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## **About Us**

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**“Dharma is to protect the Needy”**

**Article on**

**TAXATION LAW IN THE CONSTITUTION OF INDIA 1949**

**- Nancy maggo**

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**ABSTRACT :-** Taxation is crucial to the functioning of the Modern State. Tax revenues pay for the public services.- roads, the court, defence, welfare assistance, and in many countries much of health care and education too. More than one third of National income in the industrialized ( OECD) countries is, on average, taken in taxation. Taxes affects individuals in many ways. Taxation. A very short Introduction explains the role that taxes play in a modern economy and describes some of the main taxes used by the most developed and developing countries. It is consider the key issues : the question of where the burden of taxation really lies, how taxation affects the economy , and the effects of tax evasion and tax avoidance. The roots of every law in india lie in the Constitution , therefore understanding the provisions of the constitution is foremost to have a clear understanding of any law. The Constitutional provisions regarding taxation in India can be divided into the following categories:

- Only by the Authority of Law can taxes be levied ( Article 265)
- Levy of duty on tax and its distribution between centre and states(Article 268, 269, and 270)
- Restriction on power of the states to levy taxes ( Article 286)

The levying of taxes can be divided into three successive phases:

- 1) Assessment , or the definition of the exact amount of subject of taxation under the statute
- 2) Computation or Calculation
- 3) Enforcement

The limits to the right of the public authority to impose taxes are set by the power that is qualified to do so under constitutional Law.

## **INTRODUCTION:-**

The system of taxation is the backbone of a nation's economy which keeps revenue consistent, manages growth in the economy , and fuels its industrial activity . India three tier federal structure consists of Union government, the State Government, and the Local bodies which are empowered with the responsibility of the different taxes and duties, which are applicable in the country. The Local Bodies would include the local councils and the municipalities. The government of india is authorized to levy taxes on individuals and organizations according to the constitution. Taxes have been lifeblood for good governance. Contemporary ambitious development schemes for all round progress of the society rests on the revenue, generated through the medium of taxation. The power to levy taxes is vested with the Sovereign . The tax proceeds go to the general revenues of the states and the tax payers gets no return for the contribution , but only participates in the common benefits derived by all.

Article 265 of the Indian Constitution states that the right to charge taxes has not been given to any except the authority of law. The 7<sup>th</sup> schedule of the constitution has defined the subjects on which Union/States or both can levy taxes. As per the 73<sup>rd</sup> and 74<sup>th</sup> amendment of the constitution, limited financial powers have been given to the local government which are enshrined in part IX and IX-A of the constitution.

## **WHAT IS TAXATION?**

Taxation is a term for when a Taxing authority, usually a government , levies or imposes a financial obligation on its citizens or residents. Paying taxes to governments or officials has been a mainstay of civilization since ancient times. The Term “Taxation” applies to all the types of involuntary levies, from income to capital gains to estate taxes. Though taxation can be a noun or verb , it is usually referred to as an act; the resulting revenue is usually called “taxes”. <sup>1</sup>

## **DEFINITION OF TAX :-**

A tax is a mandatory fee or financial charge levied by any government on any individuals or an organization to collect revenue for public works providing the best facilities and infrastructure . The collected fund is then used to fund different public expenditure programs .If one fails to pay the taxes or refuse to contribute towards it will invite serious implications under the pre-defined law . <sup>2</sup>

**According to Justice Oliver Wendell Holmes**, “Tax is what we pay for the civilized society”.

## **HISTORICAL BACKGROUND OF INCOME TAX ACT – 1961**

In India , for the first time, Income Tax introduced in 1860 by Income Wilson.

**1860-** The Tax was introduced for the first time by Sir James Wilson India's First “ Union Budget” introduced by pre-independence finance minister , James Wilson on 7<sup>th</sup> April ,1860 .The Indian Income Tax act of 1860 was enforced to meet the losses sustained by the government on account of the military mutiny of 1857.Income Tax was divided into four schedules taxed separately:

1 Income from landed property

2Income from professions and trades

3 Income from securities

4 Income from Salaries and pensions

Time to times this act was replaced by several license taxes.

