperative federalism’ as a term to describe interstitial contestation. They contend that states with less authority can fight central government decisions through “licenced dissent,” “dissent through regulatory gaps,” or “civil disobedience,” such as passing a resolution. The authorities think the strongest proxy for separating dissent from ordinary negotiations is whether the state’s behaviour can be accurately characterised as an effort to modify national policy. Cooperative bargaining is commonly defined as a state’s effort to modify or accommodate federal policies inside the state. “Dissent” is the correct term for any effort to challenge or modify national policy.

It is good to have some level of friction, some amount of state contestation, some deliberation-generating froth in our democratic system. If the States don’t agree with the Central Bank’s decision, they have a variety of options for challenging it. Indian federalism also allows for such types of dissent. Not only does the GST Council serve as a constitutional body, but it also serves as a vital hub for promoting democracy and federalism within India’s indirect tax system.

“Fiscal federalism” is an essential component of Indian federalism. Statement of Purpose/Reasons for the 2014 Amendment Bill indicates that articles 246A and 279A were inserted to improve cooperation between federal and state governments and restore peace.. One-third of the GST Council is held by the federal government. This, along with the lack of Article 246A’s repugnancy provision, shows that the GST Council’s decisions are not legally obligatory. Taking such a stance would be in direct conflict with the goal of implementing the GST system, and it would also destabilise the delicate balance of Indian federalism. There is no basis in fact to argue that if the GST Council’s decisions are not binding, then the entire structure of GST will collapse. The GST Council’s role as a constitutional body established to reach decisions via cooperation and debate is diminished by such an interpretation of the Constitution’s provisions.

4.8.2 The contextual meaning of ‘recommendations’

The Constitution uses the term “recommendation” in a variety of places, however the meaning of the phrase varies depending on the context. Recommendation has been used in the Constitution five ways, according to the government’s argument. Preliminary suggestions from the President or Governor are discussed in Articles 3, 391, 111, 112, 135-137, 203, 207, 254, and 274 before they are put to a vote in Parliament. In this instance, the decision-making authority differs from the authority advocating the commencement of debate.

Article 233 utilises the terms ‘consultation’ and ‘recommendation’ in the second category. It is stated in Article 233(1) that the Governor, in collaboration with the High Court, shall designate the district judge. Clause 2 stipulates that in order to be appointed as a District Judge, a person who is not currently employed by the Union or the State must have practised law for at least seven years and be recommended by the High Court. To be appointed, the applicant must first be suggested by the High Court and then appointed by the Governor in “constitutional consultation,” which means that both parties are included in the process.

Articles 243I, 243Y, 280, 281, 338, 338B, and 340 are under Category 3: Recommendation with accountability. To the Governor, the Finance Commission must provide “recommendations” in accordance with Articles 243I and 243Y on the distribution of taxes among the Panchayats and Municipalities. 280 specifies that the Commission “shall be required to offer recommendations to the President” on principles guiding revenue allocation between Union and States. Article 280. As a result of Article 281, the House of Representatives is held more accountable for the recommendations given by the Financial Commission, which is documented in an explanatory memorandum. In accordance with Article 338(5)(e), the National Commission for Scheduled Castes is required to submit a report to the President each year outlining the steps that should be implemented to safeguard and develop the Scheduled Caste. This report and a memorandum outlining any actions taken or reasons for not accepting the suggestions are to be submitted before Parliament under Article 338(6). The National Commission for Scheduled Tribes is referred to in Article 338A as a “recommendatory” body.

Backward Class situations can be investigated by the President, who can appoint a Commission to do so. Upon completion of its investigations, the Commission must report to the President with their findings and recommendations, which the President must then deliver to Parliament with an accompanying explanatory paper.

Categorization 4: Recommendation that does not qualify: Inter-State Council dated 28 May 1990, published by the Ministry of Home Affairs and Article 263 of the Japanese Constitution. Article 263 allows the President to form an Inter-State Council that will make suggestions for improved coordination of policy and action in the interest of the public. The Inter-State Council Order of 1990 established its membership, which includes the Prime Minister, the Chief Ministers of all States and Union Territories, as well as six Cabinet-level ministers.

Mandatory recommendations can be found in Category 5. In accordance with the provisions of Articles 270 to 371A, the following articles are included: The Commission and Committee on Official Languages of Parliament are established by Article 344. There is a provision in 344(2) stating that the Commission will be responsible for making recommendations to President Trump on the use of the official language. Non-Hindi speaking people's claims must be taken into consideration while making suggestions, according to Clause 3 of this document. Members of the Lok Sabha and the Rajya Sabha form a committee under Article 344(4). The Committee will have to review the Commission's recommendations and provide its findings to the President.

After reviewing the report, the President will provide instructions in line with the report's entirety or any portion thereof. During the first fifteen years following the Constitution's inception, a specific method for enacting language-related legislation is outlined in Article 349 of the Constitution. Articles 270 and 275 mandate that the President shall order the allocation of tax apportionment and the fixing of grants for the States from the Consolidated Fund of India based on the advice of the Finance Commission, respectively.

A review of the foregoing clauses reveals that the meaning and substance of the term "recommendation" varies depending on the context. To qualify as a suggestion, all of the conditions must be met. Categorized as "consultation" in categories one and two,

“action” or “inaction” must be accompanied by an explanation in categories three and four, and “no qualifications” in categories three and four, suggestions are unqualified and the President’s recommendation is for the discussion to begin. According to Article 263, the Inter-State Council is simply required to suggest. The GST Council, a constitutional body, is entrusted with the duty to make recommendations on a wide range of GST-related issues, but it is unclear whether the recommendation should be accepted or deliberatively considered; in category five, the authority’s recommendations are explicitly stated to be “binding” on the decision-making authority. By virtue of its powers granted by Article 279A (4)(h), the GST Council has the authority to make recommendations on “any other subject” pertaining to GST.

As stated in Article 279A, the GST Council must come to its recommendations through unified discourse between the federal divisions. Article 279A differs from the rest of the Constitution in that it stipulates that suggestions should be presented to the ‘Union and the States’ rather than the President or Governor. The GST Council’s suggestion under Article 279A is unrestricted. As a result, there’s no explanation as to why it’s important to follow this advice. The idea that the GST Council’s recommendations become law by itself under Article 246A, on the other hand, seems far-fetched. Articles 246A or 279A would have required a qualification if the GST Council was to serve as a decision-making body whose recommendations become law. Article 279A does not begin with a non-obstante clause nor does Article 246A state that the legislative authority is “subject to” Article 279A.

In a few places, the Constitution uses the word “consultation.” If you look at Article 320(3), it indicates that the Public Service Commission should be “consulted” on civil jobs. (3) The Union Public Service Commission or the State Public Service Commission, as applicable, shall be consulted - (a) on all matters relating to recruitment methods for civil services and for civil posts; (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another, and on the suitability of candidates for such a process.

There would have been an explicit provision in Article 246A had the GST Council been meant to be a constitutional body whose recommendations would automatically become law without any intervention. There is no requirement under Article 279A for

suggestions to be submitted in the legislature with an explanation, as there is in Category 3, where this is required. Only secondary legislation based on Council recommendations under the CGST Act²⁶⁴ and IGST Act²⁶⁵ is required to be presented to the Parliamentary Houses for consideration. The use of the phrase ‘recommendations to the Union or States’ indicates that the GST Council is a recommendatory body aiding the Government in enacting legislation on GST .

An Indian Supreme Court bench construed Section 20(2) of the Right to Information Act 2005 to mean “suggestion” rather than “instruction” or “mandate” when analysing the wording in *Manohar v. State of Maharashtra*.²⁶⁶

“We may remark that proviso to Section 20(1) clearly envisions that before imposing the punishment anticipated under Section 20(1), the Commission shall offer a fair chance of being heard to the officer concerned, the Commission wrote. Section 20 does not, however, include any such particular provision in this regard (2). Section 20(2) allows the Central or State Information Commission, as the case may be, to recommend disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the relevant service rules, when deciding a complaint or appeal for the reasons stated in that section. An employee’s ability to suggest disciplinary action carries with it the potential for punishment. Legal actions would be carried out in line with the law and subject to all applicable legal requirements when a disciplinary recommendation is received. Recommendation, not compulsion, to undertake investigation. This must be understood as a different difference from “instruction” or “mandate,” which are more commonly used. However, the advice itself has substantial implications for the delinquent Public Information Officer or State Public Information Officer, including misbehaviour in accordance with applicable service regulations and the invitation to minor and/or major punishment.”

²⁶⁴ Section 166 of the CGST Act.

²⁶⁵ Section 24 of the IGST Act.

²⁶⁶ (2012) 13 SCC 14.

“Recommendation” has persuasive power, as the Constitution Bench found in *Naraindas Indurkhyya V. State of Madhya Pradesh*.²⁶⁷ The Supreme Court had to decide whether textbooks that the Board had “approved” were instantly effective. There is a key distinction between advice and prescription of a text book, the Court remarked. Textbooks that are prescribed by a legal authority must be obeyed by all schools in their jurisdiction. When a text book is prescribed, students are under a duty to use that text book. The mere recommendation of a text book does not impose any kind of duty on the student. Schools can accept or reject recommendations at their discretion; recommendations only have a persuading impact. When it comes to recommending textbooks for schools, the Board does not require statutory authority, and hence there is no danger of extra vires in such a circumstance. Now, as the texts books that were the subject of the notices of April 5, 1972, April 25, 1972, April 26 and May 17, 1972 were simply suggested and not required by the Board, they certainly could not be regarded to be ‘in effect’ immediately prior to the specified day. They couldn’t be considered text books specified under Section 4, sub-section (2) since Section 4, sub-section (2) did not apply to them (2). Many times, SC has stated that suggestions are not binding and enforceable rights, unlike ‘direction’ or ‘mandate’.

Since Parliament and state legislatures have chosen to align themselves with the GST Council’s recommendations, the IGST Act and the CGST Act, the council’s recommendations are legally obligatory. Certain clauses of the IGST, CGST, and SGST Acts explicitly state that the Government’s rule-making authority is to be utilised in accordance with the GST Council’s recommendations. Section 5 of the IGST Act, for example, stipulates that the government must notify taxpayers of the taxable event, tax rate, and taxable value based on “recommendations of the Council.” Similarly, Section 6 of the IGST Act gives the Central Government the authority to exclude products or services or both from taxation if the GST Council so recommends. GST Council suggestions can be taken into consideration when a rule-making process is enacted under Section 22 of the Act. Sections 9, 11, and 164 of the CGST Act have identical requirements. 59. When considering the IGST and CGST Acts, it’s important to keep in mind that the Union Government is required to follow the recommendations of the GST Council in order to create a consistent tax structure. Since various states could

²⁶⁷ (1974) 4 SCC 788.

previously give varied tax slabs and exemptions, the GST was created. When the government uses its authority to publish secondary legislation to put into effect the unified taxation system, it is obligated to follow the GST Council's recommendations. Article 279A of the IGST and CGST Act grants the Council comprehensive recommendatory powers on GST-related issues, including the ability to make recommendations on areas that lie beyond the ambit of the rule-making power. Even while the CGST and IGST Acts make certain of the GST Council's recommendations obligatory on the government, this does not imply that all of the GST Council's recommendations are.

The provisions of the nation's founding document, the Constitution, cannot be read in light of secondary law as a matter of principle. Only main legislation can be read in accordance with the Constitution's requirements. Legislation is enacted via the exercise of the legislature's constituent and legislative powers. The legislature's constituent authority is of a higher constitutional order than its legislative power. The GST Council's recommendations are binding on the Central Government only for the purpose of notifying secondary legislations, and this does not indicate that all of the Council's proposals under Article 279A have a binding effect on Parliament.

CHAPTER 5

LEGAL STRUCTURE AND ITS IMPLICATION ON GST

5.1 INTRODUCTION

One of the most significant post-independence tax reforms was the introduction of the Goods and Services Tax (GST). By eliminating interstate trade obstacles, the GST is a ground-breaking indirect tax reform that will establish a shared national market. Multiple national and state indirect taxes have been absorbed or included in the GST. The Constitution of India gives the government the authority to collect any tax. No tax can be levied or collected without the authorization of a law, according to Article 265 of the Indian Constitution. For levying (imposing) and collecting (paying) taxes, the charging section is a necessary. In every taxing act, a taxable event, or the moment in time at which tax is levied, is at the foundation of taxation.²⁶⁸

The pre-GST regime established distinct taxable events for each type of indirect tax (such as excise duty for manufacturing, service tax for providing services, and VAT/CST for selling products). Supplying goods or services, or both, is a taxable event in the GST system. In 1954, France became the first country to implement the goods and services tax (GST). In the 62 years since its inception, GST has been implemented in 160 countries throughout the world. GST is typically offered in a single model, while Canada and Brazil also offer GST in a dual model. The central government and individual states in India have agreed to implement a dual GST.²⁶⁹

There are total 35 GST Acts in India:

- The 2017 Central Goods and Service Tax Act, which imposes CGST on goods and services provided within the same state.
- To impose SGST on intra-state supplies of goods and services, each state has enacted the State Goods and Service Tax Act, 2017.

²⁶⁸ WBNSOU, GST in India: Levy and Collection, SLM, 89-100 (Jan, 12, 2022, 11:14 PM) http://www.wbnsou.ac.in/online_services/SLM/PG/MCOM-5B.pdf.

²⁶⁹ *Id.* at 90.

- UTGST Act, 2017 for levying UTGST on intra-Territory sale of goods and services in 5 Union Territories without State Legislatures. Chandigarh, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, as well as the Andaman and Nicobar Islands
- Legislation to implement the 2017 Integrated Goods and Services Tax Act
- Act of 2017 on GST Compensation Cess (Compensation to States) levied by the federal government.

All goods and services in India must be subject to the Goods and Services Tax (GST) (including Jammu and Kashmir). It's a single tax that applies to the whole supply chain, from the producer all the way to the customer. Credit for taxes paid in prior phases can be used to offset the output tax under the GST. GST stands for Goods and Services Tax. The consuming state will benefit from the tax (STCG/ UTGST). Taxes on products and services will be levied by both the federal government and each of the states. The federal government can now tax the sale of products inside a state, and individual states can do the same for the provision of services.²⁷⁰

5.2 BACKGROUND OF LEGAL STRUCTURE

'White Paper on Goods and Services Tax' has been issued by the Empowerment Committee of State Finance Ministers, led by Dr. Asim Dasgupta, on November 10, 2009. Dr. Asim Dasgupta wrote a four-page preface to accompany the 53-page booklet.²⁷¹ It provides a general overview of the tax system. While Union Finance Minister, Shri P. Chidambaram announced that GST would be implemented on April 1, 2010, the Empowered Committee of State Finance Ministers agreed to work with the Central Government to develop a road map for its implementation, this announcement was made in the Central Budget (2007-2008). In response to this announcement, the Empowered Committee of State Finance Ministers decided to form a Joint Working Group (hereinafter JWG) on May 10, 2007, with two cochairs: then-Adviser to Union Finance Minister and Member-Secretary of Empowered Committee, and the concerned

²⁷⁰ *Id.* at 92.

²⁷¹ Chairman of Empowerment Committee and State Finance Minister of West Bengal.

Joint Secretaries of the Departments of Revenue and all State Finance Secretaries as members. This JWG was established on May 10, 2007.

The Empowered Committee received a report from this Joint Working Group on November 19, 2007, following extensive internal deliberations and interactions with experts and members of business associations. On November 28, 2007, the Empowered Committee considered this report in great depth. Using this discussion and the written comments of the States, certain revisions were made and the final version of the Empowered Committee's opinions at that time was compiled and given to the Government of India on 30 April 2008. The Empowered Committee received the Government of India's views on December 12th, 2008, and duly evaluated them on December 16th, 2008.

A committee of state principal secretaries, secretaries of finance, taxation, and commissioners of trade taxes was formed to examine the remarks and provide their thoughts on the matter. This committee was established. On January 21, 2009, the Empowered Committee adopted these views in principle. As a result of this general agreement, a working group comprised of state government officials was created, and the group collaborated closely with top government officials in India to provide detailed suggestions on the GST structure.

Additionally, on October 19, 2009, the Union Finance Minister, Shri Pranab Mukherjee, met with the Empowered Committee to discuss compensation for states' losses due to the phasing down of CST. An in-depth review of all of the Working Group's suggestions and associated topics has been completed by the Empowered Committee presently. The Empowered Committee's full analysis of GST's structure is now available in the form of a First Discussion Paper.

5.3 EMPOWERED COMMITTEE OF STATE FINANCE MINISTERS

The Ministry of Finance, Government of India established the Empowered Committee of State Finance Ministers on the recommendation of the Conference of the Chief Ministers on July 17, 2000. A society was officially established on that date, August

17th, 2004.²⁷² The goal of the Empowered Committee of State Finance Ministers was to develop and manage a consensus of universal sales tax floor rates and subsequently to implement reforms in state level taxation.

The Committee was given the following mandate:

- To keep track of how states and union territories are implementing unified sales tax floor rates;
- In order to keep track of the phasing out of the sales tax-based incentive programmes.
- To provide a timetable and manner for States to transition to VAT and implement it.
- To keep tabs on changes in the country's CST system.

Nine finance ministers from different states made up the Empowered Committee in its infancy. Five additional State Finance Ministers were added to the Committee in the following months. The Empowered Committee was enlarged during a meeting held on 26.06.2004, and all state governments and Union Territories having legislatures were made members of the committee. As a result, the remaining states were added to the organization's roster.

