

INTERPLAY BETWEEN THE CONSTITUTION OF INDIA AND TAX LAWS

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THE CONSTITUTION OF INDIA, 1950

- Adopted by the Constituent Assembly on **26 November 1949**, after deliberations lasting for a period of 2 years, 11 months and 17 days in total
- India, that is Bharat, became a Republic on **26 January 1950** when the Constitution of India came into effect
- Our Constitution originally consisted of 395 articles divided into 22 Parts and 9 Schedules.
- Amended over a 100 times since, now consists of around 450 Articles divided into 24 Parts and 12 Schedules

IS OUR CONSTITUTION A BORROWED CONSTITUTION?

SOME SOURCES OF OUR CONSTITUTION ALONG WITH THE RELEVANT ASPECTS OF OUR CONSTITUTION TO WHICH THEY HAVE CONTRIBUTED

- **Government of India Act, 1935** – Federal Scheme, Office of Governor, Judiciary, Emergency provisions, etc.
- **United Kingdom** – Parliamentary form of Government, Rule of Law, Legislative Procedure, Single Citizenship, etc.
- **Ireland** – Directive Principles of State Policy, Nomination of members to Rajya Sabha, Method of Election of President, etc.
- **United States of America** - Fundamental Rights (Bill of Rights), Independence of Judiciary, Judicial Review, Impeachment of President and Removal of Judges, etc.
- **Union of Soviet Socialist Republics (now Russia)** - Fundamental Duties
- **France** – The ideals of **Liberty, Equality and Fraternity** which form part of our Preamble

SOME ARTICLES OF THE CONSTITUTION IN RELATION TO TAX LAWS

- **Article 246** – Subject-matter of laws made by Parliament and by the Legislatures of States.
- **Seventh Schedule – List I (Union List)**
 - Entry 82:
 - Entry 85:
 - Entry 86:
- **Article 265** – Taxes not to be imposed save by authority of law
- **Article 366(28)** – Definition of ‘Taxation’
- **Article 366(29)** – Definition of ‘Tax on income’
- **Article 14** – Equality before law
- **Article 21** – Protection of life and personal liberty
- **Article 51A** – Fundamental Duties

CHARGING SECTION OF THE INCOME-TAX ACT, 1961

➤ *SECTION 4 OF THE INCOME-TAX ACT, 1961*

4. (1) Where any *Central Act* enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :

➤ *SECTION 4 OF THE INCOME-TAX BILL, 2025*

4. (1) Income-tax for any tax year shall be charged as per the provisions of this Act ***at the rate or rates which are enacted by a *Central Act**** for such tax year.

(2) The charge of income-tax under sub-section (1) shall be on the total income of the tax year of every person as per the provisions of this Act.

(3) Income-tax shall also include any additional income-tax, by whatever name called, levied under this Act

ARTICLE 246 – SUBJECT MATTER OF LAWS MADE BY PARLIAMENT AND STATE LEGISLATURES

- **Article 246(1):** - (1) *Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in **List I in the Seventh Schedule** (in this Constitution referred to as the “**Union List**”).*
 - Entry 82: Taxes on income other than agricultural income
 - Entry 85: Corporation tax
 - Entry 86: Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
- **Article 246(2) : Concurrent List** – Parliament and State Legislatures both have the power to make laws - **List III in the Seventh Schedule**
- **Article 246(3) : State List** – States have exclusive power to make laws - **List II in the Seventh Schedule**

EXEMPTION OF AGRICULTURAL INCOME UNDER THE INCOME-TAX ACT, 1961

- **Section 10(1) of the Income-tax Act, 1961:** exempts agricultural income
- **Entry 82 in List I of Schedule VII:** Taxes on income **other than agricultural income**
- **Entry 86 in List I of Schedule VII:** Taxes on the capital value of the assets, **exclusive of agricultural land**, of individuals and companies; taxes on the capital of companies.
- **Entry 46 in List II of Schedule VII:** Taxes on agricultural income
- **Article 366(1):** Defines the term “***agricultural income***” to mean agricultural income as defined for the purposes of the enactments relating to Indian income-tax
- **Section 2(1A) of the Income-tax Act, 1961:** defines the term “agricultural income”

ARTICLE 265 – TAXES NOT TO BE IMPOSED SAVE BY AUTHORITY OF LAW (1/3)

Article 265: - It states that *‘No tax shall be levied or collected except by authority of law’*.

