

The Rising Risk of Flattened Legislative Drafting & Retrospective Tax Amendments

A Jhal-Muri Perspective

**PERFECT MIX.
PERFECT BALANCE.**



Distinct ingredients.
Balanced strengths.
One delightful experience.

VS

**FLATTENED MIX.
LOST MAGIC.**



 No contrast.  No balance.  No character.

*Overly uniform.
Meaning lost.
The soul of the dish gone.*

THE LEGISLATIVE PARALLEL



THEN:
Balanced Framework
(Main provision + Provisos
+ Explanations)
Clarity. Fairness. Intent preserved.



NOW:
Flattened & Assertive
(Sections & Subsections)
Structure lost. Balance at risk.

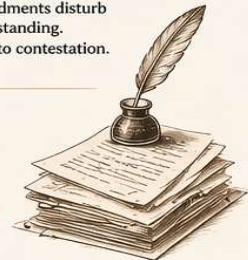


THE RISING RISK:
Interpretive signals diluted.
Retrospective amendments disturb
settled understanding.
Certainty gives way to contestation.



“ Great law, like great jhal-muri, is not about eliminating strong flavours, but about **balancing them with purpose.** ”

Remove the balance, and the identity is lost.





The Rising Risk of Flattened Legislative Drafting & Retrospective Tax Amendments: A ‘Jhal-Muri’ Perspective

Setting the Context

There are occasions in legal analysis where a simple analogy captures a complex institutional shift more effectively than dense doctrinal exposition. The preparation of a seemingly modest paper-cone of *‘jhal-muri’* offers a far more telling parallel than it first appears. What looks like an ordinary street-side snack is, in reality, a finely balanced composition of puffed rice, mustard oil, roasted peanuts, chopped onions, green chillies, boiled potatoes, sev, spices, tamarind chutney, coriander, lemon, and a hint of masala, each ingredient bringing its own texture, sharpness, and character. The balance is deliberate and instinctive. The tang must not overpower the crunch, the spice must not drown the subtle sweetness, and the mustard oil must bind without dominating. The art lies not in mere mixing, but in preserving the identity of each element within the blend. If everything is over-blended or reduced to a uniform paste, the *jhal-muri* may still contain all its ingredients, but its very essence is lost. The taste flattens, the contrast disappears, and what remains is a composition stripped of its defining character.

For decades, Indian fiscal legislation, particularly under the Income-tax Act, 1961, reflected a similar craft of balance and proportion. The main section/subsection, the proviso, and the Explanation were not incidental drafting devices, but carefully calibrated elements of a structured legislative recipe. The main provision laid down the governing rule, much like the base of puffed rice. The proviso introduced nuance by qualifying or limiting that rule, akin to the measured addition of spice or tang. The Explanation clarified scope and intent, resolving ambiguities much like the subtle blend of chutney or masala that brings coherence to the mix. Each element had a defined role and a distinct presence, and together they produced a framework that was both intelligible and functionally precise. The strength of this architecture lay in preserving the identity of each component within the whole, much like a well-prepared *jhal-muri* where the ingredients are mixed, but never blurred.

The Income-tax Act, 2025 marks a decisive departure from this carefully balanced legislative craft. By dispensing with provisos and Explanations as distinct drafting devices and absorbing all amendments into the main provision or newly inserted subsections, the statute adopts a flattened and uniform structure. At first glance, this may appear cleaner and more streamlined. However, in doing so, it strips away the very markers that once guided interpretation and conveyed legislative intent. The effect is comparable to over-mixing a carefully assembled *jhal-muri*, where the puffed rice, spices, chutney, and condiments are no longer distinguishable in form or function. The ingredients may still be present, but their individual roles are blurred, and the nuanced balance that once defined the composition is no longer perceptible.

Structural Form and Interpretive Discipline

Under the earlier legislative framework, the form of an amendment was not neutral. A proviso signalled that what followed was an exception to the rule and had to be read in conjunction



with it. An Explanation, while not determinative, indicated that Parliament was stepping in to clarify or elucidate the provision.

Over time, courts developed a disciplined approach around these devices. The presence of an Explanation did not automatically confer retrospective effect. Courts examined whether the amendment genuinely clarified an ambiguity or introduced a substantive change. This interpretive discipline ensured that retrospective operation was not lightly inferred and that legislative assertions were tested against constitutional principles of fairness and certainty.

This entire jurisprudential framework rested on the existence of these drafting devices. They were not merely textual conveniences; they were interpretive anchors. In the language of the jhal-muri analogy, they ensured that each ingredient in the legislative mix could be identified, assessed, and understood before being blended into the final interpretation.