Finance Ministers from all 28 Indian states, as well as from Delhi and Pondicherry, make up the Empowered Committee of State Finance Ministers. This committee is now chaired by West Bengal's finance minister, Dr. Asim Dasgupta, and the first member secretary is Mr. Ramesh Chandra. Before making key decisions about State Sales Tax/VAT and CST, the Ministry of Finance, Department of Revenue, consults this Committee.

5.4 STRUCTURE OF THE WHITE PAPER

There are four sections to the entire discussion paper:

²⁷² Under the Societies Registration Act XXI of 1960, having its registered office at Delhi Secretariat, Indraprastha Extension, Delhi 110 002.

- Section 1: The first 11 pages of the document include 15 paragraphs. In the beginning, it briefly describes the process of implementing VAT at the federal and state levels and highlights the specific areas in which work has to be done to strengthen the system. In addition, the GST is demonstrated in this section as a tool for achieving this goal. As a result, the basis for GST is laid out.
- It's just two paragraphs long in Section 2. It explains how to be ready for the Goods and Services Tax (GST).
- Section 3: this is when the meat of the argument is laid bare. The GST model is explained in great detail here.
- Section 4: An Annexure with twenty Frequently Asked Questions and Answers concludes this GST model.

5.4.1 Section 1: Introduction

5.4.1.1 Prior to Introduction of VAT in India

Multiple taxes were in place before to the adoption of the VAT in the federal and state governments, including the Central Excise Duty and the State Sales Tax systems. Inputs were taxed before any commodity was made, and then output was taxed after the commodity was made with the input tax burden. As a result, the cascading impact of the sales tax structure was exacerbated further when there was also a multi-point sales taxing system in place at the succeeding levels of distributional trading.

5.4.1.2 Introduction of VAT

- An input tax set-off is made when VAT replaces Central Excise Duty. This reduces the overall tax burden.
- In the case of VAT in place of sales tax system, a set-off is given from tax burden not only for input tax paid but also for tax paid on previous purchases.
- Taxes on taxes are no longer an issue thanks to the introduction of the Value Added Tax (VAT).
- As a result of the built-in checks in the VAT framework on tax compliance at the Centre and in the States, there is projected to be an increase in transparency and a reduction in tax evasion.

- More than 150 nations, including numerous federal ones, have implemented VAT as a result of its positive consequences.
- As a result, it has now been adopted in nearly every country in Asia.

5.4.1.3 Introduction of VAT at the Central Level

- With effect from March 1, 1986, India implemented VAT at the central level under MODVAT for a limited number of goods and under CENVAT in phases for all goods starting in 2002-03.
- Later, once the Constitution was amended to allow for central taxation of services, these service taxes were added to CENVAT in 2004-05.
- Revenue growth from the Central excise has not always been substantial, but the combined CENVAT and service tax revenues have grown significantly over the past few years.

5.4.1.4 Introduction of VAT in the States

- Introducing VAT in States has proven more difficult in a federal country like India, where each State is sovereign in levying and collecting State taxes in accordance with Constitutional provisions. State List (List II) and Union List (List I) of the Constitution.
- Sales tax rates among states were out of whack prior to the implementation of the VAT, posing issues such as double taxation, burdensome unfavorable cascade effects, and triple taxation.
- Additionally, there was an unhealthy competition among the States in terms of sales tax rates, known as a “rate war,” which frequently resulted in a counter-productive scenario for the States’ tax revenues.
- It was in this context that the States attempted to adopt a unified VAT in the States, while keeping in mind the problem of sovereignty of the States with regard to State tax affairs.
- Taxation without representation (V.A.T.) became law in the United States on April 1, 2005.
- All States and Union Territories have now introduced VAT after overcoming initial challenges.

- It has been strictly monitored by the Empowered Committee, and deviations from the approved VAT rates have been limited to fewer than 3% of the overall product list.

5.4.1.5 Empowered Committee of State Finance Ministers on VAT

- In 1995, then-Union Finance Minister Dr. Manmohan Singh held a gathering of Chief Ministers to begin early discussions on State-level VAT. There was a general discussion of VAT concerns at this conference that was followed by regular meetings amongst State Finance Ministers.
- On November 16, 1999, the then-Union Finance Minister Shri Yashwant Sinha called a critical conference of all the Chief Ministers, during which two key decisions, among others, were made.
- An important first step would be to halt the harmful “rate war” between states on sales taxes and unify them with the implementation of uniform sales tax floor rates for various goods starting on January 1, 2000.
- Second, if the first aim is met, the States will take the necessary procedures to implement a State-level VAT.
- A Standing Committee of State Finance Ministers was established, which was later renamed an Empowered Committee of State Finance Ministers, in order to execute these recommendations.

5.4.2 Justification For GST

5.4.2.1 Shortcomings in the structure of VAT at the Central level

- Government of India CENVAT has a flaw since it does not include numerous central taxes, such as customs duty, surcharges, and so on, which prevents manufacturers and dealers from benefiting from full input tax and service tax set-off.
- In the present CENVAT structure, no steps have been taken to capture the value-added chain in distribution commerce below the production level.
- Adding GST at the national level will not only include more indirect Central taxes comprehensively and integrate goods and services taxes for the purpose of set-off relief but may also lead to revenue gains for the national

level by expanding the dealer base and capturing value addition in the distribution trade and increased compliance.

5.4.2.2 Shortcomings in the existing State-level VAT structure

- Indirect taxes on goods and services, such as the amusement tax or the luxury tax, are still in place in many countries, but are not included in the Value Added Tax (VAT).
- Because of this, a cascade impact of CENVAT on the items is still present in State VAT, which contributes to a higher rate of state taxation on commodities that are not exempt from CENVAT. The CENVAT burden must be eliminated.
- To be sure, all commodities are created using both physical and service inputs, thus there should be an integration of VAT on products with tax on services at the state level and the elimination of the cascading impact of service tax.
- A continuous chain of set-off is formed from the original producer's point and the service provider's point up to the retailer's level to lessen the burden of all cascading effects under GST, which eliminates the cascading impacts of CENVAT and service tax.
- It's critical, however, that states have the authority to tax all goods and services if this GST is to be implemented at the state level. For so long, the ability to charge service taxes has been solely in the hands of the federal government. This authority will be extended to the states by a constitutional amendment.
- In addition, the CST burden will be lifted with the implementation of GST. The State-level GST is, thus, a logical extension.

5.4.3 Section 2: Preparation For GST

Due to a lack of set-off relief and a distorted VAT system resulting from the export of tax from one state to another, CST has to be phased out while preparing for GST. As a result, the Empowered Committee decided to phase out CST, with the understanding that the Centre would devise a mechanism to compensate the States for any revenue lost as a result of the phase-out of CST. It has already been cut to 2% and will be phased out on the basis of a GST structure that, with the required financial support to the States,

should sufficiently compensate for the States' loss on a long-term basis, with the implementation of the GST scheduled for July 1.

5.4.4 Section 3: GST Model

It is advocated to have a dual GST system, wherein the rate structure and the requirement for subsequent change may be maintained, if necessary, by a jointly accepted Constitutional Amendment.

Salient features of the proposed model are as follows:

- The GST will have two parts: one imposed by the federal government (referred to as the “Central GST”), and the other imposed by the states and territories (referred to as the “State and Territory GST”) (hereinafter referred to as State GST). Central GST and State GST tax rates should be set independently, taking into account revenue considerations and acceptability.
- All transactions in goods and services should be subject to the CGST and SGST. CGST and SGST should both utilize the HSN categorization system for commodities. Services should be classified according to worldwide best practices, while keeping in mind the unique peculiarities of the Indian service industry.
- The CGST and the SGST should be credited to the accounts of the Centre and states separately.
- So long as the two taxes are recognized as independent, ITCs paid against one will be allowed to be used solely against the CGST, and the other will not be authorized. The SGST will operate under the same principles.
- There should be no ITC cross-utilization between the federal and state tax systems.
- Ideally, both the Centre and the States should prevent the problem of credit build-up due to GST refunds in the circumstances when input tax exceeds output tax.
- Both the Central GST and the State GST should be collected in the same way.
- With relation to manufacturers with a gross turnover of more than Rs. 1.5 crores, both the Centre and the State will own the productive/distribution chain

for products. Taxpayers for products will be assigned entirely to States for registration, collection, ITC concerns and so on under both CGST and SGST, based on current tax payers' bases and available administrative machinery at both the Centre as well as the State level.

- It is possible that the thresholds already in place under the state VAT Acts, which vary from state to state, would be adopted under the GST.
- It would be necessary for the taxpayer to submit a single monthly return (i.e., the same document) to both the CGST and SGST authorities.
- PAN-based taxpayer identity numbers, with two extra digits to distinguish across states and another digit to distinguish between CGST and SGST, should be assigned to every taxpayer. This would result in a total of 13 digits. Allowing for data interchange and tax payer compliance, the PAN-based system for GST would be brought in line with existing PAN-based systems for income taxes and excise taxes.
- By considering taxpayer convenience, functions such as assessing and enforcing the tax are to be handled by the tax collection agency with information exchange between the federal government and state governments.
- Considering the current VAT threshold restrictions adopted by various states, composition/compounding schemes for GST should be developed.

5.4.4.1 Entertainment Tax

Entertainment taxes in India are the taxes paid by the entertainment sector in India, as the name suggests. Large-scale entertainment performances, private festivals that are sponsored, movie tickets, video game arcades, and amusement parks are all subject to the entertainment tax in India. Commercial movie and theatre productions, games, amusement parks, exhibitions, celebrity stage performances, sports like horse racing, and exhibitions all fall under the category of entertainment. The entertainment tax department is responsible for collecting and remitting taxes on the different entertainment activities that take place around the nation. Delhi is home to the department in charge of entertainment tax. The entertainment tax in India is levied on the organizers or owners of the entertainment performances. They deposit the tax collected from the sponsors with the Indian government. Cinema is a major source of

tax income for the entertainment industry. The price of the ticket includes a tax, which is paid at the time of purchase and is reflected in the total cost of the ticket. The 25-30 percent entertainment tax is included in the price of admission to any cinematographic exhibits.²⁷³

The government of India relies heavily on the entertainment sector for its income. Artistic expressions that depict India's ancient culture, as well as a variety of sports, have benefited greatly from its promotion. Tax-free advantages are given to the same. Prior to staging any commercial shows, the organizers of any entertainment shows will need to get approval from the Entertainment Tax Department first. The organizers or proprietors of concerts in India are subject to an entertainment tax depending on the nature of the event. Various entertainment programmes are taxed differently. These are the options you have:

- Amusement park-specific tax policies
- Tax-funded initiatives
- Based on tax-exempted industries.
- On cable television networks, tax-related shows
- Inviting programmes are subject to a variety of taxes.
- A tax on wagers placed on entertainment Video arcades are subject to a new tax.

The entertainment tax department has implemented a number of new technologies in an effort to ease the burden of tax collection. In the entertainment business, for example, a computerized ticket booking system and online data transfer have been implemented for movie ticket purchases. The higher the level of technology in the entertainment business, the higher the tax rate.

5.4.4.2 State Taxes proposed to be kept outside the preview of GST

Some states levy a purchase tax, octroi, or an entry tax instead of octroi. In an ideal world, all of these expenses would be covered by the GST. For the time being, these

²⁷³ It works under the stipulation of The Delhi Entertainment and Betting Tax Act, 1996.

taxes will not be included in the GST, due to the particular requirements of the States concerned and the interest of local governments.

5.4.4.3 Tax on items containing Alcohol

Alcoholic drinks are exempt from the GST because of the regulations of certain states.

5.4.4.4 Tax on Tobacco products

GST and ITC should apply to tobacco items. Excise duty on tobacco goods may be imposed by the central government in addition to the GST without ITC.

5.4.4.5 Tax on Petroleum Products

Crude, Motor Spirit (including ATF) and HSD may be left out of the GST basket, as is the norm in India, in light of the needs of the states and the federal government.

5.4.4.6 Taxation of Services

The States should be granted the authority to tax all services, according to this proposal. States can collect CGST and SGST taxes on intra-state services while collecting services taxes. CGST and SGST taxes can be collected by the central government in the same way for interstate services. The destination principle may be used to come up with a plan for transferring the central share of GST collected on interstate services to the centre and the state portion of GST collected by the centre to the states.

5.4.4.7 Number of Tax Rates

In light of the country's economic situation and the possibility that some commodities and services should be taxed at a rate lower than the regular rate, it is suggested that two rates be implemented. The price of precious metals, jewellery, gemstones, and diamonds might be lowered significantly.

5.4.4.8 Special Industrial Area Scheme

As of the start of the year 2000, all governmental incentive programmes for businesses were abolished. Incentives, on the other hand, have continued to be offered. Similarly, tax advantages depending on geographic region or industry should be phased out by

the federal government. As soon as GST is in place, all existing exemption programmes should be transformed to refund programmes that issue cash back to customers. Incentives should only be burdened on the state or centre that is providing them, and the GST system should be untouched.

5.4.4.9 Advance Ruling

To promote uniformity and justice in decision-making, the Centre and States should establish advance ruling and dispute resolution agencies.

5.4.4.10 Joint Authority and Legislation

A combined authority of the Central and State Governments shall have the power to alter the common exempted list and the common composition scheme, such that no single State or Central Government may amend any of these unilaterally.

5.4.5 Section 4: Frequently Asked Questions and Answers

There would be a three-tiered tax system in the GST model, with CGST, SGST and IGST all being taxed separately, according to the Discussion Paper on GST by the Empowered Committee. CGST and SGST tax credits cannot be combined; taxpayers must submit separate returns with each of these agencies; taxpayers must deposit the tax collected separately; cross-adjustment of tax credits is not permitted; taxpayers must file separate returns with each of these authorities; etc.

Even after the Discussion Paper was published, the following questions remain unanswered:

Q.1 Are dealers also exempt from the CGST exemption of 1.5 crores?

The 1.5Crores exemption limit indicated in the discussion paper will be extended to dealers if GST covers excise and VAT as part of its ambit, otherwise it will be restricted to manufacturers. In the GST tax regime, the definition of “manufacture” will be reverted if the second perspective is chosen.

Q. 2. What is the CGST threshold exemption limit for service tax under the service tax?

The threshold exemption level for CGST services has not been determined by the Empowered Committee. However, they've made it clear that this will be in line with the current exemption level of Rs. 10 lakhs.

Q. 3. Single rates will be equal to the sum of CGST and SGT, which brings us to question number three. Is there a need to keep separate records for this as well?

To be clear, the IGST credit can be used to any of the aforementioned taxes that the taxpayer owes. Interstate sales are subject to CST, but dealers aren't permitted to claim credit for it, and they're instead focusing on the scenario where they may buy products within the state and claim credit for VAT. CGST and SGST will be taxed at the same rate under this new tax system, which raises the question of whether IGST will be charged at a single compound rate or at two distinct rates, meaning that CGST and SGST would be charged at different rates or not.

If the back view is chosen, the issue of whether or not the IGST credit can be applied to both the CGST and the SGST separately or if cross adjustments are permitted arises. If cross-adjustment is allowed, taxpayers who are eligible for CGST exemption of 1.5 crores would be inclined to acquire products and sell them outside the state since they will receive the full credit of IGST, thereby benefiting them to the maximum. This scenario completely alters the current situation. The Government has yet to come to a resolution on this issue.

Q. 4: Under the GST tax scheme, stamp duty and basic customs duty are not combined.

The Stamp Duty and Basic Customs Duty will not be included in the GST taxonomy, according to a discussion paper on the subject.

Q. 5. GST would not be imposed on petroleum products.

The discussion document makes it clear that the petroleum product basket, which includes crude, motor spirit (including ATF), and HSD, would be exempt from GST. States and the federal government will continue to collect sales tax on these items at the current floor rate, and the federal government will do the same.

Q. 6. On import, non-convertible duty reduction.

Imports that are not convertible are now subject to Basic Customs Duty, as well as Customs Education Cess and Customs Secondary and Higher Education Cess. Under the GST tax system, only the Basic Customs Duty, which is not convertible, will be levyable. All other taxes would be covered by GST. As a result, imports will be more affordable.

Q. 7. To execute the dual GST concept, each state would have its own CGST and SGST legislation.

The SGST levy will be governed by several statutes. As a result, there will be a lack of uniformity in taxation at state levels. In addition, there may be difficulties in implementing the GST across the country.

Q. 8. Is there any benefit to the GST for the Special Industrial Area Scheme?

There will be no new exemptions, remissions, or extensions of existing exemptions, remissions, or extensions of existing exemptions following the implementation of GST, according to the government's statement.

Q. 9. Only exporters are eligible for a return, and there are no additional incentives.

Exporters would only be able to receive refunds for shipments they actually made under the GST tax regime. They will not be able to get any other form of compensation.

5.5 LEGAL STRUCTURE OF GST

Laws depending on supplier type are used to structure GST in a lawful manner. For intra-state supplies, the Central Goods and Services Tax Act (CGST) and state GST acts would be used to levy and collect GST, while for inter-state supplies, the Integrated Goods and Services Tax (IGST) would be used to tax both goods and services provided inside and outside the state. When it comes to the implementation of GST, the GST (Compensation to States) Act 2017 has played an important part in negotiations between the central and state governments. State governments will get compensation

from the federal government in the event that they lose tax income as a result of the adoption of GST in their states.

