

Bill No. 22 of 2011

**THE CONSTITUTION (ONE HUNDRED AND FIFTEENTH
AMENDMENT) BILL, 2011**

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (One Hundred and Fifteenth Amendment) Act, 2011. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. After article 246 of the Constitution, the following article shall be inserted, Insertion of new article 246A.
namely:—

10 ‘246A. Notwithstanding anything contained in articles 246 and 254, Parliament and the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by that State respectively: Special provision with respect to goods and services tax.

Provided that Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.— For the purpose of this article, “State” includes a Union territory with Legislature.’

Amendment of article 248.	3. In article 248 of the Constitution, in clause (1), for the word “Parliament”, the words, figures and letter “Subject to article 246A, Parliament” shall be substituted.	5
Amendment of article 249.	4. In article 249 of the Constitution, in clause (1), after the words “with respect to”, the words “goods and services tax or” shall be inserted.	
Amendment of article 250.	5. In article 250 of the Constitution, in clause (1), after the words “with respect to”, the words “goods and services tax or” shall be inserted.	10
Amendment of article 268.	6. In article 268 of the Constitution, in clause (1), the words “and such duties of excise on medicinal and toilet preparations” shall be omitted.	
Omission of article 268A.	7. Article 268A of the Constitution [as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003] shall be omitted.	15
Amendment of article 269.	8. In article 269 of the Constitution, in clause (1), after the words “consignment of goods”, the words, figures and letter “except as provided in article 269A” shall be inserted.	
Insertion of new article 269A.	9. After article 269 of the Constitution, the following article shall be inserted, namely:—	
Levy and collection of goods and services tax in course of inter-State trade or commerce.	<p>‘269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be prescribed by Parliament by law.</p> <p><i>Explanation I.</i> — For the purposes of this clause, supply of goods or of services or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.</p> <p><i>Explanation II.</i> — For the purpose of this article, “State” includes a Union territory with Legislature.</p> <p>(2) Parliament may, by law, formulate the principles for determining when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.’</p>	20 25 30
Amendment of article 270.	<p>10. In article 270 of the Constitution,—</p> <p>(i) in clause (1), for the words, figures and letter “articles 268, 268A and 269”, the words, figures and letter “articles 268, 269 and 269A” shall be substituted;</p> <p>(ii) after clause (1), the following clause shall be inserted, namely:—</p> <p>“(1A) Goods and services tax levied and collected by the Government of India shall also be distributed between the Union and the States in the manner provided in clause (2).”.</p>	35
Amendment of article 271.	11. In article 271 of the Constitution, after the words “in those articles”, the words “except the goods and services tax” shall be inserted.	
Insertion of new articles 279A and 279B.	12. After article 279 of the Constitution, the following articles shall be inserted, namely:—	40
Goods and Services Tax Council.	<p>‘279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Fifteenth Amendment) Act, 2011, by order, constitute a Council to be called the Goods and Services Tax Council.</p> <p>(2) The Goods and Services Tax Council shall consist of the following members, namely:—</p> <p>(a) the Union Finance Minister Chairperson;</p> <p>(b) the Union Minister of State in charge of Revenue Member;</p> <p>(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government Members.</p>	45 50

(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) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(6) One-third of the total number of members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(7) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(8) Every decision of the Goods and Services Tax Council taken at a meeting shall be with the consensus of all the members present at the meeting.

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

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

279B. (1) Parliament may, by law, provide for the establishment of a Goods and Services Tax Dispute Settlement Authority to adjudicate any dispute or complaint referred to it by a State Government or the Government of India arising out of a deviation from any of the recommendations of the Goods and Services Tax Council constituted under article 279A that results in a loss of revenue to a State Government or the Government of India or affects the harmonised structure of the goods and services tax.

(2) The Goods and Services Tax Dispute Settlement Authority shall consist of a Chairperson and two other members.

(3) The Chairperson of the Goods and Services Tax Dispute Settlement Authority shall be a person who has been a Judge of the Supreme Court or Chief Justice of a High Court to be appointed by the President on the recommendation of the Chief Justice of India.

(4) The two other members of the Goods and Services Tax Dispute Settlement Authority shall be persons of proven capacity and expertise in the field of law, economics or public affairs to be appointed by the President on the recommendation of the Goods and Services Tax Council.

Goods and
Services Tax
Dispute
Settlement
Authority.

(5) The Goods and Services Tax Dispute Settlement Authority shall pass suitable orders including interim orders.

(6) A law made under clause (1) may specify the powers which may be exercised by the Goods and Services Tax Dispute Settlement Authority and provide for the procedure to be followed by it.

(7) Notwithstanding anything in this Constitution, Parliament may by law provide that no Court other than the Supreme Court shall exercise jurisdiction in respect of any such adjudication or dispute or complaint as is referred to in clause (1).

