REINTRODUCTION OF INHERITANCE TAX: HINDRANCES AND CHALLENGES ON ITS IMPLEMENTATION IN INDIA

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Abstract

Inheritance tax, also known as an estate tax or death duty in some regions, is a tax imposed by the government on the assets and wealth that are transferred from a deceased person to their heirs or beneficiaries upon their death. It is a tax levied on the right to inherit property or wealth from someone who has passed away. A person can receive inheritance either under a Will or under the personal law of the deceased. In many countries, the heir must pay Inheritance Tax for inheriting any such property or assets from your parents or grandparents or any other relative or friend. In India, the concept of levying tax on inheritance does not exist now. Depending on the country, it can be as high as 55%. Tax India had before was in 1953 Indian Parliament had passed the estate duty 'Death Tax Act' which has later abolished in 1985. However, Income Tax Act specifically excludes the transfer of assets under will or inheritance from the purview of gift tax. Accordingly, the law does not provide for taxation of property received by way of inheritance. The problem of poverty is real but the run-of-the-mill solution of inheritance tax is not the solution. This research paper investigates the pressing issue of an inheritance tax in India and explores the hindrances and implications of implementing an inheritance tax as a potential solution. Its deals with the complex issue in the introduction of Inheritance tax and may have various drawbacks. Implementation of Inheritance tax will affect millions of citizens of India especially the middle section of society. The study examines various aspects of this complex issue, from economic impacts and legal frameworks to public opinion, political turmoil and policy implications. In conclusion, this research paper provides a thorough examination of the challenges posed by introduction of Inheritance tax and the introduction of inheritance tax cannot be a policy tool to address it. It underscores the importance of informed decision-making, public engagement, and the pursuit of social justice in shaping the future of India's economic landscape. The findings and recommendations presented herein contribute to the ongoing dialogue on this critical issue and offer valuable insights for policymakers, economists, political leaders and citizens alike.[1]

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[1]Vedika Balsaraf, Siddharth College of Law, THE GROWING DIVIDE BETWEEN THE RICH AND

I. INTRODUCTION

A quote by David A. Siegel reminds that 'I have enough money for rest of my life and enough to leave a good inheritance for my kids.' This are the not the words but the feelings of middle class and the poor people of India. India is a country where all the classes of people live and people of one generation spend less money on their livelihood instead, they save money for next generation so that they have some token of their ancestors love with them. In India mother keep their golds with a dream that she will give it to her grand daughter and therefore introducing Inheritance tax will affect the sentiments of Indians. Our aim is to delve with the hindrances caused after the reintroduction of Inheritance Tax. This paper insights that India should not impose Inheritance tax. There are several various issues prevailing in India that one should look upon and which need undivided attention and comprehensive redressal, like socio-economic empowerment and strengthening of government finances. But we should think out-of-the-box to arrive at better solutions rather than opt for ideas that are legacy-driven and seeped in a colonial hangover, dating half a century back in time. Refreshing new schools of thought now envision a future devoid of direct taxes, or least explore imposing a higher indirect tax or 'pay for use' levies, like for instance toll roads.[2] In fact, there's a debate going in few countries over withdrawing inheritance tax altogether, citing it to be highly unfair and hence unpopular. Equal opportunity to all is a constitutional tenet, which must be protected at all costs, but simply taxing on inherited property which the ancestors earn by doing hard work and keep money for their children can never be a sustainable solution. So where is the need for inheritance tax? The answer is straight no. More importantly, taxing a transaction which is an inherited property is not technically necessary. Inheritance is not a transaction for profit, but a technicality rooted in a transfer within the family. Rather than government should impose several schemes that should benefit the poor. The problem of poverty is real but the run-of-the-mill solution of inheritance tax is not the solution.

II. INHERITANCE TAX IN INDIA

In present scenario India don't have any inheritance tax. This means individuals

THE POOR: SHOULD INDIA IMPLEMENT AN INHERITANCE TAX?

