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RESEARCH ARTICLE

GOODS AND SERVICES TAX : IS IT IN ACCORDANCE WITH THE FEDERAL STRUCTURE OR UNITARY FEATURE OF THE CONSTITUTION.

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Abstract

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Introduction:-

Research methodology:-

This Research Project is descriptive in nature. Accumulation of the information on the topic include wide use of secondary sources like books, e-articles etc. The matter from these sources have been compiled and analysed to understand the concept from the grass root level. Websites, dictionaries and articles have also been referred. The structure of the project, as instructed by the Faculty of economics has been adhered to and the same has been helpful in giving the project a fine finish off.

Objective:-

Following are the objectives of this research work-

1. To study the economical aspect of the constitution of India.
2. To conduct an analysis of all the aspects of GST.
3. To study Constitutional validity of the GST amendment act.
4. To study the tax structure of India.

Goods And Services Tax

Is it in accordance with the Federal Structure or Unitary feature of the Constitution

This paper aims to analyse the multi-faceted indirect form of comprehensive tax structure which was enacted with the view to subsume all those taxes that were previously levied on the sale of goods or provision of services by either Central or State Government. Having faced 17 years of political setbacks, heavy debates, discussions and missing several deadlines, India's biggest tax structure reform in India - the Goods and Services Tax was launched on July 1, 2017. Many number of countries around the globe have already implemented Goods and Services Tax in their government structure. For instance, the government of Canada saw the introduction of the tax in the year 1991, replacing the Manufacture's Sales Tax. Change of Federal Wholesome Tax with GST in 2000 was witnessed by Australia. Singapore saw the implementation of the reform in 1994, while New Zealand did so in 1986. GST in Malaysia was introduced in 2015, and subsequently, India jumped on the bandwagon to provide benefits to the consumers, the industries, and the government. Having enforced, this paper tries to analyse whether the Goods and Services Tax's introduction is in accordance with the Federal structure or the Unitary feature of the Constitution

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Several digging up have been taken on the Government by the opposition, demonstrating the multiple slabs on which the tax is imposed in accordance with the nature of goods and type of services, and also the opposition promised for a single slab GST as a mark of proposition if elected in power.

Having enforced, this paper tries to analyse whether the Goods and Services Tax's introduction is in accordance with the Federal structure or the Unitary feature of the Constitution.

Chapter : 1 Introduction

Indian Government : Whether Federal or Unitary?

Before we conclude whether the GST is in accordance with the federal or Unitary structure of the constitution, let us examine these aspects of the constitution of India. India is the largest democracy of the world, having the longest written constitution with 448 articles, 25 parts, 12 schedules, and 103 amendments. The Indian Constitution has borrowed features from other constitutions of different countries of the world. The Indian Constitution is the supreme law of the land. It is one and only and is applicable to all the parts of India. The Indian Constitution provides a federal cum unitary structure according to which the leaders of the country make laws for the benefit of its people.¹

A federal form of government is a system of government in which the powers are divided between a central national government and the state local governments that are connected to each other by the national government. In this system, some areas of the citizens are controlled by the central government and some by the state governments. In a federal setup, there are two tiers of governments with well assigned and distributed powers and responsibilities. The central and state both units act within a well-defined sphere, co-ordinated and simultaneously acts independently. This system ensures the concept of checks and balances on the powers of different offices.² It is a relationship between the central government and its other political sub-units commonly known as states, counties, and provinces, etc. Some federal countries are Mexico, Brazil, etc. Whereas in a unitary form of government this sort of relationship is totally one-sided, as here the central government vests and enjoys almost all the powers and responsibilities of the country. Basically, in this system, the country is governed constitutionally as one single unit and with the constitutionally created legislature. All the power is in the form of top to bottom hierarchy, the unitary system is a sovereign state which is governed as one single unit in which the central government holds supreme authority and any administrative division (subnational political units) exercise only powers delegated by the central government to them.³ Here the local governments exercise their power through the central government. Such nations are the United Kingdom, France, etc.

But for a clear picture, we need to know to find out that what part of the Indian government is federal and what is unitary. Until the passing of the Government of **India Act of 1935**, India was a centralised government but the India Act of 1935 created autonomous units in India and combining them into a federation. The debate between the scholars of the present day is whether the feature of Indian Constitution is federal or unitary in nature. The constitution of India is vested with the components of both federal and unitary features.⁴

In spite of the fact that our Indian Constitution establishes a federal structure of the government but it is truly very difficult to put it in the category of a true federation as the following provisions in the country makes the constitution of India unitary :⁵

Unitary features of the Indian Constitution-

Union of states - **Article 1** of the Indian Constitution establishes India as an association or say union of states but it does not provide the units any opportunity to withdraw or isolate itself from the union. Also the constitution of

¹ NCERT, Indian Constitution at Work, Class 11th political science books CBSE

² Sri.G.Neelakantan Namboothiri, Indian Government and Politics core course for BA Political science III Sem 2011 University of Calicut (June 07, 2019, 1:27 PM)

<http://www.universityofcalicut.info/syl/IndianGovtAndPolitics.pdf>

⁴ National Portal of India, My Government, Constitution of India (June 13, 2019, 11:28 AM)

<https://www.india.gov.in/my-government>

⁵ Justice B.S. Chauhan, Unitary and Federal Structure of Polity under the Indian Constitution (June 13, 2019, 11:43 AM) <http://sri.nic.in/unitary-and-federal-structure-polity-under-indian-constitution>

both the union and the states is a solitary structure from which they can never get out, hence it can be called an association as it is indestructible. Centre holds a strong control over the exercise and powers of the state, most importantly the state relies on the central government for all its financial situations.