5.5.1 Intra-State supply of goods and services

Taxes paid to the federal government Amounts due to the state or union territory government, respectively, depending on where they are consumed.

5.5.2 Inter-States Supply of goods and services

Taxes levied and administered by States/UTs will be collected by the Central Government, but the States/UTs themselves will be in charge of SGST/UTGST taxation and administration. Imports will be regarded as interstate supplies and subject to IGST in addition to the normal Customs duties. There is no IGST to be paid on exports in the new GST system. The rates for the GST are 0.5 percent, 3 percent, 5 percent, 12 percent, 18 percent, and 28 percent. In addition, pan masala, coal, aerated water, and motor vehicles will be subject to a compensating cess (Sin cess). Taxes on the GST do not include an education, sanitation, or food safety cess. The transaction value of goods and services will be used to compute GST. With a few exceptions,

Every seller who has made a taxable supply is obliged to register under the GST Law under GST. Input tax paid by a registered person can be deducted from the output tax (if any), but only if the following conditions are met:

5.5.3 Utilisation of IGST

IT IS used for IGST, then CGST and SGST/UTGST may be paid with the remaining amount. The use of CGST: first used to pay CGST, then the remaining amount can be used to pay IGST. Second, SGST/UTGST can be used to pay SGST/UTGST first, then the remainder can be used to pay IGST. Inter-state supply credit movement is now frictionless under the GST system, which was not conceivable prior to the implementation of the tax. The buyer's CST payment was not refunded. The seamless credit will flow as follows under the GST regime:

- Inter-state suppliers in exporting states are permitted to deduct the IGST they due from the IGST they owe on inter-state supplies from the credit they have available in IGST, CGST, and SGST/UTGST.
- It is possible for the buyer of an interstate supplier to deduct IGST paid on purchase from the output tax that must be paid.
- Credit for SGST/UTGST used to pay IGST is transferred to the centre by the exporting state.
- The IGST credit utilised to pay SGST/UTGST is transferred to the importing state by the Centre.

There is a need for a central clearinghouse that can authenticate claims and send money to the appropriate governments. This may be done with the support of a robust information technology system. A shared GST Electronic Portal (www.gst.gov.in), a website operated by the Goods and Services Network (GSTN) for taxpaying citizens, and a common IT infrastructure for the central government as well as the states has been built. Taxpayers can take use of three primary services from the GSTN.

- Making Registration Easier.
- Sending the tax returns to the appropriate federal and state agencies.
- IGST computation and settlement.
- Data on tax payments is compared to bank records.
- Analysis of the taxpayer's profile.

Introducing the Goods and Services Tax (GST) is good for everyone. Industry, government, and customers all profit from this innovation. It is anticipated that this would lower the cost of goods and services, allowing them to compete on a worldwide scale. Here are some of the most important advantages of the new tax system, which is known as GST:

- In order to create an united national market, the goal of the GST is to standardise tax rates and processes across the country and remove economic obstacles to create an integrated national economy.
- Reduction of cascading effects: GST combines most central and state indirect taxes into a single tax and allows tax paid from the output tax to be credited for

transactions across the whole value chain. GST Eliminating “tax on tax” is beneficial to the business community.

- A big boost to the government of India’s “Make in India” strategy would be provided by GST, which will raise the competitiveness of goods and services produced in India on both the domestic and international markets.
- Expanding tax base and better taxpayer compliance are intended to raise government income through the implementation of the GST.

5.5.4 Extent of CGST Act/ SGST Act/ UTGST Act/ IGST Act

It covers all of India, including Jammu and Kashmir, with the Central Goods and Service Tax Act of 2017. This law is intended to impose CGST on interstate delivery of goods and services. Inter-state supply of goods and services is covered under the State Goods and Service Tax Act, 2017 for each state/Union territory with a state legislature (Delhi and Puducherry). UTGST Act, 2017 for levying UTGST on intra-Territory sale of goods and services in 5 Union Territories without State Legislatures (Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh). Ignition of the Integrated Goods and Services Tax (IGST) Act, 2017 for the whole country, including Kashmir.

5.5.5 Levy and Collection

Taxes are levied and collected based on the nature of the goods or services being sold. To include practically all transactions formerly subject to indirect taxes such as VAT, customs tax, excise tax, and service tax under the umbrella term "supply" would be a vast understatement. For the purposes of levying and collecting GST taxes, only the provisions of the Central Goods and Services Tax Act would be relevant, even though there are four major statutes dealing with levy and collection and those are State GST Act, Union Territory GST Act and Integrated GST Act.

5.5.5.1 Central Goods and Services Tax (CGST)

CGST is the name given to the portion of GST levied by the federal government on interstate transfers of goods and services. As a result of the Central Goods and Services Tax (CGST) Act, 2017, the federal government is now able to tax interstate transfers of goods and services. Twenty one chapters of the Act are dedicated to issues related to

the collection, levy, and administration of the GST. Section 9 of the Act deals with the imposition and collection of the tax. All intra-state supplies of goods or services or both are subject to a tax known as the central goods and services tax, which is levied on the value determined under section 15 and at rates not exceeding twenty percent that may be notified by the Government based on recommendations from the Council. The tax is collected in ways that are prescribed under sub section (2).

With effect from the date, the Government may notify on the Council's recommendations, a central tax on petroleum crude, high-speed diesel, motor spirit (commonly known as petrol), natural gas, and aviation turbine fuel would be imposed. All of this Act's provisions will apply to the recipient of such goods or services or both, as if he were the person liable for paying tax in relation to their supply, if the government notifies them in a specific category of goods or services or both. As the recipient of taxable goods or services or both supplied by an unregistered supplier to a registered person, the recipient shall pay the central tax on a reverse charge basis, and all the provisions of this Act shall apply to such recipient as if he were the person responsible for paying the tax.

This Act applies to an electronic commerce operator as if it were the supplier liable to pay tax on the supply of such services, and the Government may specify, on the Council's recommendations, categories of services for which tax on intra-State supplies shall be paid by the electronic commerce operator by notification. It's up to the person representing an electronic commerce operator in the taxable territory for whatever reason to pay tax, as long as the electronic commerce operator doesn't really have a physical presence there. According to the provision, "In the event that an electronic commerce operator has neither a physical presence in the taxed territory nor a representative in the said territory, such electronic commerce operator shall appoint a person for the purpose of paying tax and such person shall be liable to pay tax."

GST is India's most ambitious and impressive indirect tax reform since the country's independence. Its goal is to impose a single national tax on all commodities and services across India. As a result of GST, India has become a more nationalised market with a more integrated tax system that covers a wider range of manufacturers. It has the potential to make a significant contribution to both economic development and public

finances through increasing efficiency. A vast and complicated federal system may be the first in modern tax history to implement a new tax that covers both commodities and services.

The GST is a tax on goods and services with a full and continuous chain of set-off advantages up to the retail level. Only value added at each stage of production is subject to the tax, and suppliers are allowed to deduct the GST paid on the purchase of goods and services through a 'tax credit' method. The final customer (i.e. purchaser) of the item or service ultimately bears the burden of GST.

Indirect tax burdens such as cascading or pyramiding have been removed with the implementation of GST, which establishes a continuous chain of set-offs from the original producer's point and service provider's point all the way up to the retailer's level. GST's essence may be summed up in this way. Only the ultimate consumer is subject to the GST tax. As a result, manufacturing costs are reduced and the cascading of taxes (tax-on-tax) is avoided.

Before the implementation of GST, India's indirect tax system was plagued by a number of issues. When there was no GST, there was a double taxation of Central excise duty and sales tax in the States. A slew of federal and state-level indirect taxes have found a home under the GST umbrella. For the purpose of offset relief, it has included taxes on both goods and services. The distribution trade, on the other hand, has benefited from some value enhancements. The burden of all cascading consequences may now be eliminated thanks to a continuous chain of set-offs.

Currently, India's services industry has a tax base with enormous untapped potential. GST is justifiable in this sense since it has included nearly all services for taxes purposes under its purview. As a result of the GST's inclusion of key Central and State indirect taxes, the country's tax administration now has fewer levies to administer, resulting in lower operational expenses. Compliance costs will be reduced significantly if tax rates and processes are uniformly applied across the nation..

For the most part, the GST is a national indirect tax on the manufacturing, sale, and consumption of all kinds of products and services. In order to create a single, unified

market in India, the government has implemented the Goods and Services Tax (GST). Improve tax collection and provide India with a world-class tax system are the goals of the GST. It would put an end to the decades-long disparity in treatment between the industrial and service sectors. The uniform tax base under GST will allow for seamless credit to be applied across the whole supply chain and to all States.

Section 20 of the IGST Act stipulates that the CGST Act's requirements on scope of supply, composite or mixed supply, time and value of supply are to be applied mutatis mutandis to integrated tax under Section 20 of the IGST Act. Section 13 of the CGST Act specifies when services are given, whereas Section 15 of the CGST Act determines the taxable supply's value. At the moment of provision, a service provider is obligated to pay the CGST tax. Section 13's third subparagraph specifies the moment at which reverse charge tax must be paid. Under Section 15 of the CGST Act, taxable supply value is determined in accordance with the CGST Act. Transaction value is defined in sub-section (1), whereas taxes, tariffs, fees, etc. imposed separately under the goods and services tax system are defined in sub-section (2). A value for products or services that cannot be calculated under sub-section (3) is provided by sub-sections (4) and (5).

5.5.5.2 Levy and collection as per CGST Act, 2017

All intra-state supplies of goods or services or both, except for alcoholic liquor for human consumption, shall be subject to a tax called the Central Goods and Services Tax (CGST), which shall be levied at such a rate (maximum 20 percent) as notified by the Central Government on recommendation of the GST Council; and collected in such a manner as may be prescribed; and Inbound and outbound trade between states (supply from one state to another state)

According to the 2017 IGST Act, the taxable individual is responsible for paying this tax. It is mandated by Section 9(2) of the CGST Act 2017 to impose CGST on the following supply as of the date announced by the Central Government on suggestion of GST Council- A kind of crude oil Diesel engines with a top speed of more than 100 kilometres per Powered by the spirit of the automobile (commonly known as petrol) Natural gas is a by-product of coal combustion. Fuel for aircraft turbines. On a reverse charge basis, CGST is to be paid by the recipient on notified goods/services or both,

rather than by the provider of goods/services under forward charge. According to Section 9(4) of the CGST, the recipient of a taxable supply of goods or services from an unregistered provider must pay the CGST on a reverse charge basis. The E-Commerce operator must pay CGST on notified intra-state supplies under Section 9(5) of the Act.

5.5.5.3 Levy and collection as per IGST Act, 2017

In accordance with section 5(1) of the IGST Act, 2017, a tax referred to as the Integrated Goods and Services Tax (IGST) shall be levied on all inter-state supplies of goods or services or both, except for the supply of alcoholic liquor for human consumption; on the value determined in accordance with section 15 of the CGST Act, 2017; and at such a rate (maximum 40%), as notified by the Central Government on recommendation of the GST Council; and collected in accord. In addition, products and services imported into India would be subject to IGST. Section 5(2) of the IGST Act of 2017 states that the CGST for a supply is to be charged with effect from a date that the Central Government notifies in response to a GST Council proposal.

A kind of crude oil Diesel engines with a top speed of more than 100 kilometres per Powered by the spirit of the automobile (commonly known as petrol) Natural gas is a by-product of coal combustion. On a reverse charge basis, IGST is to be paid on notified goods/services or both by the recipient, rather than the provider of goods/services under forward charge, as stated in Section 5(3). As stated in Section 5(4), IGST on taxable interstate supply from an unregistered supplier (agriculturist) is to be paid by the receiver on a reverse charge basis. E-Commerce operators are required to pay CGST under section 5(5) on interstate supplies that are notified.

5.5.5.4 Levy and collection as per SGST Act, 2017

On all intra-state supplies of goods or services or both, with the exception of the supply of alcoholic liquor for human consumption, a tax called the State Goods and Services Tax (SGST) shall be levied under section 7(1) of SGST Act, 2017; on the value determined under section 15; and at such a rate (maximum 20%), as notified by the Central Government on recommendation of GST Council; and collected in the manner

prescribed; and inbound and outbound trade between states (supply from one state to another state).

According to the 2017 IGST Act the taxable individual is responsible for paying this tax. As stated in Section 7(2) of the SGST Act 2017, any supply that is subject to CGST on the proposal of GST Council would be taxed as of that date. A kind of crude oil Diesel engines with a top speed of more than 100 kilometres per Powered by the spirit of the automobile (commonly known as petrol) Natural gas is a by-product of coal combustion. For goods and services that have been notified, the receiver is responsible for paying tax under Section 7(3), rather than the provider. This means that the recipient is liable for paying SGST on a reverse charge basis rather than under forward charge. Section 7(4) of the SGST Act mandates that the recipient of taxable goods or services from an unregistered provider must pay SGST on a reverse charge basis. E-Commerce operators are required to pay SGST on intra-state supplies that are notified under section 7(5).

5.5.5.5 Levy and collection as per UTGST Act, 2017

The Union Territory Goods and Services Tax (UTGST) shall be imposed on all inter-state supplies of goods or services or both, except for the supply of alcoholic liquor for human consumption; on the value determined u/s 15 of the CGST Act, 2017; and at such a rate (maximum 40%,) as notified by the Central Government on recommendation of the GST Council; and collected in such a manner as may be prescribed; and Shall be imposed and collected in accordance with the provisions of the UTGST Act.

As a result, products and services imported into India will be subject to the UTGST. According to Section 7(2) of the UTGST Act, 2017, the Central Government must levy the CGST on the supplies as of such date as it notifies on recommendation of the GST Council. A kind of crude oil Diesel engines with a top speed of more than 100 kilometres per Powered by the spirit of the automobile (commonly known as petrol) Natural gas is a by-product of coal combustion. Fuel for aircraft turbines. Section 7(3) states that UTGST must be paid by the receiver of notified goods or services, with the recipient being responsible for the tax payment rather than the provider of goods or

services under forward charge. Under Section 7(4) of the UTGST, the recipient of taxable inter-state supply of goods/services from an unregistered provider (agriculturist) is required to pay the UTGST on a reverse charge basis. The e-commerce operator is obligated to pay CGST on notified interstate supplies under Section 7(5) of the CGST Act.

CHAPTER 6

COMPARATIVE STUDY OF SINGLE AND DUAL GST IN FRANCE AND CANADA

6.1 INTRODUCTION

India has witnessed substantial reforms in indirect taxes over the past two decades and is on the verge of another major reform initiative which will bring this process to a culmination. Central and State domestic indirect taxes transferred themselves from cascading turnover taxes into variant of taxes applied on value addition. However, for both the central taxes and state taxes, at present the base subject to tax is far from comprehensive. The central taxes don't cover value addition in goods beyond the manufacturing stage, and in services only listed services are covered. On the other hand, in the case of state taxes, only sale of goods are covered.

In order to take this process of reforms through the next big change, the Finance Minister Mr. P. Chidambaram, in his budget speech of 2006-07 announced the introduction of a unified goods and services tax in 2010. Today we are on the eve of this historic date. The contours of the proposed regime are now emerging into the public domain. The release of the discussion paper on the GST in India in November 2009, to encourage a discussion on the proposed design is an indication of the progress being made towards introducing the new regime in the near future. One of the most contentious issues in the discussions surrounding GST is the likely and feasible rates at which the new regime can be implemented. The salient features of proposed GST in India can be divided into following sections to understand it better.

GST will be charged on all imports. Imports of goods and services will be subject to both the CGST and the SGST taxes when they arrive in the nation. When it comes to SGST, the tax money will go to the state where the goods and services are consumed, based on the destination principle. The GST paid on imported goods and services would be eligible for full and complete set-off. Importers of goods and services will be required to pay GST on their exports, but this will be eliminated for exports. They will receive a refund of the GST they paid on the purchase of goods and services if they meet specific qualifications, limits, and processes.

When the tax is paid in the importing state, the benefit of zero rating can only be taken advantage of, as the system of zero rating assures It is the importer's responsibility to include all interstate purchases in their periodic returns and to make any applicable state taxes payments. A zero rating will be overturned if the tax obligation is not satisfied within the allotted time period, and the seller in the exporting state will be liable for the tax. In order to successfully implement the zero rating with pre-payment system, a reliable mechanism must be put in place to identify inter-state transactions and guarantee that taxes are not evaded. Expenditures would not be taxed. Special Economic Zones (SEZs) may also be eligible for similar advantages (hereinafter SEZ). Only the processing zones of SEZs will be eligible for such incentives. Sales from a SEZ into a domestic tariff area (DTA) would not be allowed to gain any advantage.²⁷⁴

6.2 TAXATION OF CERTAIN GOODS

Multiple taxes are levied on alcoholic drinks (e.g., excise duties and license fees), tobacco (cessation and interstate import and export fees), and petroleum (export and import taxes). Ultimately, the goal is to make people think twice about consuming these items. GST would not apply to alcoholic beverages. The current practice of taxing alcoholic beverages with sales tax or VAT can be maintained. There will be no problem with it being taxed as VAT in some states. There would be no change to the excise taxes now collected by the individual states.

With Input Tax Credits, tobacco goods will be subject to GST (ITC). Excise duty on tobacco goods may potentially be imposed by the central government in addition to the GST without ITC. India's approach is to keep petroleum items like crude oil, motor spirit, and high-speed diesel (HSD) out of the GST, as is the case in India. States may continue to charge sales tax on these items if the current floor rate is maintained. Centre, likewise, has the option of maintaining its taxes. It is still unclear whether or not natural gas would be subject to the GST.

