

CRITICAL ANALYSIS OF CONSTITUTIONAL VALIDITY OF LIABILITY TO DEDUCT TAX AT SOURCE (TDS)

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“You can’t tax business. Business doesn’t only pay taxes. It collects taxes.”

— Ronald Reagan

Abstract:

*Tax is a levy imposed by a government on the income of citizens of a State for which the government does not directly support the taxpayer. It has been a major source of government’s revenue be it Income Tax, GST, Wealth Tax etc. Government has adopted various methods of tax collection one of which is Tax deduction at source (TDS). It is an instrument designed for quick and smooth collection of tax due to the authorities from the taxpayer. The objective of TDS could be said, in general, to be maximization of revenue collection while minimizing the cost of collection. This approach is generally followed in B2B transaction where the purchaser has to pay the government a certain percentage of amounts directly after deducting the said amount from the purchase consideration. The Government has introduced this method to reduce the cost of collection. **But the cost which is reduced for the government is imposed on such businesses who are a mere third party to the transaction, a medium between tax-payee and the government.** The government has two agencies for tax collection, one being designated tax officers from the government and the other being private tax deductors. The former is paid for his services rendered to the government while the latter receives no such remuneration; however, the latter can be penalized in forms of fine, punishment for negligence or some other error which is not the case with the former. There is a possible and substantial violation of Article 14. Moreover, Article 23 of the Indian Constitution forbids any kind of Bonded / Forced Labour on Indian people. Which makes us think, whether payment of tax on behalf of the other party comes under the ambit of forced labour? Therefore, this paper aims to investigate the scope of TDS provisions under the Income Tax Act, 1960 in light of Article 14 and Article 23, in order to further investigate the Constitutionality of the provisions and taxation procedure as a whole.*

Keywords: Tax, Income. TDS, Revenue, IRS, Equality, Labour, Penalty, Procedure, Constitutionality.

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INTRODUCTION

Tax can be defined as the revenue or source of income for the government. Various initiatives and programmes are funded using tax revenue that is then used for national development. The term “tax” is defined by Black’s Law Dictionary as “a reasonable percentage of the production of the property and labour of individual persons, taken by the government, in the exercise of its sovereign rights, in the support of government, in the administration of laws, and as a means of continuing the various legitimate functions of the state.”


If we talk about India we can easily contend that India’s taxation framework traces its origins to ancient texts such as Manusmriti and Arthashastra. Hundreds of years ago artisans, merchants, and traders use to pay taxes in the form of silver, gold, and agricultural produce as prescribed by these texts. The British laid the foundation for the modern tax system in India when Sir James Wilson introduced Income tax in 1860. The newly established Indian Government cemented the structure at the time of independence to catalyze the country’s economic growth and also reduce income and wealth inequalities. Since then, India’s tax structure has undergone a revival with abolitions and modifications, as well as new reform additions. The tax reforms undertaken are intended to create economic equity which is done through a progressive taxation system as per which the rich pay a higher percent in income taxes than the poor. It would not be fair to place the same tax rate on a rickshaw puller and an industrialist and lawmakers need to take care of that. Tax is the government’s main source of revenue; which is used to conduct all of its functions.

In addition, it is a well-established principle that equal treatment and unfair treatment would be breach of Article 14 of Indian Constitution.

The legislature has ensured an equitable method of taxation in order to promote income equality, but this paper aims to discover whether the tax collection methods are in congruence to fundamental rights especially in congruence with Article 14 of the Constitution, for a state promoting equality it is important that not only the taxes but also methods of collection of taxes are following the Equality provisions of the Constitution. Before analyzing the congruence of collection method let us identify the tax collection mechanisms adopted by the government. These mechanisms are laid down under Income Tax Act, 1961 and are further elaborated below, this paper will majorly focus on the Constitutionality of Tax Deducted at Source mechanism, apart from identification of other mechanisms. (*Income Tax Act, 1961*)

The TDS (Tax Deducted at Source) concept was implemented in India with the intention of raising tax from the very source of revenue. Pursuant to the Income Tax Act 1961, when a certain payment such as wage, commission, rent, interest, professional fees etc. is made, a certain amount is reduced by a deductor; who is liable to make payment to any other person of a specified nature shall deduct tax at source and remit the same to the Central Government account. The deductee from whose income tax was deducted at source will have the right to receive credit of the amount on the basis of a TDS certificate. The Income Tax Act of 1961’s Chapter XVII establishes rules for tax deductions at the source and allows for tax deductions from a variety of sources, some of which are mentioned below:

