

## Unlimited power to spend

A] Law entails expenditure. It is a common knowledge that the law carries sanctions behind it, i.e., the mechanism of punishment for its violation and the authority there for. The subjects of law know very well that they will suffer at the hand of the authority for ignoring or breaking the law. *Ignorantia juris non excusat*. And of course, setting up and maintenance of such mechanism in the society entails expenditure. Again, law is an instrument of social welfare and carrying out of welfare activities entails expenditure. This is the reason that while delineating the legislative power under the Constitution, the subject matter of legislation involving expenditure was followed by the power to tax.

B] Entry 1 to 81 of List I, entry 1 to 42 of List II, and entry 1 to 43 of List III of the Seventh Schedule of the Constitution of India enumerates the subject matters of legislation. The entries following the subject matters of legislation involving expenditure are the subject matters of taxation, i.e., entry 82 to 96 of List I, entry 43 to 66 of List II, and entry 44 to 47 of List III. This is not a mere coincidence but a well chalked out plan to carry out the ideals of the Constitution. Constituent Assembly Debates does not bear much debates in respect of this for the simple reason that this arrangement was taken without much debate from the Government of India Act 1935 and the learned drafters of the Constitution were well aware of the mechanism and they understood its significance in governance of a State.

C] By the passage of time, however, a myth has developed that the State has unlimited power to tax as well as to spend as an

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attribute of its sovereignty.<sup>1</sup> The arrangement under the Constitution does not support such lawlessness. When the subject matter of legislation has been delineated, then the expenditure must be on the same lines. And once the expenditure is constrained it will definitely delimit the burden of the people in the form of tax.

D] Now and often the constitutional validity of taxation has been examined by the courts but owing to high litigation cost common people have eschewed from questioning the constitutional validity of expenditures. Even attempts have been made to discourage litigation in indirect taxes by adopting the concept of unjust enrichment. The refund generated owing to the victory of the contesting party is transferred to the consumer welfare fund if the benefit of victory could not be passed on to the ultimate consumer of the goods and services. It is suggested in this reference that such consumer welfare fund be used for financing the cost of litigation for examining the constitutional validity of expenditure.

E] Private expenditure is often put to judicious uses for it is incurred by the person who has earned the wealth through his blood and toil. Public expenditure is allocated on the basis of political necessities so there always is a mileage for pressure groups. Again, the trickle-down effect leaves very less for the intended welfare and the embodying corruption is difficult to be weeded out.

F] Mechanism is there to scrutinise the expenditure incurred by State in addition to the principles of financial discipline. But the necessity and relevance of the expenditure is still the prerogative of the legislator-cum-administrator. Legislative deliberations also

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<sup>1</sup> Jindal Stainless Ltd. V State of Haryana (2017) 12 SCC 1

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get curtailed because finance bills are voted by the house of elected representatives only. Gentlemen at the making of the Constitution favoured “finance” over “deliberation” for they feared that any financial hurdle may hamper the smooth running and progress of the State.

G] For a participative democracy, however, it is essential that the financial matters of the State are deliberated upon not only to ensure transparency but also to create trust and nationhood amongst its citizens. A need, therefore, is felt for at least judicial review of the decision to spend; for which there is ample scope in our Constitution.

H] Article 246 of the Constitution along with the three lists of Schedule VII that enumerates respective areas of legislation of the Union and States is wide enough to question the prudence of the legislation as it has to be read subject to other provisions of the Constitution.<sup>2</sup> So, all kinds of restraints ingrained in our Constitution need to be satisfied while making any law. Again, Article 265 of the Constitution which states that “no tax shall be levied or collected except by authority of law” and the Articles following thereof in respect of “finance” also carries an inherent limitation that tax shall be levied for meeting the expenditure intended by the law framed under the Constitution.

I] By way of caution, it may be added here that it is not only the overall expenditure which should be optimum but also the direction of the expenditure and the underlying policies which should be judicious and relevant to the development of nation.

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<sup>2</sup> Basu (2018) v 12 p 13050