Explanation.— For the purpose of this article, “State” includes a Union territory with Legislature.’

Amendment of article 286.

13. In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words “the sale or purchase of goods where such sale or purchase takes place”, the words “the supply of goods or of services or both, where such supply takes place” shall be substituted;

(B) in sub-clause (b), for the word “goods”, at both the places where it occurs, the words “goods or services or both” shall be substituted;

(ii) in clause (2), for the words “sale or purchase of goods takes place”, the words “supply of goods or of services or both” shall be substituted;

(iii) for clause (3), the following clauses shall be substituted, namely:—

“(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as Parliament may by law specify.

(4) Nothing in clause (3) shall apply to a law of a State insofar as it imposes or authorises the imposition of goods and services tax.”.

Amendment of article 366.

14. In article 366 of the Constitution,—

(i) after clause (12), the following clause shall be inserted, namely:—

‘(12A) “goods and services tax” means any tax on supply of goods or services or both except taxes on the supply of the following goods, namely:—

(i) petroleum crude;

(ii) high speed diesel;

(iii) motor spirit (commonly known as petrol);

(iv) natural gas;

(v) aviation turbine fuel; and

(vi) alcoholic liquor for human consumption.’;

(ii) clause (29A) shall be omitted.

Amendment of article 368.

15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures “article 162 or article 241”, the words, figures and letters “article 162, article 241, article 279A or article 279B” shall be substituted.

Amendment of Sixth Schedule.

16. In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

(i) in clause (c), the word “and” occurring at the end shall be omitted;

(ii) in clause (d), the word “and” shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(e) taxes on entertainment and amusements.”.

17. In the Seventh Schedule to the Constitution,—Amendment
of Seventh
Schedule.*(a)* in List I — Union List,—*(i)* for entry 84, the following entry shall be substituted, namely:—

“84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;*(b)* high speed diesel;*(c)* motor spirit (commonly known as petrol);*(d)* natural gas;*(e)* aviation turbine fuel; and*(f)* tobacco and tobacco products.”;*(ii)* entries 92 and 92C shall be omitted;*(b)* in List II — State List,—*(i)* for entry 52, the following entry shall be substituted, namely:—

“52. Taxes on the entry of goods into a local area for consumption, use or sale therein to the extent levied and collected by a Panchayat or a Municipality.”;

(ii) for entry 54, the following entry shall be substituted, namely:—

“54. Taxes on the sale, other than sale in the course of inter-State trade or commerce or sale in the course of international trade and commerce of, petroleum crude, high speed diesel, natural gas, motor spirit (commonly known as petrol), aviation turbine fuel and alcoholic liquor for human consumption.”;

(iii) entry 55 shall be omitted;*(iv)* for entry 62, the following entry shall be substituted, namely:—

“62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.”.

18. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

Transitional
provision.

19. (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Power of the
President to
remove
difficulties.

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The scheme of the Constitution does not provide for any concurrent taxing powers to the Union as well as the States. It is proposed to introduce the goods and services tax and for this purpose to amend the Constitution conferring simultaneous power on Parliament as well as the State Legislatures including every Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax would replace a number of indirect taxes presently being levied by the Central Government and the State Governments and is intended to remove cascading of taxes and provide a common national market for goods and services. The proposed Central and State goods and services tax would be levied on all transactions involving supply of goods and services except those that are exempt or kept out of the purview of the goods and services tax.

2. The proposed Bill which seeks further to amend the Constitution, *inter alia*, provides for—

(a) subsuming of various Central and State indirect taxes and levies like Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty (CVD), Special Additional Duty of Customs (SAD), Central Surcharges and Cesses (excluding those applicable to income-tax, customs duties and to excise duties so far as they relate to goods outside the purview of the goods and services tax;

(b) subsuming of State VAT/Sales Tax, entertainment tax (unless it is levied by the local bodies), Luxury Tax, Taxes on lottery, betting and gambling, tax on advertisements, State Cesses and Surcharges insofar as they relate to supply of goods and services and Entry Tax, not levied by local bodies;

(c) levy of Integrated GST (IGST) on inter-State transactions of goods and services;

(d) conferring simultaneous power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(e) coverage of goods other than crude petroleum, diesel, petrol, aviation turbine fuel, natural gas and alcohol for human consumption under the goods and services tax for the levy of goods and services tax;

(f) creation of a Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits;

(g) enabling the setting up of a Goods and Services Tax Dispute Settlement Authority, which may be approached by the affected Government (whether the Centre or a State) seeking redressal for any loss caused by any action due to a deviation from the recommendations made by the Goods and Services Tax Council or for adversely affecting the harmonious structure and implementation of the goods and services tax;

