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DIRECT AND INDIRECT TAXATION IN INDIA

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Abstract

Indian tax law separates direct taxes, which the taxpayer bears, from indirect taxes, which are collected from one person and passed to another through the price. This article follows that separation through the Constitution, the main statutes, and Supreme Court decisions from 1954 to 2026. It covers the Income-tax Act, 2025, which took effect on 1 April 2026, the GST rate changes of September 2025, the end of the compensation cess in February 2026, and the decision in Union of India v. Torrent Power Ltd. It also covers India's tax treaties, the Vodafone and Cairn arbitrations, the end of the equalisation levy, the OECD minimum tax, and the United Nations tax convention talks. It closes with six proposals and a list of open research questions.

Keywords: direct tax; indirect tax; Income-tax; GST; Consumer Welfare Fund; tax treaties; global minimum tax.

I. Introduction

A shopkeeper who adds GST to a bill and a salaried employee who has incometax deducted from her pay both hand money to the State. Only the employee bears the cost. The shopkeeper recovers it from the customer. Indian courts have seldom used the words "direct" and "indirect" to decide a case, but the difference between the two shows up in four places: who can claim a refund when a tax is struck down, how a tax rate is tested under Article 14, how exports are treated under trade rules, and how revenue is shared between the Union and the States.

The law changed a great deal between 2024 and 2026. Parliament replaced the Income-tax Act, 1961 with the Income-tax Act, 2025. The GST Council cut the rate structure to two main rates and one special rate. The compensation cess ended. The GST Appellate Tribunal began to hear appeals. The Supreme Court decided Mineral Area Development Authority

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(2024), Safari Retreats (2024) and Torrent Power (2026). Abroad, India abolished its equalisation levy, the OECD agreed a revised package on the global minimum tax, and the United Nations began negotiating a tax convention.

These changes rest on older rules. The article therefore starts with the meaning of the two terms and the history of the Indian system, then takes direct and indirect taxes in turn, and then turns to the limits on the power to tax and to the international rules. Recent developments are stated as they stood on 8 November 2026.

II. The two kinds of tax

A. The test

The usual test comes from John Stuart Mill. A tax is direct when it is demanded from the person who is meant to bear it. It is indirect when it is demanded from one person who is expected to recover it from another.[1] The Privy Council used this test to decide whether a Canadian province could levy a tax, and Indian writing has borrowed it.[2]

Income tax on a salary is direct. The employer deducts it, but the employee bears it. GST on a packet of biscuits is indirect. The shopkeeper deposits it with the Government, and the customer bears it.

B. The Indian Constitution

The Seventh Schedule does not group taxes under the labels “direct” and “indirect.” It lists subjects of taxation and says which legislature may tax each one. Parliament may tax income other than agricultural income, and may levy customs duties and excise duties on listed goods. The States may tax agricultural income, land and buildings, and mineral rights.[3] Since 2017 Article 246A gives Parliament and the States concurrent power to make laws on GST.[4] A tax law is valid if the legislature has power over its subject and the law respects the Constitution. Whether the tax is direct or indirect does not decide validity.

Table 1: Direct and indirect taxes compared

Point	Direct tax	Indirect tax

[1] John Stuart Mill, Principles of Political Economy bk. V, ch. III (1848).

[2] Bank of Toronto v. Lambe, (1887) 12 App. Cas. 575 (P.C.); Atlantic Smoke Shops, Ltd. v. Conlon, [1943] A.C. 550 (P.C.).

[3] India Const. sched. VII, List I, entries 82-84; id. List II, entries 46, 49-50.

[4] India Const. art. 246A.

Who pays the State	The person who earns the income or owns the asset.	The supplier, manufacturer or importer.
Who bears the burden	The same person.	Usually the final consumer, through the price.
Main examples	Income tax on individuals and companies; securities transaction tax.	GST; customs duty; central excise on tobacco and petroleum products.
Main laws	Income-tax Act, 2025 for tax years from 2026-27; Income-tax Act, 1961 for earlier years.	CGST, IGST and State GST Acts (2017); Customs Act, 1962; Central Excise Act, 1944.
Rates	Can rise with income.	Set by type of product, the same for every buyer.
Refunds	Paid to the taxpayer.	Paid to the applicant only if the tax was not passed on.
Exports under WTO rules	Remission is an export subsidy.	Rebate or refund is allowed.

