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Faceless Schemes in Income Tax Administration: Constitutional Limits of Executive Power and Delegated Legislation

The Income-tax Act, 2025 (hereinafter ITA, 2025) signifies a pivotal reform in India's direct taxation landscape, notably through Section 532, which empowers the Central Government to frame "faceless" schemes for tax administration by executive order. This report analyses the constitutional validity of such delegation under Indian law, with special attention to the doctrine of separation of powers, parliamentary oversight of delegated legislation, and the protection of taxpayer rights. Drawing on developments under the erstwhile Income-tax Act, 1961 (hereinafter ITA, 1961), recent judicial rulings, and comparative international experience, the report demonstrates that while such delegation can be valid within strict constitutional and procedural limits, the breadth of Section 532 raises significant constitutional, procedural, and natural justice questions—especially concerning parliamentary control and procedural safeguards against administrative overreach.

Introduction

The legislative transition from the erstwhile Income-tax Act, 1961 (hereinafter referred to as ITA, 1961) to the restructured Income-tax Act, 2025 (hereinafter referred to as ITA, 2025) signifies far more than a statutory revision—it embodies a paradigmatic shift in the philosophy underpinning India's fiscal governance. This transformation is not confined to the language or architecture of the statute; it reflects a deeper institutional reorientation toward digitalisation, automation, and executive-led administration. At the heart of this shift lies Section 532 of ITA, 2025, which confers upon the Central Government sweeping powers to frame schemes—most notably faceless schemes—through executive notification, without the requirement of prior parliamentary approval. The ostensible legislative rationale is to streamline tax administration by

reducing human interface, thereby promoting efficiency, transparency, and accountability in enforcement.

However, this delegation of power raises profound constitutional questions. As India's tax apparatus evolves into a "digital-first" enforcement regime, the contours of executive discretion and the boundaries of legislative oversight come under renewed scrutiny. The doctrine of separation of powers, a cornerstone of constitutional governance, mandates a careful calibration between the law-making authority of Parliament and the implementing role of the Executive. When statutory instruments permit the Executive to design and operationalise entire schemes—potentially affecting substantive rights of taxpayers—without legislative deliberation or scrutiny, the legitimacy of such delegation must be examined through the lens of constitutional propriety. This inquiry becomes especially

pertinent in the context of faceless schemes, which, while technologically progressive, may inadvertently dilute procedural safeguards and democratic accountability. The present article undertakes a doctrinal and statutory analysis of this delegation, juxtaposing the provisions of ITA, 2025, with the historical framework of ITA, 1961, and interrogates whether such executive lawmaking can withstand constitutional scrutiny under India's separation of powers jurisprudence.

Doctrine of Separation of Powers in Indian Constitutional Law

At the heart of the constitutional inquiry is the doctrine of separation of powers—a foundational principle of modern democratic governance that seeks to prevent the concentration of power and ensure checks and balances among the Legislature, Executive, and Judiciary.

i. Key Features of the Doctrine in India:

- **Non-Absolute Separation:** Unlike the rigid model seen in the United States, the Indian Constitution embodies a pragmatic separation of functions, allowing for some degree of overlap while maintaining a robust system of checks and balances.
- **Legislature:** Tasked principally with lawmaking, including specifying legislative policy and essential features of the law.
- **Executive:** Charged with implementing laws, and, where expressly authorized, framing rules or schemes for detailed execution of legislative intent.
- **Judiciary:** Constitutionally independent, empowered to interpret the law and adjudicate upon the legality of legislative and executive actions, including administrative and delegated legislation.

While the Indian Constitution does not expressly codify the doctrine, the Supreme Court has repeatedly recognized the separation of powers as a part of the Constitution's basic structure—and therefore immune from amendment.

ii. Judicial Articulation

In *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court held that Parliament cannot alter the basic structure of the Constitution—including the separation of powers. In *State of Tamil Nadu v. State of Kerala* (2014) 12 SCC 696, the Court confirmed that separation of powers—though not expressly stated—is “an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and is an essential constituent of the rule of law”. Only ancillary

and procedural details may be delegated to the executive, while core legislative functions—such as policy formulation—must remain with the legislature.

