

## Constitutional Provisions Of Taxation Law In India

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### Abstract

Nation's economy depends on the system of taxations as tax is the most essential part to run economy so basically, taxes are generally an involuntary fee levied on an individual or corporation that is imposed by the government either state government or central government to finance the government activities. The 88th Amendment to the Constitution of India assigned the power to tax services to the central government. Only the Legislative Act allowed for a collection of taxes in India allows no other method. The government cannot introduce any other method. Any tax levied not backed by law or is beyond the powers of the legislating authority is unconstitutional. The latest reform reaches an innovative idea of GST with motives to subsume all indirect taxes at the center and the state level, to make one-country-one-tax, to reduce the cascading effect of taxes on taxes and thus to increase productivity and transparency, increase tax-GDP ratio and to reduce/eliminate tax evasion and corruption. This paper deals with the structure of the Indian tax system, its constitutional framework, and the current changes in the system. Though it is difficult to achieve the ideal objective, reforms help us to keep the focus on further reforms.

### Introduction

The nation's economy depends upon the system of taxations. The collection of tax is the most essential part of the nation. The taxation system can lead to revenue mobilization in response to growth and result in revenue grows faster than GDP. Tax is a compulsory contribution to state revenue, levied by the government on worker's income and business profits, or added to the cost of some goods, services, and transactions. <sup>1</sup> India offers a well-structured tax system. Tax is the source of revenue for the government. India's tax structure has three federal structures consisting of the central government, state government, and other local authorities. These authorities impose taxes and duties on individuals and corporate bodies within the country and the local authorities are mainly include municipal parties and the local councils. However, article 265<sup>2</sup> of the Indian Constitution states that Taxes not to be imposed save by authority of law No tax shall be levied or collected except by authority of law so basically Tax in India can only be composed by Legislative Act, no other method allowed. The government cannot lead to any other method.

Tax is classified into two categories i.e. direct tax and indirect tax. Direct tax is the tax imposed directly on the taxpayer and paid directly to the government by the taxpayer. It cannot be shifted to someone else. Direct taxes are income tax, corporate tax, perquisite tax, gift tax, and inheritance tax. Indirect tax is a tax collected by an intermediary from the person who bears the ultimate economic burden of the tax. It can be shifted to someone else and ultimately paid for by the end consumer of goods & services. Indirect taxes are custom duty, excise duty, service tax, GST Tax promotes savings as well as investments. If an individual makes a certain set of investments, a part amount of the same would be tax exempted, thereby enabling him or her to pay a reduced amount of taxes and helps to growth in GDP.

The evolution of the tax system in independent India started with the implementation of the report of the Taxation Enquiry Commission<sup>3</sup>. This was the first comprehensive attempt to review the existing tax system and design a system that would cover the central, state, and local taxes and was intended to fulfill a variety of objectives such as raising the level of savings and investment, transferring resources from the private sector to public sector, etc. On the indirect taxes side, a major simplification exercise was attempted by the Indirect Taxes Enquiry Committee. <sup>4</sup>Thus since the year 1991, the Indian tax system has undergone some significant change and these changes were initiated in accordance with the country's financial policies.

Until 2003 India's constitution didn't expressly assign to any level of the state the facility to tax services. In 2003 an amendment to the constitution specifically assigned the power to tax services to the central government and the 88th Amendment to the Constitution of India (Article 268 A). Article 268A<sup>5</sup> of the Indian constitution, 1949 deals with the Service tax levied by Union and collected and appropriated by the Union and the States. Further Omitted by the Constitution (One Hundred and First Amendment) Bill, 2016 as in present scenario tax on services has been carried in GST, such a provision is no longer required.

<sup>1</sup> Available at: <https://en.oxforddictionaries.com/definition/tax>

<sup>2</sup> Article 265 of Constitution of India

<sup>3</sup> Government of India. 1953. Report of the Taxation Enquiry Commission.(New Delhi: Ministry of Finance,1953

<sup>4</sup> Government of India 1977.Report of the Indirect Taxation Enquiry Committee.New Delhi :Ministry of Finance

<sup>5</sup> Article 286A of Constitution of India.