The **articles 155 and 156** of the Indian Constitution provides that the governor who is the constitutional head of the state is to be appointed by the president and should remain on the position until the wishes of the president are changed.⁶ The centre may assume control over the state on the proposals of the governor or in a situation of the emergency imposed on the

state satisfying the requirements of **Article 352, 356 and Article 360**, the president of India can declare emergencies using these articles in following three cases-

1. National emergency - War, aggression, internal/external disturbances
2. State emergency
3. Financial emergency

Also, the states can't demand for an independent constitution and neither can't amend any corrections to the existing Indian Constitution. **Article 3** provides that parliament made by law, any alteration which has to be done must be done by the union only. Also, there is single citizenship (part 2 of the Indian constitution)⁷. The union can also empower to depute central forces in the state in situations of disturbances. The boundaries of the states can also be altered i.e, increase or decrease the size area of any state and can also rename it. Also in money-related issues, the state relies on the union as well.

1. Unified judiciary - generally a federal structure directs to have a dual system of courts . But in India, we have a unified judiciary with the supreme court at the top level followed by high courts and district court. The judgment of the higher court is mandatory to follow. Supreme Court is a federal court, guardian of the constitution and highest court of appeal. All these provisions are given in **Article 124-146, 214, 226**, etc.⁸
2. Powers to make new laws - Constitution of India allows the central government to make new laws for the interest of the betterment of the country and its people and empowers the Rajya Sabha and Lok Sabha to amend the existing laws of issues of national interest and of any state
3. government by having a solid majority of 2/3rd majority on any new existing bill. It is considered to be a win-win situation for the whole of India, providing benefit to stakeholders of the industry, government and the consumers. It was implemented by keeping the view of reducing the costs go goods and services to improve the economy of the country and make the Indian goods internationally/globally competitive and would ease the liquidation of the business and would reduce the ill effects of cascading or downfall. It is supposed to make
4. India one unified common market and have a crucial effect on the industry . Under **article 253** the parliament can make laws even in the matters of state govt.⁹
5. Bicameralism or Unicameralism - India has bicameralism, which means the Indian government has two chambers of the legislature but in the council to states, states have not been given equal representation as here proportional representation system is followed. Also, the office of comptroller and auditor-general and the chief justices of supreme court high are appointed by the president on the advice of prime minister and his council of ministers .
6. Centralised electoral system and flexible constitution - the election commission, a body appointed by the president is in charge of holding free and fair elections throughout the country.

The federal features of Indian Constitutions are as follows :¹⁰

1. Division of powers - the constitution has divided powers between centre and state as stated earlier to reduce and avoid the amount of corruption and misuse of powers in terms of three lists namely union list (100

⁶ <https://www.scribd.com/doc/208095605/Indian-Polity-by-NIOS>

⁷ Nasir Ahmed vs. The Chief Commissioner, Delhi and Anr. (22.09.1958 - PHHC) : MANU/PH/0083/1959
Karm Kumar vs. Union of India (UOI) and Ors. (03.08.2010 - DELHC) : MANU/DE/1792/2010

⁸ Indian Const. art. 124-146, 214, 226

⁹ Hemant Singh, Unitary features of the Constitution(June 13, 12:05 PM)

<https://www.jagranjosh.com/general-knowledge/unitary-features-of-the-indian-constitution-1474958541-1>

¹⁰ Introduction to Indian Federalism(June 13, 2019, 12:25 PM),

https://shodhganga.inflibnet.ac.in/bitstream/10603/206790/10/10_chapter1.pdf

subjects), the state list (61 subjects) and the concurrent list (52 subjects).¹¹ The central government and state government is allowed to exercise their power on subjects given in union list and state list respectively. And both the governments can exercise their control over the subjects of the concurrent list, but in case of a conflict, the

2. central law prevails.¹² The residuary subjects which are not mentioned in either of the lists are given to the centre. The government of India has three organs : the parliament , executive and judiciary.¹³
3. Supremacy and rigidity of constitution - the constitution is the supreme law and no one is above it. It gets its powers from the people of India and then gives power to the government.
4. The **preamble of India** adopted on 26th of November 1949 and came into effect on 26th Jan 1950 is based on the objectives which were drafted and moved in the assembly by Mr. Jawahar Lal Nehru. It provides the people of India with a solemn resolution to constitute and declare India a sovereign , socialist , secular democratic republic which ensures all its citizens with socio-economical-political justice, liberty of thought, expressions, beliefs, worship and faith and equality of status and opportunity and fraternity which ensures dignity of each and every individual and unity and integrity of the nation .¹⁴

