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# **INHERITANCE TAX LAW: A FAIR REDISTRIBUTION OR ECONOMIC BURDEN?**

AUTHORED BY - ANANYA BHATTI

Sam Pitroda, an Indian Telecommunications Engineer and a senior Indian Overseas Congress leader, recently sparked a new debate among this country's citizens regarding the need for an Inheritance Tax Law while seeing the present state of the country. Mr Pitroda in a recent interview given to a major Indian News Organization said while explaining the concept of Inheritance tax “If one has \$100 million worth of wealth and when he dies he can only transfer about 45 per cent to his children, 55 per cent is grabbed by the Government. That’s an interesting law. (Pitroda, 2024)<sup>1</sup>”

Sam has suddenly sparked the conversation regarding the Inheritance Tax Law. So what on earth is the Inheritance Tax Law, what other countries have Inheritance Tax Law, does India in the past have this kind of similar law, what are its advantages and disadvantages, and in the present scenario does India need this kind of law for the upliftment of the not-so-privileged sections of the society. These are the kinds of questions that will be answered below.

## **Introduction**

The legal Framework used in governing the taxation on assets and properties transferred from a deceased person to his/her heirs is known as Inheritance Tax Law. Estate Tax, Death Duty, etc are some other words that are used to call Inheritance Tax by various other legal Jurisdictions around the world. This law aims to generate other income sources for the government by taxing the assets and properties of the person who has died.

Each Jurisdiction around the world has its threshold, exemptions and rates regarding the Inheritance Tax Law. There is a multifaceted rationale behind the use of Inheritance Tax by Governments around the world. Sometimes it serves as an additional income for the government. In contrast, at the other time, it serves as a tool to redistribute wealth towards the underprivileged class of the people in the country. Additionally, it also discourages the concentration of wealth

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<sup>1</sup> Interview with Sam Pitroda, Chairman, Indian Overseas Congress, (ANI, 24 April 2024)

within a smaller group of society.

However, it is to be noted that Inheritance Tax Laws are very complex and have significant implications on the individual as well as society. Poor planning of these laws can have serious consequences for the people of the country. The use of trusts is also used by the people to get rid of Inheritance Tax Laws, mitigate tax liabilities and ensure efficient transfer of assets to the intended beneficiaries.

Overall, Inheritance Tax Laws play a very crucial role in the society in which it is implied.

### **Countries That Have Inheritance Tax Law**

It is to be noted that Inheritance Tax Laws exist in various countries, though specifics may vary because of different countries' different jurisdictions. Multiple countries in the world have Inheritance Tax Laws but mostly those are Western and First World Countries, like the United States of America, the United Kingdom of Great Britain and Northern Ireland, France, etc. just to name a few. But why does most of the Western world have Inheritance Tax Laws? It is because of cultural and historical reasons. Most of the countries in the Western world have a concept of progressive taxation where those who have higher incomes have a larger share in taxes. These countries also have means for equal distribution of wealth while ensuring social equity. Moreover, Western Countries have a well-established legal system and administrative system that can be used to enforce and implement inheritance tax laws. These countries also have higher levels of economic development and a robust welfare system that can be used to implement these kinds of policies.

#### 1) United States of America

The United States of America is the first and most prominent example of the country when we say about Inheritance Tax Laws. The USA's inheritance tax laws have two facets. Firstly, there is the Federal Estate Tax, which is the tax that is imposed on the estate of the deceased person. It is imposed on the estate's total value at the time of death, minus certain deductions and exceptions. It is also to be noted that there is a certain threshold that is set by the USA, below which the Federal Estate Tax is exempted. As of 2024, the threshold for Federal Estate Tax is 13.61 Million Dollars per individual.<sup>2</sup> <sup>3</sup>This means

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<sup>2</sup> <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> > accessed 7 May 2024

estates below this threshold are not subject to Federal Estate Tax. For estates that exceed the threshold limit, then the Federal Estate Tax is imposed at progressive tax rates. The tax ranges from 18% to 40% depending on the value of the tax. The higher the values of the estates, the higher the federal estate tax. The highest threshold applies to the type of estate that exceeds all the exemption thresholds. Federal Estate Tax also allows for portability between the spouses. This means that if one spouse dies without using the full exemption amount then the unused portion can be transferred to the other spouse effectively doubling the exemption rate. Other than the Federal Estate Tax, each state in the United States also has its own State Estate Tax that has different thresholds, rates and rules compared to the Federal Estate Tax.