²⁷⁴ Manisha Patawari, *Comparative Analysis of GST In India and Canada*, 9, IJCR, 2320-2882 (2021).

6.3 INTER-STATE TRANSACTIONS OF GOODS AND SERVICES

The interstate sale of goods and services is taxed under the IGST (integrated GST) concept. All inter-state transactions of taxable goods and services with sufficient provision for consignment or stock transfer will be subject to IGST under this paradigm, which is CGST + SGST. On the value added by the inter-State seller, IGST will be paid after subtracting the IGST, CGST, and the SGST available to the seller from his purchases. The SGST credit utilized to pay the IGST will be transferred to the Centre by the exporting state.

The Importing dealer will be able to claim IGST credits when he pays his state's output tax. The IGST credit utilized to pay SGST would be transferred to the importing state by the Centre. The Central Agency, which would operate as a clearinghouse, will receive the essential information and validate the claims before informing the other governments to distribute the monies. Its main benefits are as follows:

- Input tax credit chain continuity on interstate transactions.
- The interstate seller or buyer does not have to pay taxes or have their cash blocked in any significant way.
- There is no claim for a refund in the exporting state since the ITC is depleted during the tax payment.
- The self-monitoring models
- Inter-State merchants have a limited level of computerization, and the federal and state governments should be able to quickly computerize their operations.
- When interstate dealers are all e-registered, the level of compliance is going to be far higher than it was before.
- The model may take into consideration transactions from "Business to Business" as well as "Business to Consumer."

6.4 COMPOSITION/COMPOUNDING SCHEME

As part of the GST Composition/Compounding Scheme, there will be an upper limit on gross yearly turnover and a base tax rate for that turnover. At Rs. 50 lakhs in gross yearly revenue, a compounded cut-off point and a floor rate of 0.5% would be

implemented across the States. Dealers having a turnover below the compounding threshold would be able to register for GST under the new plan.

6.5 HARMONIZATION OF LAWS AND ADMINISTRATION

Harmonization between the federal government and states, as well as across states, will be critical under the Dual GST. The ultimate objective is to have a single tax base and a single set of regulations for each of the taxes. There are a variety of ways to accomplish this goal. The GST is a national government-imposed and -managed single tax in Australia. All tax income is subsequently divided to the several states. In accordance with a political agreement, the tax is a federal tax that is disbursed to the several states. The funds are allocated to the states in the form of grants, with consideration given to criteria such as each state's budgetary capability and need.

Three of Canada's 10 provinces levy the Harmonized Sales Tax (HST). The tax is imposed and handled by the federal government under a single statute. Provincial involvement in the HST is optional in the Canadian system. At the national level, the tax is 5 percent, but in those provinces that participate, it rises to 8 percent. According to the provinces' respective tax bases, the 8 percent additional revenue is split amongst them according to a statistical formula (which approximates the revenues they would have collected if they had levied a separate tax of their own).

Unlike in the United States, Canada, and Australia, the European Union's (EU) GST approach is very different. Instead of harmonizing administration, the EU model aims to minimize trade and competition distortions. As a result, the VAT base and the fundamental principles regulating the process and application of VAT have been harmonized (with certain persisting exceptions) (time of supply, valuation, place of supply etc.). The administration is essentially a decision for the member nations to make. (but must respect the basic principles such as neutrality).

The CST in India provides an intriguing example for harmonization. Despite the centrality of the CST statute, the tax is managed and collected by each of the States. In fact, this looks to be the most appropriate model for India. According to this concept, Parliament would be the one to adopt GST legislation at the national and state levels. It would lay out the tax base, the site where taxes are collected, and the rules and

processes for enforcing and enforcing those rules and procedures. This law may or may not include rates for the State Goods and Services Tax (State GST).

6.6. KEY FEATURES OF GST – AN OVERVIEW

- The use of the HSN (hence referred to as the HSN) will be limited to products. A uniform standard categorization system for products was believed to be necessary as international trade grew, to facilitate the movement of goods and the study of trade data.) As a result, the World Customs Organization created the Harmonized Commodity Description and Coding System (HCDDS), an international agreement of HSN (WCO). An international nomenclature standard used by most countries to maintain uniformity of categorization in international trade has been approved. There are 5019 categories of commodities that may be classified using the 8-digit HSN nomenclature.
- Procedure for national and state GST returns and collection that is the same for all taxpayers.
- Registration of the Common Taxpayer's Identification Number based on the PAN. VAT-registered sellers can be identified by their TIN, a new, unique registration number. It is made up of 11 digits and will be unique to each individual in the United States. Like PAN, TIN is utilized under the Income Tax Act for identifying assesses.
- CGST and SGST registrations will be required to meet certain turnover requirements.
- TINXSYS is a system for tracking transactions. Interstate traders in India's states and union territories trade through TINXSYS, a single, central marketplace. The Empowered Committee of State Finance Ministers has created TINXSYS, a repository of interstate transactions between various States and Union Territories. In order to efficiently monitor cross-border commerce, the Commercial Tax Departments of various States and Union Territories will be assisted by TINXSYS.
- Taxes will be paid to the receiving state's account by the exporting dealer.
- Verification from the buyer's state will secure the buyer's credit.

- The declaration form submission process will most likely be phased out in the near future.
- Exemptions based on geographic location will continue to be granted until their valid expiration dates have passed, in both the federal government and the states.
- Exemptions based on products will be refunded in cash.
- Exceptions, such as natural catastrophes, will be granted with a limited amount of leeway between the federal government and the states.
- Reduced transaction costs by reducing the complexity of the system.
- For CGST and SGST there are separate regulations and processes in place.
- Distinct provisions for resolving disputes and making decisions in advance.

6.7 SINGLE MODE OF GST IN FRANCE

All taxable products and services provided in Canada are subject to the federal GST. When it comes to the Harmonized Sales Tax (HST), the federal portion is 5 percent and the provincial portion ranges from 7 percent to 15 percent. Other indirect taxes in Canada include gasoline, cigarette, alcohol, and environmental taxes, in addition to the HST/GST. Standard GST, HST, QST, and PST rates range from 5 percent to 5-8 percent, depending on the kind of tax. Several items are taxed at a zero percent rate, such as basic foods, which are zero-rated supplies.²⁷⁵

Where sales are made, the tax rate on supply is used. There are five provinces in Canada that participate in the HST: New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, and Prince Edward Island. 5% GST and provincial taxes are applicable in other provinces. There is a 7 percent Provincial Sales Tax (PST) in British Columbia; 8 percent RST in Manitoba; 9.975% QST in Quebec; and 5 percent PST on goods and services in Saskatchewan. The maximum sales tax rate for goods and services is 5% in Alberta, the Northwest Territories, Nunavut, and Yukon.

When a product or service is sold in Canada, a tax known as sales tax is levied. Every province in Canada except Alberta imposes a provincial sales tax known as the PST

²⁷⁵ Haiderkhan S. Pathan, *A Comparative Study of GST in India and Other Countries*, 4 IJRAR, 11-23 (2017).

(Provincial Sales Tax) in addition to the GST (a federal tax) (HST (a combination of the GST and the PST known as the Harmonized Sales Tax (HST) which is levied in the provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island.

Both the QST (Quebec Sales Tax) and the GST are charged in Quebec (QST and RST). Customers in Manitoba must pay RST (Retail Sales Tax) as well as the GST (Goods and Services Tax).

Sales in Canada are divided into three categories: those that are taxable, those that are zero rated (taxed at zero rate), and those that are exempt from tax. Taxable supplies manufactured in Canada are taxable if the value of the supplies made in Canada or outside Canada exceeds 30000 Canadian dollars (CAD) in four consecutive calendar quarters (or a single calendar quarter) for a person or corporation. The individual or business can register voluntarily for GST/HST purposes if the value of such supplies falls below the registration threshold. Those who have registered for GST/HST must collect the tax on all taxable sales. A business number (BN) will be issued to the taxable person following a successful registration. This number must be recorded on all invoices.

6.8 DUAL MODE OF GST IN CANADA

There are a variety of ways to apply the Goods and Services Tax (GST). GST is widely used throughout many nations. Brazil and Canada, on the other hand, use a dual system in which the federal and state or provincial governments each levy GST. Taxes on goods and services in India are being suggested to be split into two separate taxes, the Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST). India made the best move by implementing a dual GST framework.

In a federal nation like India, where the federal government and the state's share tax-collecting authority, a dual GST is necessary. Each level of government has a different set of obligations to fulfil, and they both need to generate funds for this purpose in accordance with the Constitution. Because fiscal federalism is a constitutional mandate, a dual GST will be in keeping with that need. There will be no distinction between the

two taxes under this scenario. For the purposes of taxation, there will be no distinction between products and services, as both will be subject to the same regulations. Proposed concomitant dual GST is supposed to safeguard tax revenues and reduce red tape by consolidating several national and local taxes into one single levied at the same time.

The proposed dual rate structure appears to do nothing more than fine-tune the current system, which currently includes a Central VAT (hereafter CENVAT) and a State VAT. To put it another way, the CGST and SGST would be made up of CGST, State VAT, State Service Tax (a new fee), and a few other local levies. As with CENVAT, it's possible that CGST will have no influence. Excise duty and service tax credits that are now available will be maintained. In addition to the planned service tax, the SGST is anticipated to include municipal charges such as entrance taxes, luxury taxes, entertainment taxes, and other cess on products. Introducing input taxes previously unavailable on entrance tax (in some States) and other levies will be a great development.

Every transaction involving the provision of goods or services, with the exception of those that are exempt from GST, items that are not covered by it, or transactions that are below the established threshold limitations, would be subject to both the Central GST and the State GST at the same time. In addition, unlike State VAT, which levies on the value of the items plus CENVAT, both taxes would be based on the same price or value. For CGST, it doesn't matter where the supplier or the receiver is situated; however, SGST is only applicable if the supplier and the recipient are both in the same state. As a result, two taxes will appear on a single invoice: a central tax and a state tax. Hopefully, they will be based on the same values. Taxes of Rs 6 and Rs 7 will be imposed on a purchase of Rs 100, which means the buyer would have to pay a total of Rs 13 in taxes. Despite the fact that there are two computations, there is basically only a single tax of 13%.

With a simple and transparent tax structure, the dual GST is expected to reduce the number of taxes at the federal and state levels, cut the tax rate for many goods, remove the current cascading effect of taxation, reduce transaction costs to taxpayers through simplified tax compliance, and increase tax revenues due to a wider tax base and better compliance.... Due to the fact that it is a consumption-based tax, the dual GST will help

states with higher per capita consumption of goods and services collect more income. There would be a decrease in collecting in the less developed states. The federal government is anticipated to set up a system to make up for any money lost by states as a result of the GST.

6.8.1 Rate of Tax

Finding a revenue-neutral rate for the GST will be a monumental undertaking in and of itself, requiring agreement among all states. A normal 8 per cent/16 per cent two-rate system for excise duty and atypical 4-percent/12.5 percent two-rate structure for state VAT are now in place in India. In order to maintain a two-tiered pricing system, a lower rate has been set aside for necessities and products of fundamental significance, with a higher charge applied to all other things. In addition, there will be a unique rate for precious metals and a list of things that are exempt from the tax. A two-rate system for CGST items may be possible, with the rates conforming to those of the SGST. The CGST and SGST may be combined into a single rate for the taxation of services.

Currently, excise duty and state VAT add up to about 22% to 24% of the retail price of alcoholic beverages. The overall tax burden is expected to be greatly reduced if the GST is implemented as planned. According to what I've read, it's probable that the overall rate of the GST will be somewhere around 20%. Recent debate, on the other hand, implies that a drop in the overall GST rate is being considered. Several other design components of the GST may possibly be revised in the future. In addition to the lower rate, the model's consistent base ensures that the federal and state GST will be levied at the same rate, preventing tax cascading.

6.8.2 Input Tax Credit

There would be two separate tax chains in this proposed dual Goods and Service tax system, with no connection between them. If this is the case, then a retailer would be unable to take advantage of the input tax credit offered under the Central GST chain at the State GST level. The central GST chain is expected to incorporate the current excise duty and service tax paid at the federal level. As part of the State level GST chain, the present State-level VAT, various local taxes, and service tax on specified services that

States may be given the authority to charge service tax are expected to be integrated into the State-level GST. Input tax credit will be available in both the Central and State-level GST chains, however it will not be used in the State-level GST chain.

There would be no carryover of the credit from one chain to the other, and there would be no input tax credit. Cascade effects would only be addressed in one chain at a time by the structure. CGST credits can be transferred between products and services. Also, in the event of SGST, the cross-utilization of credit would be possible

6.8.3 Threshold Limit

An annual gross turnover threshold of Rs.10 lakh for both goods and services will be adopted for all states and union territories with adequate compensation for the states where a lower threshold had prevailed under the VAT regime (particularly the states in the North-Eastern Region and Special Category States). The CGST barrier for commodities has been set at Rs.1.5 Crore, while the threshold for services has been set at Rs.1 crore.

6.8.4 Selective Concessions/Exemptions

It would be ideal if the GST had a linear tax system with limited exclusions, but this is unlikely to happen. According to former finance minister's adviser Dr. Shome, a "shade of policy interventions is a reality of life," and that by 2010, "we will have a system that would overhaul all taxes into one, with some exemptions." The assessee will not be able to claim any input tax credit for supplies that are declared as exempt and so would not be subject to tax. Certain goods and services, on the other hand, may be eligible for input tax credits since they are classed as zero rated.

6.8.5 Service Tax Under GST

The Education Cess is included in the 10.3% Service Tax, which is collected on over 100 services. State governments currently do not charge or collect service taxes, but do get a portion of the federal government's revenue. From this year, authorities are expected to retain the whole collection of some services. For the CST phase-out in 2010, states would additionally tax and collect a second set of planned new services.

Cross-border services are unlikely to be included in the State GST because of the difficulties involved in taxing them. The service tax rate under CGST and SGST is also expected to remain the same.

A significant aspect, however, is that Input Tax Credit would be available for the SST and other taxes like Entry Tax, Electricity Tax, and Luxury Tax that would be incorporated under SGST, which would contribute to the overall cost of new local services. All qualified Input Services are required to meet this requirement.

6.8.6 Tax Base for Dual GST Levy

A dual GST structure is expected to prevent double taxation and reduce the current cascading impact of taxation, benefiting businesses and consumers alike, despite the fact that no specifics have been provided on the SGST's tax base. In order to reduce the current cascading impact of tax, the levying of CGST and SGST on the same tax base is likely.

In both India and Canada, the government is decentralized. The Indian government is divided into three levels: the national government, state governments, and local governments, all of which are quasi-federal in nature. According to the seventh schedule of the Constitution of India, the federal and state governments each have their own responsibilities and budgets. Union, state, and concurrent lists of taxes were included in its three-list structure: List I (union taxes), List II (state taxes), and List III Federal and state fiscal authority was firmly separated under the Constitution until it implemented the GST regime. There was no tax on alcoholic beverages, opium, or drugs, but there was a tax on the sale of products for intra-state distribution, which was imposed by the states. Central Sales Tax might be levied on interstate supplies, although it was collected and held completely by the source states in these cases. When it comes to taxing services, the Centre has the exclusive authority to do so. It also assessed extra import and export customs taxes, as well as a baseline customs duty. Because the taxes levied by the federal government and the states are laid out in the seventh schedule of the Indian Constitution, constitutional changes were necessary prior to the implementation of the Goods and Services Tax (GST). For these and other reasons, the Constitution (101st Amendment) Act, 2016 was ultimately passed in the Rajya and then

the Lok Sabha in August, 2016; it was then approved by the President on September 8th, 2016, and became law on September 16th.

There are various different central and state taxes that have been combined into a single tax without cascading effects in order to facilitate a shared national market in India under the Indian dual goods and services tax, a destination-based comprehensive value-added indirect tax. GST was adopted in Canada in 1991 as a multi-level VAT on the supplies and services purchased in the nation, which encompassed practically all items except for few needs like food, residential rent and medical treatments. Besides the GST, sales taxes are also imposed in Canada.

Indian goods and services tax is a destination-based comprehensive value-added indirect tax collected on the manufacturing, sale, and consumption of products and services across the nation. Each time the value of a product or service is added, it is subject to taxation. Several central and state taxes in India have been combined into a single GST without cascading effects, making it possible for a single national market. A portion of the transaction chain that begins with the importation, manufacturing, production, or provision of products or services, and ends with the consumption of such goods and services, is included in the GST. It facilitates the free flow of products and services from one state to another without having to pay state taxes or entrance taxes, and it reduces bureaucracy to a considerable extent.

Digital transactions and electronic governance are made possible thanks to the Indian dual GST. Taxpayers who fall under the scope of the GST regime are required to electronically and monthly submit their GST returns to a single shared site known as the GST Network (GSTN). GST on output supply must be paid to the taxpayer's net of GST on input supply. PAN-linked GST transactions provide the tax authorities complete insight to guarantee compliance with income taxes throughout the value chain. For the first five years of implementation of GST, the federal government is compensating the state's revenue losses as a result of the tax's impact, according to draught guidelines. The central government (GST) and state governments (SGST) both pay GST at the same time, in accordance with India's federal system. The IGST of the destination state and the CGST and SGST of the interstate supply are combined to form the integrated GST (IGST). Panchayat and municipal taxes on entertainment as well as

stamp duty and tax on gasoline and diesel are still in place. There are four GST rate tiers in India: 5%, 12.5%, 18.5%, and 28.5%; there is a flat 0% GST tax on all basics. A 3% tax on gold is in place.

