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AN EMPIRICAL STUDY ON RIGHT TO EQUALITY AND TAXATION IN INDIA

CHAPTER I: INTRODUCTION

A. Abstract

The Indian Constitution guarantees the right to equality to every citizen of the country as a fundamental right and any violation of this right results in the violations and the person can approach the court for the infringement of the right. Taxation is a right of the government to collect for the overall development of the country. It has always been a matter of discussion whether right to equality and taxation goes hand in hand. Over a period, the concept of equity had developed which means “Equals should be treated equally whereas unequal should be treated unequally”. This paper tries to analyze the relationship between the Right to equality and Taxation under the Indian Constitution.

Keywords: Taxation, Right to Equality, Equity, intelligible differentia.

B. Statement of the problem

The laws on taxation are based on the rule of equity and not equality where there are reasonable classification and intelligible differentia but at various times the classification seems that it is unreasonable and arbitrary in the eyes of the people.

C. Relevance of the Study

As taxes are the compulsory contribution that is made from the side of the people to the government it becomes evident and necessary to understand the relationship between taxation and the right to equality. The distinction is made between the people based on their income i.e., the rich pays more. There is a legitimate expectation that the people expect from the government in terms of the taxes payable but the practices of tax evasion tends to be used which means that the people doesn't feel that there is fairness in the procedure of the tax collected.

D. Objectives

The objectives of this research paper are:

1. To understand the relationship between Taxation and the Right to Equality
2. To understand the concept of reasonableness and intelligible differentia.
3. To understand the people's view on the distribution of tax payable by them in terms of equality.

E.Hypothesis

The taxes and the right of equity goes hand in hand as people are made to pay taxes based on their income and in any case of infringement the Judiciary had played a crucial role if the laws are not reasonable and not based on intelligible differentia.

F.Research Methodology

The research methodology used in this research paper is Empirical. The data is collected through a Questionnaire in the form of Google Forms circulated across India.

G.Research Questions

- A. What is the relationship between the Taxation and the Right to Equality in the Indian Constitution?
- B. What is the people opinion about the right to equality and taxation?

CHAPTER II: TAXATION AND RIGHT TO EQUALITY

Taxation is not the first topic that comes to our mind when we talk about human and Fundamental rights. Yet taxation plays a crucial role not only for the realization of human rights but also for the fulfilment of the global goals for justice. Many countries depend on aid and assistance when financing human rights and development because there is often a problem with the availability of resources. Hence, it is now stressed that aid as source of resources should be replaced with the revenues of taxation.¹ Taxes are considered as a key instrument that has the potential to provide sufficient resources for a state in financing the needs of its people, especially in enabling them to grow and develop as a society. Article 1 of the United Nations Declaration on the Right to Development (UNDRD) recognizes development as our human right where people are the central subject in the process.² Therefore, the strengthening of tax

¹ UN Commission on Human Rights (UNCHR) Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (13 August 2012) UN Doc A/67/302, para 30.

² United Nations General Assembly (UNGA) Declaration on the Right to Development (4 December 1986) UN Doc A/RES/41/128 (UNDRD), art 1.

policies and administrations are of great importance to the mobilization of resources for it can promote and realize human rights, and it will result in a development that is sustainable. Thus, it is not only the collection of taxes that has to be done effectively but also the distribution and mobilization of the resources that derive from taxation.³

In the standard model, essentially only three things matter for setting taxes prescriptively and descriptively: raising revenue, maintaining incentives to work, and achieving just post-tax outcomes. However, in the taxation public account, many people care about desert in taxation based on pretax income. That is, if people more earn money, even because of innate skill, they deserve to keep a decent share of it, and, if they earn less, they deserve less money, all for reasons unrelated to incentives to work. This commonplace view is inconsistent with the standard economic model, and the standard model's prescriptions are deeply undermined by the presence of these desert-based views. Importantly, with partially compartmentalized policy views, it is completely consistent to be resistant to redistribution through the *specific process* of taxes, while at the same time supporting either more equal outcomes overall or more egalitarian provisions through specific goods (like healthcare) or processes (like regulatory cost-benefit analysis).⁴

