



LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 3

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.359>

© 2026 LawFoyer International Journal of Doctrinal Legal Research

Follow this and additional research works at: www.lijdlr.com

Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of any suggestions or complaints, kindly contact (info.lijdlr@gmail.com)

To submit your Manuscript for Publication in the LawFoyer International Journal of Doctrinal Legal Research, To submit your Manuscript [Click here](#)

THE ADMINISTRATIVE LEVIATHAN: DECONSTRUCTING THE CONSTITUTIONAL FAULT LINES OF INDIA'S ALGORITHMIC AND COERCIVE DIRECT TAX REGIME

Indrakshi Saha¹

I. ABSTRACT

India's direct tax administration has, within a few years, acquired three capabilities that were individually unremarkable but are jointly formidable: algorithmic selection of cases for reassessment (sections 273 and 281 of the Income-tax Act 2025, formerly sections 144B and 148A of the Income-tax Act 1961), forensic access to the digital lives of taxpayers during search (section 247, formerly section 132), and pre-adjudicatory attachment of bank accounts and other property (section 500, formerly section 281B). This paper asks whether the procedural convergence of these powers, left without statutory safeguards, offends the constitutional guarantees of Articles 14, 20(3), 21, 19(1)(g) and 300A, and how it fares against the standards of the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the emerging law on automated decision-making. Using a doctrinal-comparative method, the paper argues that the strongest constitutional objections lie not in the existence of these powers but in their design: unpublished risk criteria, the absence of independent control over the acquisition and retention of digital material, and the absence of proportionality limits on freezing orders. It also confronts the weight of adverse authority, from Pooran Mal to R K Garg, and explains why the new jurisprudence on proportionality and informational privacy permits a principled departure from fiscal exceptionalism. It notes that in March 2026 the Supreme Court declined to entertain a challenge to the search power, disposing of the petition as withdrawn with liberty to represent to the Government and without ruling on the merits, which strengthens rather than weakens the case for a legislative solution. The paper

¹ 3rd year student at Dr. Babasaheb Ambedkar School of Law, Rashtrasant Tukadoji Maharaj Nagpur University (RTMNU), Nagpur (India). Email: indrakshisaha2612@gmail.com

concludes with a legislative blueprint comprising a Digital Search Protocol, an algorithmic transparency mandate and substantive guardrails for provisional attachment.

II. KEYWORDS

Algorithmic due process; digital search and seizure; provisional attachment; proportionality; Income-tax Act 2025.

III. INTRODUCTION, THESIS AND THEORETICAL FRAMEWORK

A. The Doctrine of Fiscal Exceptionalism

Indian constitutional adjudication has long treated taxation as a field in which courts should defer to the legislature. In *R K Garg v Union of India*, a Constitution Bench held that laws dealing with economic and fiscal matters attract a more generous standard of review than laws touching civil liberties, because the legislature must be allowed latitude to experiment in a domain of imperfect information.² The Court has since repeated that fiscal statutes enjoy a strong presumption of constitutionality and that the burden of showing hostile discrimination lies heavily on the challenger.³ *Mafatlal Industries Ltd v Union of India*, which upheld a self-contained statutory scheme for refunds and unjust enrichment, reflects the same attitude towards the machinery of taxation as distinct from its charging provisions.⁴

Deference of this kind is defensible when the question is the rate, the base or the classification of taxpayers. It is far less persuasive when the question is how the State *investigates, selects and coerces*. Tax statutes have never been immune from Articles 14 and 19: in *Moopil Nair* the Court struck down a taxing statute for arbitrariness,⁵ and after *Maneka Gandhi* any procedure that deprives a person of liberty or privacy must be just, fair and reasonable.⁶ This paper's first claim is that *fiscal exceptionalism is a doctrine about substance and should not be extended to procedure*, least of all to procedures that now operate through software.

² *R K Garg v Union of India* (1981) 4 SCC 675.

³ *State of Madhya Pradesh v Rakesh Kohli* (2012) 6 SCC 312.

⁴ *Mafatlal Industries Ltd v Union of India* (1997) 5 SCC 536.

⁵ *Kunnathath Thathunni Moopil Nair v State of Kerala* AIR 1961 SC 552.

⁶ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

B. The Paradigm Shift: From Human Adjudication to Automated Suspicion

Three legislative developments mark the shift.

First, the Finance Act 2021 codified the faceless assessment scheme in section 144B, replacing direct interaction between assessing officer and assessee with allocation of cases by an automated system and communication through a portal.⁷

Secondly, the same Act replaced the old reassessment regime with a new ss 148, 148A and 149, in which a notice may issue on 'information which suggests that the income chargeable to tax has escaped assessment', and in which that 'information' expressly includes data flagged under a risk management strategy formulated by the Central Board of Direct Taxes (CBDT).⁸

Thirdly, the Department's data-integration infrastructure, publicly described as the Insight platform, aggregates third-party reporting (bank, securities, property and customs data) against which declared income is scored. The 2025 Act now adds a power to reach into 'virtual digital space' during search.⁹

The change is not merely one of efficiency. A system in which a software-generated flag begins a chain of events leading to notice, assessment, search or attachment inverts the traditional sequence in which a human decision-maker forms a belief and then acts on it. The constitutional question is whether the belief is still the officer's own.

C. Thesis

The thesis defended here is narrower and, it is submitted, more defensible than the proposition that fiscal necessity can never justify these powers. It is that *the convergence of algorithmic selection, unsupervised digital search and pre-adjudicatory attachment produces, in the absence of statutory safeguards, a coercive pipeline whose cumulative effect fails the standards of Articles 14, 21 and 300A*. Each stage may be defended in isolation by the argument from revenue protection. The pipeline cannot,

⁷ Finance Act 2021 (India), inserting, among other provisions, s 144B and substituting ss 147 to 151A of the Income-tax Act 1961.

⁸ Income-tax Act 1961, s 148, Explanation 1, as substituted by the Finance Act 2021.

⁹ Income-tax Act 2025, s 247(1)(iii) (n 13).

because at no stage does an independent authority test the intrusion for necessity and proportionality.

A word on the basic structure is needed. The doctrine of *Kesavananda Bharati* constrains constitutional amendments,¹⁰ and ordinary legislation is tested against Part III and legislative competence. The ‘golden triangle’ of Articles 14, 19 and 21 identified in *Minerva Mills* is the relevant constitutional reference point,¹¹ and the rule of law enters this paper as a value informing the interpretation of those Articles, not as a free-standing ground of invalidity.

D. Conceptual Scope and Terminology

Algorithmic risk management denotes any automated process that scores, ranks or flags taxpayers or transactions so as to trigger or prioritise an enforcement step, whether or not it involves machine learning. *Forensic disk cloning* means the creation of a complete bit-for-bit copy (a ‘bit-stream image’) of a storage device or the acquisition of the full contents of an online account, as distinct from the seizure of identified documents. *Pre-judgment deprivation* means any restraint on property imposed before the liability is determined by a final order. The paper treats the first as a question of decision-making, the second as a question of search and privacy, and the third as a question of property and trade.

E. Research Objectives

This paper pursues four objectives: to establish that algorithmic selection, forensic digital search and pre-adjudicatory attachment now operate as a single enforcement sequence rather than as three discrete powers; to test that sequence against Articles 14, 19(1)(g), 20(3), 21 and 300A, and in particular against the standards of non-arbitrariness, natural justice and proportionality; to assess the regime against India’s obligations under the International Covenant on Civil and Political Rights and against comparative standards drawn from the European Convention on Human Rights, European Union data-protection law and United States Fourth Amendment

¹⁰ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

¹¹ *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625.

doctrine; and to identify the statutory safeguards whose absence produces the constitutional difficulty.

F. Research Questions

The paper addresses five questions:

1. Does the displacement of an officer's recorded satisfaction by an unpublished risk-management output deprive the reassessment jurisdiction of an adequate determining principle?
2. Does an authorisation to search which permits the imaging of devices and access to virtual digital space, granted without independent sanction, satisfy the requirements of legality and necessity?
3. Do statements recorded during a search, in the conditions in which they are taken, engage Article 20(3)?
4. Does the attachment of property before any liability has been determined satisfy the proportionality standard that Articles 19(1)(g) and 300A now attract?
5. And what statutory safeguards would bring the regime into conformity with these standards?