Registration is required under Indian GST legislation for all businesses and e-commerce operators that make taxable supplies of goods and services over Rs 20 lakhs (Rs 10 lakhs for the North Eastern and Hill States). Aside from that, anyone who is registered under the pre-GST law (such as VAT or Excise) or who is making an interstate supply of goods or services, a non-resident taxable person, a taxpayer who is using the reverse charge method, an input service distributor, an e-commerce operator or someone who is providing online information from a location outside India to India are all required to complete a normal GST registration.²⁷⁶

There are two parts to the registration procedure. To begin the registration procedure, taxpayers must submit their PAN, phone number, and email address. TRN (Transaction Receipt Number) provided by GST common portal after successful validation of these three details using email OTP (one time password) and mobile OTP. Using TRN in GST common portal (www.gst.gov.in), taxpayers must complete out GST REG Form 1 with the scanned copy of a photo, a copy of a document that indicates the location of company, such as an energy bill or tax receipts from the relevant authority, and a photocopy of the bank information. Submission of GST REG Form 1 results in an ARN (Application Receipt Number) being produced within 15 minutes of the submission. Once the ARN has been successfully established, GSTN is typically generated within three of the three common working days of the state and the centre. In the beginning, the GSTN common site will provide the taxpayer a temporary user ID and password by email to the registered email address, as well as an SMS notification of GSTN generation. After the initial login with some specific features for security, taxpayers are required to update their user ID and password. Taxpayers must use a new login ID and password for the next time they check in.

²⁷⁶ Dr. Baneswar Kapasi, *Indian GST and Canadian GST- A Comparative Study*, 7:12, IJRMEC, 246-250 (2017).

According to proposed regulations for the return of goods and services tax, there would be 27 different types of a GST return. The most often utilized formats for GST returns are as follows:

GSRT1: Outward details of supply of goods and services

GSRT2: Details of inward supply of goods and services

GSTR3: Consolidated monthly return

GSTR3B: Summarised return of outward and inward supply

GSTR4: Quarterly return for composition levy

GSTR5: Return of non-resident taxable person

GSTR6: Input service distributor return

GSTR7: Tax deduction at source return

GSTR8: E-commerce operator supply return

GSTR9: Annual Return

GSTR10: Final Return

GSTR11: Inward supplies statement for person having unique identification number

For the purposes of special returns, there are 16 more return forms in the proposed GST regulations, in addition to the previously listed return forms. Only GSTR 3B, GSTR 1 and GSTR 4 are now available in the unified GST interface, as of 31 December 2017. As a result, the common GST site's technical team is still unable to build the portal in accordance with the draught goods and services tax laws of India. Besides the temporary monthly form 3B, there are two ways to file an Indian GST return for taxable supply exceeding Rs 1.5 million annually: a monthly return or a quarterly return.

Reporting Periods for GST/HST and QST purposes vary based on total yearly revenues from taxable supplies made in Canada by the firm and its affiliates. If total annual revenue is up to Rs CAD1.5 million, a taxable firm must make an annual return; if total annual income is between Rs CAD1.5 million and Cad 6 million, a quarterly return must be made; and if total annual revenue exceeds Rs CAD6 million, a monthly return

must be filed. Non-compliance with the GST/HST, QST and PST system can result in a variety of penalties, such as fines for late filing or incorrect statements in returns, or interest on outstanding tax demands. On top of that, Canada has a reverse charge system in place for some goods and services imports to self-assess GST, HST or PST.

After the uprising of 1857, the British Indian Government of the time was forced by Sir James Wilson to introduce modern-day tax structures in order to recoup its losses. As a result of these measures, the speed of development has been controlled and the government's tax income has been expanded. Goods and services tax (GST) was recently implemented in India, including more than 15 indirect levies and becoming the most dynamic and well-publicized tax reform in recent memory. With the goal of making Indian businesses globally competitive, GST was established to remove the cascading effect, make interstate movement of commodities easier, include small enterprises in the formal economy, and reduce tax terrorism, among other benefits. It is said to be one of the finest ways to combat both direct and indirect tax evasion. For the first time, France adopted the GST in 1954, making it the world's first country to do so. More than 160 nations around the world have now embraced it due to the growth of global trade. The GST model used by India is said to be quite similar to the Canadian VAT approach. When considering the possibility of adopting the Canadian model of GST because both nations are under Common Law, it made sense. Canada became the first country to use this tax scheme in 1991. There were numerous protests against the new changes when they were first implemented, but today it is a country with an indirect tax system that is quite seamless.

6.8.7 GST Law In Canada

India and Canada are both countries that have a wide variety of people and cultures. Because of Canada's vast variety, it has been observed that the country seldom implements any radical policy shifts. However, Canadian ground experience suggests that an invoice-credit, consumption-based value-added tax (VAT) is practical at the provincial level.

The federal government has sole taxing authority under the Canadian constitution. Despite the fact that implementing GST in Canada was a ground-breaking move, rather

than just copying the existing GST model, it set out to create its own, tailoring it to the specifics of the nation in which it was implemented. Invoice-credit, destination-based VAT (VAT) adopted in the EU was always claimed by tax experts throughout the world to be a central government tax, and thus couldn't be adequately implemented at the provincial level. However, the introduction of Destination-based VAT in Canada in 1991 shattered this belief. Almost two decades after Canada's experience, federal nations like Brazil and India have learned from it.

6.8.8 Canadian GST- Its birth and effects

In the late 1980s, a debate erupted in Canada on the issue of GST. It was primarily for the purpose of manufacturing sales tax that this issue was brought up for consideration. Canada's regressive structure and built-in cascading effect allow for large tax cuts, despite the fact that MST generates 37 percent of government revenue. Former Canadian Prime Minister Brian Mulroney popularized it in Canada in 1991 by introducing it to the country. It was first offered at a 7 percent discount. After two rounds of revisions, the current rate is set at 5%. The adoption of the GST in Canada has resulted in a number of setbacks for the country. Canadian tax experts, such as Bird, were likewise displeased with the implementation of the GST. In Canada, the goods and services tax (GST) has the following features: -

- A wide variety of GST is implemented across Canada's federal and provincial governments. GST, PST, HST and QST.
- In a first for a country, GST was implemented at both the federal and provincial levels.
- For each province, the GST is applied differently.

Since the GST is a consumption-based tax, the Canadian government categorized sales into three categories, i.e., sales that are taxed, sales that are taxed at a lower rate, and sales that are taxed at a lower rate. Canadian businesses can now utilize a nine-digit number issued by the Canada Revenue Agency (CRA) as a standard means of identifying their customers when dealing with the federal, provincial, and municipal governments.

How the GST works in Canada: Canadians do not pay a single tax for both the federal and provincial governments, as is the case in India. For this reason, Canada's provincial governments have been permitted to pick the appropriate combination of taxes for their respective jurisdictions. HST (Harmonized System of Taxation) is a mix of the GST and Provincial Sales tax in five provinces: New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, and Prince Edward Island. Canada is a federation of 10 state and three territory administrations.

GST has also been recognized by the provinces of Alberta, Northwest Territories, Nunavut, and the Yukon. In the provinces of British Columbia, Manitoba, and Saskatchewan, products and services are subject to a 5% GST plus a Provincial sales tax at varying rates. The unusual relationship between the federal government and the province of Quebec is one of the most notable aspects of the Canadian GST. In terms of enforcing the new tax policy, the federal government has granted this province complete latitude since GST was first implemented. Quebec is a province that has been given the authority to manage both its own retail sales tax and the federal goods and services tax. Those in favour of the agreement said that it was created in light of Quebec's rising political desire for policy autonomy.

6.8.9 Registration

Only if the value of taxable supply made in Canada or outside Canada exceeds 30000 (CAD) in the financial year does an individual or organization need to be registered and authorized to collect GST/HST. Registration under this regulation can be freely chosen by individuals and organizations, even if the value of their goods falls below the threshold for registration. After registering, firms must collect GST/HST on all taxable sales. Invoices must include the business number supplied by the central revenue authorities following successful registration.

Canada's GST features a provision that allows some institutions to get refunds on the taxes they pay on inputs.:

- Municipalities - 57.14%
- Universities and public colleges - 66%

- Schools - 68%
- Public hospitals - 83 %
- Government registered charities and non-profit organizations - 50%

6.8.10 Comparative analysis of Law

Indirect tax regulations in both nations have a lot in common and a lot that is different. In light of their federal structures, both nations have implemented a dual GST system. The fact that an expert from Canada recommended a GST model similar to ours when the topic of introducing GST in India was raised was also right. While the Indian GST structure is similar to the Canadian structure, it is not identical, according to a comparison of the two statutes. A wide range of distinctions separates the two. From the company's name to its prices, from its division to its upper limit, and so on. There are several types of GST in Canada: Federal GST, Provincial Sales Tax, and Sales Tax on Retail Goods and Services (combination of GST and Provincial sales tax is called HST). Central, State, and Union Territory GSTs are all part of the Indian GST system.

Canada's provinces are able to choose their own sales tax rates, however in India, the rates are set by a constitutional body called the GST Council, which is chaired by the country's finance minister. There are some exceptions, such as zero-rated and exempted goods, but for the most part, the GST rate in Canada is set at 5%, while in India the GST rate ranges from 0% for unpacked food staples to 5% for essential goods and services, 13% for the majority of service types, 18% for service types like courier, and 28% for luxury goods and services. The CAD 30,000 exemption barrier in Canada is higher than the CAD 66,000 exemption requirement in India (Canadian Dollar for all the province except the north eastern state where the threshold limit is around CAD 33,000) 15. Unlike in Canada, where both the federal and provincial governments manage and collect their taxes independently, the GST is administered and collected by the central government. Canada's Quebec province is one of just a few that administers and collects both Quebec sales tax and federal GST. When it comes to submitting GST returns, Canada accepts the following three options: Monthly (if the company's turnover is less than CAD 1.5 million), Quarterly (if the company's turnover is between CAD 1.5 million and \$6 million), and Monthly (if the company's revenue is greater than \$6 million). In India, monthly returns are typically filed and one yearly return is

required to be submitted (quarterly return need to be file if the turn over exceed Rs. 1.5 cr in financial year).

As far as local taxes are concerned, Canada has given the states complete control, but the GST in India has effectively eliminated all of the states' key taxing powers. Canada has a more complicated structure and a far higher administrative expense as a result of the several taxes that coexist there. Indian version is also easy.

Canada is a country that has implemented a GST system that was before unheard of and unimagined. When it came to dual-GST, it was the first to do so. As of right now, the Harmonize GST model has shown to be a very effective approach, allowing the federal and provincial governments to tax independently. A model similar to that used in the United States has been implemented in India, with a few modifications. Taxes are levied at the same rate by both state and federal governments in India. After Canada and Brazil, India has become the third country in the world to implement a dual GST system. In Canada and India, there is a dual GST in the area of cultural and regional differences. Analysis of both countries' legal systems reveals that there are a number of similarities. There are, however, certain peculiarities that are tailored to the specific demands of the region. In comparison to the Indian model, the Canadian model is more complex and intricate, and the provinces in Canada have greater say. Because we have less taxes and administrative requirements, India's approach is simpler. Among the 33 members of the GST Council, two Union ministers have a veto power of 33%, giving the Indian government an advantage. When it comes to federalism, the Canadian system really does a better job than ours. In order to improve the efficiency of our indirect tax system, we should draw on the strengths and weaknesses of both systems.

For the vast majority of nations that have implemented the Goods and Services Tax (GST), a single, unified system of taxation has been implemented. Almost everything in these countries is subject to a single rate of taxation. Below, you'll find a bar graph that illustrates the present condition of GST in various countries throughout the world. The GST rate in India is 18 percent, which may be seen. The Netherlands has the highest rate of GST, while Canada and Jersey have the lowest. Many good and negative developments have taken place with the introduction of GST in these nations.

It's critical that you understand HSN codes now that we've talked so much about GST in India, Cascading taxes, and GST throughout the world. Currently, different states in India have their own systems for categorizing commodities in order to determine the tax rate, but with the upcoming Goods and Services Tax (GST) regime, there is a demand for more consistent categorization, not only nationally but globally. Because of this, there was a need for the Harmonized System of Nomenclature (HSN) for commodities. As a result, we'll now go through HSN codes and the GST.

The World Customs Organization established HSN, or Harmonized System of Nomenclature, as a generic worldwide product nomenclature (WCO). WCO has 181 members, the majority of which are developing countries, who account for nearly all of the world's commerce. Sections, chapters, headings, and subheadings are used to classify items, which results in a six-digit number for each commodity (two digits each representing the chapter, heading, and subheading). Since 1971, India has been a member of the World Customs Organization (WCO) and has been utilizing HSN codes to identify goods for Customs and Central Excise since 1986. As a consequence of the two extra digits added by Customs and Excise, the classification now has eight digits. This means that the majority of retailers will have to use either 2-, 4-, or 8-digit HSN numbers depending on their sales volume.

Dealers with a turnover of less than Rs. 1.5 crores will be exempt from using HSN codes, while those with a turnover of between Rs. 1.5 crores and Rs. 5 crores would be forced to use two-digit HSN codes. The GST is presently being implemented in India using the HSN codes scheme. If a business has a revenue of more than Rs. 5 crores, it must utilize four-digit HSN numbers for its products. Imports and exports must use HSN codes with eight digits since GST must be compliant with global norms.

The former tax system in India had a wide range of levies on products and services at both the federal and state levels. They included things like excise, value added tax (VAT), service tax (SCT), sales tax (ST), and other fees related to the entertainment industry (ETF). In addition, there was a tax on agriculture and sanitation, as well as an education Cess, a higher education Cess, and other taxes. Because of this, it may be inferred that products and services had to pay an ever-increasing amount of taxes,

including a sales tax at the federal level as well as at the state level. This is known as cascading taxes.

The introduction of the Goods and Services Tax (GST) in India was motivated by noble intentions, and it is likely to achieve its goals in the coming years. Many and most of the most essential issues relating to the GST were addressed in this specific study. Please pray that the Indian GST is a boon to the people and the economy of India. India, like other countries where the GST has been implemented, appears to be unable to overcome these limits. It is the goal of this study to establish a worldwide trend of GST by analyzing the implementation of GST in India and other nations across the world. It's still unclear, though, whether or not India would have to raise its GST rates as well. As for India's citizens, we can only hope for the best for the country's economic growth.

CHAPTER 7

CHALLENGES OF IMPLEMENTING GST AND ITS IMPACT ON INDIAN ECONOMY

7.1 INTRODUCTION

One of India's biggest indirect tax changes has been stated by the current administration to be the implementation of the Goods and Services Tax (GST). The Good and Simple Tax and the Gabbar Singh Tax are two different interpretations of the Goods and Services Tax. This wide range of opinions is the result of the program's implementation. Tax collection, decrease in corruption, and interstate movement of commodities are among the goals of the Indian Government's implementation of the GST. Adding petroleum items to the GST is sensible since it brings the tax system in line. There should be no exceptions to the rule that all goods and services should be taxed. According to Madan Sabnavis, Chief Economist at Care Ratings, there is a rationale to take petroleum products out of the equation. It's time to stop focusing on carving off different states from the land and start integrating into a shared economy. Since the 1950s, people have been debating this. Indirect Taxes have made it feasible for this to be done. A single currency and the unrestricted movement of industrial elements have transformed the European Union into an Economic Union (men, money and materials). Isn't it time we had a common market in India?

Remembering these factors, India's 12- to 15-year path²⁷⁷ has now come to fruition with the introduction of a goods and services tax. Positive and bad stories are emerging as a result of its adoption. Electronic and print media have been labelled "Godi media" and "compromised" in the past several years, but the truth is that these stories are actually true. Even the most casual observer may see that the introduction of GST accounting software was rushed, or that it had not even been tested once before to its adoption. To be honest, the researcher was ecstatic that GST would be implemented so that petroleum products would be taxed at a uniform rate across the country, as they are currently taxed differently in different states. However, when the researcher learned

²⁷⁷ Congress party is saying that the effort to introduce the new tax regime was reflected, for the first time, in 2006-2007 at the time of UPA Government but BJP is saying it was started in 2002 at the time of NDA government.

that the rate on petroleum products in Delhi is lower than that in Noida, he felt betrayed. Even if the higher VAT rate in Uttar Pradesh is justified, there should be uniformity. After learning that petroleum goods have not been included in the Goods and Services Tax framework, the researcher decided to investigate why it couldn't be included or what the rate of fuel and diesel would have been had it been included.

There were a number of contentious issues that needed to be resolved and agreements reached between the Central Government and State Governments prior to amending the Constitution for GST. In a country as varied as India, implementing a tax reform of this magnitude necessitated balancing the interests of many states with the national government.

The following were some of the concerns that had to be dealt with prior to the implementation of GST:

7.2 ORIGIN-BASED VERSUS DESTINATION-BASED TAXATION

The Goods and Services Tax (GST) levies a consumption tax on goods and services based on where they are. Taxes on products and services are collected at the point of consumption under the concept of destination-based taxation. As a result of the origin principle, the current VAT system apportioned Central Sales Tax to the State of Origin rather than the State of Consumption. As a result of the move from origin-based taxes to destination-based taxation, many industrial states raised concern.

