

TAXATION, ETHICS AND RELIGION**Dr. Vivek Shukla¹ And Prof. Somesh Kumar Shukla²**


1 Commerce, Asst. Professor, LPCPS Lucknow, R/O 294, sec. M1 Ashiana colony, Lucknow, 226012,
 1 Commerce, Professor and Dean of Commerce Department, University of Lucknow, R/O Jankipuram
 Lucknow,

ABSTRACT

Tax is the main source of revenue for all the nations of the world which is used for the welfare of the masses. The government charges tax with the motto of “*from the person for the person.*” Although it is used for the welfare of the nation yet it is opposed by the countrymen. This contradiction can be because of two reasons first, the public is not satisfied with the expending pattern of the revenue by the authorities i.e., “*they are not getting in proportion to what they are paying*” and the second, the public is overcharged as far as taxes are concern. To find an answer to this ambiguity we will trace the historical journey of the taxation system as it stands today. We will further delve into various religious and philosophical aspects related with imposition and collection of taxes by the authorities. In this paper we will also try to check the trends of practices like tax planning, tax avoidance and tax evasion which are generally used by the public to mitigate their tax liability.

Key Words:

Taxation, Public Finance Theory, Canons of Taxation, Tax Ethics, Tax Planning, Tax Avoidance, Tax Evasion

Access this Article Online	Quick Response Code: 
Website: http://heb-nic.in/cass-studies	
Received on: 04/06/2019	
Accepted on: 06/06/2019 © HEB All rights reserved	

Introduction:

“The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing”

- Colbert, 1665

Tax is a compulsory contribution to the nation revenue³, charged by either the state or central government. It is a special contribution to building more effective accountable states and public finance institutions. It is a burden (or charge) imposed by the legislative institutions applying their power upon persons or property to raise money for public purposes, and the enforced proportional contribution of persons and property levied by authority of the state for the support of government and for all public needs.⁴

“कर एक अनिवार्य अनुदान है, जो राष्ट्र निर्माण एवं विकास के लिए दिया जाता है,”⁵

Taxes have been rightly called the building block of civilization⁶. Taxes are of two kinds as per public finance theory, i.e., direct taxes which are imposed on the income of a person directly and the person to whom it imposed cannot shift their burden, and indirect taxes which are imposed on the value of goods or services and the ultimate burden of it bear by the consumer. There aren't many people who don't try to minimize their personal or corporate tax liabilities. And there are some who push that ethical line between minimization and avoidance of tax. More subtle, perhaps, is the issue of trying to determine whether it's ethical to impose a tax in the first place.

According to Adam Smith there are four “Canons of Taxation”⁷ which are:

- i) **Canon of Equity** - The amount of tax payable by the assessee ought to be proportional with the income that he capable of earning, i.e., assessee are obliged to pay taxes proportional to the income which they independently earn under the protection of the Sovereign State.

³ Somesh Kumar Shukla and M. Mirza, *Income Tax Law and Accounts*, New Royal Book Company, Lucknow, (5th Edition), 2017.

⁴ P. RamanathaAiyar, *The Law Lexicon Dictionary*, Wadhwa and Co., Nagpur, 2002.

⁵ Somesh Kumar Shukla and M. Mirza, *Income Tax Law and Accounts*, New Royal Book Company, Lucknow, (5th Edition), 2017.

⁶ Retrieved from <http://legal-dictionary.thefreedictionary.com/Income+Tax>, (last accessed on 8 April, 2016).

⁷ Retrieved from <<http://www.ucl.ac.uk/~uctpa15/Econ7008/slides1.pdf>>, (last accessed on 8 April, 2016).

- ii) **Canon of Certainty** - Tax liabilities of an individual ought to be clear and certain, i.e., it should be within the knowledge of the taxpayer well in advance as to the amount of tax that he is liable to pay and at what time of the year it is to be paid. Moreover, the government should also be certain about the amount of revenue that is to be collected for a specific year.
- iii) **Canon of Convenience** - Taxes should be collected at a time and in a manner which is the most convenient for taxpayers. For example, land revenue be collected at the time of harvest.
- iv) **Canon of Economy** – This tenet states that there ought to be economy in administration of tax collection. The cost incurred in collection of taxes should be less as compared to the actual amount so collected. Therefore, it would make no sense to impose and collect such taxes as are difficult to administer.