The constitution of India is rigid and at the same time, it is flexible ,which can be amended according to the growing and changing needs of a developing society and country. This is the reason it is called a **living document** . Any law made if stands against the Constitution can be struck down by the supreme court through its powers of¹⁵ judicial review.¹⁶ Some parts of the constitution such as the fundamental rights part 3 of the constitution can not be amended to the extent in which it disfigures the structure of the constitution (as done by Indira Gandhi the then prime minister of India. ¹⁷ She was accused of conducting several malpractices during her campaign for her seat of Lok Sabha elections and she was found guilty by the Allahabad high court ¹⁸, many of the opposition leaders forced her to resign but instead she persuaded the then president Fakhruddin Ali Ahmed to declare a national emergency on 26th of June 1975 which empowered her to postpone the elections to 1978 instead of 1976 . She struck down the power of all the courts to question the validity and constitutionality of any amends made by the parliament thus canceling the powers of judicial review by the 42nd amendment and as the 24th amendment allowed supremacy to amend the constitution , she also abolished some of the fundamental rights prescribed in the constitution during emergency and curtailed out the FR of right to property . She also breached the constitution by extending her tenure by 1 year as she amended the law to increase the tenure of PM by 5 to 6 years . She misused her powers and used preventive detention excessively during the mass arrest of important political leaders and ex-royals and censored the media and press and the writ of habeas corpus can not be used.)¹⁹

1. Dual polity - constitution establishes a dual polity which allows and endows both union and state to exercise sovereign powers in the filed assigned to them as the union deals in the matters of defence, foreign affairs and currency etc whereas the state deals in the, matters of public order, agriculture, health, local infrastructure and education etc.
2. Strong centre - for a federal state it is necessary to have a strong central government which vests with power to have good control over the state governments and to uphold the unity and integrity of the country.²⁰
3. Independent judiciary - in India a lot of efforts have been made to see that the judiciary runs in an independent and supreme nature without being manipulated by the parliament or the executive. The supreme court and high court of India can declare any law unconstitutional or opposed to the public policy as ultra vires and

¹¹ State of West Bengal vs. Union of India and Ors. (21.03.1995 - CALHC) : MANU/WB/0026/1996

¹² Indian polity - 5th edition - M Laxmikanth , <https://edoc.pub/indian-polity-5th-edition-m-laxmikanth-pdf-free.html>

¹³ Arnav Raj Chakravarty, Federalism in India(June 13, 2019, 1:07 PM), <http://www.legalservicesindia.com/article/686/Federalism-in-India.html>

¹⁴ Indian Const. pmbl.

¹⁵ Tata Cellular vs Union Of India, 1996 AIR 11, 1994 SCC(6) 651 (1996)

¹⁶ J. Venkatesan, "Parliament's actions subject to judicial review: court" , The Hindu, Sept 27, (2016)

¹⁷ V.N. Shukla, The constitution of India and the Introduction to the Constitution of India by Durga Das Basu

¹⁸ State of Uttar Pradesh v. Raj Narain, 1975 AIR 865, 1975 SCR (3) 333 (1975)

¹⁹ The Emergency: A Personal History by comma Kapoor

²⁰ Kuldip Nair v/s Union of India , MANU/SC/3865/2006.

State of West Bengal vs. Union of India and Ors. (21.03.1995 - CALHC) : MANU/WB/0026/1996

strike down any provision or government action to uphold the objectives of the constitution. It ensures to establish impartiality and it cannot be suppressed either by the parliament or executive. Any act of the two organs can be questioned in this institution to provide justice to the citizens.

4. Three organs - the government of India has 3 organs or say pillars of the country i.e. Parliament, executive, and the judiciary . All three are vested with their specific powers .²¹

Hence it can be said that India not a true federalism and this consist of quasi-federal features, the two sets of government ensures safety of the fair- justice-full future of the government. The most important thing is that the Constitution of the country never described or declared India as a federation, but on the other hand the Supreme Court of India did describe it India as “a federal structure with a strong bias towards the Centre”. All the 29 states and 7 union territories are the integral part of India, the Indian union is absolutely indestructible . India is the 7th largest country (by size) in the world so it is nature to have a very large population (2nd biggest) and people of different beliefs, religions, languages, races, castes, traditions etc, and to maintain unity, integrity and to provide them security it is necessary to have a strong centre(to ensure national and international welfare of the country)which gives a large part of autonomy to each state.²²

Chapter 2 : The Taxation Structure

Tax system before GST

In the previous tax indirect regime , there were many indirect taxes levied/collected by both state governments and the central government . State Govt. Collected tax in the form of Value added tax (VAT) , though every state had a different set of rules , regulations, and laws . The centre taxed on interstate sale of goods and services applicable under the name of CST (central sales tax). Other than this tax every other different goods and service had its own indirect taxes such as :

