Evasion and Avoidance of Tax

Tax evasion and avoidance and the financial corruption that goes with it are problems of great public importance not only in the field of tax legislation and revenue administration but also of serious consequence to the financial security and economic development of the country as a whole. It is an accepted fact that considerable revenue is lost to the exchequer every year through escape of tax. The moral and material consequences of this widespread anti-social practice seem to be not fully appreciated by the public at large who are victims of the tax crimes of their dishonest fellow-men. Tax evaders increase pro tanto the load of tax on the shoulders of the great body of citizens who do not desire, or do not know how, to adopt these manoeuvres. Their actions breed disrespect for law and authority. Their success and material prosperity attract others into their fold and tend to promote lawlessness in society. Such men, with the help of their ill-gotten wealth, corrupt the civil servants and public life generally, retard the pace of economic growth, and jeopardise the political independence of the Nation. The importance of the problem in a newly-independent, developing country like India cannot therefore be over-estimated.

Of course, the problem is neither new nor peculiar to India. It is prevalent in almost all countries in varying degrees. But, in India, the evil has grown considerably over the years
despite all the efforts of the authorities to eliminate it.

**Enforcement of the Tax Structure in India**

Administration of tax enactments presents so many technical and complicated problems of facts and law that it is difficult for an ordinary person to understand the intricacies involved. A study of the problem of evasion and avoidance of tax necessarily demands a close insight into the nature, working and administration of the laws in question. A detailed study of all these aspects is outside the scope of the present enquiry. What is attempted here is a general survey of the tax structure and its enforcement through criminal sanctions.

In a large federal country like India, the tax system cannot hope to achieve the neat clarity and simplicity of a small country with a unitary constitution. It is an incontrovertible fact that Indian taxes are heavily cumbersome to administer. Avoidance and evasion on the one hand, and checks and more rigorous checks on the other, create a vicious spiral of increasing cumbersomeness and complexity. First a loophole is found, and it is carefully plugged; the remedy starts a new disease, with new complications; and this chain reaction goes on. A noted industrialist is said to have remarked: "A few intelligent men in New Delhi impose the taxes; they forget that there are many more and far more intelligent men outside to find loopholes in the taxes."
It is thus an unending struggle between the Government on the one hand and the very clever evaders of taxes on the other, and the marks of the struggle are visible clearly on our complex, cumbersome and almost baffling tax system.

In this chapter the attempt is only to gauge the immensity of the problem of evasion and avoidance in relation to administration of criminal justice. And, for this limited purpose, a brief survey of the different tax enactments and their general administration is made hereunder.

The major heads of taxes in operation under the two categories of direct and indirect taxes are:
Income Tax, Wealth Tax, Estate Duty, Sales Tax etc.
Those taxes are all administered under separate statutes like the Income Tax Act, 1961, The Companies (Profits) Sur Tax Act, 1964, Estate Duty Act, 1953, Wealth Tax Act, 1957, The Gift Tax Act, 1958, The Expenditure Tax Act, 1957 etc. Though the Acts differ fundamentally from each other as regards the base of tax, the rates of levy etc., a good deal of uniformity in the procedures relating to matters like assessments, appeals and collections exists. Changes in the tax laws are effected either through the Finance Acts passed every year to give effect to the financial proposals of the Government or through particular amending Acts. The Central Board of Revenue which is a part of the Ministry of Finance of the Government of India
is responsible for administration of the various direct and indirect central revenue laws in the country. The Board exercises over-all supervision and control over the several administrative and subordinate authorities functioning under the various statutes. The Board also functions as the Department of Revenue of the Government of India and in this capacity it has the responsibility for advising the Government on various matters of tax policy.

Commissioners of Income Tax have been appointed for almost all states and principal cities, such as Bombay, Calcutta etc. Assistant Commissioners of Tax who may be either Inspecting Assistant Commissioners or Appellate Assistant Commissioners work under the supervision of Commissioners. Income Tax Officers who actually perform duties relating to assessment of taxes work under the Assistant Commissioners of Income Tax. Against assessments made by Income Tax Officers, an assessee is entitled to file appeals, if desired, to the Appellate Assistant Commissioners within the prescribed periods after assessment. The Appellate Assistant Commissioners exercise their quasi-judicial functions though they are supposed to be administratively under the Commissioner of Taxes. Against the decision of Appellate Assistant Commissioners, an assessee is allowed the right to file further appeal to the Income Tax Appellate Tribunal. The Appellate Tribunal is the final authority only in question of fact and the assessee is entitled to refer questions of law to the High Court and Supreme Court of India.
It is the duty of an assesssee or tax payer to file voluntarily, within the prescribed time, necessary return of income in respect of direct taxes for which he may be liable. After receipt of the return of income the income tax officer would call, if necessary, for further information or request the tax payer to attend for discussion in person or through a representative. Later the necessary assessment order will be passed by the Income Tax Officer. Collection of taxes is made in one or more of the following modes: (i) By deduction at source of payment, (ii) By advance payment of tax from assesssees in the financial year preceding the assessment year, and (iii) By taxes paid on the basis of provisional assessment made by Income Tax Officer after submission of Returns of Income.