The Flattened Structure under the Income-tax Act, 2025

The new Act replaces this layered approach with a unified structure. Amendments are now effected either by rewriting the main provision or by inserting additional subsections. The statute appears streamlined, with fewer visible layers.

However, this structural simplification comes with a significant cost. The distinction between rule, exception, and clarification is no longer embedded in the text. A newly inserted subsection does not, by its form, indicate whether it is intended to clarify existing law or to introduce a new principle. It is presented as part of the operative provision itself.

This shift increases interpretive uncertainty and places a greater burden on courts to reconstruct legislative intent without the benefit of structural cues. It resembles a situation where the familiar balance of jhal-muri is replaced by a uniform blend, leaving the consumer to guess what went into it rather than appreciate each element.

Finance Act, 2026: A Live Template of the Future

The implications of this drafting shift are no longer speculative. The retrospective amendments introduced through the Finance Act, 2026 provide a concrete and contemporary illustration of how future budgetary interventions are likely to unfold.

These amendments do not rely on the restrained and time-tested devices of provisos or Explanations. Instead, they proceed through the insertion of altogether new sections and multiple subsections, often accompanied by expansive non obstante clauses and sweeping deeming fictions. The language employed is assertive, frequently declaring that the law “shall always be deemed” to have operated in a particular manner from a past date.

More importantly, these amendments have been introduced with retrospective effect, in several cases directly addressing issues that were under active judicial consideration or had been decided by courts in favour of taxpayers.



This is not merely a change in drafting style. It represents a shift in legislative approach. It is the equivalent of replacing a carefully assembled jhal-muri with a pre-mixed, uniform blend where the maker retains full control over the composition, even after it has been served.

From Legislative Response to Legislative Override

The traditional legislative response to judicial interpretation operated within a structured discipline. Where a court identified an ambiguity or interpreted a provision in a particular manner, Parliament could step in through an Explanation or proviso to clarify its intent. Such interventions were then subjected to judicial scrutiny to determine whether they were genuinely clarificatory or substantively transformative.

The recent amendments, however, reflect a more assertive posture. Instead of clarifying the law through established devices of proviso and Explanation, the Legislature has inserted standalone provisions with retrospective effect, effectively recharacterising the statutory position as it existed in the past.

In practical terms, this creates the impression that where a particular legal issue does not find favour with the Revenue in courts, the legislative response may be to amend the law from a back date so as to neutralise the judicial outcome.

The Finance Act, 2026 offers multiple illustrations of this approach. Jurisdictional safeguards that were introduced as part of structural reforms, including faceless reassessment mechanisms, requirements relating to document identification numbers, and procedural checks involving approvals and limitation, have been revisited through retrospective amendments. These amendments seek to dilute or reframe such safeguards, often by characterising them as procedural rather than jurisdictional, and by validating past actions that were earlier held to be non-compliant.

The pattern that emerges is difficult to ignore. The amendments do not merely operate prospectively to refine the law. They travel back in time and alter the legal character of past actions. It is as if, after the jhal-muri has been consumed and appreciated in a certain form, the recipe is retrospectively altered to suggest that it always contained something else.

For a more detailed doctrinal and Constitutional Validity analysis of these retrospective amendments, reference may be made to the author's earlier published articles with Taxsutra & TaxAaram titled "*Retrospective Rewriting of Legislative Intent*" and "*Borrowed Words, Broken Constitutional Doctrine*" and "*From Jurisdictional Safeguards to Rubber Stamp Approvals*".

The Doctrine of Removal of Defect: A Critical Boundary

The constitutional validity of retrospective legislation is anchored in the doctrine of removal of defect. Parliament is empowered to enact laws with retrospective effect, but this power is not unbounded. A retrospective amendment must remove the basis on which a judicial decision is founded. It must cure the identified defect.



The distinction between curing a defect and overriding a judicial decision is fundamental. Where a statute suffers from a lacuna, ambiguity, or lack of authority, Parliament may address that deficiency retrospectively. However, where the statute was clear and the court has interpreted it accordingly, a subsequent amendment declaring that the law always meant something different raises a more serious constitutional concern.

The recent pattern of inserting entirely new provisions with retrospective effect, particularly in response to adverse judicial outcomes, brings this distinction into sharp focus. The amendment, in such cases, does not merely remove a defect. It reconstructs the statutory narrative.

The Role of Provisos and Explanations as Structural Safeguards

The earlier reliance on provisos and Explanations, supported by decades of judicial interpretation, acted as a natural restraint on retrospective overreach. Courts were accustomed to examining the scope and purpose of such provisions within a settled framework. The form of the amendment itself invited scrutiny.

The elimination of these devices alters that equilibrium. A subsection inserted into the body of the statute does not carry the same interpretive history. When coupled with retrospective deeming language, it becomes a more potent legislative tool, less constrained by established interpretive conventions.

