

~~~~~ **Interpreting Taxing Statutes # 14 – Challenge to validity of an Act**

The only ground for challenging the validity of a duly passed and assented Act is that it is unconstitutional; the court will not examine the irregularities in connection with introduction of a Bill or its passage through legislature or the motives of its promoters or legislators.^{^1}

SYNOPSIS

Unconstitutional

Irregularities in connection with making of an Act

Unconstitutional

An Act which has been passed by the legislature and assented by the constitutional head can only be challenged with respect to its validity on the ground of being against the constitutional norms; in other words, an Act may be invalid only if it is unconstitutional.

Ultra vires: Any law not conforming to the provisions of the Constitution may be declared *ultra vires* (ie beyond the competence of the legislature) by the court and such law may be struck off. If it is an Act then those provisions which do not pass the test of constitutionality may be struck off provided the remaining provisions are not affected by it.^{^2}

Irregularities in connection with making of an Act

It is well established that the court will not look behind an Act and investigate the process by which it was enacted; the internal workings or procedures of the legislative body are a matter for

¹ Bennion 2020 s 2.19

² Article 13

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that legislative body not the courts. An error, if discovered, would almost certainly be dealt with by validating legislation. Nor can it be argued that an Act is vitiated on the ground that members of the legislative body were disqualified or that the Act was obtained by fraud or other bad faith on the part of legislators or promoters. ^3

The court cannot scan the wisdom of the legislature.^4

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<sup>3</sup> Bennion 2020 p 72

<sup>4</sup> Commissioner of Sales Tax v Mangal Sen (1975) 4 SCC 35