

Constitutional Provisions for Taxation System in India

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Abstract - One definition of a tax is a levy levied against citizens or owners of property in order to raise funds for public services. Therefore, tax is not a voluntary payment or donation that one chooses on their own but rather a required contribution. It's money that the lawmaker is required to collect. Taxes can be imposed either directly or indirectly. Effective tax system and procedures can lead to revenue growth that is perhaps a little quicker than GDP (Gross Domestic Product). The collection and distribution of tax revenue is the focus of tax law. There are several origins for tax regulations. They have their origins in federal and state constitutions, statutes, and ordinances. The practice of tax law includes learning about, enforcing, and defending the payment or nonpayment of taxes. In this Article the author has explained the Constitutional provisions in a very simple manner so that the layman can also understand the complicated provisions related to different types of Taxes.

Keywords - Constitution of India, Good Tax, Direct Tax, Indirect Tax, Union List, State list and Concurrent list

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INTRODUCTION

When James Wilson became the first Finance Minister of the British Indian Government, he instituted a tax system in the country. He is credited for instituting India's first income tax in 1860. Adam Smith proposed four principles—fairness, clarity, ease, and efficiency—that governments should use when levying taxes in his 1776 book, *The Wealth of Nations*. Taxes should be equitable in the sense that they don't unfairly burden people who are already struggling to provide for themselves and their families.

There are two levels of government responsible for collecting taxes in India: the federal and state levels. Local governments and municipalities impose additional, often little, fees and levies. Money is needed to keep a state's government functioning and to administer its business. Indirect taxes make up a smaller portion of the total tax burden in India. Direct taxes are charged on assessors' taxable income, however it is the responsibility of the assessed themselves to make tax deposits. The term "taxation" refers to the process through which a government levies or collects taxes from its inhabitants and businesses. Everything is subject to some form of taxes, from income tax to the GST. In India, "No tax must be levied or collected except by authority of law," as stated in Article 265.

CHARACTERISTICS OF A GOOD TAX STRUCTURE

Overall, a healthy tax system should promote social justice by leveling economic opportunities. A good tax system should include the following features:

- It needs to be practical and bring in money for the government.
- Tax collection is a necessary evil, and as such, it has to be done efficiently.
- Taxes shouldn't slow down the expansion of businesses and industries.
- The government needs accurate information on the amount of money it will collect, and the taxes it imposes should provide that.
- The tax system must to be based on complete and current statistical information that permits reliable forecasting.
- The tax system, in order to adapt to the evolving demands of the State, should be straightforward and flexible.
- The tax burden should be allocated with taxpayers' capabilities in mind.

TAXATION SYSTEM IN INDIA

The Indian federal tax structure consists of three tiers, as follows:

- **The Union List** (List 1 of the 7th Schedule to the Constitution of India) contains those matters on which the Central Government has the power to make laws [Article 246(1)].

- **The State List** has only those matters on which the State Government has the power to make laws [Article 246(3)].
- **The Concurrent List** has those matters on which both the Central and State Governments have the power to make laws [Article 246(2)].

If there is a discrepancy between federal and state law regarding an item on the concurrent list, federal law will take precedence. If a state legislation contains a provision that contradicts a federal law, the state law takes precedence if it has been approved by the President of India.

DISTRIBUTION OF POWERS OF TAXATION

The Constitution's 7th Schedule, List 1, Entries 82-92B, details the Central Government's authority.

Specifically, Entries 45-63 in List 2 of the schedule detail the State Government's authority.

List 3 does not address taxes, hence neither the federal government nor individual states have taxing authority that may be exercised simultaneously.

The remaining taxing authority of the central government is detailed in Entry 97 of List 1 of the 7th Schedule.

TYPES OF TAXES IN INDIA

In India, there are two main categories of taxation: direct and indirect. The Goods and Services Tax (GST) is one of India's most significant and well-received tax changes (Goods and Services Tax). It functions as a global indirect tax that mitigates the domino impact of taxes.

