

5. Constitutional Basis of Tax in India

By: Sonali Sethi

Pg. No: 60-69

i. 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.

Table of Contents

S. No.	Title	Pg. No.
i.	Abstract	61
1.	Introduction	63
2.	Indian Constitution and Taxation	64
3.	Case Laws	67
4.	Conclusion	68

1. 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.⁷⁷ 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 265⁷⁸ 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 Commission⁷⁹. 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

⁷⁷ Available at: <https://en.oxforddictionaries.com/definition/tax>

⁷⁸ Article 265 of Constitution of India

⁷⁹ Government of India. 1953. Report of the Taxation Enquiry Commission.(New Delhi: Ministry of Finance,1953

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.⁸⁰ 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 268A⁸¹ 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.

2. 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 have 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

⁸⁰ Government of India 1977. Report of the Indirect Taxation Enquiry Committee. New Delhi :Ministry of Finance

⁸¹ Article 286A of Constitution of India.

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 265⁸² 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 or 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:⁸³

- **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

⁸² Article 265 of Constitution of India.

⁸³ Article 246 of Constitution of India.

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 ^[11]_{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 246A⁸⁴ 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.

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

⁸⁴ Article 246A of Constitution of India.

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.

3. Case Laws

Jagannath Bakah Singh v. State of Uttar Pradesh⁸⁵

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.

⁸⁵ A.I.R.(1962) S.C. 1563,1571.

Ravi Verma Raish v. Union Of India ⁸⁶

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 ⁸⁷

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.

4. Conclusion

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,

⁸⁶ A.I.R (1969) S.C. 1098

⁸⁷ A.I,R (1969) PUNJ..79,90

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.