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Law of Taxation and Constitution

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I. INTRODUCTION

The constitution has supreme power it sets the structure that democrates political code, fundamental right, procedures, powers, duties of government, duties of citizens, directive principles, Constitution has power to authorize all the laws in India.

Parliament and state legislature get power to execute various law from constitution.

Whereas tax is the sum imposed by the government on citizens and enterprises and taxation law deals with the rules and regulations that set down that when and how much tax should be paid to local, state and federal authorities.

It is the most important ingredient for the country which keeps the revenue consistent and helps in growth of economy.

Article 265 to Article 289 of constitution deals with the provision of tax.

Article 265 says that no tax shall be levied or collected except by the authority of law, tax levied must be within the legislature power.

All the matters related to tax are mentioned in the 7th schedule which consists 3 lists namely Union, State and Concurrent list. It defines and allocate the power between Union and State.

MEANING OF TAX

Tax is the most important sources of revenue for government. It is the sum imposed by government on citizens and enterprises. It is important for growth of economy.

Every government imposes two kinds of taxes.

- Direct tax
- Indirect tax

II. CHARACTERISTICS OF TAX

Tax is a compulsory contribution

A tax is a compulsory payment to government from citizens without expectation of any direct return. As it is a compulsary contribution no one can refuse to pay it on the ground that he or

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she does not get any benefit from government services.

Taxes are levied by government

Only government has right to impose and collect taxes in the country, no one other than government has this authority.

Tax is collected for the common benefit

The tax collected by the government is used for the common benefit of all the citizens.

The main purpose of collecting tax is to fulfill social needs such as health, education, building of bridges and roads etc.

Burden on individual to pay tax

No one can force a person to pay tax except government. If a person's income is above the exemption limit than only he is bound to pay tax and if it is below the exemption limit than he cannot be forced to pay tax on income.

III. SIGNIFICANCE OF TAXATION

i. Taxes are used to pay for the public goods and services, that used by individuals in their daily life.

ii. Taxes are used to provide basic facilities like primary education, affordable housing and subsidies

iii. Taxation plays a significant role to built the economy without taxation it is not possible to run the country.

IV. CONSTITUTIONAL PROVISIONS RELATING TO TAX

Constitutional provisions of taxation are referred under article 265 to article 289.

Article 265

No tax shall be levied or collected except by the authority of law, levy of taxes must be within the legislative power.

a) No presumption in levy of tax, for levy of tax fiscal statute must be read as whole.

Article 266

This article talks about consolidated funds and Public accounts of India and the states. Consolidated funds are those funds in which all the reciepts of government of India are credited like tax, loans taken, treasury bills, etc.

All expenditure of government of India is done from consolidated fund of India from which money is appropriated after the permission of parliament.

1. Public account funds
2. Funds which are not credited in consolidated funds are credited to public account funds.
3. This includes remmmitances, provident fund desposits and so on. This account can be made without parliamentary authorisation, such payments are of executive in nature such as banking transaction.

Article 267

Contigency funds are maintained by president and held by finance secretory on behalf of president. Such funds are used at the time of emergency such as natural calimities and crises like floods, tsunamis and earthquake.

Article 268

Under this article it is explained that the duties levied by the Union but they are collected and appropriated by the states. For eg. Stamp duties, excise duties on medical and toilet preparations.

The proceeds in any financial year of any such duty leviable within any state shall not form part of the consolidated fund in India, but shall be assigned to that state.

Article 269

Taxes levied and collected by central government but assigned to the states.

According to clause (2) these taxes are namely :

(a) Duties in respect of succession to property other than agriculture land.

(b) Estate duty in respect of property other than agricultural land.

(c) Terminal taxes on goods or persons carried by railway, port or airlines.

(d) Taxes on railway fares and freights.

(e) Taxes other than stamp duties on transactions in stock exchanges and future markets.

(f) Taxes on the sale or purchase of newspaper and on advertisements published therein.

(g) Taxes on the sale or purchase of goods other than newspaper where such sale or purchase takes place in the course of interstate trade or commerce.

(h) Taxes on consignment of goods.

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Article 269(A)

(101st amendment act in 2016)

Levied and collection of gods and services tax in course of interstate trade or commerce.

Goods and services tax is collected and levied by central government of India.

It is not the part of consolidated fund rather it is divided into union and state on the basis of the law made by parliament on the recommendation of GST Council.

Article 270

This article talks about those taxes which are levied and distributed between union and state except A- 268, 269 and 269 A.,

Surcharge on taxes and duties in article 271 and cess levied for specified purpose under any law made by parliament, these all are not part of CFI and they are divided on the basis of finance commission on recommendation of president.

Cess and Surcharge

Cess is a tax on tax. It is described under article 270 of constitution of India it is also called subtax. Cess is for a specific purpose and the amount of cess goes to consolidated fund of India.

For eg; Educational cess and Swachh Bharat cess etc.