Because of frequent amendments and hasty legislation, tax laws, generally speaking, suffer from loose and bad drafting and unnecessary technicalities. Thus, the whole income-tax structure has now become a veritable tangled web of all sorts of clauses and provisions and qualifications and exceptions confusing even tax experts and tax consultants. This complexity and confusion of the legislation and administration of taxes have had adverse economic and social effects, besides impairing administrative efficiency.

The Criminal Law of Taxation:

The criminal enforcement of tax legislation is based upon the distinction between 'tax evasion' and
'tax avoidance'. In theory, this distinction is simple and straightforward: evasion constitutes a violation of the criminal law with all its consequences, whereas mere avoidance means some more or less artful juggling which, though in all probability very anti-social in consequences, still manages to keep within the letter of the law. The term tax avoidance refers to arrangements by which a person, acting within the letter of the law, reduces his true tax liability, infringing, in the process, both the spirit and the intent of the law. Though it is distinctly anti-social deserving penal liability, yet it has acquired a colour of legality about it. Nowadays books are available in the market written by tax experts openly announcing ways and means to reduce tax liability or to completely avoid it. However legal and justified avoidance be, evasion, on the other hand, denotes plain defrauding of revenue through illegal acts and deliberate suppression or falsification of the facts relating to one's true tax liability. In whatever way one looks at it the line of demarcation between the conduct of one who avoids and another who evades tax, is very thin. Sometimes, the distinction is made between "evasion" and the "minimizing" of taxes. "Minimizing" in this context is taken to mean the reduction of legal tax liability to the lowest possible amount through the skilful utilization of every legitimate method. The Taxation Enquiry Commission, 1953 - '54 expressed succinctly the distinction in the
following words:

"Leakage in revenue may occur either through a deliberate distortion of facts relating to an assessment after the liability has been incurred, or by so arranging one's affairs before the liability is incurred as to prevent its occurrence or to reduce the incidence of the tax within the framework of the existing legislation. The former set of transactions is usually referred to as 'evasion' and the latter as 'avoidance'. Avoidance ordinarily arises from drafting defects in the tax legislation."

Whatever be the method an assessee adopts - whether it be avoidance or evasion - the consequence of his action is the same, viz., loss of revenue to the State and an increase pro tanto in the burden of tax on the other taxpayers who do not resort to such practices. In this respect the following observations made by President Roosevelt in his message to the U.S. Congress in 1937 are noteworthy:

"Methods of escape or intended escape from tax liability are many. Some are instances of avoidance which appear to have the colour of legality; others are on the border line of legality; others are plainly contrary even to the letter of law. All are alike in that they are definitely contrary to the spirit of the law. All are alike that they represent a determined effort on the part of those who use them to dodge the payment of taxes which Congress bases on ability to pay. All are alike in that failure to pay results in shifting the tax load to the shoulders of others less able to pay, and in mulcting the Treasury of the Government's just due."

Courts of law in this country have upheld the right of a tax payer to secure reduction in his liability by making use of the loopholes in the law. The following passage in the judgment in a Bombay case puts the matter
It has also been stated that the same result may be achieved by two entirely different transactions, and it may be that whereas one transaction could be subjected to tax the other might not be, and it is not open to the Court to tell the assessee that he could rather have entered into a transaction which subjected him to taxation rather than a transaction which permitted him to escape taxation. A citizen is perfectly entitled to exercise his ingenuity so as to arrange his affairs as may make it possible for him legally and lawfully not to pay tax, and if his ingenuity succeeds, however reluctant the Court may be to acknowledge the cleverness of the assessee, the Court must give effect to the letter of the taxation law rather than strain that letter against the assessee.