### Indian Constitution and Taxation

In a federal constitution, as is the case in India, since there is a distribution of powers between the federal and state governments, the question has sometimes been passed whether the federal or state legislature by exercise of its taxation power invade any region of legislation, although it is impliedly forbidden to enter it, and this by the simple process of making the liability to the tax depends upon matters with those regions. There are decisions from other federations in which taxes huge been struck down on the ground that such taxes invaded a legislative field demarcated exclusively for the other by the constitution. But the correct approach seems to be to treat such laws only as legitimate exercises of taxation power. The power to tax is an inherent sovereign power of a state to collect a contribution of money or other property from its citizens and the inhabitants of its territory for defraying its general expenditure as taxation as the source of the public revenue. The essential nature of tax lies in its being a burden or charge imposed by the legislative power on a person or property for public purposes. Taxation proceeds on the theory that the very existence of the government is a necessity and the taxpayer is supposed to receive his just compensation in the protection which government affords to life, liberty, and property. A federal constitution may delineate the taxing power of the federal and constitutional governments. Article 265<sup>6</sup> of the constitution provides that no tax shall be levied or collected except by authority of law but the word law in this sentence comprehended the power of the present of India and governor of the states, to make law by issuing ordinances.

The executive as well as the judiciary is powerless to impose any tax. The tax may be in money or kind. A system of levy of paddy from agriculturists during the harvest season may be viewed as a form of tax on agriculturists if proper conditions already stated are fulfilled. If however, the state pays the price of paddy of collect from the concerned person, then certainly it will lose the character of tax and will partake the character of acquisition. The conscription of men for service in armed forces and a system providing for compulsory public labor by citizens may be viewed as instances of taxes in kind. But all compulsory payments made in favor of the states are not taxes.

There are several articles in the constitution of India, which define the financial relations between Union and States such as Article 246 (Seventh Schedule) of the Indian Constitution contains the legislative powers (including taxation) of the Union Government and the State Governments. It contains the following 3 lists covering the various subjects:<sup>7</sup>

List I - Central List: It contains the areas where only the parliament i.e., Central Government can make laws (including taxation laws.),

List II—State List: It contains the areas in where only the State Legislature can make laws (including taxation laws), and

List III - Concurrent List: It contains the areas where both the Parliament and the State Legislature can make laws concurrently.

It is vital to notice that this list doesn't specify any law regarding taxation, there is no head of taxation under the concurrent list and hence Union and the State have no concurrent power of taxation. The constitution of India has followed the example of the United States of America in incorporating certain fundamental rights enforced by the Court of law. Part III of the constitution of India which deals with the fundamental right but the only provision which expressly deals with taxation power are Article 27 and Article 31(5) (b) (1) of the Constitution of India. But The Parliament can step in where a state legislature had been found incompetent to levy a tax to impose such tax and <sup>[11]</sup> ~~SEP~~end may even provide for retrospective operation.

Goods and Service Tax is a new revelation that is soon to make its appearance in the Indian Indirect Tax Regime. In the budget speech of 2010-11, the Indian Finance Minister has promised to attempt to make GST applicable in India from 2011 along with Direct Tax Code. On 8th September 2016, the 101st amendment of the constitution was passed. Article 246A<sup>8</sup> a Special Provision With Respect To Goods and Services Tax was inserted in the 101st amendment of the constitution. Article 246A provides that anything contained in articles 246 and 254, Parliament and the Legislature of every State, 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. Few important changes in the constitution were made to improve the taxation system via 101st amendment of the constitution:

ARTICLE 248, 250, 249, 269, 270, 271, 286, 366, 368, was amendment

Article 268A was omitted

Article 269A, 279A was inserted

The above mention changes are essential for the implementation of GST in the nation. The aim to bring about these amendments in the Constitution is to confer simultaneous power on Parliament and State legislatures to create laws for levying GST at the same time on each group action of offer and merchandise and Services. So basically these amendments deal with provisions for the Union and States with respect to the GST legislation. It also specifies that Parliament has exclusive power to form laws with relation to GST on interstate transactions. Thus, as per these provisions, Central Government and State Governments shall make the CGST and SGST Act respectively, while the IGST Act shall be made by Central Government only.

<sup>6</sup> Article 265 of Constitution of India.

<sup>7</sup> Article 246 of Constitution of India.

<sup>8</sup> Article 246A of Constitution of India.