Delegated Legislation in India: Legal Framework and Judicial Jurisprudence

i. Legal Framework

Delegated Legislation is the process whereby Parliament delegates certain law-making functions to the Executive or subordinate authorities by statute (the “parent act”). In India, this mechanism is especially prevalent in technical fields such as taxation, where detailed procedural rules are necessary for effective administration.

Constitutional Basis:

- **Article 245–248:** Empower Parliament and State Legislatures to make law and, by implication, to delegate certain powers to the executive.
- **Judicial Recognition:** The Supreme Court in *D.S. Garewal v. State of Punjab* (1959 AIR 512) recognized Parliament's power to delegate legislative functions, provided the scope of delegation is circumscribed, and essential legislative functions are not surrendered.

ii. Judicial Standards: The “Delegation Test”

In Re Delhi Laws Act (1951 AIR SC 332) is the landmark case delineating the permissible limits of delegated legislation.

Key Principles Evolved:

- Delegated legislation is valid as long as the legislature does not “abdicate” or “efface” its core legislative function.
- Essential legislative function involves defining legislative policy and formulating standards or principles guiding the law.

- Delegation is permitted for ancillary, procedural, or administrative details.
- *Intelligible Principle Test:* The legislation must lay down a clear policy or standard for the delegate to follow.

Examples Where Delegation Was Struck Down: In *Hamdard Dawakhana v. Union of India* (1959), delegation was found unconstitutional where the power was “unguided and uncontrolled” with no clear principle to guide the executive action.

iii. Legislative and Parliamentary Safeguards

- **Laying Procedure:** Most Acts require all delegated legislation (rules/notifications/schemes) to be laid before both Houses of Parliament. This enables Parliament to scrutinize, modify, or annul executive-made rules.
- **Committee on Subordinate Legislation:** Both Houses have standing committees to examine whether delegated legislation conforms to constitutional principles and the policy of the parent Act.
- **Judicial Review:** Courts retain the power to examine delegated legislation for consistency with the Constitution and the parent Act, and to strike down ultra vires or unreasonable rules.

The Constitutional Framework for Tax Legislation: Article 265 and Legislative Competence

i. Article 265: “No Tax Shall Be Levied or Collected Except by Authority of Law”

Article 265 of the Constitution is the bedrock of lawful taxation in India.

- **Mandate:** All taxes must have clear legislative authority. Taxation by executive fiat, without a supportive legal provision, is unconstitutional.

- **Judicial Enforcement:** Courts have struck down taxes levied without proper legislative sanction (e.g., *Kunnathat Thathunni Moopil Nair v. State of Kerala*, 1961; *Mafatlal Industries Ltd. v. Union of India*, 1997).

- **No Inherent Power:** The power to tax cannot be implied; express statutory authority is required for both levy and collection.

ii. Distribution of Legislative Power: Seventh Schedule and Taxation

Legislative competence is divided among the Union and the States via three lists in the Seventh Schedule:

- **Union List (List I):** Central taxation powers (e.g., Income Tax).
- **State List (List II):** State taxes (e.g., VAT).
- **Concurrent List (List III):** Shared powers; Union law prevails in case of conflict.

Delegated Scheme-Framing Powers: ITA, 1961 Vs ITA, 2025

i. Section 532, Income-tax Act, 2025: Text and Scope

Section 532 (ITA, 2025):

- **Empowers:** The Central Government to, by notification, frame schemes to impart efficiency, transparency, and accountability.
- **Object:** Eliminate interface with the assessee “to the extent technologically feasible” and optimize resource utilization.
- **Modification Power:** The Government may, by notification, direct that any provision of the Act shall not apply or shall apply with exceptions, modifications, and adaptations.

- **Parliamentary Control:** Every notification must be laid before both Houses of Parliament “as soon as may be” after issuance.

ii. Section 144B, Income-tax Act, 1961: Faceless Assessment Scheme

Section 144B (ITA, 1961):

- Introduced and regularly amended since 2020, Section 144B established a comprehensive “Faceless Assessment” procedure with elaborate safeguards.
- Central Government framed schemes for faceless assessment and appeals (including National Faceless Assessment/Appeal Centres, functional units, risk allocation, review processes), with the requirement that every notification be laid before Parliament.
- Power to modify application of certain statutory provisions for implementing the scheme was subject to specific time limits (e.g., till March 31, 2022) and was not open-ended.

iii. Transition from the Faceless Assessment under ITA, 1961 to ITA, 2025

- **Broader Enabling Power:** Section 532 subsumes, and arguably extends, the powers previously delineated across multiple sections in ITA, 1961, concerning faceless assessment, appeals, and other procedures.
- **Continuity Clauses:** Section 532(3) allows modification of schemes notified under ITA, 1961.