**1886-** In the 1886 the Separate income tax act was passed. This act remained in force upto, with various amendments from time to time .

**1918-** In this year A new income tax was passed. The Indian tax of 1918 repealed the Indian Income Tax of 1886

**1922-** Again it was replaced by another new act which was passed in 1922. The history of Income Tax Department starts in the year 1922. The Income Tax Act of 1922 had become veru complicated on account of innumerable amendements .

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<sup>1</sup>[www.investopedia.in](http://www.investopedia.in)

<sup>2</sup>[www.groww.in](http://www.groww.in)

1961 – In consultation with the Ministry of Law finally the Income tax , 1961 was passed. This Act has been brought into force with 1<sup>st</sup> April 1962. It applies to the whole of India (including Jammu and Kashmir )

Since 1962 several amendments of far reaching nature have been made in the Income Tax Act by the Union Budget every year which also contains finance Bill . After it is passed by both the houses of Parliament and receives the assent of the president of India, it becomes the Finance Act.<sup>3</sup>

### **TAXATION SYSTEM IN INDIA :-**

India's tax system is a three tier federal structure which is made up of the following:-

- UNION LIST ( List 1 of the 7<sup>th</sup> 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)
- The CONCURRENT LIST has those matters on which both the Central and State Government have the power to make laws. (Article 246(2))

Law made by Union Government prevails whenever there is a conflict between the Centre and State concerning entries in the concurrent list. But if any provisions repugnant to earlier law made by parliament is part of law made by the state , if the law made by the state government gets the assent of the president of India , it prevails.<sup>4</sup>

**CASE:- Commissioner of Income Tax vs Amitabh Bachchan Corporation<sup>5</sup>** The assessee filed his return of income ,filed a revised return in which he claimed security expenses of 3crore then afterward Assessment when the assessing officer asked for the detailed of expenditure where did it come then he was told that I have cash balance at home but AO was not cleared about that and attract the section 69 (c) that is unexplained expenditure .

**Supreme Courts decision :-** The Apex Court , accordingly , held that the order of the Tribunal setting aside the revisional order on the ground that it went beyond the show cause notice was not sustainable .It further held that the High Court having failed to fully deal with matter , its order was not tenable.<sup>6</sup>

### **TYPES OF TAXES:-**

There are two type of taxes namely, **Direct Tax** and **Income tax**. The implementation of both taxes differs. You pay some of them directly, like the cringed Income tax , corporate tax, and wealth tax etc. while you pay some of the taxes indirectly ,like sales tax , services taxes, and

<sup>3</sup> [www.gurutax.in](http://www.gurutax.in)

<sup>4</sup> [The constitutional law of india page no-672, 7<sup>TH</sup> Schedule Article 246 ,3<sup>rd</sup> para DR.J.N.Pandey](http://The constitutional law of india page no-672, 7TH Schedule Article 246 ,3rd para DR.J.N.Pandey)

<sup>5</sup> Commissioner of Income Tax vs Amitabh Bachchan AIR 2003 183 CTR Bom350, 2003 261 ITR 45 Bom

<sup>6</sup> [www.itatonline.org](http://www.itatonline.org) case 5

value added tax etc. However apart from two traditional taxes, there are other taxes also, which has been affected to serve a specific agenda by the country's central government .

### 1) **DIRECT TAX**

As stated earlier, you pay these taxes directly. The government levy such taxes directly on an individual or an entity and it cannot be transferred to any other person or entity. There is only one such federation that winks at the direct taxes, i.e the central board of direct taxes governed by the department of revenue .The CBDT has , to assist it with its sense of duties, the backup of several acts that preside over several aspects of the direct taxes.