Taxation and Religion

Taxation and religion are two different subjects of dialogue but here in this paper we are trying to know the different religious views regarding the levy of tax. Do religions oppose imposing of tax or are they in favour of imposing tax? Is there any mention of how much tax should be imposed or how the tax should be imposed? The study of different religious views is mentioned as hereunder:

Christianity

The problem concerning imposition of taxes is not a modern one. This predicament was faced in the Holy Bible wherein people questioned if Jews were under an obligation to pay taxes imposed by the Roman Caesar. In Matthew 22:17–21, the Pharisees asked Jesus a question: “Tell us then, what your opinion is? Is it right to pay taxes to Caesar or not?”⁸ Jesus, knowing of their malevolent intentions replied, “You hypocrites, why are you trying to trap me? Show me the coin used for paying the tax.” They brought Him a denarius, and He questioned to the public, “Whose picture is on the coin and whose imprinting on this?” “Caesar’s,” they replied. Then He replied, “*Give to Caesar what is Caesar’s, and to God what is God’s.*”⁹ Thus it can be regarded as one of the earliest recorded occasions of tax regulation. Jesus answered on the

⁸ Retrieved from <https://slideplayer.com/slide/11215688/>

⁹ Retrieved from https://www.southbendtribune.com/news/business/what-does-the-bible-say-about-taxes/article_5c09657c-4f4b-594c-822e-41abd98cde90.html

question of imposing tax “**Render unto Caesar the things that are Caesar’s, and unto God the things that are God’s.**”¹⁰&¹¹ The question about fairness of imposing tax remains same. Another instance, John who is a Baptist give suggestions to the tax collectors “*Some tax collectors came to be baptized, and they asked him, ‘Teacher, what are we to do?’ Don’t collect more than is legal, he told them*” and in Romans 13:6-7, St. Paul writes, “*That is also why you pay taxes, because the authorities are working for God when they fulfill their duties. Pay, then, what you owe them; pay your personal and property taxes, and show respect and honor for them all.*”¹²

Hinduism

The word *taxation* was also used in the Vedic Period. During the nascent stages of civilization in India, people used to give one sixth of their produce to the king as a token so that the king could utilize the money in providing various basic amenities to its subjects. The word Taxation has also been used in *Manusmriti*, wherein it has been assumed that if even after charging one sixth of the benefit from its subjects, the king is not able to fulfill their needs then he shall be subject to eternal sin.

योरक्षन्बलिमादत्तेकरंशुल्कंचपाथवः।
पृतिभागंचदण्डंचससधोनरकंवृजेत॥¹³

In the Rigveda, the king is said to be the only authority to levy tax¹⁴. Hinduism was the most developed religion of ancient times. In this, the amount of tax and the ways to levy tax are explained, so that the people do not oppose taxation. We can see a lot of proof of taxation in *Manusmriti*, another instance the king Manu said, “The king should levy tax from his people in the same way as the bumble bee collects honey from the flowers or the calf drinks milk from the cow, Leech sucks blood, in the same the king should charge annual tax from his people. The word taxation has also been used in the era of *Mahabharata*, wherein seven main elements of a state have been mentioned in which fund was regarded as one of the most important elements. More so because it was the foundation on which the superstructure of public welfare

¹⁰ Retrieved from <https://www.studylight.org/commentary/mark/12-17.html>

¹¹ Retrieved from <https://www.acuitymag.com/finance/is-taxation-ethical-and-fair>

¹² Retrieved from https://www.southbendtribune.com/news/business/what-does-the-bible-say-about-taxes/article_5c09657c-4f4b-594c-822e-41abd98cde90.html

¹³ Somesh Kumar Shukla and M. Mirza, *Income Tax Law and Accounts*, New Royal Book Company, Lucknow, (5th Edition), 2017.

¹⁴ Somesh kumar shukla, *Bharat ki prachin evam vartman kar vyavastha*, New Royal Book Company, Lucknow, (1st Edition), 2002.

was built. Funds control all the welfare activities of a state which was controlled by the emperor.¹⁵ The word *Bali* has also been used in the Ramayana which indicates *one sixth part* of income.

अधर्मः सुमहान नाथ भवेत् तस्य तु भूपतेः ।

यो हरेद बलि षड्भागम न च रक्षति पुत्रवत ॥¹⁶

It means if any head of the state collects one sixth share of the income from the masses, he is under an obligation to take care of them like his own sons. If he fails to do so he is subject to eternal sin.

Kautilya has also mentioned about the seven important elements of administrative structure which he named 'साप्तांग'.