1. Central Excise Duty
2. Duties of Excise
3. Additional Duties of Excise
4. Additional Duties of Customs
5. Special Additional Duty of Customs
6. Cess
7. State VAT
8. Central Sales Tax
9. Purchase Tax
10. Luxury Tax
11. Entertainment Tax
12. Entry Tax
13. Taxes on advertisements
14. Taxes on lotteries, betting, and gambling
15. Sales tax
16. Customs duty
17. Service tax
18. Corporate taxation

For example, excise duty was charged by the centre when some goods were manufactured and then sold. Apart from excise duty, VAT was also charged by the state. This led to the overlapping of taxes levied and led to the cascading effect of taxes where the tax liability is passed on at every stage of the transaction and the customer becomes the other end of the final liability²³. Such multiplicity of taxes gave a wide way to the happening of multiple taxable events, in such a scenario ,taxes were levied by different authorities on the same object. There was no tax payment on input goods which could not be set off against the output tax payable on services or vice

²¹ KRISHNA P. MUKHERJI, The Indian Journal of Political Science, Vol. 15, No. 3 (July-September 1954), pp. 177-179(June 14, 2019, 11:37 AM) https://www.jstor.org/stable/41853798?seq=1#page_scan_tab_contents

²² Krishna Kanta Handiqui State Open University, Introduction to Nature of Indian Federalism:Division of Powers between Union and the State(June 14, 2019, 12:05 PM) http://kkhsou.in/main/polscience/indian_federalism.html

²³ State of Gujarat vs. Virumal Santumal (11.04.2014 - GUJHC) : MANU/GJ/0485/2014

versa and also non-availability of set off against other state or central government levies.²⁴ Centre had the power to levy and collect taxes on the manufacturing of goods except for alcohol for human consumption, narcotics and in respect of services, etc and on the other side, the state had the power to levy taxes on sales of goods.²⁵

The Goods And Services Tax Of India - Gst

Casually vocalised as GST is an indirect tax which is imposed in India on the supply of goods and services which flow in the country. It is a comprehensive multistage destination-based tax. It consists of several levels because it is imposed and is applicable at every step of the production process but is meant to be refunded to all parties in the various stages of production other than the final consumer. It is a comprehensive tax because it has subsumed and has replaced almost all the earlier existing indirect taxes but few of the taxes have not been included in the GST both on the central and state level. Earlier each product had different percentages of taxations in different states, the need to implement ONE common tax regime all over the country and simplifying and rationalising the taxation structure was felt thus the GST came into being and it transformed India into “one common market place”. It is collected from the point of consumption and not from the point of origin. **Article 265** of Indian constitution provides that no tax shall be levied or collected except by authority of law.²⁶

It is divided into 5 different tax slots for the collection of tax - 0%, 5%, 12%, 18% and 28%. However, some taxes on goods like petroleum²⁷, alcoholic drinks, electricity are not taxed under GST and thus they are taxed separately by individual state governments as per the previous tax regime defined. After the implementation of GST, most of the goods are expected to be in the 18% tax range. It is a comprehensive, multi-staged, destination-based tax that is levied on every value addition at every stage and thus the final consumer will have to bear only the GST charged by the last dealer in the supply chain. Central goods and sales tax (CGST) is levied on intrastate sale of goods and other services by the central government which are collected and retained by the exporting states and in-state goods and services tax (SGST) many states levy tax on the entry and flow of goods and services in local areas, thus it is handled by both central and state government. CGST and IGST laws are enacted by the parliament and SGST by each of the state legislatures, according to which the goods can be detained even in transactions which do not involve taxable supply.²⁸

Constitutional validity, History, and evolution of GST

The Goods and Services Tax Act was passed in the parliament on the 29th of March 2017. The act came in to force on 1st July 2017, inaugurated by the Prime Minister of India, Mr. Narendra Modi. The one hundred and twenty-second amendment bill of the Constitution of India, which is officially called **The Constitution (One Hundred and First Amendment) Act 2016** introduced and made known the National Goods And Services Tax. The proposal and idea for the introduction of GST were first mooted and put forth in the budget speech for the financial year of 2006-07 under the Prime Ministerial of Shri Atal Bihari Vajpayee.²⁹ From thereafter on 28th February 2006, the then Finance Minister in his budget of 2006-07 proposed that GST would be introduced on 1st April 2010. The empowered and knowledgeable committee of state finance ministers were requested to come up with a roadmap and structure for the GST³⁰. Joint working groups of officials having representatives of several states and as well as of centre were set up to examine various aspects of GST and make reports on supplies of the states.³¹

²⁴ <https://quickbooks.intuit.com/in/resources/accounting-taxes/gst-in-india/>

²⁵ Dr. Shant kumar A.B & Dr. Sanjeev Kumar, IOSR Journal of Business and Management (IOSR-JBM) - An overview of Indian Tax System Before and After GST(2018)

