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Legal Control of Municipal Bodies' Power to Levy Tax: An Indian Perspective

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ABSTRACT

This piece of research work tries to evaluate and exemplify the importance of the Constitutional scheme of levying the tax by the municipal local bodies for the purposes of the collection of taxes. It analyses the provisions related to taxes which the Parliament can impose or the State legislatures can authorize. It also highlights the provisions which authorizes the local Self- governments like municipal corporations, municipalities and other local bodies of having power to impose various kinds of taxes for developmental purposes. It proceeds to study the scheme of distribution of powers under Schedule VII of the Constitution which contains the various provisions where the parliament as well as the State legislatures have delineated areas of operation in the form of the Union List, State List and the Concurrent List.

INTRODUCTION

India is a federal State in structure and unitary in spirit. Like a true federal state it has a defined scheme delineated under her Constitution of distribution of powers between the federal government, known as central government and the federating units called the states. It may be an ideal federal state like USA but it has a proper scheme of distribution of powers under Schedule VII of the Constitution. In the Constitution, there is a clear demarcation of the taxation powers of the Union and the States. Objectively speaking, under Article 246 of the Constitution, there are three Lists, namely, the Union List, the State List and the Concurrent List and under the schedule VII the parliament as well as the state legislatures has delineated areas of operation in the form of Union List, State List and Concurrent List. In respect of the subjects listed in the Union List including taxes, Centre has the exclusive power to make laws. Similarly, for the taxes listed in the State List, States have exclusive power to make laws. No taxes are listed in the Concurrent List. Thirteen taxes are listed in the Union List [1]. The important taxes listed in the Union List are those assigned to the Centre, are taxes on income, other than agricultural land, duties of custom, duties of excise except those on alcoholic liquor for human consumption, corporation tax, estate duty in respect of property other than agricultural land, terminal taxes on goods and passengers carried by railways, sea or air, taxes other than stamp duty on transactions in stock exchanges and futures markets and taxes on sale and purchase of goods other than newspapers, when such sale takes place in the course of inter-state trade or commerce. Under entry 92-C the Parliament is authorized to levy taxes on services [2]. Nineteen taxes are listed in the State List. The important taxes listed in the State List are land revenue, taxes on agricultural income, taxes on land and buildings, taxes on mineral rights subject to restrictions imposed by Parliament, duties of excise on alcoholic liquor for human consumption, taxes on sale and purchase of goods other than newspapers, taxes on goods and passengers carried by road, taxes on vehicles, taxation on professions, taxes on luxuries including on entertainments, taxes on entry of goods into a local area and taxes on advertisements other than those published in newspapers and broadcasted by radio or television [3].

INSTITUTIONAL MECHANISM FOR INTERGOVERNMENTAL TRANSFERS

The division of subjects between the Union and the States envisages that there is an asymmetry between the taxation powers and the functional responsibilities. While the Centre is assigned with taxes with higher revenue potential, States are assigned with more functional responsibilities. To address the issue of a gap in the resources assigned to States and their expenditure responsibilities, the Constitution provides an institutional mechanism in the form of a Finance Commission and other enabling provisions for the transfer of resources from the Centre. Article 280 mandates the setting up of a

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Finance Commission within two years from the commencement of the Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President of India considers necessary. The duties of the Finance Commission as prescribed under this Article are:

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid out of the Consolidated Fund of India;

(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the panchayats and municipalities in the State, and;

(d) any other matter referred to the Commission by the President in the interests of sound finance.

Under Article 281, every recommendation made by the Finance Commission together with an explanatory memorandum as to the action taken thereon is required to be laid before each House of Parliament.

All the taxes and duties referred to in the Union List with the exception of duties referred to in Articles 268 and 269 and surcharges referred to in Article 271 and any cess levied for specific purposes, shall be distributed between the Union and the States under Article 270. Article 268 refers to duties levied by the Union but collected and appropriated by the States. These are such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List. Under Article 269, taxes on the sale of goods and taxes on the consignment of goods shall be collected by the Government of India but shall be assigned to the States [4].