समाहर्ता दुर्ग राष्ट्रं खनिं सेतुं वनं व्रजं वणिक्पथम चावेक्षेत ॥

According to Kautilya, the main sources of state's income were – दुर्ग, राष्ट्रं, खनिं, सेतुं, वनं, व्रजं, वणिक्पथम

Islam

The history of taxation in Islam is quite descriptive. The system of taxation was also used in Islam. It was related on the authority of Abu Sa'id al-Khudri, (ra), that the Messenger of Allah (saw) said: "It is not allowed to do harm nor to allow being harmed." [Ibn Majah, Al-Daraqutni]¹⁷ Therefore, it can be said that Allah had contented the authority to charge tax from the people in Islamic nations. The authorities realize revenue to fulfill their needs by charging taxes upon the public without any negative impact on the needs of the countrymen. According to Islam, taxes should be charged on the excess income or wealth of the persons. Excess income means the surplus which remains with the person after meeting out his needs as per his living standard. In Islam the main sources of revenue were:

- a) Land Tax (Kharaj)
- b) Booties (Fai')
- c) The properties of Zakat
- d) The different types of public property revenues

¹⁵ Somesh kumar shukla, Bharat ki prachin evam vartman kar vyavastha, New Royal Book Company, Lucknow, (1st Edition), 2002.

¹⁶ Somesh kumar shukla, Bharat ki prachin evam vartman kar vyavastha, New Royal Book Company, Lucknow, (1st Edition), 2002.

¹⁷https://www.taxjusticeandpoverty.org/fileadmin/Dateien/Taxjustice_and_Poverty/Ethics_and_Religion/Islam/IslamTax.pdf

e) Head Tax (Jizya)

Is Taxation Ethical?

Imposing tax is ethical or not? To find the answer to this question one has to think on the various aspects concerned with it some of them being :

- a. What is the objective of levying tax?
- b. How much tax should be levied so that the government is able to meet out its objectives successfully? and
- c. How will people bear this tax burden?

The following approaches to ethics shall be studied in order to answer the aforementioned questions and justify the point whether charging taxes is ethical or not

- *Deontology*: Deontological are those who establish relationship between morality and duty.
- *Virtue ethics*: Virtue ethics talk about the intrinsic worth (virtue) of human beings that makes human life virtuous.
- *Utilitarianism*: Utilitarians are those who talk about the happiness of the masses. In today's world it is about satisfaction of our needs and wants.

"I think that's an interesting way to think about this," says Longstaff, the head of The Ethics Centre, which works with financial organizations to put ethical decision making at the heart of what they do. *"You might think there are some just and proper purposes for a tax being raised, but the means of raising it might be wrong. Equally, it might be the means you're using to raise a tax are perfectly reasonable but the purposes for which you're raising the taxes are wrong."*¹⁸

Furthermore he says, *"So you need to separate these two things if you're a taxing authority. Your legitimacy lies in your ability to satisfy ethical criteria in both camps concurrently. It must be raised for an ethical purpose and raised in an ethical way."*¹⁹

"Taxes, after all, are dues that we pay for the privileges of membership in an organised society."²⁰

Some political arguments also point towards the contention that taxation is coercive in nature. Robert Nozick, in his work *Anarchy, State and Utopia (1974)*, asserted that taxation is a violation of the basic rights of humans. He contends that the system of distribution of property

¹⁸ Retrieved from <https://www.acuitymag.com/finance/is-taxation-ethical-and-fair>.

¹⁹ Retrieved from <https://www.acuitymag.com/finance/is-taxation-ethical-and-fair>.

²⁰ Franklin D Roosevelt, former US President

that we come across today initially has its roots in a process known as acquisitions and thereafter by exchanges. He argues that if we assume that the initial acquisitions and further exchanges were just and fair, then the current distribution of resources is free and justified and it would not be feasible to forcefully hinder that distribution. It is nevertheless justified if a section of people willingly agree to pay for certain civic amenities, but the unwilling minority should not be forced.²¹

Another argument that ensues is on the foundation of justice. The context is about the unequal distribution of available resources. There cannot be any positive justification about some people acquiring unequal shares because it mars the right of the people who would have received equal shares of the resources in case of equal distribution. This contention has been dealt with in the work of John Rawls *A Theory of Justice* (1971). He has extensively argued that resources should be distributed in such a way that the maximum benefit is derived by the people who have fewest advantages. However, he is of the view that an unequal access system may go a long way in helping the economically disadvantaged more than an egalitarian economy. He argues that this unequal distribution of resources can be acceptable if it encourages the skilled labour to work hard and entrepreneurial people to take risks as long as these risks and the hard work pays off and renders them at a better economic and social position. He further says that it is not harmful if the rich grows even richer provided that he is helping the poor, who in turn will be even more grateful.²²

Lord Tomlin has stated that “*Each man is qualified by circumstances to arrange his financial transactions so that tax appending under the pertinent Acts is lower than it generally would be*”.²³

Assessee generally embrace different measures in order to diminish their tax obligation which falls under four categories which are:

- ❖ Tax Planning
- ❖ Tax Evasion
- ❖ Tax Avoidance
- ❖ Tax Mitigation

The dissimilarity among these methods gets blurred sometimes owing to regular utilization by tax authorities and sovereigns or the taxpayers. There is a very thin line of difference between

²¹ Retrieved from https://philosophynow.org/issues/90/The_Ethics_of_Taxation

²² Retrieved from https://philosophynow.org/issues/90/The_Ethics_of_Taxation

²³ *IRC v Duke of Westminster*, 1935, All ER 259 (H.L.)

tax evasion and tax avoidance, both undermining the amount of revenue to be generated by the state authorities by way of tax collection.