The following observations of the Supreme Court in a recent case may also be referred to in this connection:

"Sub-section (2) of section 21 (of the Bombay Sales-tax Act 3 of 1953) is a penal provision contained in a taxing statute and the Court cannot speculate contrary to the plain intendment of the words used about the object of the Legislature. If the Legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the tax payer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted."

Tax avoidance has thus acquired legal sanction and come to be regarded as not disrespectful. But in view of the fact that the number of tax dodgers are increasing and a larger number of tax payers are turning dishonest, the State is bound to adopt stricter penal sanctions and extend them even to cases of tax avoidance. This tendency is evident in the new steps taken under the Finance Act, 1964. From the sociological point of view, the dubious and artificial distinction that surrounds this
large area of anti-social behaviour does not make any
difference in the matter of their being grouped together
under White Collar Crimes. With taxation becoming
increasingly heavy and tax dodging correspondingly frequent,
Parliament has found it more and more imperative to
include in the annual Finance Acts special provisions
for checking evasion and prevention of avoidance. Thus,
the Finance Act of 1964, included a provision prescribing
a minimum of six months' imprisonment for people convicted
of making false income tax declaration. Further, the Act
stipulated that an assessee should be regarded as having
conceded his income if his declared income fell short of
80 per cent of his income as assessed by the Government.
The Act had put the onus of proof on the assessee to prove
that the failure to return the correct income did not
arise from any fraud or any gross or wilful neglect on
his part. In reply to some criticisms alleging that this
was a violation of fundamental legal principles and
normal cannons of jurisprudence, the Finance Minister
held that normal principles of jurisprudence if applied
to tax collection, tax would not be collected and the
great social evil of evasion would continue. There are
provisions in other countries including the United Kingdom
where the onus of proving that the omission to disclose
income did not proceed from any fraud or wilful neglect
is on the assessee himself. The Tyagi Committee also
recommended similar provisions in the direct taxes Acts.
After all, the facts relating to income, wealth, expenditure
etc., are known only to the taxpayer and, if he does not disclose all of them to the assessing officer, the task of the latter in determining the correct tax liability becomes very difficult. In cases where the taxpayer himself does not bring to light all the material facts, the assessing officer has to collect the relevant information acting within the limited powers given to him. In this 'unequal battle' it is only necessary that the law should be suitably modified even if it amounts to a departure from principles of traditional criminal jurisprudence.

The really dangerous tax offender does not evade; he avoids. Under the protective cover of the safeguards provided by law he dishonestly exploits the loopholes in the law and violates its spirit and object. Discussing the legal and socio-economic problems involved in tax avoidance, one writer made the following general observations which seem to be of particular importance to Indian conditions today:

(a) Might not the time have arrived for the working out of a new philosophy of tax paying - recognizing the simple fact that there is indeed behind taxation laws just as much, or just as little, 'moral obligation' as there is behind other laws against economic crime. As soon as it is realized that the financial needs of the State, if backed by the law, have to be respected just as much as individual property, it will have to be admitted that taxation fraud stands in no way on a moral level superior to that of stealing and looting.

(b) The backing of the law is, of course, indispensable, and it is here that the difference between 'evasion' and 'avoidance' will have to be re-examined in the light
of recent developments. Should it really be beyond the wits of men to conquer the seemingly impregnable fortress of what is now called "avoidance" by splitting it up into two parts: the one consisting of acts which are in conformity not only with the letter but also with the spirit of the law; the other "tax-dodging" pure and simple, and distinct from "evasion" only by its lack of straightforwardness? Unless a general formula is found to carry through this distinction, the legislator will have to continue to tread the wearisome path to casuistry, exemplified by those sections of the Finance Acts which try to deal with specific forms of avoidance. The more closely the various types of tax-dodging are scrutinized that have in recent times come to the notice of the public, the more clearly seen to stand out the criteria which distinguish them from perfectly legitimate economic behaviour: first, they are characterized by activity as contrasted with mere omission; and, secondly, from an objective point of view no economic reasons other than tax avoidance are visible behind such activity or, if there are, their weight is disproportionately small.

"To make the distinction dependent upon subjective criteria such as 'purpose' or 'motive' seems to be out of place in provision aiming merely at the nullification of economic effects which are contrary to the aims of taxation laws. The exclusive test should be the objective one of economic effect or benefit."

"(c) It is difficult to see, however, why the legislator has so far abstained from making even the most drastic cases of tax avoidance criminal offences. In the scale of anti-social activities they rank very high."