SOURCES	SECTION UNDER IT ACT
• Salary	<i>Section 192</i>
• Amount under LIC	<i>Section 193 (vi)</i>
• Interest from Infrastructure Debt Fund	<i>Section 194 LB</i>
• Brokerage or Commission	<i>Section 194 H</i>
• Commission payments	<i>Section 194 G</i>
• Compensation on acquiring immovable property	<i>Section 194 L</i>
• Contractor payments	<i>Section 194 C</i>
• Dividends	<i>Section 194</i>
• Insurance Commission	<i>Section 194 D</i>
• Interest apart from interest on securities	<i>Section 194 A</i>
• Interest on securities	<i>Section 193</i>



• Payment of rent	<i>Section 194 I</i>
• Fees for Professional Services	<i>Section 194 J</i>
• Winning from games like a crossword puzzle, card, lottery, etc.	<i>Section 194 B</i>

This is one mechanism of tax collection, which is done by involvement of third party which is the deductor to directly pay the tax to the Central Government out of the sales/service consideration he had to pay to the deductee. Now before highlighting the conflict I'd like to throw some light on others method of tax collection by the government. Which are known as advance tax method and self-assessment method:

1. Advance tax is income tax that is payable if the tax liability in a financial year reaches Rs 10,000. It is due in the year the profit is paid. Therefore, it is often called the 'pay-as-you-earn' scheme. It is applicable if a person has revenue sources other than his / her salary. For example, if one earns through capital gains, investment interest, lottery, house ownership or business, then the concept becomes relevant.
2. Self-estimation. Self-assessment tax applies to the excess tax that an assessee may have to pay on his assessed income after having taken into account the TDS and advance tax before filing the income tax return. The IT return cannot be sent to the IT Department until payment of the taxes. At the end of the year, if any tax is pending until the ITR is filed; the final amount to be determined shall be set. This is called the Self Evaluation Fee, or SAT.

Now when we identify above three methods of tax collection that are TDS, Advance Tax and Self-assessment method, we can decipher that the party to the transaction in the latter two methods is the assessee and the Government who is collecting the taxes through the Indian Revenue Officers at various posts and various levels. While in the first method there are three parties to the transaction that is the Government, the assessee and the deductor (a person who is liable to pay monetary consideration to the assessee for goods/service rendered). Therefore, it can be said the Tax Deducted at Source method imposes liability on the deductor to pay the tax after deduction from the assessee and on behalf of the assessee. The contention so made; now I'll throw light on the consideration received by the IRS/ITO for aiding the taxation process and consideration received by the deductor for acting as a channel between the assessee and the government.

As per the Sixth Pay Commission, the IRS/IT Officers receive a minimum salary of Rs.15, 600/- to Rs. 80,000/- along with a pay grade of minimum Rs.1400 to Rs. 10,000. Both may vary as per the designation of the person appointed. Apart from the aforementioned consideration the IRS/IT officers are entitled to Dearness Allowances, Housing, Vehicle and Servants who are paid by the Central Government. Moreover, the 7th Pay Commission has further recommended an increase in salary by 250%. It shall be further noted that the liability of an IRS/IT office is restricted to the assessment of return filed by the assessee; he can be charged and prosecuted only in the case of identified corruption, and is usually exempted from any kind of negligence or delay in assessment of the Income Tax Returns.

Now after highlighting the consideration paid to the IRS/IT officer for aiding the income tax collection process, I'll move on to the consideration and liability imposed upon the deductor who is an agent of tax collection in the TDS process. It can therefore be contended that the deductor receives NIL remuneration from the government unlike the IRS officers. Moreover, the deductor is liable to pay legal expenses, accounts expenses, electricity expenses for filing of TDS statements. Along with this he's liable for the following implications:

1. **Failure to Submit Return:** Penalty of Rs.100/- per day until submitted; subject to a maximum of TDS amount as provided under Section 272 (A) of the Income Tax Act, 1961.
2. **Failure in Timely Filing of Return:** Penalty of Rs.200/- per day until submitted; subject to a maximum of TDS amount as provided under Section 234 (E) of the Income Tax Act, 1961.
3. **Default in Filing of TDS statement:** A penalty of Rs. 10,000/- to Rs. 100,000/- in case the deductor defaults at the time of filing the statement as per section 271 (H) of the Income Tax Act, 1961.

