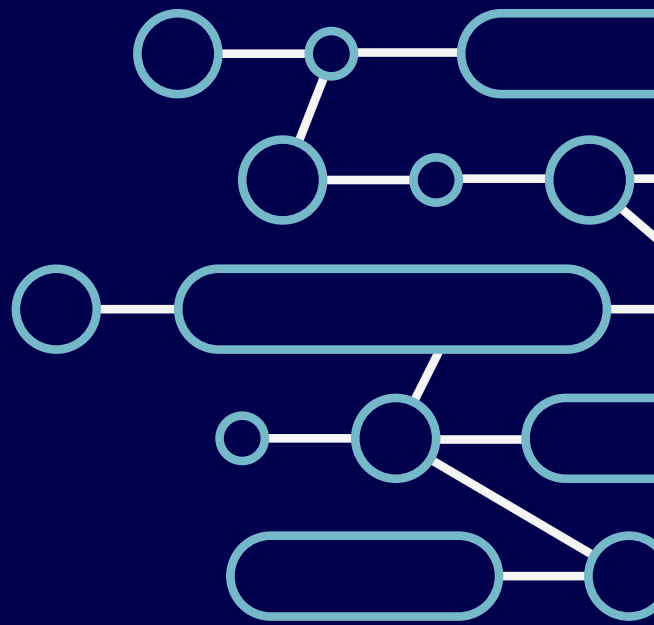


TECHNOLOGY AND ADMINISTRATION OF GST APPELLATE TRIBUNAL

AUGUST 2023



BY
COALITION FOR THE GSTAT IN INDIA

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ABOUT THE COALITION FOR GSTAT

The GSTAT Coalition India has brought together experts from various domains – lawyers, chartered accountants, economists, policymakers and administrators—to advocate for the speedy constitution of, and development of an inclusive and shared imagination of a modern digital, GSTATof global standards.

The members of this coalition are:

- Ajit Ranade, Vice Chancellor, Gokhale Institute of Politics and Economics (GIPE), Pune
- Najib Shah, IRS(retd.), former Chairperson, Central Board of Excise and Customs, Bengaluru
- Prakash Kumar, IAS (retd.), formerly CEO of Goods and Service Tax Network (GSTN), New Delhi
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- Surya Prakash B.S., Programme Director, DAKSH, Bengaluru

The Coalition has been convened by DAKSH, a civil society organisation working on law and justice system reforms, and accountability and transparency of institutions. For more details- visit - www.dakshindia.org

For more information about the Coalition and its activities, please contact Surya Prakash B.S., Convener, Coalition for the Goods and Services Tax Appellate Tribunal and Programme Director, DAKSH, Bangalore at surya@dakshindia.org

Coalition:

<https://www.dakshindia.org/coalition-for-the-goods-and-services-tax-appellate-tribunal-in-india/>

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BACKGROUND

The eagerly awaited GST Appellate Tribunal, is a greenfield project that provides immense opportunities to build on existing as well as emerging concepts, technologies and processes to render a unique, robust, and future-proof ecosystem for all stakeholders, including the judiciary, the citizens, as well as the tax administrations. The central idea behind this note is to provide a holistic approach towards building this ecosystem, whereby there is a seamless, tech-driven and well-governed flow of digital processes in the litigation chain both leading up to and beyond the GSTAT.

Impetus to this has come from none less than the Hon'ble Supreme Court, where time and again the vision of Digital Courts in a mission-mode ICT project has been underscored not only in the E-Courts Project reports but also the numerous directions and orders in several judgments. The objective is to enable "Courts to enhance judicial productivity, both qualitatively and quantitatively and to make the justice delivery system accessible, cost-effective, transparent and accountable. It envisions additional infrastructure for the judicial system that is natively digital, while improving existing physical processes. It does not merely digitize paper-based processes, it transforms processes for a digital environment."¹ The Hon'ble Supreme Court has also directed in the case of Bilfinders that the GSTAT should be a completely paperless institution. ²

1. Digital Courts - Vision & Roadmap, Phase III of the E-Courts Projects by E-Committee, Supreme Court of India.

2. C.C.E. and S.T. vs. Bilfinder Neo Structo Construction Ltd., Civil appeal No. 674/2021 dated November 29, 2021.

PRINCIPLES OF DESIGN FOR TECHNOLOGY AND ADMINISTRATION OF GSTAT

1. CITIZEN-CENTRIC

The overriding principle of design that should guide building of technology and administration of the GSTAT is that it must make GST disputes resolution accessible to citizens in a fair and efficient manner with certainty of proceedings.

