BETWEEN CURE AND CONFISCATION: CONSTITUTIONAL BOUNDARIES OF RETROSPECTIVE TAXATION AND THE EVOLUTION OF THE 'VESTED RIGHTS' DOCTRINE IN INDIA

by

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ABSTRACT

India's relationship with retrospective taxation is an enduring constitutional puzzle. Parliament and State legislatures indisputably possess the power to tax retrospectively, and the Supreme Court has, since the 1960s, treated the objection that a tax law 'operates in the past' as insufficient, in itself, to invalidate it. Yet the 2012 amendments that reversed *Vodafone International Holdings BV v Union of India*, the subsequent international arbitral awards against India, the statutory retreat of 2021, the 2025 legislative override of the Court's decision on input tax credit for 'plant or machinery' under the GST law, and the Supreme Court's 2026 decisions in *Gameskraft* and *Asia Sugar* all show that the doctrinal line between a legitimate 'clarificatory' or 'curative' amendment and an arbitrary, confiscatory re-writing of the past remains blurred.

This paper reconstructs the evolution of the jurisprudence from its plenary-power origins through the validation cases, the reasonableness-of-retrospectivity cases, and the post-*Shayara Bano* doctrine of manifest arbitrariness. It examines, in particular, the intersection of retrospective fiscal clarifications with article 14 (equality and arbitrariness) and article 19(1)(g) (the freedom to practise any profession or carry on any trade), highlighting a neglected threshold problem: article 19(1)(g) is available only to citizens, so that foreign investors, and companies as such, must ordinarily rely on article 14, article 300A and the rule-of-law dimension of article 265. Drawing on comparative materials (the United States, Germany, the European Convention system and investment-treaty arbitration) and on the economic literature on legal transitions, the paper proposes a structured, six-stage **Curative–Expropriatory Test**: (1) genuineness of the defect or ambiguity; (2) removal of the juridical basis of any contrary judgment; (3) contemporaneous evidence of legislative intent; (4) weight

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and legitimacy of reliance interests; (5) proportionality of temporal reach, quantum and collateral consequences; and (6) a remedial principle of *moderated retrospectivity*, which severs punitive consequences and interest while upholding the principal levy. The test is applied to the 2012 amendments, to the 2025 GST override, and to the 2026 decisions, and a model statutory restraint is offered as institutional complement.

Keywords: retrospective taxation; vested rights; validating legislation; clarificatory amendment; article 14; article 19(1)(g); article 300A; manifest arbitrariness; proportionality; legitimate expectation; Vodafone; Cairn; Asia Sugar; Gameskraft.

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1 Introduction

1.1 The Core Dilemma

Few topics in Indian public law expose the tension between legislative sovereignty and individual security as sharply as retrospective taxation. A tax statute is the quintessential instrument of democratic power: it converts the collective need for revenue into a legally enforceable liability. But a tax that reaches back to transactions completed under a different legal understanding converts that power into something else. It alters the legal meaning of acts already performed, in respect of which prices were negotiated, structures chosen, contracts signed, dividends declared and capital deployed. When that happens, the taxpayer is asked to pay for a legal world that did not exist when the decisions were taken.

India's constitutional order does not prohibit this outright. Unlike the criminal law, where article 20(1) forbids conviction or enhanced punishment under a retrospectively created offence or penalty, no express provision of the Constitution bars retrospective civil legislation, tax legislation included.[2] The Supreme Court has held, in a line of authority stretching from the early 1960s to the present, that Parliament and State legislatures may enact tax laws with retrospective effect, subject to legislative competence and to the fundamental rights in Part III.[3]

The difficulty is that this broad proposition says nothing about *where* the constitutional line lies. Legislatures routinely describe amendments as 'clarificatory', 'for removal of doubts' or 'deemed always to have been', and courts have often treated such labels as dispositive. Yet the label is the legislature's own characterisation of its act. If it is accepted at face value, retrospective legislation becomes self-validating: any reversal of a taxpayer-friendly construction can be recast as a 'clarification' of what the legislature always meant. That is the hazard exemplified by the post-*Vodafone* amendments.

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[2] Constitution of India 1950, art 20(1): 'No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.' The text confines the guarantee to *offences* and criminal penalties; the Supreme Court has repeatedly declined to extend it to civil and fiscal liabilities. The wording above reflects the substance of the Article; the exact text should be conformed to the official edition on citation.

[3] See, eg, Rai Ramkrishna v State of Bihar AIR 1963 SC 1667; Chhotabhai Jethabhai Patel & Co v Union of India AIR 1962 SC 1006; Krishnamurthy & Co v State of Madras (1973) 1 SCC 29; Union of India v Madan Gopal Kabra AIR 1954 SC 158 (cited for the general proposition; the specific holding should be verified); CIT v Vatika Township (P) Ltd (2015) 1 SCC 1 (Constitution Bench), paras on the competence of Parliament to legislate retrospectively. In the most recent statement, Asia Sugar & Chemical Co v State of Karnataka 2026 INSC 693 (13 July 2026), a Division Bench reaffirmed that retrospective withdrawal of a fiscal exemption is not unconstitutional *per se*.

1.2 The Vodafone Moment

On 20 January 2012 the Supreme Court held in *Vodafone International Holdings BV v Union of India* that the Indian tax authorities lacked jurisdiction to tax the offshore transfer of a share in a Cayman Islands company that indirectly controlled an Indian telecommunications operator.[4] Within months the Finance Act 2012, enacted on 28 May 2012, amended the Income-tax Act 1961 with effect from 1 April 1962 so as to bring such indirect transfers within the Indian tax net, and added a validation clause that declared past demands to be valid notwithstanding any judgment.[5] For nearly a decade the amendment cast a shadow over foreign direct investment. It prompted investment-treaty claims, two of which ended in adverse arbitral awards in 2020, and was finally withdrawn, in respect of pre-28 May 2012 indirect transfers, by the Taxation Laws (Amendment) Act 2021.[6]

Remarkably, the constitutional validity of the 2012 amendments, whether under article 14, article 19(1)(g) or article 300A, never received an authoritative decision from the Indian Supreme Court before it was legislatively withdrawn. The question was displaced into the forum of international investment law, where the standard of review (fair and equitable treatment, legitimate expectations) differs from the domestic constitutional standard. The result is a doctrinal vacuum: the most consequential retrospective fiscal intervention in India's modern history left no judicial test in its wake.

1.3 The Continuing Relevance of the Problem

The matter has not receded. Three recent developments show that the doctrinal vacuum continues to matter.

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[4] Vodafone International Holdings BV v Union of India (2012) 6 SCC 613 (three-judge bench; judgment of Kapadia CJI, with Radhakrishnan J concurring in a separate opinion and Swatanter Kumar J on a distinct point, as reported). The Court rejected the revenue's 'look-through' reading of s 9(1)(i) of the Income-tax Act 1961 and emphasised the difference between tax avoidance and tax mitigation through legitimate structuring.

[5] Finance Act 2012 (Act 23 of 2012) received Presidential assent on 28 May 2012. The amendments inserted, *inter alia*, Explanations 4 and 5 to s 9(1)(i) of the Income-tax Act 1961, amended the definition of 'transfer' in s 2(47) and clarified the scope of s 195, each framed as clarificatory and retrospective to 1 April 1962; s 119 of the Finance Act 2012 validated demands raised in terms of the amended provisions. The date of assent and the number of affected disputes (reported as seventeen) are corroborated in contemporaneous coverage of the 2021 repeal: 'Long-drawn Cairn, Vodafone tax disputes may finally end with amended law' *Morung Express* (5 August 2021) <https://morungexpress.com/long-drawn-cairn-vodafone-tax-disputes-may-finally-end-with-amended-law> accessed 4 November 2026.

[6] Taxation Laws (Amendment) Act 2021 (Act 14 of 2021), assented to on 13 August 2021. See 'India and the Cairn Energy Conundrum: It's a Wrap' *Mondaq* <https://www.mondaq.com/india/energy-law/1147698/india-and-the-cairn-energy-conundrum-its-a-wrap> accessed 4 November 2026; 'India's Parliament Approves Bill to End Retrospective Taxation, Amend Tax Law' *India Briefing* <https://www.india-briefing.com/news/india-ends-retrospective-taxation-new-bill-amend-income-tax-act-1961-22848.html> accessed 4 November 2026. The 2021 Act provides for the refund, without interest, of amounts collected on the basis of the 2012 amendment, subject to conditions including the withdrawal of pending litigation and the furnishing of undertakings and indemnities.

(i) **The 2025 GST override.** In *Chief Commissioner of Central Goods and Services Tax v Safari Retreats Pvt Ltd*, decided on 3 October 2024, the Supreme Court construed the expression 'plant or machinery' in section 17(5)(d) of the CGST Act 2017 functionally, allowing input tax credit in respect of certain immovable property used for the business of renting. The Finance Act 2025 then amended the provision with effect from 1 July 2017, restoring the narrower construction. Commentary notes that constitutional challenges are being pursued.[7]

(ii) ***DGGI v Gameskraft* (27 May 2026).** The Supreme Court upheld the levy of GST at 28% on the full face value of bets placed on online-gaming platforms, treating the 2023 amendments as clarificatory so as to sustain demands for the period before 1 October 2023. Review petitions have since been filed.[8]

(iii) ***Asia Sugar & Chemical Co v State of Karnataka* (13 July 2026).** The Supreme Court upheld a retrospective restriction of a sales-tax exemption but held, in effect, that retrospectivity must not become punitive: no penalty could be imposed for the pre-amendment period, and interest was to run only from the date of the lawful demand following reassessment.[9]

Asia Sugar is especially significant for this paper's argument. It implicitly recognises that the constitutional question about retrospective tax is not binary (valid or invalid) but graduated, and that courts possess remedial tools, short of striking down, to prevent retrospectivity from operating oppressively. That insight is the seed of the test proposed in Part 10.

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[7] Chief Commissioner of Central Goods and Services Tax v Safari Retreats Pvt Ltd (Supreme Court of India, 3 October 2024). On the Finance Act 2025 amendment to s 17(5)(d) CGST Act 2017 with retrospective effect from 1 July 2017 and its relationship with the Court's decision, see the commentary at <https://taxguru.in/?p=1045094> accessed 4 November 2026 (describing the amendment as erasing the Court's interpretation and noting the Chhotabhai Jethabhai Patel line of authority as the governing constitutional standard). The pending status of challenges should be verified at the time of citation.

[8] Directorate General of GST Intelligence (HQs) v Gameskraft Technologies Pvt Ltd 2026 INSC 595 (also reported as 2026 LiveLaw (SC) 572), Civil Appeal Nos 8241–8244 of 2026, decided 27 May 2026 (Pardiwala and Mahadevan JJ). See <https://www.mondaq.com/india/tax-authorities/1813288/directorate-general-of-gst-intelligence-hqs-ors-vs-gameskraft-technologies-pvt-ltd-ors-2026-insc-595> accessed 4 November 2026; <https://www.ibfd.org/news/supreme-court-upholds-retrospective-gst-online-gaming-and-gambling> accessed 4 November 2026; on the review petitions, <https://www.business-standard.com/amp/industry/news/online-gaming-firms-seek-review-of-sc-judgment-upholding-28-gst-on-them-126071401140_1.html> accessed 4 November 2026.

[9] Asia Sugar & Chemical Co, Devangere v State of Karnataka 2026 INSC 693; 2026 LiveLaw (SC) 778 (Aravind Kumar and Prasanna B Varale JJ, 13 July 2026), summarised at <https://www.livelaw.in/supreme-court/supreme-court-retrospective-tax-amendment-karnataka-sales-tax-act-no-penalty-544893> accessed 4 November 2026. The headnote records that the amendment was held to be *not* merely clarificatory but a substantive restriction of an exemption, yet not unconstitutional *per se*. A shorter case note elsewhere characterises the amendment as clarificatory; the LiveLaw headnote reproduces the operative conclusions and is preferred here, but the certified judgment should be consulted. See also <https://www.verdictum.in/app-lite/supreme-court/asia-sugar-chemical-co-v-the-state-of-karnataka-2026-insc-693-sales-tax-1617778> accessed 4 November 2026.

1.4 Research Questions

The paper addresses four related questions:

RQ1. What, as a matter of Indian constitutional doctrine, is a 'vested right' in the fiscal context, and is there such a thing as a vested right *not to be taxed* on completed transactions?

RQ2. How do article 14 (including the post-2017 doctrine of manifest arbitrariness) and article 19(1)(g) constrain retrospective tax legislation, and who may invoke which provision?

RQ3. What has the Supreme Court actually decided about 'clarificatory', 'curative' and 'validating' legislation, and where do those categories fail to do analytical work?

RQ4. Can a workable, justiciable test be articulated to distinguish a legitimate curative amendment from an unconstitutional expropriation of vested economic rights, and how would it resolve the recurring hard cases?

1.5 Thesis

The paper advances four linked claims. *First*, the vested-rights doctrine as applied to tax is conceptually muddled: courts have tended to say that there is 'no vested right' in a tax-free outcome, which is true of *expectations about future law* but not of *completed legal consequences under settled law*. *Second*, the label 'clarificatory' is doing too much work; it should be a conclusion reached by independent judicial analysis, not a premise supplied by the legislature. *Third*, article 19(1)(g) is a poor vehicle for most retrospective-tax challenges, for reasons of standing (non-citizens and companies) and of the tax-versus-restriction distinction; the principal constitutional burden should be carried by article 14, read with the rule-of-law values embedded in article 265 and the property guarantee of article 300A. *Fourth*, a structured proportionality-based test, ending in a graduated remedy, best reconciles legislative competence with the protection of settled economic expectations.

1.6 Methodology, Scope and Limitations

The method is doctrinal and comparative. Primary sources are the decisions of the Supreme Court of India and, where instructive, the High Courts, the text of the Constitution and of the relevant statutes, and parliamentary and executive materials. Comparative analysis draws on the United States, Germany, the European Court of Human Rights and investment-treaty tribunals, chosen because each has produced a mature, reasoned vocabulary for retroactive economic legislation. The economic literature on legal transitions informs the normative sections.

The paper is concerned with *retrospective operation of tax liability* and incidental consequences (interest, penalty, recovery). It does not offer a comprehensive treatment of retrospective *beneficial* fiscal legislation, of retrospective penal legislation under article 20(1) (except for contrast), or of the full law of investment arbitration. Because the law is evolving rapidly (several decisions are less than six months old at the time of writing), conclusions about those decisions are provisional.

1.7 Structure

Part 2 lays down conceptual foundations. Part 3 sets out the constitutional architecture. Part 4 traces the doctrinal evolution in four phases. Part 5 treats the Vodafone episode as a case study. Parts 6 and 7 analyse article 14 and article 19(1)(g) respectively. Part 8 considers article 300A and the separation of powers. Part 9 draws comparative lessons. Part 10 proposes the Curative–Expropriatory Test. Part 11 applies it to recent controversies. Part 12 answers objections. Part 13 proposes institutional reforms, including a model statutory text. Part 14 concludes.

2 Conceptual Foundations

2.1 Retroactive, Retrospective and the Problem of Vocabulary

The vocabulary of ‘retroactive’ and ‘retrospective’ legislation is unstable. Driedger’s influential analysis distinguished between a *retroactive* statute, which operates as of a time prior to its enactment, and a *retrospective* statute, which operates for the future only but attaches new consequences to past events.[10] Indian courts do not consistently maintain the distinction, using ‘retrospective’ for both. For present purposes ‘retrospective tax legislation’ means any legislative act that imposes, enlarges, or validates a tax liability in respect of events or transactions concluded before the date of enactment (or of the relevant substantive amendment), whether by an express date of effect, a deeming provision, or an ‘explanation’ declared to be clarificatory.

A second distinction is between *true* retroactivity, which changes the legal consequences of completed acts, and *quasi*-retroactivity (what German doctrine calls *unechte Rückwirkung*), which changes the consequences for the future of states of affairs that began earlier. A new tax on ongoing income streams from long-term investments, for example, is prospective in

[10] EA Driedger, ‘Statutes: Retroactive Retrospective Reflections’ (1978) 56 Can Bar Rev 264. Driedger’s distinction has been adopted in Indian statutory-interpretation scholarship, eg GP Singh, *Principles of Statutory Interpretation* (14th edn, LexisNexis) ch 5 (‘Retrospective operation of statutes’).

form but affects reliance interests built up in the past. Indian doctrine has not systematically developed this distinction, though it is implicit in decisions that treat the 'period of retrospectivity' as a measure of unreasonableness. Part 9 returns to it.