Proponents of origin-based taxes argue that states that produce commodities for interstate consumption ought to recoup part of the costs of public infrastructure and services that their governments provide to the companies that produce those items. According to this line of reasoning, the presence of export industries inside the jurisdiction of the exporting state would not contribute to tax collections if there were no interstate sales tax. According to this idea, every increase in a jurisdiction's worth necessitates more money being earned by its citizens. Sales tax revenue generated by this income is bolstered by consumers' purchases of products and services in the producing states. Although consumers' spending depends on their income level, it is the producing states that would benefit most from higher export output in terms of greater sales tax collections (even under the destination basis of consumption taxes).

7.3 RATE STRUCTURE AND COMPENSATION

Initially, there was scepticism about the GST's ability to boost revenue. A revenue neutral rate estimate was attempted; however, it is merely an estimate. With the cascade impact removed and CST being phased down, it was impossible to determine exactly how much revenue the states would get and how much revenue they would lose. As a result, during the first five years of GST implementation, states requested reimbursement.

Dr. Arvind Subramanian chaired a committee that recommended RNR (Revenue Neutral Rate) as a viable tax rate under GST. RNR stands for 'revenue neutral rate' and it refers to that single rate. The standard rate is the rate that is applied to the majority of products and services; however, this is not the case. There will be a structure of rates in practice, but for the sake of clarity and precision, it is reasonable to conceive of the RNR as one rate. A single rate is transformed into a complex rate structure based on policy decisions concerning exemptions, which goods to charge at a lower rate, and which goods to charge at a very high rate.

15-15.5 percent was the range that the committee proposed for RNR (to be levied by the Centre and States combined). Reduced taxes of 12 percent should be applied to specific commodities purchased by the poor. There should also be a 40 percent penalty rate for things like luxury automobiles, aerated drinks, pan masala and cigarettes.

7.4 DISPUTE SETTLEMENT

The Goods and Services Tax Council, which was eventually established to oversee the implementation of a unified tax system, mandated that all parties involved adhere strictly to the decisions of the higher authority (the Council). While it is possible that such a body's recommendations may be ignored altogether, it is not impossible. A legislative entity must be established to handle disputes amongst stakeholders in the event of a breakup. The composition of such a group for resolving disputes was contentious. One hundred fifteenth amendment bill created a Goods and Services Tax Dispute Settlement Authority to do this. This was a court-like body. Due to the Authority's ability to overrule the legislative authority of both Parliament and state legislatures, its draught constitution was contested. It was suggested in 2014's

Constitution (One Hundred Twenty-Second Amendment) Bill that instead of a separate GST Council, the Goods and Services Tax Council may decide how disputes resulting from its recommendations would be resolved.

7.5 ALCOHOL AND PETROLEUM PRODUCTS

The sale of alcoholic beverages and petroleum-based items for human use is a significant source of money for states. States lobbied unanimously for the exclusion of these items from the scope of the GST because they were concerned about the impact of the new tax on their budgets and the loss of tax revenue collecting authority. Crude petroleum, high-speed diesel, motor spirit (petrol), aviation turbine fuel and natural gas were exempt from the 115th Amendment Bill's GST exclusion. The 122nd Amendment Bill, on the other hand, suggested bringing the five petroleum goods listed above under the scope of GST at a future date to be determined by the Council. Tobacco and tobacco products are still subject to central government taxation, although this is now part of the GST. It was decided to exclude alcohol from GST in order to facilitate a seamless transition and create a budgetary buffer for States.

There are several benefits that may be gained from implementing GST, including increased revenues that can be sustained on a long-term basis that will help the fiscal situation. In the long term, this change will address a number of pressing challenges. As a result of a new analysis, India stands to gain \$15 billion a year when the GST is implemented. To put this into perspective, the current value of the GST is around \$500 billion when discounted annually at a modest 3 percent. In this chapter, the researcher tries to determine how the implementation of GST would affect various taxing regimes. Input tax set-offs and service tax set-offs will be expanded to encompass a broader range of goods and services, reducing the burden on business and farmers. In addition, various state and federal taxes will be rolled into the GST, and the CST will be phased away over time. In addition to increasing the tax base and improving tax compliance, a more transparent and full chain of set-offs may also result in a reduction in the tax burden for the typical dealer in industry, commerce, and agriculture.

As a result of these changes, the cost of locally created goods and services would be reduced. The elimination of the CST would also help. Increased foreign competition for Indian goods and services will improve exports and help the Indian economy.

The following section examines the effect of the Goods and Services Tax on specific industries.

7.6 FOOD INDUSTRY

Subsistence-level families would be adversely affected by the introduction of the GST on food. In the poorest communities, it would have a tremendous impact. However, eliminating all taxes on food would result in a significant reduction in the revenue base. There are several types of food, including grains and cereals, meats, fish, and poultry, milk and dairy products, fruits and vegetables as well as candies and confectionery and snacks.

Food is free from CENVAT in India, however certain food goods, such as grains and cereals, are subject to a 4% state VAT. Fresh fruits and vegetables, meat and eggs, and coarse grains are all exempt from the state's VAT. Milk, however, is exempt from taxation because it is a food product. If food is included in the scope of GST, small businesses would still be able to avoid paying taxes on such sales because of the low registration level. Food is now exempt from CENVAT and is subject to a 4% VAT, which means that the GST under a single rate will double the food tax burden. This necessitates the use of particular steps.

7.7 HOUSING AND CONSTRUCTION INDUSTRY

Land and real property supplies are exempt from taxation in several European nations, however housing and building services are taxed like any other commodity in countries like Australia, New Zealand, Canada, and South Africa. The complete selling price of a home, including the cost of land, building materials, and construction services, is liable to VAT when it is built and sold by a real estate developer. Rental costs for leasing industrial and commercial buildings are likewise taxed in the same manner as commercial buildings and factory sales.

Exceptions to this rule are limited to the selling of previously owned homes and private residences and the renting of such properties. Used houses and residences are free from sales tax because the tax was previously paid when they were purchased. For the same reason, residential rentals are likewise excluded. Rents would have to be taxed if the purchase price of the home and the cost of repairs and upkeep were not taken into account. India's building and housing industries need to be included in the GST tax base due to their importance to the country's overall economic well-being.

7.8 FAST MOVING CONSUMER GOODS SECTOR

Despite the slump in the economy, the Fast-Moving Consumer Goods (hereafter FMCG) industry in India has continually risen over the last three to four years, reaching a retail sales figure of \$25 billion (Rs 120,000 crore) in 2008. It is projected that the implementation of the Goods and Services Tax (GST) and the opening of Foreign Direct Investment (FDI) would lead to an increase in the industry's size to \$47 billion (Rs 225,000 crore) in 2013 and \$95 billion (Rs 456,000 crore) in 2018.²⁷⁸

The FMCG sector contributes \$6.5 billion (Rs 31,000 crore) to the government's coffers through direct and indirect taxes. Uniform, streamlined, and single-point taxes will result in lower pricing for FMCG products as a result of the implementation of GST.

7.9 RAIL SECTOR

Proposals to include the rail industry under the GST umbrella have been made in order to obtain considerable financial advantages and broaden the tax net while maintaining a lower total GST tax rate. If the government truly wants to level the playing field for road and air transportation, it should include the rail industry in the tax system that eliminates the majority of indirect taxes. In addition, the projected information technology (IT) network will be able to trace all interstate commodities traffic.

²⁷⁸ According to a FICCI – Technopak Report, Implementation of GST will also help in uniform, simplified and single point Taxation and thereby reduced prices.

7.10 FINANCIAL SERVICES

Financial services are generally exempt from the Goods and Services Tax (GST) in the majority of nations. In New Zealand, for example, the GST applies to nearly all products and services, with the exception of financial services. Banks and insurance firms, for example, charge for their services in a way that isn't always clear, so the fee is tucked away in interest, dividends, annuity payments, and other money flowing from the transactions. To be taxed on a service if the fee was not concealed would be simple.

Financial services in China are subject to the country's business tax, which is a tax on sales with no deductions permitted for input costs. As a turnover tax, it can be imposed on the overall spread for margin services, without having to divide it between borrowers and depositors. Israel and South Korea aren't the only countries that levy taxes in unconventional ways. The Service Tax in India has adopted a policy of taxing nearly all financial services when the consideration for them is in the form of an explicitly stated fee. As a result, it has expanded the scope of the Service Tax to include some margin services (in which the consideration is the spread between two financial flows and outflows). Taxable margin services like this include the following:

- As a compensation for the use of a credit card, merchant discounts and any explicit fees or late payment costs collected from card members are subject to taxation.
- 2 percent of the amount transferred in currency exchange operations without an express charge is taxed as a deemed amount of compensation.
- The tax is levied on the part of the premiums paid for life insurance that is used to offset the risk.

There are some nations where transactions in precious metals like gold and silver are classified as part of the financial sector since these metals are typically purchased as investments rather than for consumption. Financial services should not be excluded from the GST since there are no compelling reasons to do so. It would be best to follow the Service Tax approach.

7.11 INFORMATION TECHNOLOGY ENABLED SERVICES

Defining the type of property is critical for assessing online commerce and software. The term “intangible property” refers to property that may be transferred but cannot be physically sensed or touched. Intellectual property rights and other assets, such as goodwill, interest, and receivables, fall under this category. The character of a product is determined by the medium it is conveyed via. If it is in electronic form, it is deemed intangible property, however if it is in any other media, it is considered tangible property. In nations where GST is already in existence, the tax consequences differ based on the kind of commodities and the location of their supply. Transactions involving digital goods and services, such as those conducted via the internet, provide the greatest tax planning challenges.

E-commerce taxes has been a source of contention in India. Despite a slew of court rulings and legislation, it’s still unclear exactly how this will affect your taxes. Customized and pre-packaged programmes are now taxed based on their intended use by the parties involved. Domestic software sales should be subject to GST, as is the case in other countries, regardless of where they are made. If the Programme is distributed electronically, it should be treated as Intellectual Property (IP) and treated like any other sort of cloud computing service. Software should be taxed as a commodity if it is delivered on a physical medium such as a CD or DVD.

7.12 IMPACT ON SMALL ENTERPRISES

Concerns about the impact of the GST on small businesses are high. In the new tax system, there will be three types of small businesses. There is no need to register for the GST if your income falls below the applicable threshold level. There will be a choice between a tax based on turnover or joining the GST regime for those whose turnover falls between the threshold and composition levels. Not all small businesses will opt for the turnover tax because of the possibility of an input tax credit. Small businesses having a yearly revenue more than \$30,000 will fall within the purview of the GST. Some dealers may have new responsibilities as a result of the adoption of GST in some States, where the threshold may be reduced. If it is determined that direct support to the impacted small businesses is necessary, appropriate arrangements might be established. In terms of the Central GST, things are a little more complicated. Up to a turnover of

Rs 1.5 crores, small-scale manufacturers of selected commodities are free from excise duty. Additional costs for these units, which may be necessary to register, may be perceived.

Despite the many advantages, it does not appear that the move to GST will be a seamless one. New tax regimes always present an array of obstacles and concerns for the sector to overcome. Some of these problems are short-term, while others are recurrent and long-term, and they might have a long-term effect on the company. Identifying and understanding some of these possible concerns is essential for the sector since GST is on the horizon. If you don't grasp these difficulties, you won't be able to take action quickly enough to prevent them from causing harm to your organization. The following obstacles must be overcome in order for a fully integrated, harmonized, and fully functional GST: -

7.13 CHALLENGES WITH RESPECT TO STATE'S AUTONOMY AND THEIR POWER OF TAXATION

Due to the fact that India is a federal state, its legislative authority is split between the states and the union. Articles 245 and 246 of the Indian Constitution make it plain that States and the Union can legislate in the various sectors included in Lists I, II, and III of the Seventh Schedule, respectively. As stated in Article 245, the Union and the States are both allowed to establish laws applicable to the entire country or a specific portion of the country. Even in the area of taxation, the federal government and individual states have the authority to enact legislation.

List I of the Seventh Schedule, also known as the Union List, gives the Union the power to legislate; List II of the Seventh Schedule, also known as the State List, gives the States the power to legislate; and List III, also known as the Concurrent List, gives both the States and the Union the power to legislate. Even laws impacting taxation are subject to these legislative authorities.

Central Excise Act (Subject matters covered under Entry 84 of List I-Union List in Seventh Schedule), Customs Act (Subject matters covered under Entry 83 of List I-Union List in Seventh Schedule), CST Act (Subject matters covered under Entry 42/92-A of List I - Union List in Seventh Schedule), etc., have been enacted by the Union and

the States respectively. Stamp Duties Act (Subject Matter Covered by Entry 44 of List III - Concurrent List in Seventh Schedule) was also passed by the Union and States as a result of its inclusion in the Concurrent List.

Problems that GST presents are two-fold, after having gone through our Constitution's core structure for taxing powers of States and the Union. In the first place, state legislative authority over topics covered by State Lists is being curtailed, meaning states may no longer tailor the GST legislation applicable to them according to their own whims and desires. The general people will appreciate this because taxes has long served as a means of demonstrating political strength and dominance among states. However, state administrations are unlikely to quickly give in to public pressure.

As a result of the implementation of GST, local sales tax rates and subject matter will no longer be decided by the state. As a result, states will be unable to set their own tax rates in order to meet their income demands for the upcoming fiscal year. Another constitutional amendment that is needed is to allow governments the ability to tax on services and activities of manufacturers that are now outside the jurisdiction of the state. There is still a worry in the minds of states that new powers of taxing of services and other state level levies will be given to them by the federal government.

Because of this, states have been hesitant to impose the Goods and Services Tax (GST) in India. It is generally agreed that a constitutional GST Council should be established to address issues of taxes, tax rates, thresholds, and exemptions, among other things. States, on the other hand, have refused to accept this. The Indian Finance Minister has recently said that the GST Council will have no involvement in determining tax rates or taxing, paving the door for state sovereignty. GST would face the same destiny as VAT in India if the aforementioned is implemented by the states more often. The proposed constitutional change, which aims to reduce the state's taxing authority, is also expected to be a source of friction between states.

When it came to a dispute resolution process for GST disputes, states were requesting statutory backing rather than constitutional sanctity, while the federal government was insisting on constitutional protection. As of late, it has been reported that the Union

Finance Minister has acceded to state requests and withdrew this clause from the proposed constitutional revision.

7.14 CHALLENGES WITH RESPECT TO TAX THRESHOLD

One thing that would need to be looked at carefully is the amount of turnover that would trigger the imposition of GST. Small-scale merchants and service providers should not be put off by the low threshold restriction. Increased government spending for a small quantity of money may actually be more expensive than the amount of money gathered. Additionally, because of the low threshold, many small business owners and service providers choose to avoid paying taxes or pay off corrupt government officials instead.

As a result, current tax measures will be hampered by a low threshold limit. Governments have yet another hurdle when it comes to adopting a higher tax level. Setting a higher tax threshold has the immediate effect of reducing government income since the tax base's peripheral decreases. It might also have a negative impact on countries with low VAT thresholds, such as those in the developing world. As a result, states with high thresholds will see a decrease in income since they would be unable to collect as much as they do now.

Empowered Finance Ministers' Committee (EC), formed to evaluate the environment for implementation of GST in India, advocated a standard threshold of Rs. 10 lakhs Rupees for State GST, and Rs. 1.5 crore for Central GST, across all the Indian states. A comparable high threshold for service providers has also been recommended by the EC for the application of a tax on services. Keeping the tax threshold low is a beneficial thing since it extends the tax base, allowing for more money to be collected even at a low tax rate. Governments, on the other hand, must weigh the advantages and disadvantages of maintaining a low tax threshold level in order to maintain the GST's original goals.

The economic cost benefit analysis should also be kept in mind when determining the tax threshold limit in order to determine the possible advantages that may be gained by collecting more revenue in comparison to the probable costs of enforcement/collection of money. As an element of state sovereignty and independence, several states have argued that they should be allowed to set their own tax rates in addition to the tax floor

rate, which has been widely publicized in the media. Taking the states' requests into consideration would be a huge setback to the goals that are being pursued.

7.15 CHALLENGES WITH RESPECT TO NATURE OF TAXES THAT ARE GOING TO BE SUBSUMED

According to the First Discussion Paper, taxes imposed by the federal government, such as excise, extra excise duty, and other surcharges and cesses, would be included in the GST. Excise duty, countervailing duty, Cess, service tax, and state-level VATs are among the taxes that are commonly included in the GST. There are a surprising number of taxes imposed by states and unions that would be exempt from the GST. Our indirect tax system would continue to be fragmented if we exclude a number of taxes, levies, and cesses from the proposed GST. As far as taxes on food grains, road and toll fees, octroi and taxes on liquor, petroleum products, and mineral cesses are concerned, there is no guarantee. Introducing GST will be a half-hearted attempt because of this.

7.16 CHALLENGES WITH RESPECT TO NUMBER OF ENACTMENTS OF STATUTES

Despite the fact that the problem may appear little at first glance. However, this issue should take center stage in the GST debate. Having a smaller number of statutes means that the implementation of GST will go more smoothly, without any need for exaggeration. Central GST (CGST) and State GST are proposed in the First Discussion Paper as two distinct forms of GST legislation to be enacted at the federal and state levels, respectively (SGST). According to our understanding, each state will have a distinct GST because of the varying tax rates for products and services at the central and state levels, and because each state's needs, location, geography, and resources need different types of goods and services. If this is the case, then it will be the primary cause of the failure of the implementation of GST, or the beginning of a problematic implementation of GST.