C. Where the difference matters

Refunds come first. When an indirect tax is held invalid, the law asks who actually bore it, and the answer decides who gets the money. Part VI explains this rule of unjust enrichment. Fairness comes second. A tax on a product is the same for rich and poor buyers, so the choice of products and rates carries the weight that progressive rates carry in income tax. Trade comes third, and Part VIII covers it. Revenue sharing comes fourth. The Union shares the net proceeds of most of its taxes with the States on the recommendation of the Finance Commission.[5]

III. How the system developed

Table 2: Main stages

Year	Development
1860	First Indian income tax, introduced by the colonial government.
1878	Sea Customs Act.
1922	Income-tax Act, 1922.
1935	Government of India Act, 1935 divides taxing powers between the Centre and the provinces.
1944	Central Excises and Salt Act, 1944 (now the Central Excise Act, 1944).
1950	Constitution comes into force with Article 265 and the Seventh Schedule.
1953-54	Report of the Taxation Enquiry Commission.
1955-56	Bengal Immunity; Sixth Amendment; Central Sales Tax Act, 1956.

[5] India Const. arts. 270, 280.

1957	Wealth-tax Act, 1957.
1961-62	Income-tax Act, 1961 (in force 1 April 1962); Customs Act, 1962.
1982	Forty-sixth Amendment adds Article 366(29A).
1986-2005	Central credit for excise on inputs (1986); service tax (1994); VAT replaces State sales tax (2005).
2015	Wealth-tax abolished; Black Money Act, 2015.
2016-17	One Hundred and First Amendment (2016); GST begins on 1 July 2017.
2019-21	Lower corporate rate (2019); optional personal regime and faceless assessment (2020); retrospective tax on indirect transfers withdrawn (2021).
2024-26	Equalisation levy ends; GST rates reformed (22 September 2025); Income-tax Act, 2025 in force (1 April 2026); compensation cess ends (1 February 2026); GST Appellate Tribunal starts work.

A. Colonial period

India's first income tax came in 1860, when the finances of the colonial government were under strain after 1857.[6] The Income-tax Act, 1922 became the long-lasting basis of income tax administration.[7] Customs law was consolidated in the Sea Customs Act, 1878, and excise on manufactured goods rested on the Central Excises and Salt Act, 1944.[8] The Government of India Act, 1935 divided taxing power between the Centre and the provinces, and the Seventh Schedule follows that division.[9]

B. The Constitution and the first decades

The Constitution kept the federal division and added Article 265: no tax without authority of law. The Taxation Enquiry Commission of 1953-54 then reviewed the whole system.[10] Two early decisions show how courts and Parliament answered each other. In Bengal Immunity the Supreme Court held that a State could not tax an inter-State sale unless Parliament permitted it. The Constitution was amended in 1956, and Parliament passed the Central Sales Tax Act, 1956.[11] In Gannon Dunkerley the Court held that a works contract is not a plain sale of goods,

[6] Income Tax Act, No. 32 of 1860 (India).

[7] Income-tax Act, No. 11 of 1922, India Code (1922).

[8] Sea Customs Act, No. 8 of 1878 (India); Central Excise Act, No. 1 of 1944, India Code (1944).

[9] Government of India Act, 1935, 25 & 26 Geo. 5, c. 42 (U.K.).

[10] Gov't of India, Ministry of Fin., Report of the Taxation Enquiry Commission 1953-54 (1954).

[11] Bengal Immunity Co. v. State of Bihar, A.I.R. 1955 S.C. 661 (India); Central Sales Tax Act, No. 74 of 1956, India Code (1956).

so States could not tax the materials used. Parliament added Article 366(29A) by the Forty-sixth Amendment in 1982, and the Court upheld it in Builders' Association of India.[12]

The Income-tax Act, 1961 took effect on 1 April 1962, and the Customs Act, 1962 replaced the older customs law.[13] The wealth-tax of 1957 was abolished in 2015 and replaced by an additional surcharge on very high incomes.[14]

