Published in Institute's Journal July 2001

DIFFERENCE BETWEEN TAX & FEE AND GUIDELINES FOR DRAFTING OF FISCAL LEGISLATION

Bharat Ji Agrawal
Senior Advocate
Allahabad High Court

The tax is an imposition made for the public purpose, without reference to any services rendered by the State or any specific benefit to be conferred upon the tax payer. The object of levy of tax is to raise the general revenue. On the other hand, a fee is a payment levied by the State in respect of services performed by it for the benefit of the individual. It is levied on a principle just opposite to that of tax while a tax is paid for the common benefit conferred by the Government on all tax payers, a fee is a payment made for some special benefit enjoyed by the payer and the payment is shown proportionately to the special benefit.

The money raised by a fee is set apart and appropriated specifically for the purpose of the services for which it has been imposed and it is not merged in the general revenue of the State. If the special- service rendered is distinctly and primarily meant for the benefit of a specific class or area, the fact that in benefiting the specific class or area, the State as a whole may ultimately and indirectly be benefited would riot detract from the character of the levy as a fee. In such a case it is necessary to see what is the primary object of the levy and the essential purpose, which is intended to achieve. Its primary object and essential purpose must be distinct from its ultimate or incidental results or consequences. On the other hand, if there is no strict and clear nexus between some special service and the levy it cannot be said to be a fee.

While in the case of tax there is no quid pro quo between the tax payer and the state. There is a necessary correlation between the fee collected and the service intended to be rendered as held by the Hon'ble Supreme Court in the case of State of Rajasthan vs. Sajjan Lal, AIR 1975 (Supreme Court) page 706, (Para 40 and 41), which has again been reiterated in Kishan Lal vs. State of Haryana (1993) Supplement 4 SCC page 461.

The amount of fee is based upon the expenses incurred by the State in rendering the services, though in the case of particular fee the amount may not be arithmetically commensurate with the expenses.

A tax is compulsory extraction of money by public authority for public purpose enforceable by law and is not a payment for services rendered. On the

other hand, fee is charged for special services rendered to individuals by some governmental agency.

Ever, the traditional view of quid pro quo that undergone a transformation in recent years. The Hon'ble Apex Court has held that what is to be seen for a fee is whether there is a fair correspondence between the fee charged and the cost of services rendered .to the fee payers as a class; a broad co- relationship is all that is necessary. Such relationship need not be strict and even a casual relation may be enough. Neither the incidence of fee nor the service rendered need be uniform. Merely because other are also getting benefited will not detract the character of the fee as held by Hon'ble the Supreme Court of India in the case of Delhi Municipality vs. Yasin, (AIR 1983), Supreme Court 617, (para 9) and S.G.T. vs. State of Andhra Pradesh, (AIR 1983 Supreme Court 1246) (Para 33 & 38). The same view has been reiterated in the case of M/s Kishan Lal Lakhmi Chand & Ors. vs. State of Harayana (1993 Supplement 4 SCC page 461). However, the quid pro quo would not necessarily be lost merely because the statute prescribes a minimum rate, the fee such as market fee is levied in respect of public properties for example public road. The benefit to be derived from fee is not simultaneous but is deferred and the amount collected by way of fee is a result for future services. Where the fee is levied for special services the fact that others besides those paying the fee are also benefited did not detract the character of the fee, as held by Hon'ble the Apex Court in the case of ITC vs. State of Karnataka, (1985 Supplement SCC 476 para 3).

The cases may arise where under the garb of levying a fee the Legislature may attempt to impose a tax. In the case of such colourable exercise of legislative power, the courts would have to scrutinizes the scheme of the levy very carefully and determine whether in fact there is a co-relation between the services and the levy or whether the levy is excessive to such an extent as to be pretence to a fee and not a fee in reality.

Even though it is said that there is no generic difference between the tax and a fee and the taxing power of a state may manifest itself in different forms known respectively as special assessments, fees and tax. Our Constitution has for legislative purposes, made a distinction between the tax and fee. Hence while drafting the Bill or making the legislation, one has to -keep in mind the relevant entries of the Constitution of India.

The distribution of the power to levy a tax in not identical, with that of the power to levy a fee. Taxes are specifically distributed as between the Union and the State Legislation by various entries in List I and List II and residuary power to levy a tax which is not enumerated in any of the entries under Entry 97 of List I exclusively for the Parliament. On the other hand, entry relating to fee has been specifically mentioned in the end of the 3 List I, II and III.