2.2 A Taxonomy of Retrospective Fiscal Legislation

Indian case law contains at least four recurring types. The categories are not mutually exclusive, but their separation is analytically necessary, because the constitutional justification offered for each differs.

Declaratory or clarificatory amendments. An amendment that, in truth, merely states what the law always was, resolving a latent ambiguity or correcting a draftsman's omission. Retrospective operation is considered natural because the amendment changes nothing: it only reveals. The classic indicators are the use of 'for removal of doubts', the absence of a new liability, and prior administrative practice consistent with the clarified meaning.[11]

Curative or remedial amendments. An amendment designed to repair a defect in a pre-existing statute, eg a drafting lacuna that has produced unintended hardship (as with the second proviso to section 43B of the Income-tax Act 1961, held retrospective in operation to relieve assessees),[12] or a statutory gap that has frustrated the legislature's evident object. Curative amendments are ordinarily beneficial to the taxpayer, but may also burden.

Validating legislation. A statute that retrospectively removes the legal basis of a judgment holding a levy, assessment or collection invalid, by supplying the missing legal element (a legislative competence, a procedural step, a definition) and then declaring past collections valid notwithstanding any judgment. The doctrine of validation is considered in detail in Part 4.

Substantive retrospective legislation. A law that creates a new or heavier liability for the past, without pretence of clarification. It is the constitutionally most exposed category, though not for that reason alone invalid, as *Asia Sugar* confirms.

A fifth, *punitive*, category deserves separate mention: retrospective interest, penalty, prosecution or disabilities attaching to conduct that was lawful when undertaken. As Part 10

[11] On the indicia of a clarificatory amendment, see CIT v Gold Coin Health Food Pvt Ltd (2008) 9 SCC 622; Allied Motors (P) Ltd v CIT (1997) 3 SCC 472; CIT v Podar Cement (P) Ltd (1997) 5 SCC 482; Zile Singh v State of Haryana (2004) 8 SCC 1 (presumption of prospectivity; the relevance of 'explanation' clauses). The exact propositions for which each is cited should be verified against the reports.

[12] Allied Motors (P) Ltd v CIT (1997) 3 SCC 472; CIT v Alom Extrusions Ltd (2009) 319 ITR 306 (SC) (second proviso to s 43B, inserted by the Finance Act 2003, held to operate retrospectively from 1 April 1988 as a curative amendment).

argues, the constitutional objection to retrospective punishment is much stronger than to retrospective principal liability.

2.3 What Is a 'Vested Right' in the Fiscal Context?

2.3.1 The traditional formulation

The common-law presumption, adopted in Indian statutory interpretation, is that a statute will not be construed to take away vested rights or to impose new burdens on past transactions unless the legislature makes its intention unmistakably clear.[13] But this is a *rule of construction*, not a constitutional limit on legislative power. The legislature can, and often does, rebut it. The constitutional question is therefore different: when, if ever, does a 'vested' interest acquire constitutional protection against retrospective alteration?

2.3.2 Three tiers of fiscal interests

A useful way of structuring the inquiry is to distinguish three tiers of interests in the fiscal context.

Tier 1: Accrued rights and final determinations. Interests that have crystallised through a final judicial determination, a concluded assessment, or a completed refund. A taxpayer in whose favour the Supreme Court has authoritatively held that no tax is payable on a transaction holds something stronger than an expectation: it holds a judicially determined legal position, the *res judicata* effect of which the legislature may not directly nullify.

Tier 2: Completed transactions under settled law. Interests arising from transactions concluded in reliance on a settled and publicly stated legal position (statute, authoritative judicial interpretation, binding circulars or consistent administrative practice). The taxpayer has no property right in the *rule* but possesses a strong reliance interest in the *consequences* the law attached at the time.

Tier 3: Inchoate expectations. Hopes about the future course of the law, including expectations that an exemption, rate or deduction will remain available. These attract little or no protection: legislatures must be free to change tax policy for the future.

The Indian cases usually collapse these tiers, asserting that there is 'no vested right in a tax' or 'no vested right in an exemption' (true of Tier 3) and then applying that conclusion to Tier 2

[13] The presumption is stated in virtually every statutory-interpretation text; for Indian authority, see Keshavan Madhava Menon v State of Bombay AIR 1951 SC 128; Garikapati Veeraya v N Subbiah Choudhry AIR 1957 SC 540 (vested right of appeal governed by the law on the date of institution of the suit); Govinddas v ITO (1976) 1 SCC 906; CIT v Vatika Township (P) Ltd (2015) 1 SCC 1 (Constitution Bench).

cases. The point of the differentiation is that the justification for protection grows as one moves from Tier 3 to Tier 1, and that the constitutional analysis of retrospective legislation should track that gradient.

2.3.3 Vested rights and article 300A

Since the Constitution (Forty-fourth Amendment) Act 1978 removed the right to property from Part III and placed it in article 300A, the vested-rights concept has little textual home in fundamental rights jurisprudence. Article 300A provides that no person shall be deprived of property save by authority of law. A tax, being a lawful exaction, is ordinarily not a 'deprivation' of property at all. The Supreme Court has, however, recognised that the requirement of 'authority of law' is not an empty formality: the law must be validly enacted, within competence, and must itself conform to Part III.[14] Part 8 considers whether article 300A supplies a standard of review for confiscatory retrospective taxes.

2.4 Theoretical Perspectives

2.4.1 Rule of law: Fuller, Raz and Hayek

Lon Fuller's account of the 'inner morality of law' lists the non-retroactivity of rules among eight conditions without which a legal system fails to be a system of law at all; retroactive rules cannot guide conduct because the subject cannot know, at the time of acting, what the rule will be.[15] Joseph Raz makes the same point in his well-known formulation of the rule of law: laws should be prospective, open and clear, because the point of law is to guide action.[16] Hayek, writing from a classical-liberal perspective, treats the predictability of the legal framework as a precondition of individual planning.[17] But none of these theorists treats non-retroactivity as absolute. Fuller explicitly allows curative retroactivity to repair breakdowns in the legal system. The challenge is to specify the conditions of legitimate cure.

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[14] See Jilubhai Nanbhai Khachar v State of Gujarat 1995 Supp (1) SCC 596; KT Plantation (P) Ltd v State of Karnataka (2011) 9 SCC 1; Vidya Devi v State of HP (2020) 2 SCC 569 (describing the right to property as a constitutional and human right, and requiring that deprivation conform to the rule of law).

[15] Lon L Fuller, *The Morality of Law* (rev edn, Yale University Press 1969) 51–62 (listing eight desiderata, including the failure to make rules, failure to publicise and abuse of retroactive legislation). Fuller himself accepted that retroactive legislation is sometimes necessary to correct mistakes in the legal system ('curative' retroactivity), a point that anticipates the curative/expropriatory distinction developed here.

[16] Joseph Raz, 'The Rule of Law and its Virtue' (1977) 93 LQR 195, 198–99.

[17] FA Hayek, *The Constitution of Liberty* (University of Chicago Press 1960) chs 11–14 (on the rule of law and the certainty of the legal framework within which individuals plan).

2.4.2 Economic analysis: legal transitions

The economic literature on legal transitions provides a more instrumental analysis. Michael Graetz argued that, in income-tax revision, the retroactivity label is a poor guide to the economic effect of a change, since a prospective change in tax rules can produce capital losses on existing assets just as a retroactive one does; the real question is how transitional burdens should be allocated.[18] Louis Kaplow, treating government as an insurer against policy risk, argued that compensation for losses caused by legal change is often inefficient because it blunts private incentives to anticipate and adapt to change.[19] Daniel Shaviro, building on this work, emphasises political-economy concerns: legislators who do not internalise the costs of retroactivity may over-use it, and constitutional constraints are justified as a check on this bias.[20]

Three lessons follow for the present inquiry. First, the *degree* of retroactivity is a policy variable, not a binary; a short, narrowly targeted look-back is categorically different from a fifty-year deeming. Second, the efficiency argument against compensation does not extend to *completed transactions in which parties could not have anticipated the change*: Kaplow's incentive concern is about *future* behaviour, and there is no future behavioural margin once the transaction is complete. Third, the political-economy argument against retroactivity is strongest where the burden falls on a discrete, politically weak group, such as non-resident investors without a domestic electoral voice, which is exactly the configuration in the Vodafone and Cairn disputes.

2.5 The 'Clarification' Problem

The central analytical problem for the paper is that legislatures can control the characterisation of their own acts. Where a court has resolved an ambiguity in the taxpayer's favour, and the legislature responds with an 'Explanation' that purports to state what the law 'always meant', two incompatible readings are available:

- *The curative reading*: the court misread the legislature's intention, and the Explanation merely restores the true meaning.
- *The substantive reading*: the court read the text correctly; the legislature, finding the outcome unwelcome, has changed the law and chosen to apply the change to the past.

[18] Michael J Graetz, 'Legal Transitions: The Case of Retroactivity in Income Tax Revision' (1977) 126 U Pa L Rev 47.
[19] Louis Kaplow, 'An Economic Analysis of Legal Transitions' (1986) 99 Harv L Rev 509.
[20] Daniel Shaviro, *When Rules Change: An Economic and Political Analysis of Transition Relief and Retroactivity* (University of Chicago Press 2000).

Judicial deference to the legislative label amounts to adoption of the curative reading in every case. But the curative reading is plausible only when the court's interpretation was genuinely contrary to the legislature's contemporaneous intention. Where the court's interpretation followed settled principles of strict construction of fiscal statutes, was consistent with administrative practice, and was consistent with the text, the curative reading is a legal fiction. The Supreme Court itself has recognised the danger: in *Asia Sugar* it declined to treat the amendment as merely clarificatory even though the State so contended.[21] The proposed test builds on that insight by requiring a substantive inquiry into whether an amendment is genuinely curative.

Conceptual summary

Retrospective tax law is not constitutionally suspect *because* it is retrospective, but because retrospectivity can (a) defeat reliance on settled law, (b) override the judicial function, (c) fall on discrete and politically weak groups, and (d) convert compliance into default after the fact. The constitutional task is to identify when these concerns cross the threshold at which a 'cure' becomes a confiscation.

3 The Constitutional Architecture

3.1 Legislative Competence and the Power to Legislate Retrospectively

The power to make laws on taxation derives from articles 245 and 246 read with the Seventh Schedule. Parliament's power to tax income other than agricultural income lies in Entry 82 of List I, customs duties in Entry 83, and the residuary power in Entry 97 and article 248. State legislatures draw on entries in List II, such as Entry 54 (taxes on the sale or purchase of goods) which was the entry in issue in *Asia Sugar*.[22]

The power to legislate includes, absent a constitutional prohibition, the power to legislate with retrospective effect. The Court has consistently so held: the power to enact a law *for* a subject-matter includes the power to make it operate over any period, because the competence is over

[21] Asia Sugar (2026 INSC 693), conclusions (iii) and (v), as reproduced in the LiveLaw summary at <https://www.livelaw.in/supreme-court/supreme-court-retrospective-tax-amendment-karnataka-sales-tax-act-no-penalty-544893> accessed 4 November 2026.

[22] Constitution of India 1950, Seventh Schedule, List I entries 82, 83, 97; List II entry 54; arts 245, 246, 248. Following the Constitution (One Hundred and First Amendment) Act 2016, art 246A and art 279A govern GST. The reference to entry 54 of List II in Asia Sugar is recorded in the headnote reproduced at <https://www.livelaw.in/supreme-court/supreme-court-retrospective-tax-amendment-karnataka-sales-tax-act-no-penalty-544893> accessed 4 November 2026.

the subject, not over the period.[23] Two limits are universally recognised: the legislature must not transgress the fundamental rights in Part III (article 13(2)), and it must not usurp the judicial power by purporting merely to nullify a judicial decision.

3.2 Article 265 and the Requirement of Authority of Law

Article 265 provides that no tax shall be levied or collected except by authority of law. In ordinary tax cases, this is a rule of legality for the executive: the revenue may not collect what the legislature has not authorised. In retrospective legislation, however, the Article takes on a different role: the legislature supplies the authority *ex post*. The question whether article 265 constrains the manner in which that authority is supplied has rarely been squarely posed. The natural reading is that 'law' in article 265 means valid law, ie law that satisfies the constitutional requirements of competence and conformity with Part III; article 265 thus adds nothing independent. But there is an alternative, richer reading, associated with the rule-of-law values that animate the Article: that 'authority of law' presupposes a legal order in which taxpayers can know and plan around their obligations. On that reading, an enactment that supplies authority retrospectively to defeat a judicially settled position engages the Article's purpose. The paper does not rest its test on that richer reading, but notes it as a supplementary argument.

3.3 Article 14: Equality, Reasonable Classification and Arbitrariness

Article 14 guarantees equality before the law and the equal protection of the laws to 'any person'. It is not limited to citizens. This simple textual fact makes it the principal route for non-citizens, foreign corporations and domestic companies alike.

The Article has two doctrinal faces. The classical face tests classification under the twin requirements of an intelligible differentia and a rational nexus with the legislative object.[24] In economic and fiscal legislation the Court applies the test with deference, giving the legislature wide latitude.[25] The second face, developed from *EP Royappa*, *Maneka Gandhi* and

[23] Rai Ramkrishna v State of Bihar AIR 1963 SC 1667; Shri Prithvi Cotton Mills Ltd v Broach Borough Municipality (1969) 2 SCC 283; Hiralal Rattanlal v State of UP (1973) 1 SCC 216; Union of India v Martin Lottery Agencies Ltd (2009) 12 SCC 209; State of Rajasthan v Mangilal Pindwal (1996) 5 SCC 60. These authorities are among those collected in the headnote to Asia Sugar as supporting the competence to enact retrospective fiscal legislation.

[24] State of West Bengal v Anwar Ali Sarkar AIR 1952 SC 75; Ram Krishna Dalmia v Justice SR Tendolkar AIR 1958 SC 538 (principles of permissible classification).

[25] RK Garg v Union of India (1981) 4 SCC 675; Twyford Tea Co v State of Kerala (1970) 1 SCC 148 (taxation legislation); in Asia Sugar the Court reportedly held that there was a rational basis for distinguishing imported from domestic sugar: see the case summary at <https://lawtext.in/judgement.php?bid=83179> accessed 4 November 2026.

consolidated in *Shayara Bano*, treats arbitrariness as an independent ground of invalidity: a state action that is arbitrary is unequal. Part 6 traces its application to legislation.

3.4 Article 19(1)(g): Trade, Profession and the Taxing Power

Article 19(1)(g) guarantees to *citizens* the right to practise any profession or to carry on any occupation, trade or business, subject to reasonable restrictions in the interests of the general public under article 19(6). Two features limit its utility in the retrospective-tax context. The first is standing, discussed at length in Part 7. The second is the characterisation problem: a tax is not, in ordinary circumstances, a 'restriction' on the right to carry on business, because it burdens the *fruits* of business and not the activity itself. The Court has accepted that a tax can, however, amount to an unreasonable restriction when it is so heavy as to be prohibitive or confiscatory, or when it is imposed with retrospective effect in such a way as to destroy the business.

3.5 Article 20(1), the Contrast Case

Article 20(1) bars ex post facto criminal laws and the retrospective enhancement of penalties for offences. The existence of that express prohibition in the criminal sphere has been treated as supporting the inference that the Constitution leaves retrospective *civil* legislation to the ordinary operation of competence and Part III. But the contrast also provides an analogical resource: the *values* that article 20(1) protects, namely fair notice and the rule against after-the-fact punishment, are engaged whenever retrospective tax legislation attaches interest, penalty or prosecution to conduct lawful when undertaken. This is the doctrinal basis, argued in Part 10, for treating retrospective punitive consequences more strictly than retrospective principal liability, and it is the intuition that the Court appears to have followed in *Asia Sugar*.

3.6 Separation of Powers and the Basic Structure

The Court has held that the separation of powers, and the independence of the judiciary, form part of the basic structure of the Constitution.[26] The doctrine of validating legislation, treated in the next Part, is an attempt to reconcile legislative competence to alter the law retrospectively with the judiciary's exclusive competence to decide disputes under the existing law. The two powers meet at the point where the legislature changes the law underlying a judgment; they conflict at the point where it merely announces that the judgment is wrong.