C. From reform to GST

Central credit for excise paid on inputs began in 1986. Service tax began in 1994, and the Supreme Court upheld it as an indirect tax resting on Parliament's residuary power.[15] The States replaced sales tax with VAT in 2005. Even so, the Centre taxed manufacture and the States taxed sale, so tax was often paid on tax. The Constitution (One Hundred and First Amendment) Act, 2016 created GST, and it began on 1 July 2017.[16] On the direct tax side, a lower corporate rate for companies that give up certain exemptions came in 2019, and an optional personal regime with lower rates and fewer deductions came in 2020.[17]

IV. The constitutional basis

A. Authority of law and the meaning of tax

Article 265 says that no tax may be levied or collected except by authority of law.[18] It requires a statute behind every tax, so an officer cannot create a tax by circular. The statute must also respect fundamental rights. In Moopil Nair the Supreme Court struck down a land tax that charged the same rate on every holding whatever its quality and gave the Government an unguided power to grant exemptions.[19]

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[12] State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., A.I.R. 1958 S.C. 560 (India); India Const. art. 366(29A); Builders' Ass'n of India v. Union of India, (1989) 2 S.C.C. 645 (India).

[13] Income-tax Act, No. 43 of 1961, India Code (1961); Customs Act, No. 52 of 1962, India Code (1962).

[14] Wealth-tax Act, No. 27 of 1957, India Code (1957) (repealed by Finance Act, 2015 (India)).

[15] Finance Act, 1994, No. 32 of 1994, India Code (1994); All India Fed'n of Tax Practitioners v. Union of India, (2007) 7 S.C.C. 527 (India).

[16] Constitution (One Hundred and First Amendment) Act, 2016, India Code (2016); Central Goods and Services Tax Act, 2017, No. 12 of 2017, India Code (2017) (CGST Act).

[17] Income-tax Act, 1961, §§ 115BAA, 115BAC.

[18] India Const. art. 265.

[19] Kunnathat Thathunni Moopil Nair v. State of Kerala, A.I.R. 1961 S.C. 552 (India).

In Shirur Mutt the Court described a tax as a compulsory payment taken by a public authority for public purposes, not paid for a service to the payer.[20] A fee, by contrast, pays for something specific. Later cases apply the same test to cesses and similar levies.[21] In 2024 a nine-judge Bench held by 8 to 1 that mining royalty is a contractual payment to the lessor and not a tax, and that the States may tax mineral rights under Entry 50 of the State List, subject to limits Parliament may set.[22]

B. Who may tax what

Table 3: Division of taxing power (simplified)

Subject of tax	Who may tax	Source
Income other than agricultural income	Union	Union List, Entry 82
Customs duties, including export duties	Union	Union List, Entry 83
Excise on tobacco, petroleum crude, diesel, petrol, natural gas and aviation fuel	Union	Union List, Entry 84 (as amended in 2016)
Supply of goods and services (CGST and SGST)	Union and States	Article 246A
Inter-State supply and imports (IGST)	Union, shared with States	Article 269A
Agricultural income	States	State List, Entry 46
Land and buildings; mineral rights	States (mineral rights subject to Parliament's limits)	State List, Entries 49 and 50
Alcohol for human consumption	States	State List, Entries 51 and 54

C. The GST Council

Article 279A set up the GST Council. The Union Finance Minister chairs it, and the State finance ministers are its members. It recommends rates, exemptions and related matters.[23] In Mohit Minerals the Supreme Court held that its recommendations do not bind Parliament or the State legislatures. The Court read Articles 246A and 279A as cooperative federalism: the

[20] Comm'r, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 S.C.R. 1005 (India).

[21] State of W.B. v. Kesoram Indus. Ltd., (2004) 10 S.C.C. 201 (India).

[22] Mineral Area Dev. Auth. v. Steel Auth. of India Ltd., (2024) 10 S.C.C. 1 (India), overruling India Cement Ltd. v. State of Tamil Nadu, (1990) 1 S.C.C. 12 (India).

[23] India Const. art. 279A.

legislatures keep their power to make law, and the recommendations have strong persuasive value.[24] A GST rate is therefore set by legislation and can be changed by legislation.