Every legislature has the power to levy fee which is co-extensive with power to legislate with respect to substantive matters and legislature may while making law relating to a subject matter within its competence, levy a fee with reference to the services that would be rendered by the State under such Law. Taxes are specifically divided between List I Entries 82 to 92A and in List II Entries 46 to 63. The fees are however, not mentioned specifically. There is a general entry towards the end of each list which empowers the legislature to levy a fee in respect of any matter over which it has legislative power according to the relevant List. The power to levy fee is thus distributed in Entry 96 of List I, 66 of List II and 46 of List III.

The result is that power of legislature to levy a fee or tax is to be determined by complying different test. If a fee is levied on the capacity of the payer, then it shall not be treated as fee and will be held to be a tax. Similarly, a fee cannot be levied for increasing the general revenue. In such a case it cannot be justified under any of the Entries of the Constitution of India.

In the case of Sri Jagnath Ramanuj Das and another vs. State of Orissa, (AIR 1964 SC p.400, para 9), the earliest leading case of the Supreme Court, in para 9, Hon'ble Apex Court clearly held :

"A tax is undoubtedly in the nature of a compulsory extraction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes of the State without reference to any special benefit to be conferred upon the payers of the tax. The taxes collected are all merged in the general revenue of the State to be applied in the general revenue public purposes. Thus, tax is a common burden and the only return which the tax -payer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public into but for some special service rendered or some special work done for the benefits of those from whom payments are demanded. Thus, in fees there is always an element of 'quid pro quo' which is absent in a tax. Two elements are thus essential in order that a payment may be regarded, as fee. In the first place, it must be levied in consideration of certain services, which the individuals accepted either willingly or unwillingly. But this by itself is not enough to make the imposition of a fee. If the payments are demanded for rendering of such services are not se a part are specifically appropriated for the purposes, but are merged in the general revenue of the State to be spent for general public purposes." {para 9}

As mentioned by me earlier, that the traditional view that there must be actual quid pro quo for a fee has undergone a sea change. In this connection I may refer to and rely upon the decision of Hon'ble The Apex Court In M/s. Kishan Lal Lakhmi Chand & Ors. vs. State of Haryana & ors. (Judgements

Today) 1993 (4) SC page 426 (para 5): where it was held by Hon'ble The Supreme Court :

> "The traditional view that there must be actual quid pro quo for a fee has undergone a sea change. The distinction between a tax and fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary purposes of regulation in public interest, if the element of revenue for general purposes of the State predominates, the levy becomes a tax. In regard to fee, there is, and must always be, co-relation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purposes it to render specific services to a specified area or class; it may be of no consequence that1he State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that is must be "by and large" a quid pro quo for the services rendered. However, co- relationship between the levy and the services rendered/expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. There is no genetic difference between a tax and a fee. Both are compulsory extractions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, not is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual nor that each should obtain the benefit of the service. "

	FEE		**TAX**
Primarily			
(1)	There must be actual quid pro quo for a fee has undergone a sea changed	(1)	A tax is levied as a part of a common burden
(2)	While a fee is for payment of a specific benefit or privilege although the special to the primary purpose of regulation in public interest.	(2)	If the element of revenue for general purpose of the State predominates, the levy becomes a tax.
(3)	In regard to fee, there is and must always be, correlation		

between the fee collected and the service intended to be rendered.		

(iv) In case of licence fee, condition of quid pro quo for a fee is not necessary. There is no generic difference between a tax and fee. Both are compulsory extractions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent.

In view of the aforesaid law laid down by Hon'ble Apex Court in M/s Kishan Lal Lakhmi Chand vs. State of Haryana, there may be a regulatory fee and a compensatory fee. In the cases of licence fee, which is a regulatory fee, the condition of quid pro quo is not necessary.

"(f) Corporation of Calcutta and Anr. vs. Liberty Cinema (AIR 1965 SC 1107). *Fee for licences and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for service rendered. This is apparent from a consideration of Article 110(2) and Article 199 (2) where both the expression are used indicating thereby that they are not the same. It has further been held that:*

It would therefore, appear that a provision for the imposition of licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered.“

Same view was taken :

(g) P. Kannadsan etc. vs. State of Tamilnadu & other etc. J.T. **1996 (7*) SC 16.*** *It has been observed that* :

"*Even in the matter of fees, it is not necessary that element of quid pro quo should be established in each and every case, for it is well settled that fees can be both regulatory and compensatory and that in the case of regulatory fee$, the element of quid pro quo is totally irrelevant.”*

(h) Vam Organic Chemicals Limited and Anr. vs. State of U.P. & Ors. (JT 1997 (1) SC 625)-

"*..... has approved that there is a distinction between the fees charged for licence. i.e. regulatory fees and the fees for the services rendered as compensatory. It approved the view that in case of regulatory fees like the licence fees, existence of quid pro quo is not necessary.* “

In the connection I may also refer to the recent decision of Hon'ble The Apex Court in (1999) 2 Supreme Court Cases 274- Secunderabad Hyderabad

Hotel Owners Association & Ors. vs. Hyderabad Municipal Corporation, Hyderabad & another, (relevant paras 9, 10, 11 and 12, page 282, 283 & 284).