Constitutional and Procedural Concerns

i. Scope of Delegation: Excessive or Essential?

The constitutional validity of Section 532’s scheme-framing power turns on whether the

Central Government’s delegation is “excessive,” and whether it is adequately circumscribed by intelligible principles.

- **Policy vs. Procedure:** Section 532 arguably delegates both procedural and substantive modification powers—not merely filling procedural gaps, but altering the applicability of statutory provisions to implement schemes.

- **Essential Legislative Function:** The power to suspend or modify the operation of statutory provisions, if unguided or open-ended, may amount to the delegation of essential legislative functions—which is prohibited.

- **Intelligible Principle?** Section 532 aims to “impart efficiency, transparency, and accountability,” but such objectives may be too generic to suffice as clear policy instructions for the exercise of significant discretion by the executive.

ii. Parliamentary Oversight: Is the “Laying” Sufficient?

Notification Laying Requirement:

- Section 532(4) requires notifications to be laid before both Houses of Parliament “as soon as may be after the notification is issued.” However, it does not stipulate a post-laying approval or annulment requirement, making it akin to a simple laying procedure.
- **Judicial Precedent:** The Supreme Court has held that mere laying before Parliament, without further control (affirmative/negative resolution), may render parliamentary supervision largely illusory, especially where the delegate has wide modification powers over statutory provisions.

- **Current Trends:** Parliamentary committees have repeatedly urged a uniform transition to laying subject to negative or affirmative resolution to ensure effective control over administrative schemes.

iii. Natural Justice and Procedural Fairness in Faceless Schemes

Procedural Concerns:

- Faceless assessment/appeal schemes aim for efficiency but risk abridging the taxpayer's right to be heard (*audi alteram partem*)—a foundational principle of natural justice.

- **Personal Hearing as Discretionary:** Several schemes permit personal hearing or video conferencing at the discretion of senior tax officials, not as a matter of right. Such discretionary confinement could be challenged for being arbitrary or in violation of Article 14 (Equality) and Article 21 (Fair Procedure).

- **Judicial Review:** High Courts (e.g., Delhi High Court in *Lakshya Budhiraja v. UOI*, Bombay High Court in *Renaissance Buildtech Pvt. Ltd. v. NEAC*) have held that the denial of reasonable opportunity for oral hearing, or failure to consider submissions/facts, may render assessment orders under the faceless scheme invalid for violation of natural justice.

iv. Comparative International Models: Executive Delegation in Tax Law

- **United Kingdom:** Delegated legislation (statutory instruments) is abundant, but subject to detailed scrutiny and often requires explicit parliamentary approval for significant substantive changes.

- **United States:** The Administrative Procedure Act (APA) applies to IRS rulemaking, requiring notice-and-comment procedures, public participation, and substantive explanations for “legislative rules.” Courts have recently invalidated IRS rules issued without APA compliance, reaffirming the need for procedural safeguards even in highly technical tax administration.

Parliamentary Select Committee and Legislative Debate on ITA, 2025

The Select Committee reviewing the Income-tax Bill, 2025 noted:

- The Bill is primarily a simplification effort, with no major policy changes, but broadens the enabling power for the Central Government to frame schemes.
- During deliberations, stakeholders expressed concerns over potentially excessive executive discretion, the adequacy of parliamentary control, and the need for safeguards on taxpayer rights under faceless schemes.
- The Committee emphasized continuity with the ITA, 1961 in structure, but recommended preserving all existing checks and balances in the new enabling powers.

