The financial provisions of the Constitution were from the first based closely on the 1935 Act. This was foreshadowed even by the loose federalism of the first Union Powers Committee report. In the second Union Powers report, which reproduced almost intact the Legislative List of the 1935 Act, including the division of tax heads, and in the very general recommendations of the first union constitution committee report, which cited as precedents various section of the 1935 Act, the reliance on the example of Government of India Act became even more apparent. The more detailed clauses and articles of Rau's Draft Constitution and that framed by the Drafting Committee were in many cases copies of the provisions of the 1935 Act, although by this time certain important changes had crept in.

When preparing the Draft Constitution, the members of the Drafting Committee had for their consideration the recommendations of the Expert Committee and detailed memoranda from nearly all the provincial governments.

The most difficult problem to solve, one that provoked a 'battle royal' in the Assembly and the one that best demonstrates the basic differences between the union and provincial governments is the sales tax (i.e. tax on sales or purchase) issue. The provinces wanted their rights under the
1935 Act to levy a sales tax left untouched, and the union aimed at restricting the tax in order to promote smoother and more effective commercial intercourse within the country and to prevent high prices as a result of multiple taxation. During the first year of the Assembly the Union Government had shown little interest in the sales tax. The Drafting Committee troubled itself only to insert an item in the provincial list, making minor change in the wording of the equivalent entry in the 1935 Act. At a meeting with provincial Finance Ministers, the Union Ministry recommended, for example, that there should be no sales tax on the export from one province to another of essential food items such as grain, pulses, flour and several other articles, and that sales taxes on raw materials should be held to a minimum.

This effort evidently failed, for the finance ministry next sought to control the use of the sales tax by means of a provisions in the Constitution. The provision in the new Article 264 A was sent to the Drafting Committee. This amendment resembled the present Article 286 of the Constitution. Among other things, it prohibited the taxing of the sale or purchase of goods by a province when the sale took place outside the boundaries of the province or in the course of export from or import into India, and it also prohibited the taxing of purchases or sale in the course of inter-State and taxing of essential goods so defined by Parliament-without Presidential consent. 'Taxes on the sale or purchase of goods' was still to be, however a provincial subject.
On 24th July, 1949, several days after it received the Finance Ministry's new Article 264-A, the Drafting Committee met with Prasad, Nehru and Mathai and the provincial finance and prime ministers to consider the questions. The presence of Prasad and Nehru indicates the importance the issue had assumed. All three of the union leaders explained that it was agreed to leave the sales tax as an exclusively provincial subject, but they emphasised that the use of the tax should be restricted to safeguard the union's programme of industrial development and to ensure a uniform application of the tax. Ambedkar added that the terms of Article 264 A would reinforce the right to freedom of trade laid down in Article 16." The Chief Minister of Bihar, Shri Krishna Sinha, expressed to Ambedkar the opinion that there should be no ban on taxing materials used for manufacturing, and that goods for sale outside a province should not be taxed within the province. On the other hand Ravi Shankar Shukla, the Prime Minister of Central Provinces and Berar favoured a sales tax on raw materials. But he, along with the Assam Government disapproved of a tax on food grains. The Government of Madras, on the other hand, found the proposed prohibition on taxation of essential food items such as wheat, rice, pulse, salt and condiments "unacceptable" because the government would lose so much of revenue. The Madras government also approved the stage taxation, and would have exempted from sales tax only the last

24 Proceedings of the meeting, 24 July 1949;
transaction before export from the province. The problem of the
distribution of revenues from divided tax heads did not prove
so knotty on the sales tax issue. Nevertheless there was a
definite conflict between the interest of the provinces and
between the provinces and the union. The basic issue in each
case was how to decide which of the two parties concerned, the
federal government or the units, had the more legitimacy for
available funds and how to divide the nation's taxable capacity
between them. Within this issue were two others, there were, in
the words of the joint parliamentary committee, that the
provinces had "rarely had means adequate, for a full
development of their social needs, and that the existing
division of heads of revenue between centre and province leaves
the centre with an undue share of those heads which respond
most to an improvement in economic conditions". To help remedy
this situation, the 1935 Act provided that income tax revenues
were to be divided between federation and the provinces. In any
federation the problem of allocation of resources is
necessarily one of difficulty, since two different authorities
(the National government and the Regional government) each with
independent powers, are raising money from the same body of tax
payers. The constitutional problem is simplified if it is
possible to allocate separate fields of taxation to two
authorities, but the revenues derived from such a division,
even where it is practicable, may not fit the economic and
financial requirements of each authority; neither do these
requirements necessarily continue to bear constant relation
each other, and yet it is difficult to devise variable
International position regarding Constitutional provisions of taxation:

In England the principle that the crown has no power to tax save by grant of Parliament has its origin in the demand Magna Carta (1215) "No scutage or aid is to be levied without the consent from concilium excepting the three customary feudal aids", which was affirmed and finally established by the Bill of Rights, 1689 - "Levying money for the use of the Crown by pretence of prerogative without grant of parliament is illegal".

The above principle of 'no taxation without the authority of law' is so zealously guarded by the courts that they would not infer the grant of a power to tax from any legislation in the absence of a clear expression. Thus a tax on the purchase of milk could not be imposed under a power to 'regulate the sale of milk'. In this case it was observed - If an officer of the Executive seeks to justify a charge upon the subject, he must show in clear terms, that parliament has authorised that particular charge.

In U.S.A. In Art 1 sec. 8(1) of the Constitution says - "The congress shall have power to lay and collect taxes, duties, imposts and excises ..............." The power of

taxation belongs exclusively to the legislature and the courts can interfere only if taxing power is colourably used for the exercise of forbidden power, i.e. confiscation.