Inequality is one of the defining issues of our time. Nevertheless, orthodoxy among public policy scholars, prominently including those in law and economics, has long been that all areas of the law but one should do nothing to address inequality. That one area for distributional concerns is using taxation to transfer cash from rich to poor. Transferring only cash lets the recipient choose what to get and the payer choose what to give up, allowing the rest of policy to focus on growing the overall size of the economic pie.⁵

Unfortunately, our standard approach is deeply at odds with social reality, so it yields bad policy prescriptions that fail to address or even magnify inequality. Ordinary people don't think about policy like economists do, fungibly trading off redistribution through one means or another. Instead, people view policies through their own internal norms. For tax policy, people commonly think that the poor do not deserve free cash and the rich deserve a decent share of their income, thwarting sufficient redistribution through taxation. A democracy where Congress is attentive to such views will need to look elsewhere to achieve distributive justice.⁶

³ IBAHRI (n 2) 6.

⁴ Zachary Liscow, "Equality, Taxation and Economics in the 21st Century", Yale Law School, February 2020

⁵ Ibid

⁶ Ibid

The Indian tax system maintains that equals should be treated equally and unequal's should be treated unequally which states about the concept of the right to equity. In a way it is correct to pay more taxes by the person whose income is more and less by the person whose average income is less. The system of equity is applicable in a positive way but the problem lies when this procedure by the government doesn't seem to be fair. The practices of Tax evasion or tax avoidance are one of the major concerns of the people that are living in today's world especially in a developing country like India where the literacy rate as well as the poverty is extended to a higher level.

The Judiciary had also questioned various laws and procedures that are implemented by the government as sometimes the statutes are found unreasonable and discriminatory. These laws are questioned based on the efficiency and need of its implementation. The Judiciary power of the Judicial Review is one of the major safeguards from the discriminatory laws that may be implemented by the Legislature consisting of the Members of the Parliament.

The presence of the tax public account alone significantly disrupts standard economic policy prescriptions. On its own account, economics tries to find the most efficient way to help the poor given limited resources, and it says that cash through taxes and transfers is typically the best way to do that. Doing so leaves a relatively clean and practical prescribed approach to law: just adopt the efficient approach, which in principle is based on observable actions that people take themselves.⁷ Efficiency also, in any given judicial or administrative context, has the appearance of "neutrality" in considering everyone's willingness to pay equally.⁸

However, efficiency is not "neutral" in the sense of providing the same legal entitlements to rich and poor.⁹ Since it is based on willingness to pay, and the rich tend to be willing to pay more, efficient policies tend to endow the rich with larger legal entitlements than the poor. The transportation spending example, in which more money is spent on the rich than the poor because the rich are willing to pay more to commute more quickly, exemplifies this non-neutrality. Of course, this effect matters little though if taxes and transfers make up the difference.

But the tax public account renders the clean separation between taxes and transfers addressing distribution and nontax policies maximizing efficiency undesirable. The basic problem is that

⁷ Recall that efficient policies are based on willingness to pay. We can often infer willingness to pay by observing what people actually choose—and are thus willing—to pay for a given good or service. *Supra* notes 26-28 and surrounding text.

⁸ See Liscow, *supra* note 8 (discussing efficiency and neutrality).

⁹ (discussing when efficiency is and is not neutral and describing how it tends to provide larger legal entitlements to the rich); Dworkin, *supra* note 58 (providing a prominent early example of non-neutrality).

economics does not have an answer to how redistributive policy should be. As Kaplow and Shavell explain, even within a narrow welfarist frame, that decision would be based on multiple factors, including the declining marginal utility of income, the distribution of well-being, and interdependent preferences for well-being¹⁰—each of which is itself not easily measurable, to say the least.¹¹ And, with the tax public account, we can no longer just depend on Congress to address distributive issues through taxes. Given pervasive separate public accounts, there is little reason to expect that the efficient solution is best. This inability to provide answers that address issues of distribution is especially concerning given the possibility that the distributive questions may be as or more important than the efficiency questions that dominate work in economics, given concern over inequality.¹²

CHAPTER III: JUDICIARY APPROACH

The Judiciary from time to time had made efforts to prevent the misuse of the power of the Parliament by looking into the need and the intention of the parties to protect the people from any sort of discrimination towards them. The Judiciary had been successful on the same due to the power of Judicial Review.