## 2) United Kingdom of Great Britain and Northern Ireland

There is also a provision of inheritance tax law in the United Kingdom. The Inheritance Tax Law in the United Kingdom of Great Britain and Northern Ireland has three parts through which the Government decides how much tax is to be levied on the deceased individual's estate. The first part is the Nil Rate Band ( NRB ). The NRB is up to which the Government doesn't hold Inheritance Tax liability. Each person has their own Nil Rate Band as per the United Kingdom's law. The Nil Rate Band for 2024-25 is 325,000 Pound Sterling<sup>4</sup>. After NRB there is Residence Nil Rate Band. The Residence Nil Rate Band is the additional allowance that applies when the main residence is given to the direct descendant of the deceased. The RNRB gradually increased from 100,000 Pound sterling in 2016-17 and now stands at 175,000 Pound sterling as of 2020-21. These above rates are not fixed, these are constantly changing as per the needs of the UK's Government and changes in the UK's society. The NRB and RNRB are also known as thresholds in the UK's Inheritance Tax Law above which the taxes are enforced on the citizens. The tax rate in Inheritance Tax Law in the UK is 40% on the value of the estate above the Nil Rate Band and Residence Nil Rate Band.

Under the United Kingdom's Inheritance Tax Law, there are some exemptions and reliefs given to the citizens. These include Spouse or Civil Partner exemption which means transfers between civil partners and spouses are mostly exempted from Inheritance Tax

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<sup>4</sup> <https://commonslibrary.parliament.uk/research-briefings/sn00093/#:~:text=Inheritance%20tax%20is%20paid%20on,'nil%20rate%20band>'. > accessed 7 May 2024

regardless of the amount. Gifts or estates registered to charities whether made during one's lifetime or in the will are exempted from Inheritance Tax. Citizens can give away gifts that amount to 3000 pounds sterling in a year without being added to the Inheritance Tax. Also, small gifts up to 250 pounds sterling per year without being added to the Inheritance Tax.<sup>5</sup> It is also stated in the law that gifts made more than seven years before the death of the donor are also generally exempted from the Inheritance Tax, these are also called Potentially Exempt Transfers or PTs. The exemptions also include Business Property Relief or BPR which can apply to business assets and can allow them to pass tax free from the inheritance tax or with reduced tax. There is also Agriculture Property Relief or APR in exemptions and relief in Inheritance Law. Similar to BPR, APR applies on agricultural property allowing it to pass free from tax or reduced tax from Inheritance Tax Law. But gifts made into certain types of trusts or gifts above the annual exemption are subjected to Inheritance Tax. The executor or administrator of the deceased person is responsible for calculating and paying the dues of Inheritance Tax. This includes valuing the estate's assets, applying any exemptions or reliefs and completing necessary forms of Revenue and Customs.

### 3) France

Inheritance Tax in France is known as “droits de succession” or “taxe sur le successions”<sup>6</sup>. Like other countries, France also has exemption thresholds, tax rates and exemptions and reliefs. In the exemption threshold, the amount exempt from the Inheritance Tax depends upon the relationship between the deceased and the beneficiary. While the spouses are generally exempted from the tax, other beneficiaries are included in the inheritance tax and it generally depends upon the region of France. The Inheritance tax rates in France are progressive which means that it depends upon the value of the inherited assets and the region of France. The tax rates can range from 5% to 45%.