G. Research Methodology and Scope

1. **Method and Sources:** The study is doctrinal and comparative. It analyses the text of the Income-tax Act 2025 and of the Income-tax Act 1961, the decisions of the Supreme Court and the High Courts on reassessment, search and attachment, and the instructions of the Central Board of Direct Taxes. The comparative component draws on the jurisprudence of the European Court of Human Rights, the Court of Justice of the European Union, the Supreme Court of the United States and the courts of the Netherlands and Australia, together with the General Data Protection Regulation and the reports of the Organisation for Economic Co-operation and Development on the digital transformation of tax administration.

Primary sources are used throughout. No empirical or quantitative method is employed.

2. Statutory Currency and Concordance: The Income-tax Act 2025 (Act 30 of 2025) came into force on 1 April 2026 and repealed the Income-tax Act 1961. Section 536(1) effects the repeal, and section 536(2)(c) preserves the repealed Act both for proceedings pending at commencement and for proceedings initiated on or after 1 April 2026, including notices, assessment, reassessment, recomputation, rectification, penalty, reference, revision and appeals, in respect of any tax year beginning before that date.¹² The constitutional case law on reassessment, search and attachment arose under the 1961 Act, and that saving keeps the earlier numbering operative for the assessment years that will occupy the courts for several years. This paper therefore cites the provision of the 2025 Act first and the corresponding provision of the 1961 Act in brackets. In one respect directly relevant to Section VI below the new statute enlarges the search power: section 247(1)(iii) permits an authorised officer to override the access code to any computer system, and section 261(e) defines a computer system to include remote or cloud servers and virtual digital space, which section 261(j) in turn defines to cover email servers, social media accounts, online investment, trading and banking accounts, and digital application platforms.¹³ The concordance below lists every provision relied upon in this paper, taken from the enacted text published by the Income Tax Department. The constitutional analysis applies, with greater force, to the later text.

Income-tax Act 1961	Income-tax Act 2025	Subject-matter
s 50C	s 78	Full value of consideration: land or

¹² Income-tax Act 2025 (India) (Act 30 of 2025), ss 536(1) and 536(2)(c).
¹³ Income-tax Act 2025, ss 247(1)(iii), 261(e) and 261(j).

		building
s 50CA	s 79	Full value of consideration: shares other than quoted shares
s 56(2)(x)	s 92(2)(m)	Income from other sources: receipts without or for inadequate consideration
s 115BBH	s 194, Table, Sl No 4	Tax on income from the transfer of virtual digital assets
s 132	s 247	Search and seizure
s 133A	s 253	Powers of survey
s 133C	s 259	Power to call for information by prescribed income-tax authority
s 144B	s 273	Faceless assessment
s 147	s 279	Income escaping assessment
s 148	s 280	Issue of notice where income has escaped assessment
s 148A	s 281	Procedure before issuance of notice under s 280
s 149	s 282	Time limit for notices under ss 280 and 281
s 150	s 283	Assessment in pursuance of an order on appeal
s 151	s 284	Sanction for issue of notice

s 151A	s 532, read with s 273	Power to frame schemes; faceless reassessment
s 270A	s 439	Penalty for under-reporting and misreporting of income
s 281B	s 500	Provisional attachment to protect revenue

Table 1: Concordance of the provisions relied upon

The 2025 Act contains no discrete counterpart to section 151A. The requirement that reassessment be conducted without interface with the assessee is carried by section 273, and the power to frame schemes, including those already notified under the repealed Act, by section 532. That caveat should be borne in mind wherever this paper relies on the authorities on faceless and jurisdictional assessing officers.

3. **Limitations:** This paper has limitations. Its claims about practice rest on reported decisions and secondary literature, and an empirical study of search practice, flagging data and attachment orders would strengthen or qualify them. Its treatment of the Income-tax Act 2025 is confined to the provisions set out in Table 1; a provision-by-provision mapping of the whole statute remains to be done. Both are suggested directions for further research.

IV. ALGORITHMIC DUE PROCESS AND THE REASSESSMENT ARCHITECTURE (ARTICLES 14 AND 21)

A. The Insight Portal and Sections 280 and 281: The Dilution of ‘Reason to Believe’

Under the pre-2021 section 147, an assessing officer could reopen an assessment only on ‘reason to believe’ that income had escaped assessment, and the Supreme Court insisted that the belief be honest and rest on material having a rational connection or

‘live link’ with the conclusion.¹⁴ Procedurally, the assessee could demand the reasons and object to jurisdiction before the assessment proceeded.¹⁵

The reassessment architecture has since been recast. The Finance (No 2) Act 2024 substituted sections 148, 148A, 149 and 151 of the 1961 Act with effect from 1 September 2024, and the Income-tax Act 2025 now carries the scheme in sections 279 to 284. Under section 281 the assessing officer must, before issuing a notice, serve a show-cause notice accompanied by the information suggesting escapement, consider any reply, and pass an order determining whether it is a fit case, with the prior approval of the specified authority.¹⁶ The earlier text permitted a preliminary enquiry and fixed the periods for the reply and for the order; neither survives.

Limitation now runs for three years and three months from the end of the relevant tax year, or five years and three months where the escaped income is fifty lakh rupees or more, and sanction is given by an Additional or Joint Commissioner or Director. The threshold, however, is unchanged. What the officer must be satisfied of is that there is ‘information’ suggesting escapement, and section 280(6)(a) of the 2025 Act (section 148(3)(i) of the 1961 Act) treats information arising under the Board’s risk management strategy as such information.¹⁷ The strategy is published neither in its categories nor in its general logic, and no provision allows the person flagged to contest it. The jurisdictional fact has moved from the officer’s recorded satisfaction to an upstream computational output.

The Revenue’s answer is that a flag does no more than set the show-cause procedure in motion, and that section 281 is a human-in-the-loop procedure. That answer underestimates two well-documented phenomena. The first is automation bias, the tendency of reviewers to defer to machine-generated outputs; the second is that, where the criteria that produced the flag are withheld, the person subject to it cannot

¹⁴ ITO v Lakhmani Mewal Das (1976) 103 ITR 437 (SC); see also Calcutta Discount Co Ltd v ITO (1961) 41 ITR 191 (SC).

¹⁵ GKN Driveshafts (India) Ltd v ITO (2003) 259 ITR 19 (SC).

¹⁶ Income-tax Act 2025, ss 279–284; Income-tax Act 1961, ss 148, 148A, 149 and 151, as substituted by the Finance (No 2) Act 2024 with effect from 1 September 2024.

¹⁷ Income-tax Act 2025, s 280(6)(a); Income-tax Act 1961, s 148(3)(i), as substituted with effect from 1 September 2024 (formerly s 148, Explanation 1, cl (i)) (n 8).

contest the one thing that actually set the process in motion. The scholarship on ‘technological due process’ identifies exactly this combination as the point at which notice and hearing become formal rather than real.¹⁸ Others have documented how opaque scoring systems operate as unaccountable decision-makers,¹⁹ and how administrative agencies that substitute algorithms for discretion raise non-delegation and due-process concerns that existing doctrine is only beginning to address.²⁰

Comparative experience supports the concern. In *State v Loomis* the Wisconsin Supreme Court allowed a proprietary risk score to inform sentencing but only with cautionary limits, and the decision remains controversial precisely because the defendant could not examine the model.²¹ A Dutch court, in the *SyRI* litigation, held that a legislative scheme for risk-profiling citizens through data linkage violated Article 8 of the European Convention on Human Rights because it was insufficiently transparent and verifiable.²²

In Australia, the ‘Robodebt’ scheme of automated debt-raising produced an admission by the Commonwealth, in proceedings before the Federal Court, that it had no proper legal basis to raise, demand or recover debts calculated by income averaging; the Court approved the resulting class-action settlement in *Prygodicz*, and a Royal Commission later condemned income averaging as a methodology and the scheme itself as neither fair nor legal.²³ None of these systems is the Indian one, and the differences matter; they nevertheless identify the risks the Indian design leaves unaddressed.

¹⁸ Danielle Keats Citron, ‘Technological Due Process’ (2008) 85 Washington University Law Review 1249.

¹⁹ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015); Cathy O’Neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (Crown 2016).

²⁰ Cary Coglianese and David Lehr, ‘Regulating by Robot: Administrative Decision Making in the Machine-Learning Era’ (2017) 105 Georgetown Law Journal 1147.

²¹ *State v Loomis* 881 NW 2d 749 (Wis 2016).