²⁶ Central Board of Indirect Taxes, Department of Revenue, Ministry of Finance, Government of India, Feb 1, 2019 (June 14, 3:13 PM) <http://www.cbic.gov.in/resources/htdocs-cbec/gst/01022019-%20GST-Concept%20and%20Status.pdf;jsessionid=3F40221369267048AABE909509D3F700>

²⁷ Union Of India vs M/S.Kothari Petrochemicals Ltd, MANU/TN/7046/2018

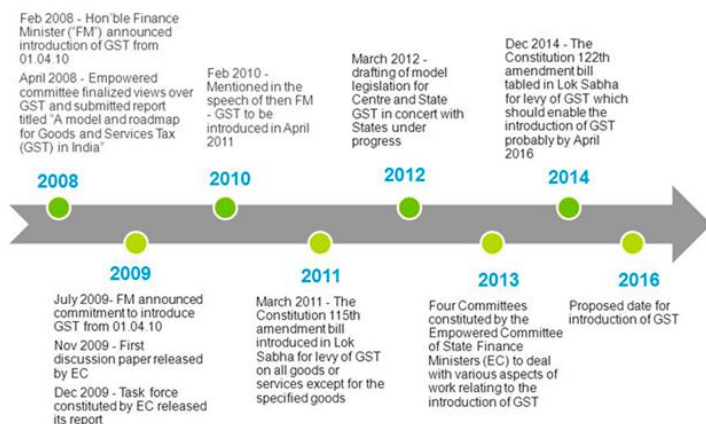
²⁸ M/s. Indus Towers Limited v. The Assistant State Tax Officer & Ors. [W.P. (C) no. 196/ 2018]

²⁹ <https://en.wikipedia.org/wiki?curid=29017808>

³⁰ http://insightiasacademy.com/wp-content/uploads/Yojana_2017_Aug_Goods_and_Services_Tax.pdf

³¹ Board of indirect taxes and customs (CBIC), Department revenue, Ministry of Finance, Government of India, 1st FEBRUARY, 2019

GST Journey in India



After several discussions, the EC released its First Discussion Paper (FDP) on GST in Nov 2009 and in it gave multiple features, laws, and rules of the proposed GST.

Hereafter in 2011 March, the 115th constitution bill (amendment) was introduced in Lok Sabha to enable levy of GST, however, due to some political consensus, the bill lapsed after the dissolution of 15th Lok Sabha in August 2013. After this, on 19th Dec 2014, the 122nd constitution (amendment) bill was again introduced in Lok Sabha and was passed by Lok Sabha in May 2015. The **bill was introduced in the Lok Sabha** in 2014 by finance minister. Arun Jaitley on Dec 14 and passed by the house on 6th May 2015.³² The bill was then taken to Rajya Sabha where the bill was first referred to the Select Committee on 14th May 2015. This committee later submitted/presented the report on the bill on 22nd July 2015, hereafter the constitutional amendment bill was moved on 1st August 2016 based on political consensus.³³

The bill was passed by Rajya Sabha on 3rd August 2016 and the amendment bill was finally passed by the Lok Sabha on 8th August 2016. The said bill was put on a motion moved by the minister of finance, corporate affairs and information and broadcasting were referred to the selection committee for examination. The committee heard the Secretaries, Ministry of Finance (Department of Revenue), Ministry of Law and Justice, Ministry of Urban Affairs and Ministry of Panchayati Raj and also heard various financial experts and institutions, state governments and stakeholders on the bill. The committee placed the following documents :

1. Background note on the bill prepared by the ministry of finance, by the ministry of Panchayati Raj and by the ministry of urban development.
2. Pieces of information and papers were bill prepared by the legislative department .
3. Memorandum furnished by state governments, experts and other stakeholders .
4. After the committee heard the views of related institutions and people , some modifications on the bill about enacted formulas, etc were made and some other recommendations which were earlier not stated in the bill were incorporated .

The bill after this got ratification as required by the states legislatures and received Assent from former President of India, Mr. Pranab Mukherjee on Sep 8th, 2016, and the same was then notified in The Gazette of India on the same date, this amendment (101st) then paved way for the introduction go GST. The act was passed in accordance with the provisions of Article 368 of the Indian Constitution and has been ratified by more than half of the state legislatures as required by clause (2) of the same article. The GST council then approved the

³² An Insight of GST in India - Institute of Cost Accountants of India , https://slidelegend.com/an-insight-of-gst-in-india-institute-of-cost-accountants-of-india_59bcd33a1723dd77e8011fb4.html

³³ Evolution of GST in India (June 06, 2019, 4:19 PM), <https://www.gst.gov.in/about/gst/history>

components of GST : the CGST Bill 2017 and integrated goods and services (IGST) Bill 2017³⁴, the union territory goods and services tax bill(UGST) bill, goods and services tax (compensation to the states) bill 2017(the compensation bill), all these bills were passed by the Lok Sabha on 29th March 2017.³⁵ Then the Rajya Sabha passed these bills on 6th April 2017 and were then enacted as Acts on 12th April 2017. Thereafter state legislatures of different states passed respective SGST bills. After the enactment and establishment of various GST laws, the GST was finally launched with effect from 1st July 2017 by Hon'ble PM of India Shri Narendra Modi in presence of Shri Pranab Mukherjee, the then President of India in a midnight function organised at the central hall of the Parliament of India. Till now around 33 GST acts have been passed. Liquor is kept out of the scope of GST but tobacco is included in it.