The meaning of various terms used in this Article is elaborated as follows:

- **Tax:** Defined in Article 366(28) as *‘including the imposition of any tax or impost, whether general or local or special, and tax shall be construed accordingly’*.

➤ **Commissioner of Income-tax, Udaipur Rajasthan vs McDowell & Co. Ltd., [2009] 180 Taxman 514 (SC):**

13. The 'Tax', 'Duty', 'Cess' or 'fee' constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. **This power can be exercised in any of its manifestation only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only expression that no 'tax' shall be levied and collected except authorized by law.**

14. It in its elementary meaning conveys that **to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under article 73 by the Union or article 162 by the State.....**

(Emphasis supplied)

ARTICLE 265 – TAXES NOT TO BE IMPOSED SAVE BY AUTHORITY OF LAW (2/3)

○ Levy or Collection:

- The legal meaning of the term '**levy**' means '**to establish or collect by legal authority**'.
- The legal meaning of the term '**collection**' means '**the act or process of collecting; the collection of data; the collection of taxes**'.

➤ **Assistant Collector of Central Excise, Calcutta Division vs National Tobacco Co. of India Ltd., 1972 AIR 2563:**

*The term "levy" appears to us to be wider in its import than the term "assessment". It may include both "imposition" of a tax as well as assessment. The term "imposition" is generally used for the levy of a tax or duty by legislative provision indicating the subject matter of the tax and the rates at which it has to be taxed. The term "assessment", on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount. **The Division Bench appeared to equate "levy" with an "assessment" as well as with the collection of a tax** when it held that "when the payment of tax is enforced, there is a levy". **We think that, although the connotation of the term "levy" seems wider than that of "assessment", which it includes, yet, it does not seem to us to extend to "collection". Article 265 of the Constitution makes a distinction between "levy" and "collection".***

(Emphasis supplied)

ARTICLE 265 – TAXES NOT TO BE IMPOSED SAVE BY AUTHORITY OF LAW (3/3)