Like the United Kingdom, France also has some exemptions and reliefs. The transfers to the spouses and civil partners are exempted from Inheritance Tax. The transfers between the children and descendants are subject to lower inheritance tax. Small gifts given by the donor to the beneficiaries before the death of the donor are also exempted from

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<sup>5</sup> <https://commonslibrary.parliament.uk/research-briefings/sn00093/#:~:text=Inheritance%20tax%20is%20paid%20on,'nil%20rate%20band>'. > accessed 7 May 2024

<sup>6</sup> <https://www.economie.gouv.fr/particuliers/droits-succession-simulateur> > accessed 7 May 2024

taxation. Life Insurance policies can also provide tax-efficient inheritances subject to conditions and limits. The donations made during the lifetime of the deceased can also be subject to inheritance tax but the rate depends upon the nature of the gifts and the relationships between the donor and beneficiaries.

The administration of the Inheritance Tax in France is in the following manner. Firstly, the beneficiaries are required to declare the Inheritance Tax within a specified timeframe after the death of the deceased. Secondly, the estate value is assessed after taking note of both assets and liabilities. Thirdly, the tax authorities calculate the inheritance tax after taking into account thresholds, applicable rates of tax and exemptions. Lastly, the beneficiaries must pay the tax within a specified period.

### **Inheritance Tax in India**

In the past, India also has an Inheritance Tax Law. It was by the name of Estate Duty. The whole act was the Estate Duty Act, of 1953. This law was formed in 1953 during the tenure of our then Prime Minister Pandit Jawaharlal Nehru. This estate duty was abolished in 1985 during the time of the then Prime Minister Rajiv Gandhi.

Estate Duty applied to both moveable and immovable property situated in India and can also applied to certain properties outside India if the deceased was a resident of India. The estate duty is paid by the executor of the deceased's estate before the distribution of the estate to his/her beneficiaries. The estate value was based on fair market value, that is the value of the estate at the time of the person's death. It was noted that the estate included all the assets, possessions, interests, properties and rights that were entitled to the deceased at the time of his/her death. The tax rates in the Estate Duty of 1953 were progressive which means that the higher the cost of the estate, the higher the tax is levied on the estate, which can go up to 85%. The rates in the Estate Tax of 1953 were structured in slabs, that were similar to the present-day Income Tax in India<sup>7</sup>.

There were also various deductions and exemptions present that were reasonable for example funeral expenses, debt present with the person at the time of his/her death and encumbrances as well as specific allowances in the agricultural land and family-owned business held closely.

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<sup>7</sup> Dutta D, Gupta A, Malhotra H, Shardul Amarchand and Mangaldas, 2018, <https://www.amsshardul.com/wp-content/uploads/2019/09/Report-GC-Estate-Duty-Act-March2018.pdf> > accessed 8 May 2024

Certain deductions and exemptions were provided for the agricultural land under the then estate tax. The main intent of this provision was to protect the farmers and certain agricultural communities so that they were not stripped of their livelihood. Certain deductions were also provided and allowed for the properties inherited by the close family members as this was due to reduce the tax burden on the family members who inherited the property. Lastly, the properties given to reputable charitable organisations were also exempted from the Estate Tax.

The administration and execution of the Estate Duty was done with the appointment of the Estate Duty Officer. The Government appointed the Estate Duty Officer to assess the value of the estate, determine the tax payable and ensure the compliance of law by all the people in the country. The Executors of the estate of the deceased are required to file a statement to the Government analysing all the value of the estate and its liabilities. The Estate Duty Officer was then required to assess and confirm the tax payable. But if any dispute arises regarding the valuation of the estate then there were provisions to appeal the same to the higher authorities including tribunals and courts.