GST Council structure - Article no. 279A of the amended constitution defines the GST Council as a joint forum of the Centre and States and consists of Union Finance Minister as its Chairman, the Union Minister of State, in-charge of Revenue, Minister of finance and Minister in-charge of Finance/Taxation or any other minister nominated by each state government as members.³⁶ This council is empowered to make recommendation to both the Union and States on these bases:

1. the taxes, cesses, and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
2. the goods and services that may be subjected to, or exempted from the goods and services tax;
3. model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;
4. the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
5. the rates including floor rates with bands of goods and services tax;
6. any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
7. special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, and Uttarakhand; and
8. the date on which GST shall be levied on petroleum crude, high-speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel
9. any other matter relating to the goods and services tax, as the Council may decide.

It is provided in the constitution that the GST Council, in the discharge of various functions, shall be guided by the need for a harmonised structure of GST and for the development of a harmonised national market for goods and services. It also given that every decision of GST Council shall be taken at its meeting by a majority of not less than 3/4th of the weighted vote of the members present and counting the vote of central government should have a weight of 1/3rd of the votes cast and the votes of all state governments shall be taken together as a weightage of 2/3rd of the total votes cast in that meeting and also one half of the total members of the GST Council shall constitute and present the quorum at its meeting. The Cabinet also decided to provide some funds for the meeting of recurring and non-recurring expenses of the GST council secretariat(which shall be manned by officials taken on deputation from both central and state Govts), which are borne by the central government.

The Bill

The bill contained 21 clauses on which the committee submitted the report and the clauses contained in it proposed to amend the constitution of India by inserting new articles like Articles - 246 A (supersedes article 246, provides state and centre to levy tax on goods & services in unison, on interstate supply, only centre can levy tax), 269 A (provides IGST will be distributed b/w state or UTs and centre, centre will determine the place and time of supply, import/export is deemed interstate supply) and 279 A and also to amend the existing Articles like 248, 249, 250, 268, 269, 270, 271, 286, 366 and 368 and the amendment of 6th and 7th schedule of the Indian Constitution.

³⁴ Union of India (UOI) and Ors. vs. Mohit Mineral Pvt. Ltd. and Ors. (03.10.2018 - SC) : MANU/SC/1118/2018

³⁵ Bipson Surgical (India) Pvt. Ltd. vs. State of Gujarat (27.03.2018 - GUJHC) : MANU/GJ/1084/2018

³⁶ GST Council Structure(June 6, 2019, 4:32 PM) <https://www.gst.gov.in/about/gst/council>

The 7th schedule contains 3 lists as the union, state & concurrent lists. Article 279 A provides for constituting a Council called the Goods and Services Tax Council within 60 days of the commencement of the 101st constitutional amendment act 2016, acc to its union finance minister will be its chairperson. This council can make recommendations for the improvement of GST. Article 366(12A) of the constitution defines the GST. The bill also seemed the request to appeal article 268 A of the constitution with respect to special provisions to goods and services tax in course of interstate trade, commerce, levy & collection of taxes, etc.³⁷

The government of India by bringing this bill into effect intended to usher in the fundamental systematic reforms in the country's indirect taxes through which the dispensation had been implemented by integrations and harmonising the tax structure in the form of GST as aim of this is to confer simultaneous power on parliament and state legislature to make laws for levying GST on every transaction of supply of goods and services. The broad objects of the introduction of GST broadened the tax base through the coverage of multifarious economic activities into its scope and bounds by lowering the overall burden on goods and services so that it could provide competitiveness of both domestic and international industries.

Tax system after GST & How it works ?

Before GST one had to pay 'tax-on-tax' throughout the chain value and this double taxation did not allow the business to take tax credit which increases the taxes to as high as 24-27 % and raises the end cost of goods and services. GST will attempt to remove the geographical barriers and create a single market that will be open to all -to buy, import, sell and export within India. There are two types of taxes: direct (paid directly by an individual) and indirect (imposed on goods and services). However, it is said that the impact of GST will not be uniform and will vary from one state to another. The common man of nation will be benefitted in two ways: first - all the taxes will be directly collected at the time of consumption of good and services for example if a shirt is taxed at 10%, it will include both the central and state government's taxes. and second - the consumers won't have to pay double tax on the same product, even if the product is shipped, bought and sold across different inter-state borders and thus multiple taxes on the same product will be removed reducing its final cost of production. This would lead to an increase in the profits of the businessman and of the end-consumers as well.³⁸