- **Except by Authority of Law:**

- ***Mathuram Agrawal vs State of Madhya Pradesh, (1999) 8 SCC 667***

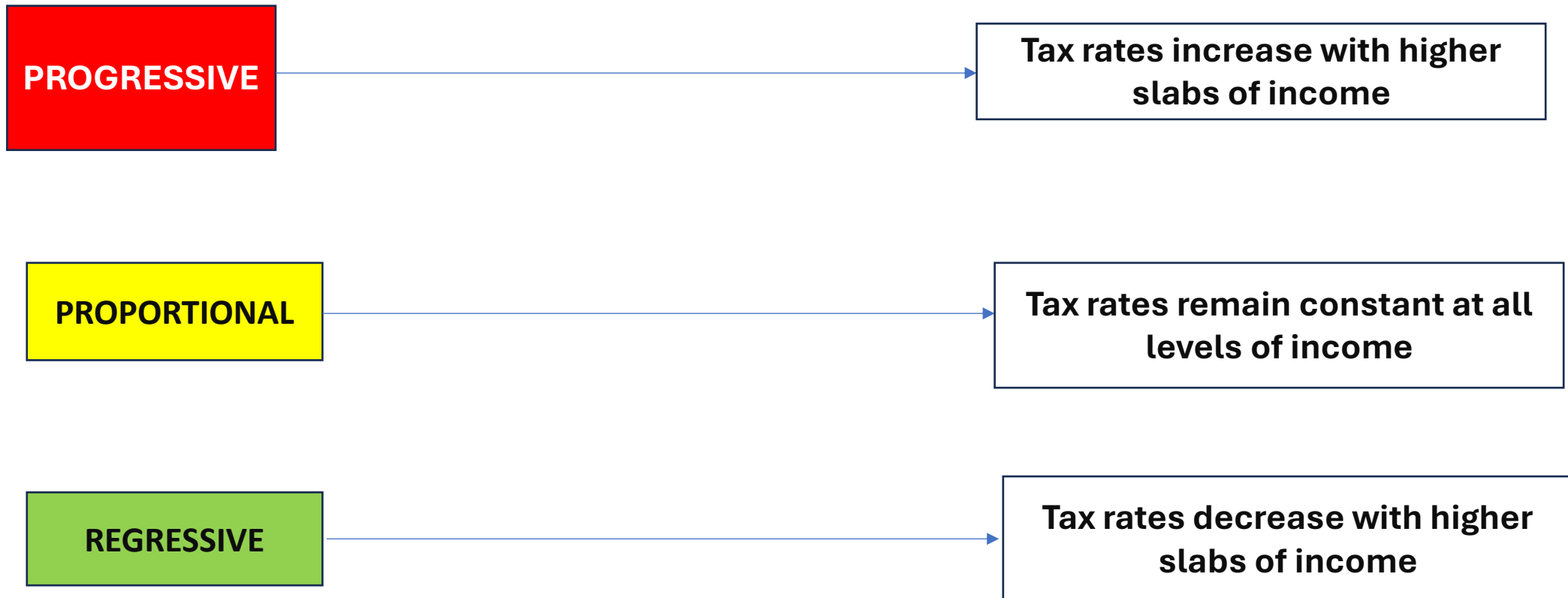
In this judgment, the Hon'ble Supreme Court held that there is ***no tax liability if there is ambiguity in any of the following three components of tax law:***

- Subject of tax;
- Person who is liable to pay tax; and
- Rate at which tax is to be paid

If there is ambiguity in any of these components, then there is no tax liability in law and it is for the legislature to do the needful in such a matter.

ARTICLE 14: EQUALITY BEFORE LAW (1/3)

TYPES OF TAX RATES



ARTICLE 14: EQUALITY BEFORE LAW (2/3)

Article 14: - It states that *‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India’.*

Is a charge of income tax on a progressive basis unconstitutional?

➤ ***State of West Bengal vs Anwar Ali Sarkar, 1952 AIR 75***

- Article 14 does not take away from the State the power to classify persons for the purpose of legislation.
- However, classification must be rational, i.e., subject to satisfaction of the following tests:
 - Must be based on intelligible differentia which is able to distinguish those who are clubbed together from others; and
 - Differentia must have a rational relation to the object sought to be achieved by the Act

ARTICLE 14: EQUALITY BEFORE LAW (3/3)

➤ **Seth Sukhlall Chandanmull vs A.C. Jain, Income-tax Officer, [1958] 34 ITR 82 (Calcutta)**

Relying upon the above judgment, the Hon’ble Calcutta High Court held as follows:

Applying those tests it seems to me that the progressive graduation of income-tax with different rates applying to different income groups or to different slabs of income far from being discriminatory is a just practical and reasonable system of classification. Obviously a flat rate applicable to different groups of income would be the most inequitable arrangement.....

.....

I read no constitutional inhibition in the Indian Constitution to suggest that once a class has been reasonably made, that class cannot be further divided into reasonable sub-classes for achieving particular legislative policies and therefore I see no reason why the classification or classes made reasonably for purpose of income-tax cannot equally reasonably be re-classified or sub-divided for the purposes of super-tax.

(Emphasis supplied)

➤ The above judgment of the Hon’ble Calcutta High Court has been upheld in **Seth Sukhlall Chandanmull vs A.C. Jain, Income tax officer, [1959] 37 ITR 101 (Calcutta)**

ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY (1/2)

Article 21: - It states that *‘No person shall be deprived of his life or personal liberty except according to procedure established by law’*.