"If this should be done and the worst cases of tax avoidance made criminal offences, the subjective test of purpose or motive would, of course, become indispensable in addition to the objective one."

"(d) Such a tripartite scheme: legal in every respect - illegal with no other consequences than nullity of the transactions for taxation purposes - illegal and criminal, whether as evasion proper or as criminal avoidance - clearly requires a well-thought-out system of distribution of powers between administrative
authorities and criminal courts. Should it be left to the former to deal with the objective criteria, i.e., the factual side and the economic implications of the transactions, and the latter to decide the subjective test of purpose or motive? Occasionally, magistrates might find it impossible to discover any disreputable motive in cases concerning 'respectable people'; the majority of them, however, will probably be able to draw the right conclusions from the economic situation as elucidated in the findings of the administration - findings which should be binding with regard to the external facts."

It is now recognized that a two-pronged move plugging the loopholes in the law and making the enforcement machinery more efficient and stronger is necessary to check the evil of tax evasion and avoidance. While making a pointed reference to the limitations of the existing machinery, the then Finance Minister Mr. T.T. Krishnamachari said in the course of the second Feroze Memorial Lectures:

"I feel the circumstances obtaining in the country need the creation of a special tribunal the constitution of which and the disciplinary control over which does not lie in the hands of the executive, but is vested in the highest organs of the judiciary. The procedure to be followed by this tribunal should not be elongated as it happens in the case of orthodox judicial bodies administering the common law and some kind of summary procedure which has to be arrived at with the assistance of lay and expert assessors, where a final appeal under Articles 32 and 226 of the Constitution is considerably limited, seems to be called for."

However, it is beyond doubt that for the expeditious disposal of assessment proceedings and for the full collection of tax due to the State, it is necessary that some revolutionary changes in the law and its enforcement are called for. Such changes may
necessitate some radical departures from the traditional practices and procedures as discussed above and as endorsed partially in the Finance Act of 1964.

As such the tax system is working perniciously. While certain classes evaded the tax, others, e.g. the salaried class have had to pay the full rates. This undermines public morality for it unnecessarily penalises certain classes while ignoring the real criminals. This happens as follows: When the Government revenue falls below the budget estimate due to tax evasions, they will be obliged to impose more taxes on the honest tax-payers and raise loans to meet the expenditure to which they are already committed. The tax evaders may invest the evaded tax money in the loans and collect interest thereon from the honest tax-payers! Thus the honest tax-payers pay their legitimate dues, pay the extra taxes to make up for the tax-evaders and also pay interest on the tax evaders' investment in loans! It amounts to penalising honesty and rewarding dishonesty. It brings Government into disrepute and promotes financial corruption in a still larger scale.

**Extent of Evasion:**

It is difficult to ascertain with any degree of accuracy the extent of tax evaded every year in the country. In no country has it been possible to do so and the difficulties involved in the process have been acknowledged by the various enquiry bodies, both in India and abroad.
In 1956 Professor Nicholas Kaldor of the University of Cambridge, who was invited by the Government of India to undertake a review of the system of direct taxation in this country, reported on the basis of certain tentative figures relating to national income supplied to him by the Central Statistical Organization that the amount of income tax lost through evasion amounted to between Rs.200 crores and Rs.300 crores for the assessment year 1953 - '54. As against this, the Central Board of Revenue was of the opinion that the tax evaded in that year would not have exceeded Rs.20 crores to Rs.30 crores. It is very likely judging from the increasing trend of evasion in subsequent years, that the CBR figure has under-estimated the extent of the evil. However, it has to be conceded that it is no negligible amount to be allowed to be lost through mere evasion.

No estimate has so far been made of the revenue lost to the State by means of evasion or avoidance of other taxes (Wealth Tax, Expenditure Tax, Customs Duty, Sales Tax, Estate Duty etc.). According to conservative estimates the leakage has been anywhere between 25 per cent to 40 per cent of the amount. Such leakage is sizeable in a poor developing country like India.

