
A CONSTITUTIONAL COMPARATIVE ANALYSIS OF TAXATION IN THE USA AND INDIA

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Introduction

The majority of democratic governments tolerate socioeconomic inequality while professing a desire for equality in public life. However, there is room for economic fairness within the democratic state's framework. This equality can be attained by allocating the wealth of the public through the political system in accordance with the egalitarian principles of majority rule and one person, one vote. The philosophy that states must work to better the lives of their less fortunate citizens through programs of wealth distribution is widely recognized in today's democratic states.

Tax is considered to be a peripheral concept under comparative law. Comparative law doesn't emphasize on private law because it looks into the needs of the individuals but the comparativist tends to ignore the fact that public law also focuses on the relationship of the individuals with the government and society at large.¹ There is a need for comparative study in tax law, for a better understanding of the governmental structure and its implementation. Different nations have different ways in the implementation of tax. For example, the structure of the income tax can be broadly divided into two forms, firstly residence- based tax and secondly scheduler taxation, which focuses on the source of the income.²

Structure of taxation in United States of America

The United States of America's tax structure is set up at the federal and state government. Taxes come in many forms, including income, sales, capital gains, etc. The taxing powers of

¹ William Barker, Expanding the Study of Comparative Tax Law to Promote Expanding the Study of Comparative Tax Law to Promote Democratic Policy: The Example of the Move to Capital Gains Democratic Policy: The Example of the Move to Capital Gains Taxation in Post-Apartheid South Africa Taxation in Post-Apartheid South Africa, 109 Penn St. L. Rev. 707 (2005).

² William Barker, Expanding the Study of Comparative Tax Law to Promote Expanding the Study of Comparative Tax Law to Promote Democratic Policy: The Example of the Move to Capital Gains Democratic Policy: The Example of the Move to Capital Gains Taxation in Post-Apartheid South Africa Taxation in Post-Apartheid South Africa, 109 Penn St. L. Rev. 713 (2005).

the federal government and each state are wholly distinct from one another. The Federal Government can't interfere with the State government taxes. Each state has a unique tax structure that is distinct from those of the other states. There could be many jurisdictions within the state that levies taxes as well. For instance, in addition to state taxes, counties or towns may impose their own school taxes. The American tax system is very intricate.³

One of the forms of taxation in the U.S. is the income tax, where the individuals are taxed on their income. The individuals pay both federal as well as state taxes. Another form of taxation is the sale tax. This tax is levied on purchase, sale tax is a state tax and it varies from state to state.

The United States of America adopted taxation on individuals in the year 1864, in order to finance the Civil War.⁴ The said Act was repealed and a new act was enacted in the year 1895, which taxed both individuals and corporations. The said Act was declared unconstitutional as the Congress didn't have the power to adopt income tax on individual with apportioning the tax among the states based on their relative population.⁵ A series of Revenue Act were enacted which superseded the prior Act; hence the Congress enacted the Internal Revenue Code of 1939. The 1954 Code revised income tax on various departments like partnership firm, trusts, estates, etc. The Congress introduced several amendments to increase and decrease the revenue. It can be inferred from the history of implementation of the Internal Revenue Code, 1986 that the Congress has repealed several acts and implemented entirely new ones, but since 1986 the act has remained same but has undergone amendments, this aspect can be looked in from the perspective of legislative endurance and also how stakeholder initially used their position or their own benefit.

The 16th amendment of the Constitution gave rights to the Congress to impose Federal Income Tax. Earlier the Congress powers to impose tax were restricted as it could impose tax only if the bill would increase the revenue. After the amendment the Congress had broad latitude in creating classifications and distinction in tax statutes.⁶ Subsequently the courts have held that amendment of the tax statute would be applied retrospectively and it wouldn't be violate the 5th Amendment of the Constitution when the congress would have acted in good faith to correct

³U.S. Taxation (4th September 2022),

https://www.rpi.edu/dept/advising/free_enterprise/us_government/taxation.htm

⁴ Edward B. Whitney, *Income Tax and the Constitution*, 20 HARV. L. REV. 284 (1906-1907).

