

## **TAXATION AS AN INSTRUMENT OF REFORMS**

**(By J.M. Kalia, Advocate)\***

### **Introduction :**

The paramount consideration and the goal of the constitution of India, as reflected in its preamble also, is to achieve a new social order i.e. justice for all. Justice viz. social and economic. It is here, the state has to intervene through 'good governance' implementing its policy to achieve justice for all. Justice as rightly said, is the first virtue of social institution. As aptly remarked by the Hon'ble Supreme Court in *Samtha Vs. State of AP & Ors. : 1997(8) SCC 191* (para 76) *"Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity. Law as a social engineering is to create just social order removing inequalities in social and economic life, socio-economic disabilities with which poor people are languishing by providing positive opportunities and facilities to individuals and groups of people"*.

To achieve this ultimate goal of constitution, the parliament authorized the government to raise funds through taxation. Thus an effective taxation system, perhaps, is the only means to achieve social and economic justice i.e. by advancing economic reforms. The expression 'Re-form' is made of two words. 'Re' means fresh / new and 'form' means formulation. Reform therefore means a fresh or new formulation of an existing policy which either became obsolete or found defective / ineffective in fulfilling its purpose.

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\* This article was read out by the author at the All India Seminar on 08-04-2017 at Vigyan Bhawan held by confederation of Indian Bar (CIB) on the topic : "Economic Reforms with Reference to Electoral Issues". The author, apart from practicing law, is the advisor to the Revenue Department and also Information Technology, Govt. of NCT of Delhi. He has also the credit of drafting few legislations including the Delhi (Right to Time Bound Delivery of Services) Act, The Delhi GEO Spatial Data Infrastructure (Management, Control, Administration, Security and Safety), Act, 2011, Court Fee (Delhi Amendment) Act, litigation policy for the Department of Revenue, Govt. of NCT of Delhi, Delhi (Compulsory Registration of Marriage) Order, 2014. The author is Ex-Law Faculty member Delhi University.

**Fundamentals of taxing policy :**

Tax is an extraction of money by the state from its subject with corresponding promise to utilize the fund for the common general benefit. Public purpose therefore is *inhere* in every system governing tax administration. The state as a matter of fact is a trustee of the fund raised through taxation from the public and is bound to utilize it in a most economic manner that too only in accordance with the law and not as per its own whims and fancies. The state government is bound to utilize each unit of the tax payers fund only as authorized by law. As the government is trustee, any deviation from its policy must attract the government acting through its officers as guilty of misfeasance, breach of trust and misappropriation of government fund.

**Tax as an instrument of social and economic justice :**

Ordinarily the purpose of tax is to generate revenue for the government so that it can spent the same for the common welfare of its public / society i.e. for laying of roads for better and efficient transportation, school / collages for education, hospital to provide health services and so on.

However most important object of the tax is the redistribution of resources by transferring the wealth / resources from the rich to the poor with a view to fill the gap among them. The same is achieved by imposing tax on luxury items payable by which and funds so collected is distributed/utilized in the welfare scheme for the upliftment of poor/poorest of poor.

The tax is also imposed on luxury goods on higher rate, thus putting less burden on the commodities used by a common man. These luxury items are made costlier which are affordable by rich people, while the commodities meant for general/common consumption are either exempted from taxation or nominally taxed so as to maintain affordability by the common man.

Similarly, following the principles of balanced taxing policy, certain product not considered good for the general public health are deliberately taxed at higher rate to discourage its consumption for example liquor, tobacco or so.

Another purpose of an ideal taxation policy is accurate balancing between the direct taxes and indirect taxes in as much as the direct tax, comparatively, could be easily and effectively administered with less amount of cost of collection, comparing to indirect taxes. The indirect tax involves complexity keeping in view its peculiar nature and characteristic burdening the consumer as mostly it involves the element of tax upon tax adding up the cost of consumable item manifold while the cost of collection of the indirect taxes is higher. Indirect taxes directly influence the rate of inflation also.

Hence to achieve social and economic justice which is the ultimate object of every democratic form of governance, taxing policy plays an important and significant role.