State sovereignty and autonomy may make it impossible to achieve the goals of GST if each state retains the ability to make changes to the SGST to its heart's content. It's likely that the GST would end up like India's VAT, which was a disastrous mishandling

of the tax system that led to cascading consequences and problems with double taxing. It's impossible to make any meaningful observations about this situation without knowing what the government hopes to accomplish.

The researcher, on the other hand, emphasizes the importance of a centralized system for administering GST, both the CGST and the SGST, so that states do not have the authority to make changes to the legislation. States may be given limited authority that may only be used in extreme circumstances, such as a financial crisis, as outlined in Article 360 of the Indian Constitution. As an alternative, a single central authority would select which goods and services should be subject to the CGST and SGST as well as the applicable tax rates. Additionally, it is important to keep in mind that all states should have a single commodity tax rate in order to minimize revenue leakage, which might result in different tax rates for the same item across several states.

7.17 CHALLENGES WITH RESPECT TO RATES OF TAXATION

Before the implementation of GST in India, this was one of the most contentious issues. States are concerned that their room for exercising political clout would be reduced if the public and industry support eliminating states' freedom to change the SGST and the desire for a central, constitutionally constituted authority to handle tax rate problems. As a result, several states have expressed concern about how they would pay for their public spending. True, a tax rate should be set in accordance with the state's requirement for revenue, but this is not always the case. State governments should be able to increase tax rates on particular commodities if they need to earn more income in order to meet their growing spending needs. Under current VAT laws, this ideal practice has only resulted in a mishandling of the taxing system.

Union officials have agreed to compensate states for any income shortfalls caused by GST, but it may not be enough to persuade state governments since they fear losing their ability to levy illogical tax rates. Another element that puts the GST in a tough spot is the possibility of revenue declines in the state coffers, as previously discussed under the idea of state sovereignty and autonomy being lost in taxes.

We should also keep in mind that the GST presents genuine difficulties for any tax-setting institution. There are typically 4-6 schedules in each state's VAT Act, based on

existing state-level VAT legislation. Agricultural equipment, Gandhi Ji's Topi and Charkha, and other tax-exempt items, are just a few examples of the types of items included in the schedules. Other items have a tax rate of 1 percent — essential commodities like food and clothing, for example, and a tax rate of 4 percent — normal consumables and industrial products. Finally, other items have tax rates ranging from 10 percent to 12 percent or 14 percent — depending on the type of item.

Next up are things that are either very objectionable to society like alcohol, or specific commodities such as Aviation Turbine Fuel (ATF) and Petroleum Products, or highly luxury goods that are taxed at significantly higher rates of 20 to 70 percent depending on the states. In general, this is a typical pattern that sums up the present practices in every state. Currently, one of the primary issues will be whether or not the current schedules with some revisions will be retained or whether or not a single tax rate will be maintained for all goods when GST is implemented. As you may imagine, there will be plenty of disagreement on this topic.

Some tax reform advocates suggest that things should be taxed based on their usage and the incomes of the individuals who own them. Progressive tax systems do not allow for the same rate to be applied to necessities and luxuries since this would impose a greater burden on those who are already struggling while giving the wealthy an advantage. A single tax rate should be specified for all goods, so that states may receive a considerable quantity of income from the tax. To do so, the tax rates on most vital items would have to be significantly higher than they are currently.

Indirect taxes are passed on to the final consumer, which means that the entire population will be affected by high tax rates. The parties participating in developing tax mechanisms have stated that products would be subject to a combined GST at a standard rate of 20%, essential items at a concessional rate of 12% and services at a standard rate of 16%. This is what has been said in their speeches. The standard rate of 20 percent of duty would be greater than what is presently charged if this tax rate is adopted by all parties, including the Union and the States.

Services, which are currently taxed at 10.30 percent, will also rise in price under the GST. Even under the suggested approach, we realize that alcohol and gasoline would

not be included in the GST, otherwise, the people would bear the burden of a big tax burden for the pleasures of a few. A lopsided tax system is also a result of this. The states have a problem with imposing the same tax on all goods. A single tax rate has the inherent difficulty that the tax rate needs to be kept as low as possible so that the impoverished and the general public do not suffer. Commodity taxes are kept low to protect the most basic goods from being taxed excessively, but this results in lower revenues for the governments, which might impede their efforts to grow.

7.18 CHALLENGES WITH RESPECT TO TAX ADMINISTRATION AND INFRASTRUCTURE

In order to make GST a Saral (simple) one, it is up to the states and the federal government. A policy or administrative measure's success in tax reform is dependent on the system's inherent simplicity, which leads to high compliance with the policy or administrative measure. There are a variety of tax schemes in place, with varying registration requirements, payment methods, and reporting systems. State commercial tax/trade tax departments are not integrated with Union tax collecting procedures in terms of sharing of information. As a result, the assessee is required to provide a large number of identical documents.

GST necessitates an IT infrastructure that allows states and the union to communicate information about each individual taxpayer. This will make it easier to conduct assessments, ensure compliance with GST regulations, and conduct investigations and scouting missions. The assessee's transaction expenses will be considerably reduced as a result. Nandan Nilekani, chairman of the Unique Identification Authority of India, has been given the authority to form a committee comprising representatives from both the state and federal governments to identify a suitable IT method for the implementation of India's new Goods and Services Tax (GST). There is good news in this area, as India's oldest depository, the National Securities Depository Ltd (NSDL), has agreed to set up a clearing house to handle tax collections and credits under a special purpose corporation.

7.19 CHALLENGES WITH RESPECT TO IMPLICATIONS OF CENTRE-STATE FINANCIAL RELATIONS

Despite the fact that the GST regime benefits consumers and suppliers alike, the implementing governments stand to lose out on new revenue entitlements as a result of the new system. The drop in tax revenues is a logical consequence of the reduction in prices because most taxes payable for replacement are charged on an ad valorem basis. In addition, the availability of credit would abolish many of the State's current revenue-collecting obligations.

As a result, the federal and state governments would have to look for additional sources of revenue. In the past, several plans for expanding the tax base, increasing the reliance on direct taxes, etc. have been discussed but not implemented. To save the United States from becoming bankrupt, thorough consideration of these and other possibilities is needed. Because of this, only a few Indian states have been surplus producers (i.e., producing more than the demand for their own products), whereas the majority of states are characterized by high consumption patterns that do not correspond to the country's output. As a result of this circumstance, inter-State loan access has been resisted. These challenges, together with the widespread hostility against revenue-sharing across the states, make any attempt to integrate and cross-link indirect taxes extremely difficult.

In other words, even if there is political agreement on GST's fundamental premise, the lack of political will is due to apprehensions that the transition would lead to lower revenue collections in some states and disrupt the current equilibrium. The States had similar problems when the Central Government had to agree on a compensation package to aid the transition in the States when VAT was introduced. Even if GST were implemented, the Central Government would have to give up a significant portion of its resources, which would put its own financial viability in jeopardy, not to mention that of the States.

The Finance Commission is working around the clock to come up with a solution to these and other challenges, but it is clear that any agreement will be a hard-fought one. No Finance Commission in India's history has been able to satisfy all of the players in the country's Centre-State financial relations conflict.

7.20 STRUCTURAL ISSUES

In addition to the fundamental disagreements over income collection and distribution, there are still a number of concerns that may be seen. It's a problem in and of itself to lay the structural underpinnings for GST. Due to constitutional restrictions and the separation of powers in taxation, it is unlikely that the various taxes would be merged into a single piece of legislation under the current system. The Indian polity is based on the concept that the Parliament cannot legislate on State issues, hence it is outside Parliament's jurisdiction to control or tax transactions in the nature of sales and purchases. That the Centre could only produce a White Paper outlining a model VAT system while the States could only be persuaded to adopt it is due to this restriction. The GST is no exception.

Without a constitutional amendment procedure to gain legislative and other plenary powers in respect of taxes on the sale of goods, the Centre can only submit model legislation on GST and rest its case relying on the States to adopt such model as it did for VAT. Such an endeavor, however, is improbable because even one uncooperative state may thwart its advantages. However, despite the Constitution's options, advancing changes is ultimately a question of political will, regardless of disagreements between political parties at the national and local level.

Instead of integrating all three taxes into one, a two-tiered GST has been recommended as a solution to these numerous problems. First, the first layer would replace the Central levies, while the second tier would account for the State taxes, thereby defining the financial collections attributable to the Centre and the States. Despite the fact that the idea goes against the Finance Minister's stated intention, it is cited as the only workable compromise solution that can produce outcomes. However, it is argued that a two-tiered system would defeat the fundamental objective of implementing GST.

According to our findings, the closure of tax loopholes is a key driver for the move to GST. The images show that the prices have risen because of the non-alignment and simultaneous functioning of central and state taxes on commodities, which are levied on top of central taxes. Dual-tier GST adoption would not address the problem, rather

it would only change the nomenclature of the problem. This conclusion is bolstered by the example of Canada.

Because of this, there are three possible approaches to implementing GST in India, each having pros and cons that should be considered before making a final decision. The best option would be to combine all indirect taxes into a single, multi-stage charge. This simple approach will put an end to all structural and administrative headaches related to implementation problems. However, constructing such a system would need a constitutional modification and the agreement of the federal and state governments on a revenue-sharing mechanism.

Taxes on goods and services should be replaced by the GST, except for excise charges, which may be charged on any or all of the goods and services. Taxes on goods and services may be adjusted through a system like this, which allows governments to keep control over markets and prevent undesirable effects from occurring. Excise taxes are imposed on a wide range of items in the European Union, including cigarettes, oil, and other substances. Such a system would need a similar constitutional modification, as well as a policy choice on whether excise tax should be vested in the federal government or the state governments.

In the third option, a GST replaces all indirect taxes except for the last one, which seems like a reasonable compromise. The State Legislature might impose its own GST on the final sale of products or the provision of services. In this scenario, the federal government would maintain all of the preceding phases of taxation, while the states would retain the tax imposed on the final sale or supply to the customer. The cascading difficulties and their repercussions would not be eliminated, but it would simplify the system to a considerable extent and eliminate concerns such as income sharing. Such an approach, however, relies on the exactness with which the 'place of supply' criteria are set and the administrative machinery's capacity to enforce compliance. Tax reform's core goals, such as revenue neutrality, equity, simplicity, and economic efficiency, would be undermined if proponents of a dual-tier system were permitted to gain sway, even if the final say on the matter remains with policymakers.

7.21 IMPACT OF PETROLEUM PRODUCTS

For every drop in the price of oil, the government gets a tax cut. It is possible that lower oil prices may spur consumers to spend more on other products and services, which would raise the real gross domestic product (GDP).²⁷⁹ Petrol and home heating costs, as well as industrial costs and the production of electric power are all affected by rising crude oil prices. Approximately 96% of transportation, 43% of industrial goods, 21% residential and commercial, and 3% electric power are fuelled by oil, according to the US Energy Information Administration. As a result, everything you buy, notably food, becomes more expensive due to rising oil costs. The GST system does not apply to petroleum crude, natural gas, diesel, or gasoline. Taxes on crude oil, gas and automobile fuel would not be deductible because they are paid at the time of production. Fortunately, the GST scheme includes oil goods like cooking gas, kerosene, and naphtha, so certain taxes may be set-off against taxes already paid. However, this is a circumstance that should be avoided at all costs. Taxation at a marginal rate would have little impact on consumers, but it would have a significant positive impact on the sector. Due to the limited use of input tax credits on numerous commodities and services purchased during exploration and production, GST has minimized the cascading impact of taxes paid on petroleum products.²⁸⁰

7.22 GST IMPACT ON PETROLEUM

Tax collection, decrease in corruption, and interstate movement of commodities are among the goals of the Indian Government's implementation of the GST. The VAT system in India is far from perfect. The integrated GST, a new name for the central sales tax imposed by the union government on the transfer of products across states, will be in effect going forward. According to experts at Care Ratings, there are a number of reasons why the GST has had an adverse effect.

²⁷⁹ Shabir Ahmad Shah, *Impact of GST on Petroleum and GDP*, Greater Kashmir (June 03, 2022, 07:49 AM) <http://www.greaterkashmir.com/news/opinion/impact-of-gst-on-petroleum-and-gdp/262617.html>

²⁸⁰ Editorial Opinion, *The case for GST on petroleum products*, The Economics Times Blog (June 03, 2022, 11:23 PM) <https://blogs.economicstimes.indiatimes.com/et-editorials/the-case-for-gst-on-petroleum-products/>.

Firstly, it is difficult to determine the impact of GST on price levels since there are several other factors that influence price levels. Businesses that don't register for GST, under-report their sales, don't pay taxes, and claim refunds falsely are the most common causes of GST tax evasion, according to the Tax Foundation. On the other hand, India has an 18 percent tax band, which includes both the CGST (9%), as well as SGST (9%) on the same basis. This is a major difference between the GST in India and the GST in other nations. A total of five tax bands have been established by the GST council: 0 percent, 5%, 12%, 18%, and 28%. Nearly 160 nations, as of 2016, had adopted the GST concept to consolidate several taxes into a single tax. Of the EMEs, India has the highest GST rate at 18 percent; important commodities are included in this percentage. EMEs like China and Brazil have a tax rate of 17 percent and 10 percent for most commodities. There are a few developed nations with higher GST rates of 19% to 20% including France, Germany and the United Kingdom.

Mr. Dharmendra Pradhan, Minister of Petroleum and Natural Gas, stated that he has urged the Ministry of Finance to include petroleum goods under the GST.²⁸¹ He cited the need for a "consistent tax structure" across the country as justification for the action. "This is what the Ministry of Petroleum has to say about it. All of the states and the Finance Ministry have been contacted (to bring petroleum items under GST). Taxes must be rationalized in light of the consumer interest. The GST Council was created by the Government of India and the states as a well-thought-out system for administering the GST. Both federal and state taxes exist (on petroleum products). State VAT and central excise are two separate taxes. As a result, Pradhan told PTI, "the sector is anticipating a consistent tax regime." Due to the floods in the United States, he claimed, the price of refined oil rose by 13 percent.

Market observers believe that if the government implements the ministers' recommendation and includes gasoline costs in the GST, the prices would fall significantly. Taxes and levies, on the other hand, appear to be more than the country's real cost of producing gasoline and diesel. Because of national excise and state taxes, a litre of fuel costs more at the pump. Furthermore, the overall cost of fuel is being

²⁸¹ Editorial Opinion, *The case for GST on petroleum products*, The Economics Times Blog (June 04, 2022, 01:57 AM) <https://blogs.economicstimes.indiatimes.com/et-editorials/the-case-for-gst-on-petroleum-products/>.

determined by adding the firm margin and other fees to the amount given to a petrol pump dealer.

7.23 CURRENT TAXATION AND ANALYSIS

Petrol and diesel are currently subject to two taxes: VAT and excise charge. The proportion of VAT that is collected in each city is determined by the state government, and it varies from city to city. Excise taxes, on the other hand, are set nationally by the federal government. Taxes levied by the federal and state governments account for about half of the current price of gasoline and diesel. A shocking 79.5 percent of current taxes (VAT+Excise) is applied to diesel and 107.3 percent of current taxes are applied to gasoline.²⁸²

Excise duty on petrol	Rs 21.48 per liter
VAT on Basic price on petrol (27 percent on Basic Price say)	Rs.14
Dealers commission	Rs 3.23 per liter
Excise duty on Diesel	Rs17.33 per liter
VAT on Basic price on Diesel	Rs 27 percent on basic price
Dealers commission	Rs 2.17 per liter

Petrol and Diesel pricing might be based on the following assumptions: Diesel costs between Rs 58 and 59 per litre, while petrol costs between Rs 70 and 71 per litre. Taking into account the excise duty of Rs 21.48, the state's 27 percent VAT of Rs 14.96, and the dealers' fee of Rs 3.24/litre, the true cost of a litre of fuel is Rs 30.85. Delhi's fuel price might drop to Rs 38 per litre if the government brings it under 12 percent GST, while under the 18 percent category, it would drop to Rs 40 per litre. Even if the government raises the GST tax rate to 28 percent, the price of a gallon of fuel would remain at Rs 43. Diesel would be sold in Delhi for Rs 31 if the government lowers the

²⁸² Ruchi Agarwal, Moneycontrol Research, *With govt revenues under strain, petroleum products may stay out of GST for a while*, MONEYCONTROL (June 04, 2022, 11:36 AM) <http://www.moneycontrol.com/news/business/economy/with-govt-revenues-under-strain-petroleum-products-may-stay-out-of-gst-for-a-while-2397977.html>.

price down below the GST rate of 12 percent. Diesel would cost Rs 33 at GST rate of 18%, while it will cost Rs 37 at GST rate of 28%.

Double taxation and a lack of input tax credits might arise if GST is applied only to inputs in the petroleum industry and not outputs, as is now the case in this country. Properly, the States should agree that it is in the national interest to include petroleum items in the GST. Richard Guerrant, Vice President LNG for ExxonMobil Gas and Power Marketing, predicted that by 2023, there will be a total of 175 million tons of additional LNG. As the worldwide LNG surplus scenario will not continue long and global natural gas consumption is expected to expand by 50 percent between 2014 and 2016, India, China, and Taiwan will witness a steady increase in LNG demand. Making petroleum products and the whole sector subject to the GST might improve the competitiveness of Indian manufacturing.²⁸³

7.24 WHY A NEED FOR GST?

The introduction of a state-wide sales tax (GST) on gasoline and diesel would level the playing field for all states. Many companies rely on petroleum products as a primary raw material; however, these industries cannot claim an input tax credit (ITC) since petroleum products are not included in the GST. As a result, even oil marketing corporations (OMC) are unable to take advantage of the ITC benefit, which dramatically increases their tax burden. When gasoline and diesel are taxed, OMCs can use the ITC and reduce their tax burden. Currently, the combined tax rate on gasoline and diesel is roughly 107 percent and 79%, which is significantly higher than the highest GST slab of 28%. This calls into doubt the viability of taxing gasoline and diesel.