While the difficulties inherent in any attempt at estimating the extent of evasion are obvious, it cannot be denied that the evil is now very common in this country at all levels of income. It is particularly pervasive
in the corporate private sector and non-salaried professionals like businessmen, contractors, doctors, lawyers and film artistes. The Income Tax Investigation Commission had in the 1,058 cases investigated by it, detected concealed income of order of Rs.48 crores. The tax and penalty levied in respect of this evaded income amounted to Rs.39.42 crores. Concealed income amounting to Rs.70 crores was disclosed by the assesses themselves under the "Voluntary Disclosure Scheme of 1951" in 20,912 cases, and additional tax and penalty amounting to nearly Rs.11 crores was demanded on this score. Besides, considerable amount of escaped income is brought to tax, every year, by the efforts of the Income Tax Department under the provisions of Section 34 of the Income-Tax Act. During 1958-59 concealed income amounting to Rs.31.10 crores was assessed in 27,343 cases resulting in additional tax and penalty of Rs.15.84 crores under section 34(1) (a) and (b) of the Act. An unofficial estimate of the Central Board of Revenue is that about Rs.45 crores of tax is evaded annually by assesses in the higher income groups, the evaded income being about Rs.230 crores. A team of tax experts from the U.S.A, which recently made a study of Indian tax laws and the structure of personal taxation was understood to have come to the conclusion that in this country several thousands of people are totally evading taxation and an even larger number was paying only a fraction of the taxes due from them. The team found this practice widely prevalent in those areas where income was derived from
business, profession or vocation. In the cases of salaried-classes, evasion is most unlikely because the tax gets deducted at the very source, before the income reaches the taxpayer's pockets. The Finance Minister was reported to have confided that the section of people evading taxes had widened in recent years and that only 40 per cent of the taxes was now being actually collected! The above figures and facts conclusively prove the magnitude of the problem of tax evasion in India.

Methods of Evasion of Tax

As has already been noticed, the business community and a few other professional classes of people form the majority of tax evaders and the methods they employ are diverse, technical, complex and ingenious. Under-statement of income on returns is the principal mode of practising fraudulent evasion. Two of the important methods employed by businessmen to evade taxes are:

1. Under-voicing and over-voicing the deal or contract and (ii) the distribution and division of the sources of income. In the case of undervoicing and overvoicing racket the actual income is concealed and illegal profits are obtained. Unscrupulous businessmen make underhand arrangements with their offices or collaborators in foreign countries so that the goods going out of India were undercharged. The goods imported into the country from abroad were shown as of much greater value. The amounts thus made were held by their agents or banks in foreign countries or by their foreign collaborators in
business, thus placing an illegal stock of foreign exchange in their hands.

This technique of under invoicing and over invoicing of goods also leads to what is called black money that pass hands without public account. The volume of unaccounted black money in the hands of 2000 to 3000 of our dishonest businessmen has been variously estimated between Rs.3000 crores to Rs.4000 crores! It is just unrecorded gains or ill-gotten wealth which does not form part of a legal transaction, and as such escapes all taxes. The introduction of this huge ill-gotten wealth back into trade and commerce, without being detected by the Income Tax Department, has been a problem with the holders of such money. Many use it for ostentatious consumption. Many others converted it into non-detectable assets in the form of bullion or precious metal. Now the tendency of such hoarders of black money is to buy urban property and exploit the housing shortage in expanding big cities. To buy and sell properties at prices much greater than those recorded in the conveyance deeds has become a common method of cheating the government of taxes and of transferring black money. In Bombay a system of bogus hundi transactions was reported to have been successfully practised in an extensive scale to defraud the Income Tax authorities. Black money is also used for speculative purposes in trade for hoarding of scarce commodities the sale of which yields more black money. The Pantham Committee on Prevention of Corruption
found the money being used by unscrupulous businessmen to corrupt public officials and expand their industrial-financial empires. According to a former Finance Minister of the Government of India black money is playing havoc in the country's economy and is leading to greater inequalities amongst the people.

A few illustrative cases of the holding of black money and tax evasion by big business may be noted here. In its inquiry on the administration of the Dalmia-Jain Companies, the Vivian Bose Commission found 114 fictitious persons to whom shares worth Rs. 16 lakhs were fraudulently issued in order to bring the secret profits of the D.J. Group into circulation and convert it into what is known as "White Money". The Commission also observed from what had happened before the Income Tax Investigation Commission that the Group did have over Rs. 4 crores of secret and undisclosed assets down to the year 1947. The Commission also estimated the gains made at cost of exchequer by just four companies of the D.J. Group by evading or avoiding taxes to the tune of Rs. 1,45,19,790. The methods employed for this purpose included compensation payment for termination of selling and managing agencies, understatement of sales, suppression of profits, fictitious losses in shares etc.