#### **Case PR. CIT V. MARUTI SUZUKI INDIA LTD. (2019)**<sup>7</sup>

**Supreme court decision:-** In the Present case , Despite the fact that the assessing officer was informed of the amalgamating company having(s) ceased to exist as a result of the approved scheme of amalgamation .The jurisdictional notice was issued in the name of the amalgamating company. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamating , The supreme court,accordingly , held that the initiation of assessment proceeding on a non existent entity (S in this case) void-ab-initio and participation in the proceedings by the appellant amalgamated company(M in this case )In the circumstances cannot operate as an estoppels against Law .<sup>8</sup>

#### **Example of Direct Tax Direct**

- 1.Income Tax
- 2.Capital gains Tax
- 3.Securities Transaction Tax
4. Perquisite Tax
- 5.Corporate Tax

#### **A few of these act are as under;**

- Income Tax Act
- Wealth Tax Act
- Gift Tax Act
- Expenditure Tax Act
- Interst Tax Act

#### **INCOME TAX ACT**

<sup>7</sup> PR. CIT V. Maruti Suzuki India Ltd. 25 july 2019

<sup>8</sup> <https://indiamkanoon.org>

Income tax act is called the IT Act ,1961 .Income TAX in India is governed by the rules set by this act .The income taxed by this act can be generated from any source such as profits received from salaries and investments , owing a property or a houses , a business ,etc.

### **WEALTH TAX ACT**

The Wealth tax act come into effect in the year 1951 and is in charge of taxation linked with an individual net wealth , a hindu unified family or a company .

### **GIFT TAX ACT**

If a person received gifts or presents , valuables or monetary , he has to pay a tax on those gifts .The Tax on aforementioned gifts was sustained at 30 percent but it was given , and it was some what like shares , jewellery , property, etc.

### **EXPENDITURE TAX ACT**

The expenditure Tax Act came into existence in the year 1987 and cope with the expenditure made by you , as a person , may incur whilst you avail the services of a restaurant or a hotel .It is appropriate to the entire nation other than Jammu and Kashmir .

### **INTERST TAX ACT**

This Act of 1974 copes with the tax, which was chargeable on interest produced in some specific situations. In the Acts last amendment, it is stated that this act is not applicable to interest earned after march 2000.

### **2) INDIRECT TAX**

The taxes levied on goods and services are referred to as indirect taxes . They are different from taxes as they are not imposed on an individual who shells out them directly to the Indian government , they are , as an alternative , imposed on the products and an intermediary , the individuals selling the products , collect them.The most trivial examples of the indirect taxes are Sales tax , Taxes levied on imported goods, Value Added tax ,etc. Such taxes are imposed by summating them with the price of the product or services that likely to push the price of the product up.

### **A few of these Act under as :-**

- Sales Tax
- Service Tax
- Value Added Tax
- Custom Duty
- Excise Duty

## **SALES TAX**

The tax imposed on the sale of any product is called sales tax. This product can be anything in India itself or imported and can be cover services provided. The sales taxes is levied on the products seller who then passes it to the individual who buys the said product with this tax summated to the product price.

### **CASE :- Ramavatra v. Assistant Sales Tax Officer**

Three petitions under Article 32 of the Constitution challenging the imposition of Sales Tax officer, Akola. The Petitioner in the three petition are dealer in betel leaves at Akola, challenging the taxing of betel leaves under the C.P and berar sales tax act,1947. The appellant contended that no such tax could be levied as betel leaves were vegetables, on the sale of which no tax could be imposed.<sup>9</sup>

**Judgement:-** The court applied the literal rule and held that vegetables are to be construed as understood in common language and betel leaves will not fall under this category. Hence, they were taxable.<sup>10</sup>

## **SERVICE TAX**

As sales tax, the services taxes also summated to the prices of the product sold in the country. In the budget 2015, the FM announced that the rates of services tax will be elevated to the 14 percent from 12.36 percent. It is not charged on goods but on the companies that offers services and once every quarter or every month it is collected on the way services are offered.

## **Goods and Services Tax – GST**

The GST, i.e Goods and Service Tax is the biggest reform in the structure of indirect tax in India since the market began unlocking 25 years back. The goods and Services tax is a consumption is taking place. The GST is imposed on the value-added services and goods at every stage of consumption in the supply chain. The GST chargeable on the acquisition of the goods and services can be redeemed against the GST chargeable on the supply of the goods and services. The vendors will have to make payment of the GST on the applicable rate but he can claim it back via the tax credit method.