4. **Incorrect Details:** A penalty of Rs. 10,000/- to Rs. 100,000/- in case the deductor furnishes incorrect details pertaining to PAN, challan particulars as per section 271 (H) of the Income Tax Act, 1961.

1. **Non-Payment of TDS:** Levying of interest along with penalty in case of non-payment of TDS within due date under Section 201 of Income Tax Act, 1961. (*Income Tax Act, 1956*)

From the above contention it can prima-facie be seen that though the deductor and the IRS/IT officers are primarily performing similar functions of tax collection on behalf of the government, they are being treated unequally. On one hand the IRS officers are being remunerated with salaries and privileges and are exempted from various kinds of negligence. While on the other hand the Act has imposed a liability on the deductor to deduct and pay the taxes to the government without any remuneration from either the government or the assessee. It has further provided for penalizing provisions for various kinds of negligence and errors as mentioned above. This is where the conflict rises, though both the deductor and the IRS/IT officers are citizens of India and both are performing similar function of tax collection but then too the treatment received by one is unequal to treatment received by another, prima facie making the provisions of Chapter XVII discriminatory in nature, one can call it a violation of Article 14 of the Constitution.

Secondly the work being carried out by the IRS/IT officers are voluntary in nature to the extent of receiving remuneration while the work being carried out by the deductor is involuntary nature to the extent of carrying on business and avoiding penalties. This involuntary work being imposed by the Government, prima facie satisfies the definition of forced labour which is prohibited under Article 23 of the Constitution. It can further be argued that TDS as a procedure is also in violation of Article 23 of the Constitution. Although it is impossible and negligent for legal fraternity to rely on prima facie arguments and therefore it is necessary to identify the scope of Article 14 and Article 23 of the Constitution in pursuance of investigating Constitutionality of TDS as a procedure and the power of the legislature to discriminate amongst citizens on the ground of profession (*Bokil, Anil S. (2001), Indian Tax Structure with a Reform Proposal, Think-Line Publishers, Nashik*).

1. EQUALITY UNDER THE CONSTITUTION

Article 14 of the Constitution of India incorporates the basic principles of equality. Article 15.16 applies to the suffering of people there. Article 14 ensures equality Article 15 prohibits discrimination and Article 16 protects equal opportunities in public employment for Indian citizens. The general principle for equality that is Article 14 provides that *"the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*

We therefore note that Article 14 sets out two principles-(1) Equality before the law and (2) Equal protection of law. The principle of equality before the law is found, in most of the written constitution which guarantees citizens' fundamental rights. Both principles are also incorporated into the universal declaration of human rights. The first definition of equality before the law is an English root and the second idea of equal protection by law is taken from the American constitution. These terms reflect the principle of equal rights and equal treatment as we find in our Constitution preamble. (*D.D. Basu, Introduction to the Constitution of India, New Delhi, 1976*)

1.1 EQUALITY BEFORE LAW

Equality before the law means fair recognition of equal rights which should be administered equally, *that the right to sue and be sued should be treated alike*. To prosecute and be prosecuted for the same kind of action should be sure for all citizens of full age and understanding without distinction of race religious, wealth, social status or political influence. Therefore, the concept of equality does not mean absolute equality between human beings which is nearly difficult to achieve. It is a term which implies the absence of any special privilege by reason of birth, religion or the like in favour of any person and equally subject to the ordinary law of the land of all individuals and classes. What it forbids is discrimination between people who in similar circumstances or situations are substantially alike. Unequal treatment does not occur as between different situations and different sets of circumstances regulating individuals. The rule is that like should be treated alike and not that unlike should be

treated alike. (*Narender Kumar, Constitutional Law of India, Eight Edition, 2012; Shoeshankav Vs State of M.P. AIR 1951 Nagpur 5*)

Equality before the law is one component of what Dicey calls the English rule of law. It means that no man is above the law, and that every person is subject to the jurisdiction of ordinary courts whatever his rank or conditions. Dicey wrote that for any act undertaken without any legal excuse, any official from the prime minister down to the constable or a tax collector is under the same obligation as every other person. Although in India the Constitution is the source of individual rights. The constitution is the supreme law of the land and *all legislation enacted by the legislature shall adhere to the constitutional provisions*.