According to the Commission's report, avoidance of income tax liability was done as follows:

"(a) By suppressing taxable profits by manipulation of accounts;"
(b) By extinguishing reserves and accumulated profits before taking the companies into liquidation;

(c) By introducing secret profits under cover of share money by allotting shares to nonexistent persons;

(d) By transferring the assets and liabilities of companies that were taken into liquidation while their income-tax liabilities for the periods upto the dates of liquidation were yet to be determined by initiation and/or completion of the relevant assessment proceedings”.

More recently, a Calcutta firm, Bird and Company was fined Rs. 1.65 crores in two cases of tax evasion accomplished by means of under-invoicing of jute goods and iron ore.

Large-scale tax evasion by speculative magnates in the stock market is known to anyone acquainted with the stock markets in the cities like Bombay, Calcutta or Ahmedabed. By trading in oil seeds or cotton or shares they make huge profits every day which seldom appear in the return of the income liable to tax. It generally disappears through being spread over a large number of Benami transactions. Income declarations fall due only after the end of the year and their examination is not taken up for at least several months more, so that the opportunity for adjustment is ample.

The practice of benami transactions is frequently resorted to for evading taxes. In a benami transaction, the property is acquired or held in the name of a person other than the real owner without any intention to give such
a person the benefit of the real ownership of the property. Such a person is commonly known as benamider or ostensible owner. This practice is common throughout the country and has received recognition from courts of law as well. In the eyes of law, the benamider is the legal owner of the property standing in his name. Unless the assessing officers can prove that the person in whose name the property stands in the documents is not its real or beneficial owner, but only a benamider for another person, it is not possible to consider the property for purposes of taxation, as belonging to the latter person viz., the real or beneficial owner. It is obviously very difficult for the assessing officers to expose the benami character of a transaction and to establish it beyond any doubt against the evidence of the legal document in assessee’s favour. Thus benami transaction help exceedingly well to conceal the wealth and true income of a person and also for evading taxes.

Another important method of tax evasion is through the practice of 'blank transfers'. In the blank transfer deed the seller only fills in his name and signature. Neither the buyer's name and signature nor the date of sale are filled in the transfer form. The advantage in giving such a blank deed is that the buyer will be at liberty either to sell it again without filling his name and signature to a subsequent buyer. In the latter case he can avoid the payment of the transfer stamp and a new deed to the buyer. The process of purchase and sale can be repeated any number of times with the blank deed and
ultimately when it reaches the hands of one who wants to retain the shares, he can fill in his name and date and get it registered in the company's books. For this ultimate transfer and registration, the first seller will be treated as the transferor, even if it happens years after his death. On such registration, the last buyer will be recognized as a shareholder by the company and the other intervening parties being not such shareholders but only having had an equitable right in themselves if they had so desired to be registered as shareholders of the company. It is the common method adopted for share transfers in speculative dealings in this country and all the stock exchanges in the country recognize blank transfer as a valid delivery. It is a fact, however, that by means of these blank transfers dishonest assesses are able to conceal their income from the tax department and even if the concealments are detected and assessed, they can avoid the payment of the taxes as the shares are not registered in their names, and they cannot, therefore be attached and sold.

The division and distribution of the sources of income is also a widely used method for denying the state's share in tax. Under the Voluntary Disclosure Scheme of 1950-51, a lot of black money was declared by tax evaders in the name of their relatives to whom the money did not really belong.
On the basis of the annual Administration
Reports of the Sales Tax Department, the Sales Tax
Enquiry Committee (1957-58) appointed by the Government of
Bombay listed some of the numerous devices resorted to
for evasion of tax as under: (i) omission to report
taxable turn-over; (ii) fraudulent changes in account
books; (iii) maintenance of multiple sets of account books;
(iv) opening of accounts under assumed names; (v) carrying
out transactions in the names of dummies or figureheads;
(vi) keeping transactions out of account books; and
(vii) distorting the nature of transactions so as to
conceal their true character. The keeping of different
sets of account books, one for the trader, one for the
Income-tax Department etc., has become a normal practice
amongst our traders.

The wealthy section of the tax paying public
use all their skill in evasion and avoidance of tax.
They seem to prefer spending money on maintaining the
services of lawyers, accountants, advisers and experts
rather than paying to the State.

Causes of Evasion:

The motive for evasion of tax is, of course,
wrongful gain through non-payment of tax due to the State.
Many economists hold the view that the prevailing high
rates of taxation is one of the main causes for tax evasion.
The high rates of tax in the top income brackets are
said to be tolerated only because of the considerable
evasion that takes place. On this point, the Direct Taxes Administration Enquiry Committee observed “While we cannot deny that the higher the rate of tax, the greater will be the temptation for evasion and avoidance, we feel that the tax rates by themselves are not to blame for the large extent of evasion in the country. Even if the rates of tax are reduced, evasion will still continue, because it exists at all levels of income. The evidence before us shows that tax evasion has never been the prerogative of the higher income groups but, as the stakes involved are larger in their cases, the tendency to avoid or evade tax is also greater.”