Transparency, Accountability, and Impact on Taxpayer Rights

i. Transparency and Administrative Accountability

The lack of physical interface in faceless schemes can enhance transparency and reduce petty corruption, but increases the risk of impersonal, opaque decision-making if procedural safeguards are weak. The centralization of decision-making in anonymous units may reduce local biases but also undermines personalized understanding of complex factual issues.

ii. Impact on Taxpayer Rights

The most critical risk is the erosion of the right to a fair hearing. If the power to frame schemes allows the government to short-circuit or diminish statutory procedural rights, it risks being challenged under Article 14 (equality and non-arbitrariness), Article 21 (right to a fair legal procedure), and Article 265 (authority of law for taxation).

- **Delhi and Bombay High Court Precedents:** Faceless assessment schemes have been challenged where they resulted in non-application of mind, failed to serve notices or gave only formal opportunities for a digital written reply (with denial of oral hearing), or where review units usurped the domain of the original assessing authority (a quasi-judicial function).
- **Supreme Court Guidance:** Administrative efficiency cannot override constitutional guarantees of fairness and equality (see *Union of India v. Bharat Forge Co. Ltd.*, Supreme Court (Civil Appeal No. 984 of 2022)). Authoritativeness and lawfulness of orders depend on meaningful opportunity for rebuttal and a reasoned order.

Conclusion and Recommendations

The delegation of power under Section 532 of the Income Tax Act, 2025 can be constitutionally valid if it is anchored in a clear legislative policy, confined by intelligible principles, and accompanied by robust procedural protections that preserve taxpayers' fundamental rights. Valid delegation requires that Parliament define the purpose and limits of executive authority with sufficient specificity so that delegated decision-making remains tethered to legislative intent and is amenable to meaningful judicial review. Equally essential are procedural safeguards: taxpayers must retain effective avenues for representation, a genuine right to be heard, and access to reasoned decisions that explain the factual and legal basis for outcomes.

Section 532 contains open-ended language and vague objectives—terms like “efficiency” and “transparency”—that furnish little guidance to administrators and weak constraints for judicial review. The parliamentary safeguard of merely laying notifications permits minimal contemporaneous scrutiny and little corrective power. The faceless model, as practised, treats oral and personal hearings as exceptions, centralises discretion within administrative hierarchies, and increases the risk of opaque, unreasoned decisions. These defects invite constitutional challenge for breaching separation of powers and undermining principles of natural justice. To address these concerns and fortify the constitutional integrity of the delegation, the following reforms are recommended:

1. **Define scope, purpose and limits of delegation:** Parliament should specify which statutory provisions may be modified or exempted, articulate the legislative aims justifying delegation, and set temporal and substantive limits so delegation is proportionate and time-bound.
2. **Prescribe intelligible principles and objective criteria:** The statute must list narrow, objective criteria that constrain executive choices, describe permissible ends and means, and prohibit open-ended formulations that transfer law-making discretion without guidance.
3. **Require legislative oversight by resolution:** Any executive scheme that materially affects taxpayer rights should be subject to an affirmative or negative resolution procedure within a fixed timeframe; delegated instruments should carry sunset clauses and be reportable to Parliament.
4. **Make the right to be heard a default procedural safeguard:** Oral hearings should be the norm; where efficiency requires remote participation, electronic or videoconference hearings

must offer the same opportunity for effective representation and engagement.

5. **Mandate reasoned, evidence-based orders:** Every administrative order issued under the faceless scheme must contain clear, intelligible reasons, disclose the non-privileged evidence and legal authorities relied upon, and set out the factual basis enabling meaningful review.
6. **Preserve prompt and effective judicial review:** Statutory language must unambiguously preserve timely access to courts to challenge ultra vires, arbitrary, or procedurally defective decisions and prevent ouster of judicial remedy by executive design.
7. **Decentralize decision-making and require accountable sign-off:** Procedural rules should avoid concentrating discretion in a faceless hierarchy by decentralizing suitable decisions, while requiring senior approval for significant departures with publicly stated reasons.
8. **Enhance transparency and administrative accountability:** Mandate regular reporting on delegated instruments, maintain accessible administrative records for affected taxpayers, and require Parliament to review and, where necessary, amend or annul schemes that stray beyond legislative intent.

These measures would not only enhance the legitimacy of executive action under Section 532 but also reinforce the constitutional balance between efficiency and accountability in tax administration.

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