Direct Tax

Both corporations and individuals must pay this tax. This is a unique kind of tax that cannot be transferred to another entity or accepted by any other party. Wealth tax, income tax, gift tax, and so on are all forms of direct taxes. The Central Board of Direct Tax (CBDT) is a sub-department of the Revenue Department in the Ministry of Finance. The Direct Taxes Board of India serves a dual purpose by providing advice on both long-term planning and immediate policy decisions for the country of India. The Income Tax department receives assistance in its handling of direct taxes from the Central Board of Direct Taxes.

Indirect Tax

Indirect taxes are those that are levied on consumers after they have already spent money on a product or service. Taxes are collected from businesses and individuals that produce and sell products and

services on behalf of the government. Value-added tax, or VAT, is a sales tax paid on goods and services at a rate set by the government of the state in which they are sold (VAT). The Central Board of Excise and Customs is responsible for formulating tax and customs policies, as well as collecting customs excise duty and service tax (CEBC). After Goods and Services Tax (GST) was implemented, the Central Board of Excise and Custom (CBEC) was renamed the Central Board of Indirect tax and Custom (CBIC). Its primary function is to advise the government on GST policy.

Custom Duty

All imported products are subject to a tax and must be declared and paid for at customs. It serves as a source of income for the government and as a tool for controlling international commerce.

Excise Duty

A real commodities tax, this one is charged on the manufacturing process rather than the final sale. Taxes on alcoholic beverages and controlled substances are collected by the federal government. Unlike tariffs, this tax is levied solely on Indian-made products. This tax is also known as the Central Value Added Tax (CENVAT).

Service Tax

In this case, a service is the taxable good. Telephone, stock brokerage, and insurance were the first services to be taxed in India. More services have been added to this sphere since then, and the previous system has been replaced with a single Goods and Services tax.

Value Added Tax

The poor indirect tax system in India prompted the introduction of this tax. Value-added tax is easy to administer since it includes built-in mechanisms for monitoring itself. Except for Andaman & Nicobar and Lakshadweep, all Indian Union Territories and States are required to collect and remit VAT.

GST

Indirect and direct taxes were collected by the three government agencies until July 1, 2017, when GST became effective. GST incorporates a wide range of indirect taxes levied previously at the federal and state levels. Within each state, the sale of goods and services generates indirect tax revenue for both the federal and state governments.

Constitutional Provisions Regarding Taxation in India

For a thorough comprehension of Indian law, it is essential to first familiarize oneself with the Constitution, which serves as the foundation for all other laws. The taxation provisions of the Indian Constitution may be broken down into the following groups:

- It is only with the backing of the law that monetary penalties and contributions may be demanded. (Article 265)
- Distribution of tax revenue between the federal government and individual states (Article 268, Article 269, and Article 270)
- Limitation on the ability of governments to impose their own taxes (Article 286)
- Transactions involving the sale or purchase of products that take occur outside of the state
- Involvement in the sale and acquisition of items throughout the process of importing and exporting
- Definition of State Taxes/Reason State's for Levying Taxes (Article 276, and Article 277)
- Taxes levied for a federal or state government program (Article 271, Article 279, and Article 284)
- Grants-in-Aid (Article 273, Article 275, Article 274, and Article 282)

Article 265

In layman's words, this article says that no taxes may be collected without the "power of law." In this context, "law" refers only to a statute or other legislative enactment. When enforced, the legislation must not run afoul of any other parts of the Constitution. This piece of writing is a defensive weapon against unfair taxation. The villagers in *Tangkhul v. Simirei Shailei* paid Rs 50 per day to the head man as part of a tradition that allowed each family to work for free once a week. This was a yearly ritual that had been carried on for many years. In this instance, the court found that the collection of Rs. 50 amounted to an unconstitutional tax since it was not permitted by law (Art 265). When a tax is levied without statutory authorization, it is a violation of Article 265.