The main intent of Estate Duty was to generate additional income for the Government. It used to create significant revenue for the state. But the problem was that the actual collection for the Estate Duty was much less than what was anticipated and expected. This was because of widespread evasion and avoidance by the people. The Estate Duty of 1953 also faced criticism because though this law was made for the redistribution of wealth, it was complex and discouraged people from saving and investing in the market in India because people believed that in the end a certain chunk of their investment and savings will be taken away by the government. Moreover, this process was very tiring and cumbersome for both the taxpayers and the administration. Finding the value of the estates by the executors and then reviewed by the Estate Duty Officer posed a significant challenge to the citizens as well as the Government.

In 1985, the Estate Duty in India was abolished. It was a very significant change in the Inheritance Tax Law in the country. It was abolished because the estate duty did not generate significant revenue for the Government as people were using loopholes to not pay that estate duty. Moreover, due to its complexities, it gave a significant challenge to the administration as well as to the citizens. Lastly, as it was discouraging the citizens from saving and investing, to encourage the same it was abolished. Since the abolishment of estate duty simplified the tax regime of India. Since the abolition of estate duty, there has been no direct inheritance tax law in India (Gift Tax

was also abolished in 1988).

## **Advantages And Disadvantages Of Inheritance Tax Law**

The Inheritance Tax Law has both pros and cons. Each country analyses these pros and cons and then decides whether to implement the inheritance tax laws in their respective countries.

Inheritance Tax Laws help the government in providing significant revenue generation for the Government. The government can further use this generated money for social welfare like infrastructure, education, healthcare, and social welfare programs. Moreover, the Inheritance Tax is also used by Governments worldwide to reduce budget deficits and manage the national debt levels for effective management. Wealth redistribution is also one of the advantages of Inheritance Tax Law. This law prevents the concentration of wealth within the small segments of society. It prevents the rich from being rich and helps the poor to gain a certain stand in society, promoting economic equality and equitable distribution of wealth within the society. Taxing large inheritance also paves the way for the social mobility of poor people. Moreover, in most countries giving some part of the inheritance to the charitable organization reduces the tax that will be levied as the inheritance tax law. To reduce the tax on the inherited estate, wealthy individuals of the society most of the time increase their charitable institutions. Even though the reason is quite selfish, but inheritance tax law increases charitable donations to various non-profits and social causes. Also, inheritance tax encourages the use of assets rather than saving or hoarding wealth. Due to this, the heirs of the wealth may be motivated to spend the wealth and invest the inheritance effectively which will further lead to effective investment in the country. Lastly, it encourages individuals to have more active financial planning which leads to a very efficient and productive use of resources during the inheritant's lifetime.<sup>8</sup>

With advantages, there are also disadvantages of the Inheritance Tax Law. The first disadvantage is that it is a huge administrative burden. As we know, Inheritance Tax Law is very complex for the government and citizens as the whole process of valuing assets and calculating the tax is very complex and expensive, requiring significant administrative resources and professional assistance. The inheritance tax law also requires lawyers for the inheritance which can be quite expensive. Also, a high inheritance tax discourages individuals from saving and investing because they know that a huge chunk of money will be taken by the Government so there is no use for savings and investments. The businesses owned by the families may also struggle to survive after

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<sup>8</sup> Daniel Halliday, *Inheritance of Wealth* (2018)

the owner's death because the inheritance will have to sell their assets to pay the inheritance tax, which is not good for the economy and citizens' general social conscience. It can also be possible that during the owner's lifetime, the business is subjected to other taxes like capital tax or income tax, which in turn will lead to double taxation. Many families will also have to liquidate their family assets to pay the inheritance tax which can disrupt the family legacy and heritage. Moreover, to save the inheritance tax, the people will use legal loopholes like offshore assets that will help them save the tax and this is not good for generating revenue for the Government. Lastly, it impacts the financial security and long-term planning for the heirs.<sup>9</sup>

### Should India have an Inheritance Tax law now?

With the largest population in the world, India also has 77.8 million taxpayers in 2022-23. India certainly had an example with the Inheritance Tax law right after the years of independence by the name of estate duty. We also know that it was scrapped in 1985 by our the then Prime Minister Late Rajiv Gandhi. Even after so many years does India need Inheritance Tax law? Does India need to tax the inheritances of these people to increase the revenue and to support later that money for the less privileged people of the country?

