



GST: A barrier to human rights for persons with disabilities

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Abstract

In terms of Section 2 of the Protection of Human Rights Act, 1993 (hereafter referred to as 'the Act'), "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts in India. The Goods and Services Tax (GST), which was introduced on 1 July 2017, is considered a significant tax reform in India up to the date of its independence in 1947. The key aim behind GST's growth is to sub-substantiate all kinds of indirect taxes in India, such as the Central Excise Tax, VAT/Sales Tax, services tax, etc. It is expected that taxation structure focused on GST offers greater clarity in the tax system and raises the GDP rate from 1% to 2% and decreases tax robbery and corruption in the India. From the consumer point of view, the biggest advantage would be in terms of reduction in overall tax burden on goods but implementation of GST tax structure in India hinders the basic Fundamental Rights (Food, Shelter & Clothing) of Individuals of India which leads to increase in prices of necessary goods and services. The paper underlines the Impact of GST tax structure on Common man hindering them to deprive from their basic needs. This paper mainly focuses on Impact of GST on persons with disabilities.

Keywords: tax, indirect tax, goods and services tax (GST), taxation reforms, disable persons, human rights, right to life

1. Introduction

Even after more than a year since the Goods and Services Tax (GST) came into being, people are still reeling under its effect. Pushed as a government's promise to the common public that day-to-day products will attract zero tax has fallen short of accomplishment as taxes have been imposed on goods for differently-abled people. On one hand, the government tries to show that it is strongly committed for the empowerment of persons with disabilities (PWD), but on the other, imposes a GST of high rate slab. Footwear, readymade garments likely to attract higher rates of GST. The fitment committee, which recommends rate changes to the Council, has proposed increasing the rate on footwear (less than Rs 1,000), readymade garments, and fabrics to 12% from 5% from 1st Jan2022. Car prices increased, Commercial Rented properties attracts GST, Real estate, Apparels and Footwear prices are increased, Banking, Insurance services, Train fare, Air travel, Jewelry, Mobile bills, Restaurant etc prices are also increased after GST implementation, which are necessities nowadays. Petrol is excluded from GST tax structure due to which prices of petro and diesel are increasing day by day making people difficult to survive.

Negative Impact of GST on the Common Man

- Compliance burden: You have to submit GST and file the return on time.
- Filing GST returns is not as easy as it sounds. You must appoint a tax professional to manage it.
- The government is taking steps to make return filing easier and to keep it simple. But, even then, it will take time to actually smoothen the entire process from start to end.
- Large businesses with enough employees can handle the entire process easier. But for small traders/merchants/service providers or individuals who have just started their business or service, it is still complex.

- At the present time service tax at a 15% rate is being charged on services. Therefore, if GST is introduced at a higher rate, which is going to happen in the near future, the cost of services will increase. GST at 18% will be levied on maximum services and will reach 28% for certain services. Which means all services like telecommunications, banking, airline, etc. will become more expensive.
- The higher service tax means increased cost of services, it will be added in Common Person's monthly expenses.
- To bear the cost of additional services, you will have to reset the budget of the common man.
- Everyone including Businessmen and service providers is still exploring and getting used to new laws. During this time dependence on tax experts and professionals is increasing which results in a bit more business expenses.
- The real implications of GST can be experienced after a certain period.
- GST or Goods and Services Tax is a consumption-based tax, Thus for services, the place where the service is provided needs to be determined.
- For better compliance, proper invoicing and accounting are necessary. However, there are various companies that are developing GST accounting software.
- If the actual benefits are not passed on to the consumer and the seller increases his profit margin, then the prices of the goods may also increase.
- The rise in inflation can be observed initially, however, it may also come down gradually.

The activities of profiteering will have to be strictly checked so that the end consumer can enjoy the real benefits of GST.

GST: A Barrier to Human Rights for Persons with Disabilities

Problem Statement

As per the 2011 census, India has over 21 million people with disabilities which is around 2.17% of the population. Persons with disabilities face many hurdles in education and employment which is reflected in the low effective literacy rate of 59%, far below the national level of 74.04% as well as a low work participation rate at 36.3%.

Lower levels of literacy and employment in turn imply lower income levels for this group. Thus, additional support through policy, financial and operational measures is required to help persons with disabilities participate fully in the economy. The new GST rules however, seek to impose tax on assistive technologies and goods and services which are essential for the advancement of persons with disabilities, hampering their mobility and ability to participate in education and employment thus further compounding the disadvantages already faced by this group.