Sugar merchants in the case of *Lord Krishna Sugar Mills v. UOI* were required to reach export objectives as part of a government-initiated promotion campaign; if they fell short, they would be subject to a higher excise levy. In this case, the court stepped in and ruled that the government lacked the legal right to impose this extra excise tax. Essentially, this implies that the administration cannot impose this tax unilaterally until Parliament approves it.

Article 266

The Consolidated Funds of India and the State Public Accounts are covered in this section. In this case, the law states that, with the exception of the circumstances described in Article 267 and Chapter 1 (part XII), the entire or a portion of the net proceeds of certain taxes and duties to the States, all loans raised by the Government through the issuance of treasury bills, all money received by the Government in repayment of loans, all revenues received by the Government of India, and all loans or ways and means of advances shall form one consolidated fund to be entitled the Consolidated Fund. The same true for the income obtained by the Government of a State when it is termed the Consolidated Fund of the State. With the Constitution as the guiding document, the Consolidated Fund of India or a State may only be raided for constitutionally permissible reasons.

Article 268

Duties such as stamp duties and excise on medicinal and toilet preparations, which are levied by the Government of India but collected by the state (duties collected by the state do not form a part of the Consolidated Fund of India but are with the state only), are included here. The Union List specifies the jurisdictions outside of which these duties may be levied.

Article 269

It details the numerous federal taxes, how they're collected, and how they're assigned to individual states. The appellant's lawyer in the case of *M/S. Kalpana Glass Fibre Pvt. Ltd., Maharashtra v. State of Orissa and Others* relied on a Supreme Court ruling in the case of *Gannon Dunkerley & Co. and others v. State of Rajasthan and others* to argue that in order to calculate Taxable Turnover, inter-State transactions, export, and import under the CST Act should be disregarded. It follows that CST Act Sections 3 and 5 always take precedence over the requirements of the State Sales Tax Act. Article 269 of the Constitution of India forbids the sale or purchase in the course of interstate trade or commerce as well as the charge and collection of tax thereon.

Article 269(A)

This new section, dubbed IGST by the Model Draft Law, grants the Central Government of India, or the Centre, the authority to collect GST on inter-state trade and commerce. Direct Apportionment (let's say out of total net revenues 42% is directly apportioned to states) via the Consolidated Fund of India is one of the two methods in which states get their share of the money collected by the Centre (CFI). A certain proportion of CFI funds is allocated to the United States.

Article 270

The method by which Union and State taxes are collected and redistributed is laid forth in this article.

All of the levies and customs fees included in the Union List, with the exception of the fees and levies listed in articles 268, 269, and 269A. The Union Government collects all taxes, surcharges, fees, and cess as outlined in Article 271 of any statute enacted by Parliament. According to clause (2). Money collected in taxes and duties during a given fiscal year goes directly to the coffers of the individual states from which they were collected rather than being pooled into a national pot. Any taxes collected by the federal government should be shared equally between the federal government and the states per clause (2). Article 270(1A) and Article 20 have been added to this Article as a result of the Goods and Services Tax (GST) (1B7). In the landmark case of T.M. Kannian v. I.T.O., decided by India's highest court, the court established an important legal precedent under Article 270 of India's Constitution. In this decision, the Supreme Court argued that tax revenue goes into India's central coffers. Income tax collected in this manner cannot be redistributed to the federal government, the union territories, or the states governed by the president.

Article 271

Parliament for the Union Government may vote to raise any of the taxes/duties listed in Article 269 and Article 270 by levying an extra surcharge on them, and the money collected from these new taxes/duties goes into the Consolidated Fund of India. In contrast to Articles 269 and 270, this one is an exception. The Union is also responsible for surcharge collection, although individual states play no part in this process.

