



# CHAPTER 2

# *CONSTITUTIONAL AMENDMENTS*



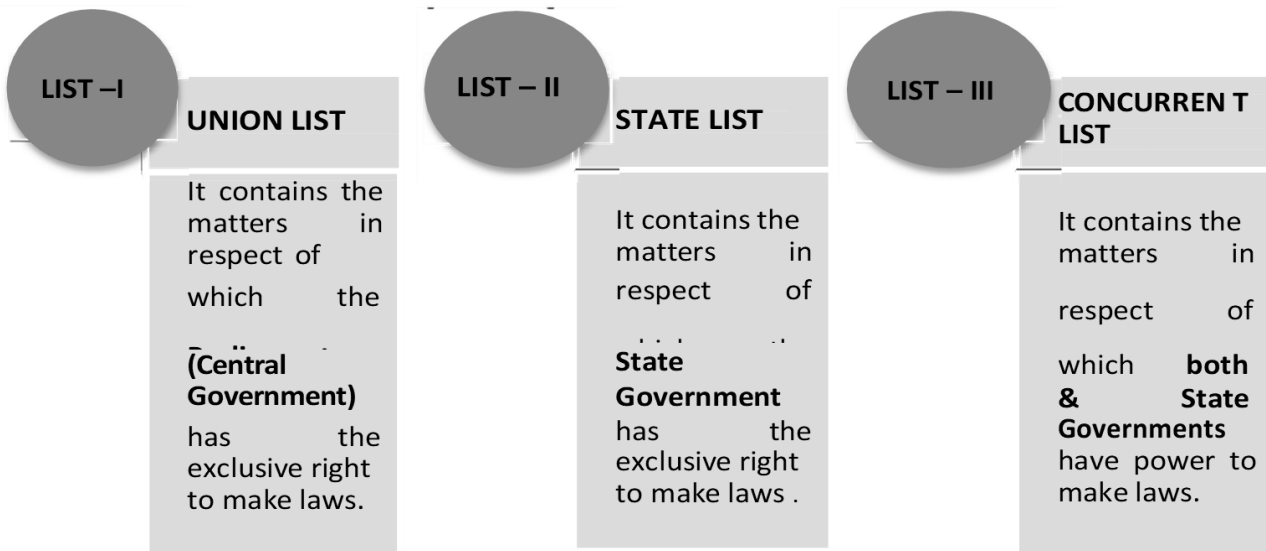
**CONSTITUTIONAL PROVISIONS**

**INTRODUCTION TO CONSTITUTION OF INDIA**

India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among three tiers of Governments, in accordance with provisions of the Indian Constitution.

The significant provisions of the Constitution relating to taxation are:

ARTICLE 265	ARTICLE 245	ARTICLE 246
No tax shall be levied/collected <b>except by authority of law.</b> This provision prohibits arbitrary collection of tax	The power for enacting laws is conferred on (i) the Parliament for whole or any part of India; and (ii) the Legislature of a State for whole or any part of State	It gives the respective authority to Union and State Governments for levying tax <b>Seventh Schedule to Article 246:</b> contains three lists under which Union and State Governments has authority to make laws.



**Entries 82 to 91** of List I enumerate subjects where the Central Government has power to levy taxes

**Entries 45 to 63** of List II enumerate the subjects where the State Governments have the power to levy taxes

Residual Power is with Parliament

**Article 246A of the Constitution introduced by the Constitution (101<sup>st</sup> Amendment) Act, 2016 has given power to levy GST**



### NEED OF CONSTITUTIONAL AMENDMENT

Introduction of GST required amendment in the Constitution to enable integration of

- (i) Central excise duty including additional duties of customs;
- (ii) State VAT;
- (iii) State specific taxes; and
- (iv) Service tax

**into a comprehensive GST and to empower both Centre and States to levy and collect it.**

### SIGNIFICANT PROVISIONS OF CONSTITUTION (101<sup>ST</sup> AMENDMENT) ACT, 2016

#### Power to make laws with respect to GST [Article 246A]

- (1) It grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State.
- (2) Centre has exclusive power to make laws with respect to GST in case of **INTER-STATE SUPPLY** of goods and/or services.
- (3) In respect to the following goods, GST shall apply from date recommended by the GST Council:
  - Petroleum Crude
  - High speed diesel
  - Motor spirit (known as petrol)
  - Natural gas
  - Aviation Turbine Fuel
- (4) The provisions of Article 246A are notwithstanding anything contained in Articles 246 and 254. Article 254 deals with the supremacy of the laws made by Parliament.