The complexity and ambiguity of tax laws, many provisions of which are not easily intelligible, are to some extent responsible for tax evasion and avoidance. Prof. Kaldor was of the view that the income tax law was full of anomalies and loopholes offering the assesses opportunities for successful tax evasion. According to him, these loopholes were more evident in the elastic definition of allowable deductions particularly in the case of business income. Equally important factor in facilitating evasion is the complexity of modern business operations. Analysing the reasons for large-scale tax evasion, the first Five Year Plan rightly remarked:

"The fact that the corporate form of organisation is confined to a limited sector of business renders the problem of checking evasion difficult particularly in regard to trading operations. Even where the corporate form exists, the close interlocking of managerial and other controlling interests in the industry, trade and finance offers to the unscrupulous opportunities for evasion."
This leads us to another contributing factor — the shortage of experienced technical personnel to man the administration of tax laws. The delay in assessment proceedings is often utilised by unscrupulous taxpayers to manipulate their accounts, to destroy existing evidence or to fabricate new evidence — in short, to distort, the true position regarding their tax liabilities. In quite a few cases, the assets are alienated or frittered away during the interval between the earning of the income and its assessment, and even if ultimately a demand is raised, its collection is rendered very difficult. A huge backlog of income tax arrears amounting to Rs.271.71 crores was awaiting recovery at the end of March 1963.

The Tyagi Committee therefore, observed that the time-lag in completing the assessments is itself one of the causes for evasion. In this respect, it may be pointed out that the law, as it stands now, is highly loaded in favour of the tax evader. Tax assessment proceedings, at present, are unduly held up for long periods as a result of the interlocutory orders of High Courts exercising their writ jurisdiction. There were 528 writ applications pending before the Allahabad High Court against income tax assessments for more than two years. Even though ultimately these might be dismissed or decided against the private parties, the long delay involved, it is stated, itself acts to the detriment of the Public Exchequer. The collection of income-tax in Uttar Pradesh was round about Rs. 5 crores, while the arrears were Rs.20 crores. Could it be said that "Law affords
protection to those who do not respect it?"

Lack of requisite integrity in some officers of the tax department and collusion of few others with the dishonest tax-payers also contribute to the prevalence of tax evasion. Collusion with the tax-payer is not the only means available to a corrupt official for making unlawful gains. There are many avenues open to him such as intentional delays, withholding on flimsy pretences of benefits admissible in law, over-assessment and similar forms of harassment; in these and other ways a corrupt official can extort money from tax-payers with or without detriment to the revenues of the State. The Public Accounts Committee reported in their sixth report (Third Lok Sabha) as follows:

"The Committee are rather alarmed at such a large number of cases of under-assessment involving considerable amounts, detected in the test audit by the Comptroller and Auditor-General, when it is borne in mind that this scrutiny was limited to only a small percentage of cases in 235 income-tax wards out of 1,310 wards in the country. It is significant to note that the number of cases in which defects, discrepancies etc., involving under-assessment to the extent of Rs. 120.77 lakhs were found, works out to about 16 per cent of the total number of cases audited (i.e. 13,357 cases)."

In the case of test-audit conducted during 1961-62, under-assessments of tax were noticed in 4,829 cases involving a tax of Rs. 1.19 crores. Disclosing this information the Public Accounts Committee in its 21st report expressed concern over the fact that out of the 42,9443 cases in all examined in test audit, defects were
found in 8,604 cases which worked out to about 20 per cent. "What is worse", observed the Committee, "1,062 cases out of these had already been checked by the internal audit of the department who had failed to detect these mistakes."