Cess and Surcharge

Many people seem to be unsure of the difference between cess and surcharge. Article 270 of the Indian Constitution defines cess. A cess is similar to a tax in that it is imposed by law and used for a specific function. A surcharge, as discussed in Article 271, is simply an extra tax levied on top of the base tax already collected by the union for a specific purpose. Both the cess and the surcharge go into the Indian government's "Consolidated Fund." The Supreme Court was asked to decide whether or not an education cess may be assessed on excisable commodities before the application of cess on products created but cleared after the implementation of such cess, in the case M/S SRD Nutrients Private Limited v. Commissioner of Central Excise, Guwahati. Despite the fact that Justice A K Sikri and Justice Ashok Bhushan ruled in favor of the manufacturer, they did so while noting that the education and higher education cess are surcharges.

Grants-in-aid

The Constitution allows for grants to the States and other federating bodies to be sanctioned. When the tax receipts flow to the center but the welfare measures and functions are delegated to the states, the central government provides financial aid to the states to balance, rectify, and modify the financial needs of the units. The Parliament of India has the power to approve these expenditures from the Consolidated Fund of India.

Article 273

Instead of receiving a portion of the net earnings from the export tariff on jute goods, the states of Assam, Bihar, Orissa, and West Bengal instead get an annual grant from the Consolidated Fund of India. As long as the Union government continues to impose an export tariff on jute or jute products, or until the period of expiry, which is 10 years after its beginning, this grant shall continue and be charged to the Consolidated Fund of India.

Article 275

Legislation passed by parliament authorizes the provision of such subsidies to governments that demonstrate an extreme need for financial resources and administrative support. The state government mostly puts these subsidies and donations toward expanding its social programs and infrastructure. For the Scheduled tribes living in such territories, it is also utilized for social welfare purposes.

Article 276

State taxes are discussed in this article because they are imposed by, administered by, and collected by each state's government. However, state taxes are not standardized and may fluctuate depending on where you live. Among them are value-added taxes like sales tax and value-added-value-added-value-added-tax, like.

Article 277

Even if they are on the Union List, levies, fees, charges, and taxes that were already in effect prior to the start of the constitution by any municipality or other local authority for the purposes of the State may continue to be levied and applied for the same objectives.

The appellant in Hyderabad Chemical and Pharmaceutical Works Ltd. v. State of Andhra Pradesh was a drug manufacturer that used alcohol for production, for which it needed permits issued under the Hyderabad Abkari Act and paid fees to the State Government for oversight. However, parliament passed the Medicinal and Toilet Preparations Act, 1955, under which no fee was required to be paid. However, the petitioner

challenged the levy of taxes by the state after the passage of the Medicinal and Toilet Preparations Act, 1955, on the grounds that the state could not impose any fee in accordance with Article 277, entry 84 of list 1 in the 7th schedule. It was clarified how tax and charge vary from one another. Tax revenues are distributed among all taxpayers, whereas fees are used exclusively to fund the service being provided.

Article 279

Methods for determining "net profits" are discussed here. Here, "net profits" refers to the amount that remains after the Comptroller and Auditor-General of India has determined and confirmed that all expenses related to collecting the tax have been paid.

Article 282

The authority to impose punishments under this system is not limited, and it is thus often reserved for one-off, short-term, or emergency measures. The Supreme Court of India said in the case *Bhim Singh v. Union of India & Ors* that welfare programmes have existed to promote public welfare and for public purposes via grants which have been given by the Union Government from the time of the application of the Constitution of India. As a development and welfare initiative conducted by the state, MPLAD (Member of Parliament Local Area Development Scheme) meets the definition of "public purpose" as set out in the Directive Principles of State Policy, but only if the necessary constitutional conditions are met. Both Article 275 and Article 282 of the Constitution may be used as justification for dispersing money. The authority to impose penalties under Article 282 is not limited and is thus often reserved for exceptional, transitory, or ad hoc programs. The Supreme Court ruled in *Cf. Narayanan Nambudripad, Kidangazhi Manakkal v. State of Madras* that religious observance is an inalienable right. Unless the state assumes control of a religious endowment for the public good and employs the assets for public benefit, the gifts and endowments provided by the religious institution are not a matter for the state. The public interest in using Article 282 is clear, but so is the potential for abuse in the name of that same public interest.

