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Collection and Recovery of Taxes in India: A Lacunae yet to be Fulfilled

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Abstract

Tax can be defined as a mandatory contribution to the revenue levied and enforced by a government entity from the income or business profit of the individual or the organization. This mandatory contribution is involuntary in nature. Failure or evasion of paying taxes are punishable by law. It is a proverb that a fine is a tax for doing something wrong whereas a tax is a fine for doing something good for the civilized society. Every nation has own sets of law for governing taxes, has its own procedure for collection and recovery of taxes. Article 265 of the Constitution of India says, "No tax shall be levied or collected except by the authority of law". Income Tax Act, 1961 as amended by Finance Act, time to time governs direct taxes and the Central Goods and Services Tax Act, 2017 governs indirect taxes in India. India has dedicated revenue service officers for collecting and recovering taxes. This article aims at finding the lacunae and suggest some remedy for better administration of taxes and performance of economy.

Keywords: Revenue, taxes, Article 265, Income Tax Act, 1961, remedy

INTRODUCTION

"Taxation is the price which civilized communities pay for the opportunity of remaining civilized."

—*Albert Bushnell Hart [1]*

Taxation in Vedic Period and Mauryan Period

"It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand-fold."

—*Kalidas in Raghuvanshi [2]*

From the first day of civilization taxation is one of the main elements for administration of the subjects. We can find the mention of taxation in Manu smriti, Ramayana, Mahabharat and other several dharma sastras. In Manu smriti it has been mentioned that King should levy reasonable taxes which should not become burden to the public. That is why King has the holy duty to protect all its subject at any cost. In Mauryan period Kautilya's 'Arthasastra' was the main source for administering of the taxation. Major portion of 'Arthasastra' is devoted to the financial administration of states.

Taxation in Sultanate and Mughal Period

In sultanate or Mughal period taxes collected from land (be it from crops or size of the lands) was the major source of revenue [3]. There was Jajia taxes imposed on non-Muslim [4]. There

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were taxes on import. There was Ghari taxes on houses. In Mughal period Local zamindars or landlords collected taxes from the people and sent a quota to the Mughal Emperor of Delhi [5]. They enjoyed a great power and influence. But the bitter fact was many times those revenues never reached the treasury of the Emperor. Akbar, the great Emperor that is why felt it was the need of the time to change the system. Akbar monetized the tax system and required the peasants to sell their grain in market towns and ports for cash where oversight of taxation could be more controlled [6]. Having been bypassed in the taxation process, the role of the zamindars as tax-collecting landlords decreased; State profits poured directly into the government's purse [7].

Taxation in British India

Lord Cornwallis started zamindari system in 1793. Those zamindars were recognized as the owner of the land and they were authorized to collect Khajnas on behalf of the East India Company, the de facto ruler of the then India. The ownership of the land was decided by the highest bidding system, who can extort and collect more taxes will become zamindars. In 1820 ryotwari system was introduced by Sir Thomas Munro in some part of India by which the land revenue can be directly paid to the State by peasants. In British period, first consolidated legislation on taxation can be traced to the Indian Income Tax Act, 1860. It was enforced to meet the losses incurred in Sepoy Mutiny, 1857 [8]. Due to some financial difficulties British Indian Government forced to introduce Indian Income Tax Act, 1886. The main reforms to the Indian Income Tax Act of 1886 were due to the administrative and financial difficulties linked to the First World War and were implemented in 1918 and in 1922 [9]. The Indian Income Tax Act of 1918 repealed the Indian Income Tax Act of 1886 [10]. Income tax filing was made compulsory. Income Tax Act 1922 was one of those first consolidated legislation on taxation in India which was continued post-independence. British government also heavily dependent on land revenue and those revenue was usually collected by Collectors who were high class civil service officers.

Independent India and Its Taxation

India after its independence felt there is a need of comprehensive legislation which can comply with the provision of the Constitution of India. That is why after independence Central Government has abolished inheritance tax, gift tax. Wealth Tax Act, 1957 was repealed in 2015 and replaced with an additional surcharge of 2% on super rich income group. Income Tax Act, 1961 is an Act which was introduced to consolidate and amend the law relating to income tax and super taxes.

Previously, there was various sales tax, and this was governed by the Central Sales Tax Act, 1956. This was '*An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of imports into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject*' [11]. Value added tax was introduced to the Indian taxation system by replacing sales tax in the year 2005. Every State had its own sets of VAT Act and regulations thus making the tax administration very cumbersome. The purpose of enacting Central Goods and Services Tax Act, 2017 was to meet the need of the time and to clear the difference and confusion. This Act aimed at centralising the whole taxation system and tax legislation. It is an *'Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto'* [12].

COLLECTION AND RECOVERY OF TAXES IN INDIA

Types of Taxes

In Indian taxation system there are mainly two types of taxes people had to pay to the appropriate government. They are direct taxes and indirect taxes. The power of levying any taxes has been conferred upon Central Government and State Government by the Constitution of India. Central Government only can legislate or levy taxes on those listed on Union list, State government only can legislate or levy taxes on those listed on State list. Local government also can levy taxes as per the State list as it is notified by the appropriate government time to time. Property tax can be regarded as example in this regard.

Income tax, a tax imposed on individual's income, is a direct tax collected by Central Government. *Goods and service taxes*, a tax collected on supply of goods and services is an indirect tax collected by both Central and respective State Governments in India. Central Government usually collect taxes from custom duty, excise duty, corporation taxes, estate duty etc. Land revenue, taxes on agricultural income, stamp duty, electricity duty, tolls, capitation taxes are one of the major sources of revenue of the State Government. The most important fact is these lists are getting bigger and broader day by day.