1.2 EQUAL PROTECTION OF LAWS

While equal protection of law means that all individuals shall be treated in identical circumstances both in the privileges conferred and in the liabilities imposed. In the same case, fair law should be applicable to everyone, and there should be no discrimination between one citizen and another. Thus the rule is that the like should be treated alike and not that unlike should be treated alike (*State of Bombay v. Balsara (1951) SCR 682 708-609*). Moreover, the rule of law embodied in article 14 is the basic features of the Indian constitution and hence it cannot be destroyed even by an amendment under article 368 of the constitution.

1.3 LIMITATION

The equality doctrine doesn't mean that every law has to be uniform. There are exceptions for all individuals who are not in the same place by definition, accomplishment or circumstances, as the differing needs of various groups of people also need separate treatment. (*Sakhwant R.B.I. v. Sahasranaman AIR 1986 SC 1830 (Para. 58)*) Therefore, the principle does not take away the power to classify persons for legitimate purposes from the state. Each classification is likely to produce some inequality in the same degree and it is not enough to produce mere inequality. Differential care does not constitute a breach of Article 14; 'per se.' It *only refuses equal treatment where the distinction has no reasonable basis*. (*Sakhwant v. state of Orissa (1955) 1 SCR 100*)

1.4 REASONABLE CLASSIFICATION PRINCIPLE

Article 14 forbids class law, which is not a fair designation for legislative purposes. If the legislature takes care to fairly identify persons for legislative purposes and deals equally with all persons belonging to a well-defined class, on the ground that the legislation does not extend to other persons, it is not open to charge of denying equal protection. For the purpose of permissible classification two conditions must be fulfilled:

1. That the classification must be based on an intelligible distinction that separates persons or items that are grouped together from those that are left outside the category.
2. That the discrepancy must have a reasonable relation to the purpose which the statute in question seeks to accomplish

What is required for is a nexus to exist between the classification basis and the object of the Act under consideration (*Budhan v. State at Bihar (1955) S.C.R. 1045 (1049)*). Therefore if the same provision is applied to the Income Tax Act then it can be contended that the object of Act that is a smooth collection of taxes and classification between the deductor and the ITO must have a nexus and a reasonable relation to purpose. Although the courts have intended to broaden the horizons of Equality by evolving new concept of equality and not merely sticking to the principle of reasonable classification, a new concept which protects against arbitrariness of the Statue and also courts (*State of West Bengal Vs Anwar Ali Sarkar AIR 1952 SC 75(4)*)

In *E.P. Rovappa Vs Tamil Nadu State*, honourable Supreme Court of India challenged the traditional equality concept, which was based on a reasonable classification and laid down a new equality concept. Bhagwati J. in providing judgment on his own behalf, Chandrachud and Krishna Iyer JJ promoted the modern concept of equality that equality is a dynamic concept with many aspects and dimensions and that it cannot be limited within conventional and doctrinal boundaries of reasonableness. From a positivist standpoint, equality is antithetical to arbitrariness. It fact equality

and arbitrariness are sworn enemies: One belongs to the rule of law in a republic and the other belongs to an absolute monarch's whim and caprice. Where an act is arbitrary, it is implied in it that, according to both political theory and constitutional law, it is unjust and, thus, clearly in violation of Article 14 (*E.P. Rovappa v. Tamil Nadu State 1 AIR 1974 SC 555*).

In international *Airport Authority* Case, Bhagwati J. reiterated the same principle that it must therefore now be taken to be well settled that what Article 14 Strikes at is arbitrariness because our action that is arbitrary, must necessarily involve negation of equality. It is merely a judicial formula for determining whether the legislative or executive action at issue is arbitrary and constitutes a denial of equality beforehand (*RD. Shetty v. Airport Authority AIR 1979 SC 162*).

The core objective of this research paper in light of Article 14 is to investigate the coherence of tax collection procedure with the Article. At the core of it both TDS and Advance Tax as tax collection methods used by the government therefore in general the work can be contended to "tax collection". What we now need to investigate is whether the businesses are entitled to equal pay for tax collection.