Article 286

This article restricts the power of the State to tax

- 1) Import/export taxation and taxes levied on residents of other countries are both off-limits to the state.
- 2) Only the legislature may establish rules for determining whether or not a transaction occurred during export, import, or outside the country. (Sections 3, 4, 5 of the Central Sales

Tax Act, 1956 have been constituted with these powers)

- 3) Parliament may place limitations on the ability of the State Government to impose taxes on the sale or purchase of items deemed to be of exceptional significance (Section 14 and Section 15 of Central Sales Act, 1956 have been constituted to impose restrictions on the state Government to levy taxes on these goods of special importance). According to court documents in the case of *K. Gopinath v. the State of Kerala*, the Cashew Corporation of India bought raw cashew nuts from Africa and then sold them to local consumers. The Supreme Court ruled that the transaction at issue did not qualify for an exemption under the Central Sales Tax Act, 1956 since it was not made in the course of an import. The question before the court was whether the appellants' (the cashew company of India) imports of raw cashew nuts from African sources are exempt from taxation under the Kerala General Sales Tax Act, 1963. The appellants in this case did not succeed in their attempt to overturn the verdict.

Article 289

The Union cannot tax the property or revenue of the states, although it may do so to the degree permitted by any legislation passed by parliament in this respect.

SOME OTHER TAX RELATED PROVISIONS IN CONSTITUTION OF INDIA

Article 301 with the exception of the situations described in Articles 302, 303, and 304 of the Indian Constitution of 1949, says that trade, commerce, and inter-course are not subject to any taxes in India.

Article 302 allows lawmakers to impose economic restraints in the name of public good.

Article 303 indicates that this article becomes relevant anytime products become scarce. Except in cases when there is a genuine shortage of a specific commodity in one state, the law forbids the federal government from showing favor to one state government over another.

Article 304 allows for taxes to be levied on products entering the state from other states and union territories, but prohibits preferential treatment of goods produced inside the state. The State also has the authority to regulate commercial activity inside its borders.

Article 366

Article 366, which provides the definition of, is another important article that should be included together with the others:

- Goods
- Services
- Taxation
- State
- Taxes that are levied on the sale/purchase of goods
- Goods and service tax etc.

CONCLUSION

Many various religious and ethnic groups, as well as socioeconomic classes, are represented in India's massive population. Equal taxation is impossible. That's why India's tax structure has been so convoluted for so long. The issue of tax evasion has been a source of contention in India, and it seems to be corroding the very foundation of our taxation system. Direct tax revenue collection is inefficient in India despite the country's high tax rate. As a result, the government has attempted tax cuts on several occasions. Even if tax rates are low, a country still needs an effective tax collecting system to avoid running out of money and having to scale down its development programs. The ability of the government to make retroactive adjustments to tax statutes is a major flaw in India's taxation system. After the Supreme Court's decision in *Chhotabhai Jethamal Patel & Co v. UOI & Others*, a law was changed to allow for the retroactive imposition of excise taxes.

With the introduction of GST, an all-encompassing indirect tax, the process has become more streamlined and the cascading impact it had been experiencing has been mitigated. In accordance with the 7th Schedule's breakdown of powers between the central government and the states and the people, the Indian Constitution includes funding allocation provisions in Chapter 2 of Part XII. Summing up, the rights of Parliament are not fixed, and the Indian Constitution grants Parliament broad authority. As a result, the aforementioned rules of law may be modified in the future as necessary. Inconvenient as it is, paying taxes is what makes possible the advancements and infrastructure on which we rely.

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