²² *NJCM c.s. v The Netherlands (SyRI)* (District Court of The Hague, 5 February 2020) C/09/550982 / HA ZA 18-388, ECLI:NL: RBDHA:2020:865.

²³ *Prygodicz v Commonwealth of Australia (No 2)* [2021] FCA 634 [4], [59] and [65] (Murphy J), the settlement being approved under s 33V of the Federal Court of Australia Act 1976 (Cth); Royal Commission into the Robodebt Scheme, Report (Commonwealth of Australia, 7 July 2023) vol 1, Overview, xxvi and xxx, and ch 17.

The paper makes no claim that the Department's flagging system is inaccurate. The claim is structural: a rule that makes an unpublished classifier the trigger for a coercive process must supply some means by which the affected person can learn what was flagged and why.

B. Non-Arbitrariness and Manifest Arbitrariness

Equality before the law is violated by arbitrary state action: arbitrariness is the antithesis of equality, as *Royappa* put it,²⁴ and *Ajay Hasia* applied the idea to the exercise of discretion by public bodies.²⁵ In *Shayara Bano*, the leading opinion held that legislation may be struck down as manifestly arbitrary, that is, capricious, irrational or without adequate determining principle.²⁶ The Court applied that standard to a financial-crime statute in *Nikesh Tarachand Shah*, invalidating the twin conditions for bail in section 45 of the Prevention of Money Laundering Act 2002.

Parliament cured the defect prospectively by section 208(e) of the Finance Act 2018, and in *Vijay Madanlal Choudhary* the Court upheld the amended provision as reasonable, though review petitions against that decision remained pending as at October 2026. *Nikesh* therefore stands here not as a live authority on the twin conditions but as an illustration of manifest arbitrariness applied to a fiscal-criminal statute that Parliament then cured, which should be read with the use made of *Vijay Madanlal* in Section 7.2 below.²⁷

Applied to risk-based selection, the test does not demand that the State prove its algorithm is optimal. It asks whether there is an 'adequate determining principle'. A statute that tells the Board to flag cases under a strategy of its own devising, without any indication of the categories of data that may count, the consequences of a flag, or any duty to disclose the basis of selection, supplies a determining principle only at the highest level of generality. The unpublished status of the strategy compounds

²⁴ *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

²⁵ *Ajay Hasia v Khalid Mujib Sehravardi* (1981) 1 SCC 722.

²⁶ *Shayara Bano v Union of India* (2017) 9 SCC 1 [101] (Nariman J).

²⁷ *Nikesh Tarachand Shah v Union of India* (2018) 11 SCC 1; Finance Act 2018 (India), s 208(e), brought into force on 19 April 2018; *Vijay Madanlal Choudhary v Union of India* (2023) 12 SCC 1, 2022 SCC OnLine SC 929 [187(xiii)]; *Karti P Chidambaram v Directorate of Enforcement*, RP (Crl) No 219 of 2022 (Supreme Court of India, pending as at October 2026).

the difficulty: it has long been settled that a rule that has not been promulgated cannot bind those who have no means of knowing it.²⁸

C. Sub-delegation of Quasi-Judicial Discretion

Section 281(3) of the 2025 Act (section 148A) (3) of the 1961 Act) assigns the decision whether it is 'a fit case' for a s 148 notice to the assessing officer, and the decision is quasi-judicial because it determines the assessee's exposure to reassessment. A statutory authority entrusted with discretion must exercise it itself and may not abdicate to another body or to a rule that dictates the outcome.²⁹ Excessive delegation of essential legislative functions is a separate ground of invalidity,³⁰ but the more immediate point is the first: if the flag effectively determines whether the process begins, the quasi-judicial decision has been displaced upstream.

It should be acknowledged that this is an *as-applied* argument. A court will not presume that officers are rubber-stamping flags; the argument requires evidence, and the evidence is exactly what the assessee cannot obtain in the absence of disclosure. That asymmetry is itself the best reason for a statutory disclosure duty (Section X below).

D. Audi Alteram Partem in the Faceless Regime

Natural justice is part of Article 14 and Article 21 after *Maneka Gandhi*.³¹ The right to be heard and the duty to give reasons are both recognised components,³² and the faceless scheme, whatever its merits in reducing discretion and corruption, must be assessed against them. The difficulty arises where the scheme treats a video-conference hearing as available on request and subject to approval, and where requests are refused by a system that responds in standard terms. The jurisprudence

²⁸ *Harla v State of Rajasthan* AIR 1951 SC 467.

²⁹ *Commissioner of Police v Gordhandas Bhanji* AIR 1952 SC 16; *Anirudhsinhji Karansinhji Jadeja v State of Gujarat* (1995) 5 SCC 302.

³⁰ *In re Delhi Laws Act 1912* AIR 1951 SC 332; *Hamdard Dawakhana v Union of India* AIR 1960 SC 554.

³¹ *Maneka Gandhi* (n 6).

³² *Swadeshi Cotton Mills v Union of India* (1981) 1 SCC 664; *Kranti Associates (P) Ltd v Masood Ahmed Khan* (2010) 9 SCC 496.

of the High Courts on such refusals is still developing, and a systematic survey is a necessary next step for any empirical version of this argument.

The Revenue has a respectable response: Indian law does not make an oral hearing an invariable element of natural justice, and written representations may suffice.³³ The argument here is therefore not that every assessment requires oral argument. It is that the *adequacy of the opportunity* must be measured against the complexity of the issue and the consequences of the order, and that a scheme which gives the officer deciding the case no discretion to dispense a hearing when fairness demands it is vulnerable to challenge as applied.

E. The Article 142 Dilemma: Ashish Agarwal and Rajeev Bansal

The Finance Act 2021 substituted the reassessment regime with effect from 1 April 2021, but the Department continued to issue notices under the old provisions, relying on extensions of time under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 (TOLA).³⁴ High Courts quashed a very large number of those notices. In *Union of India v Ashish Agarwal*, the Supreme Court, invoking Article 142, directed that the invalid notices be treated as show-cause notices under s 148A(b), so that the Department could proceed afresh with the benefit of the new safeguards.³⁵ In *Union of India v Rajeev Bansal*, decided on 3 October 2024, the Court held that s 3(1) of TOLA overrides s 149 to the extent of relaxing the time limit for notices under s 148, and applied the *Ashish Agarwal* directions on that footing.³⁶

The constitutional interest of these decisions lies in the tension they expose. Limitation is a protection for taxpayers, and one function of a limitation period is to give finality to the assessee's affairs. The Court's concern was equitable: it did not want a statutory transition error to defeat large amounts of legitimate revenue. But Article 142 is a power to do 'complete justice' and has been held not to authorise

³³ *Union of India v Jesus Sales Corporation* (1996) 4 SCC 69.

³⁴ Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 (India), s 3(1).

³⁵ *Union of India v Ashish Agarwal* (2023) 1 SCC 617; (2022) 444 ITR 1 (SC).

³⁶ *Union of India v Rajeev Bansal* 2024 INSC 754; (2024) 469 ITR 46 (SC) (3 October 2024).

orders contrary to express statutory provisions or to fundamental rights.³⁷ The decisions are best read as confining the use of Article 142 to rescuing a defective transition, not as a licence to cure administrative non-compliance more generally. For present purposes, they matter in a different way: they show that the new reassessment regime was introduced with insufficient administrative readiness, a circumstance that sits uneasily with the claim that automated processes are reliable enough to dispense with scrutiny.

V. THE DIGITAL PANOPTICON: SEARCH, SEIZURE AND SELF-INCRIMINATION (ARTICLES 20(3) AND 21)

A. Digital Device Cloning as Modern ‘General Warrants’

Section 247 of the 2025 Act (section 132 of the 1961 Act) permits a search where an authorised officer, on information in his possession, has ‘reason to believe’ that a person has failed to produce books or documents on summons, or holds undisclosed income or assets.³⁸ The authorisation is issued by a senior tax officer, not by a judge. Over successive amendments, the power has been extended to electronic records and to requiring those in control of computer systems to afford access.

One safeguard does apply. Section 247(10) applies the provisions of the Bharatiya Nagarik Suraksha Sanhita 2023 relating to searches and seizure, so far as may be, to a search under the section; under the 1961 Act the same result followed from section 132(13) read with section 8(1) of the General Clauses Act 1897, the Sanhita having replaced the Code of Criminal Procedure 1973 on 1 July 2024. Section 105 of the Sanhita requires the process of search and seizure, including the preparation and attestation of the list of things seized, to be recorded by audio-video electronic means and the recording to be forwarded without delay to a Magistrate, and the High Courts have begun to treat non-compliance as a serious infirmity. Its reach is

³⁷ Prem Chand Garg v Excise Commissioner, UP AIR 1963 SC 996; Supreme Court Bar Association v Union of India (1998) 4 SCC 409.