[26] Kesavananda Bharati v State of Kerala (1973) 4 SCC 225; Indira Nehru Gandhi v Raj Narain 1975 Supp SCC 1; SP Sampath Kumar v Union of India (1987) 1 SCC 124; L Chandra Kumar v Union of India (1997) 3 SCC 261 (judicial review as part of the basic structure).

3.7 Summary: The Constitutional Menu

Table 1. Constitutional provisions relevant to retrospective taxation.

Provision	Who may invoke	Role in retrospective-tax challenges
Article 14	Any person (including companies, non-residents)	Classification; manifest arbitrariness; legitimate expectation as an element of arbitrariness; proportionality-flavoured review.
Article 19(1)(g)	Citizens only	Restriction on trade/business; reasonableness under article 19(6); cognisable where tax is prohibitive/confiscatory; *not* available to companies as such or to foreign investors.
Article 20(1)	Any person	Criminal and penal consequences only; analogical value for punitive retrospective consequences.
Article 265	Any person	Authority of law; rule-of-law reading supplementary.
Article 300A	Any person	Deprivation of property only by authority of law; the standard for confiscatory taxation remains underdeveloped.
Articles 245–246; Sch. VII	–	Legislative competence, including to legislate retrospectively.
Basic structure (separation of powers)	–	Limits on mere nullification of judgments.

4 The Doctrinal Evolution of the Retrospective-Tax Jurisprudence

The case law can be divided, for analytical convenience, into four overlapping phases. The periodisation is not strictly chronological, but identifies the dominant concern of the Court in each phase.

4.1 Phase I: Plenary Power and the Absence of Vested Rights (1950s–1970s)

4.1.1 The foundational position

The earliest post-Constitution decisions treated retrospective tax legislation as unexceptional. In *Chhotabhai Jethabhai Patel & Co v Union of India* the Court rejected the argument that a retrospective excise levy infringed the fundamental rights then protected by article 19(1)(f) and (g), reasoning in substance that the legislature was competent to impose a tax for a past period and that the burden was not, by reason of its retrospectivity alone, an unreasonable

restriction.[27] In *Rai Ramkrishna v State of Bihar* the Court upheld retrospective tax legislation, emphasising that the question of whether the law is retrospective is distinct from whether it is within competence; and that the legislature, within competence, may set the period.[28] *Krishnamurthy & Co v State of Madras* similarly upheld a retrospective sales-tax enactment.[29]

4.1.2 Characteristics of Phase I reasoning

Three features stand out. First, the Court proceeded on the premise that there is no vested right in the continuation of any particular tax regime, so that the retrospective withdrawal of a favourable position did not infringe a 'right' of the assessee. Second, the reasonableness analysis under article 19(6) was conducted at a high level of generality; the Court asked whether the retrospective tax was within the legislature's competence and not whether the retrospective *extent* and *effects* were proportionate to the legislative aim. Third, the Court did not engage with the distinction between completed transactions under settled law and inchoate expectations.

4.2 Phase II: Validating Legislation and the Boundary with the Judicial Power (1960s–1990s)

4.2.1 The problem

A distinct body of law grew around the question whether the legislature may nullify a judgment invalidating a tax by retrospectively validating the tax. The question is ubiquitous in fiscal law, because tax statutes are regularly struck down for defects of competence, drafting or procedure, and legislatures respond by repairing the defect.

4.2.2 The settled test

The Court's answer, articulated in *Shri Prithvi Cotton Mills Ltd v Broach Borough Municipality*, is that the legislature may validate a tax declared illegal by a court, provided it removes the basis of the judgment, ie cures the defect that the court identified, and does not

[27] Chhotabhai Jethabhai Patel & Co v Union of India AIR 1962 SC 1006. The case concerned the Central Excises and Salt Act (the levy on tobacco). Note that the later commentary linked at <https://taxguru.in/?p=1045094> accessed 4 November 2026 cites the case for the narrower proposition that a retrospective law taking away vested rights must be justified by the public interest; the headline holding is the validity of retrospective fiscal legislation, and any citation should be checked against the report.

[28] Rai Ramkrishna v State of Bihar AIR 1963 SC 1667, which continues to be cited for the legislative power to levy a tax with retrospective effect: see the Asia Sugar headnote authorities.

[29] Krishnamurthy & Co v State of Madras (1973) 1 SCC 29.

merely declare the judgment to be wrong or ineffective.[30] The legislature may thus retrospectively amend the law *on which the judgment was based*, so that the judgment no longer applies; it may not simply provide that the judgment is overruled or that the declared illegality is to be treated as legal.

Three refinements followed.

(i) **Removal of the basis, not overruling of the verdict.** In *Indian Aluminium Co v State of Kerala* the Court, after a thorough review, restated that the legislature may not sit in appeal over a judgment but may change the law retrospectively so that the foundation of the judgment is gone.[31]

(ii) **Fresh enactment and constitutional scrutiny.** A validating law remains subject to scrutiny under Part III. The legislature's competence to validate does not immunise the validating law from article 14 or article 19.

(iii) **Direct nullification forbidden.** The Court has struck down laws that directly overrule judicial decisions without altering the law. *Madan Mohan Pathak v Union of India* is an example, where the Court held that legislation which in effect nullified a judgment of the High Court, without curing any legislative defect, was invalid.[32]

4.2.3 Limits of the validation test

The *Prithvi Cotton* test is a good device for detecting disguised appeals against judgments, but it has a structural weakness for present purposes: it takes the *legislature's* characterisation of the defect largely at face value, and it asks whether the law has been changed, not whether the *change was justified*. Whenever the court's ruling turns on an interpretation of statutory language, the legislature can always insert new language with retrospective effect, thereby 'removing the basis' of the ruling. The test therefore protects the formal integrity of the judicial function without protecting the substantive interests that the judgment vindicated. The Vodafone sequence, in which the Court's reading of section 9(1)(i) was answered by new

IJLJ ISSN: 2583-2794

[30] Shri Prithvi Cotton Mills Ltd v Broach Borough Municipality (1969) 2 SCC 283, paras 4–6 (retrospective validation permitted where the legislature 'removes the defect' pointed out by the court); Janapada Sabha Chhindwara v Central Provinces Syndicate (1970) 1 SCC 509; Tirath Ram Rajindra Nath v State of UP (1973) 3 SCC 585; Hindustan Gum & Chemicals Ltd v State of Haryana (1985) 4 SCC 124. Paragraph references are indicative and should be checked.

[31] Indian Aluminium Co v State of Kerala (1996) 7 SCC 637; see also State of Tamil Nadu v Arooran Sugars Ltd (1997) 1 SCC 326; SR Bhagwat v State of Mysore (1995) 6 SCC 16; Bakhtawar Trust v MD Narayan (2003) 5 SCC 298.

[32] Madan Mohan Pathak v Union of India (1978) 2 SCC 50; compare Re Cauvery Water Disputes Tribunal 1993 Supp (1) SCC 96 (legislature cannot overrule a judicial decision as such); Cheviti Venkanna Yadav v State of Telangana (2017) 1 SCC 283 (reviewing the validation cases).

Explanations deeming the position to have always been the opposite, shows how comfortably the formal validation test can be satisfied while the substantive grievance remains untouched.

4.3 Phase III: Reasonableness of Retrospective Operation and the 'Curative' Cases (1980s–2015)

4.3.1 Empire Industries and Ujagar Prints

In *Empire Industries Ltd v Union of India* the Court upheld retrospective excise legislation but acknowledged that the reasonableness of retrospectivity could be examined, taking into account whether the burden could be passed on, the length of the period and the purpose of the law.[33] These decisions were the first to indicate that retrospective tax legislation, though competent, remains subject to a reasonableness review that has temporal and consequential dimensions.

4.3.2 The presumption against retrospectivity: Vatika Township

CIT v Vatika Township (P) Ltd, decided by a Constitution Bench, restated the rule of construction: unless a contrary intention appears, legislation is presumed not to operate retrospectively; legislation which imposes new burdens or affects vested rights is ordinarily prospective; beneficial legislation may be retrospective.[34] *Vatika* did not decide what the legislature may do; it decided how courts should read statutes whose temporal scope is unclear. But its rationale, that 'justice, fairness and the rule of law' favour prospective burdens, supplies an interpretive backdrop that informs the constitutional analysis.

4.3.3 Curative and clarificatory amendments

In a parallel line, the Court has approved the retrospective operation of amendments that are curative or clarificatory, in the sense that they remove a technical defect or confirm the original intent. *Allied Motors* and *Alom Extrusions* (both concerning section 43B) are the principal examples: a proviso inserted to cure a harshness in the original provision, which

[33] Empire Industries Ltd v Union of India (1985) 3 SCC 314; Ujagar Prints v Union of India (II) (1989) 3 SCC 488 (validating legislation affecting processors; art 19(1)(g) challenge rejected; the Court considered the retrospective effect of the legislation and the possibility of passing on the burden). The principle that the 'reasonableness of retrospective operation' and the 'effect on past transactions' remain relevant is traced, in a recent scholarly note, to this line: 'Retrospective Tax Amendments: No Penal Consequences' *SCC Online Blog* (7 August 2026) <https://www.scconline.com/blog/post/2026/08/07/retrospective-tax-amendments-no-penal-consequences-supreme-court-fairness-fiscal-laws/> accessed 4 November 2026.

[34] CIT v Vatika Township (P) Ltd (2015) 1 SCC 1 (Constitution Bench, concerning the second proviso to s 113 of the Income-tax Act 1961, held prospective). The case is an authority on interpretation, not on constitutional limits; it is cited here because it reflects the Court's understanding of the fairness rationale of the presumption.

frustrated the object of the provision, was treated as retrospective from the date of the provision itself.[35] Other decisions, such as *Podar Cement*, accepted retrospective 'Explanations' as declaratory of the law.[36]

The common thread is that the retrospectivity in these cases was easy to justify: the amendment benefited the assessee or removed an unintended anomaly. When the amendment instead *burdens* the assessee after the Court or the department had taken a different view, the quality of the justification changes, but the Court's language of 'clarification' remained available.

4.4 Phase IV: Arbitrariness, Proportionality and the Rights Revolution (2016–present)

4.4.1 Manifest arbitrariness as a ground to strike down legislation

For decades *State of AP v McDowell & Co* (1996) stood for the proposition that arbitrariness, as distinct from violation of a specific fundamental right or competence, was not a ground on which a legislation may be invalidated; arbitrariness was confined to executive action.[37] That position was displaced by *Shayara Bano v Union of India*, where a majority held that a statute may be struck down if it is manifestly arbitrary, ie capricious, irrational or without adequate determining principle.[38] The ground has since been used in economic legislation, a development whose implications for retrospective taxation are explored in Part 6.

4.4.2 Proportionality in fundamental-rights review

In parallel, the Court adopted a structured proportionality standard for rights review: legitimate aim, suitability, necessity (least restrictive alternative) and balancing stricto sensu.[39] Although proportionality has been applied principally under article 19 and article 21, there is

[35] Allied Motors (P) Ltd v CIT (1997) 3 SCC 472; CIT v Alom Extrusions Ltd (2009) 319 ITR 306 (SC). The common factor is that the amendments were beneficial to assessees and rectified a legislative error; their retrospectivity was not contentious in the way a burdening amendment is.

[36] CIT v Podar Cement (P) Ltd (1997) 5 SCC 482. The Court emphasised that an Explanation may be introduced to clarify, and that in such a case the clarification relates back to the date of the main provision.

[37] State of AP v McDowell & Co (1996) 3 SCC 709. The Court in Shayara Bano v Union of India (2017) 9 SCC 1 treated the contrary position (arbitrariness is a ground for invalidating legislation) as established by earlier authority and by the character of art 14 as understood since Royappa.

[38] Shayara Bano v Union of India (2017) 9 SCC 1 (Nariman J). Follow-on: Navtej Singh Johar v Union of India (2018) 10 SCC 1; Joseph Shine v Union of India (2019) 3 SCC 39. The ground has been invoked in tax and economic legislation: see the discussion in Part 6.

[39] Modern Dental College & Research Centre v State of MP (2016) 7 SCC 353 (proportionality under art 19(1)(g)); KS Puttaswamy v Union of India (2017) 10 SCC 1 (privacy; proportionality); KS Puttaswamy v Union of India (Aadhaar) (2019) 1 SCC 1; Anuradha Bhasin v Union of India (2020) 3 SCC 637; Binoy Viswam v Union of India (2017) 7 SCC 59. For the general theory, Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (CUP 2012).

no principled reason why it cannot inform the article 14 inquiry into whether a retrospective tax is arbitrary.

4.4.3 The recent retrospective-tax decisions

Three recent decisions are discussed in detail in Part 11: *Gameskraft* (2026) treating the 2023 GST amendments as clarificatory; *Asia Sugar* (2026) upholding a substantive retrospective withdrawal of an exemption but moderating its consequences; and *Naresh Kumar Gupta v State of Punjab*, 2025 INSC 719, which reiterated the two-fold test of competence and non-transgression of Part III rights in upholding a retrospective extension of the assessment limitation period under the Punjab VAT Act.[40]

4.5 Synthesis: The Existing Doctrine in Five Propositions

The decisions to date support the following five propositions, which define the current doctrinal baseline.

P1. Legislatures have competence to enact retrospective tax laws; retrospectivity *as such* is not a ground of invalidity.

P2. Retrospective legislation must conform to Part III; the Court retains the power to examine its reasonableness, including the length of the retrospective period and its effect on past transactions.

P3. A validating law is valid if it removes the basis of the judgment; direct nullification of judgments is invalid.

P4. A 'clarificatory' or 'curative' amendment ordinarily operates retrospectively without objection, but the label is for the Court to assess.

P5. There is no vested right in an exemption or a particular tax treatment, but retrospectivity may not be applied in a punitive or oppressive manner (*Asia Sugar*).

What is missing from this baseline is a *test*: a set of ordered questions that tell a court how to decide whether a given amendment, on given facts, falls on one side or the other of the line. Parts 6 to 10 aim to supply one.

[40] For Naresh Kumar Gupta v State of Punjab 2025 INSC 719 (Nagarathna and Satish Chandra Sharma JJ), see the CaseMine commentary titled 'Retrospective Extension of Assessment Limitation under the Punjab VAT Act and the Narrowing of "Nokia": A Supreme Court Re-Calibration' <https://www.casemine.com> accessed 4 November 2026 (describing the Court as reiterating legislative competence to enact retrospective tax laws so long as the legislation removes the basis of a judgment without discharging judicial functions and does not transgress Part III). The reference to 'narrowing of Nokia' in the commentary's title is the commentator's characterisation and has not been independently verified. Relatedly, on benevolent clarificatory circulars, see Suraj Impex (India) Pvt Ltd v Union of India 2025 INSC 755, summarised in the CaseMine commentary 'Clarificatory Fiscal Circulars Are Retrospective' <https://www.casemine.com> accessed 4 November 2026.

5 Case Study: The Vodafone Amendments and Their Aftermath

5.1 The Transaction and the Supreme Court's Decision

In 2007 a Netherlands subsidiary of the Vodafone group acquired the entire share capital of a Cayman Islands company which, through a chain of subsidiaries, held a controlling interest in an Indian mobile telephony company. The Indian revenue authorities, treating the transaction as a transfer of a capital asset situated in India, issued a notice to the Dutch buyer for failure to withhold tax on the consideration. The Supreme Court, in a decision reported at (2012) 6 SCC 613, held that the Indian tax authorities lacked jurisdiction. Its reasoning rested on the principles that (i) section 9(1)(i) of the Income-tax Act 1961 taxes the transfer of a capital asset situated in India, which a transfer of shares of a foreign holding company is not; (ii) the 'look-through' approach could not be read into the Act without legislative authority; and (iii) genuine tax mitigation through legitimate structuring is distinguished from tax avoidance.[41]

5.2 The Legislative Response

The Finance Minister announced in the 2012 Budget speech, delivered on 16 March 2012, that the Government would amend the law to restore what it described as the original legislative intent.[42] The resulting Finance Act 2012 (assented to on 28 May 2012) operated in three layers:

(a) **Substantive redefinition.** New Explanations to section 9(1)(i) provided that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India, was deemed to be and always to have been situated in India if it derived its value substantially from assets located in India; and that the word 'through' in the phrase 'through the transfer of a capital asset situated in India' included, and was always to be deemed to have included, 'by means of', 'in consequence of' or 'by reason of'.