A product when is in the process of production is made to undergo various stages before it reaches the end consumer and on each stage, several types of taxes were applicable through the process but this has been changed by GST and thus only one single tax would account to be paid. Here's how:

Stage 1 :- The Manufacturer

Let us take an example of a manufacturer of a shirt (or apparel manufacturer) who buys raw material to weave the cloth and other essentials such as thread, buttons, tailoring equipment & machinery which costs him ₹ 200, the sum includes the tax of ₹ 10. With the now available raw material he produces a shirt and the producer adds value to the materials which are in the process of creating the shirt. Let us assume that the value added by him is ₹ 20. Then the gross value of the shirt now becomes ₹ 220 (200+20). Now at the rate of 10% on output on the shirt will be ₹ 22. But under GST, he can set off this tax ₹ 22 against the tax, as he has already paid it on the raw materials and inputs ₹ 20. Therefore here the effective GST incidence on the producer is only 12 (22-10), thus making GST a tax only on the value added.

Stage 2 (wholesaler/Distributor)-

Now the apparel (shirt) is passed to the wholesaler from the manufacturer at a gross value of 220 that is inclusive of GST of 10 %. The wholesaler then again adds his value (margin) of INR 40 making the total cost of the product good 260 (220+40). This brings the total tax amount on the final to ₹ 26. Just like the manufacturer, the wholesaler too can set off this tax amount with the tax that he had already paid while purchasing the good from the producer. Ultimately the effective GST incidence on the wholesaler will be only 4 (26-22).³⁹

³⁷ the Select Committee Report submitted to Parliament of India - Rajya Sabha 2015 on one hundred twenty second amendment bill

³⁸ Kongovi Private Limited vs. The Union of India and Ors. (28.03.2019 - KARHC) : MANU/KA/1993/2019

³⁹ <https://www.indiafilings.com/learn/how-gst-works-in-india/>

Stage 3 (retailer & consumer) -

Finally, at this stage, the retailer buys the shirt from the wholesaler. He adds a margin of 40 ₹ to his price now making the effective price of the product 280 (260+20). Not a tax of 10% will be 28 ₹. By setting off this tax (28 ₹) against the tax on his purchase from the wholesaler (26), now, at last, the retailer brings down the effective GST incidence on himself to ₹ 2 (28-26). Thus we come to this conclusion of the total on the entire value chain from the raw material which is input suppliers (which can claim no tax credit since they haven't purchased anything themselves) through the manufacturer, the wholesaler and the retailer is 10+12+4+2=28 as the total amount which is finally been carried by the consumer.

Is GST worth it ?

It has been almost two years since its implementation hence its importance can be remarkable as it gave a road to the new building of a common national market. It acted as a host of small trades or service providers as small businesses are now neon benefitted from the composition scheme as it eases the compliance burden for them, eliminated cascading effect as discussed above and service providers with turnover of lower than/upto Rs 20 lakhs are exempted from paying GST. It also reduced tax compliance as a number of tax returns to be filed under GST has come down significantly making it easy for the common people to reach out. Most importantly the final price of the goods and services produced has come down avoiding any worse paths for inflation as the benefit of the input tax credits gets passed on to the final customer. With the help of internet facilities now the registration and filing returns procedures under GST are now made simpler as ever when done online. Unorganised business can now be regulated efficiently as input tax credit can be availed only when the supplier accepts the amount and brings accountability. It also provides an improved efficiency of logistics which also provides a more and increased number of job opportunities. Earlier to GST regime goods supplied through e-commerce were not defined not it has gone validity and defined recognition because of which consumption of goods and services has been increased as it has benefitted every level of people, it, as a matter of fact, has resulted in the increase of demand and supply too. It also a very transparent tax, also when all of the taxes are integrated, it would make possible the taxation burden to be split equitably between manufactures and services.⁴⁰

It has removed economic distortions and has helped to make the taxation structure widely corruption-free administration.⁴¹ The government can now control the flow of black money. GST can no doubt help in boosting the Indian economy in the long run. Moreover, unnecessary hypes taxes on some products have been reduced. It is clearly said by the experts that GST has an 80 % chance of having a good impact on India's GDP in the next couple of years.