Practical Application: Keeping the citizen at the centre of design of technology and rules, and putting in place mechanisms and capacity for regular feedback. The workflows and rules of the GSTAT should be radically reimagined, maximise the use of digital technology and be simplified (as compared to those currently in use in other courts/tribunals) to meet the needs of citizens.

2. INDEPENDENCE

The separation of powers between the legislature, executive, and judiciary is a fundamental tenet of the Rule of Law in India. Keeping in line with the concept of separation of powers while balancing the needs of a modern GSTAT, the institutional structure must empower the GSTAT to make decisions independently. The requirement for independence of the GSTAT is of particular importance given that the executive (state and union governments) will be a party in all disputes heard by it.

Practical Application: GSTAT should have the organisational capacity and financial resources to make independent informed decisions on its operations including on engaging with other state institutions or private organisations.

3. FEDERAL STRUCTURE

The proposed institutional structure must take into consideration the needs of the states and the union while enabling a unified system. The GST is a unique tax born out of a negotiation between the states and the union. The GSTAT will need to strike a balance between meeting the needs of these governments (such as location of the benches, selection of personnel, and cadre level aspirations) and retaining independence.

Practical Application: The funding of the GSTAT will have to be borne in an equitable manner so as to not burden any one state. Similarly, neither the Union government nor the state governments should have undue influence on operations.

4. FUNCTIONAL SPECIALISATION

The GSTAT leadership should be supported by manpower with domain expertise to manage and operate a next-generation dispute resolution institution.

Practical Application: This would require GSTAT to bring in personnel with competencies in fields such as technology, stakeholder engagement, administration, finances and create an institutional structure that will attract the best talent from these domains. This would also require building procurement capacity to engage with vendors that offer services in these domains. Once such teams are in place and the operations of the GSTAT has stabilised these functions may be transitioned to a separate entity set up for this purpose.

5. TECHNOLOGY AS A DIGITAL PUBLIC INFRASTRUCTURE

The technology solutions and systems of GSTAT should be envisaged as Digital Public Infrastructure that enable the effective provision of essential society-wide functions and services that are open source, customisable, and localisable. This would prevent vendor lock-in, increase resilience, leverage existing solutions and adapt them to local needs, and support interoperability between different platforms and solutions.

Practical Application: GSTATs tech infrastructure should enable building of customised and configurable technology tools on top of it that enable seamless data flow leading up to and beyond the GSTAT.

6. RESILIENT SYSTEM

The systems of the GSTAT should be resilient in a way that the GSTAT can function normally even in the event of disruptions. It is necessary to create a system that consistently delivers accurate, timely

and secure services to all stakeholders. This should be a priority to ensure that the GSTAT guarantees uninterrupted access to justice, maintains public trusts and safeguards the functioning. The general approach in event of disruptions in the technology is to go the traditional paper route and bypass the technology. So as to prevent such bypassing, the system should be built in a way that there are alternatives for functioning without compromising on its digital nativity.

Practical Application: The technology infrastructure should be built with robust disaster recovery mechanisms, data backup, resilience and redundancy systems such that the GSTAT's technology can endure unforeseen events, maintaining essential services and preventing data loss. Resilience can be achieved through distributed architecture, redundancy, robust data backup systems and multiple security systems.

INSTITUTIONAL CAPACITY FOR TECHNOLOGY AND DATA ANALYTICS

An inhouse technology and data analytics team will ensure that the GSTAT's technological infrastructure is adequately developed, maintained and aligned with the demands of the digital age. For instance, enabling API can help build an ecosystem that can share relevant data seamlessly and generate solutions. The internal ICT function can manage this API technology and meet the evolving needs of all stakeholders. The Phase III of the eCourts project focuses on creation of a foundational Digital Infrastructure (in contrast to services or solutions) that can facilitate the creation of an infinite number of additional services/ solutions.