GRANTS TO STATES

There are two Articles governing the grants-in-aid from the Union to the States. Article 275 (1) provides for grants-in-aid of the revenue of such States as Parliament may determine to be in need of assistance and different sums may be fixed for different States. There are two provisos to clause (1) of this Article. These deal with the promotion of the welfare of Scheduled Tribes in the State of Assam. Under clause (2) of Article 275, no order with regard to grants under clause (1) shall be made except after considering the recommendations of the Finance Commission. Keeping in view these provisions, the terms of reference of Finance Commission stipulates that the Commission shall make recommendations for the purposes other than those specified in provisos to clause (1). Thus, the Finance Commission recommends grants under the substantive provision of Article 275 (1). Grants under Article 275 are charged on the Consolidated Fund of India.

Under Article 282, the Union or a State can make any grants for any public purpose, not withstanding that the purpose is not one with respect to which Parliament or the Legislature of a State, as the case may be, may make laws. Unlike the grants under Article 275 which can be dispensed only on the recommendations of the Finance Commission, grants under Article 282 can be made with no such restriction and are voted. The Sarkaria Commission was the first national level Commission to have comprehensively reviewed the Centre-State relations [5].

PUBLIC BORROWING

Articles 292 and 293 define the borrowing powers of the Union and the States, respectively [6]. Under Article 292, the executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time-to-time be fixed by the Parliament by law [7]. This power extends to giving guarantees. Article 293 empowers a State to borrow within the territory of India upon the security of the Consolidated Fund of the State. Thus, States can borrow only within the territory of India. Clause (2) of Article 293 imposes the condition that a State may not raise any loan if any part of the loan extended by the Government of India remains outstanding. In such cases, the permission of the Government of India is required for a State to raise a loan.

Table 1: Shows the vertical imbalance of the relative shares of the centre and the states in the combined revenue and total expenditure.

Finance Commission	Total Expenditure Centre	Revenue Before Transfer States	Expenditure (Percent) Centre	Expenditure (Percent) States
EIGHTH (1984-89)	47.86	52.14	44.22	55.78
NINTH (1989-95)	45.58	54.42	43.45	56.55
TENTH (1995-2000)	43.35	56.65	43.18	56.82
ELEVENTH (2000-05)	43.77	56.23	44.03	55.97
TWELFTH (2005-08)	43.74	56.26	44.45	55.55

SOURCE: Basic Data Ministry of Finance, Indian Public Finance Statistics, Various Years.

73RD AND 74TH CONSTITUTIONAL AMENDMENTS

The 73rdand74thAmendments to the Constitution in 1993 conferring statutory status to rural and urban local bodies respectively were developments of far reaching importance [8]. Article 243 provides for the constitution of elected rural and urban local bodies. The Article also provides for the constitution of a State Election Commission in each State entrusted with the responsibility of holding regular elections to these local bodies. Article 243(I) (1) mandates the appointment of a Finance Commission within one year of the commencement of the Constitutional Amendment Act and thereafter at the expiry of every fifth year to review the finances of the local bodies and to make recommendations on the principles of distribution of net proceeds of taxes between the State Government and the local bodies and the principles governing grants-in-aid to local bodies. Following these developments, Article 280 was also amended mandating the Central Finance Commission to make its recommendations regarding the augmentation of the Consolidated Fund of a State to supplement the resources of local bodies on the basis of the recommendations made by the Finance Commission of the State. These developments have given rise to demands for a separate fiscal space for local bodies.

FIVE YEAR PLAN ASSISTANCE TO STATES AND CHANGING DYNAMICS

For the Eleventh Plan, the percentage of GBS envisaged for the State Plans is only 23 per cent. Central assistance to State Plans is envisaged to come down from 1.48 per cent of GDP during the Tenth Plan period to 1.20 per cent of GDP in the Eleventh Plan. In contrast, the gross budgetary support to the Central Plan is envisaged to go up from 2.77 per cent of GDP in the Tenth Plan period to 3.97 per cent in the Eleventh Plan [5].

Besides the reduction in the budgetary support to the State Plans, the composition of the budgetary support has undergone major changes over the years. The share of normal plan assistance in the total budgetary support to the State Plan has come down drastically and that of CSS, additional Central assistance and special plan assistance has gone up considerably [9].

CONCLUSION

The Constitutional scheme to impose tax and the manner of distribution between the centre and the states is the golden mean of any federal government and due to many reasons the control of finances remains centralized at the discretion of the central government. As a result of this, many states often face difficult financial situations. In the same vein, the constitution of India operates in such a way that the financial bowl remains with the centre though there are some provisions for sharing and distribution. The financial relation of the state of Jammu and Kashmir with the Central Government follows the same pattern despite enjoying some special status under Article 370 of the Constitution.

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