1.5 EQUAL PAY FOR EQUAL WORK

In a series of cases, the Supreme Court recognised fundamental rights to equal compensation for equal work in order to uphold the constitutional ideal of equality and social fairness. According to the ruling in *U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. vs Its Workmen*, when senior and junior groups of promoters perform the same type of work, higher wages given to one group to encourage an articular history must also be paid to promoters of another group on the basis of the equal pay principle for equal work. (*U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. Vs Its Workmen, AIR 1990 SC 495*).

In contrast, it has been determined in the case of *Kshetriya Kishan Gramin Bank v. O.B. Sharma* that the ideas of "equal remuneration for equal effort" and "parity with some others" are two distinct conceptions. However, under similar working conditions, two classes of people perform the same work for the same employer with the same responsibilities; therefore, the argument that the methods of recruitment for the two classes are dissimilar cannot invalidate the application of the equal pay for equal work principle. (*Kshetriya Kishan Gramin Bank Vs O.B. Sharma, AIR 2001 se 168 (Para 7)*).

Last but not least, it was established in another case that casual workers who perform work that is currently classified as Class IV work are entitled to salaries that are equal to those of Class IV government employees. This is one of the landmark cases establishing that private individuals are entitled to the same pay as government employees for work that is performed in a similar manner. (*Food Corporation of India VS Shyamal K. Chatterjee, A.I.R. 2000 3554 (Para 7)*).

In order to fully understand the implications of Article 23 of Indian Constitution before analysing the constitutionality of the Tax Deducted at Source Procedure in light of the aforementioned claims made against that provision of the Constitution, Article 14 should first be clarified. (*Shukla, 2011*)

2. SCOPE OF ARTICLE 23

The Constitution of India gives its citizens freedom, social and economic security, and political freedom of expression, belief, and worship, as well as equality of position and opportunity, brotherhood, human dignity, and national cohesion. The Constitution forbids forced or bonded labour (Article 23). There are several more provisions in the Constitution that follow the spirit of Article 23. Article 19 (right to freedom), Article 21 (protection of life and personal liberty), Article 24 (prohibition of employing children in mines, factories, and other dangerous occupations), and Article 38 (the State to secure a social order for the promotion of the welfare of the people).

Focusing on Article 23, we may argue that it has a fairly broad reach to ensure that no one is forced to do anything against their will. For instance, it prohibits forcing a labourer who is destitute and landless to do free services. The provision also prohibits forcing a woman or kid into prostitution. In the case of *People's Union for Democratic Rights v. Union of India*, the Supreme Court provided an interpretation of article 23's application. The Court concluded that the word "force" in this article had a fairly broad definition. This entails the use of physical force, legal force, and other economic pressures that might compel someone to perform labour. Therefore, if someone was compelled to work for less than the

minimum wage due to poverty, lack, destitution, or starvation, it will be considered forced labour. (*People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473).

In addition, the Court clarified what "all related sorts of forced labour" meant in the context of Article 23 of the Indian Constitution. It said that all forms of forced labour, including being a beggar, are illegal. That implies that it would not matter whether a person received compensation or not as long as he was required to perform labour against his choice.

Additionally, in his decision dated December 16, 1983, Bhagwati.J. provided a broad and liberal definition of forced/bonded labour system labour in the matter of *Bandhua Mukti Morcha*, which might be summed up as follows:

1. In a creditor/debtor relationship, it is not essential to show beyond a reasonable doubt the presence of a loan, debt, or advance;
2. It is assumed that if the debtor is providing some services to the creditor without charging a fee, he or she is doing it for financial gain;
3. Therefore, he or she is a bound worker deserving of legal protections. (*Bandhua Mukti Morcha v. Union of India* AIR 1998 SC 3164)

EXCEPTION

The Constitution of India, 1950, stipulates in Article 23, clause 2, that this provision does not preclude the State from exacting obligatory services for public objectives. Additionally, it states that when doing so, the State may not discriminate on the basis of race, colour, caste, gender, or any combination of these. Hence According to the Constitution's Article 23, Clause 2, this Provision does not prevent the State from implementing mandatory public service. It further states that when doing so, the State shall not discriminate on the basis of religion, race, ethnicity, class, or any of them.