By putting in place an inhouse team, GSTAT can build required expertise and resources to ensure consistency, standardisation and a strategy for technology adoption. A strong inhouse team is a prerequisite for GSTAT to engage with external agencies/organisations - whether GSTN (Goods and Service Tax Network - the government enterprise that handles technology for GST), NIC (National Informatics Centre - a part of the Ministry of Electronics and Information Technology) or vendors from the private sector.

GOVERNANCE STRUCTURE FOR TECHNOLOGY

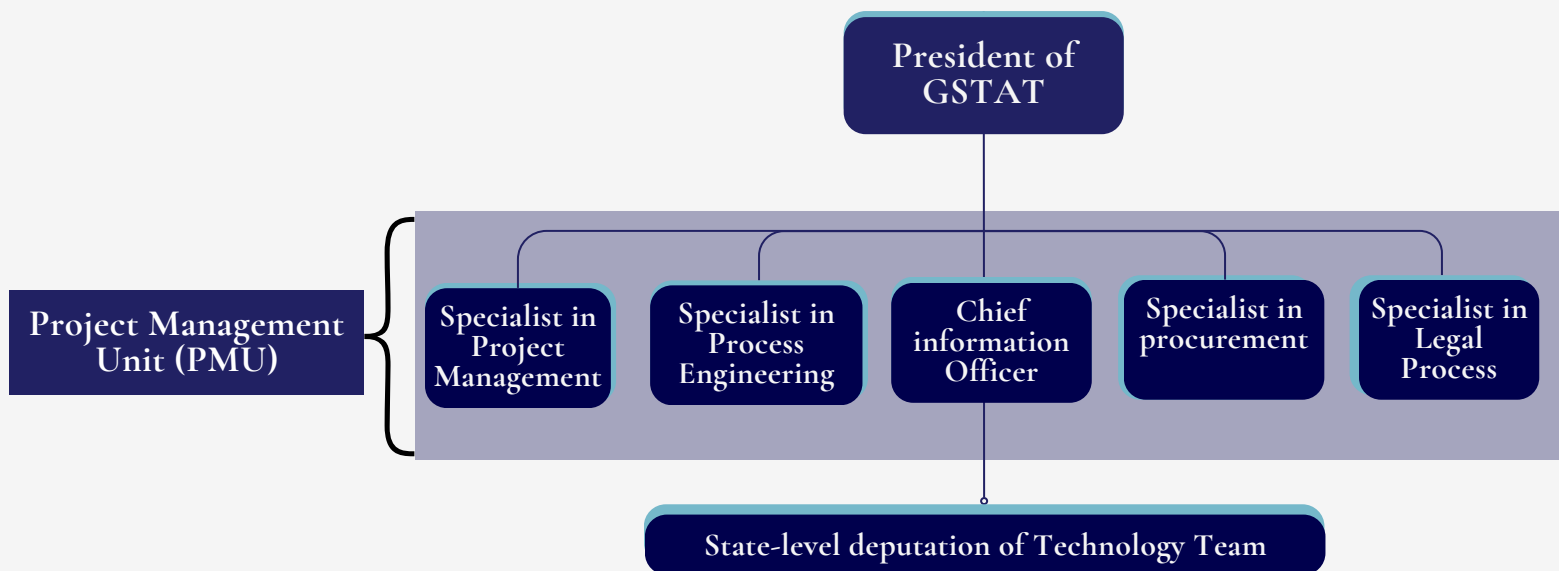
GSTAT will be an independent judicial body and the President of the GSTAT would be the judicial as well as the administrative head of the GSTAT. The President would have adequate discretion to deploy requisite resources - such as human resources, technology or funds - needed to institute, operationalize, govern and manage the newly formed organisation. The GSTAT is now one national institution with several State Benches - the technology architecture and its governance has to follow the same structure. The technology and data support should be a shared function with a national presence. This means that there should be a national technology and data team that sets overarching technology standards, policies, and strategies, with deputations to the states to assist in implementing as per local needs. This allows for flexibility within predefined guidelines, fostering different approaches while ensuring adherence to central standards.