V. Direct taxes

A. Coverage

The core of direct taxation is income tax on individuals, Hindu undivided families, firms and companies. Income is taxed under heads such as salary, business or profession, capital gains and other sources, and tax is collected through advance tax and tax deducted at source. Agricultural income is left to the States. The securities transaction tax is counted among direct taxes in the Union Budget. The Black Money Act, 2015 separately taxes undisclosed foreign income and assets.[25]

B. The Income-tax Act, 2025

The Income-tax Act, 2025 received assent on 21 August 2025 as Act No. 30 of 2025 and came into force on 1 April 2026.[26] It replaces the 1961 Act. The old law used the "previous year," in which income is earned, and the "assessment year," in which it is taxed. The new Act uses one term, the "tax year," which runs for twelve months from 1 April. The first tax year is 2026-27.[27]

The Central Board of Direct Taxes describes the Act as a rewrite for simplicity and not a change of tax policy. Rates, deductions and exemptions in force under the 1961 Act at the end of March 2026 carry over under new section numbers. Assessments and appeals for earlier years stay under the 1961 Act, so both statutes will be in use for years. A reference to the old section 192, for example, must now be read as a reference to the new section on tax deducted from salary, and contracts and forms that cite old numbers need to be updated.

C. Rates and choices

An individual may choose an older regime with many deductions or a newer regime with lower rates and fewer deductions. Since 2023 the newer regime applies unless the taxpayer opts out. The Union Budget of 2025 raised the rebate so that no tax is payable on income up to

[24] Union of India v. Mohit Minerals Pvt. Ltd., (2022) 10 S.C.C. 700 (India).

[25] Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, No. 22 of 2015, India Code (2015).

[26] Income-tax Act, 2025, No. 30 of 2025, § 1(3), India Code (2025).

[27] Press Release, Cent. Bd. of Direct Taxes, Income-tax Act, 2025 Comes into Force from 1st April, 2026 (Apr. 1, 2026), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2248005&reg=48&lang=2.

₹12 lakh under the newer regime, apart from income taxed at special rates. The Budget of 2026-27 left the slabs unchanged.[28] Domestic companies may choose a 22 per cent rate if they give up certain exemptions and incentives.[29]

D. Tax planning and avoidance

The main direct tax disputes in court have been about where lawful tax planning ends and avoidance begins. In McDowell & Co. v. Commercial Tax Officer (1985), the Supreme Court said that colourable devices, meaning arrangements that look genuine but exist only to avoid tax, are not legitimate tax planning.[30] In Union of India v. Azadi Bachao Trust (2003), the Court limited that statement. A taxpayer may arrange his affairs to pay less tax if he stays within the law, and using a tax treaty through a company in a treaty country is not illegal in itself.[31]

Vodafone International Holdings B.V. v. Union of India (2012) concerned a foreign company that sold the shares of a foreign holding company which indirectly owned an Indian telecom business. The Revenue claimed tax on the sale. The Supreme Court held that the law as it then stood did not tax the transfer, and that a genuine business structure must be respected unless it is a sham.[32] Parliament then amended section 9 of the Income-tax Act in 2012, with effect from 1962, to tax such indirect transfers.[33] Vodafone and Cairn Energy took the matter to investment arbitration (Part VIII). In 2021 Parliament withdrew the retrospective demands for transactions before 28 May 2012, and the Government agreed to refund amounts paid, without interest, on conditions.[34]

Chapter X-A of the 1961 Act contains a general anti-avoidance rule, in force since 1 April 2017. It allows the authority to deny a tax benefit when an arrangement has tax saving as its main purpose and lacks commercial substance.[35]

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[28] Ministry of Fin., Gov't of India, Budget Speech 2025-26 (Feb. 1, 2025); Ministry of Fin., Gov't of India, Budget Speech 2026-27 (Feb. 1, 2026).

[29] Income-tax Act, 1961, § 115BAA.

[30] McDowell & Co. v. Commercial Tax Officer, (1985) 3 S.C.C. 230 (India).

[31] Union of India v. Azadi Bachao Trust, (2004) 10 S.C.C. 1 (India).

[32] Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613 (India).

[33] Income-tax Act, 1961, § 9(1)(i), Explanation 5, inserted by Finance Act, 2012 (India).

[34] Taxation Laws (Amendment) Act, 2021 (India).

[35] Income-tax Act, 1961, §§ 95-102.