The administration is unlikely to want to change the newly imposed GST system and introduce a slab greater than 28% of the total tax burden. The government's revenue would take a serious blow if GST at 28 percent was implemented immediately, and that's something it can't afford right now. As a result of demonetization and the implementation of the Goods and Services Tax (GST), the government is considering

²⁸³ Ribhu Sharma, *GST Impact on Petroleum Products*, SAG INFOTECH OFFICIAL BLOG (June 04, 2022, 01:12 PM) <https://blog.saginfecth.com/gst-impact-on-petroleum-products>.

a fiscal stimulus to jumpstart the economy. We need to extend the tax system, modernize it, and rev up efficiency by renouncing tax-on-tax and cascading rates down the value chain in order to maximize indirect tax collections. Including all petroleum goods under the GST system and levying an additional Cess to account for externalities like as pollution and proactively sharing the benefits with the states are both feasible options for the federal government.

At a 12% GST rate, fuel in Delhi may cost as little as Rs 38.10 per litre. Other items that are not subject to the GST include petroleum products and portable alcoholic beverages. This money comes from state taxes, and it's a big portion of what the states use to fund their operations. Even if the state taxes petroleum at 28 percent, which is the highest possible rate, the federal government must divide that tax with the state. A 28 percent tax on petroleum goods in some areas may also lower costs as a result of the new law. To compensate for the loss of money, another option is to include gasoline in a descriptor (or even create a whole new category) and impose a Cess on it (currently Delhi government charges 0.25 percent as pollution Cess on diesel). Problems abound here as well.

A tax is now levied on luxury items, such as expensive vehicles. Fuels such as gasoline and diesel are essential for both retail and business customers. The government would need a Cess of between 50 and 75 percent to make up for lost income due to the enormous gap between the maximum GST rates and the present taxation rate on gasoline and diesel. In the absence of such a Cess, the government will be forced to face a large financial cost. The government will continue to play "heads I win, tails you lose" with the consumer until it can find an alternate source of money. Instead of putting up with a subpar tax system, we should move all petroleum goods into the Storage Works as soon as possible. Tax efficiency in India's rapidly expanding transportation, logistics, and distribution industry can only be achieved by the introduction of GST on fuels. As a worldwide standard, it will help India's competitiveness in every sector. It's in your best interest to do this as quickly as possible.

CHAPTER 8

FINDINGS, SUGGESTIONS, CONCLUSION AND RECOMMENDATION

According to the researcher's findings, suggestions, and conclusion in this thesis, the implementation of GST as an indirect tax reform in India has been met with a great deal of effort and anticipation. The closer you go to what appears to be a mirage, the further away it appears. A major tax reform for the Indian economy in the form of GST had been proposed by the government of India after examining the effects on the economy and the people who live in it. The current economy, tax administration, compliances and finally the revenues of various governments are all examples of proof. Since its inception half a decade ago, the industrial sector and the government have gone through a whirlwind of ups and downs. There have been significant improvements in efficiency compared to the previous, antiquated system as a consequence of digitising tax compliances and using technological tools for tax administration. In order to do this, the 'GSTN' 'one-stop-shop' site for all compliances was developed. However, there is still work to be done in terms of implementation, particularly in regards to reducing the load on taxpayers, despite the fact that GST has several advantages.²⁸⁴

8.1 CONCLUSION

Despite the implementation of CENVAT and VAT, the problem of multiple taxes in India has lingered for years. CENVAT has the problem of not including taxes like additional custom duty, additional excise duty, and so on, whereas VAT does not cover taxes like luxury tax, entertainment tax, and so on. One of the most important tax components, Service Tax, has been overlooked in both situations. As a result, the installation of GST was being examined as a potential solution to these problems. As a result of the introduction of the Goods and Services Tax (GST), the primary producer of goods and services has been able to maintain an uninterrupted link to the retailer's stage, eliminating any cascading effects in the process.

²⁸⁴ Rahul Agarwal, *The Need to Make GST Reporting Standardized, Less Cumbersome for Taxpayers and Administrators*, THE ECONOMICS TIMES (Jul. 01, 2022, 09:30 AM) <https://economictimes.indiatimes.com/small-biz/gst/the-need-to-make-gst-reporting-standardised-less-cumbersome-for-taxpayers-and-administrators/articleshow/92587287.cms?from=mdr>.

The researcher would like to conclude that numerous critical considerations are necessary before GST can be implemented in India as a comprehensive value added tax:

- While this has been crystal clear that the tax would be in the form of a dual VAT. Presuming that the country is going to witness considerable tax reform, it is only fair on the taxpayers that the details are worked out well in advance so that preparations for a smooth transition can be made.
- There is a need to ensure two-fold requirements in any constitutional amendments. The first one is to meet the objective proposed by introduction of GST – a robust indirect tax regime in India which minimizes unwarranted cascading effects, and smoothens the supply chain till the level of consumers.
- The other objective that any amendments should meet is not to abrogate federal autonomy that states enjoy in framing fiscal legislations.
- Also, such constitutional provisions should be flexible within its rigidity to make provisional emergency provisions when states face acute economic emergency.
- Constitution can provide the mechanisms and procedures to be adopted to amend GST when such grave situations are faced by the states. If each state is allowed to tinker with GST tax base and rate, then, there will be every possibility that this noble work will not bring any better situation than that is prevalent today.
- GST removes the high tax burden on the part of the business entities as well as the customer who is the ultimate consumer of the product called goods or services.
- GST ensures better compliance at each stage of Supply chain as supply chain being one of the crucial stages for levying tax under GST. The incidence of tax under GST occurs on the transaction of supply.
- Abolition of CST had paved the way for an integrated Goods and Services Tax (IGST) which had been introduced by April 1, 2010 now been abolished by the introduction of IGST Act, 2017.

These above are some of the issues that needed to be dealt by the governments and policymakers in the process of implementing GST in India effectively. The enumeration of the benefits casts a welcome setting for GST. The above assessment of GST in comparison to the existing structure, however, is in a limited context. Proving GST as a superior and efficient system depends upon the structure it is designed into and the manner of implementation. Without a careful analysis of the two, it is hard to say if all the predictions would be met.

While it serves to be a beneficial setup for the industry and the consumer, it would hit the government hard in terms of the revenue that would forgo GST to replace the existing setup. Further, a number of critical areas such as the rate of GST; revenue apportionment between Centre and States; scope and ambit of exemptions; implementation issues; etc., challenge an effective transition to GST. Given its potential benefits, nonetheless, it is not without substance that the euphoria for indirect tax reform in this post-liberalization paradigm has come to terms with a comprehensive tax on Goods and Services.²⁸⁵

GST has been a landmark initiative which has kick started the next generation of reforms. All stakeholders have to gear themselves for this regime of indirect tax reform in India. Refurbishing the current tax system requires implementation of such a new methodology that it is able to eliminate the drawbacks of the present system of taxation in India. India waited for the GST to arrive the scenario for a better tax system. Added to it the Direct Tax Code can also replace the Income Tax Act, 1961 like GST. But before getting introduced to this system of GST, one must have a general idea about the whole system.

At last but not the least, the researcher would like to mention on the point of proving the hypothesis that the hypothesis is partially refuted on few points and partially proved on few points. This is because the hypothesis is partially proved on few points.

²⁸⁵ Ujjawal Mishra, *GST: Five Years On, How It's Going for The Tax Reform*, SWARAJYA (Jan. 30, 2022, 02:30 PM), <https://swarajyamag.com/context/gst-five-years-on-how-its-going-for-the-tax-reform>.

8.2 MAJOR FINDINGS

There are many people to thank for making it possible, including the Central Government, State Governments, Department of Revenue (DoR), Central Board of Indirect Taxes and Custom (CBIC), GST Network (GSTN) and those companies that were prepared for the introduction of GST in India. To prevent tax cascading, the introduction of GST has created a single national market for all products and services, with the exception of a few goods sectors that are exempt from GST. Uniform tax rates and forms for registration, returns and challans have been introduced across the nation as a result of the implementation of GST. E-way bills have mostly replaced the old-fashioned checkpoints.

The rollout of the streamlined tax compliance system is a crucial area where the full promise of GST has not yet been realized. An error in the return method and technical difficulties led to a roll-back of the system-verified Input Tax Credit initially intended to be based on matching invoices with GST return (GSTR-1, 2 and 3). The stop-gap measure of the self-assessed summary GSTR-3B return has been maintained.²⁸⁶ Unverified returns without IT-based invoice checks are common in today's system, making it vulnerable to ITC fraud. Because the self-correcting system was never implemented as planned, unnecessary assesse-tax officer physical interfaces have continued instead of being replaced with IT-based interfaces. It is impossible to implement the proposed GST tax compliance system if invoice matching and the automatic creation of refunds and assessments is not implemented. Because the IGST settlement reports were connected to data coming from returns and also from modules such as appeals and refunds, the settlement of IGST to the States is also affected.²⁸⁷

In general, it was believed that everyone concerned would be sufficiently prepared to make this shift conceivable when a significant system change was on the anvil and had been contemplated for some time. Initially, there may be some issues with a significant overhaul of the tax system that affects the entire country. The DoR, CBIC, State Tax

²⁸⁶ Suresh Nandlal Rohira, Sandeep Pareek, Streamlining GST Compliance is a Must, MINT (Jul. 02, 2018, 05:50 PM) <https://www.livemint.com/Opinion/fljzJvI0zhx70irxuxAiiK/Streamlining-GST-compliance-is-a-must.html>.

²⁸⁷ V.K. Krishnan, *A Compliance Strategy for GST*, BUSINESS STANDARD (Feb. 09, 2021, 11:19 PM) https://www.business-standard.com/article/opinion/a-compliance-strategy-for-gst-121020901985_1.html.

authorities, and the GSTN are responsible for ensuring that the business rules and system design are adhered to.

COVID-19 pandemic has been a roller coaster for the economy, and it's still not under control. A major stride forward was taken in India's indirect tax reforms with the introduction of GST. The elimination of cascading effect or double taxation has been a primary benefit of the GST, which combines a large number of federal and state taxes into a single tax. In April 2022, gross GST income collection surpassed Rs 1.68 lakh crore for the first time, which is very commendable achievement. Various tax administration measures to encourage timely filing of returns, make compliance easier and smoother, and strict enforcement actions taken against errant taxpayers identified through data analytics and artificial intelligence have resulted in a noticeable improvement in compliance behaviour of GST.

According to the researcher, after doing the through study of the research topic, the below mentioned are the major findings of the present research:

- Tax payments and settlements under the GST scheme is required to be made using a 100 percent invoice-matching system and the use of input tax credits. This system would also be used to settle IGST payments. As of right now, neither of these options is feasible due to the lack of an invoice matching system. This substantial tax reform can only be fully realized if all invoices are matched.
- Tax revenues would be protected, IGST would be properly settled and the tax official-assessor interaction would be minimalized, if not eliminated. However, the human approach may no longer be essential, returns may be prepared automatically by a system that matches invoices, and incidents of evasion, etc. can be discovered by using analytic tools and AI to the huge data that crores of invoices generate.
- A long-term goal of the introduction of GST is to lower the amount of hidden and embedded taxes in the system, which will open up new investment possibilities.
- Increased GDP and lower inflation were predicted as a result of adopting GST as our primary indirect tax. GST has been implemented in other countries, and it has been shown that GDP growth decreases initially, but rebounds after two

to three quarters. Inflation, on the other hand, increases in the early quarters before declining. While the evidence of a reversal of the original patterns may not be readily apparent after only the initial quarters of GST implementation in India, it would be fascinating to examine the tendencies that have emerged thus far.

- Gross value added (GVA) growth at constant prices (2011–12 series) shows a declining growth rate from the fourth quarter of 2015–16 and was 5.6% in the first quarter of 2017–18. The increase in GVA is due to the implementation of GST on July 1st, 2017. While still higher than the 8.1% and 6.4% recorded in 2015-16 and 2016-17, the 2017-2018 average growth rate is lower (7.1 per cent).
- The economy was hit by a shock seven months before GST was implemented, when high denomination notes were removed from circulation. This should be taken into consideration before drawing any inferences regarding the impact of GST on GVA from these figures. To put it another way, the government has just a few months to get its fundamentals right on an appropriate constitutional change in light of several delays in implementation and the planned implementation date.
- As the next natural step toward complete indirect tax changes in the country, the Empowered Committee of States finance minister regards the GST as a considerable improvement. It has the potential to be India's most significant fiscal programme ever.
- The planned Direct Tax Code and the Goods and Service Tax are the two most significant tax reforms in the country. Macroeconomic changes enacted during the 1990s are also expected to be on par with this plan.
- Another benefit is that it may be used as a case study by other countries considering implementing a GST. To unite all indirect taxes in India under one roof, the GST initiative is a tremendous accomplishment and should be congratulated.
- GST in its current form is not what most people want. A single indirect tax cannot be implemented since India's federal system must remain intact.

8.3 SUGGESTIONS & RECOMMENDATION

In India, the five-year anniversary of the passage of the GST Law is rapidly approaching. Certainly, the first half a decade of this historic reform's path has been a wild voyage filled with both highs and lows. Changes in effective tax rates and increased supply chain efficiency have occurred in India over this time period. One of GST's greatest successes has been the establishment of a tax regime based on a technologically based monitoring system by means of electronic returns, electronic invoices, and e-way bills. Also noteworthy is the fact that all policy choices made by the GST council have been implemented uniformly across the country thanks to the hard work of the Centre and the States working together. While it's great that GST has been implemented in India, there are still problems that need to be addressed for the business community as a whole. These problems range from a lack of access to working capital to unnecessary assessment processes.²⁸⁸

The researcher would like to give some suggestions and recommendations in the form of five areas that may be looked at to improve GST effectiveness:

I. Removing roadblocks to working capital by updating the Input Tax Credit (ITC) scheme

Input service credit availability, seasonal enterprises, extended gestation periods, inverted duty structure, etc. all contribute to the heavy load of accumulated ITC in a number of industries. Making the Central GST (CGST) pool transferable between states is one proposal that has been made to reduce the risk of such vital operational cash being impeded. The CGST balance of a company registered in one state must be usable in all other states. The government may also think about enabling the input tax credit to be converted into marketable scrips. In the balance sheets of companies, this would assist free up working capital and mobilize idle assets. Group corporations with several state registrations typically have trouble with credit build-up in one state and cash leakage in others as a result of their organizational structure. It would be

²⁸⁸ Mahesh Jaising, *GST 2.0: Ideas to Improve Indirect Taxation*, THE ECONOMIC TIMES (May 06, 2022, 11:55 AM), <https://m.economictimes.com/small-biz/gst/august-gst-revenue-collection-up-28-yoy-at-rs-1-44-lakh-cr/articleshow/93944718.cms>.

useful to have fungible credit among firms within a group structure so that working capital could be better managed and cash flows could be enhanced.

II. Reducing complexity and bringing coherence to ITC regulations

Many of the credit limitations from the previous administration are still in place under GST. Despite the fact that building of immovable property is an expense spent for a taxable output service, the GST regulations contain special restrictions on such expenditures. Huge amounts of money are spent by businesses on logistics warehouses and large factories in a variety of industries. The cost of running company rises when access to such finance is denied. Therefore, it is crucial that the government seriously consider allowing such input tax credit for the building industry.

III. Rationalization of many audits, assessments, investigations, etc.

There has been an increase in GST officials issuing summons to corporate executives in recent years. While the goal is to prevent evasion, legitimate businesses have come under scrutiny from investigative agencies, which has been a burden. Most of the time, investigative authorities focus on matters that do not affect tax income or are based on inconsistent advance decisions accessible across jurisdictions. There is also a lack of consistency in the specifics and approach taken when requesting information and documents for audits and evaluations. To maintain uniformity and convenience of operations for taxpayers, there is a need for issue of clear SOPs for processes to be followed during summons and investigations, way in which details are requested during audits, and cross empowerment of Centre and State.

IV. Dispute resolution

For the purpose of settling disputes between different states' judgements, it was planned to establish a National Bench of Advance Ruling. This structure has not yet taken shape, though. To prevent further litigation and a backlog of cases at the High Court level, the GST Law Committee may choose to proactively assess areas with such inconsistent findings and proactively clarify.

In addition, despite the fact that we are very close to the five-year anniversary, GST Appellate Tribunals have not been established, and there is currently no clear sight on this matter.

V. Expansion of TAX network

Since petroleum is not subject to GST, a sizable portion of the economy continues to operate outside of the tax system. The Council has appointed a Group of Ministers (GoM) to lead the effort, and Mr. Basavaraj Bommai, the Chief Minister of Karnataka, is serving as its chairman.

Therefore, while GST has helped accomplish important improvements and aims of a unified indirect tax system, the road towards a 'good and simple tax' will only continue in the context of 5 years of GST and the expanding audits/investigations. It's important to strike a balance between expanding tax income and making it easier for people to file and pay their bills. After the pandemic, India's economy has been slowly but steadily recovering, and this trend can only accelerate with a shift in attitude and a serious examination of changes.

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