Sovereign Right to Taxation

Why in News

Recently, the Government of India introduced **The Taxation Laws (Amendment) Bill, 2021** in the Lok Sabha which **seeks to withdraw tax demands made using a 2012 retrospective legislation** to tax the indirect transfer of Indian assets.

The government has stressed the need to establish its **sovereign right to taxation.**

Key Points

- **Sovereignty:**
  - Sovereignty, in political theory, **means the ultimate overseer, or authority, in the decision-making process** of the state and in the maintenance of order.
  - Derived from the Latin superanus through the French ***souveraineté,*** the term was **originally understood to mean the equivalent of supreme power.**
  - **Constitutional Sovereignty** implies that the constitution is sovereign and supreme.
- **Sovereign Right to Taxation in India:**
  - In India, **the Constitution gives the government the right to levy taxes on individuals and organisations,** but makes it clear that **no one has the right to levy or charge taxes except by the authority of law.**
    - Any tax being charged has to be backed by a law passed by the legislature or Parliament **(Article 265).**

- **Taxation in India:**
    - Tax is a **pecuniary burden laid upon individuals or property owners to support the government, a payment exacted by legislative authority,** and that a tax **is not a voluntary payment or donation, but an enforced contribution,** exacted pursuant to legislative authority.
    - Taxes in India come under a **three-tier system based on the Central, State and local governments,** and the **Seventh Schedule** of the Constitution puts separate heads of taxation under the **Union and State list.**
    - There is **no separate head under the Concurrent list,** meaning Union and the States have no concurrent power of taxation.
- **Limitation to States Sovereignty:**
    - The two most used **Bilateral Investment Treaties (BIT)** provisions to challenge a state's taxation measures are **expropriation** and the **fair and equitable treatment** provision.
    - The tax **should not be discriminatory** and it should **not be confiscatory.**

Way Forward

- India should **exercise its right to regulate while being mindful of its international law obligations,** acting in good faith and in a proportionate manner.
- **Investor-State Dispute Settlement (ISDS)** tribunals **do not interfere with such regulatory measures.** In sum, the debate never was whether India has a sovereign right to tax, but **whether this sovereign right is subject to certain limitations.** The answer is **'yes'** because **under international law the sovereign right to tax is not absolute.**

Source: IE