IJLJ ISSN: 2583-2794

[41] Vodafone International Holdings BV v Union of India (2012) 6 SCC 613. The decision is also known for its engagement with McDowell & Co Ltd v CTO (1985) 154 ITR 148 (SC), and Union of India v Azadi Bachao Andolan (2004) 10 SCC 1, on the legitimacy of tax planning; for a doctrinal summary of the Court's approach, see the standard commentaries (eg Kanga & Palkhivala, *The Law and Practice of Income Tax* (latest edn, LexisNexis), on s 9).

[42] Budget Speech of the Finance Minister, 16 March 2012, Union Budget 2012–13. The Budget statement described the proposals as clarifying the legislative intent that an indirect transfer of Indian assets be taxable. The precise wording of the speech should be quoted from the official text if used.

(b) **Retrospective dating.** The new Explanations were stated to take effect from 1 April 1962, the date of the commencement of the Income-tax Act 1961, and were framed as clarificatory ('for the removal of doubts').

(c) **Validation.** Section 119 of the Finance Act 2012 validated demands raised in accordance with the amended provisions notwithstanding any judgment, decree or order to the contrary.[43]

5.3 Analysis under the Existing Doctrine

The amendments are an instructive stress test of the five baseline propositions (P1–P5, Part 4).

Competence (P1). The amendments were within the competence of Parliament under Entry 82 of List I; the extra-territorial aspect, an Indian tax on the transfer of foreign shares deriving value from Indian assets, would have been tested under the 'territorial nexus' doctrine, a doctrine that permits extra-territorial legislation where there is sufficient nexus with India.[44]

Validation test (P3). The formal test in *Prithvi Cotton* is arguably satisfied: Parliament changed (or purported to clarify) the law on which the decision was based, and did not simply declare that the judgment was wrong. Whether the amendment 'cured' a defect or reversed a judicial interpretation is, as noted, a matter of characterisation.

Clarification (P4). The characterisation of the amendments as clarificatory is the most contestable. The Supreme Court had, in the Vodafone decision itself, construed the text of section 9(1)(i) as not covering offshore transfers of this kind, and the legislative history, including the Direct Taxes Code's proposals and the administrative positions on offshore restructurings, was equivocal at best. A court applying a genuine test of clarification would ask whether the legislature, in the years before 2012, had in fact intended to tax such transfers and had expressed that intention in ways that the taxpayer could have anticipated. The retrospective extension to 1962, some fifty years earlier, tested the credibility of the clarificatory label.

IJLJ ISSN: 2583-2794

[43] Finance Act 2012 (Act 23 of 2012), s 119 (validation of demand). The seventeen cases in which demands were raised, referred to in the 2021 repeal debates, are reported in contemporaneous coverage, eg <https://morungexpress.com/long-drawn-cairn-vodafone-tax-disputes-may-finally-end-with-amended-law> accessed 4 November 2026.

[44] On territorial nexus: Wallace Brothers & Co v CIT AIR 1948 PC 118; State of Bombay v RMD Chamarbaugwala AIR 1957 SC 699; GVK Industries Ltd v ITO (2011) 4 SCC 36 (Parliament's extra-territorial legislative competence under art 245(2)). The detailed application of the nexus test to the 2012 amendments is beyond the scope of this paper.

Oppression (P5). The tax was imposed on non-resident investors who had no vote in the enacting legislature, with interest and penalty exposures, and in at least one case with the attachment and sale of shares and the withholding of unrelated refunds.[45]

5.4 The International Arbitral Awards

5.4.1 Vodafone

In September 2020 a tribunal constituted under the India–Netherlands Bilateral Investment Treaty held that the retrospective tax demand on Vodafone breached India's obligation of fair and equitable treatment.[46] The tribunal's reasoning reflected the investment-law view that the stability of the legal framework and the protection of legitimate expectations form part of the fair-and-equitable-treatment standard, and that the retrospective imposition of a tax liability on a transaction that had been completed under a settled legal position contravenes that standard.

5.4.2 Cairn

In December 2020 a tribunal in the Cairn case, constituted under the India–United Kingdom BIT, held that the retrospective application of the 2012 amendments to Cairn's 2006–07 internal reorganisation, and the Indian authorities' enforcement measures, breached the fair and equitable treatment standard and awarded damages. Reports put the amount to be returned at approximately US$1.2 billion.[47]

[45] On the Cairn episode, see Cairn Energy PLC and Cairn UK Holdings Ltd v Republic of India PCA Case No 2016-7, Final Award (21 December 2020), and the factual summary in <https://www.onmanorama.com/news/business/2021/08/06/india-govt-scraps-retro-tax-cairn-vodafone.html> accessed 4 November 2026 (the tribunal having asked India to return the value of shares seized and sold, the tax refund withheld and the dividends confiscated).

[46] Vodafone International Holdings BV v Republic of India PCA Case No 2016-35, Award (25 September 2020). Contemporaneous reporting: <https://www.thequint.com/amp/story/news/business/bill-to-undo-retrospective-tax-law-updates> accessed 4 November 2026 (Vodafone Group having won an international arbitration in September 2020). The award's reasoning on legitimate expectations and fair and equitable treatment should be consulted directly.

[47] Cairn Energy PLC and Cairn UK Holdings Ltd v Republic of India PCA Case No 2016-7, Final Award (21 December 2020). The award figure is reported in the contemporaneous commentary at <https://www.india-briefing.com/news/india-ends-retrospective-taxation-new-bill-amend-income-tax-act-1961-22848.html> accessed 4 November 2026, which reports that India would have to refund US$1.2 billion to Cairn Energy for the shares it had sold, the tax refund withheld and the dividends confiscated. Other press reports gave the figure including interest and costs at a higher level; the award itself should be cited for the precise components.

5.4.3 Significance for the domestic constitutional debate

The awards matter for the present paper in two ways. First, they demonstrate that an international standard exists, legitimate expectations and stability, that regards the retrospective revision of a settled tax position as presumptively wrongful. Second, they show how a domestic constitutional vacuum can be filled by external adjudication: the very question that the Indian courts did not decide was decided by tribunals applying a different standard. The argument of this paper is that Indian constitutional law should develop its own indigenous standard, rooted in articles 14, 265 and 300A, rather than leaving the field to the investment-treaty regime. (The Indian Model BIT of 2016 now excludes taxation measures from its scope, a choice that places the burden of controlling retrospective tax squarely on domestic constitutional law.)[48]

5.5 The 2021 Retreat

The Taxation Laws (Amendment) Act 2021 provides that no tax demand shall be raised in future on the basis of the 2012 retrospective amendment in respect of indirect transfers undertaken before 28 May 2012, and that amounts paid are to be refunded, without interest, subject to conditions.[49] The Act is a legislative acknowledgment of the costs of the 2012 approach and a statement of policy that the Government 'will not pursue retrospective taxation cases' of that kind.[50] Three features of the settlement structure bear on the analysis:

- **Prospective survival of the 2012 amendment.** The 2021 Act does not repeal the 2012 Explanations as such. They remain in force for transactions after 28 May 2012, ie they are now prospective law. The constitutional question about the *validity* of the retrospective operation was therefore mooted for the pre-2012 period but not decided.
- **Conditionality.** Refunds are conditioned on withdrawal of proceedings and on indemnities. The structure illustrates a general feature of sovereign retreats from retrospective claims: relief is traded against litigation peace.

[48] Model Text for the Indian Bilateral Investment Treaty (2016), art 2.4 (excluding taxation measures from the scope of the treaty, with limited exceptions). The provision should be verified against the text of the Model BIT.

[49] See <https://thewire.in/business/govt-proposes-refunds-in-retrospective-tax-disputes> accessed 4 November 2026 (describing the Bill as seeking to withdraw tax demands made on indirect transfers of Indian assets prior to 28 May 2012 and as proposing refunds without interest), and <https://www.india-briefing.com/news/retrospective-tax-india-end-new-amendment-bill-changes-income-tax-act-1961-22848.html/> accessed 4 November 2026. The Lok Sabha passed the Bill without discussion: <https://www.tribuneindia.com/news/business/lok-sabha-passes-bill-to-nullify-retro-taxes-294311> accessed 4 November 2026.

[50] The quoted formulation is the Finance Minister's statement of policy in Parliament as reported at <https://www.onmanorama.com/news/business/2021/08/06/india-govt-scraps-retro-tax-cairn-vodafone.html> accessed 4 November 2026; the full text of the statement in the Parliamentary record should be consulted before quotation.

- **No interest.** The refund of principal without interest reproduces, in the remedy, a feature of the underlying wrong: the investor bears the time-value cost of a levy that the sovereign ultimately conceded should not have been made.

5.6 Lessons for the Doctrine

The Vodafone episode yields five lessons that shape the test proposed in Part 10:

1. The validation test of *Prithvi Cotton* is satisfied too easily to be a safeguard against retrospective expropriation.
2. The label 'clarificatory' requires independent judicial scrutiny.
3. The identity of the burdened class (non-resident, non-voting) is constitutionally relevant under article 14, as a feature of the political process that produced the law.
4. The *extent* of the retrospective period (fifty years) is a relevant variable.
5. Collateral enforcement measures (attachment and sale of shares, withholding of unrelated refunds) magnify the oppressive character of retrospective liability and should be part of the proportionality inquiry.

6 Article 14: Equality, Arbitrariness and Retrospective Taxation

6.1 Why Article 14 Is the Primary Vehicle

As noted, article 14 applies to 'any person'. A foreign investor, a domestic company, a firm and a citizen are all within its protection. It is thus the only fundamental-rights provision that is available to all categories of retrospective-tax claimant. Its reach is also wide: since *Royappa* the Court has treated equality as antithetical to arbitrariness, and since *Shayara Bano* it has accepted that legislation may be struck down for manifest arbitrariness.

6.2 The Classical Classification Test as Applied to Retrospective Taxes

Under the classical test the legislature may classify provided (i) there is an intelligible differentia and (ii) that differentia has a rational nexus to the object. Retrospective tax laws ordinarily pass this test. The legislature classifies by reference to the date of the transaction (before or after the enactment) and the object is the protection of revenue, or the restoration of the legislative intent. The Court has tended to hold that any date selected by the legislature is permissible unless it is shown to be capricious.[51]

[51] For the general deference to the choice of cut-off dates in fiscal legislation, see Union of India v Parameswaran Match Works (1975) 1 SCC 305; and note that the classical test has been applied in Asia Sugar to uphold the distinction between domestic and imported sugar (case summary: <https://lawtext.in/judgement.php?bid=83179>

Three types of Article 14 challenge to retrospective tax legislation can nonetheless succeed under the classical test:

(a) **Differential retrospectivity within a class.** If the legislature validates a levy retrospectively for one category of assessees (eg those who have not litigated) but not for another similarly situated (those who have obtained a favourable judgment), the difference may be arbitrary.

(b) **Targeting.** If the retrospective provision is, in effect, designed to defeat the claim of an identifiable taxpayer or small group, the legislation is directed at individuals rather than classes. The 2012 amendments, which were in substance the legislature's answer to a single decided case, invite this analysis.

(c) **Irrational period.** If the retrospective period bears no rational relation to the legislative object (a fifty-year look-back for a 'clarification' in respect of a tax of recent origin), the differentia lacks nexus.

6.3 Manifest Arbitrariness and Retrospective Legislation

6.3.1 Doctrine

Shayara Bano confirmed that legislation may be invalid if it is manifestly arbitrary, ie capricious, irrational, or without adequate determining principle, or if it is excessive and disproportionate. It must be noted that the doctrine's application to economic legislation has been cautious. The Court has emphasised that economic and fiscal laws attract a large measure of judicial restraint, because they require balancing of complex considerations.[52]

6.3.2 Features of retrospective tax laws that may satisfy the manifest-arbitrariness standard

The following features, individually or cumulatively, may support the conclusion that a retrospective tax law is manifestly arbitrary:

(i) **Absence of an adequate determining principle for the period of retrospectivity.** The legislature should be able to explain why the retrospective date was chosen. A date coinciding with the commencement of the Act (1962) for a provision never previously so interpreted lacks a determining principle.

accessed 4 November 2026). Authorities cited for the proposition should be checked.

[52] For the continuing deference in economic legislation, see RK Garg v Union of India (1981) 4 SCC 675; and for the Court's cautious application of manifest arbitrariness after Shayara Bano, see Navtej Singh Johar v Union of India (2018) 10 SCC 1, and Joseph Shine v Union of India (2019) 3 SCC 39; the application to fiscal statutes has been less frequent, and no Supreme Court decision has yet, to my knowledge, struck down a tax statute *solely* on the ground of manifest arbitrariness arising from its retrospectivity.

(ii) **Over-inclusiveness.** The retrospective provision sweeps in transactions the legislature could have no rational reason to tax retrospectively, such as completed transactions undertaken in compliance with the then-prevailing administrative guidance.

(iii) **Defeating an authoritative judicial determination without curing a genuine defect.** Where the court's decision was a faithful application of the text and settled canons, legislative reversal *with retrospective effect* is arbitrary unless supported by a reason beyond mere preference for revenue.

(iv) **Disproportionate collateral consequences.** Interest and penalties on a liability that was not ascertainable at the time.

6.4 Legitimate Expectation and Article 14

The doctrine of legitimate expectation, recognised in Indian law as an aspect of the rule against arbitrary state action, protects reasonable expectations arising from consistent practice or express promise.[53] Its application against *legislation* is more constrained than against executive action, because the legislature, as policy-maker, must retain flexibility. The courts have generally held that legitimate expectation cannot of itself bar a legislative change. But it can be a relevant factor in the arbitrariness inquiry: the greater the reliance engendered by official statements, circulars or judicial decisions, the heavier the justification the legislature must offer for upsetting it retrospectively.

An illustration is the Mauritius treaty circular (CBDT Circular 789 of 2000), whose validity the Court upheld in *Azadi Bachao Andolan*, thereby legitimising reliance on certificates of residence.[54] If retrospective legislation were later to tax transactions undertaken in express reliance on that kind of guidance, the article 14 claim would be at its strongest.

6.5 The Role of Proportionality in Article 14 Review

Some courts and commentators argue that proportionality should be a general standard of review under article 14. The Constitution Bench in the Aadhaar case and several other

[53] Food Corporation of India v M/s Kamdhenu Cattle Feed Industries (1993) 1 SCC 71; Union of India v Hindustan Development Corporation (1993) 3 SCC 499; Punjab Communications Ltd v Union of India (1999) 4 SCC 727; for the English origins and the comparative debate, see Paul Craig, *Administrative Law* (8th edn, Sweet & Maxwell 2016) ch 23 (substantive legitimate expectations); and, on the general theory, Søren J Schønberg, *Legitimate Expectations in Administrative Law* (OUP 2000).

[54] Union of India v Azadi Bachao Andolan (2004) 10 SCC 1; CBDT Circular No 789 dated 13 April 2000. The Circular is mentioned here as an example of administrative guidance on which investors relied; its relevance to Vodafone is that the legal environment, including Court-approved positions on treaty and structuring choices, had suggested that legitimate structuring was respected.

decisions used proportionality for rights-restrictive legislation. For retrospective taxation, a proportionality analysis would ask:

(1) **Legitimate aim:** Is the retrospective operation aimed at a legitimate goal (restoring genuine legislative intent, correcting a drafting error, preventing abuse)?

(2) **Suitability:** Is retrospective application rationally connected to that aim?

(3) **Necessity:** Could the aim have been achieved by a less burdensome alternative, eg prospective operation with transitional relief, a shorter look-back, or the waiver of interest and penalty?

(4) **Balancing:** Does the benefit of retrospectivity outweigh the cost in reliance interests and in the integrity of the legal order?

A court applying this framework would typically find the legitimate-aim and suitability requirements satisfied (revenue protection is a legitimate aim and retrospective application is rationally connected to it), and would focus on necessity and balancing. The fact that the Government itself, nine years later, concluded that prospective operation would have been preferable is some evidence that a less restrictive alternative existed.

6.6 Summary: The Article 14 Standard

An article 14 challenge to retrospective tax legislation should succeed where the legislation (a) is directed in effect at an identifiable taxpayer or group; (b) lacks a rational determining principle for its retrospective period; or (c) imposes burdens on completed, settled transactions that are disproportionate to the legitimate aim of the legislature. These conditions are the root of limbs 3 to 5 of the test proposed in Part 10.