Collection and Recovery of Taxes

Chapter XVII, Section 220 to 232 of the Income Tax Act, 1961 deals with the collection and recovery of taxes in India. While reading this, we may have a question what about indirect taxes? In case of indirect taxes, we had to pay the taxes while buying or availing any goods or services. This procedure is not that complex. Though dishonest traders many times evade indirect taxes by not issuing cash memo or sale receipt to its customer. Some time for some discount or for lack of awareness customers either do not take this cash memo or do not ask for it. But we have to remember that a proper cash memo can protect buyer from any kind of fraud or misrepresentation. Previously we have already mentioned that there is a Central and State level civil service, revenue service officers who look after collecting and recovering of taxes for the respective government. There is income tax department and its officers Act accordingly under the provisions of Income Tax Act, 1961 for collecting and recovery of taxes.

Statistics, Data and Report

The difference between total revenue and expenditure is usually termed as fiscal deficit. It is a shortfall in the government's income compared to spending. Fiscal deficit in a simple language can be defined as when expenditure exceeds income. In another simple way it can be told as if the government's income or revenue is insufficient to meet its expenses or its spending capacity. So, in this regard the most important fact is nothing but a clear deficit in tax collection. According to a recent report of Ministry of Finance, Government of India Union government's fiscal deficit soared to 135% of the 2020–21 budget estimate (Figure 1). Fiscal deficit was 119% at the time of November 2019. We can find that government is making efforts to achieve the target sets in its budget and this gap is increasing day by day. The Covid-19 pandemic just made it worse. However, India is planning to touch or reach the trillion-dollar economy and it is hoped that the efforts are well-rewarded.

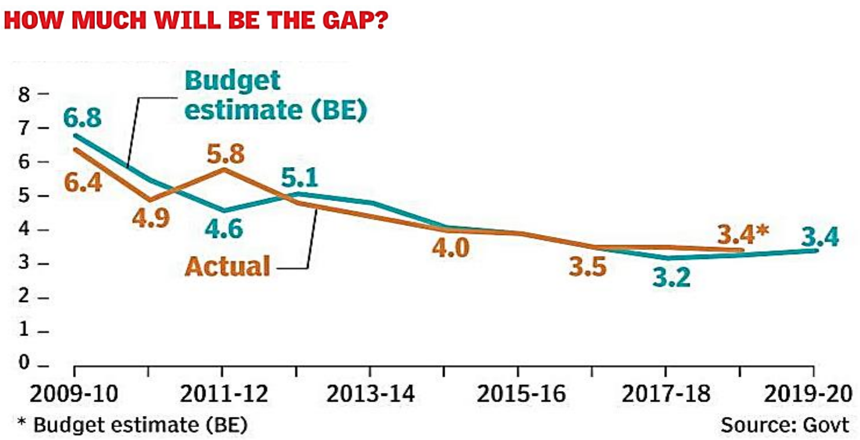

Figure 1. Fiscal deficit as a % of GDP.

LACUNAE AND REPAIRMENT: SUGGESTIONS AND RECOMMENDATIONS

In this research it has been tried to highlight the processes of taxation system of India. Indian tax legislation is not only broad but also frequent amendments to those legislation makes it flexible. We have separate cadre officer for collecting and recovering of taxes. A person has to pay several kinds of taxes. There is need to make the taxation system transparent and accountable. Due to lengthy process in courts and respective tribunal it has become very hard to either recovery of taxes or recovery of overpayment of taxes. Also, there is a parallel economy running in India where undisclosed income or black money is helping in widening of gaps in the economic status of people. As a responsible citizen one has to pay tax timely for ensuring progress of our country. The real fact is India has second largest population in the whole world but only 2 to 3% population pay income taxes. The large number of populations are from remote areas and majorities work in unorganised sector. So, when there is meagre salary, there will be non-availability of basic livelihood. When there is huge struggle for living, when people are fighting every day for bread-butter-shelter, there cannot be taxable income. The time has come for all the think tank to formulate policies for the improvement of taxation system so that the economy could grow and prosper. Also, efforts should be made to literate the people about the pros and cons of taxation system in the country so that the economy could be benefitted.

Lacunae literally means unfulfilled gap. By drawing the reality through this research, it has been shown that this gap is yet to be filled. This unfulfilled gap will be filled in future if some changes could be introduced in the arena. Firstly, we need to have simplified tax system with less burden. Second, Government had to choose between more tax, less taxpayer and less tax, most taxpayers with several other benefits and encouragement. Thirdly, we need to introduce transparency in taxation system through which people could be informed about the expenditure of the government and to its timely audit of the expenditure because every person whatever may be their income wants their money to be wisely used. Fourthly, like every other service if people started to get more than what they have invested none will hesitate to pay tax timely or before time. In a very simple word if their investment (Read as tax) can be returned back to them as access to proper quality of food with reasonable price, good education in school colleges, good and hygienic healthcare facilities, good roads and transport services, security in life then they will not abscond from tax liability. Proper Development not only needs to be done but should be seen to be done. Proper proof of development and progress will build the trust between government and governed. This will lead our nation towards gigantic greatness, and surely, the country will set its foot in the glorious and golden era one day. Lastly the research is concluded by quoting Franklin Roosevelt:

"*Taxation according to income is the most effective instrument yet devised to obtain just contribution from those best able to bear it and to avoid placing onerous burdens upon the mass of our people*" [13].

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