In Canada, the power of taxation is conferred in the widest terms on the Dominion, and a power of direct taxation within the province to raise revenue for provincial purposes is conferred on the provinces. Thus the taxing powers are independent, but as regards direct taxation, they cover an overlapping field.

In Australia "The Federal power over customs and excise duties is exclusive (sec. 90), but as regards other taxation, the Commonwealth and the state parliaments have separate rather than concurrent power". These overlapping powers of taxation, covering the same field, for example, the power to impose on income tax, have given rise to much litigation and have raised the question whether the federal power can be so exercised so to nullify the state's power of taxation.

**Origin of the provisions of Taxation in Indian Constitution:**

The scheme of the legislative as regards taxation under the Government of India Act, 1935, has been taken over by the Constitution of India. The Draftsmen of the Government of India Act, with a view to avoid a final allocation of residuary powers between the federation and the provinces, attempted an exhaustive enumeration of heads of legislative subjects and distributed them in three legislative lists; List I being the
Federal, List II being the provincial and List III being the concurrent. The lists contained in the Sch. VII to the G.I. Act, 1935 provided for distinct and separate field of taxation, and it is not without significance that the concurrent legislative lists contains no entry relating to taxation but provide only for "fees". Among important items of federal taxation are duties of customs (entry 44), duties of excise with certain exception (entry 45) taxes on income other than agricultural income (entry 54), taxes on the capital value of assets (entry 55) duties in respect of succession to property (entry 56). Among the items ot provincial taxation are land revenue (entry 39), taxes on agricultural income (entry 41), taxes on the sale of goods and on advertisements (entry 48). It will thus be seen that List I and List II of Sch. 7, thus avoid overlapping powers of taxation and proceed on the basis of allocating adequate sources of taxation for the federation and the provinces, with the result that few problems of conflicting competing taxing powers have arisen under the Government of India Act, 1935.

The taxes on the legislative lists remain much the same as under the 1935 Act. The states are absolutely entitled to the proceeds of taxes on the state list and the union takes the proceeds of taxes on the union list. While the proceeds on the taxes within the state list are entirely retained by the states, the proceeds of some of the taxes in the union list are to be assigned or may be assigned wholly or partly to the states. The residuary taxing authority rests with the union.
The constitution distinguishes four categories of union taxes which are available, wholly or in part, to the states.

i. Duties levied by the union but collected and wholly appropriated by the states; Stamp duties in respect of Bills of Exchange, Cheques, Promissory notes, Bills of lading, letters of credit, insurance, transfer of shares, debentures, proxies and receipts, and excise duties. On medicines and toilet preparations containing alcohol.

ii. Taxes levied and collected by the union but whose net proceeds are wholly assigned to the states include:
   (a) duties in respect of succession to property other than agricultural land;
   (b) estate duty in respect of property other than agricultural land;
   (c) terminal taxes on goods and passengers carried by railway, sea, or air;
   (d) taxes on railway fares and freights;
   (e) taxes other than stamp duties on transaction in stock exchanges and future markets;
   (f) taxes on the sale or purchase of newspapers and on advertisements published therein and;
   (g) taxes on the sale or purchase of goods in the course of interstate commerce and trade.

iii. Taxes levied and collected by the union but whose net proceeds are shared between the union and the states. The only tax which comes under this category is the income tax. The
corporation tax is not shared but belongs exclusively to the union. Agricultural income tax is a state subject and, therefore, does not come under this category. After deduction of sums attributable to the union territories and to union emoluments, the net proceeds of income tax are divided between union and the states and among different states as prescribed by the order of the President after considering the report of the Finance Commission.

iv. Taxes are levied and collected by the union but whose not proceeds are shared between the union and the states. Under this category come union excise duties other than those on medicinal and toilet preparation.

Exemption from taxation the constitution also follows the general provisions of the Government of India Act, 1935 and exempts the property of one government from taxation by another. Article 285 provides that unless parliament declares otherwise, union property is not subject to state taxation. A state may not tax electricity supplied to the Government of India or a railway unless permitted to do so by parliament. Without the consent of the President, a state may not tax water or electricity supplied or control-led by any authority established for regulating or developing among inter-state river valley.

The property and income of a state are exempt from union taxation, but exemption does not extend to a trade or business carried on by the government of a state unless parliament declares by law such trade or business incidental to
the ordinary functions of the government.

Specific provision of Taxation in our Constitution:

Art 265- "No tax shall be levied or collected except by authority of law."

Thus Article 265 provided that not only 'levy' but also the collection of a tax must be under the authority of some law. Where an executive authority has been empowered to collect a tax by an invalid law or rules made thereunder the court is entitled to interfere. The result is the same where there is a valid law but impugned tax is not authorised by that law.

In absence of any specific constitutional prohibition, there is no bar against a legislature taxing the same subject matter more than once, under valid legislative power.

"Authority of law" refers to a valid law, which means that-
(a) The tax proposed to be levied must be within the legislative competence of the legislature imposing the tax.
(b) The law must be validly enacted i.e. by the proper body which has the legislative authority and in the manner required to give its acts the force of law.
(c) The law must not be a colourable use of, or a fraud upon the legislative power to tax.
The term "law" in this article means state law i.e. an Act. of the legislation. Accordingly, supreme court held in Ramjilal V.I.T.O 25a that no levy can be imposed either by executive action or by the resolution of a house. In Delhi Municipal Corporation V Birala Cotton Spinning & Weaving Mills Ltd., 25b the Hon'ble Supreme Court held "The legislature cannot provide for delegation of substantive power to levy and collect a tax. The principle of tax liability, the determination of the tax base and mode of collection must be prescribed by the legislature itself, and cannot be substantially delegated to the executive government."

25a AIR 1951 S.C. 97;
25b AIR 1968 S.C. 1232;