Surcharge is also tax on tax, it is levied on specific limit usually higher income groups. Amount of surcharge is also goes to CFI, surcharge is not levied for specific purpose but it is levied on specified people mainly higher income groups.

Article 273

Grants in lieu of export duty on jute and jute products in states Assam, Bihar, Orissa, and West bengal and this grant shall be charged on the consolidated fund of India (CFI)

Article 274

Talks about the taxes in which states are interested such as agricultural income, for that prior recommendation of president is required to bills affecting taxation in which states are interested.

Article 275

Talks about that grants from Union to State for schemes and developments, welfare of SC and ST and thirdly that administration development of autonomous district of Assam.

Article 276

The sixtieth amendment act of constitution of India amended article 276.

The article talks about that the extra taxes are levied on profession, trades and callings and employments and the limit of these taxes are Rs.2500.

Article 277

Talks about that any taxes, duties, cesses or fees immediately before the commencement of the constitution, were being lawfully levied by the government of any state or any municipality or any other local authority may nowithstanding that those taxes, duties and cesses or fees are mentioned in the Union list continue to be levied by the same purpose until the provision to the contrary has been made by Parliament by law.

Article 279

Talks about calculation of net proceeds and its partition here net proceeds are actual amount after deducting the cost inferred from the collection of Tax. And this amount apportioned between union and state.

Article 279A

The article defines GST council clause 1 of the article says that when the 101 amendment passes president constitutes a council namely GST council.

The chairperson of that council will be the union finanace minister and the union ministers of state in charge of revenue of finance is the member, the minister in charge of finance or taxation or any other minister nominated by each state governments are the members.

The council can give the recommendation on cess, tax, surcharge levied by the union and state and other local bodies, the goods and services that may be exempted from the GST.

GST laws and on what basis it is decided and appointment principles and threshold limit of turnover, baserate, special rate for the special purposes like for natural calamity or special provisions on respect of hilly areas or northeast states. (Arunachal Pradesh, Mizoram, Kashmir, Manipur, Meghalya, Nagaland,Uttrakhand and Himachal Pradesh)

GST council shall recommend the date on which the goods and services tax shall be levied on petroleum, crude oil, high speed diesel, natural gas, viation turbine fuel.

Article 282

The Union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the state, as the case

may be, may make laws.

Article 286

State cannot authorize the imposition of tax on supply of goods and services, where such supply takes place outsnNide the state or where the export of the goods and services takes place out of territory of India.

Parliament by law formulate principles for determining when a supply of goods and services takes place in any way mentioned in clause (1)

Article 289

This article talks about exemption of property and income of state from union taxation.

(1) The property and income of state are exempted from union taxation.

Nothing in Clause (1) shall prevent the Union from imposing or authorizing the imposition of, any tax to such extent, if any, as Parliament made by law provide in respect of a trade or business of any kind carried on by or on behalf of the government of a state, or any operations connected therewith, or any property used or occupied for the purpose of such trade or business or any income accruing or arising in connection therewith.

V. SEVENTH SCHEDULE TO CONSTITUTION

Seventh schedule deals with division of subjects for powers and responsibilities in Union, State and Concurrent list.

Seventh schedule has three types of list

- Union list [Article 246 (1)]

Under this list Parliament authorised to make laws as per list 1 of seventh schedule

- State list [Article 246(3)]

Under this list state is authorised to make laws as per the list two of 7th schedule.

- Concurrent list

Under this list both Union and State are authorised to make law.

VI. DISTRIBUTION OF TAXATION POWER

Cental government, State government, local government get power to impose tax from Indian Constitution.

Article 245 and Article 246 deals with distribution of Taxation power.

Article 245 of constitution is extent of law made by parliament and by legislature of state, both the government have right to make laws. These are provided by constitution itself, these subject matters provided in 7th schedule of Indian constitution.

According to article 245 subject to provision of this constitution, Parliament may make laws for whole or any part of the territory of India and legislature can make law for any part of the State.

Article 246

Article 246 is related to the distribution of subject matters on which central government or state government can make laws. It must be read with the 7th schedule of constitution.

VII. TAXATION SYSTEM IN INDIA

Taxes plays contribution in total revenues. The Indian tax system is called three tier federal structure which includes, cental government, state government and local municipal body.

Article 256

No one can levy or collect the tax without the permission of law.

Role of centre and state government in Indian Taxation system

Tax on custom duties, income tax service tax, cental excise duty is collected by central government.

Income tax on agricultural products, professional tax, VAT, state excise duty, land revenue, stamp dutiesare collected by state government, octroi, property tax, water and drainage are also collected by state government.

Types of taxes

(1) Direct tax

It is paid by the person on whom it is legally imposed, the impact of money burden and incidence are on the same person, direct tax cannot be shifted to another person. For eg; Income tax, wealth tax, house tax, salaries, capital gains.

(2) Indirect taxes

it is imposed on one person, but paid partly or wholly by another person.

The impact and the incidence of tax are on different person, indirect taxes can be shifted or passed on to another person eg GST, excise duty

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