GST may be a revenue enhancement on the provision of products and services, right from the manufacturer to the consumer. Credits of input taxes paid at every stage are going to be out there within the sequent stage of value addition. GST basically may be a tax solely on price addition at every stage. The final purchaser of the product or service will bear the GST charged by the last dealer within the offer chain, with set-off benefits at all the previous stages. Under GST, there would be only one tax from the manufacturer to the buyer, leading to transparency of taxes paid to the final consumer. So there will be relief in overall tax burden.

This is as a result of underneath the GST regime; the whole offer chain is going to be economical resulting in gains and interference of leakages. It is expected that it will result in the overall tax burden on most commodities to come down, which will benefit consumers and the main motive of GST is to make one-country-one-tax to reduce the cascading effect of taxes on taxes and thus to increase productivity and transparency, increase tax-GDP ratio and to reduce/eliminate tax evasion and corruption. These new changes to form a new direct tax code had been planned to expect that lower taxes and simpler rules will ensure compliance and more revenue.

### Case Laws

#### **Jagannath Bakah Singh v. State of Uttar Pradesh**<sup>9</sup>

Article 31(2) has no application to taxation law given Article 31(5) (b)(i). Article 31(2) would be inapplicable to a taxing statute because the taxing statute does not purport to acquire or requisition any property.

Ravi Verma Raish v. Union Of India<sup>10</sup> The tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, larger play to legislative discretion in the matter of classification.

**Shanti Swaroop Sharma v. State of Punjab**<sup>11</sup> It was held that it was more as akin to rent or compensation payable to an owner by the occupier or lease of land for the use or exploitation of resources contained in it. It was also laid down that merely because the provision with regard to royalty was made by statute or that uniform rates were prescribed throughout the state would not make it compulsory exaction in the nature of a tax

### Constitutional Provisions Relating to Taxation in India

the constitutional provisions relating to taxation in India are designed to ensure that both the Union and the States have the resources they need to function effectively, while also protecting the interests of taxpayers. Taxation is one of the most important sources of revenue for the government. It is used to fund essential services such as education, healthcare, and infrastructure.

In this article, we will discuss the constitutional provisions relating to taxation in India. We will explore the division of taxation powers between the Union and the States, as well as the restrictions on taxation powers. We will also discuss the importance of these provisions for the smooth functioning of the Indian economy.

#### Need for Constitutional Provisions Relating to Taxation

The Constitution divides taxation powers between the Union and the States in a way that gives the Union government the power to levy taxes on a wider range of items than the States. This is because the Union government has a wider range of responsibilities, such as national defence and foreign affairs. The States, on the other hand, have a more limited range of responsibilities, such as education and healthcare.

The Constitution also places some restrictions on the taxation powers of both the Union and the States. For example, the Constitution prohibits the Union government from taxing agricultural income and it prohibits the States from taxing inter-State trade and commerce. These restrictions are designed to protect the interests of taxpayers and to ensure that the taxation system is fair.

The constitutional provisions relating to taxation are complex and have been interpreted by the courts in a number of cases. However, the basic principles underlying these provisions are clear: to ensure that both the Union and the States have the resources they need to function effectively, while also protecting the interests of taxpayers.

#### Article 265

Article 265 of the Constitution of India states that no tax can be levied or collected except by the authority of law. This means that all taxes must be imposed by a valid law and that no tax can be levied or collected without the authority of law.

The law here means only a statute law or an act of the legislature. The law when applied should not violate any other constitutional provision. This article acts as an armour against arbitrary tax extraction.

In the case of **Tangkhu v. Simerei Shailei**, the [Supreme Court](#) held that the practice of villagers paying Rs. 50 a day to the headman in place of a custom to render free a day's labour was a collection of tax and that no law had authorised it. Therefore, it violated Article 265.

<sup>9</sup> A.I.R.(1962) S.C. 1563,1571.

<sup>10</sup> A.I.R (1969) S.C. 1098

<sup>11</sup> A.I.R (1969) PUNJ..79,90

In the case of **Lord Krishna Sugar Mills v. UOI**, the Supreme Court held that the government had no authority of law to collect additional excise duty on sugar merchants who fell short of export targets in a promotion scheme started by the government. This is because the government had not passed a law to authorise the collection of this tax.

These cases illustrate the importance of Article 265 in protecting citizens from arbitrary taxation. This article ensures that taxes can only be levied by a valid law and that no tax can be levied without the authority of law. This helps to prevent the government from imposing excessive or unfair taxes on citizens.