The principle of fair play or public trust means that the taxation authority must not be allowed an unfair advantage in its dealings with taxpayers. Application of this principle suggests that (1) the authority must notify a taxpayer of any action the authority may take relating to that taxpayer, (2) during litigation, a taxpayer must be afforded all the rights of process allowed the authority, and (3) the authority must be bound by its interpretation of the law as applied to a taxpayer's particular situation. In most countries, these rules of fair play are part of the general administrative law. However, exceptions to these rules can be made when fair play does not suffer as a result. For example, an authority may take action without notice if it reasonably suspects that the taxpayer would destroy evidence or flee the jurisdiction.¹³

- *Meenakshi Vs State of Karnataka*¹⁴ -The rate of tax and objects to be taxed are to be determined by the legislature and unless it is found to be so unreasonable, the court does not interfere with the latitude enjoyed by the legislature in this behalf.¹⁵

¹⁰ KAPLOW & SHAVELL, *supra* note 7, at 27, 30-1.

¹¹ *But see* MATTHEW D. ADLER, MEASURING SOCIAL WELFARE: AN INTRODUCTION (2019) (describing how measurements can be approximated).

¹² *See supra* notes 10-17 and surrounding text; Furman, *supra* note 17.

¹³ Frans Vanistendael, "Legal Framework for Taxation"

¹⁴ AIR 1983 SC 1283

¹⁵ Dr. Yogendra Kumar Verma, "Principles of Taxation Law"

- *TO Vs N. Takin Roy Rymbai*¹⁶- While it is true that a taxation law, cannot claim immunity from the equality clause in Article 14 of the Constitution, and has to pass like any other law, the equality test of that Article, it must be remembered that the State has in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purposes. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others Nor the mere fact that tax falls more heavily on some in the same category, is by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article.
- *KT Moopil Nair Vs State of Kerala*¹⁷-A land was taxed at a fixed rate Rs. 2 per acre whether or not there was any income from the property. The Court declared such statutory provision discriminatory and violative of Article 14 of the Constitution of India. Here there is no classification between productive or non-productive land. The object of taxation is to acquire money from gains not from losses. If any tax is imposed on land having less income than tax or nothing, is against the objectivity of taxing statute.
- *M. Match Works Vs Assistt. Collector*¹⁸- The classification has been done between mechanised and non-mechanised matches industry for taxing purpose has been held valid because principle of classification linked to the productivity process. The Mechanised industry required less labour force than non-mechanised industry and more production which generates more income. Here it is reasonable to impose different taxing rate upon different destination.
- *S. Kodar Vs State of Kerala*¹⁹- It can be said that a legislative classification making the burden of the tax heavier in proportion to the increase in turnover would be reasonable.

¹⁶ (1976)103 ITR 82

¹⁷ AIR1961SC552

¹⁸ AIR 1974 SC 497

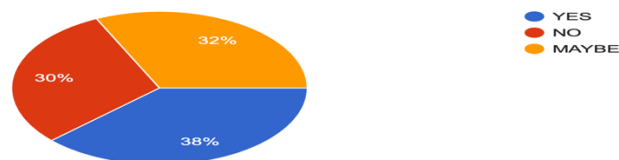
¹⁹ AIR 1974 SC 2272

A flat rate is thought to be less efficient than the graded one as an instrument of social justice. The economic wisdom of a tax is within the exclusive province of legislature. The only question for the Court to consider it whether there is rationality in the belief of the legislature that capacity to pay the tax increases, by and large with an increase of receipts. An attempt to proportion the payment to capacity to pay and thus bring about a real and factual equality cannot be ruled out as irrelevant in levy of tax on the sale of purchase of goods. The object of a tax is not only to raise revenue but also to regulate the economic life of the society.

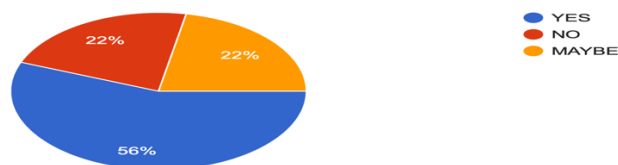
CHAPTER IV: APPROACH OF CITIZENS ON TAXATION AND THE RIGHT TO EQUALITY

The main concern here arises that whether the people understands the meaning of taxation to give a discrete opinion and to pay the taxes in an efficient manner and able to give a certain opinion on the current relation of Right to Equality and Taxation in the Indian Constitution. To understand the people's view on current taxation system data had been collected which states as follows.