Project Management Unit (PMU)

It is recommended that a PMU with diverse expertise be formed at the earliest to initiate the building out of technology for GSTAT.

The PMU can comprise experts in project management, GST law, adjudication processes, procurement, and stakeholder engagement apart from the Chief Information Officer of the GSTAT and others as deemed appropriate by the President.

A depiction of the PMU is provided below:



MODELS FOR BUILDING TECHNOLOGY INFRASTRUCTURE

Some structural models that can be adopted for building the technology are:

- **Leverage GSTN**

Leverage GSTN handling of technology for nationwide rollout of GST. However, given that GSTN is seen to be part of the administration of GST, it is important that an arms length distance be maintained in both data flows and governance to uphold GSTAT’s independence.

- **Utilise National Informatics Centre (NIC)**

NIC, which is under the Ministry of Electronics and Information Technology, can provide its services to the GSTAT to design and develop the IT infrastructure. The eCourt Mission Mode Project for the ICT enablement in District Courts and High Courts has been developed by the NIC. NIC does not have experience in building technology for adjudication institutions from a digital public infrastructure perspective.

- **Outsourcing to External Vendors**

The GSTAT can outsource the various technology services and solutions to external vendors. This includes cloud services, software development, hardware provisioning. This model reduces the GSTAT’s burden of technology management and allows it to leverage specialised expertise, but it requires robust vendor management and service agreements.

- **Special Purpose Vehicle (SPV)**

A separate entity may be set up to manage the technology infrastructure development and operations. This SPV can bring in external expertise, funding, and dedicated focus on technology, administration and management. This allows for better separation of technology operations from core judicial functions, promoting agility and focused technology management. Once the technology and operations of GSTAT has stabilised, this can be thought of.

LEVERAGING THE EXPERTISE AND RESOURCES OF GSTN FOR THE GSTAT INFRASTRUCTURE:

The GST Council in its meeting in July 2023, has recommended setting up of the GSTAT at the earliest starting with the appointment and selection of the President and Members of the GSTAT. Therefore, while selecting the model for building the technology infrastructure it is important to recognize the need for an efficient and effective approach that aligns with the timeline constraints for setting up the GSTAT. While several models are available for building the technology, the process for building a new developer team, a new entity like an SPV and the Request for Proposal process for the other models would be time-consuming.

The GSTAT has the option to leverage the experience and resources of the GSTN that has successfully created an SPV and developed

technology infrastructure. This option provides an opportunity to tap into established expertise and capabilities.

Leveraging GSTN would require the following aspects to be considered:

Time and Materials Basis

The Time and Materials basis (TNM) arrangement would be on the basis of factors such as the time spent by the personnel and the resources and materials used by the GSTAT of the GSTN. This would give the GSTAT the direct control over the scope of work and adjust the requirement on the basis of evolving needs and priorities.

Preserving Independence

It is important that the independence of the GSTAT is maintained. The TNM arrangement helps in preserving this independence by collaborating with the GSTN only to build the infrastructure. While it is important that the two institutions are independent and separate, the infrastructure and data flows should also be built in a manner that it appears as separate to the citizens.

Clear Governance and Communication

For this initiative to succeed, clear governance structures and transparent communication channels are essentials. The Project Management Unit of the GSTAT should be handling the collaboration with the GSTN.

Leveraging Technical Proficiency

By engaging on a TNM basis with the GSTN, the GSTAT can tap into the technological proficiency of the GSTN and their expertise in this domain. This will help in expediting the technology endeavours while maintaining the autonomy to shape the technology as per the unique requirements of the GSTAT.

Path Forward

This model with the GSTN addresses the current requirements with timeline constraints and the need for technology capabilities and expertise. A clear trajectory and timeline for the arrangement needs to be prepared to ensure continuity and successful implementation of the GSTAT's technology infrastructure.

FUNDING

While funding should not normally be a constraint, it continues to be a critical and most-often a game changing aspect of any technology mission. Irrespective of the governance structure chosen, the need for adequate and sustainable funding for the technology operations and regular upgradation cannot be over-emphasized.

It is also important to go into the question of which parent department would house the GSTAT. As per Rojer Matthew (2020 6 SCC 1), the department against which cases are being heard by a tribunal should not also be administratively in charge of it.