7 Article 19(1)(g): Trade, Business and Retrospective Burdens

7.1 The Standing Problem

Article 19(1)(g) is a right of ‘all citizens’. Two consequences follow, each of which is regularly overlooked in the commentary on retrospective taxation.

(i) Foreign investors cannot invoke it. A Dutch or British company is not a citizen, and a foreign national cannot invoke article 19 at all. Neither Vodafone International Holdings BV nor Cairn UK Holdings could have relied on article 19(1)(g) before an Indian court. This observation explains part of why the investment-treaty route was attractive: the domestic constitutional route was, for them, effectively confined to article 14.

(ii) Companies as such cannot invoke it. The Supreme Court has held that a corporation is not a citizen for the purposes of Part III and cannot claim the article 19 rights as such.[55] Thus an Indian company burdened by retrospective taxation must either rely on article 14, or find citizen-shareholders or proprietors to assert article 19(1)(g). Individuals, partnerships and proprietary concerns whose members are citizens can ordinarily invoke the Article.

The practical result is that article 19(1)(g) is in many retrospective-tax disputes a secondary argument, and that the main constitutional contest is under article 14. That matters for the design of any judicial test: a test that is built on article 19(6) reasonableness, with its distinctive vocabulary of 'restriction' and 'public interest', would be unavailable to precisely those litigants most likely to be affected by retrospective taxation (foreign investors and corporations).

7.2 Is a Tax a 'Restriction'?

Even where standing exists, there is a threshold question: whether a tax is a restriction on the right to carry on business. The Court's position has been that a tax, as such, does not restrict the right, but that it may do so when it is so onerous that it practically prohibits the business, or when it is discriminatory or imposed in a manner that destroys the business.[56] The standard is stringent. In ordinary cases, a heavy tax does not violate article 19(1)(g).

For retrospective taxes the analysis is nuanced. A retrospective levy on completed transactions does not restrict the *conduct* of business in the usual sense; the taxpayer is not prevented from doing anything. But it may have a prohibitive effect on the *continuation* of the business, by imposing an unexpected liability out of proportion to the business's capacity to bear. The Court recognised this possibility in *Ujagar Prints* and *Empire Industries*, but in each case concluded that the burden was not unreasonable, in part because the burden could be passed on.

— IJLJ —
ISSN: 2583-2794

[55] State Trading Corporation of India Ltd v CTO AIR 1963 SC 1811; Tata Engineering & Locomotive Co Ltd v State of Bihar AIR 1965 SC 40. The Court has in some circumstances allowed shareholders who are citizens to complain of an infringement of their own rights through the corporation's treatment: RC Cooper v Union of India (1970) 1 SCC 248; Bennett Coleman & Co v Union of India (1972) 2 SCC 788. The scope of this exception in the tax context is limited.

[56] Federation of Hotel & Restaurant Association of India v Union of India (1989) 3 SCC 634 (expenditure tax on hotels; art 19(1)(g) does not protect against tax unless it amounts to a prohibition or is confiscatory); Kunnathat Thathunni Moopil Nair v State of Kerala AIR 1961 SC 552 (tax law that is arbitrary and confiscatory may be unreasonable); Khyerbari Tea Co Ltd v State of Assam AIR 1964 SC 925 (a tax may amount to an unreasonable restriction on trade).

7.3 The 'Pass-On' Factor

The ability to pass on a retrospective burden to customers has been an important factor in upholding retrospective indirect taxes.[57] Where the legislature validates a levy that was lawfully not collected, the assessee is liable to bear the tax from his own pocket, because it cannot ordinarily recover from customers an amount that was not collected at the time of sale. The cases in which retrospective indirect taxation has been upheld have often involved situations in which the assessee had in fact collected the tax from the customer, or had the practical ability to do so. In *Asia Sugar*, by contrast, the dealers had not collected tax from purchasers because the commodity was treated as exempt, and this was a reason for refusing the retrospective penalty and interest.[58]

The lesson for retrospective direct taxes is that the pass-on factor is largely unavailable (income tax is borne by the assessee), and so the justification for upholding retrospective burdens on that ground is correspondingly weaker.

7.4 Reasonableness under Article 19(6) and the Period of Retrospectivity

Where article 19(1)(g) is properly invoked, the test under article 19(6) is whether the restriction is reasonable in the interests of the general public. The Court has traditionally considered both the substantive aspects (the nature of the right, the extent of the restriction, the disproportion between the evil and the remedy) and the procedural aspects (the manner of imposition).[59] Since *Modern Dental College* the Court has also used the structured proportionality test. On that approach, a retrospective tax on completed transactions would be assessed for suitability, necessity and balancing, with attention to the length of the retrospective period, the availability of less restrictive alternatives (such as prospective application) and the severity of the consequences.

7.5 Evaluating the Article 19(1)(g) Route

The assessment may be summarised as follows.

— IJLJ —
ISSN: 2583-2794

[57] Empire Industries Ltd v Union of India (1985) 3 SCC 314; Ujagar Prints (II) (1989) 3 SCC 488; and, in relation to the unjust-enrichment principle applied to refunds, Mafatlal Industries Ltd v Union of India (1997) 5 SCC 536.

[58] See the extracts from the judgment as reproduced in <https://www.livelaw.in/supreme-court/supreme-court-retrospective-tax-amendment-karnataka-sales-tax-act-no-penalty-544893> accessed 4 November 2026: dealers who had not collected tax because the commodity was exempt under the then-existing law, and whose assessments had been completed as exempt, were protected from penal consequences.

[59] State of Madras v VG Row AIR 1952 SC 196; Chintaman Rao v State of MP AIR 1951 SC 118; Mohd Faruk v State of MP (1969) 1 SCC 853.

Table 2. Assessment of article 19(1)(g) as a vehicle for challenging retrospective taxes.

Issue	**Position**	**Implication**
Standing	Citizens only; companies and foreigners excluded.	Article 19(1)(g) unavailable to foreign investors and to companies as such.
Characterisation	Tax is not a restriction unless prohibitive/confiscatory.	High threshold; retrospective levies rarely cross it.
Pass-on	Ability to pass on supports validity of indirect taxes.	Weaker support for retrospective direct taxes.
Test	Article 19(6) reasonableness; proportionality since 2016.	Useful analytic tool, but should be mirrored under article 14.
Result	Rarely successful in tax cases.	Should not be the primary vehicle in the proposed test.

The conclusion is that a doctrinal test for retrospective taxes should be formulated primarily under article 14 (with article 265 and article 300A as supporting values), and should be capable of being invoked by every category of taxpayer. Where article 19(1)(g) is available, the same proportionality framework should apply, so that the two provisions yield consistent outcomes.

8 Article 300A, Article 265 and the Separation of Powers

8.1 Is a Tax a Deprivation of Property?

The orthodox position is that a tax is not a deprivation of property within the meaning of the property guarantee, because the exaction of tax by authority of law is a normal incident of sovereignty. This was so under the former article 31 and remains so under article 300A. If the orthodox position were applied mechanically, article 300A would never constrain retrospective taxation.

There are two reasons for thinking the orthodox position too simple. First, article 300A requires ‘authority of law’, and the Court has repeatedly held that the ‘law’ must be valid, a requirement that imports the standards of Part III into the Article. Second, the Court has recognised in other contexts that the deprivation of property by a law that is arbitrary, unreasonable or without public purpose is not a deprivation ‘by authority of law’ in the constitutionally relevant sense.[60]

[60] KT Plantation (P) Ltd v State of Karnataka (2011) 9 SCC 1, para 189 et seq (the Constitution Bench of the Court in IR Coelho v State of TN (2007) 2 SCC 1 held that the right to property, though no longer a fundamental right, remains a constitutional right whose abrogation in a manner that damages the basic structure may be reviewed); see also Jilubhai Nanbhai Khachar v State of Gujarat 1995 Supp (1) SCC 596. In KT Plantation the Court discussed whether public purpose and compensation are inherent in art 300A; the discussion is cited here for the broader proposition that art 300A contemplates a procedurally and substantively valid law. Pinpoints to

The Court has not yet developed a distinct standard of review for taxes that are alleged to be confiscatory. But the combination of article 300A and article 14 supplies a coherent theory: where a retrospective tax burdens a completed transaction with a liability that is so large and so unforeseeable that it effectively takes the taxpayer's property without any counterpart justification, the tax is vulnerable not because it is a tax but because it is an arbitrary deprivation.

8.2 Judicial Power and Legislative Overrides

The separation-of-powers dimension has two parts. The first, treated in Part 4, is the prohibition on direct nullification of judgments. The second is more subtle and has been under-theorised: the question whether a legislative *override* of a recent interpretive decision, in a field where the court's reading was a straightforward application of the text, can be a misuse of the legislative power. The override practice is not unconstitutional, because the legislature has plenary power to change the law. But where it is repeatedly exercised with retrospective effect it risks converting the judicial function into a rehearsal for legislative correction, with the judgment standing only if the revenue approves.

The Court's decision in *Safari Retreats* (3 October 2024) and the Finance Act 2025 amendment, which restored the pre-judgment understanding retrospectively from 1 July 2017, illustrate the problem. The amendment arguably satisfies the formal *Prithvi Cotton* test, since it changes the statutory words on which the decision was based; but the nature of the legislative response, the reversal of a very recent Supreme Court interpretation with effect from the commencement of the entire GST regime, raises the question whether the judicial function has in substance been negated.[61]

8.3 Rule-of-Law Reading of Article 265

The suggestion made in Part 3, that article 265 embodies a rule-of-law norm of fair notice, can be developed here. The Constitution requires that tax be levied *by authority of law*. The idea of 'authority of law' in a constitutional democracy is not exhausted by the formal enactment of a statute; it presupposes that the law is knowable, general and not designed to defeat

be verified.

[61] On the factual position, see the commentary at <https://taxguru.in/?p=1045094> accessed 4 November 2026. The substantive question is under challenge before High Courts according to commentary; see also the discussion of pending High Court challenges to retrospective amendments and the Court's permission to assessees to amend pending writ petitions in <https://taxguru.in/?p=1061221> accessed 4 November 2026 (describing the Court's settled test for validating legislation and noting that Parliament may retrospectively remove the basis of a judicial decision but cannot merely override a judgment without curing the defect). The status of these challenges must be verified before reliance.

particular persons. Where the law is enacted *after* the event, *in response to* a decided case, *against* a defined class of non-voting taxpayers and *on the footing* that it merely restates an earlier law that no one had understood in that way, the law's claim to be 'authority' for the original levy is weakened. This is not a doctrine that the Court has adopted; it is a normative argument that supplies the constitutional rationale for the evidential and proportionality requirements proposed below.

9 Comparative Perspectives

9.1 United States: Due Process and the 'Modest Period' of Retroactivity

The United States Supreme Court has held that retroactive tax legislation is not, as such, a violation of the Due Process Clause, but that its validity depends on a 'rational legislative purpose' and on the retroactive period being modest.[62] In *Carlton* the Court distinguished the retroactivity of a tax in a case where the legislature acted promptly to correct a mistake from cases in which retroactivity extended over a long period. Justice Scalia, concurring in the judgment, would have gone further, doubting that the Due Process Clause provides any protection against retroactive taxation, but the majority position remains a two-part inquiry: rational purpose and modest period.

Landgraf v USI Film Products supplies the interpretive presumption against retroactivity in civil statutes, a rule similar to the *Vatika* presumption.[63] And in *Eastern Enterprises v Apfel*, a plurality of the Court found that a retroactive economic burden that was severe and disproportionate to the employer's prior experience could be a violation of the Takings Clause or due process.[64]

The lesson for India is the focus on *duration* and *purpose*: a short retroactive period tied to correcting a legislative mistake is constitutionally unproblematic, while a long period or a purpose that is simply to override an unwelcome ruling is vulnerable. The American cases provide a practical gloss on the idea of 'reasonableness of retrospective operation' mentioned in the Indian decisions.

[62] United States v Carlton 512 US 26 (1994) (upholding a retroactive amendment to the estate-tax deduction for ESOP sales, applied to a transaction in the preceding year; the Court emphasised the 'modest' period of retroactivity and the legislature's rational purpose in correcting an unintended error costing the fisc substantial revenue); Welch v Henry 305 US 134 (1938); Nichols v Coolidge 274 US 531 (1927) (invalidating retroactive application of an estate-tax provision as arbitrary and capricious); United States v Darusmont 449 US 292 (1981); United States v Hemme 476 US 558 (1986).

[63] Landgraf v USI Film Products 511 US 244 (1994).

[64] Eastern Enterprises v Apfel 524 US 498 (1998) (plurality: Coal Act; the severe retroactive liability imposed on a former coal operator was held to be an unconstitutional taking; Kennedy J concurring in the judgment on due-process grounds).

9.2 Germany: Echte and Unechte Rückwirkung

German constitutional law, building on the principles of the rule of law (*Rechtsstaatsprinzip*) and the protection of legitimate expectations (*Vertrauensschutz*), draws a classic distinction between *genuine* retroactivity (*echte Rückwirkung*, a law that attaches legal consequences to completed past facts) and *non-genuine* retroactivity (*unechte Rückwirkung*, a law that applies to ongoing situations and affects future consequences). Genuine retroactivity is in principle prohibited, subject to exceptions: where the citizen could not have relied on the existing law (because it was unclear or confused), where the legislature is replacing an invalid provision with a valid one, where there are overriding reasons of the common good, or where the burden is minor (the *Bagatellvorbehalt*).[65] Non-genuine retroactivity is permitted but requires a balancing of the legislature's aims against the disappointment of reliance.

This structure maps closely onto the three-tier analysis of vested interests proposed in Part 2. Completed transactions under settled law (Tier 2) correspond to the German category of genuine retroactivity, which is presumptively prohibited. The exceptions are useful analogues for the factors that should be examined to decide whether the presumption is rebutted: confused or unclear law, replacement of an invalid provision, overriding public interest, de minimis burden.

9.3 European Court of Human Rights: Article 1 of Protocol No 1

The European Convention on Human Rights protects the 'peaceful enjoyment of possessions' (article 1 of Protocol No 1), with a specific reservation of the state's power to enforce tax laws. The Strasbourg Court gives the state a wide margin of appreciation in tax matters but has insisted that the interference be lawful, pursue a legitimate aim and strike a 'fair balance'. Retrospective tax legislation was considered in *National & Provincial Building Society v United Kingdom*, where the Court accepted that retrospective legislation validating defective tax regulations did not violate the Convention, noting that the legislation was designed to give effect to what had always been the intention of the legislature and, in the circumstances, was

[65] On the German doctrine, see the decisions of the Federal Constitutional Court (Bundesverfassungsgericht) in BVerfGE 13, 261 (1961); BVerfGE 30, 367 (1971); BVerfGE 72, 200 (1986); and, for a modernisation of the doctrine in the tax context, BVerfGE 127, 1 (Spekulationsfrist, 2010) and BVerfGE 127, 31 (2010). The summary is drawn from general comparative literature and the citations should be verified against the official collection before use.

not unforeseeable; but it held that retrospective legislation designed to interfere with pending litigation can engage article 6 (fair trial) if there is no compelling ground of general interest.[66] The Strasbourg approach is instructive for two reasons. First, it distinguishes retrospective legislation that corrects a technical flaw in a way that matches the original aim from retrospective legislation that *interferes with pending judicial proceedings* to the state's advantage. The latter requires 'compelling grounds of the general interest'. Second, *Stran Greek* and *Yukos* demonstrate that a state's retrospective intervention in its own favour in a dispute to which it is party attracts the closest scrutiny.

9.4 Investment-Treaty Arbitration

Investment tribunals have developed a body of reasoning on the stability of the legal and business framework under the fair-and-equitable-treatment standard. They have held, in several awards, that a state's retroactive changes to the tax regime, or discriminatory enforcement of retrospective liability, can breach the standard where the investor had relied on specific assurances or on a stable framework.[67] The Vodafone and Cairn awards fall within this line. They are not binding on Indian courts and rest on different legal texts, but their reasoning is a helpful reference point for what a 'reasonable' legislature should respect.