⁵ Hugh J. Ault and Brian J. Arnold, *Comparative Income Taxation- A structural Analysis* 173 (3rd ed. 2010).

⁶ *Regan v Taxation with Representation of Washington*, (1983) 461 US 540.

the mistake.⁷ ⁸The courts have also interpreted Article 1, Section 7, and clause 1 of the Constitution by stating that Senates have the power to revise the bill passed by the House of Representatives.⁹ The courts have always ensured that the 14th amendment of the constitution is not violated. The 14th Amendment is an equal protection clause, which limits the federal and the state from imposition unequal taxation.

United States do not have a special court to address tax matters, the redressal can be sorted by approaching the jurisdictional court or the United States Court of Federal Claims which provides redressal against the government. The decisions from these courts can be appealed to the Court of Appeal and all the decisions can be reviewed by the Supreme Court if it is an issue of constitution or if the courts have taken contradicting view. It can be seen that the court have played an important role in the doctrinal development. The courts have not only interpreted the statute and given it a new color, it has also passed judgments which have become the primary source of law and also in certain cases the interpretation of the courts have been implemented in the statutes. The Courts have also played a significant role in resolving the tension between a strict and liberal approach to a statutory interpretation. The courts have interpreted the statute by looking into the plain meaning of the words but if the plain meaning is absurd or futile the courts have looked into the purpose of the act. The courts have looked beyond the plain meaning of the act to look into the purpose of the legislation, the courts have also referred to the reports from the House Ways and Means Committee, the Senate Finance Committee and the Conference Committee. The Court also examines the explanation given by the statute drafters (Joint Committee on Taxation). This attitude of the court has been criticized by various scholars as it may contribute to the proliferation of tax shelters.¹⁰

The formal and substantial elements of the government's power constraints are present. The former focuses on simple authorization, whether the government has received the necessary authority to act? The latter addresses the "how", what is the appropriate question? The legislature and the government must adhere to constitutional regulations and uphold the interests and rights, such as equal protection and rights to property. Constitutional analysis of

⁷ United States v Carlton, (1994) 512 US 26.

⁸ William W. Stuart & Michael K. Williams, Constitutional Considerations of State Taxation of Multinational Corporate Income: Before and after Container Corporation of America v. Franchise Tax Board, 16 IND. L. REV. 786 (1983).

⁹ The Article states that all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments.

¹⁰ Hugh J. Ault and Brian J. Arnold, Comparative Income Taxation- A structural Analysis 186 (3rd ed. 2010).

tax law in the US development as being limited and linear formal method.¹¹ The US Constitution does not place any restrictions on the states' ability to define and tax income, unless they go beyond "horizontal" limits in relation to extraterritorial income or revenue from interstate commerce. Although some state constitutions have been read to restrict the states' ability to tax income, these limitations are not a restraint to the federal system.¹²

The US fiscal constitution is that, as we have already noted, there is no such thing as a US fiscal constitution in the sense of a clear set of constitutional provisions defining the fiscal powers of the national and subnational governments and their relationship to one another. In actuality, there are very few clauses in the US Constitution that specifically mention either taxing or spending. In light of this, when referring to the US fiscal constitution, we shall refer to "the Constitution as a whole, taking into account provisions not specifically directed to fiscal matters and taking into consideration the federal structure, including both rules defining the fiscal competence of the branches of the federal government and rules allocating taxing and spending powers between the federal government and the state.

Tax Competition is a big barrier to government expansion. There are differences between tax competition and legal checks and balances like the presidential veto or the split between the two houses of Congress. Simply put, one of the advantages of living in a global economy is tax competition. Tax competition is a vital defense against the unstoppable expansion of government.

Structure of taxation in India

India's evolution of taxation system can be traced back to the Manu Smriti, which was introduced by Sir James Wilson in the year 1860.¹³ In India the Central Government, State Governments, and occasionally municipalities levy taxes. Direct taxation and indirect taxation are the two methods used by the government to collect taxes. The difference between a direct tax and an indirect tax is whether the incidence and burden of the tax fall on the same person or two different people. Any tax law that does not follow the Indian Constitution is deemed to

¹¹ Yoseph Edrey, *Constitutional Review and Tax Law: An Analytical Framework*, 56 *Am. Univ. Int. Law Rev* 1187, 1192 (2007).