But as any other scheme of government GST does have some loopholes. Compliance of GST is very high as there are three different tax returns to be filed every month, hence there is no major reduction in the number of tax layers. Some common people who are not familiar with handling such accounts have to rely on unreliable accountants and similarly, because of the same reason, it will be difficult for small businesses to adopt this online and advance system of taxations⁴². GST acts like a hypocrite by saying advertising the slogan "one nation - one tax" as there 33 legislation or acts for regulating GST laws. Instead of having a single or dual rate GST system, there are around 7 standard tax rates as well as multiple rates of CESS. The hurried and sudden implementation of GST has led to confusion. It has unintentionally increased caused by business as the businessman has to keep the current software up to date or invest in one or lift repairing expenses. Also after GST, some products like clothes have become expensive regardless of the manifests GST plays. Adoption and migration to this new system had involved teething troubles and it has also affected the real estate market drastically.⁴³

Conclusion:-

⁴⁰ Howard Pender, A Journal of Policy Analysis and Reform(June 14, 2019, 3:30 PM) <https://www.jstor.org/stable/43199719>

⁴¹ Union of India vs Sapna Jain & others, SLP(Crl.) Nos. 4322-4324/2019 (2019)

⁴² Abicor and Binzel Technoweld Pvt Ltd. v. Union of India & ANR [W.P. (C) no. 2230/2018] (2018)

⁴³ Walk your GST Journey with Tally.ERP 9(June 14, 2019, 3:45 PM) <https://tallysolutions.com/gst/>

It is evidently clear that government needs money to maintain law and order in the country and to do some expenses to provide bread and butter to the functioning of the government and to take measure to ensure balanced development of both country and its people. So for its expenditure, the government's primary source of income is the revenue and taxes which is collected by the government from the people of the country and from other foreign sources too. But keeping everything aside taxation is the only tool through which growth such targets can be achieved of attaining growth in every sphere, especially in the economy. The Indian government is a unique blend of both federal and unitary features.

Thus GST is a landmark step taken by the government of India to boost up the GDP of the country and introduce and establish a more effective method of collection of tax in which the person at each level of the product is benefitted. It has been approximately 17 Years since the GST was first conceptualised in India. India after Canada is the second country in the world to adopt a dual GST model. France is considered the 1st country to implement GST in 1954 & since then around 160 countries including India has implemented it too. It is believed that the **"one nation - one tax "** regime has made effective steps towards better economic growth. The introduction of GST marked a clear departure from the scheme of distribution of fiscal powers envisaged in the constitution. It harmonised the indirect tax regime in the country and fostered a common seamless Indian market. GST is also a wondrous game changer and a significant achievement introduced by the NDA government. Though the contours of GST are still evolving to suit the needs of the country and its people. India has features of both a unitary system and a federal system that provides Indian government with stability, accuracy, efficiency, flexibility and at the same time rigidity.

So we can conclude that as the Indian constitution has both federal and unitary characteristics, so is the GST of India. As we have seen, to amend or add new features or tax slabs a GST Council has been constituted with ample state representation. Any proposal for modification or addition in GST has to be ratified by the council which has two third voting weightage of the states. This is in accordance with the federal features of the constitution as states voice is amply represented and have been vested requisite authority in the GST council.

The states have the right to impose and collect their share of tax as SGST and so does the centre as CGST. As against earlier tax regime were the centre used to collect lions share of taxes and then used to distribute it to the states as per its sweet will, GST clearly divides and provides the states their share as SGST. This too is in accordance with federal feature of the constitution.

But as evident from above, one third voting weightage in the council gives an edge to the centre in GST council. With right to appointment in the council vested with the president of India and support of a few states (ruled by the same party as in centre), the centre has decisive control over the states. After GST enforcement no state can impose tax on its own (except on liquor, tobacco and petroleum products) which is not in accordance with federal structure. The centre has kept CGST on majority of goods and services and at the same rates as of SGST, keeping its share of revenue big. Bigger the revenue greater is the control. On the basis of above analysis it is evident that the states have a say in the present GST tax regime, but the centre has more control. This is apparent with the slogan of GST - ONE NATION ONE TAX, which speaks in strong unitary tone.

At last it will be appropriate to say that as the Constitution of India is federal in nature but with strong unitary traits, keeping this in mind we can say that as GST gets its implementation power from the Constitution and as the nature of the constitution is quasifederal so is the GST which is in accordance with the spirit of the Indian Constitution and our polity.

Given from what we have told in this paper, we gather that the Indian government like any other government is still developing and keeps on changing according to the needs of the society . But what we believe is that India does have both features but it is more unitary in nature because ultimately everything is under control of the centre and it supersedes the federal structure at the end. Though the government tries to divide the powers more and more and given autonomy to the lower level so that it may not feel like they can be exploited on any matter. The constitution here gives powers to all rules , acts, and laws but it itself gets its power from the citizens of India so ultimately people get to decide their future and present. GST also gets its recognition from the constitution of India, after certain amendments to the constitution it now is the ultimate tax to be paid. From the above content, we have tried to show that GST complies with both the features. It was implemented and regulated by centre but the state too has powers vested to regulate it to on the state and local level. Both the

governments have given powers to recommend new policies if needed and make changes according to the lists. So at last it will be appropriate to say that as the Constitution of India is neither completely unitary nor it is totally federal in nature and it thus is in concurrence with both unitary and federal. And by keeping this in mind we can say this too that as GST gets its implementation power from the Constitution and the nature of the constitution is as such, we can also speculate that GST hence is in the Spirit and in accordance with Indian Constitution and is demarcated in both the governmental parts of the Indian Government.