Some of the possible options for funding are as follows:

- Wholly funded by the Centre
- Funded partly by the Centre and partly by the States in any prescribed manner (like the funding pattern for GSTN)
- Funded partly out of the proceeds of Court fees/technology charges or any other self-sustainable model

The right amount of funding for technology and data analytics in GSTAT would enable smooth and seamless delivery of justice under GST laws. Academia and industry could also contribute to the funding by way of utilisation - at an appropriate level of costing - of the relevant (and anonymized, where necessary) data from the whole ecosystem. Filing and other fees could also be structured innovatively by balancing access to justice and the usage of judicial resources.

TECHNOLOGICAL ARCHITECTURE

It is important that the design and architecture of technology for GSTAT is appropriate and thought through right at the inception stage. Deploying a sub-par IT system will impose costs, direct and indirect, in the short term and long term, to all stakeholders. Incorporation of state of art technology holds the key to an efficient and successful functioning of GSTAT. Selection of the right technology has the potential to revolutionise the entire landscape of GST dispute resolution. Leveraging latest technologies, including but not limited to artificial intelligence, machine learning, blockchain and

smart processing mechanisms such as microservices would certainly go a long way in improving efficiency and transparency.

A centre-out approach should be adopted while designing the technology architecture for the GSTAT. The technology architecture should ensure that the interests of the citizens are secured. This should be done while ensuring that data and analytics is the overarching core capability of the infrastructure. This can be achieved in the following way:

1. Digitization and integration of vertical and horizontal chains:

APIs (Application Programming Interfaces) - APIs facilitate the integration of different software applications within the GSTAT's ecosystem. The APIs can be leveraged to integrate with external platforms and systems such as GSTN, NIC, CBIC, ICEGATE etc. These external platforms also include the relevant Banks or RBI/GSTN to seamlessly facilitate payments from and refund of such payments to the appellant/taxpayer.

File Transfer - A secure File Transfer Protocol can be employed to securely transfer large volumes of sensitive case-related documents between different entities such as the appellate authority, High Court, Supreme Court, and revisional authority.

2. Case Management System

A robust Case Management System (CMS) covering management of documents and a workflow is extremely important for an efficient functioning of the GSTAT. The CMS should be designed from an end-to-end perspective including data retrieval, processing and dissemination. This ensures seamless communication and collaboration across different departments within the Court, streamlining the entire case lifecycle. This could potentially include an online appeal filing, real-time data retrieval from systems such as GSTN, ICEGATE or other courts. A real-time and online tracking of cases would go a long way in ensuring both the appellants and respondents know the status of their case with just a few clicks.