**IS RIGHT TO PRIVACY A
FUNDAMENTAL RIGHT?**

YES – as held by the Hon’ble Supreme Court in *Justice K.S Puttuswamy (Retd.) vs Union of India, 2019 (1) SCC 1*

“It is better to be unique than the best. Because, being the best makes you number one, but being unique makes you the only one” – opening lines of the judgment authored by Justice A.K. Sikri

“The impact of the digital age results in information on the internet being permanent. Humans forget, but the internet does not forget and does not let humans forget” (observations in **para no. 631**)


ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY (2/2)



Right to be forgotten - whether a Fundamental Right?

- Right to be forgotten – first recognized in Fresh jurisprudence and referred to as '**le droit a' l'oubli**'.
- Right conferred upon convicts who had been released –
 - to help them make a fresh start in their lives;
 - Independent of their past; and
 - Allowing convicts to seek erasure of their names from official databases
- 'Right to privacy' has to be balanced with citizens 'Right to know' – redaction of information may not be permitted in cases where such redaction would be against public interest
- Above considerations considered by the Hon'ble Madras High Court in the case of **Karthick Theodore vs The Registrar General Madras High Court, Chennai, W.A.(MD)No.1901 of 2021** wherein the Hon'ble Madras High Court directed that certain personal details of the petitioner be redacted.

CAN CORPORATIONS CLAIM FUNDAMENTAL RIGHTS? (1/2)



CAN A CORPORATION BE CONSIDERED A
CITIZEN FOR EXERCISING FUNDAMENTAL
RIGHTS?

- Certain Fundamental Rights, for e.g., Article 14, Article 19, Article 21, etc. **can be exercised only by Citizens.**
- **Part II** of the Constitution deals with Citizenship. However, such citizenship refers to persons who are **natural persons** only
- **Section 2(1)(f) of the Citizenship Act, 1955** – “Person” does not to include *any Company or Association or Body of Individuals, whether incorporated or not.*

CAN CORPORATIONS CLAIM FUNDAMENTAL RIGHTS? (2/2)

➤ *The State Trading Corporation of India vs The Commercial Tax Officer, 1963 AIR 1811*

..... It seems to us, in view of what we have said already as to the distinction between citizenship and nationality, that corporations may have nationality in accordance with the country of their incorporation; but that does not necessarily confer citizenship on them. There is also no doubt in our mind that Part 11 of the Constitution when it deals with citizen- ship refers to natural persons only.

*This is further made absolutely clear by the Citizenship Act which deals with citizenship after the Constitution came into force and confines it only to natural persons. **We cannot accept the argument that there can be citizens of this country who are neither to be found within the four corners of Part II of the Constitution or within the four corners of the Citizenship Act.** We are of opinion that these two provisions must be exhaustive of the citizens of this country, Part II dealing with citizens on the date the Constitution came into force and the Citizenship Act dealing with citizens thereafter. **We must, therefore, hold that these two provisions are completely exhaustive of the citizens of this country and these citizens can only be natural persons. The fact that corporations may be nationals of the country for purposes of international law will not make them citizens of this country for purposes of municipal law or the Constitution.***

(Emphasis supplied)

ARTICLE 51A: FUNDAMENTAL DUTIES

- **Justice Oliver Wendell Holmes** in *Compania General de Tabacos de Filipinas vs. Collector of Internal Revenue*, 275 U.S. 87 (1927):

“TAXES ARE THE PRICE WE PAY FOR CIVILIZATION. I LIKE TO PAY TAXES. WITH THEM, I BUY CIVILIZATION”

- Last day of the Constitutional Convention in Philadelphia on September 17, 1787

Q: Elizabeth Willing Powell – “Well, Doctor, what have we got, **a Republic or a Monarchy?**”

A: Benjamin Franklin – “**A Republic, Madam, if you can keep it**”.

- Hon’ble Finance Minister **Smt. Nirmala Sitharaman** in her 2025 Union Budget Speech quoting the 19th Century Andhra poet Gurujada Apparao:

“Desamante Matti Kaadoyi, Desamante Manushuloyi” (A country is not just its soil, a country is its people).

QUESTIONS