

Lottery in the Constituent Assembly - Questions same - answers different

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By Vijay Kumar

I will take off from where I left last week. Though this is not a continuation of last week's column, I would recommend to you to visit that [Demand for Rs 21,000 Crores!](#)

The last paragraph in last week's column reads as:

Whether it is gambling or a game of chance or skill, perhaps there is no reason to not tax it. After all, if you can tax chapathis and rotis, why can't you tax rummy? - simple and of course good.

But can you tax gambling and betting, which should ideally remain prohibited?

There was an interesting discussion on this subject in the Constituent Assembly.

Please note these two entries in List-II - State List in the Seventh Schedule to the Constitution of India: (Pre-GST era)

34. Betting and gambling.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

So, if lottery comes under **Betting and Gambling**, only the States could tax it.

In the Constituent Assembly, when this was discussed, Prof. Shibban Lal Saksena said,

Sir, betting and gambling are being legalised by this entry in the Schedule. I thought that gambling was a crime and so I am surprised to see that gambling and betting are provided for as a legitimate field of activity under this Schedule. In fact, I was sorry that entry No.78 in List I was passed without any opposition,

"Lotteries organised by the Government of India or the Government of any State."

I think that this is against the principles to which we are committed. Gambling and betting should be banned. Sir, I strongly oppose this entry.

And a very interesting discussion took place:

Mr. Lakshminarayan Sahu: Mr. President, I am opposing this for the reason that when we are going to build the entire structure of our State on the foundations of truth and non-violence, when we are guided by the lofty ideals of Mahatma Gandhi, there should be no mention at all of betting and gambling in the Constitution we are to frame. The very mention of these words would indicate that our National Government favours the idea of encouraging betting and gambling and seeks to have its own control on them. Have we forgotten the lessons of the Mahabharat? Taxation on such items does not appear proper. The clause relating to lottery laid down in the Constitution, is also not proper.

Sardar Hukam Singh: Does the honourable Member want that there should be no betting and gambling?

Mr. Lakshminarayan Sahu: Yes, I want that.

Sardar Hukam Singh: Who is to prohibit it?

Mr. Lakshminarayan Sahu: The Constitution Assembly which is making the rules now, should prohibit it. Therefore, Mr. President, I oppose it.

And Dr. Ambedkar gave a brilliant, but obvious answer.

Dr. B.R. Ambedkar: Sir, I am very much afraid that both my friends, Mr. Shibban Lal and Mr. Sahu, have entirely misunderstood the purport of this entry and they are further under a great misapprehension that if this entry was omitted, there would be no betting or gambling in the country at all. I should like to submit to them that if this entry was omitted, there would be absolutely no control of betting and gambling at all, because if entry was there, it may either be used for the purpose of permitting betting and gambling or it may be used for the purpose of prohibiting them. If this entry is not there, the provincial governments would be absolutely helpless in the matter.

I hope that they will realise what they are doing. If this entry was omitted, the other consequence would be that this subject will be automatically transferred to List I. The result will be the same. *viz.*

the Central Government may either permit gambling or prohibit gambling. The question therefore that arises is this whether this entry should remain here or should be omitted here and go specifically as a specified item in List I. If my friends are keen that there should be no betting and gambling, then the proper thing would be to introduce an article in the Constitution itself making betting and gambling a crime, not to be tolerated by the State. As it is, it is a preventive thing and the State will have full power to prohibit gambling. I hope that with this explanation they will withdraw their objection to this entry.

What Dr. Ambedkar brilliantly referred to was Entry No.97 in List 1.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

So, any subject, including any tax not mentioned in List II or List III would automatically fall in List I and come under the jurisdiction of the Central Government. There is no way that a subject can be eliminated from these lists, unless as Dr. Ambedkar stated, it is so done by an article in the Constitution.

This must be the reason that GST was kept out of these three lists and the constitution was amended to create a new article

"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State

Article 246 deals with the lists, I, II and III on the powers of Parliament and State legislatures and Article 254 is in relation to the supremacy of the laws passed by Parliament. So, beyond these provisions, a new article was inserted to bring in GST, which is not in any of the Lists. GST lawmakers must have read Ambedkar. GST could not have been placed in any of the three lists, but a new article in the Constitution outside the lists, with a GST Council with only recommendatory powers, (as held by the Supreme Court in the ***Mohit Minerals*** case - [2022-TIOL-49-SC-GST-LB](#)) was perhaps not the best option.

That leads me to an incident that magnifies my respect for politicians, at least some of them. In our recent TIOL Tax Conclave, Mr. Sushil Modi, former Deputy Chief Minister of Bihar, who was a driving force for GST, mentioned the ***Mohit Minerals*** case in his speech and emphatically stated that what the Supreme Court held was an already known fact and it was not going to affect the GST in any way. I was astounded by the knowledge levels of this great politician. He is away from GST for the last two years, but is aware of the ***Mohit Minerals*** case and the inaccurate press reports about it.

Questions same - answers different

In 1942, Albert Einstein gave an exam to senior physics students at Oxford. His assistant asked him:

"Isn't it exactly the same exam which you had given to the same class one year ago?" "Yes!" said Einstein. "Well, the answers have changed."

This is perhaps applicable to GST. The answers have changed. Maybe we have to take the same test again. Anyway, it was with this anecdote that Mr. VK Garg started his enchanting speech in the very first session of our TIOL Tax Congress on 7th November 2022. Mr. Garg was a Joint Secretary in the TRU of CBEC and is credited with conceiving and implementing the negative list in service tax. He took voluntary retirement from the Department and worked for a top corporate and was advisor to the Chief Minister of Punjab.

About the future GST, Mr. Garg said,

- Automated tax systems, relying on advanced data analytics, will know so much about economic participants that evading taxes and hiding wealth would be next to impossible.
- Block chain, digital currency, AI and Robotic- based solutions will apply to a large number of existing problems helping predictive working, including automated filings and verifications.
- Even though facing a robot judge sounds like science fiction at present, many envision this as a part of next set of possibilities in administration of justice. AI automatically screens out cases for the purpose of reference, recommends relevant laws and regulations, drafts legal documents and alters perceived human errors in a judgement. At least the problem of revenue biased show cause notices can be addressed through such AI techniques restricting demands unless the machine validates the proposed notice by a desired minimum rating.
- I see massive scope for convergence amongst all these taxes or at least tax laws including the possibility to have just one tax in future collected equally between Centre and States. This can start with a common tax code on operational issues.
- If future sounds like science fiction movie you are probably wrong. But if it doesn't sound like science fiction you are certainly wrong.
- Tax compliance in future will be like self-driving cars, based on algorithms and design systems, freeing up the driver's attention to concentrate on business. Going forward billions of packages will be sent out for delivery using drone, robot, or autonomous vehicle.
- If anyone believes that E-way bills, tax returns, searches and seizures will survive a lifetime, he may not be thinking even a decade ahead.

Interesting times ahead indeed.

Until Next week