DO YOU UNDERSTAND THE INDIAN TAX LAWS WHEN YOU PAY THE TAXES?
50 responses



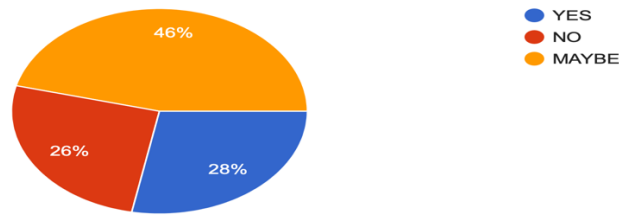
DO YOU KNOW ABOUT THE EXISTENCE OF INCOME TAX ACT,1961 ?
50 responses



The above two graph's statistics shows that the only 56% of the people know about the existence of the Income Tax Act, 1961 while a large proportion of the people are the tax-payers showing the lack of knowledge among the citizens of India. Only 38% of the Indian citizens understands the Indian tax system when they pay the taxes and majority of them take the help of CA to fulfil or meet this criteria.

DO YOU THINK INDIAN TAX LAWS MAINTAINS THE RIGHT TO EQUALITY ?

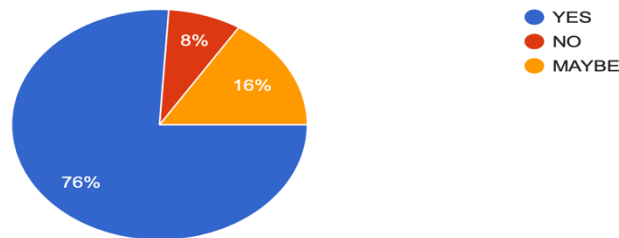
50 responses



The above statistics shows that the people are not sure that the Indian law system maintains the right to equality as guaranteed by the Indian Constitution to them.

DO YOU THINK THAT THE INDIAN LAWS NEEDS TO BE SIMPLIFIED FOR THE BETTER UNDERSTANDING OF THE INDIVIDUALS?

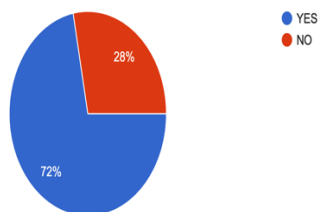
50 responses



The citizens in the above graph clearly states that the Indian tax law system is complex for them to understand and to pay the taxes and states about the simplification of the same.

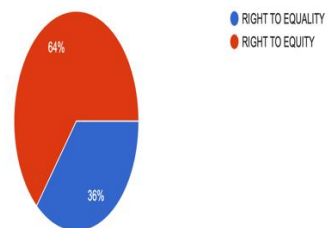
DO YOU THINK INDIAN LAWS ON TAXATION NEEDS TO BE CHANGED AS THEY ARE DISCRIMINATORY ?

50 responses



WHAT ACCORDING TO YOUR OPINION INDIAN LAWS MAINTAINS?

50 responses



The above two graphs shows the people's opinion that the Indian system of Taxation maintains the right to equity and feels that they needs to be changed as they tends to be discriminatory in nature.

WHY DO YOU THINK THE PRACTICES LIKE TAX EVASION AND TAX AVOIDANCE HAPPENS ?
50 responses



According to the people's opinion the problem of the practices of the tax evasion or tax avoidance arises due to the various reason, but most of the people believe that it is due to the practices of Corruption in India while 28% also believes that is it due to the complicated laws on taxation whereas 22% people believes that it is due to the lack of knowledge.

CHAPTER V: CONCLUSION

The taxation is one of the most important ways to collect revenue by the government especially in the developing country like India, but these laws should as such that the people find them easy and convenient which is lacking in the Indian Constitution. The Indian tax laws are very complicated to understand by the layman compelling them to resort to the practices of tax evasion. The people understand that the Indian tax system is based on equity and feels secure over the same, but the problem lies in the transparency of the laws and the procedures for its implementation. The Judiciary plays an important role in maintain the right to equity and the Indian tax system.

CHAPTER VI: BIBLIOGRAPHY

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