¹² Gianluigi Bizioli and Claudio Sacchetto, *Tax Aspects of Fiscal Federalism* 34 (IBF 2011).

¹³ Nishant Ravindra Ghuge and Dr. Vivek Vasant Rao Katdare, *A Comparative Study of Tax Structure of India with respect to other countries* (4th September 2022) https://www.researchgate.net/profile/Nishant-Ghuge/publication/301477624_A_Comparative_Study_of_Tax_Structure_of_India_with_respect_to_other_countries/links/571619fc08ae6177286ce410/A-Comparative-Study-of-Tax-Structure-of-India-with-respect-to-other-countries.pdf

be ultra-vires, and violate of the Constitution.¹⁴ The framework of the implementation of taxation in India is limited to the authority in the legislative competence of the legislation.¹⁵ The taxes are levied and collected by the authority based on the categorization mentioned in Schedule VII of the Constitution. Article 246 read with Schedule VII divides the subject matter between union list, state list and concurrent list. For example the Central Government can levy taxes on income, custom duties, goods and services, etc. The state government can levy taxes on land, building, excise on alcohol, etc. Under the concurrent list both the central and state government have powers to legislate and levy taxes on those subject matter mentioned under this list. From the Constitutional framework it is evident that the Central government has the residuary power to impose tax on the subject matter which is not mentioned in the state list or the concurrent list. A few of such taxes are gift tax, wealth tax and expenditure tax.

The regulation and the implementation of the tax provisions can be inferred from Article 301 to 307 of the Constitution. From the above provisions it is visible that the trade, commerce and intercourse are free throughout India. Though there is no reasonable restriction imposed but the courts have interpreted by stating that the restriction can be imposed in the light of public interest.¹⁶ The judiciary has played a significant role in interpretation of the statutes and has always abided to the norm of strict interpretation. Under the Indian judiciary structures which behave like a federal structure which imposes a hierarchy to be followed. Indian judiciary is a unitary judiciary system. Even in the case of taxation, the taxpayer can approach the quasi-judicial body established under the Act, which acts as an investigator and an arbiter simultaneously. The second redressal form available is Income Tax Appellate Tribunal (ITAT), and it conducts hearings similarly to a civil court. The High Court and Supreme Court are the next two, and they only hear cases that contain a significant legal issue. In case of Indirect taxation the redressal at the first instance can be sort from the Customs, Excise and Service Tax Appellate Tribunal.

The Indian Constitution confers autonomy to the Parliament and the State to legislate within the respective fields enshrined under the Constitution. Any deviations from the competent legislation can be overseen; this feature of the Indian taxation structure shows a fiscal autonomy. Prior to the 2016 Constitutional amendment it was seen that the exclusive and equal

¹⁴ Pradeep Gulrajani, Comparative Study and Analysis of Tax Policies of United States, Australia and India, 24 *Supremo Amicus* [1175] (2021).

¹⁵ INDIA CONST. art. 265

¹⁶ *Prag Ice & Oil Mills v Union of India* AIR 1978 SC 1296.

legislative distribution of the taxation structure established the federal structure in India.¹⁷ After the 2016 Amendment, the constitution altered the powers of the center and the state government with respect to indirect taxation and imposed simultaneous powers on them.

Both India and the USA reflect on dual federalism. This constitutes an autonomous, independent and competing unit.¹⁸ This model can also be termed as competitive federalism. In the United States after the Civil war in 1865 paved a way to a new era in the American politics which created a dualistic federalism by segregating the powers between the federal and the state. Both the federal and the state government are enshrined with exclusive powers.