### **Case:- Krupa Trading company v. C.C.E AND S.T Valsad**

The Ahmedabad bench of the customs excise and service tax appellate tribunal (CESTAT) has held that the Input Tax can't be denied merely because invoice bears handwritten serial number.<sup>11</sup>

<sup>9</sup> Ramavatra v. Assistant Sales Tax Officer 1961v AIR 1325, 1962 SCR(1)279

<sup>10</sup> <http://www.casemine.com>

<sup>11</sup> <https://taxguru.in> krupa Trading Company v. C.C.E And S.T Valsad.20 March,2020

## **VALUE ADDED TAX**

Value Added Tax, popularly known as commercial tax is not chargeable on the commodities , which are zero rated for food and necessary drugs or those falling under exports. VAT is imposed at all the steps of the supply chain , from manufacturers to dealers to distributors to the end users.

## **CUSTOMS DUTY AND OCTROI**

While you buy anything that requires being imported from abroad , you are applied a charge on it and that is known as the customs duty. <sup>12</sup>

## **SCHEME OF TAXATION LAW**

Constitutionally established scheme of taxation. Article 246 of the Indian Constitution, distributes legislative powers including taxation , between the Parliament of India and the state Legislature.

Every Person whose income in the previous year exceeds the maximum amount not chargeable in income tax act the rates given in the income taxation act, 1961, and Finance Act in the assessment year. However the income is determined on the basis of the residential status in India.

## **CONSTITUTIONAL PROVISIONS REGARDING TAXATION IN INDIA**

The roots of every law in India lie in the constitution , therefore understanding the provisions of the constitution is foremost to have a clear understanding of any law. These are divided under following categories:-

### **Article 265 (Only by the authority of law can taxes be levied )<sup>13</sup>**

No Taxes can be collected is what this article means in a simple terms. The law when applied should not violate any other constitutional provisions.

In the case , **Lord Krishna Sugar Mills v. UOI**, sugar merchants had to meet some exports targets in a promotion scheme started by the government but if they fell short of the targets then an additional excise duty was to be levied in the shortfall. The court intervened here and said that the government had no authority of law to collect this additional excise tax. What this means in effect is that the government on its own cannot levy this tax by itself because it has not been passed by the parliament. <sup>14</sup>

### **Article 268, 269, 270 :-( Levy of duty on tax and its distribution between centre and states)**

Article 268- This gives the duties levied by the union government but are collected and claimed by the state governments such as stamp duties, excise on medicinal and toilet preparations which although are mentioned in the union list and levied by the government of India but collected by states do not form a part of the consolidated fund of India but are with the state only with in

<sup>12</sup> [www.groww.in](http://www.groww.in)

<sup>13</sup> The Constitutional Law of India Page no.687 JN Pandey

<sup>14</sup> <http://indiankanoon.org> Lord Krishna Sugar Mills v. UOI 1959 AIR 1124, 1960 SCR(1)226

which these duties are eligible for levy except in union territories which are collected by the government of India.<sup>15</sup>

Article 269- Levied and collected by the union and the manner of distribution and assignment of tax to states.<sup>16</sup>

Article 270 –This article gives the provision for the taxes levied and distributed between the union and the states:

All the taxes and duties named with in the Union List , except the duties and taxes named in articles 268,269 and 279(A) separately. These are cases on the particular fuctions which are specific in Article 271 under any law created by parliament are extracted by the Union Government .

The Supreme Court of India has a set a famous judicial precedent under Article 270 of the Constitution of India in the **Case T.M Kanniyam v. I.T.O.** , The SC, In this case, propounded that the Income –Tax-collected forms a part of the consolidated Funds of India.

**ARTICLE 271:-** Article 270 by levying an additional surcharge on them and the proceeds from them form a part of the Consolidated fund of India. The collection of the surcharge is also done by the union and the state has no role to play in it.

**CESS AND SURCHARGE** ;-Article 271 deals with the surcharge which is nothing but an additional tax on the particular purpose .Proceeds from the both the cess and surcharge form part of the consolidated Fund of India .