The question of the public service's scope now emerges. Public service, according to the Cambridge Dictionary, is "a service offered by the government, such as hospitals, schools, or the police." Therefore, it may be argued that public services are those that directly benefit the whole populace. Part D of the paper will assess if the TDS is covered by the notion of public service.

3. ANALYSIS (THE CONSTITUTIONALITY TEST)

Now after highlighting the history, meaning of TDS as a taxation procedure, discovering the scope of Equality under the constitution along with highlighting the principle of reasonable qualification and limitation, apart from laying down the scope of Article 23 it makes it essential to move on to the most essential part of the paper that is taking the test of constitutionality of Tax Deducted at Source on the Scale of equality and Article 23 with the supreme scale of Rule of Law. Therefore, my analysis will be sub-divided into two parts first will be the text of equality, second being the test of conformity with Article 23

1. Test of Equality

As stated earlier that the equality is "equal treatment of equals and unequal treatment of unequal" therefore it is essential to highlight and discover the equality of the Income Tax Officer and Private Tax Deductor. It can therefore be contended that both are performing the sovereign function of tax collection that is collecting the tax on behalf of the government. One can say both are equal in the eyes of law to the extent of functions they are performing, both should have been equal but the inequality is created by the statute itself that is the Income Tax Act, 1972. The act which has provided for penalties as mentioned earlier for any kind of delay/error in submitting the TDS return, such penalties would have justified in the case where the deductor was entitled to some sort of remuneration for performing the sovereign function as in the case of the ITO who is entitled to salary, gratuity, pension and other benefits therefore the irony is that the act itself discriminates between two citizens for performing similar function. The right to remuneration should be applicable to both. There's no such remuneration provided by the State to its subjects (Deductors) for investing in electricity, accounting etc., in order to carry out a function that should have been done by Sovereign itself, in case of failure to do so the Sovereign is bound to compensate for any such function which is done by an individual on behalf of the sovereign in light of Rule of Natural Justice.

It can nevertheless be claimed that every rule must apply equally to all subjects, that the state has the right to distinguish between various topics, and that different classes of people may require different treatment. Although those who support the TDS as a method with an acceptable classification concept sometimes overlook the fact that classifications can only be created between individuals who are not comparable in nature, achievement, situations, or roles. Additionally, there must be a connection between the categorization established and the act's goal. Both are absent in the present case as though the circumstances are different but the nature and functions tend to be same of the deductor and ITO also since the object is tax collection I don't see any reasonable nexus between the object of the act and classification made.

Moreover as illustrated in *E.P. Rovappa Vs Tamil Nadu State*, equality is a broad and dynamic concept and therefore of cannot be limited within conventional and doctrinal boundaries of reasonableness. Equality, from a positivist perspective, is opposed to arbitrariness. In actuality, equality and arbitrariness are sworn enemies: one is associated with the rule of law in a republic, while the other is associated with the whim and caprice of an absolute monarch. When an act is arbitrary, it is inferred that it is unfair and manifestly in violation of Article 14 of the Constitution both in terms of political philosophy and constitutional law. (*E.P. Rovappa v. Tamil Nadu State 1 AIR 1974 SC 555*).

As highlighted in Section B of this paper the concept of equality should imbibe “*equality before law and equal protection of law*” henceforth it can be contended that there is absence of equality before law in the present case as for the same function one receives remuneration while other has got penal provisions and therefore the aspect of Equality is missing in the Indian Taxation Procedure. Furthermore, the courts have entitled the private individuals to same remuneration be it in form of salary as government individuals in case of same function being performed by both. (*Food Corporation of India VS Shyamal K. Chatterjee, A.I.R. 2000 3554 (Para 7)*)

Furthermore, it can be argued that Article 15 only prohibits discrimination based on one of the following: religion, race, caste, sex, place of birth, or any combination of these. It does not ban discrimination based on occupation or class. Such objections or reasons might be flagrantly disregarded due to the fact that the State does not have the authority to discriminate on any other grounds not specified in the Article just because a phrase is absent. The discrimination can only be done as long as it qualifies the test of reasonableness as per the old theory and confine to the principles of Natural Justice as per the new theory and therefore the taxation procedure fails the test of equality to the extent of Tax Deducted at Source. (*Shukla, 2011*)