Main Concerns

The specific GST provisions that negatively impact persons with disabilities include:

- 5% GST on Braille typewriters, Braille paper, Braille watches and Brailers (originally set to 18% for typewriters and 12% for Braille paper and watches and reduced after protests from organizations like the National Centre for Promotion of Employment of Disabled People (NCPEDP), the Disability Rights Organisations Forum (DROF), and various regional groups).
- 12% GST on Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture

appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability. Hearing aids have also been listed under the list of goods with nil taxes, which is contradictory.

- 18% GST on motor vehicles for persons with disabilities.
- Braille books are exempt from the tax while other Braille implements are not.
- IT software, consulting and support services, online text, audio and video, software downloads etc. have all been classified but no GST rate has been quoted, which implies that they are taxed at 18%. This means software like screen readers, assistive software for persons with cognitive disabilities, online text etc. which are essential aspects of communications and information access for persons with disabilities will also be taxed at 18%, which will severely hamper their ability to communicate and even carry out daily tasks.

GST: Hampering Accessibility and Inclusion

However, with the addition of GST, the situation becomes even more-dire. For instance, according to India Today, the current market price for a Braille typewriter is about INR 34,000, or over 20 times higher than the monthly income of an impoverished urban Indian. Even with the new 5 percent GST (a reduction from the previous 18 percent), this would work out to INR 35,700. Given that 29.5 percent of the total population of India remained below the poverty line in 2011-12 and had a monthly per capita consumption of less than INR 972 in rural areas and INR 1407 in urban areas, assistive technology would be prohibitively expensive even for the average Indian, let alone persons with disabilities.

GST: Impacting Mobility

The proposed GST on motor vehicles for persons with disabilities also impacts their right to mobility as per Article 41(2) of the Persons with Disabilities Act which calls for the government of India to "promote the personal mobility of persons with disabilities at affordable cost" through measures including incentives and concessions. The imposition of such a high tax on car purchases by persons with disabilities is in direct contravention of this.

Why Impose Luxury GST Rate On Wheelchair Parts And Accessories?

Even after more than a year since the Goods and Services Tax (GST) came into being, people are still reeling under its effect. Pushed as a government's promise to the common public that day-to-day products will attract zero tax has fallen short of accomplishment as taxes have been imposed on goods for differently-abled people. On one hand, the government tries to show that it is strongly committed for the empowerment of persons with disabilities (PWD), but on the other, imposes a GST of 5% on products like wheelchair. Another major problem is with imposing GST on parts and accessories of products like specialised wheelchair cushions, which although is a necessity for people with disabilities, have been categorised as a luxury item meaning that it attracts a GST of 28%. Luxury GST rate on parts and accessories All the products, as per international standards are listed under the Harmonised System of Nomenclature (HSN). This classifies products in categories and subcategories. So, usually, when a tax is imposed, it is assigned to the product which is highest in the hierarchy, meaning all the products in