In a multi-party system, it is not necessary that the part at the center would have power in the state, such being the case it is necessary for to establish a cooperative federalism. Under Cooperative federalism though each unit of the government is separate and autonomous, they integrate together to achieve the objective of federalism.¹⁹ The United States follows the trend of cooperative federalism after the implementation of the Federal Income Tax Act, 1931. This gave the federal government the power to tax all the citizens.²⁰ In India the structure of the government can be seen from the articles 245 to 263 and also from the 7th schedule. Article 131 of the Constitution upholds the spirit of the cooperative federalism which gives supreme court of India the original jurisdiction to decide matters in dispute. In the United States of America it can be inferred from Article VI and Article 1, section 8.

On the other, in order to ensure the functionality of the Constitution it is necessary for the state and central government to work on the objective of resolving the conflicting issues among them and this can be termed as collaborative federalism. Hence, it is necessary for the units of the government to act with the objective of the functionality of the Constitution to ensure a smooth and efficient operation.

¹⁷ SR Boomia v Union of India (1994) 3 SCC 1.

¹⁸ Union of India & Anr. V Mohit minerals Pvt. Ltd. (2022) SCC Online 657

¹⁹ State (NCT of Delhi) v Union of India (2018) 8 SCC 501.

²⁰ The federal government gained influence after the federal income tax was enacted in 1913 due to the wealth generated by its ability to tax all residents, which resulted in a dramatic increase in Washington's intergovernmental authority. In order to address social welfare issues at the subnational level during the Great Depression in the 1930s, the federal government had to get involved in state and local politics. As a result, through initiatives like the Social Security Administration, the national government assumed control of ensuring the general welfare of residents under President Roosevelt's New Deal strategy. Programs for social welfare and public policy were jointly supported by the federal and state governments in an effort to combat the societal problems caused by poverty. While income taxes on people and businesses provided the majority of the federal government's funding to eliminate that problem.

²¹ Julius A. Nukpezah and Aisha Sarah Ahmadu, Fiscal Federalism in the USA, Springer, Cham 3 (2019).

Conclusion

John Locke emphasis on the theory of taxation by stating that individual living in a community is one's decision and one has to pay tax for the benefits derived. Locke puts emphasis on the imposition of tax by a legitimate government. Even in modern society, that people should be prepared to pay taxes to support society's administration of benefits, whether they be law and order for the protection of property, as in Locke's day, or contemporary social services to support the less advantaged members of society, is pervasive in current culture as well.²²

On the critical analysis of both the democratic countries, it can be understood that both the countries have a federal constitutional structure. In comparative law most of the scholars go back to the roots of the development of the law. The development of taxation in the United States can be traced back to the Civil War. Whereas in India the taxation system can be traced back to the Manu Smirits, the king could levy taxes. In Kautilya's Arthasatra the taxation system was elaborate and in a planned manner. The modern taxation system has undergone changes but when traced back to the roots, it is evident that the tax structure was implemented with socio-political underpinnings.

The US government structure is a two- tier system, the federal and state is autonomous body and are independent of each other. The Federal Government can't interfere with the State government taxes.²³ Each state has a unique tax structure that is distinct from those of the other states. Indian governmental structure is a three- tier system; the powers are enshrined in the Constitution of India. The Constitution of the India lays a clear demarcation with respect to the powers of the government structures to levy tax. In India we rely on both direct and indirect taxes but whereas the United States rely more on the direct taxes than on the indirect taxes. On perusal of the structure of the government it is evident that both the countries have a different system but yet there are some similarities with respect to its implementation, i.e., both the countries have progressive taxation system. The judiciary system in both the countries has the autonomous power to solve the problems between the citizens and the state.

The Concept of Constitutional endurance can be drawn parallel to the amendment of the 16th Amendment in the American Constitution and the 101st Amendment of the Indian Constitution. The procedure of the amendment is almost similar in both the countries, the United States the

²² Jane Frecknall Hughes, Locke, Hume, Johnson and the continuing relevance of tax history, 12 eJournal Tax Res. 90 (2014).