³⁸ Income-tax Act 2025, ss 247(1) and 247(10); Income-tax Act 1961, ss 132(1) and 132(13); Bharatiya Nagarik Suraksha Sanhita 2023, s 105; General Clauses Act 1897, s 8(1); Shadab v State of Uttar Pradesh 2026 SCC OnLine All 5.

nonetheless limited: the duty attaches to the process of search and seizure, not to the examination of a person on oath, and it says nothing of the imaging, filtering, retention or destruction of a forensic copy. Part of the protocol proposed in Section 10.1 below therefore already has a statutory footing; what remains unregulated is the treatment of the image once taken.

The Supreme Court's decision in *Pooran Mal* is the main obstacle to any constitutional challenge. It upheld s 132 against Articles 14 and 19, held that evidence obtained by an irregular search remains admissible, and treated the search power as a necessary corollary of the power to tax.³⁹ *M P Sharma* had likewise held that a search and seizure does not, by itself, compel a person to be a witness against himself.⁴⁰ Both decisions, however, predate *Puttaswamy*, and neither considered the seizure of an entire digital life. A physical search is bounded by the premises and by what a human can read in a night; a forensic image of a phone, laptop or cloud account is bounded by nothing except the device's capacity, and it captures privileged correspondence, medical records and the data of third parties who are not under investigation.

Courts have begun to confront this. The Karnataka High Court has issued detailed guidance on the search and seizure of digital devices and the compelled disclosure of passwords, tying the investigative power to the protections of Article 20(3) and Article 21.⁴¹ The authentication of electronic evidence is now governed by section 63 of the Bharatiya Sakshya Adhiniyam 2023, which replaced section 65B of the Indian Evidence Act 1872 and makes a certificate in the terms of the Schedule a condition of admissibility; the Schedule requires the hash value of the record to be stated and the algorithm identified, a hash report to be enclosed, and Part B to be completed by an

³⁹ *Pooran Mal v Director of Inspection (Investigation)* (1974) 93 ITR 505 (SC).

⁴⁰ *M P Sharma v Satish Chandra* AIR 1954 SC 300.

⁴¹ *Virendra Khanna v State of Karnataka* 2021 SCC OnLine Kar 5032; *Vishwaprasad Alva v Union of India*, WP (C) No 114 of 2026 (Supreme Court of India, 9 March 2026) (dismissed as withdrawn, with liberty to make a representation).

expert.⁴² Arjun Panditrao, decided on the repealed section 65B, retains its force for the construction of the successor provision. The significance of that requirement for the acquisition stage is taken up in Section 10.1 below.

The closest judicial treatment of the present thesis is *Vishwaprasad Alva v Union of India*, a petition challenging section 132 of the 1961 Act and section 247 of the 2025 Act, including the power to override access codes and to reach virtual digital space. On 9 March 2026 a Bench of Surya Kant CJ and Bagchi J declined to entertain it, and the petition was disposed of as withdrawn with liberty to make a representation to the Union Government. The reasons attributed to the Bench were that recourse to judicial review before the High Courts is not barred and that the apprehension of misuse was premature. The order is not a reasoned adjudication on the merits, and it does not meet the argument advanced here: review after the event tests an authorisation already executed and a device already imaged, and offers no remedy for material that has been copied, retained and read. The liberty to represent, moreover, directs the petitioner to the legislative route, which is the route this paper recommends.

Comparative law supplies the contrast. In the United States, the search of a mobile telephone requires a particularised judicial warrant because of the quantity and nature of the data it holds.⁴³ The requirement of particularity is an old one, directed against general warrants,⁴⁴ and the Indian authorisation under s 132, though it describes the place and the person, does not describe the *categories of digital material* to be taken.

B. The Proportionality Review

Informational privacy is protected by Article 21, and a state intrusion must satisfy legality, legitimate aim and proportionality.⁴⁵ The three-fold test of legality,

⁴² *Bharatiya Sakshya Adhiniyam 2023*, s 63 and the Schedule; *Pune Bar Assn v Union of India* 2026 SCC OnLine SC 1297; *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1, decided on s 65B of the Indian Evidence Act 1872, repealed with effect from 1 July 2024.

⁴³ *Riley v California* 573 US 373 (2014).

⁴⁴ *Marron v United States* 275 US 192 (1927).

⁴⁵ *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1 (Chandrachud J).

legitimate aim and proportionality is that of the 2017 judgment; the four-stage structure of proportionality (legitimate goal, rational connection, necessity or least restrictive means, and balancing) was articulated by the majority in the Aadhaar case, drawing on the Court's earlier proportionality decisions.⁴⁶

The paper applies the four stages:

1. **Legitimate aim:** Protection of revenue and detection of tax evasion are legitimate aims. This stage is not contested.
2. **Rational connection:** Seizure of books and records relevant to undisclosed income plainly has a rational connection with the aim. Seizure of the entire contents of a device does so only to the extent that the device contains relevant material, which is the point of search.
3. **Necessity:** This is the decisive stage. Necessity requires the State to show that no less intrusive measure would achieve the aim equally well. Targeted extraction by date range, custodian or keyword, performed under independent supervision, is technically feasible and is the norm in several comparative systems. The State may reply that imaging is necessary to preserve integrity, since opening a live device alters its contents. That is correct, and it shows where the argument should be framed. *The objection is not to the creation of a protected image but to the absence of any control over what is then done with it.* Preservation is necessary; unrestricted review and indefinite retention are not.
4. **Balancing:** Against the revenue interest stand the privacy of the taxpayer, the confidentiality of legal communications,⁴⁷ and the data of third parties such as family members, employees and clients. The absence of any statutory filter for privileged material weighs heavily.

⁴⁶ Justice K S Puttaswamy (Retd) v Union of India (2019) 1 SCC 1 (Sikri J); Modern Dental College and Research Centre v State of Madhya Pradesh (2016) 7 SCC 353; Anuradha Bhasin v Union of India (2020) 3 SCC 637.

⁴⁷ Indian Evidence Act 1872, s 126 (now replaced by the Bharatiya Sakshya Adhiniyam 2023).

On the stage of legality, neither section 247 nor its predecessor regulates imaging, retention or deletion at all. The Court in *Puttaswamy* treated the existence of a law as the minimum condition of legality and required the law to be clear enough to guard against arbitrary use.⁴⁸ A power that is exercised through practice rather than text is difficult to bring within that requirement.

C. Self-Incrimination in Real Time

Section 247(6) of the 2025 Act (section 132(4) of the 1961 Act) authorises the officer to examine on oath a person found in possession or control of relevant material, and any statement so made may be used in evidence in proceedings under the Act. Article 20(3) provides that no person accused of any offence shall be compelled to be a witness against himself. In *Selvi*, the Court held that the privilege extends beyond the courtroom to the stage of investigation and covers testimonial compulsion in any form, including techniques that bypass the will.⁴⁹ The distinction between testimonial and physical evidence drawn in *Kathi Kalu Oghad* remains good law,⁵⁰ and *Nandini Satpathy* extended the protection to questions that might tend to incriminate.⁵¹

The Revenue has strong counter-authority. Article 20(3) applies to a 'person accused of any offence', and the Court has treated that as requiring a formal accusation,⁵² while statements to officers under fiscal and customs statutes have been held not to attract the protection of Article 20(3), nor to carry a right to have a lawyer present throughout.⁵³ The answer to this line is not that these decisions are wrong, but that a statement under s 132(4) is in practice the foundation of both the assessment *and*, where it is pursued, a prosecution for wilful evasion. The reality of the functional use should inform the characterisation of the person as an accused.

⁴⁸ *Puttaswamy* (n 45).

⁴⁹ *Selvi v State of Karnataka* (2010) 7 SCC 263.

⁵⁰ *State of Bombay v Kathi Kalu Oghad* AIR 1961 SC 1808.

⁵¹ *Nandini Satpathy v P L Dani* (1978) 2 SCC 424.

⁵² *Raja Narayanlal Bansilal v Maneck Phiroz Mistry* AIR 1961 SC 29.

