

Levy of Property Taxes in India
Grounds for Challenges in Courts*
I. Immunity from Article 14 and Classification

- A law on taxation cannot claim immunity from equality clause embodied in Article 14 of the Constitution.
- But in the application of the doctrine of equality in matters relating to taxation, the Courts have, in view of the “inherent complexity of fiscal adjustment of diverse elements”, permitted¹ “a larger discretion to the Legislature in the matter of classification”. The Legislature possesses “greatest freedom of classification” and the power to classify is of “wide range and flexibility” so long as it adheres to the fundamental principles underlying the doctrine of equality and refrains from “clear and hostile discrimination” against particular person or classes.
- In permissible classifications, mathematical nicety and perfect equality are not required. Similarity and not identity of treatment is enough². If there is equality and uniformity within each classified group, the law will not be struck down as discriminative “though due to some fortuitous circumstances arising out of a peculiar situation, some included in a class get an advantage over others, so long as they are not singled out for special treatment”³.

The Court cannot for “obvious reasons meticulously scrutinize” the burden of taxation on different persons and interests⁴. Certain advantages or disadvantages are accidental and unavoidable and are inherent in every law imposing a tax because such law “has to draw a line somewhere and some cases necessarily fall on the other side of the line”.

II. Procedure

- If a statute does not lay down any specific procedure to make any assessment and leaves it entirely to the executive to lay down such procedure as appears to it to be fair, the statute will be challenged⁵.
- The “Procedure” as proposed under the Composite Area Linked System involves the following steps :

(1) *Submission of returns* by owners of lands and buildings

Provision for submission of returns by occupiers also

* based on a Study of 39 Case Laws by P.K. Ghosh, Formerly, Secretary, West Bengal Legislative Assembly and TRF’s Specialist Consultant on Legislation.

1 *Khandige Sham Bhat vs Agricultural Income-Tax Officer*, A.I.R. 1963 S.C. 591, 594, 596; *State of Kerala vs Haji K. Kutty*, A.I.R. 1969 S.C. 378.

2 *East India Tobacco Company vs State of Andhra Pradesh*, A.I.R. 1963 S.C. 1733; *Twyford Tea Company Limited vs The State of Kerala*, A.I.R. 1970 S.C. 1133, 1138, *Anant Mills Co. Ltd. vs State of Gujarat*, A.I.R. 1975 S.C. 1234, 1244.

3 *Khandige Sham Bhat vs Agricultural Income-Tax Officer*, A.I.R. 1963 S.C. 591, 594.

4 *D.G. Gouse and Co. vs State of Kerala*, A.I.R. 1980 S.C. 271.

5 *Jagannath Baksh Singh vs State of Uttar Pradesh*, A.I.R. 1962 S.C. 1563, 1570; *D.G. Gouse & Co. vs State of Kerala*, A.I.R. 1980 S.C. 271, 283.

Enabling provision for Municipal Commissioner or authorized officer to make an inspection and survey and take measurements

- (2) Declaration, by public notice, by Municipal Commissioner of his intention to classify, with reference to premises numbers, lands and buildings in each ward on the basis of factors specified in the law, including location and structural characteristics of buildings
- (3) Provisions for a reasonable opportunity to ratepayers for filing objections
- (4) Hearing of objections by a Municipal Valuation Committee consisting of a Higher Judicial Service Officer as its Chairman and two other Members, one being an officer of the State Government not below the rank of Deputy Secretary and the other being a Deputy Municipal Commissioner or a Chief Municipal Engineer of the Corporation
- (5) An appeal against the decisions of the Municipal Valuation Committee may be filed with the Municipal Assessment Tribunal constituted under the Act.

III. Reasonableness

- A taxing statute may be challenged on the ground that it has violated the requirement of reasonableness.
But as long as a tax retains its character as a tax and is not confiscatory or extortionate, the reasonableness of the tax cannot be challenged⁶. The Court would reject the challenge of a taxing statute as unreasonable⁷ unless it is shown that the infirmities in the provisions of a taxing statute are of such a serious nature as to justify its description as a colourable exercise of the legislative power.
- The reasonableness of a taxing statute may be ensured by, -
 - (1) laying down the procedure for consulting the wishes of the local inhabitants⁸
 - (2) there could also be a provision for an appeal
 - (3) the approval of the State Government may be made necessary before classification of lands and buildings is finalized and the unit area annual values are fixed.
The State Government could act, thus, as a watch-dog on the actions of the local body on behalf of the Legislature⁹.
- It may be noted that it is not possible to put the test of reasonableness into a “strait-jacket of a narrow formula”.
- It may also be mentioned that the quantum of tax to be levied, the condition subject to which it is levied and the social and economic policies which the tax is designed to sub-serve are all matters of political character and these matters have been entrusted not to the Courts but to the Legislatures¹⁰.

6 *Assistant Commissioner of Urban Land Tax, Madras vs Buckingham and Carnatic Co. Ltd.*, A.I.R. 1970 S.C. 169, 178.

7 *Jagannath Baksh Singh vs State of Uttar Pradesh*, A.I.R. 1962 S.C. 1563.

8 *M/s. Jullundur Rubber Goods Manufacturers' Association vs The Union of India*, A.I.R. 1970 S.C. 1589, 1594.

9 *M/s. Jullundur Rubber Goods Manufacturers' Association vs The Union of India*, A.I.R. 1970 S.C. 1589, 1594.

10 *Assistant Commissioner of Urban Land Tax, Madras vs Buckingham and Carnatic Co. Ltd.*, A.I.R. 1970 S.C. 169, 178.

IV. Delegation

- The essential legislative function consists of the determination of legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the Legislature. There is also no unlimited right of delegation inherent in the legislative power itself. There should be sufficient guidance in the statute itself for the exercise of the delegated power.
- The guidance may take the form of providing the maximum rates of tax upto which a local body may be given the discretion to make its choice. It may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by a local body to the approval of the State Government which acts as a watch-dog on the action of the local body in this matter, on behalf of the Legislature.
- So long as the law has provided a method by which the local body can be controlled and there is provision that reasonable rates are fixed, it can be said that there is guidance in the matter of fixing the rates.
- The nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation¹¹.

V. Floor Area Basis

- A question may be raised whether valuation of property and imposition of tax can be made on the basis of the floor area.
- It may be mentioned that there are different methods of arriving at the annual value of any land or building¹² and there is no rule of law as to the method of valuation to be adopted for determining the annual value.
- Where there is more than one method and the Legislature selects one out of them, the Court would not strike down the law on the ground that the Legislature should have adopted another method which, in the opinion of the Court, is more reasonable unless the Court is convinced that the method adopted by the Legislature is “capricious, fanciful, arbitrary or clearly unjust”¹³.
- In fact, entry 49 of the State List in the Seventh Schedule to the Constitution does not indicate that the property tax is limited only to rateable value, i.e., the annual letting value. It may be imposed on a variety of bases, namely, the extent of the land, floor area, number of storeys, etc.¹⁴.

11 *Municipal Corporation of Delhi vs Birla Cotton, Spinning and Weaving Mills, Delhi*, A.I.R. 1968 S.C. 1232, 1244.

12 Faraday on Rating, Fifth Edition, pp. 24, 165.

13 *D.G. Gouse & Co. vs State of Kerala*, A.I.R. 1980 S.C. 271, 279, 280.

14 A.I.R. 1968 Gujarat 124, 140.