"9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quit pro quo must be there between the services rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fee can also be regulatory when the activities for which a licence is given required to be regulated or controlled The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.

10. In the case of ***Commr. H.R.E. Vs. Sri Lakshmindra Thirlha Swamiar of Sri Shirir Mutt*** *one of the earliest case dealing with the question whether the levy is a fee or a tax, this Court held that the Constitution and, in particular; the legislative entries in Schedule VII of the Constitution make a clear distinction between a tax and a fee. This Court reproduced the definition of what "tax" means, given by Latham, C.J. of the High Court of Australia in* ***Matthews vs. Chicory Marketing Board (CLR at p 276) (See at p. l040).*** *"A tax" according to the learned Chief Justice, 'tis a compulsory extraction of money by public authority for public purposes enforceable by law and is not payment for services rendered". A fee, on the other hand, is generally defined to be a charge for a special services rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though is many cases, the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, as far may be, of various kinds of fees. It is not possible to formulate a definition that would be applicable to all cases. The Court then observed: (at page 1042)*

"The distinction between a tax an a fee lies primarily in the fact that a tax is levied as a part of the common burden, while a fee is a payment for a special advantage, as for example, in the case of registration fee for documents or marriage licences, is secondary to the primary motive of regulation in the public interest.

There is really no generic difference between a tax and a fee and as said by Seligman, the taxing power of a State may f manifest itself in a

three different forms known respectively as special assessments, fees and taxes. Our Constitution has, for legislative purposes, made a distinction between a tax and a fee.

11. 1n the case of Corpn. of Calcutta vs. Liberty Cinema (SCR at p. 483), this court after referring to the constitutional provisions making a distinction between a fee and a tax also went on to say that in our Constitution, fees for licence and fees for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Article 110 (2) and Article 199 (2) where both the expression are used indicating thereby that they are not the same. In other words, a distinction was made between fees for services rendered and fees which are regulatory. In ***India Mica Micanite Industries vs. State of Bihar (SCC at p. 241: SCR at p. 324) Om Prakash Agarwal vs. Giri Raj Kishore and Municipal Council, Madurai vs. R. Narayanan (SCC pp. 503 to 505: SCR at pp. 339 to 340),*** *The court had considered a fee which was charged for services rendered. In all these cases, the Court observed that when a fee is charged for services rendered, an element of quid pro quo is necessary and there has to be a co-relationship of a general character between the cost of rendering such service and the fee charged. A number of other decisions were also cited in this connection. The position in respect of fees for services rendered is summed up in the case of* ***Krishi Upaj Mandi Samiti vs. Orient Paper & Industries Ltd. (SCC in para 21).***

12. In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity of the licensees to ensure that they comply with the terms and conditions of the licence. Dealing with such regulatory fees, this Court in ***Vam Organic Chemicals Ltd. vs. State of U.P. (SCC at p. 726),*** *observed that in the case of regulatory fee, no quid pro quo was necessary but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been made in the case of* ***P. Kannadasan vs. State of T.N., (SCC in para 36)*** *as well as* ***State of Tripura vs. Sudhir Ranjan Nath (SCC at p. 673)."***

In this connection, for drafting the legislative Bills regarding fiscal legislation for imposition of tax, one has to keep in mind the provisions of Article 110 and Article 199 of the Constitution of India which was interpreted by Hon'ble Apex Court in **Kewal Krishan Puri and another vs. State of Punjab, AIR 1980 SC 1008 (at page 1015, para 7).**

"7. *Clause (2) of Article 110 and clause (2) of Article 199 of the Constitution, the former occurring in the Chapter of Parliament and the latter in relation to the State Legislature are in identical terms as follows*:-

"A bill shall not be deemed to be a Money Bill by reason only that it provides ..... for the demand or payment of fees for ..... licences or fees for services rendered..... "

The Constitution, therefore, clearly draws a distinction between the imposition of a tax by a Money bill and the impost of fees by way of other kind of Bill. So also in the Seventh Schedule both in the List I and List II a distinction has been maintained in relation to the entries of tax and fees. In the Union List entries 82 to 92A relate to taxes and duties and entry 96 carves out the legislative field for fees in respect of any of the matters in the said list except the fees taken '2' in any court. Similarly in the State List entries relating to fees are entries 46 to 63 and entry 66 provides for fees in respect of any of the matters in List II but not including fees taken in any Court. Entry relating to fees in List III in entry 97. Our Constitution, therefore, recognizes a different and distinct connotation between taxes and fees."