9.5 Comparative Synthesis

Despite differences in doctrine, the comparative systems converge on five factors that determine whether retrospective tax legislation is permissible:

1. The *genuineness* of the legislative purpose (correcting a mistake or ambiguity versus raising revenue).

[66] National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v United Kingdom (1997) 25 EHRR 127 (Application nos 21319/93 etc), judgment of 23 October 1997. The Court's later case law, including Stran Greek Refineries and Stratis Andreadis v Greece (1994) 19 EHRR 293 (retrospective legislation annulling an arbitral award against the state violated art 6 and art 1 of Protocol No 1), and OAO Neftyanaya Kompaniya Yukos v Russia App no 14902/04 (ECtHR, 20 September 2011) (finding violations of art 6 and of art 1 of Protocol No 1 in respect of aspects of the tax proceedings, including the retroactive application of a limitation rule and the disproportionate enforcement), show the relevance of both retroactivity and disproportionate enforcement.

[67] See, eg, Técnicas Medioambientales Tecmed SA v United Mexican States ICSID Case No ARB(AF)/00/2, Award (29 May 2003); EnCana Corporation v Republic of Ecuador LCIA Case No UN3481, Award (3 February 2006) (VAT refunds; the tribunal found that, absent a specific commitment, the tax measure did not constitute expropriation, though it addressed the treaty's tax carve-out); Occidental Petroleum Corporation v Republic of Ecuador ICSID Case No ARB/06/11, Award (5 October 2012); Yukos Universal Ltd v Russian Federation PCA Case No AA 227, Final Award (18 July 2014); and, for general treatments, Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2nd edn, OUP 2012) ch VII; Zachary Douglas, *The International Law of Investment Claims* (CUP 2009); Campbell McLachlan, Laurence Shore and Matthew Weiniger, *International Investment Arbitration: Substantive Principles* (2nd edn, OUP 2017). The EnCana case is cited for its treatment of the tax measure and the treaty's tax carve-out; the outcome on the stability point should be verified.

2. The *length* of the retroactive period ('modest' versus extended).
3. The *foreseeability* of the change to a reasonable taxpayer.
4. The *severity* of the burden relative to the taxpayer's circumstances.
5. The *character of the state's involvement* (eg interference in pending litigation to which the state is a party).

These five factors are fully reflected in the test proposed below.

10 A Proposed Judicial Test: The Curative–Expropriatory Test

10.1 Design Principles

The test is designed to satisfy five constraints.

(i) **Respect for legislative competence.** The test must not deny the legislature the ability to correct genuine mistakes or to enact tax laws with limited, justified retrospectivity.

(ii) **Independent judicial characterisation.** The court, not the legislature, should decide whether an amendment is clarificatory.

(iii) **Availability to all taxpayers.** The test should be anchored in article 14, and thus available to non-citizens and companies.

(iv) **Graduated review.** The intensity of scrutiny should track the severity of the interference with vested interests (the Tier 1–3 gradient).

(v) **Graduated remedy.** The court should not be confined to the binary choice of upholding or striking down; it should be able to moderate retrospective consequences, as in *Asia Sugar*.

10.2 The Test in Summary

The Curative–Expropriatory Test (CET)

A retrospective tax provision is constitutional under article 14 (read with articles 265 and 300A, and article 19(1)(g) where available) only if it satisfies each of the following stages, assessed in order. Failure at Stage 1 shifts the provision into the strict-scrutiny track for Stages 3–5.

Stage 1. Genuine defect or ambiguity (characterisation). Was there, at the time of the transactions affected, a real textual defect or an ambiguity that the amendment resolves, such that the amendment may be characterised as clarificatory or curative rather than substantive?

Stage 2. Removal of the basis of any contrary decision (separation of powers). If the amendment follows a judicial decision, does it change the legal *foundation* of the decision, and does the decision's reading represent a defensible interpretation rather than an evident error?

Stage 3. Contemporaneous legislative intent (evidential). Is there reliable, contemporaneous evidence that the legislature intended the construction now stated, eg in the legislative history, consistent administrative practice and circulars, and not only in the post-decision explanatory memorandum?

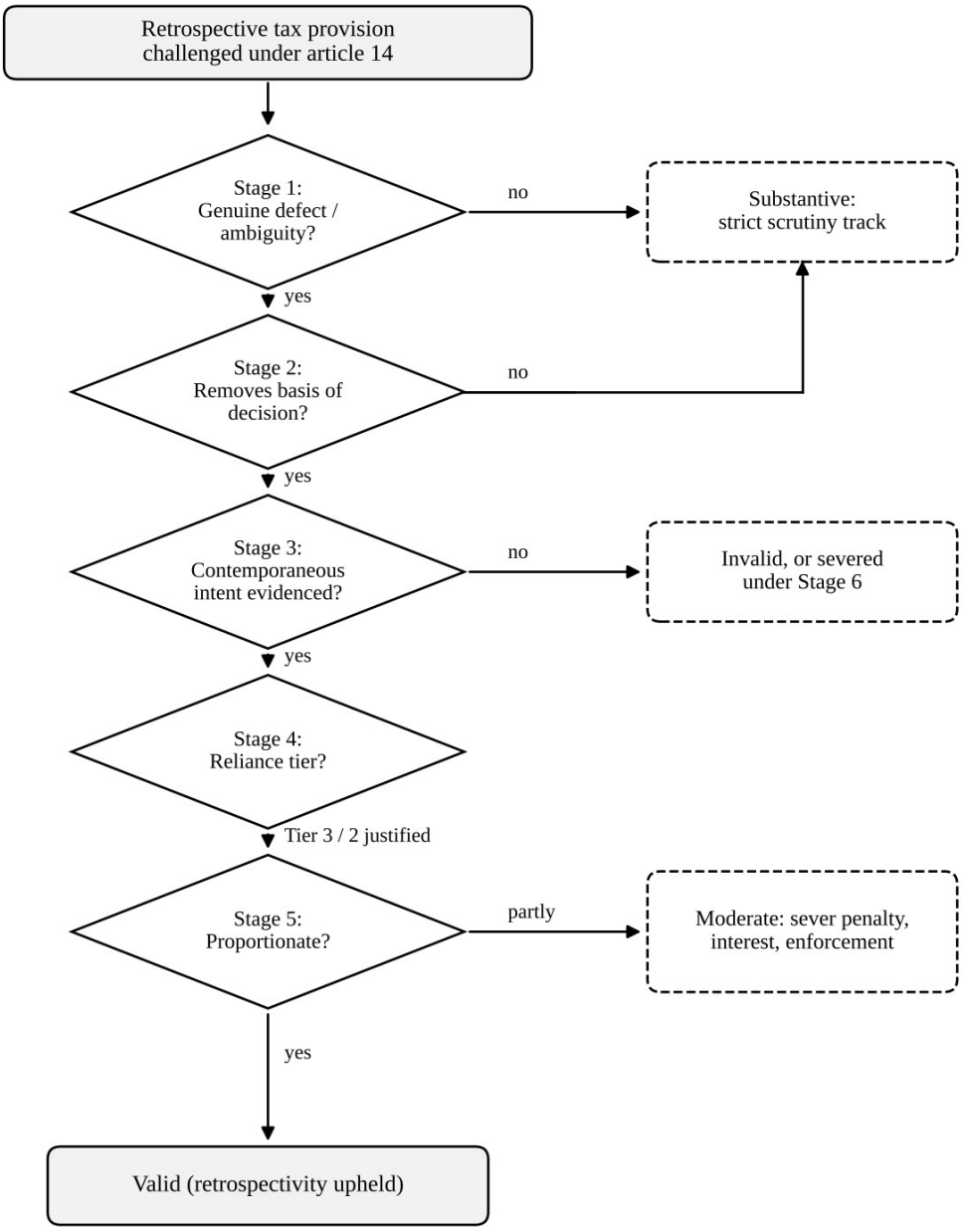
Stage 4. Reliance and vested interests (weighting). What is the weight of the reliance interests? Does the burden fall on Tier 1 (final determinations), Tier 2 (completed transactions under settled law) or Tier 3 (inchoate expectations)?

Stage 5. Proportionality (temporal reach, quantum, collateral consequences). Is the retrospective reach necessary and proportionate to the legitimate aim, having regard to the length of the look-back, the quantum, the availability of pass-on, any collateral enforcement measures, and less burdensome alternatives?

Remedial stage (Stage 6). Where the provision fails one or more of Stages 1–5 only in part, the court should *sever* and *moderate* rather than strike down entirely, uphold the principal liability for the period to which retrospectivity is justified, and set aside retrospective penalty, prosecution, interest and collateral enforcement.

— I J L J —
ISSN: 2583-2794

10.3 Flow of the Test



ISSN: 2583-2794

Figure 1. Schematic flow of the Curative–Expropriatory Test. ‘Strict scrutiny track’ means that the State must carry a heavier justificatory burden at Stages 3–5.

10.4 Stage 1: Genuine Defect or Ambiguity

10.4.1 The question

The first stage asks whether the amendment is truly clarificatory or curative. The inquiry is not satisfied by the legislature's label. The relevant questions are objective:

- Was the language of the pre-amendment provision capable of the meaning now declared? Or does the amendment add words, change the character of the charging provision, or extend its reach to subjects previously outside it?
- Did the pre-amendment provision lead to a consistent, uncontroversial reading in practice, or was there genuine divergence in the lower courts and in the administration?
- Does the amendment affect the *charging* provision or only machinery?

10.4.2 The rationale

This stage operationalises the idea that a clarification is a statement about what the law *already was*. If a competent court, applying orthodox canons, held that the law did not cover X, and the legislature then enacts that the law covers X 'and always did', the legislature's statement is false as a matter of legal analysis. The legislature is entitled to change the law; it is not entitled to a constitutional premium for pretending that it has not.

10.4.3 Evidence and burden

The party asserting that the amendment is clarificatory (ordinarily the State) bears the burden of establishing it. The strongest evidence that an amendment is genuinely clarificatory is (i) contemporaneous statements of intent in the legislative history, (ii) consistent pre-amendment administrative practice, (iii) divergent judicial interpretations that created real doubt, and (iv) the beneficial or neutral effect on taxpayers. The strongest evidence that an amendment is substantive is (i) a decision of the Supreme Court or a High Court adopting a contrary construction, (ii) the use of 'deemed' fictions, (iii) a new burden on a class previously outside the charge, and (iv) a statement of revenue expectation arising specifically from the amendment.

10.4.4 Consequence of failure

If the amendment is not genuinely clarificatory, the court is not thereby entitled to invalidate it. It is merely required to treat the amendment as substantive retrospective legislation and apply the heightened proportionality scrutiny of Stages 3–5, as did the Supreme Court in *Asia*

Sugar when it held that the amendment was not merely clarificatory but still not invalid *per se*.

10.5 Stage 2: Removal of the Basis of the Decision

This stage restates, and tightens, the *Prithvi Cotton* validation test. Two points are added.

First, the court should ask whether the amendment cures a *defect* (a flaw in competence, a procedural lacuna, a drafting omission) or whether it *reverses a considered interpretation*. A defect cure is easily justified: the legislature never validly enacted the tax, or enacted it incompletely. A reversal of interpretation is different: the legislature enacted a law, the court construed it faithfully, and the legislature now wishes it had enacted a different law. The latter may still be legitimate, but it is closer to substantive retrospective legislation and moves the case to the strict-scrutiny track.

Second, the court should examine whether the legislature has addressed the *parties* to the earlier judgment in a manner that defeats the judicial outcome (an overriding of the *res judicata* effect). Tier 1 interests, those with final judicial determinations, deserve the strongest protection, and a validating law that nullifies a final determination as to specific parties without any general policy justification is vulnerable.

10.6 Stage 3: Contemporaneous Legislative Intent

The third stage requires evidence that the legislature, at the time of the original enactment, intended the construction now stated. This requirement is central to the *curative* claim: an amendment cures only if it restores what was meant. The following sources are relevant:

(a) The legislative history of the original provision, including committee reports and explanatory memoranda.

(b) Consistent administrative interpretation, including circulars and standard assessment practice, in force before the dispute arose.

(c) Contemporaneous statements by the minister in charge.

(d) The position taken by the revenue in earlier litigation.

Post-decision statements of intent, such as a Finance Minister's statement that the legislature 'always intended' a particular result, have low evidential value, since they are made after the adverse decision and are plainly motivated by it. The point is not that such statements are insincere, but that they are not independent evidence.

The Court in *Asia Sugar* considered the State's own prior treatment of the commodity: the tax department had originally accepted that the exemption applied and completed assessments on

that footing. The test generalises this approach: the *administration's* own contemporaneous conduct is the best evidence of what the law was understood to be.

10.7 Stage 4: Reliance and Vested Interests

The fourth stage assigns weight to the interests affected by retrospectivity, using the three-tier typology.

Table 3. Tiered weight of reliance interests in Stage 4.

Tier	Typical interest	Level of scrutiny and justification required
Tier 1: Accrued / final	Final judicial determination; concluded assessment; completed refund; res judicata.	Very strong protection. Retrospective alteration permitted only on compelling public-interest grounds, with no direct nullification of the judgment.
Tier 2: Completed, settled-law reliance	Transaction concluded under authoritative or administratively settled law.	Strong presumption against retrospective burden. State must show genuine clarification (Stage 1) or overriding necessity, and proportionality (Stage 5).
Tier 3: Inchoate expectation	Hope that a rate, exemption or deduction will continue.	Minimal protection. Prospective change valid; retrospective change permitted subject to rationality.

The classification is fact-sensitive. Relevant indicators of Tier 2 reliance include: a published circular or notification; a binding advance ruling; a consistent pattern of assessment; a favourable judgment of the Supreme Court or a High Court (even if not final in the individual's case); and the nature of the transaction, ie whether it was concluded in reliance on the legal position or was a routine transaction in which reliance is incidental.

10.8 Stage 5: Proportionality

10.8.1 Components

The fifth stage applies proportionality to the retrospective operation itself. Its components are:

(a) **Legitimate aim.** Revenue protection is legitimate in the abstract, but the *particular* retrospective operation must be traced to a legitimate aim such as correction of an unintended anomaly or prevention of abuse. A purpose simply to recoup revenue forgone by the State's own drafting is not a strong aim.

(b) **Suitability.** Retrospectivity must be rationally connected to the aim.

(c) **Necessity.** Was there a less burdensome way: (i) prospective operation from the date of the amendment; (ii) a limited look-back (for example, the period of limitation for

reassessment); (iii) transition relief for transactions concluded in reliance on the earlier law; (iv) a waiver of interest and penalty?

(d) **Balancing.** Do the public-interest benefits outweigh the harm to reliance and to the legal order? The following factors are relevant: the length of the retrospective period; the quantum of liability relative to the taxpayer's resources; whether the burden can be passed on; whether the burden falls on a discrete, politically weak group; whether collateral enforcement measures (attachment, sale of assets, set-off of unrelated refunds) accompany the liability; and whether the State is party to pending litigation which the amendment is designed to defeat.

10.8.2 A heuristic: the retrospective burden ratio

For analytical convenience a court may wish to consider a rough heuristic: the ratio of the retrospective burden *B* to the taxpayer's net economic benefit *E* from the transaction at the time. Where *B*/*E* is significantly greater than the burden that the prospective law would impose, or where *B* exceeds *E* (as with the online-gaming demands, which commentators say could exceed lifetime revenue for most platforms),[68] the burden is prima facie disproportionate and requires heightened justification. The ratio is not a legal rule, but a device to organise the balancing stage.

10.9 Stage 6: Moderated Retrospectivity as the Default Remedy

10.9.1 Rationale

The most important innovation in *Asia Sugar* is its recognition that retrospective tax liability and retrospective punitive consequences are separable. The Court upheld the principal tax and refused penalty and interest for the period before the amendment, observing that penalty presupposes culpability and that charging interest from the original transaction date would effectively give the retrospective levy a punitive character.[69] Stage 6 generalises this into a remedial principle.

[68] See the commentary at <https://amlegals.com/gst-on-online-gaming-when-the-supreme-court-buried-the-skill-chance-distinction/> accessed 4 November 2026 (observing that, for most platforms, the retrospective demand computed on full face value would exceed the company's total lifetime revenue). This is a commentator's observation, not a finding of the Court, and is used here only to illustrate the heuristic.

[69] Quotations and paraphrase from Asia Sugar are as reported in the LiveLaw summary, <https://www.livelaw.in/supreme-court/supreme-court-retrospective-tax-amendment-karnataka-sales-tax-act-no-penalty-544893> accessed 4 November 2026, conclusions (v)–(viii) and the extract headed 'Limits on Enforcement of Retrospective Levy – Penalty and Interest'.