VI. Indirect taxes

A. How GST works

GST is one tax on the supply of goods and services, charged at the place of consumption. The Centre levies Central GST (CGST) and the State levies State GST (SGST) on supplies inside a State. The Centre levies Integrated GST (IGST) on supplies between States and on imports, and the proceeds are shared. A business pays tax on its sales and deducts, as input tax credit (ITC), the tax it paid on its purchases. Tax is therefore paid only on the value added at each stage.[36] The final consumer has no one to pass the tax to, so the consumer bears it. The One Hundred and First Amendment added Articles 246A, 269A and 279A and defined GST in Article 366(12A).[37]

B. Leading decisions

1. Refunds: Mafatlal and Torrent Power

In Mafatlal Industries Ltd. v. Union of India, a nine-judge Bench considered claims for refund of excise and customs duty. It held that a manufacturer who has already recovered the duty from its buyers cannot take it back from the State, because it would be paid twice. This is unjust enrichment.[38] GST adopts the same rule. Under section 54, a refund is paid to the applicant only if the incidence of the tax has not been passed on. Otherwise the amount is credited to the Consumer Welfare Fund created under section 57.[39]

Union of India v. Torrent Power Ltd., decided on 10 February 2026, applied the rule. Torrent had paid IGST and service tax under a reverse charge notification on ocean freight for imported gas. The notification was later held invalid in Mohit Minerals, and Torrent claimed a refund of about ₹19.29 crore. The tax officer proposed to credit the amount to the Consumer Welfare Fund because the tax had been passed on to consumers. The Gujarat High Court set that aside and directed the company to hold the amount in a separate account for adjustment in future tariffs. The Supreme Court reversed the High Court. It held that a refund is payable to the applicant only if the burden was not passed on, that the amount otherwise goes to the

[36] CGST Act §§ 9, 16; Integrated Goods and Services Tax Act, 2017, No. 13 of 2017, India Code (2017).

[37] India Const. arts. 246A, 269A, 279A, 366(12A).

[38] Mafatlal Indus. Ltd. v. Union of India, (1997) 5 S.C.C. 536 (India).

[39] CGST Act §§ 54(5), 54(8), 57, 58.

Consumer Welfare Fund, and that a court cannot create a different refund route outside the statute.[40]

2. Input tax credit: Safari Retreats

The Supreme Court treats ITC as a benefit given by statute, available on the conditions the statute sets, and not as a fundamental right.[41] In Safari Retreats (2024), a two-judge Bench upheld section 17(5)(c) and (d) of the CGST Act, which block credit on certain construction of buildings. It read the words "plant or machinery" by function, so that a building can be a "plant" when the business cannot be carried on without it, and sent the facts back to the High Court.[42] In 2025 Parliament amended the clause to read "plant and machinery," which changes the wording on which the Court's reading rested.[43]

3. Economic policy and Article 14: VKC Footsteps

In Union of India v. VKC Footsteps India Pvt. Ltd. (2021), the Supreme Court upheld the formula for refunding unused credit under the inverted duty structure, where tax on inputs is higher than tax on the output. The Court said that it gives the legislature and the executive wide room in economic and fiscal policy.[44] This follows R.K. Garg v. Union of India, discussed in Part VII.

C. Changes in 2025 and 2026

1. New GST rates

On 3 September 2025 the 56th GST Council meeting recommended a structure of 5 per cent and 18 per cent, with a rate of 40 per cent for a short list of luxury and "sin" goods. The 12 per cent and 28 per cent rates were removed.[45] The new rates took effect on 22 September 2025 under notifications issued on 17 September 2025.[46] Notebooks, pencils, maps and a number of life-saving medicines moved to a nil rate, and many goods in the old 12 per cent slab moved to 5 per cent.

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[40] Union of India v. Torrent Power Ltd., SLP (C) No. 13084 of 2025 (India Feb. 10, 2026), setting aside Torrent Power Ltd. v. Union of India, Special Civil Application Nos. 13655 & 1659 of 2024 (Guj. Oct. 23, 2024).

[41] Jayam & Co. v. Assistant Comm'r, (2016) 15 S.C.C. 125 (India).

[42] Chief Comm'r of Cent. Goods & Serv. Tax v. Safari Retreats Pvt. Ltd., Civil Appeal No. 2948 of 2023, 2024 INSC 756 (India Oct. 3, 2024).

[43] Finance Act, 2025 (India) (amending CGST Act § 17(5)(d)).