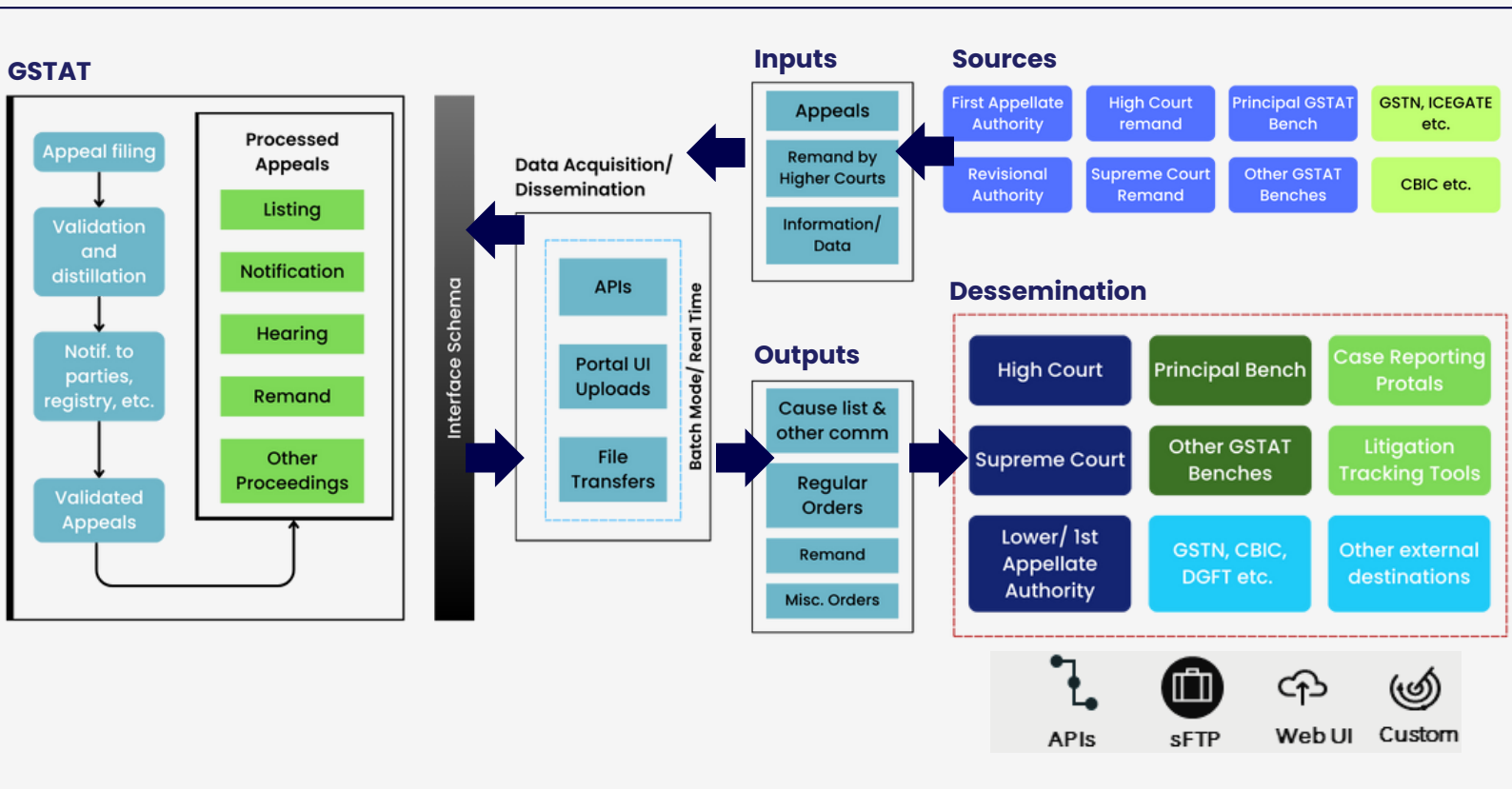
Document Management - Integration with digital document management systems enable real-time access to case-related documents, facilitating efficient collaboration among the stakeholders.

3. Digital experience for the citizens:

User management and experience - GSTAT will naturally have various types of users, including external and internal stakeholders. A robust user management, with appropriately graded user rights will ensure accountability, responsibility and transparency.



GSTAT Landscape



A superior user experience including an intuitive user interface would play a great role in ensuring that the GSTAT platform and portal are efficiently used by all the stakeholders including the judiciary, the parties to the disputes as well as the large ecosystem of advisors, counsels and others. Virtual conduct of proceedings - The technology framework used should enable virtual proceedings and hearings where requested by the parties.

The virtual proceedings may also enable preservation of recordings of proceedings and generation of transcript - both of which may be useful in appeal proceedings.

APIs for judgments and cause lists - Exposing the judgments and cause lists through an API can help the developers, researchers and legal professionals easily access the information. It can help in building tools for research, data-driven decision making and tools to get real-time updates on the case. This would encourage the building of an innovative ecosystem for GST.