### **Constitutional mandate governing financial matters pertaining to Union of India :**

- i) As per article 112 of the constitution the president shall in respect of every financial year cause to be laid before both the house of parliament a statement of the estimated receipts and expenditures of the Govt. of India for that year referred to as 'Annual Financial Statement'. The estimate of expenditure shall embody the sum required to meet expenditure described by the constitution as expenditure charged directly upon the consolidate fund of India and the sums required to meet other expenditures proposed to be made from the consolidated funds of India. The emoluments and allowances of the president and expenditures of his office, the salaries and allowances of chairman and deputy chairman of the council of state and the speaker and deputy speaker of the house of people, debt charges of the Govt. of India and other expenditures relating to loan raised etc., the salary and allowances / pension payable to the judges of Supreme Court, the salaries,

allowance and pension payable to comptroller and auditor general of India, any sum required to satisfy any judgment decree or award of any court, or arbitral tribunal, or any other expenditure declared by the constitution or by parliament by law to be so charged, are directly chargeable to consolidated funds of India.

- ii) In accordance with article 113, estimates relating to expenditure charged directly upon the consolidate fund of India shall not be submitted to the vote of parliament though the parliament is entitled to discuss in either house those estimates. However, the estimates related to other expenditures shall be submitted in the form of demands for grants to the house of people and the house of people shall have power to assent, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein. No demand for a grant can be made except on the recommendation of the president.
- iii) Article 114 of the Constitution mandates to introduce a bill to provide for the appropriation out of the consolidate fund of India of all moneys required to meet (a) the grants so made by the house of people, and (b) the expenditure charged on the consolidated fund of India but not exceeding in any case the amount shown in the statement previously laid before the parliament. No amendment is allowed to any such bill which will have the effect of varying the amount or altering the destination of any grants made or of varying the amount of any expenditure charged on the consolidate fund of India.

Subject to the provision of article 115 and 116 (which deals with supplementary additional or excess grant and vote on account thereof to make grant in advance, for meeting any unexpected demands, to make exceptional demand etc.) no money can be withdrawn from the consolidated fund of India except under appropriation made by law passed in accordance with the provision of article 114.

- iv) No tax can be levied or collected except by the authority of law (article 265).
- v) Subject to the provision of article 267 (contingency fund) and provisions with respect to assignment of the whole or part of the net proceeds of certain taxes and duties to states, all revenue received by the Govt. of India all loans raised by such government by the issue of treasury bills, loans or ways and means and all moneys received by the Govt. of India in repayment of loan shall form one consolidated fund known as "The Consolidated Fund of India". Similarly, all revenues received by the government of a state, all loan raised by that government by the issue of treasury bills, loans and ways and advances and all moneys received by the state government in repayment of loan shall form one consolidated funds known as "consolidated fund of the state".

All other public moneys received by or on behalf of Govt. of India or Govt. of State shall be credited to the public account of India or the public account of the state.

No money out of the consolidated fund of India or consolidated fund of state shall be appropriated except in accordance with the law and for the purposes and in the manner provided in the constitution (article 266).

- vi) Calculation of net proceeds : Net proceeds means in relation to any tax or duty the proceeds thereof reduced by the cost of collection and for the purpose of those relevant provisions, the net proceeds of any tax or duty, or any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the comptroller and auditor general of India, whose certificate shall be final (article 279).

**Tax reforms :**

Performance and accountability of the functioning of any government goes together as they supplement to each other. In fact they are two sides of one coin. Control over the public money of which the government is trustee is the hallmark of democracy. Tax policy is employed as an instrument to correct severe budgetary pressure. The budgetary deficit of India at present is approximate 14% of its GDP which is quite high. Since 1991 the taxing policies in India has undergone significant changes with the advent of liberal economic policies globally and commitment to the WTO, with emphasis on reduction in the rate of taxation and widening the tax base following the principle of equity, efficiency and simplicity. Of past India has attained economic growth attracting foreign investment due to the economic reforms introduced in our country. The growth rate of GDP has increased from mere 3.7 (between 1950-1980) 5.9 (1980-1990) and 6.2 (1990-2000), thus becoming fastest growing economies in the world, now competing with china with a growth rate of around 7%. Notwithstanding this improvement, the per-capita income remains very low in comparison with other Asian countries particularly china which had the same level of per-capita income as India in 1970.

**Constitutional and statutory safeguards regarding appropriate utilization of government fund / tax payers money :**

In order to ensure that the tax payers money is utilized for public purposes and common good, certain safeguards are provided in the constitution as well as through the law made by the parliament, such as :-

- i) Article 148 – Appointment of Comptroller and Auditor General of India.
- ii) Article 149 – The Comptroller and Auditor General of India shall perform duties and exercise such powers in relation to the accounts of the Union and of the States and of any other Authority or Body as may be prescribed by or under any law made by the parliament.