⁵³ *Poolpandi v Superintendent, Central Excise* (1992) 3 SCC 259.

The paper's narrower claim concerns the *conditions* in which statements are taken: sustained questioning through the night, recording of statements as admissions without counsel, and later reliance on them against a retraction. The CBDT has itself directed that officers should not try to obtain confessions and that the quality of evidence should be preferred to admission,⁵⁴ which suggests that the administrative practice and the statutory text have diverged. Instructions of this kind, however, are unenforceable by the assessee, and recommendation (vii) in Section 10.1 below, a statutory recording protocol, is intended to close this gap. The Law Commission's analysis of Article 20(3) and the right to silence provides the doctrinal background.⁵⁵

D. Comparative Safeguards

The European Court of Human Rights has dealt with each of these themes. In *Funke v France* the compulsion of a taxpayer to produce bank statements, under penalty, was held to violate the privilege against self-incrimination under Article 6.⁵⁶ *Saunders v United Kingdom* and *J B v Switzerland* developed the rule that compelled material may not be used against a person in criminal or quasi-criminal proceedings, the latter in a tax context.⁵⁷ In *Ravon v France* the Court found a violation of Article 6 where taxpayers had no effective judicial remedy against a search of their premises by tax officers.⁵⁸

In *Vinci Construction*, the seizure of entire e-mail accounts, including privileged correspondence, without adequate review of the manner of seizure breached Article 8. (The case arose from a competition investigation, not a tax one, but the reasoning is general.)⁵⁹ At the same time, in *Bernh Larsen v Norway* the Court found *no* violation where tax authorities copied a server's data, because the taxpayer could object, the

⁵⁴ CBDT Instruction No 286/2/2003-IT(Inv II) (10 March 2003); see also the CBDT instruction of 18 December 2014 to similar effect.

⁵⁵ Law Commission of India, 180th Report on Article 20(3) of the Constitution of India and the Right to Silence (2002).

⁵⁶ *Funke v France* (1993) 16 EHRR 297.

⁵⁷ *Saunders v United Kingdom* (1996) 23 EHRR 313; *J B v Switzerland* App no 31827/96 (ECtHR, 3 May 2001).

⁵⁸ *Ravon v France* App no 18497/03 (ECtHR, 21 February 2008).

⁵⁹ *Vinci Construction and GTM Génie Civil et Services v France* App nos 63629/10 and 60567/10 (ECtHR, 2 April 2015).

data was limited to tax-relevant material and statutory safeguards applied.⁶⁰ The pairing is instructive: the Convention does not forbid the copying of data, but conditions it on safeguards of the kind the Indian statute omits.

In the United States, *Riley* and *Carpenter* establish that digital data of a quantity and sensitivity inherent in telephones and location records attracts a warrant requirement.⁶¹ The comparison must not be pressed too far, because the American tax system relies on administrative summons rather than search for many purposes, and the standard for a summons is deliberately modest.⁶² The point is narrower: where a tax authority obtains a power of search over electronic data, the legal systems with which India is most commonly compared supply independent supervision, filtering, or both.

VI. ECONOMIC DUE PROCESS AND PRE-JUDGMENT CONFISCATION (ARTICLES 19(1)(G) AND 300A)

A. Artificial Tax Bases and Deemed Fictions

The Union's power to tax incomes is found in Entry 82 of List I ('Taxes on income other than agricultural income'), and the Supreme Court has said that 'income' bears its ordinary and natural meaning, and implies something that has come in.⁶³ The Court has insisted that tax is charged on real, not notional, income.⁶⁴ Sections 78, 79 and 92(2)(m) of the 2025 Act (sections 50C, 50CA and 56(2)(x) of the 1961 Act) depart from that ideal by treating the fair market value or stamp-duty value of an asset as the consideration, or as the recipient's income, where the actual price is lower. They are legal fictions, which a court construes in light of their purpose and does not extend beyond it.⁶⁵

⁶⁰ *Bernh Larsen Holding AS v Norway* App no 24117/08 (ECtHR, 14 March 2013).

⁶¹ *Carpenter v United States* 138 S Ct 2206 (2018).

⁶² *United States v Powell* 379 US 48 (1964).

⁶³ Constitution of India 1950, Seventh Schedule, List I, Entry 82; *Navinchandra Mafatlal v CIT* (1954) 26 ITR 758 (SC).

⁶⁴ *CIT v Shoorji Vallabhdas & Co* (1962) 46 ITR 144 (SC); *Godhra Electricity Co Ltd v CIT* (1997) 225 ITR 746 (SC).

⁶⁵ *State of Bombay v Pandurang Vinayak Chaphalkar* AIR 1953 SC 244.

This paper does not claim that these provisions are invalid. There are good reasons for anti-avoidance rules directed at undervaluation, the provisions allow a tolerance band, and the valuation can be referred to an independent valuation officer, so that they cannot fairly be described as applying regardless of the real consideration. The more modest argument is as-applied: in a distress sale, where a seller accepts a price below the circle rate because the alternative is default, the seller may be taxed on a gain the market denies, while the buyer is taxed on a notional gift. A court asked to decide whether Parliament has overstepped Entry 82 will be guided by the strong presumption of constitutionality,⁶⁶ and the likelier path to relief runs through statutory interpretation of rebuttal rights. The entry is a source of competence rather than a sword for the taxpayer.

B. Provisional Attachment under Section 500 (Section 281B)

Section 500 of the 2025 Act (section 281B of the 1961 Act) empowers the assessing officer, with the approval of a Competent Authority, to attach provisionally any property of the assessee during the pendency of assessment or reassessment where this is necessary to protect the interests of the revenue. The attachment is time-limited and may be extended by a senior authority. In practice, the power has been used to freeze bank accounts.⁶⁷

Radha Krishan Industries v State of Himachal Pradesh concerned the equivalent power in the Himachal Pradesh Goods and Services Tax Act 2017 but its reasoning applies to all provisional attachment statutes in fiscal law. The Court held that such power is draconian, that it must be exercised on tangible material and on a formed opinion that attachment is necessary for the protection of revenue, that it must be proportionate, and that it must not be used as a means of recovery.⁶⁸ It also made clear that the person affected must be able to show cause. For a business, the freezing of an operating account is not an inconvenience: it may stop payroll, supplier

⁶⁶ Rakesh Kohli (n 3).

⁶⁷ Income-tax Act 2025, s 500; Income-tax Act 1961, s 281B.

⁶⁸ *Radha Krishan Industries v State of Himachal Pradesh* (2021) 6 SCC 771.

payments and statutory remittances, in effect liquidating the enterprise before any liability is established.

The State can point to the Court's willingness, in *Vijay Madanlal Choudhary*, to uphold the provisional attachment provisions of the Prevention of Money Laundering Act 2002, in the face of a challenge based on proportionality, because of the safeguards built into the scheme.⁶⁹ That decision supports the position taken here: provisional attachment is constitutional *when* it is accompanied by procedural safeguards, which is the question s 281B leaves to judicial interpretation case by case.

C. The Proportionality Standard in the Deprivation of Property

Article 300A provides that no person shall be deprived of property save by authority of law. Since the deletion of Article 31 it is a constitutional right rather than a fundamental right, and it cannot be enforced through Article 32. Nonetheless, the Court has treated the right to property as a human right and as a constitutional right of substance.⁷⁰ In *K T Plantation* it recognised that 'law' in Article 300A must satisfy certain minimum standards, including a public purpose, and that arbitrary deprivation is not saved by the mere existence of a statute.⁷¹

Under Article 1 of Protocol No 1 to the European Convention on Human Rights, the Strasbourg Court assesses interferences by asking whether a 'fair balance' has been struck between the general interest and the individual's rights, as first articulated in *Sporrong and Lönnroth v Sweden*.⁷² The Court gives States a wide margin in tax matters,⁷³ but it has found violations where the burden was individual and excessive, or where the procedure left the owner without effective protection.⁷⁴ The doctrine thus supplies a ready vocabulary for what Indian courts already do under the heading of proportionality: the obligation to consider whether a lesser measure,

⁶⁹ *Vijay Madanlal Choudhary v Union of India* 2022 SCC OnLine SC 929.

⁷⁰ *Jilubhai Nanbhai Khachar v State of Gujarat* 1995 Supp (1) SCC 596; *Tukaram Kana Joshi v MIDC* (2013) 1 SCC 353; *Vidya Devi v State of Himachal Pradesh* (2020) 2 SCC 569.