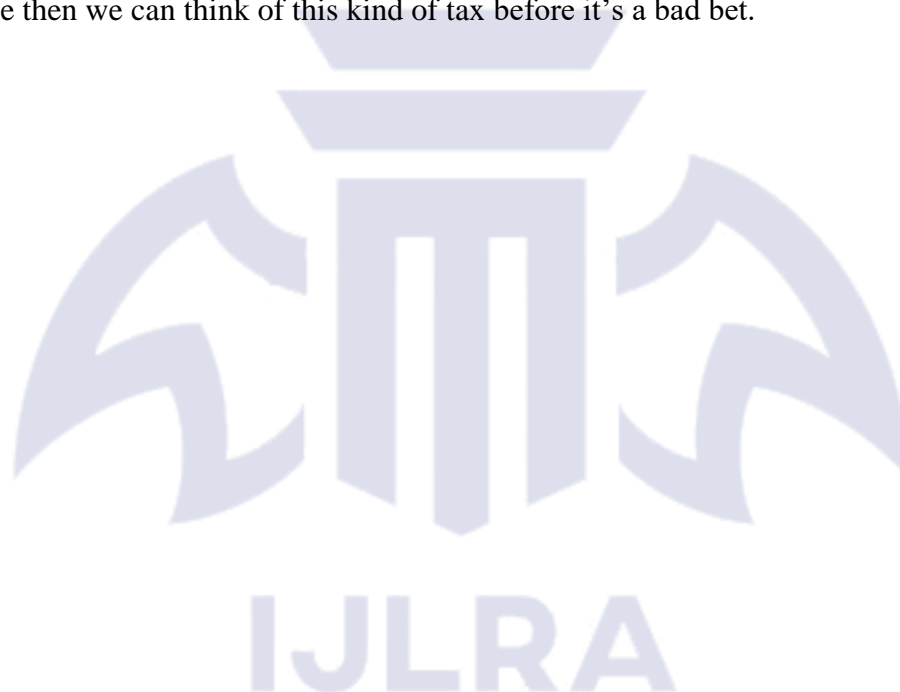
The answer that came forward after the research on this topic is India should not have an Inheritance Tax Law. It is because it will lead to many complex problems which will be difficult to solve in the country. The social or economic considerations like discouragement of investment and saving because people know that a certain amount of money will be taken away by the government, or due to complexities of the law it will become a huge administrative challenge for the same or a bad impact on the middle class or small business enterprises such as double tax, etc. These things can happen or did happen when the Inheritance Tax Law was first enforced in India by the name of Estate Tax.

But what legal harm will the Inheritance Tax cause if it is enforced in India? Firstly, it will increase the litigation and legal disputes in the country. As if the country is currently not grappling with a high number of cases. By, enforcing this tax will further increase the pile-up number of cases in the country. Secondly, due to the complexities of this tax, it will be very difficult to administer this and the same problem India had before during the Estate Duty era. Thirdly, the practices of tax evasion will increase in the country. Fourthly, in this globalised world, many people have properties and assets all around the world and this tax will increase the cross-border legal issues or battles in the name of assets. This will increase the administrative burden and legal

costs. This tax can also impact the stability and legal certainty because people might get agitated because of this tax after all government is taking their inheritance. Lastly, it has the potential for some constitutional challenges because there might be people who may challenge the constitutional validity of this act by stating that it violates some basic principles of fairness enshrined in the Constitution.<sup>10</sup>

### **Conclusion**

Inheritance Tax Law might be a wonderful tool in the hands of the government to increase their revenue and might have many advantages but in India, it most certainly becomes a failure because its disadvantages outweigh its advantages. After legal and economic development like in the West, maybe then we can think of this kind of tax before it's a bad bet.



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<sup>10</sup> Daniel Halliday, *Inheritance of Wealth* (2018)