#### Levy and collection of GST on INTER-STATE SUPPLY [Article 269A]

- (1) It provides that GST would be levied and collected by Government of India on **INTER-STATE SUPPLY** and such tax shall be apportioned between Union and States in the manner recommended by GST Council.
- (2) Import of goods or services or both into India is deemed to be **INTER-STATE SUPPLY**. Accordingly, the Central Government to levy **IGST** on import which were earlier subject to Countervailing duty under the Customs Tariff Act, 1975.
- (3) In order to facilitate transfer of funds between the Centre and the States, amount collected as IGST which has been used for payment of SGST **shall not form part of the Consolidated Fund of India.**



- (4) Parliament is empowered to formulate the principles regarding **place of supply** and when supply of goods, or of services, or both occurs in inter-State trade or commerce.

### **Power of Parliament to legislate with respect to a matter in the State List, in the national interest/in case of emergency, extended to GST provided under Article 246A [Article 249 and 250]**

- (1) Article 249 grants the Parliament the power to make laws with respect to a matter in the State list in **national interest** in a case where the Council of States has declared by resolution supported by at-least 2/3<sup>rd</sup> of the members present and voting on any matter enumerated in the State List.
- (2) Article 250 grants the Parliament the power to make laws with respect to any of the matters enumerated in the State List if a **proclamation of Emergency is in operation**.

### **Residuary powers of legislation amended [Article 248]**

Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List. Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

**Now, this power has been subjected to Article 246A**, namely the power to make laws with respect to goods and service tax to be imposed by the Centre and States

### **Distribution of GST between the Centre and the States [Article 270]**

Article 270 is amended to provide for distribution of GST between the Centre and the States, **by order of the President after considering recommendations of the Finance Commission**. This applies for those tax amounts apportioned or payable to the Central Government for taxes levied by it under articles 246A(1) and (2) and Clause (1) of 269A.

### **Increase in duty and tax [Article 271]**

Article 271 empowers Parliament to increase any of the duties, or taxes referred to in articles 269 or 270. It further provides that such surcharge is not shareable and remains with the Centre. **Now this article is amended to exclude GST from its purview**.

### **Relevant Definitions [Article 366]**

**“Goods and services tax”** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. **[Article 366(12A)]**

**“Services”** means anything other than goods. **[Article 366(12B)]**

**“States”** includes Union Territory with Legislature **[Article 366(12C)]**

**“Goods”** includes all materials, commodities, and articles” **[Article 366(12D)]**



## CONSTITUTIONAL AMENDMENTS

### Imposing restrictions as to imposition of tax on the sale or purchase of goods [Article 286]

Article 286 restrains the States from framing laws for imposition of any tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in course of the import of the goods into, or export of the goods out of, the territory of India.

**Amendment:** Changes incorporated arising out of GST by substituting the words “sale or purchase” with “supply” and words “goods” with “goods or services or both”.

Consequently, States have no right to impose GST on inter-State supply of goods or services or both. It will be levied by Union Government under Article 269A as mentioned earlier

### Formation of GST Council [Article 279A]

It empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council). Such provisions came into force on 12<sup>th</sup> September, 2016 and GST Council was constituted on 15<sup>th</sup> September, 2016.

### Functions of GST COUNCIL

- It is the main decision-making body that has been formed to finalize the design of GST;
- The governing body of GST comprises of Union Finance Minister, being the Chairman of the council and the Minister of State (Revenue) and the State Finance/ Taxation Ministers.
- The duty of the Council is to make recommendations to the Union and the States on important issues like tax rates, taxes to be subsumed in GST, model GST laws, exemptions, threshold limits, dispute resolution, special provisions for special category states etc.
- It shall also recommend the date on which GST be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.
- In the GST Council, a decision will be taken by at-least 3/4<sup>th</sup> majority. Votes of the Centre has a weightage of 1/3<sup>rd</sup> of total votes and all states taken together has remaining 2/3<sup>rd</sup>.
- Quorum for GST meetings: ½ of total number of Members of the GST Council.
- No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—
  - (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 procedural irregularity of the Council not affecting the merits of the case

### Ratification by at-least half of states is required [Article 368]

Article 368 has been amended to include Article 279A also within its purview. Consequently, at least 2/3<sup>rd</sup> of the majority in each House of the Parliament and ratification by at ½ of the States is specifically required to make any amendment in Article 279A relating to GST Council.