⁷¹ *K T Plantation (P) Ltd v State of Karnataka* (2011) 9 SCC 1.

⁷² *Sporrong and Lönnroth v Sweden* (1982) 5 EHRR 35.

⁷³ *Gasus Dosier- und Fördertechnik GmbH v Netherlands* (1995) 20 EHRR 403.

⁷⁴ *Hentrich v France* (1994) 18 EHRR 440; *N K M v Hungary* App no 66529/11 (ECtHR, 14 May 2013).

such as a bank guarantee or an attachment limited to the estimated demand, would protect the revenue equally well.

D. Ring-Fencing Digital Assets (Section 194, Table, Serial Number 4)

Section 194 of the 2025 Act, read with serial number 4 of the Table in that section (section 115BBH of the 1961 Act), taxes gains from the transfer of virtual digital assets at a flat rate, disallows deduction of any expenditure except the cost of acquisition, and prohibits set-off of losses.⁷⁵ It may be argued that the classification is arbitrary and devoid of an intelligible differential. That is the weakest of the paper's four objections, and it should be presented as such.

The Court has long accepted that Parliament may treat speculative or high-risk activity separately, and the Act already ring-fences other receipts of that character; the deference described in Section I applies in full. A more promising argument is that the prohibition on set-off can produce a liability exceeding the taxpayer's real economic gain across a year, which engages the principle that tax is charged on real income.⁷⁶ Even this argument faces the rule that deductions are a matter of legislative grace.

VII. INTERNATIONAL HUMAN RIGHTS LAW AND COMPARATIVE JURISPRUDENCE

A. The International Covenant on Civil and Political Rights

India acceded to the ICCPR in 1979. The Covenant guarantees a fair hearing in the determination of criminal charges and of rights and obligations in a suit at law (Article 14), and protects against arbitrary or unlawful interference with privacy, family, home and correspondence (Article 17).⁷⁷ The Human Rights Committee has explained that interference authorised by law must itself comply with the Covenant's aims and be reasonable in the circumstances, and that searches of a

⁷⁵ Income-tax Act 1961, s 115BBH, inserted by the Finance Act 2022.

⁷⁶ Shoorji Vallabhdas (n 64).

⁷⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 14, 17.

person's home should be limited to a search for necessary evidence and should not amount to harassment.⁷⁸

The legal force of these norms in India is limited. India follows a dualist approach, so that treaty obligations require legislation to become enforceable, though the Court has read international norms into fundamental rights where domestic law is silent and they are consistent with it.⁷⁹ The Protection of Human Rights Act 1993 defines 'human rights' to include rights embodied in international covenants and enforceable by Indian courts.⁸⁰ India is not a party to the First Optional Protocol, and so individual communications to the Committee are not available. The Covenant's role in the argument is therefore interpretive and persuasive: it supports reading Article 21 to demand independent supervision of intrusive searches.

A further difficulty concerns Article 14. Whether a tax dispute is the determination of a 'suit at law' is contested, and the Strasbourg Court has excluded pure tax disputes from the civil limb of Article 6 while bringing tax surcharges of a punitive character within the criminal limb.⁸¹ Penalties for under-reporting and misreporting are levied under section 439 of the 2025 Act (section 270A of the 1961 Act) at fifty per cent of the tax payable on under-reported income, rising to two hundred per cent where the under-reporting is in consequence of misreporting. Exactions at those rates are punitive rather than compensatory, and on the cumulative approach taken in *Bendenoun* and *Jussila* the criminal limb has real application to those proceedings.

B. The European Court of Human Rights

The principal contribution of the European jurisprudence has been discussed in Section VI: protection against compelled self-incrimination (*Funke, Saunders, J B*), the requirement of effective judicial review of searches (*Ravon*), and the filtering of

⁷⁸ UN Human Rights Committee, 'General Comment No 16: Article 17 (Right to Privacy)' (1988) paras 4 and 8.

⁷⁹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241; *Gramophone Co of India Ltd v Birendra Bahadur Pandey* (1984) 2 SCC 534; Constitution of India 1950, art 51(c).

⁸⁰ Protection of Human Rights Act 1993, s 2(1)(d).

⁸¹ *Ferrazzini v Italy* (2001) 34 EHRR 1068 [29]; *Bendenoun v France* (1994) 18 EHRR 54 [47]; *Jussila v Finland* (2007) 45 EHRR 39 [38]; Income-tax Act 2025, ss 439(9)–(10); Income-tax Act 1961, ss 270A(7)–(8).

privileged and irrelevant data (*Vinci*, contrasted with *Bernh Larsen*). Article 6(1) also incorporates the requirement of equality of arms, the principle that each party must have a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage.⁸² Where the Revenue holds the algorithmic basis for selection and the assessee does not, that principle is engaged. The standard treatise on this subject, and the comparative general report on taxpayers' fundamental rights prepared for the International Fiscal Association, collect the case law across jurisdictions.⁸³

C. Algorithmic Governance Standards

Article 22 of the General Data Protection Regulation gives a data subject the right not to be subject to a decision based solely on automated processing which produces legal effects or similarly significantly affects them, subject to exceptions and with a requirement of human intervention and safeguards.⁸⁴ The Court of Justice has read the provision broadly: in *SCHUFA* it held that the generation of a credit score is itself an automated decision where a third party draws strongly on it in deciding whether to extend credit.⁸⁵

Its decision on the scope of the right to an explanation of the logic involved in automated decisions confirms the direction of travel.⁸⁶ The GDPR also permits Member States to restrict these rights for the protection of important financial interests including taxation, but only where the restriction respects the essence of the rights and is necessary and proportionate.⁸⁷ Fiscal context is, therefore, a recognised ground of derogation, not a categorical exemption.

⁸² *Dombo Beheer BV v Netherlands* (1993) 18 EHRR 213.

⁸³ Philip Baker, 'Taxation and the European Convention on Human Rights' [2000] *British Tax Review* 211; Philip Baker and Pasquale Pistone, 'General Report' in International Fiscal Association, *The Practical Protection of Taxpayers' Fundamental Rights* (Cahiers de Droit Fiscal International vol 100B, 2015).

⁸⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data [2016] OJ L119/1, art 22.

⁸⁵ Case C-634/21 *OQ v Land Hessen (SCHUFA Holding (Scoring))* EU:C: 2023:957.

⁸⁶ Case C-203/22 *CK v Magistrat der Stadt Wien (Dun & Bradstreet Austria GmbH)* (CJEU, 27 February 2025).

⁸⁷ Regulation (EU) 2016/679, art 23(1)(e) and (2).

India has no equivalent of Article 22. The Digital Personal Data Protection Act 2023 contains broad exemptions for State processing, including for the detection of offences and for instrumentalities notified by the Central Government.⁸⁸ The Srikrishna Committee, whose work preceded the Act, had proposed stricter principles of purpose limitation and data minimisation and attention to surveillance reform.⁸⁹ Tax authorities have also been the subject of study within the OECD, which has promoted taxpayers' rights charters and has called for governance of digital risk management as tax administrations digitalise.⁹⁰ Recent work on automated tax guidance also shows the risks of error when revenue authorities automate their interaction with taxpayers.⁹¹

D. The United States Fourth Amendment

The Fourth Amendment requires particularity in warrants and, after *Riley* and *Carpenter*, treats the seizure of comprehensive digital records as a search of exceptional intrusiveness.⁹² The third-party doctrine, under which information voluntarily conveyed to a third party loses protection, was a ground on which the United States has historically permitted access to financial records,⁹³ and the Indian analogue is the Department's reliance on third-party reporting by banks and other entities.

Carpenter narrowed that doctrine for pervasive digital records. If the same reasoning were adopted in India, the use of aggregated third-party data to profile individuals would require justification beyond the mere fact that the third party was the original holder. The dissimilarity of the legal framework's counsels caution; the comparison

⁸⁸ Digital Personal Data Protection Act 2023 (India), s 17.

⁸⁹ Committee of Experts under the Chairmanship of Justice B N Srikrishna, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (Ministry of Electronics and Information Technology 2018).

⁹⁰ OECD, Tax Administration 2023: Comparative Information on OECD and Other Advanced and Emerging Economies (OECD Publishing 2023); OECD, Tax Administration 3.0: The Digital Transformation of Tax Administration (OECD Publishing 2020).