(h) empowering District Councils and Regional Councils also to levy tax on entertainment and amusement;

(i) enabling the levy of goods and services tax on sale or purchase of newspapers and advertisements published therein;

(j) permitting only Municipalities and Panchayats to levy and collect tax on entry of goods in a local area for consumption, use or sale therein;

(k) allowing States to levy tax on intra-State sale of goods kept outside the purview of the goods and services tax, namely, Petroleum crude, High Speed Diesel, Natural Gas, Motor Spirit (Petrol), Aviation Turbine Fuel and Alcoholic Liquor for human consumption.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

PRANAB MUKHERJEE

The 16th March, 2011.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

**[Copy of letter No. 31011/04/2009, dated 16.3.2011 from Shri Pranab Mukherjee,
Minister of Finance to the Secretary-General, Lok Sabha]**

The President, having been informed of the subject matter of the proposed Bill, recommends, under clauses (1) and (3) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Constitution (One Hundred and Fifteenth Amendment) Bill, 2011 in Lok Sabha and also the consideration of the Bill.

FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert new articles 279A relating to constitution of Goods and Services Tax Council and 279B relating to establishment of Goods and Services Tax Dispute Settlement Authority in the Constitution. The proposed new article 279A seeks to empower the President to constitute a Council to be called the Goods and Services Tax Council consisting of the Union Finance Minister as its Chairperson and Union Minister of State in-charge of Revenue and the State Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government as their Members.

The proposed new article 279B seeks to provide for the establishment of a Goods and Services Tax Dispute Settlement Authority to adjudicate dispute or complaint referred to it by a State Government or the Government of India arising out of a deviation from any of the recommendations of the Goods and Services Tax Council constituted under the proposed article 279A that results in a loss of revenue to a State Government or the Government of India or affects the harmonised structure of the goods and services tax.

There are no direct financial implications on account of the proposal. However, the creation of the Goods and Services Tax Council and the Goods and Services Tax Dispute Settlement Authority will involve creation of some posts. Given that the introduction of goods and services tax will make the Indian trade and industry much more competitive, domestically as well as internationally and contribute significantly to the growth of the economy, such additional expenditure on these bodies would be miniscule.

It is not practicable to make an estimate of the expenditure, both recurring and non-recurring on account of the above. However, such expenditure would be considerably marginal.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert a new article 279A relating to the constitution of a Council to be called the Goods and Services Tax Council and another article 279B establishing the Goods and Services Tax Disputes Settlement Authority. Clause (1) of the proposed new article 279A provides that the President shall, within sixty days from the date of the commencement of the Constitution (One Hundred and Fifteenth Amendment) Act, 2011, by order, constitute a Council to be called the Goods and Services Tax Council. Clause (7) of the said article provides that the Council shall determine the procedure in the performance of its functions.

2. The procedure, as may be laid down by the Goods and Services Tax Council in the performance of its functions, are matters of procedure and details. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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Residuary powers of legislation. **248.** (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

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Power of Parliament to legislate with respect to a matter in the State List in the national interest. **249.** (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

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Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation. **250.** (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

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Distribution of Revenues between the Union and the States

Duties levied by the Union but collected and appropriated by the States. **268.** (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(a) in the case where such duties are leviable within any Union territory, by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable.

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Service tax levied by Union and collected and appropriated by the Union and the States. **268A.** (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2).

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—

(a) collected by the Government of India and the States;

(b) appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.

Taxes levied and collected by the Union but assigned to the States. **269.** (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation.—For the purposes of this clause,—

(a) the expression “taxes on the sale or purchase of goods” shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression “taxes on the consignment of goods” shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

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270. (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 268A and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2). Taxes levied and distributed between the Union and the States.

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271. Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India. Surcharge on certain duties and taxes for purposes of the Union.

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286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—
 (a) outside the State; or
 (b) in the course of the import of the goods into, or export of the goods out of, the territory of India. Restrictions as to imposition of tax on the sale or purchase of goods.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

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366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say— Definitions.

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(29A) “tax on the sale or purchase of goods” includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

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PART XX

AMENDMENT OF THE CONSTITUTION

Power of Parliament to amend the Constitution and procedure therefor.

368. (1)* * * * *

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

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SIXTH SCHEDULE

[Articles 244 (2) and 275 (1)]

Provisions as the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram

8. Powers to assess and collect land revenue and to impose taxes.—(1)* * * *

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

* * * * *

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

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SEVENTH SCHEDULE*(Article 246)***List I—Union List**

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84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

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92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

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92C. Taxes on services.

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List II—State List

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52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

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54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

* * * * *

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

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further to amend the Constitution of India.

(Shri Pranab Mukherjee, Minister of Finance)