- iii) Article 150 – The accounts of the Union and the States shall be kept in such form as the president may on the advice of Comptroller and Auditor General of India, prescribe.
- iv) Article 151 – The reports of the Comptroller and Auditor General of India relating to the accounts of the union shall be submitted to the president who shall cause them to be laid before each house of the parliament. Similarly the reports of the CAG relating to the accounts of a State shall be submitted to the Governor of the State who shall cause the same to be laid before the legislatures of the state.
- v) The Comptroller and Auditor General's (Duties, Power and Conditions of Service) Act, 1971 – By this Act of parliament the CAG appointed under the Act has been vested with the responsibilities to compile accounts of Union and States from the initial and subsidiaries accounts rendered to the audit. Provision was made vide proviso to section 10 of the above said Act in the amending Act of 1976, relieving the CAG from the responsibility of compilation of accounts of the union of India on the recommendation of the president and relieving the CAG from maintaining / compiling accounts of the State, which provision was partly acted upon hence, the CAG is no more responsible for the maintenance of account of Union of India and its responsibility confines only to carry the audit of the accounts pertaining to the Union of India.

Section 13 of the above said Act deals with general provision relating to audit of all expenditures from the consolidated fund of India and of each State / Union Territory and to ascertain whether the money shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it. Identical powers have been bestowed to audit all transactions of the union and the state relating to contingency funds and public account and to audit all trading, manufacturing, profit and loss account and balance sheet of any department of union or the state.

It also has the power to audit the receipts and expenditures of bodies or authorities substantially financed from union or state revenues (section 14).

Section 16 of the Act empowers CAG to audit all receipts payable into consolidated fund of India and of each state / union territory having legislative assembly and to satisfy that the rules and procedure on that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and for this purpose to carry such examination of the accounts as think fit and report thereon.

It also has the authority to audit accounts of anybody or authority, powers of which has not been entrusted by law, if requested so to do by the president or the governor of the state or the administrator of a union territory having a legislative assembly, to audit the accounts of such body or authority on such terms and condition as may be agreed between him and the concerned government and shall have for the purposes of such audit, right of access to the books and accounts of that body and authority (section 20).

- vi) Regulations on Audit and Accounts 2007 – In pursuance of section 23 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, the CAG has made detailed and exhaustive regulations pertaining to the scope and extent of audit, guiding principles of auditing standards, finance audit, compliance audit, performance audit, audit of government companies / authorities / establishments other than government, audit of panchayatiraj institutions and urban local bodies, audit notes and reports, general principles of accounting etc.



- vii) General Financial Rules, 2005 – To be followed in common by all departments under the central government respecting receipt, custody and disbursement of government moneys. These rules are supplementary to the Treasury Rules, Central Government Account (Receipt and Payment) Rules and have to be applied in conjunction with them. The rule prescribes the general system of financial management respecting the moneys received by or on behalf of government (rule 7 to 20) and the general principles relating to expenditures and payment of money (rule 21 to 32) report of losses if any (33 to 38) etc.

As per rule 21 of GFR, every officer incurring or authorizing expenditure from public money should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulation are observed by his own office and by subordinate disbursing officers. The guiding principles on which emphasis generally laid are

- (a) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- (b) The expenditure should not be prima facie more than the occasion.
- (c) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.

- (d) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless – a claim for the amount could be enforced in a court of law, or the expenditure is in pursuance of a recognized policy or custom.
  - (e) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowance are not on the whole a source of profit to the recipients.
- viii) CCS (CCA) Rules, Pension Rules 1972 etc. – The Central Civil Services (Conduct Rules) and Central Civil Services (Classification, Control and Appeal) Rules relates to employee's code of conduct and discipline, out of which the CCS (CCA) rules deals with disciplinary cases. Vide rule 11, a government servant may be imposed penalty, for good and sufficient reasons, on account of misconduct. One of the penalties which could be imposed vide rule 11(iii) is recovery from his pay the whole or part of any pecuniary loss caused by him to the government by negligence or breach of orders, as minor penalty. As part of major penalty, a government officer may even be directed to be removed or dismissed from services.

Under rule 9 of pension rules, 1972, the president reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for specified period, and of ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the government, if in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of service.