[44] Union of India v. VKC Footsteps India Pvt. Ltd., (2022) 2 S.C.C. 603 (India).

[45] Goods & Servs. Tax Council, Recommendations of the 56th GST Council Meeting (Sept. 3, 2025).

[46] Notification Nos. 9/2025-17/2025-Central Tax (Rate) (Sept. 17, 2025) (India).

2. The compensation cess and tobacco

When GST began, the Union promised to compensate the States for revenue loss for five years and imposed a compensation cess on certain goods to fund it.[47] The cess was removed from most goods in September 2025 and ended for tobacco on 1 February 2026. From that date the Central Excise (Amendment) Act, 2025 (Act No. 34 of 2025) charges additional excise duty on tobacco products, and the Health Security se National Security Cess Act, 2025 charges a cess on pan masala manufacturing. Cigarettes and similar products also bear GST at 40 per cent.[48] Union excise on these goods is allowed by Entry 84 of the Union List.

3. The GST Appellate Tribunal

For about eight years the GST law provided for an appellate tribunal that did not exist, and taxpayers went to the High Courts. The GST Appellate Tribunal was launched on 24 September 2025, its procedure rules were notified in 2025, and its benches began to hear appeals in 2026.[49] Its case-load and disposal times are not yet public in a form that allows assessment.

VII. Limits on the power to tax

A. Equality

Article 14 does not demand one rate of tax for everybody. In R.K. Garg v. Union of India the Supreme Court said that the legislature has wide freedom in economic matters because it works with imperfect information and must be free to experiment.[50] The freedom has a floor. Moopil Nair struck down a flat land tax that treated unlike holdings alike. Indirect tax usually classifies by product, with low or nil rates on necessities and higher rates on luxuries. No decision holds that Article 14 requires a tax to follow ability to pay.

B. Freedom of expression

Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India concerned customs duty on newsprint. Newsprint had been exempt until 1981. The publishers argued that the duty

[47] Goods and Services Tax (Compensation to States) Act, 2017, No. 15 of 2017, India Code (2017).

[48] Central Excise (Amendment) Act, 2025, No. 34 of 2025 (India); Health Security se National Security Cess Act, 2025 (India); Abhijeet Kumar, Centre Notifies New Tax Framework for Tobacco, Bus. Standard (Jan. 1, 2026), https://www.business-standard.com/industry/news/tobacco-tax-regime-gst-vat-cess-excise-sin-goods-126010100641_1.html.

[49] Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025 (India); CGST Act § 109.

[50] R.K. Garg v. Union of India, (1981) 4 S.C.C. 675 (India).

raised costs, that cover prices followed, and that circulation fell.[51] The Court held that the press has no general immunity from tax but that a tax on newsprint is examined more closely than an ordinary tax. The publishers lost on proof, because they showed that circulation fell but not that the duty caused the fall. The Court still directed the Government to reconsider the levy.

C. Collection and property

Article 300A says that no person may be deprived of property except by authority of law. A valid tax law satisfies it, because Article 265 supplies the law. The Article matters more for the powers used to collect tax. In Radha Krishan Industries v. State of Himachal Pradesh the Supreme Court read the power to attach a taxpayer's property under the GST law strictly. The power must rest on tangible material, the officer must record reasons, and the taxpayer must have a chance to object.[52]

D. The Consumer Welfare Fund

A taxpayer has no right to a matching benefit from the State, and the Constitution leaves spending to the legislature through the Consolidated Fund.[53] No Indian court has held that the State must spend tax revenue on a particular group, and Article 21 has not been used to limit tax on necessities. The Consumer Welfare Fund is the one statutory channel through which money collected from consumers can return to them. After Torrent Power, refunds of passed-on tax can go only to that Fund. The rules on how the Fund is spent therefore decide whether the people who bore the tax ever see the money.

VIII. International rules

A. Tax treaties

India has a large network of double taxation avoidance agreements. They prevent the same income from being taxed twice and divide taxing rights between countries. Section 90 of the 1961 Act lets the Central Government make them, and a taxpayer may choose the treaty rule where it is more beneficial than the domestic rule.[54] Azadi Bachao Trust upheld treaty

[51] Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India, (1985) 1 S.C.C. 641 (India) (decided Dec. 6, 1984).