[2] Amar Ambani, A case Against Inheritance Tax, time to break the shackles of ultra-social mindset

inheriting property or assets do not incur any tax liability. However, other tax implications might arise: Capital gains tax: If the inherited asset is sold, capital gains tax may be applicable depending on the holding period and the nature of the asset. Probate fees: In some cases, obtaining a probate (court order confirming the will's validity) might involve fees.[3] In order to promote fairness in society, the government has introduced various measures such as gift tax, wealth tax, and estate duty. Wealth tax was removed in 2015, while gift tax was eliminated in 1998, but reintroduced in 2004, which means that income tax is charged on gifts given to relatives. [4] Tax on acquiring ancestral property can never be a good strategy neither be levied on the poor nor the rich. Imposing inheritance tax will first of all it directly hits the middle class, it directly hits the aspirational class they work hard, sweat and toil of theirs is saved in small saving to buy a dream house and keep some fixed deposit. All these will be spoiled after the introduction of Inheritance Tax. India is a land where grandmother keeps gold necklace for her granddaughter as her token of love and if tax will be imposed on this it will directly hurt the sentiments of Indians. Poor don't get much of the ancestor property and maximum of that limited property if goes in paying tax then what will left to them. The Second Scenario could be if the inheritance tax is taken from the rich people that is the wealth creator the then it will destroy the economic condition of the country as they make money, employ people and it will take us ten years back era.

III. HISTORICAL BACKGROUND

Inheritance Tax was imposed in India way back in 1953 to mitigate economic inequality. It served as a mechanism to levy taxes on the extremely wealthy who transferred huge wealth to their successors. Estate duty was levied on the market value of all immovable properties in India, as well as on all movable property (whether in India or outside) passed on to successors upon the death of an individual. The primary aim of introducing an inheritance tax was to reduce wealth inequality and redistribute wealth. It was also seen as a measure to raise revenue for the government. The erstwhile law also had an anti-avoidance mechanism in place to curb

[3] Abhishek S, understanding inheritance tax: Why it was in trend and Indian Scenario

[4] The Economic times, Sam Pitroda inheritance tax debate: What is inheritance tax in India

certain transactions such as gifts made in ‘contemplation of death' or gifts given within two years prior to death. Despite its noble objectives, the estate duty law was met with significant disapproval throughout its existence. The tax was abolished in 1985 during the government of Prime Minister Rajiv Gandhi. The reasons for the abolition were Administrative and enforcement challenges, lead to high costs and low efficiency. The tax was perceived as encouraging capital flight and discouraging investment, as wealthy individuals sought ways to avoid the tax through various means. It was also seen as contributing to tax evasion and encouraging the undervaluation of assets. This duty applied to real estate and movable assets within or outside India. However, the tax faced public Opposition due to its steep rates, reaching up to 85 per cent for properties valued over Rs 20 lakh. It commenced at 7.5 per cent for properties valued at Rs 1 lakh. Property worth was determined based on market value at the time of the individual's demise.[5]

In India, there is no inheritance tax, as we have discussed earlier. However, to help you understand how it works - let us take the example of France. Many factors determine the final tax amount - we won't go into the details - we keep it simple. Let us say the total value of the inheritance is €500,000. The beneficiary is the child (direct inheritance). Next, let us assume is there a tax-free allowance of €100,000 for children inheriting from their parents.

- Taxable Amount: €500,000 - €100,000 = €400,000

Now, let's say the applicable tax rate for this amount is 10%.

- Inheritance Tax Owed: €400,000 * 10% = €40,000

So, in this scenario, the inheritance tax owed would be €40,000.

The tax is typically calculated based on the value of the assets left behind after any exemptions or deductions. The purpose of an inheritance tax is often to generate revenue for the government and to redistribute wealth. It was payable only if the total value of the inherited portion of the property exceeded the exclusion limit. In India, it was set as high as 85% on properties. Properties worth at least ₹ 1.5 lakh, were taxed at a rate of 7.5%.

[5] Abhijeet kumar, Decoded: The history and political relevance of Inheritance tax in India

Despite heavy litigation, the revenue collected from estate duties was minimal, amounting to only Rs 20 crore for the financial year 1984-85, representing a mere 0.4% of the total direct tax collection that year. The objective was to narrow the income disparity but was scrapped in 1985. As both wealth-tax and estate duty laws apply to the property of a person, the former applying to his property before death and the latter after his death, the existence of two separate laws with reference to the same property amounts to procedural harassment to the taxpayers and the heirs of the deceased who have to comply with the provisions of two different laws.

IV. WHO ARE CONSIDERED AS HEIR?

In this aspect, there is a double casuistry. If there is a will, it is in this legal document that the distribution of the inheritance is determined. If there is not one, it will be distributed taking into account an order of succession: children and descendants, ascendants, spouses, siblings and other relatives. If there is no will or no relative claims the inheritance, it would pass to the State.