⁹¹ Joshua D Blank and Leigh Osofsky, 'Automated Legal Guidance' (2020) 106 Virginia Law Review 179.

⁹² *Riley* (n 43); *Carpenter* (n 61).

⁹³ *Smith v Maryland* 442 US 735 (1979).

is offered as an indication of the questions a court should ask, not as a rule of Indian law.

VIII. DOCTRINAL SYNTHESIS

The foregoing analysis supports four conclusions:

First, the constitutional vulnerability of the Indian regime lies in the absence of safeguards, not in the existence of its powers.

Secondly, the principal adverse authorities (*Pooran Mal*, *M P Sharma*, *R K Garg*) are distinguishable: they predate the recognition of informational privacy and the emergence of proportionality as a constitutional standard, and none concerned automated selection or the wholesale seizure of digital data.

Thirdly, courts are better placed to read down particular applications than to invalidate these powers, which is why the primary recommendation is legislative.

Fourthly, comparative materials point to a consistent set of design features: independent authorisation, specificity, filtering, disclosure and time limits.

IX. SUGGESTIONS AND RECOMMENDATIONS

A. A Codified Digital Search Protocol

The Income-tax Act should be amended to include a Digital Search Protocol (DSP) applicable to any search which includes electronic devices or online accounts. Its core elements are:

- 1. Specific authorization:** The authorisation should identify the devices or accounts to be searched and the categories of material sought, and should be subject to prior or contemporaneous review by a judicial or independent authority where an officer proposes to image a device or to access an online account.
- 2. Hash validation at acquisition:** Section 63 of the Bharatiya Sakshya Adhiniyam 2023 and its Schedule already require a hash value, an identified algorithm and an expert's certificate when an electronic record

is tendered in evidence.⁹⁴ The protocol should move that requirement forward in time. The hash of each image should be computed and recorded at the moment of acquisition and supplied to the assessee then, so that integrity is verifiable from the outset rather than reconstructed at trial.⁹⁵

3. **Independent technical master:** An independent forensic examiner should conduct the extraction and filtering, with the officer receiving only material responsive to the authorisation.
4. **Privilege and third-party redaction:** Legal professional privilege and medical, family and third-party data should be filtered out by a protocol that allows the assessee to identify privileged material before review.
5. **Retention and destruction:** The image should be returned or destroyed within a defined period after the conclusion of proceedings, with a logged chain of custody.
6. **No compelled credentials:** Disclosure of passwords or biometric keys should be possible only by judicial order, consistently with Article 20(3).⁹⁶
7. **Recording of statements:** Section 105 of the Bharatiya Nagarik Suraksha Sanhita 2023, applied by section 247(10), already requires the process of search and seizure to be recorded by audio-video electronic means, but it does not reach the examination of a person on oath. Statements under section 247(6) should therefore be audio-visually recorded in their own right, taken during defined hours save for exceptional and recorded reasons, with counsel permitted at a reasonable distance and a statutory warning of rights.

⁹⁴ Bharatiya Sakshya Adhiniyam 2023, s 63(4) and the Schedule; ISO/IEC 27037:2012 Information technology: Security techniques: Guidelines for identification, collection, acquisition and preservation of digital evidence.

⁹⁵ Bharatiya Sakshya Adhiniyam 2023, the Schedule, Part B; Arjun Panditrao (n 42).

⁹⁶ Virendra Khanna (n 41).

B. Algorithmic Transparency and Explainability

Parliament should require the Board to publish the categories of data and the general logic of its risk management strategy, as distinct from threshold values that could be gamed. Section 281(2) already requires the show-cause notice to be accompanied by the information relied upon, which meets part of this recommendation; what it does not require is disclosure of the particular data point that was flagged, of its source, and of the identity of the officer who reviewed it, and the notice should be amended to require all three.

The order under section 281(3) should show that the officer has independently evaluated the flag. The system should be subject to periodic independent audit, including testing for error and disparate impact, with reports laid before Parliament. These measures reflect the principle of ‘technological due process’ and the safeguards identified in the European and Australian experience.⁹⁷ The Board’s data-integration systems should also be covered by an enforceable data-protection standard, rather than a general exemption.⁹⁸

C. Substantive Guardrails on Provisional Attachment

Section 500 should be amended to require: a recorded finding, on tangible material, that attachment is necessary and that no lesser measure will suffice; a cap on the amount attached by reference to the estimated demand; automatic carve-outs for payroll, statutory dues and ordinary business payments; the right to substitute security such as a bank guarantee; a hearing within a short fixed period; and a fast-track appellate review before a specialised forum, rather than reliance on writ jurisdiction alone. These features codify what *Radha Krishan* requires in any event.⁹⁹

Power	Constitutional defect	Proposed safeguard	Comparative anchor
-------	-----------------------	--------------------	--------------------

⁹⁷ Citron (n 18); SCHUFA (n 85); Royal Commission into the Robodebt Scheme (n 23).

⁹⁸ Digital Personal Data Protection Act 2023, s 17 (n 88).

⁹⁹ *Radha Krishan Industries* (n 68).

Algorithmic selection (ss 144B, 148A)	Unpublished criteria; flag displaces recorded satisfaction; unequal access to information	Disclosure of flag and source; published categories; audit; reasoned human order	GDPR art 22; <i>SCHUFA</i> ; <i>SyRI</i> ; Robodebt
Digital search (s 132)	No control over scope, review, retention; privileged and third-party data; compelled statements	Digital Search Protocol; independent master; hash validation; recorded statements	<i>Riley</i> ; <i>Vinci</i> ; <i>Bernh Larsen</i> ; <i>Ravon</i>
Provisional attachment (s 281B)	No proportionality limit; operating accounts frozen; limited remedies	Necessity finding; cap; carve-outs; substitute security; fast-track review	<i>Radha Krishan</i> ; Art 1 Prot 1 ECHR

Table: Summary of reform proposals

X. CONCLUSION

Revenue mobilisation is a constitutional necessity, and nothing in this paper doubts the legitimacy of tax enforcement. The question is the architecture through which enforcement is carried out. Where an unpublished classifier initiates the process, where a forensic image of an entire digital life is held without filtering, and where a bank account is frozen before any liability is established, the Indian taxpayer is subject to a sequence of intrusions for which no independent authority has been required to apply the test of proportionality.

The better reading of Articles 14, 21 and 300A, informed by international standards, is that the State must supply that test through law. The first challenge to reach the Supreme Court was not entertained, and the petitioner was left to a representation to the Government, which confirms that the remedy lies in the first instance with Parliament rather than with the courts. If Parliament does not act, courts will nonetheless be asked to supply the test through interpretation, case by case and at

greater cost to the system's coherence. A statutory Digital Search Protocol, an algorithmic transparency mandate and substantive guardrails for provisional attachment would restore the balance between revenue and rights without weakening the State's ability to tax.

XI. BIBLIOGRAPHY

A. Cases: India

1. *Ajay Hasia v Khalid Mujib Sehravardi* (1981) 1 SCC 722
2. *Anirudhsinhji Karansinhji Jadeja v State of Gujarat* (1995) 5 SCC 302
3. *Anuradha Bhasin v Union of India* (2020) 3 SCC 637
4. *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1
5. *Calcutta Discount Co Ltd v ITO* (1961) 41 ITR 191 (SC)
6. *CIT v Shoorji Vallabhdas & Co* (1962) 46 ITR 144 (SC)
7. *Commissioner of Police v Gordhandas Bhanji* AIR 1952 SC 16
8. *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3
9. *GKN Driveshafts (India) Ltd v ITO* (2003) 259 ITR 19 (SC)
10. *Godhra Electricity Co Ltd v CIT* (1997) 225 ITR 746 (SC)
11. *Gramophone Co of India Ltd v Birendra Bahadur Pandey* (1984) 2 SCC 534
12. *Hamdard Dawakhana v Union of India* AIR 1960 SC 554
13. *Harla v State of Rajasthan* AIR 1951 SC 467
14. *In re Delhi Laws Act 1912* AIR 1951 SC 332
15. *ITO v Lakhmani Mewal Das* (1976) 103 ITR 437 (SC)
16. *Jilubhai Nanbhai Khachar v State of Gujarat* 1995 Supp (1) SCC 596
17. *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1
18. *Justice K S Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1
19. *K T Plantation (P) Ltd v State of Karnataka* (2011) 9 SCC 1