Deterrent punishments like imprisonments are not meted out to tax evaders when they are caught, even though the law provides for prosecution and imprisonment in cases of concealment and false statements in declarations. The Public Accounts Committee in its 21st report expressed surprise that while there were 4,511 cases in 1961 - '62 in which penalties were levied for concealment of income totalling Rs.7,13 crores, not more than one person was sent up for prosecution. The Tyagi Committee also came to the conclusion that "the non-resort to prosecution and the non-levy of deterrent penalties have, no doubt, encouraged the growth of evasion." Though the maximum penalty leviable is 150 per cent of the tax sought to be evaded, such a high penalty is rarely levied, and even the moderate penalties imposed by the assessing officers are reduced by the appellate authorities to nominal amounts. With regard to the question of criminal prosecution of evaders, the Committee found the situation still worse, for, the Department could not get even a single person convicted in a court of law for an offence against the Income-tax Act during the ten years prior to the report. The Committee further added that "We feel that unless it is brought home to the potential tax evader that attempts at concealment will not only pay but
also actually land him in jail, there could be no effective check against evasion."

Secrecy in respect of incomes and wealth can have only an anti-social effect. The practice of publishing names of tax payers with assessed incomes, which is already being followed in several countries, will be an effective check on tax evasion. Further, in as much as the pressure of public opinion is a major deterrent against any offence by the white collar group, publication of the names of those penalised for concealment of income, wealth etc., should be resorted to adequately and public conscience should be roused against tax evasion. The widely held feeling in the minds of the public that evasion pays and that evaders are treated lightly is definitely harmful. There is no reason why persons who have defrauded the State of large sums of revenue should be placed on a better footing than persons who have defrauded private parties.
CHAPTER FOUR

TAX EVASION AND AVOIDANCE

REFERENCES AND NOTES

4. Tyagi Committee Report, Supra, P. 147.
6. Hearings before the Joint Committee on Tax Evasion and Avoidance (1937), P. 2, Quoted in Tyagi Committee Report, Supra, P. 147.
10. This is evident from the fact of increasing amount of taxes being evaded year after year and the increasing quantum of penalties realized from the Assessors.
11. Sections 16, 30, 31, 42, 45 and 49 of the Finance Act, 1964 are important in this respect.

Section 16 enables the assessment of unexplained money; Section 30 confers powers of Search and Seizure on tax officers; Section 31 provides the power of survey; Section 42 provides for enhanced punishment by amending Section 278 of the Income Tax Act; Section 45 provides for publication of information respecting assessors and Section 49 provides for amendment of the State Duty Act, 1963.
12. The observations of Viscount Simon, L.C., in Latilla vs. Inland Revenue Commissioners, (1943) A.C., 377 is noteworthy:

"My Lords, of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income, without sharing in the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopt them are "entitled" to do so. There is, of course, no doubt that they are within their legal rights but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeeded, is of course, to increase pro tanto the load of tax on the shoulders of the great body of good citizens who do not desire or do not know how to adopt these manoeuvres."


"If a person makes a statement in any verification under this Act or under any rule made thereunder or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than six months."

14. Section 40, Finance Act, 1964 amending Section 271 (1) of the Income Tax Act, 1961. By this Section, an 'Explanation' is added to Section 271 of the Income Tax Act, besides omitting the word 'deliberately' from Cl. (c) of Section 271. The explanation reads: "Where the total income returned by any person is less than 80% of the total income as assessed under Section 143 or 144 or 147, such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of clause (c) of this sub-section."

16. Section 48 (1) of the Income Tax Act, 1962 (United Kingdom)

17. Tyagi Committee Report, Supra, pp. 167 - 169 at P.169

18. Mannheim, H., Criminal Justice and Social Reconstruction, Supra, pp. 150 - 152.

19. Tyagi Committee Report, Supra, P.147.


21. Kaldor, Indian Tax Reform (1956), Ministry of Finance, Govt. of India - Quoted in Tyagi Committee Report, Supra, P.148


26. Ibid.


31. Report of the Commission of Inquiry on the Administration of Balmis Jain Companies (1963), Govt. of India, pp. 244 - 245.


33. Ibid, p. 33.

34. See Section 41, Transfer of Property Act; Kuttenpan Kair Vs. Kuttiscakaran Kair (1957) 2 M.L.J. 603.

35. Tyagi Committee Report, Supra, P.149.

36. Nicholas Kaldor, Indian Tax Reform (1956) Supra, pp. 103 - 115; See in this respect the Final Report of the Erothalisingam Committee on the Rationalisation and Simplification of the Tax Structure, Govt. of India(1968)
37. The First Five Year Plan.
38. Tyagi Committee Report, Supra, P. 149.
40. Santhanam Committee Report, Supra, P. 149.
41. Quoted in Santhanam Committee Report, Supra, P. 150.
42. Twenty First Report of the Public Accounts Committee.
43. Ibid.
44. Tyagi Committee Report, Supra, P. 150.
45. Ibid, P. 150.