V. FORM OF DISTRIBUTION TO HEIRS

Below we show you how the estate should be divided among the heirs, which will depend:

- If there are only children: The estate will be divided equally to each child.
- If there is only one child and spouse: The estate is divided equally.
- If there is more than one child, less than 7 children and a spouse: The spouse is entitled to double the inheritance of each child, therefore each child is entitled to the equivalent of (Formula: The total of the hereditary mass divided by the number of children, plus 2) and to the spouse twice for each child.
- If there are more than 7 children and a spouse: The spouse is responsible for a quarter of the estate while the remaining part is divided equally among the children.
- If there is a spouse and ascendants: The spouse has 2/3 of the estate. The rest is divided equally between the ascendants.
- If there is only one spouse: The total inheritance corresponds to him or her.
- If there are only ascendants: The hereditary mass is divided equally between the ascendants.

- If there are other heirs: The inheritance will be divided equally.[6]

VI. METHODS OF INHERITANCE TAX

a) *Will of succession*

This is an old and traditional way of inheritance. Will of succession is a document in which the deceased person has pre-declared the lawful owner of his/her assets.

b) *Inheritance by nomination*

A person can declare a person of his/her choice as the nominee. The nominee then becomes the lawful owner of an asset and the benefit it generates.

c) *Inheritance by joint ownership*

If any asset lies under the joint ownership of two or more people, the survivor(s) get to manage the asset post death of the other owner.

If there is an existence of any asset or property under joint ownership of people, involving two or more individuals, the surviving person possesses complete control of the deceased person's assets.

Joint ownership of the inherited property takes place in the following ways:

- Tenants in Common

This is when two or more people are involved in purchasing a property but do not mention shares of each other. If one of them dies, his or her assets are then passed on to the legal heir.

- Joint Tenancy

This is when two or more persons are owners of the property and each of them has equal shares with the same rate of interest and under the same deed. When one of the joint tenants dies, the other surviving tenant avails the share.

- Tenancy by Entirety

This kind of ownership takes place between spouses. None of them can sell off the property without the consent of the other spouse. Thus, it is only possible to end

[6] Visha Sharma, Inheritance tax in India: history, types and distribution among heirs

ownership only through death, divorce or mutual agreement between spouses.

VII. TAXATION ON INHERITED ASSETS

In the Indian scenario, the succession law is applied in accordance with the personal law. That is, in case of a death of a Hindu, the assets will be divided according to the Hindu succession act and so on.

As per the Income Tax Act of 1961, no tax is levied on the inherited assets, whether movable or immovable, as such. However, the tax will be levied if the new owner decides to sell the property. In case of movable assets like mutual funds, gold, shares, etc., the new owner is not liable to pay any tax. But he/she shall have to pay the tax when they decide to sell these movable assets. Let us now see what the tax liabilities on different inheritance conditions are.

The following conditions will help us to get a clearer picture.

a) Tax on Inheritance of immovable property

- While selling the inherited property, keep in mind to pay the taxes on the long-term capital gains from the sold property. If the asset is held for more than three years from the date of acquisition, then the new owner is subject to tax liability after he/she receives the money from the sale of the asset.

- To save on the capital gains tax, Section 54 of Income Tax act of 1961 says that the new owner can be exempted from this tax if he/she invest the sale proceed in another property of equal or more value. If the purchased property is of lesser value, then the remaining balance must be deposited in Capital Gains Account scheme before filing the income tax.

- An NRI can inherit property in India under the Foreign Exchange Management Act (FEMA), and no tax will be levied on inheritance.

- If the value of the inherited property is greater than INR 30 Lakh, then the new owner will be liable to pay Wealth Tax. However, if it is the only property a person has, he/she will be exempted from the wealth tax.

b) Tax on inheritance of movable assets

No tax is levied on the movable assets, unless the legal heir, nominee or the joint owner decides to sell them. However, certain formalities must be fulfilled by the inheritance owner in case of receiving movable assets.

- In case of inheriting a bank account, you must change the account name to Account Holder Deceased. If you are the nominee, survivor or legal heir, then you will be credited with the pipeline flow to make withdrawals from the account.

- In case you inherit a locker, the belongings of the locker will be transferred under your ownership. The bank will release the belongings to you against an indemnity. No tax is levied here.

- If the asset is a fixed deposit, the new owner can wait for the FD to get mature or close the FD account prematurely. The bank, in this case, will add deceased against the account holder's name.

- In case of inherited shares, the dematerialized forms are transferred automatically to the joint account holder, nominee or the legal heir depending upon the method of inheritance. You are then only liable to pay the income tax as per your returns.

- The life insurance policy matures after the death of the insured. In this case, the nominee is required to apply with certain documents to get the claim.