²³ Karla W. Simon, Congress and Taxes: A Separation of Powers Analysis, 45 U. Miami L. Rev. 1012 (1991)

amendment can be introduced by the Congress with the 2/3rd majority and 3/4th of the states must ratify the amendment but whereas in India the right to amendment is enshrined under Article 368 of the Indian Constitution. In India, for certain amendments state's ratification is not necessary. In this way it can be understood that how amendment of the Constitution helps in constitutional endurance in its longitivity, flexibility, political and social stability. As Prof. Mark Tushnet has stated that constitutional amendments is necessary to create a system of governance, to ensure that it continues to run and for substation governance.²⁴

Hence, it can be concluded that there is more convergence than divergence across the countries with respect to implementation of tax regimes i.e., they focus on socio-political aspect and limit their power with respect to welfare and public interest of the society.

²⁴ Tom Ginsburg, *Constitutional Endurance*, Edward Elgar Publishing Ltd. 114 (2011).

Bibliography

Books

1. Gianluigi Bizzioli and Claudio Sacchetto, *Tax Aspects of Fiscal Federalism* 34 (IBF 2011).
2. Hugh J. Ault and Brian J. Arnold, *Comparative Income Taxation- A structural Analysis* 173 (3rd ed. 2010).

Articles

1. Edward B. Whitney, *Income Tax and the Constitution*, 20 HARV. L. REV. 284 (1906-1907).
2. Jane Frecknall Hughes, *Locke, Hume, Johnson and the continuing relevance of tax history*, 12 eJournal Tax Res. 90 (2014).
3. Julius A. Nukpezah and Aisha Sarah Ahmadu, *Fiscal Federalism in the USA*, Springer, Cham 3 (2019).
4. Karla W. Simon, *Congress and Taxes: A Separation of Powers Analysis*, 45 U. Miami L. Rev. 1012 (1991)
5. Pradeep Gulrajani, *Comparative Study and Analysis of Tax Policies of United States, Australia and India*, 24 Supremo Amicus [1175] (2021).
6. Tom Ginsburg, *Constitutional Endurance* , Edward Elgar Publishing Ltd. 114 (2011).
7. William W. Stuart & Michael K. Williams, *Constitutional Considerations of State Taxation of Multinational Corporate Income: Before and after Container Corporation of America v. Franchise Tax Board*, 16 IND. L. REV. 786 (1983).
8. William Barker, *Expanding the Study of Comparative Tax Law to Promote Expanding the Study of Comparative Tax Law to Promote Democratic Policy: The Example of the Move to Capital Gains Democratic Policy: The Example of the Move to Capital Gains Taxation in Post-Apartheid South Africa* Taxation in Post-Apartheid South Africa, 109 Penn St. L. Rev. 707 (2005)
9. Yoseph Edrey, *Constitutional Review and Tax Law: An Analytical Framework*, 56 Am. Univ. Int. Law Rev 1187, 1192 (2007).

Cases

1. Prag Ice & Oil Mills v Union of India AIR 1978 SC 1296
2. State (NCT of Delhi) v Union of India (2018) 8 SCC 501.
3. SR Boomia v Union of India (1994) 3 SCC 1.
4. Regan v Taxation with Representation of Washington, (1983) 461 US 540
5. United States v Carlton, (1994) 512 US 26.
6. Union of India & Anr. V Mohit minerals Pvt. Ltd. (2022) SCC Online 657

Laws

1. Goods and Services Act, 2017.
2. Income Tax Act, 1913.
3. Indian Constitution
4. US Constitution

Internet Sources

1. Nishant Ravindra Ghuge and Dr. Vivek Vasantrya Katdare, A Comparative Study of Tax Structure of India with respect to other countries (4th September 2022)
https://www.researchgate.net/profile/Nishant-Ghuge/publication/301477624_A_Comparative_Study_of_Tax_Structure_of_India_w ith_respect_to_other_countries/links/571619fc08ae6177286ce410/A-Comparative-Study-of-Tax-Structure-of-India-with-respect-to-other-countries.pdf
2. U.S. Taxation (4th September 2022),
https://www.rpi.edu/dept/advising/free_enterprise/us_government/taxation.htm