The Constitution Bench decision of the Supreme Court in the case of **Synthetics and Chemicals Ltd. and others vs. State of U.P. and others (1990) I SCC 109 (at Page 165, para 109),** has considered the legislative competence of the State legislature regarding levy of fee in respect of denatured spirit unfit for human consumption. Even though the State has the exclusive privilege in dealing with the alcoholic liquor but if the revenue earned a substantial, it will not be justifiable as fee which is levied for carrying on the business of such alcoholic liquor."

In para 109 it has been held that -

"These questions about the privilege and the doctrine of police powers in fact would be material to be considered when the question about the various levies imposed by the State in respect of alcoholic beverages is considered and so far as the present cases are concerned which, pertain to, only alcoholic liquors which are not for human, consumption that is which are meant for industrial use, the only question will be as to whether the State could justify the respective levies under any of the entries in List II The main theme of the arguments on behalf of the States has been that they have imposed levies because the alcohol which is not for human consumption is a commodity which could be easily converted into alcoholic liquors for human consumption and therefore the levies have been imposed assuming that it is for human consumption or in other words the contention has been that these levies have been imposed in order to prevent the conversion of alcoholic liquors which are not for human consumption to those which are for human consumption. A contention therefore was suggested that these levies could be justified as regulatory fees although it was frankly conceded that

although the revenue earned out of it is substantial and may not be justifiable as fees but have been imposed and it was therefore that the main themes on behalf of the respondents has been based on the doctrine of the privilege of the State to trade in these commodities as that trade is considered to be obnoxious and injurious to public health. "

Hon'ble The Apex Court was pleased to hold that such levy must find a justification as tax under any of the taxing entries in the legislative list.

In view of the legal position that the fee is compensatory in nature and not regulatory as in the case of market fee levied by various Mandi Samitis etc. the element of quid pro quo will still be required. In this connection, I may refer to para 36 of the judgment of the Hon'ble Supreme Court in the case of Bhagwan Das Sood vs. State of Himanchal Pradesh (1997) 1 Supreme Court Cases 227 at page 239 and 240:

"36. Levy of market fee being essentially a fee and not a tax, such imposition of levy of market fee necessarily inheres in it the essence of quid pro quo between the fees levied and services returned to the payer of such fees. What should be extent of services returned to the payers of levy of market fees so as to keep such levy of fees within the bounds of accepted principle of fee involving existence of reasonable quid pro quo has been a vexed question agitated before various High Courts including this Court from time to time. Some of the decisions of this Court on this question have been indicated. The legal position regarding constitutional validity of levy of market fee may be summarised as follows:

(i) Existence of quid pro quo is essential for retaining the character of 'fee' in the matter of levy of market fee.

(ii) Such quid pro quo is not to be reckoned with any mathematical precision with reference to quantum of fees realized by imposition of levy and the percentage of such fees spend for establishing market yards, construction of various infrastructures etc. and providing various amenities as envisage under the Marketing Act and the Rules framed there under for effective implementation of aims and objectives under the Act.

(iii) The service to the rendered to the payers of market fee must be real and not illusory

(iv) *Such service must have an objective basis and have a direct link and not be remote its effect.*

(v) *It is not necessary that imposition of levy is to be effected only on establishment of principal and sub market yards by completing the infrastructures required for such establishment of market and sub market yards. Such construction being time consuming and*

expenditure-oriented. It will be sufficient to justify valid imposition of levy if it is demonstrable that after notifying market area, effective steps not in contemplation but in reality have been taken to identify market and sub-market yards and schemes for establishment of such market or sub- market yards have in fact been put to action and the market fees levies and realized are being ploughed back for the advancement of the purpose for which market fees have been levied and realized.