#### Article 269

Article 269 of the [Constitution of India](#) provides the list of various taxes that are levied and collected by the Union and the manner of distribution and assignment of Tax to States. These taxes include taxes on income other than agricultural income, taxes on corporation tax and duties of customs.

The taxes mentioned in Article 269 are levied and collected by the Union government, but the proceeds are assigned to the States. This is done to ensure that the States have a fair share of the tax revenue and that they are able to raise the resources they need to provide essential services to their citizens.

The case of **M/S. Kalpana Glass Fibre Pvt. Ltd. Maharashtra v. State of Orissa and Others** is an example of how Article 269 has been interpreted by the courts. In this case, the Supreme Court held that the State Sales Tax Act was not applicable to sale or purchase in the course of interstate trade or commerce. This is because Article 269 prohibits the levy and collection of tax on sale or purchase in the course of interstate trade or commerce.

#### Article 277

Article 277 of the Constitution of India provides that cesses, fees, duties or taxes which were levied immediately before the commencement of the Constitution by any municipality or other local authority for the purposes of the State, despite being mentioned in the Union List, can continue to be levied and applied for the same purposes until a new law contradicting it has been passed by the Parliament.

This article was enacted to protect the interests of the States and the local authorities. It ensures that the States and the local authorities can continue to raise revenue from taxes that were already being levied before the commencement of the Constitution. This revenue can then be used for the benefit of the people of the State or the local area.

The case of **Hyderabad Chemical and Pharmaceutical Works Ltd. v. State of Andhra Pradesh** is an example of how Article 277 has been interpreted by the courts. In this case, the Supreme Court held that the State government could continue to levy a fee on the appellant for the supervision of the use of alcohol in the manufacture of medicines, even though the Parliament had passed a law that prohibited the levy of fees on the manufacture of medicines.

The Court held that the fee levied by the State government was a “cess” and not a “tax”. A “cess” is a tax that is levied for a specific purpose, while a “tax” is a tax that is levied for general revenue. The Court held that the fee levied by the State government was for the specific purpose of supervising the use of alcohol in the manufacture of medicines and therefore it was a “cess” and not a “tax”. Article 277 is an important article that protects the interests of the States and the local authorities. It ensures that they can continue to raise revenue from taxes that were already being levied before the commencement of the Constitution. This revenue can then be used for the benefit of the people of the State or the local area.

#### Article 282

Article 282 of the Constitution of India provides for grants by the Union government to the States for any public purpose. The grants can be made for special, temporary or ad hoc schemes. The power to grant sanctions under Article 282 is not restricted.

In the case of **Bhim Singh v. Union of India & Ors**, the Supreme Court held that the Member of Parliament Local Area Development Scheme (MPLAD) falls within the meaning of “public purpose”. The MPLAD scheme is a scheme by which Members of Parliament can use funds to undertake development projects in their constituencies. The Supreme Court held that the MPLAD scheme is a public purpose because it helps to improve the lives of people in the constituencies of Members of Parliament.

In the case of **Cf. Narayanan Nambudripad, Kidangazhi Manakkal v. State of Madras**, the Supreme Court held that the practice of religion is a private purpose. Donations and endowments made for religious purposes are therefore not a state affair unless the state takes over the management of the religious endowment for a public purpose and uses the funds for public welfare measures.

Article 282 can be used for a public purpose, but it can also be misused. It is important that the grants made under Article 282 are used for genuine public purposes and not for political or personal gain.

#### Article 286

Article 286 of the Constitution of India restricts the power of the States to tax. It states that the States cannot:

- Impose taxes on imports or exports.
- Impose taxes on sales or purchases that take place outside the territory of the State.
- Impose taxes on goods that are of special importance, unless the Parliament has authorized them to do so.

The Parliament has the power to lay down principles to determine when a sale or purchase takes place during import or export or outside the territory of the State. The Parliament can also restrict the power of the States to tax goods of special importance.



The case of **K. Gopinath v. the State of Kerala** is an example of how Article 286 has been interpreted by the courts. In this case, the Supreme Court held that the sale of cashew nuts by the Cashew Corporation of India to local users was not in the course of import and did not come under an exemption of the Central Sales Tax Act, 1956.