In this sense, the shift in drafting methodology has implications that extend beyond textual presentation. It affects the balance between legislative flexibility and judicial oversight. The carefully layered jhal-muri is replaced with a single blend where the boundaries between ingredients are no longer visible, and therefore harder to test.

Implications for Certainty and Litigation

Tax law operates within a framework where predictability is essential. Taxpayers organise their affairs based on the law as it exists and as interpreted by courts. Retrospective amendments that alter settled positions have a direct impact on this predictability.

The increasing resort to retrospective insertions of new sections and subsections, particularly in response to judicial developments, is likely to intensify litigation. The nature of disputes may also shift. Instead of focusing solely on statutory interpretation, challenges may increasingly centre on the constitutional validity of such amendments.

The current landscape already reflects this trend. Writ petitions have been instituted across jurisdictions challenging retrospective amendments introduced through the Finance Act, 2026. The issues raised are not confined to the scope of individual provisions. They extend to broader questions regarding legislative power, constitutional limits, and the doctrine of fairness.

The Risk of Structural Accumulation

There is also a longer-term structural concern. As future amendments continue to be introduced through additional subsections and standalone provisions, the statute may gradually accumulate layers of insertions without clear demarcation of their temporal origin.



Under the earlier framework, provisos and Explanations often carried identifiable links to specific amendments and timeframes. Their placement provided contextual clarity. In the absence of such devices, tracking the evolution of provisions may become increasingly complex, potentially leading to a different form of legislative unwieldiness.

What initially appears as a neatly arranged preparation may, over time, resemble an overfilled mixture where successive additions make it difficult to identify what was added when.

Reassessing the Notion of Simplification

The objective of simplifying tax legislation is both necessary and desirable. However, simplification must be understood in substantive terms, not merely as a reduction in visible textual layers.

The earlier drafting approach, though sometimes elaborate, provided a structured method for introducing changes without disturbing the coherence of the statute. It allowed Parliament to qualify, clarify, and refine provisions in a manner that was both transparent and interpretable.

The new approach achieves visual simplicity but reduces internal differentiation. The clarity that was once embedded in the structure of the provision must now be derived through interpretation, often in contested settings.

Concluding Reflections

The transition in legislative drafting under the Income-tax Act, 2025 represents more than a stylistic change. It reflects a shift in how statutory evolution is conceived and executed.

The retrospective amendments introduced through the Finance Act, 2026 serve as a real and immediate illustration of the direction this evolution may take. They demonstrate a move away from restrained legislative devices of provisos and Explanations towards more assertive interventions, involving the insertion of new sections and subsections with retrospective effect, often in response to the trajectory of litigation and the outcome of disputes before courts.

If this approach becomes the norm, the relationship between legislative power and judicial interpretation may undergo significant recalibration. The doctrine of removal of defect will assume central importance, and its boundaries will likely be tested with increasing frequency.

The earlier framework, with its reliance on provisos and Explanations, embodied a balance between flexibility and discipline. It allowed the law to evolve while preserving interpretive clarity, much like a well-balanced jhal-muri where each element contributes without overpowering the other.

The present framework, while streamlined, carries the risk of enabling more expansive retrospective assertions. The challenge ahead lies in ensuring that the pursuit of simplification does not inadvertently dilute the structural safeguards that have, for decades, underpinned the stability and predictability of tax law.



In the final analysis, the transition in legislative drafting under the Income-tax Act, 2025 must be viewed through the lens of balance rather than mere simplification. The temptation to present the statute in a uniform, streamlined form, where all elements are absorbed into assertive sections and subsections, may appear efficient. However, tax law, like a well-crafted jhal-muri, derives its effectiveness not from uniformity, but from the calibrated interplay of its components. In a well-prepared jhal-muri, the saltiness, tanginess, spice, and texture do not compete; they correct and balance one another to create a composition that sits well on the palate. Remove that diversity, and the result is either bland or disproportionately harsh. Similarly, the traditional use of provisos and Explanations in Tax laws, ensured that the rigour of the main provision was balanced by qualification and clarification, preserving interpretive discipline. Their substitution with expansive, standalone provisions, often introduced with retrospective effect, risks disturbing this equilibrium. What emerges is not simplification, but a structure that is more susceptible to overreach, reinterpretation, and contestation. The recent legislative trend only underscores this concern. The challenge ahead lies in ensuring that the law continues to reflect balance in design and restraint in application.

Because in both tax law and jhal-muri, it is the harmony of distinct elements, not their reduction into sameness, that sustains both coherence, credibility and taste.

[This article, authored by our Founder- Shri Mayank Mohanka, FCA, has also been published in Taxutra].