the subcategories will reflect the same rate of tax. Unfortunately, products for the disabled are not listed under separate category which has mobility aids for disabled people. To give an idea of how this is extremely unjust for PwD is that, products like powerised wheelchair comes under the same category as motor vehicle, that is, 28%. It is to be noted that in countries like UK, Canada and Australia disabled people do not pay taxes as they enjoy an end-user exemption. Before GST, all products for the disabled persons were listed under 'List 32' and no tax, whatsoever, was imposed on them. 'List 32' is a list of all the types of equipment that PwDs use. Now, the situation is that not only is GST being imposed on these products, there are widespread confusion and ambiguity around the GST amount attracted by these products, their parts and accessories. Prashant Singh, from Specialized Mobility Operations & Innovations, told The Logical Indian "We are one of the very few manufacturers of customised products for disabled persons. Pre-GST, all wheelchair and accessories/parts imports were excluded from any taxation and customs duty. Post GST implementation, the entire wheelchair industry is facing a tremendous amount of confusion and uncertainty with respect to taxation being levied upon wheelchair parts and accessories." Mr Singh further explains that products like wheelchairs have been classified under two different GST rates. One is the HSN code '90 or any other chapter' which by definition 'Parts of goods, namely crutches, wheelchairs, walking frames, tricycles, brailers and artificial limbs' attracts 5% IGST. And the other is HSN Code Heading 8714 by definition 'parts and accessories of vehicles of heading 8711 and 8713 'which attracts 28% IGST. HSN code 8713 also, by definition contains 'Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled 'is applied to all wheelchair imports which attracts 5% IGST. "Our concern is which HS Code would be applicable to wheelchair parts such as wheels, brakes, frames etc.? We manufacturers are constantly on the receiving end when importing these items as the Customs Department levies variable GST rates and sometimes even duty which negatively impacts business operations," says Mr Singh. "Govt has completely ignored disabled persons" When The Logical Indian spoke to Vaishnavi Jayakumar from the Disability Rights Alliance (DRA), she said, "While earlier there was zero tax on the products like wheelchair etc., after the GST came into effect, they are being taxed at 5%. Infact, earlier the GST was fixed between 5%-18% on aids needed by the differently-abled to sustain everyday life, it was only after a lot of hullabaloo that it was reduced to 5%." Vaishnavi says that when there was a huge campaign for complete roll back of GST on the products and aids. Finance Minister Arun Jaitley had said that this was the best GST rate fixed for the disabled persons as they would now be getting the input tax credit. Input credit means that at the time of paying tax on output, you can reduce the tax you have already paid on inputs. "We met with the Finance Minister and produced two bills for a wheelchair. One was that of before GST and the other was of three months later, which was the price with GST. And the amount in the latter was higher. However, Mr Arun Jaitley then refused to believe it and said that 'it could no way be possible'," says Vaishnavi. Vaishnavi raises a very poignant point, "Everybody believes that the income tax they pay is what runs the whole infrastructure the government builds. However, in reality, it is the indirect taxes like that of GST which plays a huge role in this. So when a disabled

person pays these tax, the government rewards him/her by building infrastructure like the metro, which is not at all accessible to disabled people." "We are actually demanding for 0% GST on aids needed by disabled persons. But at least for now we want all the products with their parts and accessories to have an uniform GST of 5%. Government should not profit from the way we are," she says. "These are not luxury items for us, these are necessities" Mr JD Madan suffers from a spinal cord injury. In cases of spinal cord injuries, depending on the level of injury, the body that is completely paralysed. It is the most severe form of locomotor disability. "We spend our whole day on a wheelchair. So with the wheelchair, we need customised cushions. In absence of which, we may develop pressure sores or pressure ulcers," he says. When a person develops a pressure ulcer, he/she can no more sit on the wheelchair and has to lie on the bed all the time. To recover from this it takes anywhere between four weeks to even 12 weeks. "Not moving around may lead to even urinary infections, which may further lead to fever and cold. It is a really bad cycle. You would need a lot of time and a lot of help from others to recover. This may also lead to depression in some people. So, the thing is that items like cushions are definitely not a luxury item, it's a necessity. If we didn't have to use it, we would have not used it at all," says Madan. The Logical Indian take It is highly unjust that the government is imposing high tax rates on aids required by disabled persons. These products and parts are an extreme necessity, akin to a body part. It wouldn't be wrong to say that imposing GST on these is the same as imposing GST on body parts. How unfair is that? The GST council meet is to be held on August 4. The Logical Indian hopes that the council strictly considers the proposals made by the individuals with disability and the manufacturers of such products.

Legal Framework

The proposed GST implementation and tax on products and services that are critical for persons with disabilities to pursue independence, literacy and employment with dignity runs counter to both national and international law to which India is a signatory.

Article 38 of the Constitution of India also requires the government to minimize inequalities in income, status, facilities and opportunities among individuals and groups of people.

The Rights of Persons with Disabilities Act 2016, enjoin the government to utilise the capacity of persons with disabilities by providing appropriate environment (Art 3(2)) and take necessary steps to ensure reasonable accommodation for persons with disabilities (Art 3(5)).

The UN Convention on the Rights of Persons with Disabilities, which India has signed and ratified, calls on nations to promote the development and adoption of assistive technologies and devices for persons with disabilities, again "giving priority to technologies at an affordable cost." (Article 4 (g)). Additional provisions include:

- Art 4 – General Obligations asks states parties to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- Art 5 (3) - asks States Parties to take all appropriate steps to ensure that reasonable accommodation is provided
- Article 20 also requires nations to facilitate access to mobility aids, assistive technologies and other

intermediaries, and requires that they be made available at affordable cost.