- In case of inherited vehicle, the new owner must transfer the vehicle under his/her name by filing an application with the state RTO.[7]

VIII. SCENARIOS OF INHERITANCE TAX IN OTHER COUNTRIES

Inheritance tax or estate tax is the **tax** levied upon the **wealth** of a person at the time of his/her death before it is passed on to their **heirs.** Inheritance taxes are widespread in nations like the UK, Japan, France, and Finland.

- With a striking 40 per cent rate, the US holds one of the highest inheritance tax rates.
- Japan tops the list with a 55 per cent rate, followed by South Korea at 50 per cent and France at 45 per cent.

[7] A report HDFC life, Tax on inheritance in India

a) *United States*

- The United States imposes a federal estate tax on the transfer of the estate of deceased persons.
- The maximum tax rate is 40%. Some states also impose their own estate or inheritance taxes.
- As of 2023, inheritance taxes are scarce, imposed only within Iowa, Kentucky, Maryland, Nebraska, New Jersey, and Pennsylvania.
- The taxation amount depends on factors like the inheritance's value, the beneficiary's relationship to the deceased, and the local legislation.
- Additionally, the state where the deceased lived or owned property may also impose an inheritance tax.

b) *United Kingdom*

- In the UK, inheritance tax is charged at 40% on estates above the threshold of £325,000.
- However, there are exemptions such as if you leave everything above the threshold to a spouse, civil partner, a charity, or a community amateur sports club, where the estate is tax-free.
- Additionally, there is a residence nil rate band when a residence is passed on to direct descendants.

c) *Japan*

- Japan has one of the highest inheritance tax rates in the world.
- The rates range from 10% to 55%, with the amount of tax levied depending on the relationship of the heir to the deceased and the value of the inheritance.

d) France

- France's inheritance laws are quite stringent, with tax rates based on the relationship to the deceased.
- Direct descendants and spouses pay rates from 5% to 45%, while distant relatives or non-relatives can pay much higher rates.

e) Germany

- Germany charges inheritance tax on a scale based on the relationship to the deceased and the value of the inheritance.

- Tax rates range from 7% to 50%, with spouses and children typically enjoying higher allowances and lower rates.[8]

IX. POLITICAL TURMOIL ON ITS REINTRODUCTION

A debate has arisen in India over 'Inheritance tax' following Indian Overseas Congress chairman **Sam Pitroda**'s remarks on April 24 advocating for a US-style tax policy for inherited family wealth. Responding to this, Prime Minister alleged that Congress would impose such a tax on inherited wealth if voted to power. Mr. Pitroda's remarks were themselves a response to Mr. Modi's allegations that the Congress was planning to **redistribute citizens'** wealth among Muslims.[9] The remarks made by Economist Gautam Sen called the idea of inheritance tax unrealistic while terming Congress leader Rahul Gandhi's proposal of a "wealth survey" as impractical. Surveying all households and business for wealth redistribution would lead to economic chaos. On Sam Pitroda's suggestion, the economist said, "First of all, there is no inheritance tax in the US. They don't have inheritance tax it is called estate duty and gift tax. In the US, it is paid by 0.14 percent of the deceased till 2022 - of 2.5 million deceased only 0.14 percent, i.e. 4,000 people in the entire US are subject to Estate Duty."

However, Proponents of its reintroduction argue that it can serve several crucial purposes:

- **Reducing Wealth Inequality:** A significant argument for inheritance tax is its potential to lessen the gap between the rich and the poor. By taxing a portion of large inheritances, the government could generate revenue that could be used for social programs aimed at uplifting the underprivileged. This could help create a more equitable society where opportunities are not solely determined by birthright.
- **Boosting Government Revenue :** Inheritance tax can be a significant source of income for governments. In countries with established inheritance tax systems, it contributes a notable portion of government revenue. This additional revenue could be used to fund various public services like infrastructure development, education, and healthcare.

[8] Sawathi Satish, Inheritance tax: the Controversy and history

[9] Suchitra Karthikeyan, Inheritance Tax in India: History, abolishment and revival attempts

- **Examples from Developed Nations:** Many developed nations, such as the United States and several European countries, have well-established inheritance tax systems. Proponents argue that India could learn from these examples and implement a fair and effective inheritance tax system that benefits society as a whole.

The potential for increased government revenue and reduced wealth inequality are compelling arguments for the return of inheritance tax. However, some concerns and challenges need to be addressed.[10]

X. CHALLENGES ON ITS IMPLEMENTATION IN INDIA

India's inheritance tax was repealed in 1985 because it neither helped bring down economic inequality in society nor did it contribute significantly to the exchequer. In 1984-85, the total tax collected under the Estate Duty Act was Rs 20 crore, but the cost of collection was very high because the complex calculation structure spawned a lot of litigation.