1. Test of Conformity with Article 23

Keeping in mind Article 23 of the Constitution, let's now go on to the TDS procedure's conformance. It might be argued that this Article forbids forced labour in any form since it degrades human dignity and goes against the foundational principles of humanity. The definition of forced labour has been tested and established by the Supreme Court in a number of decisions, such as the case of People's Union for Democratic Rights v. Union of India, where the court determined that it includes physical force, legal force, and other economic factors that may compel someone to perform labour. Therefore, it will be considered forced labour if a person was made to perform labour for less than the minimum wage. Even if compensation is provided, forced labour is still considered to have taken place if the individual's labour was provided against their choice. Therefore, if one party to a contract compels the other party to execute contract obligations that he is unwilling to, this will also fall under the definition of forced labour because the only way to repair a breach is to ask for particular performance or compensation rather than force.

Now in light of current definition as laid down in the aforementioned case it is quite clear that any legislation making it mandatory to any act against the will of the person which has no reasonable, judicial backing shall be treated as forced labour. In light of the same one can contend that investing one's own money in electricity, accounting etc. for smoothening the tax collection process is a form of forced labour as long as it goes against the will of the person doing it; logically speaking no man with reasonable diligence would be ready to incur such additional expenses and penalties in order to collect tax at source on behalf of the government.

As far as the relationship of deductor and government are concerned it is a common misconception that the relationship between the government is of debtor and creditor since the deductor has collected the money on which the government had the right, this notion is generally used to justify the penalty provision, though even if we consider this form of relationship (which it is not actually) we'll be able to identify this as a form of forced labour on the basis of ratio laid down in the case of ***Bandhua Mukti Morcha*** where Bhagwati J. opined that in case if the debtor is rendering any service to the creditor free of cost then it shall be presumed it to be a form of forced labour under the ambit of Article 23. It is further contended that the role of deductor is an agent of the government who is facilitating tax collection and not a debtor, this relationship has come out of force and provisions of Income Tax Act, 1972 and hence a violation of Article 23 (***Bandhua Mukti Morcha v. Union of India AIR 1998 SC 316***).

Moreover, references of clause (2) of Article 23 are given as a defence and method to justify the taxation procedure. Clause (2) which is an exception to Article 23 provides the State can force its citizens to the extent of rendering public service. But if we browse through various definition of public service we'll discover that public service relates is service related to hospital, education, transport etc. which is directly benefitting the public. Therefore, admitting students under the RTE, treating patients etc. for free initially and taking the remuneration from government can be considered public service. Although collecting tax which has no direct relation with the general public as illustrated under the definition will therefore fall outside the ambit of public service and hence the exception won't apply, which leads to the TDS not in conformity to Article 23 of the constitution (***State of H.P. v. Jarawar, AIR 1955 HP 1***).

4. CONCLUSION:

It can therefore be contended that the government has shifted the onerous burden of tax collection which should have been a sovereign function on the citizens as a mandate in order to carry out their businesses. As illustrated and justified previously the whole procedure of Tax Deducted at Source comes out to be arbitrary in nature. The procedure of TDS as whole is violative of Article 14 and 23 of the Constitution as it fails to reasonably differentiate between the deductor and the income tax officer, benefits and penalties as given to both have already been described earlier and therefore are clear violation of principle of natural justice.

Moreover, individuals rendering free service and incurring cost on behalf of the government due to Income Tax Act has already been proved that TDS is not in conformity with Article 23 of the Constitution. Hence the Tax Deducted at Source being not in conformity with Article 14 and 23 stands ultra-vires the constitution and hence unconstitutional.

A. RECOMMENDATIONS AND SUGGESTIONS:


Now post a detailed analysis and evaluation of the question of how the TDS Collection Mechanism in the Statutes failed the test of Constitutionality by violating Article 14 and 23 of the Constitution, let us find out the ways or methods to bring the collection method in the constitutionality framework, the recommendations and suggestions for the same are as follows:

- **Need to incentivizing Businesses:** A percentage of TDS collected should be allotted to businesses who are mandated to file the TDR Form in order to meet their accounting, electricity and other miscellaneous expenses incurred due to cutting of TDS.
- **Need to provide interest only in place of penalty:** In case of delay in filing TDS Returns and depositing the amount, the authorities should be mandated to charge interest only on the said amount while the penalty clauses should be modified by extending their duration. Schemes/Grants for businesses filing timely TDS return should be introduced.

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