(vi) In deciding the question of rendering of a real and not illusory' services in discharging the obligation emanating from quid pro quo, to levy of market fee, no strait-jacket formula can be evolved. Fact 5ituation in the matter of establishment of principal and sub-market yards and the practical feasibility of construction of infrastructures, roads, pathways etc. for establishment of such market yards within a time frame and in the light of financial constraints is bound to vary depending on various factors including imponderables. It is therefore, essentially necessary to take a pragmatic approach to the problems associated with establishing market and sub-market yards with necessary infrastructures etc. and accompanying facilities and amenities to be made available to traders and producers coming to such yards, in order to decide whether concrete steps have been translated into action with reasonable sincerity in implementing the schemes envisaged under the Marketing Act and the Rules framed there under. "

In view of Article 265 of the Constitution of India no tax can be levied or collected except by authority of law. Law in this context means an Act of legislature and not an executive order or a rule without express statutory authority. An executive order, executive instruction or custom cannot justify an imposition of tax. Where the legislature has a power to levy a tax, it may with retrospective effect validate an illegal assessment of tax made by the executive without proper legislative sanction but it cannot give retrospective operation to a tax in respect of an area over with it had no territorial jurisdiction during the period of retrospective operation.

In the end, I will repeat the words of Hon'ble The Apex Court while classifying the distinction between the tax an the fee in para 21 of the judgment in the case of **Krishi Upaj Mandi Samiti vs. Orient Paper & Industries Ltd., (1995) 1 Supreme Court Cases 265,** subject to what has been said above.

"21. Thus what emerges from the conspectus of the aforesaid decisions is as follows:

(1) Though levying of fee is only a particular form of the exercise of the taxing power of the State, our Constitution has placed fee under a separate category for purposes of legislation. At the end of each one of the three Legislative Lists, it has given power to the particular legislature to legislate on the imposition of fee in respect of everyone of the items dealt with in the list itself, except fees taken in Court.

(2) The tax is a compulsory extraction of money by public authority for public purposes enforceable by laws and is not payment for services rendered. There is no quid pro" quo between the tax payer and the public authority. It is a part of the common burden and the quantum of imposition upon the tax payer depends generally upon his capacity to pay.

(3) *Fee is a charge for a special service rendered to individuals or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are various kinds of fees and it is not possible to formulate a definition that would be applicable to all cases.*

(4) The element of compulsion or coerciveness is present in all kinds of impositions though in different degrees and it is not totally absent in fees. Hence it cannot be the sole or even a 1hat~rial criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable bylaw against an individual in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees.

(5) The distinction between a tax and fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for a 'special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all imposition but in a fee it is some special benefit which is conferred and accruing which is the reason for imposition of the levy. In the case of a tax, the particular advantage it is exists at all is an incidental result of State action. A fee is a sort of return or consideration for services rendered and hence it is primarily necessary that the levy of fee should on the face of the legislative provision be correlated to the expenses incurred by Government in rendering the services. As indicated in Article 110 (2) of the Constitution ordinarily there are two classes of cases where

Government imposes fees upon persons. The first is of grant of permission or and the second for services rendered. In the first class of cases, the cost incurred by the Government for granting of permission or privilege may be very small and the amount of imposition levied is based not necessarily upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, the tax element is predominant. It the money paid by privilege-holders goes entirely for the expenses of matters of general public utility, the fee cannot but be regarded as a tax. In the other class of cases, the government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered.

(6) There is really no generic difference between tax and fee and the taxing power of the State may manifest itself in three different forms, viz. special assessments, fees and taxes. Whether a case is tax or fee, would depend upon the facts of each cases. If in the guise of fee, the legislature imposes a tax it is for the Court on a scrutiny of the scheme of the levy, to determine its real character. In determining whether the levy is a fee, the true test must be whether it primary and essential purpose is to render specific services to a specific area or classes. It is of no consequence that the State may ultimately and indirectly be benefited by it. The amount of the levy must depend upon the extent of the services sought to be rendered and if they are proportionate, it would be unreasonable to say that since the impost is high it must be a tax. Nor can be method prescribed by the legislature for recovering the levy by itself alter its character. The method is a matter of convenience and though relevant, has to be tests in the light of other relevant circumstances.

(7) It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further; cannot be remote. The test of quid pro quo is not to be satisfied with close or proximate relationship in all kinds if fees, a good and substantial portion of the fee must, however; be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable correlation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering

services to those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of qutd pro quo in the strict sense is not always a sine quo non-for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general co- relationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

(8) Absence of uniformity is not a criterion on which alone it can be said that the levy is of the nature of a tax. The legislature has power to enact appropriate retrospective legislation declaring levies as fees by denuding them of -the characteristics of tax.

(9) *It is not necessary that the amount of fees collected by the Government should be kept separately. In view of the provisions of Article 266, all amounts received by the Governments have to be credited to the Consolidated Funds and to the public accounts of the respective Governments* "

****