The issue before the court was to decide whether the purchases of raw cashew nuts from African suppliers made by the appellants from the cashew corporation of India) fall under the nature of import and, therefore protected from liability to tax under Kerala General Sales Tax Act, 1963. The judgment here went against the appellants.

Article 286 is an important article that protects the interests of the Union government. It ensures that the States cannot impose taxes on goods that are of national importance and that they cannot tax imports or exports. This helps to create a level playing field for businesses across the country and it helps to promote economic growth.

### **Some Other Tax-Related Provisions in the Constitution of India**

Article 301 of the Constitution of India guarantees freedom of trade, commerce and intercourse throughout the territory of India. This means that goods and services can be freely transported and sold across the country, without any restrictions. Article 302 empowers the Parliament to impose restrictions on trade, commerce and intercourse in the interest of the general public. For example, the Parliament can impose restrictions on the import of goods that are harmful to public health or safety.

Article 303 allows the Parliament to give preference to one State over another in the matter of trade, commerce and intercourse if there is a scarcity of goods in that State. For example, the Parliament can give preference to a State that is facing a drought, so that the people of that State can get foodgrains at a cheaper price.

Article 304 allows a State government to impose taxes on goods imported from other States and Union Territories. However, the State government cannot discriminate between goods from within the State and goods from outside the State. The State government can also impose some restrictions on freedom of trade and commerce within its territory, but these restrictions must be reasonable and in the interest of the general public.

Article 366 defines the following terms:

- **Goods:** This includes all movable property, including animals and birds.
- **Services:** This includes any activity that is not the sale of goods.
- **Taxation:** This includes the imposition of taxes, duties, cess and tolls.
- **State:** This includes a Union territory, but does not include a Union territory that is a part of a State.

Taxes that are levied on the sale/purchase of goods: This includes all taxes that are levied on the sale or purchase of goods, including value-added tax (VAT).

Goods and service tax (GST): This is a single tax that is levied on the sale or purchase of goods and services.

### **Conclusion**

The constitutional provisions relating to taxation in India are complex and have been interpreted by the courts in a number of cases. However, the basic principles underlying these provisions are clear: to ensure that both the Union and the States have the resources they need to function effectively, while also protecting the interests of taxpayers.

The Constitution divides taxation powers between the Union and the States in a way that gives the Union government the power to levy taxes on a wider range of items than the States. This is because the Union government has a wider range of responsibilities, such as national defence and foreign affairs. The States, on the other hand, have a more limited range of responsibilities, such as education and healthcare.

The Constitution also places some restrictions on the taxation powers of both the Union and the States. For example, the Constitution prohibits the Union government from taxing agricultural income and it prohibits the States from taxing inter-State trade and commerce. These restrictions are designed to protect the interests of taxpayers and to ensure that the taxation system is fair.

The constitutional provisions relating to taxation are essential for the smooth functioning of the Indian economy. They ensure that the government has the resources it needs to provide essential services, while also protecting the interests of taxpayers.

The Constitution of India envisages a sovereign democratic republic to secure to all its people's social and economic justice. Though the Constitution does not subscribe to any definite economic theory as such, certain provisions of the directive principles of state policy certainly indicate that what is intended to achieve is a society, where social and economic equality exists. Moreover, the Constitution is very important in relation to taxation. Understanding of every law, the validity of subordinate legislation and administrative actions must be in the background of the provisions of the Constitution. The Indian taxation system has witnessed several modifications over the years.

There has been the standardization of income tax rates with governing laws enabling common people to recognize the same. This has resulted in ease of paying taxes, improved compliance,

and enhanced enforcement of the laws. Though in this paper, little attention has been paid to dwell on Central Council of Finance ministers, this is a very important aspect that constitution must address whereas in India there was a requirement



of a simplified form of taxation with greater emphasis on income tax - e tax on all types of income and receipts (whether agricultural, non-agricultural, capital u receipt or revenue receipt, etc..) a wealth tax, and a tax on estate or inheritance, apart from other duties like excise duty, customs duty and sales tax. Only by efficient taxation of income wealth and succession concentration of wealth can be prevented.

This problem was solved by passing the GST amendment as If each state is allowed to tinker with GST tax base and rate, then, there will be every possibility that this noble work will not bring any better situation than that is prevalent today. These above are some of the issues that need to be dealt with by constitutional amendments in the process of introducing GST In India.