- Art 24 on Education enjoins States parties to ensure persons with disabilities have access to inclusive education, that reasonable accommodation is provided and use of Braille, alternative modes and formats is facilitated.
- Art 27 on Work and employment required nations to protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work.
- Art 29 on participation in political and public life advocates the creation of an environment that enables persons with disabilities to participate fully and effectively in the conduct of public affairs.

Conclusion

1. We fully concur with the representations made by different organisations working for persons with disabilities in India seeking a complete roll back of GST for persons with disabilities. India has in the past, refrained from taxing the disabled deliberately, keeping in mind their particular needs and circumstances and nothing has changed in the past few years to warrant this move. Persons with disabilities remain below the poverty line, without access to information, resources and the ability to enjoy even their basic human rights to live a life of freedom, independence, dignity, inclusion and participation. It is unconscionable to place such articles of basic need such as crutches and wheel chairs without which a person cannot even move on the same level as other goods. Certainly these are more basic than other items such as glass bangles or kajal which are not subject to GST or semi-precious stones which are taxed at a very minimum.
2. Rolling back GST would be in accordance with national and international legal commitment. India cannot place itself on the same level as countries in the EU for taxing the disabled; we do not have the same infrastructure and resources which these countries have made available for their disabled citizens, nor the social security measures which they offer. They are better placed in terms of development and progress of the disabled, with regard to education, employment and daily living. We cannot impose 18% tax on vehicles for the disabled while we are not providing them with a completely functional accessible transport network, accessible roads and a barrier-free environment. A very small percentage of persons with disabilities in India is actually living a full and complete life with access to resources and aids, an imposition of tax will further minimise chances of progress in the years to come of empowerment and emancipation of persons with disabilities. India has been a thought leader in the field of disability internationally in terms of its policies and served as an inspiration to countries around us. We were one of the earliest countries to sign and ratify the UNCRPD, as well as the first country to ratify the Marrakesh Treaty more recently in 2014. We do not lack in spirit, however do not always follow up with action. The roll back on GST would be an appropriate move in line with our commitment to enable human rights for persons with disabilities and empower them with the use of technology and other tools and resources.
3. Specified exemptions for use of assistive technologies-Technology has proven a source of tremendous

empowerment to persons with disabilities. Given that most ICTs are to be taxed at 18%, we strongly urge the government to specifically exclude all ICTs and downloaded software and content which are intended for persons with disabilities from tax. By imposing tax on an enabling technology, it would be tantamount to imposing tax on a sensory organ, i.e., by imposing tax on a hearing aid or screen reader, which would enable a deaf person to hear/ a blind person to read, it would be like imposing tax on ears or eyes. We hence strongly urge the government to reconsider the present move and set right the error which has been committed by subjecting goods and services for persons with disabilities to tax. We recommend review, complete roll back and explicit exemption on all goods and services for persons with disabilities from the purview of GST.

References

1. <https://blog.saginfotech.com/sc-5-percent-gst-disability-equipment>.
2. http://www.censusindia.gov.in/2011census/population_enumeration.html.
3. <http://www.thehindu.com/todays-paper/tp-national/tp-otherstates/drag-seeks-rollback-of-gst-on-disability-aids/article19123085.ece>.
4. <http://indiatoday.intoday.in/story/gst-goods-and-services-tax-arun-jaitley-narendra-modi-disabledbraille/1/967920.html>.
5. http://planningcommission.nic.in/reports/genrep/pov_re_p0707.pdf.
6. http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf.
7. <https://www.disabled-world.com/news/south-america/>.
8. <http://thebrazilbusiness.com/article/tax-reduction-for-people-with-disabilities>.
9. <https://psa.gov.ph/content/persons-disability-philippines-results-2010-census>.
10. <http://www.ncda.gov.ph/disability-laws/republic-acts/republic-act-9442/>.
11. <http://www.ncda.gov.ph/disability-laws/implementing-rules-and-regulations-irr/irr-of-ra-10754-anact-expanding-the-benefits-and-privileges-of-persons-with-disability-pwd/>.
12. https://www.business-standard.com/article/economy-policy/footwear-readymade-garments-likely-to-attract-higher-rates-of-gst-121052700012_1.html.