[52] Radha Krishan Indus. v. State of H.P., (2021) 6 S.C.C. 771 (India).

[53] India Const. arts. 114, 266.

[54] Income-tax Act, 1961, § 90; India Const. art. 253. The Income-tax Act, 2025 carries these provisions under new section numbers.

benefits even where a taxpayer chose a treaty-friendly route, so long as the arrangement is not a sham.

India signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI) in 2017 and ratified it in 2019. It adds anti-abuse tests, including a principal purpose test, to covered treaties.[55] Transactions between related companies in different countries must be priced as if the parties were independent.[56]

B. Vodafone and Cairn

The 2012 retrospective amendment led to arbitration under investment treaties. In September 2020 the tribunal in Vodafone International Holdings B.V. v. Republic of India held that the retrospective tax demand breached fair and equitable treatment under the India-Netherlands investment treaty. In December 2020 the tribunal in Cairn Energy PLC v. Republic of India reached a similar result under the India-United Kingdom treaty.[57] The 2021 amendment followed these awards.

C. Digital services and the global minimum tax

India introduced an equalisation levy of 6 per cent on payments to non-residents for online advertising in 2016 and a levy of 2 per cent on e-commerce supplies by non-residents in 2020.[58] The 2 per cent levy was withdrawn from 1 August 2024 and the 6 per cent levy was abolished from 1 April 2025.[59] The Finance Minister said the step was meant to address uncertainty in international economic conditions.

In 2021 members of the OECD/G20 Inclusive Framework agreed a two-pillar plan. Pillar Two is a 15 per cent minimum tax on large multinational groups, and more than 140 members have agreed its rules.[60] On 5 January 2026 the Inclusive Framework agreed a “side-by-side” package with safe harbours and simplifications, and it lets groups headquartered in qualifying

[55] Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, June 7, 2017.

[56] Income-tax Act, 1961, §§ 92-92F.

[57] Vodafone Int'l Holdings B.V. v. Republic of India, PCA Case No. 2016-35, Award (Sept. 25, 2020); Cairn Energy PLC v. Republic of India, PCA Case No. 2016-7, Final Award (Dec. 21, 2020).

[58] Finance Act, 2016, ch. VIII (India); Finance Act, 2020 (India).

[59] Finance (No. 2) Act, 2024 (India); Finance Act, 2025 (India); Govt to Abolish "Google Tax" amid Trump's Tariff Threat, Deccan Herald (Mar. 25, 2025), https://www.deccanherald.com/amp/story/business/govt-to-abolish-google-tax-amid-trumps-tariff-threat-3462385.

[60] OECD/G20 Inclusive Framework on BEPS, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Oct. 8, 2021).

jurisdictions elect relief from some top-up rules.[61] A Business Standard report of 6 January 2026 stated that India had not yet implemented Pillar Two, and that Indian groups must still comply in countries that have.[62] I found no later source on Indian legislation.

D. The United Nations tax convention

On 24 December 2024 the General Assembly adopted Resolution 79/235, which set the terms of reference for a Framework Convention on International Tax Cooperation and two early protocols.[63] An Intergovernmental Negotiating Committee is drafting them over 2025 to 2027. Its fifth session ended on 13 August 2026. Delegates worked from complete drafts of the convention and of the two protocols, one on taxation of cross-border services and one on dispute prevention and resolution. The sixth session is scheduled for Nairobi from 30 November to 11 December 2026.[64] At a BRICS tax heads meeting in New Delhi in September 2026, the Finance Minister said that the rules of international taxation are being renegotiated.[65] Nothing in the negotiations binds India yet.

E. Indirect tax and trade

GST follows the destination principle, which the OECD recommends in its International VAT/GST Guidelines.[66] Exports are zero-rated: the exporter charges no GST on the export and may claim a refund of tax paid on inputs. Imports bear IGST in addition to customs duty.[67] WTO rules allow a country to rebate indirect taxes on exported goods but treat remission of direct taxes on exports as a prohibited subsidy.[68] This is the point at which the direct and

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[61] OECD, Tax Challenges Arising from the Digitalisation of the Economy - Global Anti-Base Erosion Model Rules (Pillar Two): Side-by-Side Package (Jan. 5, 2026).