10.9.2 The moderation toolkit

When a retrospective provision passes the constitutional threshold in respect of its principal charge but would operate oppressively in some respect, the court should consider the following measures in order of preference:

(1) **Sever penalty and prosecution** for the pre-amendment period.

(2) **Defer interest** to run from the date of lawful demand following the amendment rather than from the original transaction date.

(3) **Shorten the look-back** by reading down the retrospective date to a period consistent with the ordinary limitation for reassessment, where the legislature's provision admits such a reading.

(4) **Protect Tier-1 interests** (final determinations) by excluding them from the operation of the amendment.

(5) **Restrain collateral enforcement** (attachment, recovery, set-off of unrelated refunds) pending determination of the validity of the retrospective charge.

(6) **Strike down** the retrospective operation, preserving prospective operation, where the amendment is manifestly arbitrary and no moderated form can save it.

10.9.3 Doctrinal basis for moderation

The Court's power to read down or sever is well settled in Indian constitutional law: a statute may be upheld in part, and the Court may read down a provision to bring it within constitutional limits.[70] The proposal here is that moderation, as a form of reading down in respect of temporal reach and consequences, is also a legitimate technique for retrospective-tax cases. In effect, it translates the constitutional distinction between principal liability and punitive consequences into a remedy.

10.10 Burdens and Standard of Review

The test allocates burdens as follows. The taxpayer must show that the provision operates retrospectively and burdens the taxpayer. The State then bears the burden of establishing Stage 1 (genuine clarification or curative character) and Stage 3 (contemporaneous intent), because the facts bearing on these questions lie largely within its knowledge. On Stages 4 and

[70] On severability and reading down, see AK Gopalan v State of Madras AIR 1950 SC 27 (doctrine of severability); RMD Chamarbaugwala v Union of India AIR 1957 SC 628; Kihoto Hollohan v Zachillhu 1992 Supp (2) SCC 651. For the reading-down technique in constitutional adjudication, see MP Jain, *Indian Constitutional Law* (8th edn, LexisNexis) ch on judicial review and severability; and HM Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1991) vol 1 (on severability).

5 the burden is shared: the taxpayer must establish reliance; the State must justify proportionality. The standard of review should be deferential in the economic-policy sense (the court does not substitute its view of the best fiscal policy) but not so deferential that it accepts the legislature's characterisation without examination.

10.11 Consistency with Existing Authority

The test is consistent with existing authority in the sense that it does not overrule any of the major decisions. Specifically:

- It preserves the holding that retrospectivity *per se* is not a ground of invalidity (P1).
- It builds on the *Prithvi Cotton* validation test, adding the substantive stages (P3).
- It operationalises the Court's own statement that clarificatory character is for the Court to determine (P4), as in *Asia Sugar*.
- It generalises *Asia Sugar*'s recognition that retrospective operation must not become punitive (P5).
- It aligns with the Constitution Bench's emphasis in *Vatika* on fairness as the rationale for the presumption against retrospectivity.

Where the test goes beyond existing doctrine is in (a) the requirement of contemporaneous evidence of intent; (b) the tiered weighting of reliance interests; and (c) the proportionality and moderation framework as a systematic remedy.

11 Applying the Test: Six Controversies

This Part applies the Curative–Expropriatory Test to six controversies: the 2012 Vodafone amendments, the 2025 GST override of *Safari Retreats*, *Gameskraft* (2026), *Asia Sugar* (2026), the curative section 43B proviso, and a stylised 'reverse-the-judgment' hypothetical. Each application is necessarily provisional. In particular, the analysis of the 2026 decisions rests on published summaries and headnotes, not on the full certified text, and the constitutional arguments in the pending review and High Court proceedings may alter the position.

11.1 The 2012 Amendments (Pre-2021 Operation)

Stage 1 (genuine defect?). The Court's reading in *Vodafone* followed orthodox principles: a tax on the transfer of a capital asset situated in India does not, on its text, reach the offshore transfer of shares in a foreign company. The new Explanations added a deeming rule (shares of a foreign company deemed situated in India if they derive substantial value from Indian

assets) and an interpretation of 'through'. The first is a substantive extension of the charge, not a mere clarification. *Result: substantive; strict-scrutiny track.*

Stage 2 (basis of decision removed?). Formally yes; the legal situs rule was changed. But the amendment reversed a considered interpretation of the Supreme Court within months of the decision, and its validation clause reached concluded demands. *Result: formally satisfied; substantively a reversal.*

Stage 3 (contemporaneous intent?). The Revenue's pre-2012 conduct, including the stance in the Vodafone case itself, was based on a particular reading of the Act's existing text rather than on any articulated legislative intent to tax offshore indirect transfers; and the Court did not find such an intent. The State would find it difficult to show contemporaneous evidence of a legislative purpose to tax such transfers back to 1962. *Result: unlikely to be satisfied.*

Stage 4 (reliance). The affected investors had concluded transactions in 2006–07 on the footing of a Supreme Court-endorsed position (and, in Vodafone's case, a Supreme Court decision in its favour: Tier 1 as to Vodafone itself). *Result: Tier 1/Tier 2.*

Stage 5 (proportionality). A 50-year look-back; interest and penalty exposure; attachment and sale of shares and the confiscation of unrelated refunds (in Cairn); and the identity of the burdened class (non-resident investors). Less restrictive alternatives (prospective operation from 2012 with a transition rule; the GAAR route) were available and were eventually adopted. *Result: disproportionate.*

Stage 6 (remedy). A court applying the test would, at a minimum, have restrained the retrospective operation in respect of concluded Tier 1 and Tier 2 transactions and refused penalty and interest, in effect arriving at the position reached by the 2021 Act, but through constitutional adjudication rather than after international arbitration and diplomatic cost.

11.2 The 2025 GST Override of Safari Retreats

Stage 1. The Supreme Court had construed 'plant or machinery' functionally. The 2025 amendment narrowed the provision with effect from 1 July 2017. This reverses an interpretation by the highest court rather than clarifying a latent ambiguity, though the Government may argue that the legislature always intended the narrower reading. *Result: arguably substantive.*

Stage 2. The statutory words were changed; the formal test is satisfied.

Stage 3. The State would point to the legislative history of the 2017 provision and to the Revenue's earlier circulars; the taxpayer would point to the Court's own finding that the functionality reading was the better one. A GST-specific feature: the credit scheme is a

statutory entitlement, and retrospective withdrawal of the credit after taxpayers have claimed it affects completed returns. *Result: contestable.*

Stage 4. Taxpayers who claimed credit in reliance on the 2024 decision, or on earlier favourable High Court rulings, have a Tier 2 interest; those with final determinations in their own cases have a Tier 1 interest.

Stage 5. The reversal operates from the inception of the GST regime, eight years back at the time of enactment, and carries interest exposure. A shorter look-back, or protection of those with concluded determinations, were less burdensome alternatives.

Stage 6. A moderated outcome is conceivable: upholding the amendment prospectively and for open periods, while protecting concluded matters and waiving interest on reversal for the period before the amendment. As noted, the pending status of challenges must be verified.[71]

11.3 DGGI v Gameskraft (27 May 2026)

The Court is reported to have held that online-gaming activities involving pooled stakes constitute 'betting and gambling' within the meaning of the CGST framework, that GST at 28% is leviable on the full face value of the bets, and that the 2023 amendments (including to Entry 6 of Schedule III and Rules 31B and 31C) were clarificatory, so that their effect was not confined to the period after 1 October 2023; the challenge to Rule 31B under article 14 was rejected.[72]

Stage 1. This is the pivotal stage. If the Court's holding is that the pre-2023 statutory text already covered the activity (the amendments merely clarifying), the case is one in which the constitutional question of retrospectivity does not arise in a strong form: the Court is declaring what the law always was. But if the 2023 amendments introduced a new valuation rule (taxing full face value, as opposed to the platform fee), that is, on its face, a substantive change in the measure of the tax. A critical reader would ask whether the label 'clarificatory' is carrying the weight of the retrospective result. The Court's characterisation is entitled to respect, and the test does not suggest it was wrong; it suggests the issues that a reasoned judgment should address (whether there was genuine pre-2023 ambiguity, and how the Revenue itself understood the valuation rule before 2023).

[71] For the status of challenges to the Finance Act 2025 amendment, see the sources cited in the note on Safari Retreats in Part 1; the paper takes no position on how the challenges will be decided.

[72] See <https://taxguru.in/?p=1049885> accessed 4 November 2026 (summary referring to 'Issue (vii)' on whether the 2023 amendments are clarificatory and retrospective, and recording the rejection of the art 14 challenge to Rule 31B); <https://theprint.in/judiciary/game-over-sc-backs-retrospective-28-gst-on-online-betting-says-game-skill-argument-irrelevant/2943155/> accessed 4 November 2026; and <https://www.medianews4u.com/online-gaming-firms-face-huge-tax-blow-as-supreme-court-upholds-28-gst-levy/> accessed 4 November 2026. The summaries differ in emphasis; the certified judgment is the authority.

Stage 3. The Revenue's own pre-2023 conduct is the key evidence: the show-cause notices dated from 2022 and covered 2017–2022, which suggests a contemporaneous revenue position that the full-value reading was already correct, and the Karnataka High Court had in 2023 held otherwise. A genuine contemporaneous intent would be easier to show for the period after the notices than before.

Stage 5. The proportionality concern is quantum: commentators observe that demands computed on full face value could exceed a platform's lifetime revenue. The Court's reported response is that this is an inherent consequence of the levy as validly framed. Under Stage 6, an alternative would be to uphold the principal tax but moderate interest and penalty for the retrospective period, an outcome that the Court may consider on review.

Observation. The case illustrates the difficulty of applying a purely retrospectivity-focused test when the Court's ratio is that the *pre-existing* law already covered the activity. The CET is designed to be applied where the legislative amendment is a necessary part of the revenue's case. Where the Court finds that the law always had that meaning, the amendment is superfluous and the retrospectivity inquiry is, in substance, a question of statutory interpretation with a constitutional afterthought. The proper analysis therefore depends on a close reading of the Court's reasoning, which should be done on the certified judgment.

11.4 Asia Sugar (13 July 2026)

Stage 1. The Court held the amendment not merely clarificatory, but a substantive restriction of an exemption, and thus placed the case on the strict-scrutiny track, even if it did not use that vocabulary.

Stage 3. The Court found that the pre-2001 exemption entry covered imported sugar (applying strict construction and relying on its earlier decision in *State of Kerala v State Trading Corporation of India*), and the department had itself completed assessments granting exemption.[73] This is precisely the kind of contemporaneous administrative conduct that Stage 3 treats as the best evidence of the understood law, and it cut against the State's characterisation.

Stage 4. The dealers had imported sugar in 1994–96, had not collected tax from purchasers, and had assessments completed as exempt: strong Tier 2 reliance.

Stage 5 and Stage 6. The Court upheld the amendment and the principal tax, but barred penalty and deferred interest. The result is a textbook application of moderated retrospectivity.

[73] As recorded in the LiveLaw summary of the judgment at <https://www.livelaw.in/supreme-court/supreme-court-retrospective-tax-amendment-karnataka-sales-tax-act-no-penalty-544893> accessed 4 November 2026, which cites State of Kerala v State Trading Corporation of India Ltd (1999) 9 SCC 102.

The CET differs from the Court's reasoning mainly in making the stages explicit and in allowing for a more searching inquiry, in an appropriate case, into the necessity of the retrospective date.

11.5 Section 43B: A Genuine Curative Amendment

The second proviso to section 43B, which allowed a deduction for specified statutory payments made on or before the due date for filing the return, was a curative amendment: the original provision had operated harshly and in a way that frustrated the legislature's object of ensuring actual payment. Applying the test:

- **Stage 1:** genuine defect (an unintended hardship), purpose evident.
- **Stage 2:** no contrary judgment to override.
- **Stage 3:** intent evident from the object of the provision.
- **Stage 4:** the amendment benefits taxpayers; no reliance interest is harmed.
- **Stage 5:** retrospectivity advances rather than defeats reliance.

The test thus validates retrospective operation without difficulty, and confirms the Court's treatment in *Allied Motors* and *Alom Extrusions*.[74] It is important that the test does not impede such measures.

11.6 A Stylised Hypothetical

Suppose that a High Court holds that income from X is not chargeable under section Y, following a long-standing circular of the Board to the same effect. Within a year the legislature inserts an Explanation stating that, for removal of doubts, income from X has always been chargeable, with effect from the commencement of the section 25 years earlier, imposing interest from the original due date and a penalty for under-reporting. Applying the test:

Stage 1: The Board's own circular is evidence of no ambiguity in the taxpayer's favour; the Explanation is substantive.

Stage 2: The text is changed; formal satisfaction.

Stage 3: The Board's circular negates contemporaneous intent.

Stage 4: Tier 2 reliance on the circular and on the High Court's decision.

Stage 5: A 25-year look-back, interest and penalty: disproportionate.

Stage 6: Moderation: uphold for the period from, say, the date of the High Court's decision or the date of the Bill; sever penalty and interest.

[74] Allied Motors (P) Ltd v CIT (1997) 3 SCC 472; CIT v Alom Extrusions Ltd (2009) 319 ITR 306 (SC).

The hypothetical shows that the test does not make the legislature powerless; it directs the legislature towards a narrower, less oppressive exercise of its retrospective power.

11.7 Cross-Case Comparison

Table 4. Indicative application of the CET.

Controversy	**Stage 1 (defect)**	**Stage 3 (intent)**	**Stage 4 (reliance)**	**Stage 5 (proportionality)**	**Indicative outcome under CET**
2012 Finance Act (pre-2021)	Substantive	Weak	Tier 1/2	Disproportionate	Retrospectivity restrained; penalty/interest set aside
2025 GST override	Arguably substantive	Contestable	Tier 2 (Tier 1 for some)	Open	Likely moderation (protect concluded cases; interest)
Gameskraft (2026)	Depends on Court's reading of pre-2023 text	Mixed	Tier 2/3	Quantum concern	Principal levy upheld; moderation of interest/penalty at review a live option
Asia Sugar (2026)	Substantive	Weak	Tier 2	Penal element disproportionate	Principal upheld; penalty severed; interest deferred (as decided)
Section 43B proviso	Curative	Strong	Beneficial	Proportionate	Valid

12 Objections and Replies

12.1 'The test usurps legislative power.'

The objection is that the judiciary is prescribing how the legislature may legislate on taxation, a field where democratic accountability and expertise lie with Parliament. The reply is threefold. First, the test is a *constitutional* standard under article 14, a standard that the Court is charged to enforce; the Court does not act beyond its remit when it applies Part III to tax legislation. Second, the test leaves the legislature free to enact retrospective laws; it requires only that the exercise be justified and proportionate, and it provides remedial moderation in place of invalidation. Third, the test enhances the legislative process: if the State must demonstrate contemporaneous intent and proportionality, it will have an incentive to document them at the time of enactment.

12.2 'Revenue is a vital state interest; certainty cannot trump it.'

The objection is that the fisc has a legitimate claim to tax that the legislature intended to levy but failed to articulate, and that mistakes of drafting should not allow windfalls. The reply is that the test fully accommodates genuine correction: Stage 1 and Stage 3 are designed to identify genuine legislative mistakes, which pass easily; only where the claim is contested and

the legislature's intent is doubtful does the test require heavier justification. Moreover, the long-run interest of the fisc lies in investor and taxpayer confidence: the 2021 retreat, undertaken to restore confidence after the arbitral awards, indicates the Government's own assessment of the cost of retrospective expropriation.

12.3 'Tax avoidance justifies retrospective correction.'

The objection is that aggressive structuring exploits gaps in the statute, and retrospective legislation is the only effective deterrent. The reply is that the problem of avoidance is addressed more fairly by prospective anti-avoidance measures. India has since introduced General Anti-Avoidance Rules (Chapter X-A of the Income-tax Act 1961), which apply from 1 April 2017, and the *Vodafone* decision itself distinguished legitimate structuring from sham.[75] Where a particular structure is abusive, Stage 1 would be readily satisfied (the law always prohibited abuse), and Stage 3 would be supported by contemporaneous administrative challenges. Retrospectivity is not necessary to combat abuse; it is necessary only to combat *lawful* structures that the legislature later disfavours.

12.4 'The test is too indeterminate.'