In the Case, **m/s SRD Nutrients Private LTD.V. Commisioner of Central Excise, Guwahati**, The SC was presented with the question : If on excisable goods an education cess can be levied before the imposition of cess on goods manufactured but the cleared after imposition of such cess. The judgment given in this case was in favour of the manufacturer but the judges, Justice AK Sikri and Justice Ashok Bhushan observed that education and higher education cess are surchargee.<sup>17</sup>

### **GRANTS –IN- AID** <sup>18</sup>

The constitution has provisions for sanctioning grants to the states or others federating units. It is Central Government financial assistance to the states to balance the financial requirements of the units when the revenue proceeds go to the centre but the welfare measures and fuctions are entrusted to the states.

### **ARTICLE 273 :-**

<sup>15</sup> The Constitutional Law of India page no.687 DR.J.N Pandey

<sup>16</sup> The constitutional law of India pageno. 688 DR J.N Pandey

<sup>17</sup> <http://www.indianemployees.com> M/S SRD Nutrients Private Ltd. V. CCE , Guwahati 10 november, 2017

<sup>18</sup> The Constitutional Law of India page no.690 DR JN Pandey

This grants is charged to the consolidated fund of India every year in place of any share of the net proceeds , exports duty on products of jute to the states of Assam, Bihar, Orissa, and West Bengal.

#### **ARTICLE 275:-**

These grants are sanctioned as the parliament by law decides to gives to those states which are in dire need of funds . These funds are mainly used for the development of the state and for the widening of the welfare measures undertaken by the states government .

#### **ARTICLE 277:-<sup>19</sup>**

Except for cess , fees, duties or taxes which were levied immediately before the commencement of the constitution by any municipality or local body 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. In the **case Hyderabad chemical and Pharmaceutical Works Ltd. V. State of Andhra Pradesh** the appellant was manufacturing medicines for making which they had to use alcohol, the licenses for which were procured under the Hyderabad Abkari Act and had to pay some fees to the State Government for the supervision. But the parliament passed the Medicinal and Toilet Preparations Act, 1955 under which no fee had to be paid but the petitioner challenged the levy of taxes by the state after the passing of the Medicinal and Toilet Preparations Act, 1955 because according to Article 277, entry 84 of list 1 in the 7th schedule, the state could not levy any fee. The difference between tax and fee was explained. Proceeds from tax collection are used for the benefit of all the taxpayers but a fee collected is used only for a specific purpose.<sup>20</sup>

#### **ARTICLE 279 :-**

This article deals with the calculation of Net proceeds . etc .Here net proceeds means the proceeds which are left after deducting the cost of collection of the tax , ascertained and certified by the comptroller and auditor General of India.<sup>21</sup>

#### **ARTICLE 282:-**

In the case, **Bhim Singh v. Union of India and Ors** , the SC held that from the times of the applicability of the constitution of India , welfare schemes have been there intending to advance public welfare and for public purposes by grants which have been disbursed by the union government .<sup>22</sup>

#### **Article 366 :-**

Apart from all the these provisions , there are other provision also that requires mention such as Article 366 which gives the definition of :

<sup>19</sup> The Constitutional law of India page no. 690 DR J. N Pandey

<sup>20</sup> Hyderabad Chemical and Pharmaceutical works Ltd. V. State of AP 20March,1964

<sup>21</sup> The Constitutional law of India pageno 691. D JN Pandey

<sup>22</sup> Bhim Singh v. Union of India and ors 24 january, 2014

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

### **CONCLUSION :-**

India is a big country with the people belonging to the different communities and different wealth groups and income . Taxation to all cannot be the same .This is the reason for the tax system in india being a complicated . cone for the long. India has been grappling wuth the problem of tax evasion which seems to be making our taxation system hollow from the core. In India tax rate has a high but a low yield of direct sales. One of the biggest problem faced by india.s taxation system is the power of the government to make retrospective amendments regarding the tax status.The practice began with the judgement given by the supreme court in the case of **Chotabhaijethamal patel v co v. UOI and others** after which an amendment bill was passed for retrospective levy of excise duties.

After the implementation of the gst which is an all inclusive indirect tax , the process has become smoother and helped prevent the cascading effect it had earlier. Paying taxes may not be the best task, however, it pays for all development and infrastructure that one enjoy.