[62] Monika Yadav, OECD Pillar Two Safe-Harbour Rules Offer Limited Relief to Indian MNEs, Bus. Standard (Jan. 6, 2026), https://www.business-standard.com/amp/economy/news/oecd-pillar-two-safe-harbour-rules-offer-limited-relief-to-indian-mnes-126010601201_1.html.

[63] G.A. Res. 79/235, U.N. Doc. A/RES/79/235 (Dec. 24, 2024) https://docs.un.org/en/a/res/79/235.

[64] PwC, UN Tax Negotiations Move from Concepts to Treaty Text (Aug. 19, 2026), https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-un-tax-negotiations-move-from-concepts-to-treaty-text.pdf; U.N. Dep't of Econ. & Soc. Affs., Fifth Session, https://financing.desa.un.org/inc/fifth-session.

[65] Sitharaman Calls for Stronger BRICS Voice in Global Tax Negotiations, Bus. Standard (Sept. 23, 2026), https://www.business-standard.com/finance/news/brics-tax-administrations-seek-stronger-voice-in-global-tax-talks-fm-sitharaman-126092300333_1.html.

[66] OECD, International VAT/GST Guidelines (2017).

[67] Integrated Goods and Services Tax Act, 2017, § 16 (India).

[68] General Agreement on Tariffs and Trade 1994, art. III:2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187; Agreement on Subsidies and Countervailing Measures, Annex I, n.58, Apr. 15, 1994, 1869 U.N.T.S. 14.

indirect labels have a direct legal effect. Customs duties are also reduced by trade agreements and supplemented by anti-dumping and safeguard duties.[69]

IX. Revenue figures

Table 4: Union gross tax revenue, Budget estimates (₹ lakh crore)

Item	2025-26	2026-27	Share in 2026-27
Direct taxes	25.20	26.97	61.2%
Indirect taxes	17.50	17.07	38.8%
Gross tax revenue	42.70	44.04	100%

These are budget estimates, not collected revenue.[70] Direct taxes give the larger share. The journal of the Institute of Chartered Accountants of India attributes the rising direct tax share to income growth and the formalisation of the economy.[71] The 2025-26 estimate for indirect taxes was made before the September 2025 rate cuts, and the 2026-27 estimate was made after them. Indirect tax still supplies about two rupees in every five of gross tax revenue, and it is the tax that reaches households with little or no taxable income.

X. Proposals

The proposals below are the author's own. Each can be adopted within the existing constitutional framework.

Amendments that reverse a judgment or reach back in time should be avoided where possible. Vodafone and Safari Retreats both ended with an amendment, and the first led to arbitration awards against India. Where a change is needed, it should apply to the future and carry clear transition rules.

The Government should publish a table that maps each section of the 1961 Act to its place in the 2025 Act, and should issue guidance on the carry-over of rules, so that renumbering does not itself cause disputes.

[69] Customs Tariff Act, 1975, No. 51 of 1975, India Code (1975).

[70] Gross Tax Revenues Projected to Grow 8 Pc to Rs 44.04 Lakh Cr in FY27, The Week (Feb. 1, 2026), https://www.theweek.in/wire-updates/national/2026/02/01/gross-tax-revenues-projected-to-grow-8-pc-to-rs-44.04-lakh-cr-in-fy27.html.

[71] Union Budget 2026-27: Growth and Structural Transformation, ICAI CA J., https://cajournal.icai.org/article-details/union-budget-2026-27-growth-and-structural-transformation.

The rules under section 58 of the CGST Act should state what the Consumer Welfare Fund may be spent on, and the Government should publish each year what was credited to the Fund and what was spent. After Torrent Power, the Fund is the only lawful route for returning passed-on tax to consumers, and at present there is no public information about its use.

The Government should publish data on GST paid by income group. Without it, no court, legislature or researcher can test the claim that GST weighs more heavily on poorer households. The want of such evidence also defeated the publishers in Indian Express.

When the GST Council recommends a rate change on a necessity, or on an input such as paper, its recommendation should record that the effect on low-income households was considered. This is not a legal duty today. It would match the recorded reasons that Radha Krishan requires from officers, and it would give a court something to examine if the rate is challenged.

The GST Appellate Tribunal should publish the number of appeals filed, decided and pending, so that its working can be judged.