**Critical appraisal of the mandate governing checks and balances to maintain financial propriety and discipline :**

1. A cursory examination of the powers of Comptroller and Auditor General of India as culled out from the constitution and the Act of 1971 clearly suggest that (a) the duty of CAG as per the mandate of the constitutional safeguards and the Act of the parliament arises only after the expenditure has been incurred. Hence, there is no control before the pilferage / loss of ex-chequer's money in the form of tax / revenues entrusted to the government. (b) the appropriation accounts of the government are audited only at a later stage as decided / deemed fit by the CAG the scope and extent of which is determined by the CAG under section 23 of the Act. (c) the CAG is authorized to dispense with any part of detailed audit of any account or class of transactions and to apply limited check in relation to such accounts or transactions as he may determine, if the circumstances so warrant, a wide and uncontrolled arbitrary discretion likely to be misused, (d) his report in relation to account / audit are submitted to the president of India who shall cause them to be laid before each house of parliament or to the governor of the state who shall cause them to be laid before the legislature of the state as the case may be. Such reports are subject matter of discussion and deliberation, affording hardly any effective recovery in the event of loss of ex-chequer on account of not maintaining financial propriety and discipline as laid down under the law. (e) Despite provisions for recovery of loss of government money caused by a government officer, there are hardly cases by which any such recovery was ever effected either during the tenure of the officer or after retirement / superannuation. (f) there is no effective system in place empowering or authorizing concurrent audit of any receipt / expenditure / scheme of any government involving financial burden, more particularly when the tenure of a government is only five years and it is the discretion of the CAG to decide as to when the audit shall commence / carried out keeping in view the limited resources of its office.

**Over view of significant tax reforms i.e. the integrated goods and services**

**tax :** With the 122<sup>nd</sup> amendment of the constitution, the most progressive tax reform is on its way in the form of the goods and services tax. With the role out of GST, all indirect taxes ranging from excise duty, custom duty, service tax, value added tax / sale tax, entertainment tax, octroi, entry tax, purchase tax, luxury tax and different surcharges, would be subsumed into a single tax for the consumer. The centre would levy and collect central goods and services tax and states would levy and collect the states goods and services tax on all transactions within a state. The input tax credit of CGST would be available for discharging the CGST liability on the output at each stage. Similarly the credit of SGST paid on inputs would be allowed for paying the SGST on output. This will avoid tax on tax. Services and goods would be subjected to taxes only on value addition at each stage, thus bringing down the overall tax burden on the consumers. As the GST involves taxation at the destination level it would be gain for the consuming state and loss for the manufacturing state. However, the GST bill provides for compensating the losses to the states for 5 years.

**Critical appraisal of the GST :** Petroleum products and alcoholic beverages have been left out of the GST. Of the net central exercise collection of Rs.91491 crore during April-June of the current fiscal, as much as Rs.60796.25 crore came from petroleum products with the remaining Rs.30695 crore coming from other products. This means that the impact of the introduction of GST in so far as the excise duties are concerned, will be insignificant keeping in view the ratio. Additionally, the cess on petroleum product which is Rs.6 on diesel and Rs.8 on petrol per liter will continue to burden the consumer as part of indirect taxes. As per estimate of the period 2014 the consumption of diesel in India was 8 crore kiloliter while the consumption of petrol was 2.5 crore kiloliter. The excise duty on petrol is Rs.9.73 per liter and Rs.13.83 on diesel while the vat is 25% on petrol and 16.6% on diesel. It is the petroleum product which contribute majorly to the inflation as it has direct cascading effect particularly increasing the cost of transportation on every consumable item. Additionally the toll rates collected through National Highway Authority of India throughout the country are out of the GST purview which also significantly contribute to the rates of the consumable item and to inflation.

**Conclusion :**

The past experience of the functioning of the government<sup>5</sup> exhibit that by enlarge it failed to maintain and follow the financial propriety leading to wastage of resources at the one hand and intentional and deliberate misuse of the public fund on the other hand. Various scams came to light stood testimony to this fact. The benefit of the taxing policy is either not reaching to the targeted group of the society or major part of it is lost on the way in the form of heavy, wasteful/avoidable expenditures by the government. If the avoidable leakage to the treasury is regulated and controlled by maintaining strict financial propriety including fixing responsibility and recovery from the erring officials the ultimate object of justice could be achieved easily without burdening much on the common man.

The reforms through GST regime though welcoming step, keeping out of its purview the petroleum products and also the liquor product needs review. Additionally, the better and effective tax administration demands well and in time concurrent audit to rule out possible pilferage. In the event any loss or wastage of the government fund came to the notice, personal responsibility of the erring officials needs to be fixed and recovery effected.

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