4. Data and analytics as a core capability:

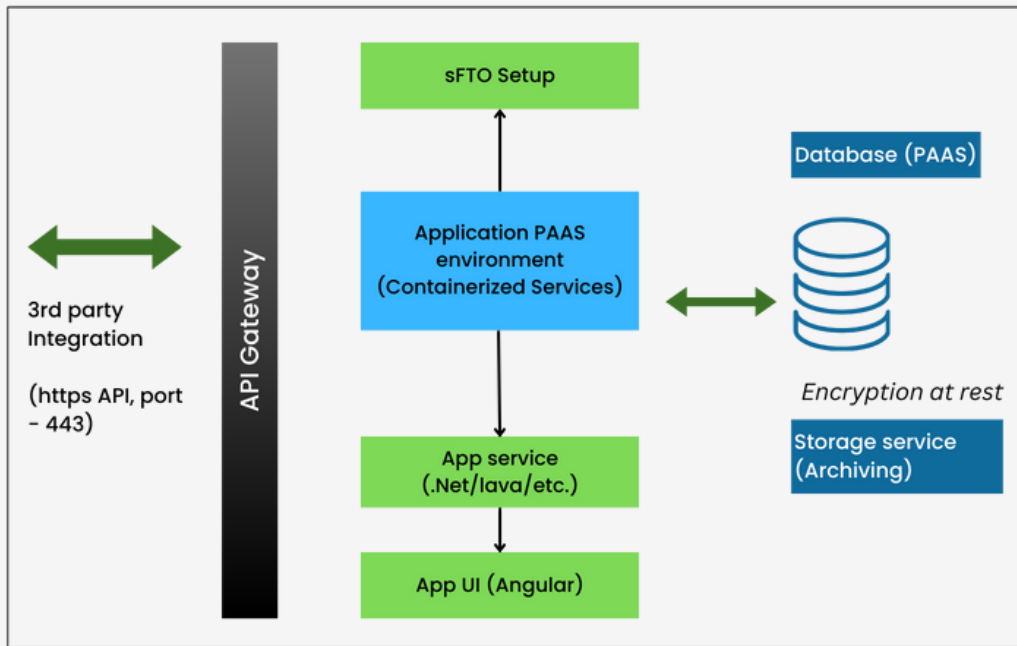
Analytics and Reporting

The technology backbone of the GSTAT should incorporate advanced analytics and reporting functionalities which can be used by all, including judiciary, parties to the cases as well as counsels. Availability of near real-time analytics and availability of data will go a long way in ensuring transparency, efficiency and speedy disposal of cases.

Cloud Infrastructure

Infrastructure is core to any technological solution. For a modern technology foundation, the GSTAT should consider various alternatives on hosting data and applications, including adopting a cloud-based infrastructure. Hosting on cloud offers scalability, flexibility, and cost-effectiveness, allowing the GSTAT to efficiently manage its resources and infrastructure requirements.

High-level application design and key considerations-



SUMMARY OF RECOMMENDATIONS

1. Formation of the Project Management Unit at the earliest

The GST Council in its meeting in July 2023, has already recommended the appointment and selection of the President and Members of the GSTAT. Therefore, the Project Management Unit consisting of the Chief Information Officer, Specialist in project management, Specialist in process engineering, legal processes and in procurement should be formed immediately. The formation of the PMU would be the first step towards building the technology infrastructure of the GSTAT. This Unit would be tasked with the responsibility to evaluate the different models for building the technology platforms, procuring services vendors and building the IT manpower to support the functioning of the GSTAT.

2. Leveraging GSTN and expertise for the GSTAT infrastructure

Keeping in mind the timeline constraints for setting up the GSTAT, the experience and resources of the GSTN should be leveraged to develop the technology infrastructure. This should be done in a manner that the independence of the GSTAT from the administrative authority is maintained.

3. Reimagining Rules and Processes

The Rules, guidelines and processes for the functioning of the GSTAT should be reimagined incorporating the principles of citizen centricity, functional specialisation, technology as digital public infrastructure and a resilient system.

4. Digital public infrastructure

The technology infrastructure of the GSTAT should enable APIs, and leverage cloud infrastructure, data and analytics to create a digital ecosystem for the citizens. This investment in creating a digital public infrastructure would not just streamline the operations of the GSTAT but also foster trust of the citizens in the GSTAT.

5. Department in charge of GSTAT

The GST Council should deliberate upon which would be the appropriate department to house the GSTAT in. In the light of the observations of the Hon'ble Supreme Court in *Rojer Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1, the department (in this case the Commercial Taxes Departments at the state level and Department of Revenue at the Union Government level, which are usually part of the Finance Ministry) against which cases are being heard by a tribunal should not also be administratively in charge of it. We recommend the Department of Justice (in the Union government) and Department of Law and Parliamentary Affairs (at the state levels) to house the GSTAT as has been done in the case of the Income Tax Appellate Tribunal.



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