20. Karti P Chidambaram v Directorate of Enforcement, RP (Crl) No 219 of 2022 (Supreme Court of India, pending as at October 2026)
21. Kesavananda Bharati v State of Kerala (1973) 4 SCC 225
22. Kranti Associates (P) Ltd v Masood Ahmed Khan (2010) 9 SCC 496
23. Kunnathat Thathunni Moopil Nair v State of Kerala AIR 1961 SC 552
24. M P Sharma v Satish Chandra AIR 1954 SC 300
25. Mafatlal Industries Ltd v Union of India (1997) 5 SCC 536
26. Maneka Gandhi v Union of India (1978) 1 SCC 248
27. Minerva Mills Ltd v Union of India (1980) 3 SCC 625
28. Modern Dental College and Research Centre v State of Madhya Pradesh (2016) 7 SCC 353
29. Nandini Satpathy v P L Dani (1978) 2 SCC 424
30. Navinchandra Mafatlal v CIT (1954) 26 ITR 758 (SC)
31. Nikesh Tarachand Shah v Union of India (2018) 11 SCC 1
32. Poolpandi v Superintendent, Central Excise (1992) 3 SCC 259
33. Pooran Mal v Director of Inspection (Investigation) (1974) 93 ITR 505 (SC)
34. Prem Chand Garg v Excise Commissioner, UP AIR 1963 SC 996
35. Pune Bar Assn v Union of India 2026 SCC OnLine SC 1297
36. R K Garg v Union of India (1981) 4 SCC 675
37. Radha Krishan Industries v State of Himachal Pradesh (2021) 6 SCC 771
38. Raja Narayanlal Bansilal v Maneck Phiroz Mistry AIR 1961 SC 29
39. Selvi v State of Karnataka (2010) 7 SCC 263
40. Shadab v State of Uttar Pradesh 2026 SCC OnLine All 5
41. Shayara Bano v Union of India (2017) 9 SCC 1
42. State of Bombay v Kathi Kalu Oghad AIR 1961 SC 1808

43. State of Bombay v Pandurang Vinayak Chaphalkar AIR 1953 SC 244
44. State of Madhya Pradesh v Rakesh Kohli (2012) 6 SCC 312
45. Supreme Court Bar Association v Union of India (1998) 4 SCC 409
46. Swadeshi Cotton Mills v Union of India (1981) 1 SCC 664
47. Tukaram Kana Joshi v MIDC (2013) 1 SCC 353
48. Union of India v Ashish Agarwal (2023) 1 SCC 617; (2022) 444 ITR 1 (SC)
49. Union of India v Jesus Sales Corporation (1996) 4 SCC 69
50. Union of India v Rajeev Bansal 2024 INSC 754; (2024) 469 ITR 46 (SC)
51. Vidya Devi v State of Himachal Pradesh (2020) 2 SCC 569
52. Vijay Madanlal Choudhary v Union of India 2022 SCC OnLine SC 929
53. Virendra Khanna v State of Karnataka 2021 SCC OnLine Kar 5032
54. Vishwaprasad Alva v Union of India WP (C) No 114 of 2026 (Supreme Court of India, 9 March 2026)
55. Vishaka v State of Rajasthan (1997) 6 SCC 241

B. Cases: European Court of Human Rights and Court of Justice of the European Union

1. Bendenoun v France (1994) 18 EHRR 54
2. Bernh Larsen Holding AS v Norway App no 24117/08 (ECtHR, 14 March 2013)
3. Case C-203/22 CK v Magistrat der Stadt Wien (Dun & Bradstreet Austria GmbH) (CJEU, 27 February 2025)
4. Case C-634/21 OQ v Land Hessen (SCHUFA Holding (Scoring)) EU:C:2023:957
5. Dombo Beheer BV v Netherlands (1993) 18 EHRR 213
6. Ferrazzini v Italy (2001) 34 EHRR 1068
7. Funke v France (1993) 16 EHRR 297

8. Gasus Dosier- und Fördertechnik GmbH v Netherlands (1995) 20 EHRR 403
9. Hentrich v France (1994) 18 EHRR 440
10. J B v Switzerland App no 31827/96 (ECtHR, 3 May 2001)
11. Jussila v Finland (2007) 45 EHRR 39
12. N K M v Hungary App no 66529/11 (ECtHR, 14 May 2013)
13. Ravon v France App no 18497/03 (ECtHR, 21 February 2008)
14. Saunders v United Kingdom (1996) 23 EHRR 313
15. Sporrøng and Lönnroth v Sweden (1982) 5 EHRR 35
16. Vinci Construction and GTM Génie Civil et Services v France App nos 63629/10 and 60567/10 (ECtHR, 2 April 2015)

C. Cases: Other Jurisdictions

1. Carpenter v United States 138 S Ct 2206 (2018)
2. Marron v United States 275 US 192 (1927)
3. NJCM c.s. v The Netherlands (SyRI) (District Court of The Hague, 5 February 2020) ECLI:NL: RBDHA:2020:865
4. Prygodicz v Commonwealth of Australia (No 2) [2021] FCA 634
5. Riley v California 573 US 373 (2014)
6. Smith v Maryland 442 US 735 (1979)
7. State v Loomis 881 NW 2d 749 (Wis 2016)
8. United States v Powell 379 US 48 (1964)

D. Legislation

1. Constitution of India 1950, arts 14, 19(1)(g), 20(3), 21, 51(c), 142, 265, 300A; Seventh Schedule, List I, Entry 82
2. Bharatiya Nagarik Suraksha Sanhita 2023 (India), s 105

3. Bharatiya Sakshya Adhiniyam 2023 (India), s 63 and the Schedule
4. Digital Personal Data Protection Act 2023 (India)
5. Finance Act 2018 (India), s 208
6. Finance Act 2021 (India)
7. Finance Act 2022 (India)
8. Finance (No 2) Act 2024 (India)
9. General Clauses Act 1897 (India), s 8
10. Indian Evidence Act 1872 (repealed and replaced by the Bharatiya Sakshya Adhiniyam 2023)
11. Income-tax Act 1961 (India), ss 50C, 50CA, 56(2)(x), 115BBH, 132, 133A, 133C, 144B, 147-151A, 270A, 281B
12. Income-tax Act 2025 (India) (Act 30 of 2025), ss 78, 79, 92, 194, 247, 248, 253, 259, 261, 273, 279-284, 439, 500, 532, 536
13. Protection of Human Rights Act 1993 (India)
14. Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 (India)

E. Administrative Instructions

1. Central Board of Direct Taxes, Instruction No 286/2/2003-IT(Inv II) (10 March 2003)
2. Central Board of Direct Taxes, Instruction F No 286/98/2013-IT(Inv II) (18 December 2014)

F. International and Regional Instruments and Materials

1. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171
2. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation) [2016] OJ L119/1

3. UN Human Rights Committee, 'General Comment No 16: Article 17 (Right to Privacy)' (1988)
4. ISO/IEC 27037:2012 *Information technology: Security techniques: Guidelines for identification, collection, acquisition and preservation of digital evidence*

G. Books

1. O'Neil C, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (Crown 2016)
2. Pasquale F, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015)

H. Articles and Reports

1. Baker P, 'Taxation and the European Convention on Human Rights' [2000] British Tax Review 211
2. Baker P and Pistone P, 'General Report' in International Fiscal Association, *The Practical Protection of Taxpayers' Fundamental Rights* (Cahiers de Droit Fiscal International vol 100B, 2015)
3. Blank J D and Osofsky L, 'Automated Legal Guidance' (2020) 106 Virginia Law Review 179
4. Citron D K, 'Technological Due Process' (2008) 85 Washington University Law Review 1249
5. Coglianese C and Lehr D, 'Regulating by Robot: Administrative Decision Making in the Machine-Learning Era' (2017) 105 Georgetown Law Journal 1147
6. Committee of Experts under the Chairmanship of Justice B N Srikrishna, *A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians* (Ministry of Electronics and Information Technology 2018)
7. Law Commission of India, *180th Report on Article 20(3) of the Constitution of India and the Right to Silence* (2002)

8. OECD, *Tax Administration 2023: Comparative Information on OECD and Other Advanced and Emerging Economies* (OECD Publishing 2023)
9. OECD, *Tax Administration 3.0: The Digital Transformation of Tax Administration* (OECD Publishing 2020)
10. Royal Commission into the Robodebt Scheme, *Report* (Commonwealth of Australia, 7 July 2023)