Tax evasion amounts to an illegal method of avoiding tax by suppression of facts, misrepresentation and fraud and thus is unacceptable. Tax avoidance is the “minimization of one’s tax liability by taking advantage of legally available tax planning opportunities^{24, 25}”;

The European Court of Justice has demarcated tax avoidance as “simulated arrangements designed for evading tax rulings²⁶”.

It is practiced by assesseees to avoid their liability by designing a device the foundation of which lies in some lacuna that may have crept in the provisions of the Act, the intention of the legislature being otherwise. It cannot be termed as illegal because it is the outcome of acts which are not forbidden by law and it is a plan entered into basically for obtaining levy advantage. Avoidance methods remain unaddressed except through express judicial decisions and specific anti-avoidance provisions.

One more scenario that comes into picture is that of toll vindication wherever the taxpayer takes benefit of a tax related enticement afforded to him by the tax regulation of a dominion by essentially surrendering to the circumstances and fiscal results that the specific tax rule brings about. Example: Setting up of an initiative by a taxpayer in a definite region like Special Economic Zone. Tax planning, contrariwise may be defined as a prearrangement of an assessee’s occupational concerns or private activities in such a manner so as to curtail tax obligation. However, of late, the court is asserting that any endeavor to avoid the tax liability shall not be encouraged. Both these methods of avoiding tax liability seriously undermine the public finance function of the state, creating a hindrance in effectively collecting tax. The onus has been heavily placed on the revenue department while dealing with the matter of tax avoidance. All these reasons have thus led to the introduction the General Anti-Avoidance Rules which are intended to serve as a deterrent against tax avoidance.

There are *four basic tax avoidance techniques* practiced,²⁷ though numerous variations and subtleties exist

²⁴ Retrieved from <http://docs.manupatra.in/newsline/articles/Upload/C8034670-1E8E-4E9D-A68B-35D1E7AF7B29.pdf>

²⁵ Bryan A. Garner, *Black’s Law Dictionary*, Thomson West, Eighth Edition, 2004.

²⁶ Retrieved from [http://www.un.org/esa/ffd/tax/seventhsession/CRP11_Add1_Tax % 20Evasion.pdf](http://www.un.org/esa/ffd/tax/seventhsession/CRP11_Add1_Tax%20Evasion.pdf), (last accessed on 10 April, 2016).

²⁷ D.P. Mittal, *Law and Practice relating to General Anti Avoidance Rules (GAAR)*, Taxmann Publications (P.) Ltd., New Delhi, 2012.

- i. *Deferred payment of tax liability:* Deferred payment of tax liability is a popular technique of avoiding tax among the international tax players; it becomes possible through shifting current year high tax rate income to future years in which low tax rates will be applicable.
- ii. *Re-characterization of an item or income or expense to tax at a lower or nil rate:* In this technique persons swap between the sources of incomes in such a way so that the total tax liability get reduced.
- iii. *Permanent elimination of tax liability:* In permanent elimination of tax liability assessee understate their income or overstate their expenditure in comparison to actual.
- iv. *Shifting of income from a high-taxed to a low-taxed person:* It is a technical process in which assessee maintains more than one organization with the same nature of business; it helps him to manage turnover and income.

Conclusion and Suggestions:

As far as the question of imposition of taxes being ethical is concerned, it can be said that all the religions justify its imposition in one form or the other. But as far as the amount or rate of taxes that should be imposed is concerned, there are different views.

If we consider it from an angle of tax planning, tax avoidance and tax evasion, it can be said that tax planning is legal as well as ethical because every individual has a right to arrange his economic transactions in a way so as to derive maximum benefits. However, tax evasion is neither legal nor ethical because it tries to understate the income or overstate the expenditure using those methods and transactions which are forbidden in tax legislations. Talking about tax avoidance, it is not expressly regarded as illegal in any statute, but judiciary from time to time urges the masses not to involve in it. The legislature also issues specific anti avoidance rules from time to time so as to reduce the instances of avoidance. Thus it can be said that avoidance is unethical because it is impliedly condemned by the authorities. To conclude this study the following suggestive points can be given:

- a) The rate of charging taxes should be convenient so that masses have sufficient amount at their disposal to spend on their basic needs and also on luxuries products and services; it would also strengthen the economic cycle.

- b) Tax on basic necessities like medicines, health services, roads, transportation services, electricity and water should be eliminated; especially when these products and services are provided by government.

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