India levied an inheritance tax between 1953 and 1985. A glance at the budget documents for the early 1980s reveals Government of India collected only Rs 2-4 crore in revenue from the tax every year, amounting to about 0.02% of all tax revenue, as per Jay Vinayak Ojha, a project fellow at Vidhi Centre for Legal Policy, "If applied to figures for 2022-23, this would mean a revenue of about Rs 600 cr. For comparison, it costs over Rs 10,000 crore a year to collect direct taxes. Even if the addition of this complex tax did not add to this expenditure, all the revenue generated from it wouldn't even keep its administrators going for a month," Ojha said. Former RBI governor Raghuram Rajan has challenged the effectiveness of traditional redistributive tax measures, such as wealth and inheritance taxes, arguing that they can be easily circumvented by the wealthy. He provocatively suggests that the only sure way to achieve wealth equality through taxes would be something as extreme as a communist revolution, which he argues results in violence and poverty rather than a stable solution.[11] There can be various challenges on reintroduction of Inheritance tax in India.

a) ***Growth deterrent*****:** A high inheritance tax could discourage investments and reserves. The investment climate in India could face challenges,

[10] Mani, Inheritance in India – a looming Debate

[11] Business Today

considering wealth creation may have tax implications and, therefore, would go against building assets and intangibles in India.

b) ***Constraints on Family Enterprises*:** Family enterprises are crucial in India. Most well-established businesses are family businesses, contributing heavily to employment generation and GDP growth. In the United States, family businesses frequently encounter liquidity challenges when confronted with substantial estate taxes, as capital is reallocated to satisfy tax obligations rather than supporting business activities or growth. In India, implementing an inheritance tax may threaten these enterprises' sustainability, compelling them to liquidate assets or incur substantial debts to fulfil their tax responsibilities. On a lighter note, if an inheritance tax is implemented, you may see an increase in divorces for riches to avoid taxes through artificial detachments in the family.

c) ***Administrative difficulties*:** There was a reason to abolish erstwhile wealth taxes in India. The cost of administration was higher than the income generated through wealth taxes. The United States experience demonstrates that estate taxation can become extraordinarily complicated and frequently requires expensive legal and financial services for administration, which may disadvantage smaller estates and encourage tax evasion.

d) ***Effect on the creation of wealth*:** In addition to dampening the entrepreneurial spirit, high inheritance taxes can reduce the potential returns on investments.

e) ***Tax criminals*:** With new-age fancy structuring, one may see a rise in tax disputes and criminals, thereby putting unnecessary pressure on the judiciary.

f) ***Migrations*:** An inheritance tax may encourage the drain of brains and wealth out of the country, which has a significant negative impact on the economy.[12]

g) ***Complex Tax Structure*:** India's existing tax regime is characterized by complexity and multiplicity, posing challenges in the implementation and

[12] Akshay kenkre, Inheritance tax: A will or won't for India.

administration of an additional tax like inheritance tax.

h) ***Resistance from Affluent Families***: Wealthy families may vehemently oppose the imposition of inheritance tax, viewing it as a threat to their intergenerational wealth transfer strategies.

i) ***Data Collection and Compliance***: Accurate assessment of inherited wealth necessitates robust data collection mechanisms, which may be lacking, particularly in rural areas with informal economies.

j) ***Potential for Tax Evasion:*** High net-worth individuals could resort to tax avoidance or evasion strategies, undermining the effectiveness of inheritance tax enforcement.

XI. CONCLUSION

Inheritance tax in India remains a topic of debate. Whether or not India chooses to implement inheritance tax, the conversation highlights the nation's ongoing efforts to address wealth inequality and ensure a sustainable future. India's decision to abolish inheritance tax in 1985 stands in stark contrast to the diverse approaches adopted by other former British colonies. Can a well-designed inheritance tax system help bridge the gap between the rich and the poor in India? Will it create a more level playing field for future generations? The answers lie in a thorough evaluation of both the potential benefits and drawbacks, informed by the experiences of other nations that have grappled with this complex issue. It is essential to acknowledge that an inheritance tax is not a panacea, nor should it be rushed into without careful consideration of its potential consequences. The process of deciding whether to implement such a tax should be characterized by transparency, public discourse, and the involvement of diverse stakeholders, including those who stand to be affected the most. In making this decision, let us strive for a future where the divide between the rich and the poor narrows, where social justice prevails, and where the promise of a better life is within reach for all our citizens. The path may be challenging, but it is a journey worth embarking upon for the sake of a fairer and more prosperous India.