The objection is that a six-stage inquiry with proportionality balancing invites unpredictable decisions and litigation. The reply is that predictability is, in the retrospective-tax context, the very value at stake; the present law, in which the label 'clarificatory' is dispositive, is predictable only in favour of the State. The test replaces one form of uncertainty with a structured inquiry that is no more indeterminate than the proportionality analyses the Court already conducts in other fields. Moreover, the staged structure produces its own indicia: the burden of proof, the tier classification and the moderation toolkit all provide anchor points.

12.5 'The test will chill beneficial retrospective amendments.'

The objection is that taxpayer-friendly retrospective amendments (such as the section 43B proviso) will be burdened by the test. The reply is that the test is triggered only by *burdensome* retrospectivity: where the amendment benefits assessees, no reliance interest is harmed and Stages 4 and 5 are trivially satisfied.

[75] General Anti-Avoidance Rule: Chapter X-A (ss 95–102) of the Income-tax Act 1961, inserted by the Finance Act 2012 and brought into force with effect from 1 April 2017 following deferral. The Shome Committee on GAAR (2012) recommended deferral and prospective application. Verify section numbers and dates against the current statute; the Income-tax Act 1961 has been replaced for tax years beginning from 1 April 2026 by the Income-tax Act 2025, whose corresponding provisions should be consulted for current practice.

12.6 'International arbitration already addresses this.'

The objection is that investment-treaty protection makes domestic constitutional development unnecessary. The reply is that treaty protection is available only to qualifying foreign investors, and India's 2016 Model BIT excludes taxation measures from its scope. Domestic taxpayers, and foreign investors outside treaty protection, have no remedy other than domestic constitutional law. In addition, the international route is slow, costly and diplomatically fraught; a domestic standard is both more accessible and more legitimate.

12.7 'Courts lack the competence to assess legislative intent.'

The objection is that judges are not well placed to reconstruct intent. The reply is that courts routinely do so in statutory interpretation, and that Stage 3 requires only a review of a documentary record (legislative history, circulars, past litigation positions), which is the standard fare of interpretation.

13 Institutional and Legislative Reform

A judicial test is necessary but not sufficient. Legislative practice should also change. Four reforms are suggested.

13.1 A Policy of Restraint, Embedded in Law

The Government's 2014 Budget statement (by Finance Minister Arun Jaitley) that it would not ordinarily bring changes retrospectively that create fresh liabilities, and its 2021 statement of policy that retrospective cases of the Vodafone kind would not be pursued, are policy commitments with no enforcement mechanism.[76] A statutory restraint would convert them into a rule of legislative procedure.

13.2 Retrospective Impact Statement

Any Bill proposing a retrospective tax provision should be accompanied by a statement of: (a) the legal and factual basis for the claim that the provision is clarificatory or curative; (b) the contemporaneous legislative or administrative evidence of intent; (c) the estimated number of

[76] On the 2014 statement, see Budget Speech of the Finance Minister, 10 July 2014; on the 2021 position, see <https://www.onmanorama.com/news/business/2021/08/06/india-govt-scraps-retro-tax-cairn-vodafone.html> accessed 4 November 2026. The Tax Administration Reform Commission (chaired by Dr Parthasarathi Shome) in its 2014 reports also stressed certainty and restraint in tax legislation; the specific recommendations on retrospective amendments should be verified against the Commission's reports before citation.

affected taxpayers and the revenue effect; (d) the alternatives considered (prospective operation; shorter look-back); and (e) the treatment of interest and penalty. The statement would also serve as the evidential record for Stage 3 of the test.

13.3 Parliamentary Committee Scrutiny

A retrospective-tax provision should be referred, as a matter of practice, to the relevant Standing Committee. The 2021 Bill that scrapped the 2012 provisions was passed in the Lok Sabha without discussion, and this should not be the pattern for the next controversy.[77]

13.4 A Model Statutory Provision

The following model text is offered for illustration, to be placed in the Income-tax Act 1961, its successor, or a general fiscal-legislation statute. It is drafted to complement, not replace, the constitutional test.

Model Provision: Restraint on Retrospective Fiscal Legislation (draft)

1. Definition. 'Retrospective fiscal provision' means any provision of a Bill that, in respect of a period before the date of its commencement, imposes or increases a tax, duty, cess, interest, penalty or prosecution, or withdraws an exemption, deduction or credit.

2. Conditions. No retrospective fiscal provision shall be introduced unless the Bill is accompanied by a Retrospective Impact Statement setting out (a) the basis on which the provision is stated to be clarificatory or curative, together with the contemporaneous evidence of legislative or administrative intent; (b) the period of retrospectivity and its justification; (c) the number of affected persons and the estimated revenue; and (d) the alternatives considered.

3. Limit on look-back. Unless the Statement records a compelling public interest, the retrospective period shall not exceed the period for which a reassessment may ordinarily be initiated under the Act.

4. No retrospective penalty or interest. No penalty, prosecution or interest shall be imposed in respect of any period before the commencement of a retrospective fiscal provision by reason of that provision alone.

5. Protection of final determinations. A retrospective fiscal provision shall not affect any matter finally determined by a court of competent jurisdiction before the date of its

[77] 'Lok Sabha passes bill to nullify retro taxes' *Tribune India* <https://www.tribuneindia.com/news/business/lok-sabha-passes-bill-to-nullify-retro-taxes-294311> accessed 4 November 2026 (reporting that the Taxation Laws (Amendment) Bill 2021 was passed without discussion).

commencement, unless the provision expressly so states and the Statement records the grounds.

6. Review. A retrospective fiscal provision shall be referred to the relevant Standing Committee of Parliament before it is passed.

Clause 4 gives statutory expression to the principle in *Asia Sugar*; clause 5 protects Tier 1 interests; clause 3 imports the proportionality limb on temporal reach; clause 2 builds the evidential record for judicial review. The provision would not bind a future Parliament, because of the principle that no legislature can bind its successors, but a statutory requirement of explanation would nonetheless alter the political economy of retrospectivity, a consideration emphasised in the economic literature.[78]

14 Conclusion

The question with which this paper began was whether a workable test can be articulated to distinguish a legitimate curative tax amendment from an unconstitutional expropriation of vested economic rights. The answer proposed is a six-stage Curative–Expropriatory Test, anchored in article 14 and informed by articles 265 and 300A, that (i) subjects the 'clarificatory' label to independent judicial characterisation, (ii) requires contemporaneous evidence of legislative intent, (iii) weights reliance interests by tier, (iv) applies proportionality to the temporal reach, quantum and collateral consequences of retrospectivity, and (v) provides a graduated remedy, moderated retrospectivity, in place of an all-or-nothing choice.

Four conclusions follow from the analysis.

C1. The vested-rights doctrine in tax requires differentiation. The statement that there is no vested right to a tax-free outcome is true of inchoate expectations but misleading as applied to completed transactions under settled law, and wrong as applied to final judicial determinations.

C2. Article 14 should carry the main burden. Article 19(1)(g) is unavailable to non-citizens and corporations as such, and sets a high threshold in tax cases. A test constructed principally under article 14 is available to all taxpayers and can be reinforced by the proportionality methodology that the Court has already adopted.

[78] Daniel Shaviro, *When Rules Change* (University of Chicago Press 2000) (the political-economy argument that legislators over-use retroactivity because they do not internalise its costs, so that procedural friction can reduce over-use).

C3. The label 'clarificatory' should be a conclusion of analysis, not a premise. The recent decisions in *Asia Sugar* and, arguably, *Gameskraft* show that the Court is willing to investigate characterisation; the proposed test would make the investigation systematic.

C4. Moderation is a principled middle path. *Asia Sugar*'s separation of principal liability from penalty and interest shows that the Court can protect fairness without sacrificing legislative power, and the model statutory provision shows that the same principle can be written into legislative practice.

The Vodafone controversy cost India a decade of investor confidence and a substantial sum in arbitration and refund; yet it produced no Indian constitutional precedent. The doctrinal task now is to ensure that, if a comparable controversy arises, the Indian courts have a test of their own. The test proposed here is offered as a basis for that development: a structure within which the legislature's undoubted power to correct its own mistakes is preserved, and the taxpayer's equally real claim to rely on the law as it was announced is protected.

Suggested directions for further research. (i) An empirical study of the use of 'for removal of doubts' Explanations in Indian fiscal legislation since 1990, and their subsequent judicial treatment; (ii) a comparative study of tax-specific constitutional limits in Commonwealth jurisdictions (Canada, Australia, South Africa); (iii) the interaction between the proposed test and the doctrine of legitimate expectation in administrative law; (iv) the application of the test to GST legislation, where the multiplicity of retrospective notifications and amendments raises distinctive issues; and (v) the relationship between retrospective tax legislation and the Income-tax Act 2025.

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APPENDIX A: CHRONOLOGY OF KEY EVENTS AND DECISIONS

Date	Event / decision
1962	*Chhotabhai Jethabhai Patel & Co v Union of India*: retrospective excise levy upheld against article 19(1)(f)/(g) challenge.
1963	*Rai Ramkrishna v State of Bihar*: legislative power to tax retrospectively affirmed.
1969	*Shri Prithvi Cotton Mills v Broach Borough Municipality*: test for validating legislation (removal of the basis of the judgment).
1973–1989	*Krishnamurthy, Hiralal Rattanlal, Empire Industries* (1985), *Ujagar Prints* (1989): retrospective tax and validation cases; reasonableness of retrospectivity acknowledged.
1978–79	Constitution (Forty-fourth Amendment): right to property moved from Part III to article 300A.
1996	*Indian Aluminium Co v State of Kerala*: restatement of the validation doctrine and its limits.
1997	*Allied Motors v CIT* (section 43B proviso as curative); *Podar Cement*.
2004	*Union of India v Azadi Bachao Andolan*: validity of CBDT Circular 789 of 2000.
2007	Vodafone group's acquisition of the Cayman holding company; Cairn's 2006–07 internal reorganisation.
20 Jan 2012	*Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613 (Supreme Court holds the transfer outside Indian tax jurisdiction).
16 Mar 2012	Budget speech announcing amendments to reverse the effect of *Vodafone*.
28 May 2012	Finance Act 2012 assented to: retrospective Explanations to section 9(1)(i) from 1 April 1962; section 119 validation.
Jul 2014	Budget statement of the Finance Minister disclaiming ordinary resort to retrospective liabilities.
Dec 2014 / 2015	*CIT v Vatika Township (P) Ltd* (2015) 1 SCC 1 (Constitution Bench; presumption against retrospectivity).
22 Aug 2017	*Shayara Bano v Union of India*: manifest arbitrariness as ground to strike down legislation.
25 Sep 2020	Vodafone investment-treaty award (PCA Case No 2016-35) against India.
21 Dec 2020	Cairn investment-treaty award (PCA Case No 2016-7) against India.
5–6 Aug 2021	Taxation Laws (Amendment) Bill 2021 introduced and passed by the Lok Sabha.
13 Aug 2021	Taxation Laws (Amendment) Act 2021 receives assent.
3 Oct 2024	*Chief Commissioner of CGST v Safari Retreats Pvt Ltd* ('plant or machinery' in section 17(5)(d) CGST Act 2017).
2025	Finance Act 2025 amends section 17(5)(d) with effect from 1 July 2017; *Naresh Kumar Gupta* (2025 INSC 719) and *Suraj Impex* (2025 INSC 755) decided.
27 May 2026	*DGGI v Gameskraft Technologies*, 2026 INSC 595.
Jul 2026	Review petitions filed in *Gameskraft*; *Asia Sugar & Chemical Co v State of Karnataka* decided (13 July 2026), 2026 INSC 693.

APPENDIX B: TABLE OF PRINCIPAL INDIAN AUTHORITIES AND PROPOSITIONS

Case	Citation	Proposition (as used in this paper)
Chhotabhai Jethabhai Patel v Union of India	AIR 1962 SC 1006	Retrospective fiscal levy not invalid merely for retrospectivity.
Rai Ramkrishna v State of Bihar	AIR 1963 SC 1667	Legislative competence to tax retrospectively.
Shri Prithvi Cotton Mills v Broach Borough Municipality	(1969) 2 SCC 283	Validation valid if basis of judgment removed.
Janapada Sabha Chhindwara v Central Provinces Syndicate	(1970) 1 SCC 509	Validating legislation; competence.
Krishnamurthy & Co v State of Madras	(1973) 1 SCC 29	Retrospective sales-tax enactment upheld.
Hiralal Rattanlal v State of UP	(1973) 1 SCC 216	Retrospective legislation; validation.
Madan Mohan Pathak v Union of India	(1978) 2 SCC 50	Direct nullification of judgment impermissible.
Empire Industries v Union of India	(1985) 3 SCC 314	Reasonableness of retrospective levy; pass-on.
Ujagar Prints (II) v Union of India	(1989) 3 SCC 488	Retrospective validation; article 19(1)(g).
Indian Aluminium Co v State of Kerala	(1996) 7 SCC 637	Limits of validating legislation; separation of powers.
Allied Motors v CIT	(1997) 3 SCC 472	Curative proviso retrospective.
CIT v Podar Cement	(1997) 5 SCC 482	Retrospective Explanation as declaratory.
CIT v Alom Extrusions	(2009) 319 ITR 306 (SC)	Section 43B second proviso retrospective.
Union of India v Martin Lottery Agencies	(2009) 12 SCC 209	Retrospective fiscal legislation within competence.
Vodafone International Holdings v Union of India	(2012) 6 SCC 613	Offshore share transfer outside section 9(1)(i).
CIT v Vatika Township	(2015) 1 SCC 1	Presumption against retrospectivity (Constitution Bench).
Modern Dental College v State of MP	(2016) 7 SCC 353	Proportionality in article 19(1)(g) review.
Shayara Bano v Union of India	(2017) 9 SCC 1	Manifest arbitrariness invalidates legislation.
Navtej Singh Johar v Union of India	(2018) 10 SCC 1	Manifest arbitrariness; constitutional morality.
State Trading Corporation v CTO	AIR 1963 SC 1811	Corporation not a citizen for article 19.
Tata Engineering v State of Bihar	AIR 1965 SC 40	Same.
RC Cooper v Union of India	(1970) 1 SCC 248	Shareholder standing.

Case	Citation	Proposition (as used in this paper)
Federation of Hotel & Restaurant Assn v Union of India	(1989) 3 SCC 634	Tax and article 19(1)(g): only prohibitive or confiscatory taxes.
Safari Retreats	Decided 3 Oct 2024	Functional reading of 'plant or machinery'.
Naresh Kumar Gupta v State of Punjab	2025 INSC 719	Retrospective extension of limitation; two-fold test.
Suraj Impex v Union of India	2025 INSC 755	Clarificatory benevolent circulars retrospective.
DGGI v Gameskraft	2026 INSC 595	Retrospective online-gaming GST; amendments clarificatory.
Asia Sugar v State of Karnataka	2026 INSC 693	Retrospective tax valid; no retrospective penalty; interest deferred.

— I J L J —
ISSN: 2583-2794

APPENDIX C: TABLE OF PRINCIPAL FOREIGN AND INTERNATIONAL AUTHORITIES

Authority	**Citation**	**Proposition**
United States v Carlton	512 US 26 (1994)	Retroactive tax valid if rational purpose and modest period.
Nichols v Coolidge	274 US 531 (1927)	Retroactive tax arbitrary on facts.
Welch v Henry	305 US 134 (1938)	Retroactive tax upheld.
Landgraf v USI Film Products	511 US 244 (1994)	Presumption against retroactivity.
Eastern Enterprises v Apfel	524 US 498 (1998)	Severe retroactive economic burden (plurality).
National & Provincial Building Society v UK	(1997) 25 EHRR 127	Retrospective tax validation; article 6 and art 1 Prot 1.
Stran Greek Refineries v Greece	(1994) 19 EHRR 293	Retrospective interference with pending litigation.
OAO Neftyanaya Kompaniya Yukos v Russia	App no 14902/04 (2011)	Tax proceedings; disproportionate enforcement.
BVerfG, *Spekulationsfrist*	BVerfGE 127, 1 (2010)	Genuine retroactivity in tax; legitimate expectations.
Vodafone Intl Holdings v India	PCA Case No 2016-35 (2020)	Retrospective tax breaches FET.
Cairn Energy v India	PCA Case No 2016-7 (2020)	Same; damages.
Tecmed v Mexico	ICSID ARB(AF)/00/2 (2003)	Stable framework; legitimate expectations.
Yukos Universal v Russia	PCA AA 227 (2014)	Tax measures as treaty breaches.

— I J L J —
ISSN: 2583-2794

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— I J L J —
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