‘It was only for the good of his subjects that he collected taxes from them, just as the sun draws moisture from earth to give it back a thousand-fold’

Kalidas Eulogizing King Dalip in Raghuvansh

All civilized countries need to collect taxes for several reasons, such as to finance developmental activities, to meet their day to day expenses related to maintenance of a free and fair society, to control the economy through fiscal measures, and to a certain extent, to change the economic behavior of people. This authority of national governments to collect monies from taxpayers must recognize a balance between the nations’ authority to tax and taxpayers' rights. Thus, the real challenge for nations is to ensure that taxpayers are treated with fairness, justice, and equity, while national governments assert their jurisdiction as taxing authorities. Ideally this tax collection can be analogized to the extraction of honey from the abode of honeybees where honeybees are not disturbed and careful extraction of the honey results in a circular process where more honey is deposited by honeybees giving better opportunity to the extractor to get the honey in perpetuity.

1.1. Prelude

Taxes are as old as civilizations. Taxes are imposed so that a Government may perform its traditional functions, under take welfare and developmental activities, and make provision for its own administration. It needs financial resources for these purposes and taxation is one method of transferring money from private to public hands. Taxation is necessary because what the Government gives it must first take away.

\[1\] An old Indian epic in Sanskrit Language
1.2. Cosmos

The State, in modern times, is playing a vital role in the life of an individual. The philosophy of welfare State led to transform a police State from a *laissez faire State*. The concept of welfare State implies a concept of government where the State plays a lead role in the protection and promotion of the economic and social well being of its citizens. It is mainly based on principles of equality of opportunity, equitable distribution of wealth and public responsibility for those who are not able to avail themselves the basic amenities of good life. Indeed the model of welfare State presents a systematic form of economic and social organization. Since, the State is looked as a provider of basic amenities of life. Therefore, it performs multiple functions e.g. service provider, protector, inspector, regulatory, entrepreneurship etc. The State charges the individuals for providing above services. According to Schumpeter, “without financial need the immediate case for the creation of the modern State would have been absent” In fact taxation is a touchstone of the politics of the modern State.

1.2.1. Taxation

Oliver Wendell Homes Said, “Taxes are what we pay for a civilized society.” The modern welfare State becomes possible only with the emergence of a commercial market or exchanged based economy. In earlier times, tax-framing, under which a ruler would sell off or award to subaltern the right-to make an income by extracting what resources he could from the local populace, had been common. Concealment or hording were common forms of resistance to the exaction. In the modern period, however, we move towards taxation uniformly applied by the State through officials who are responsible for collection, but whose income is not dependent upon these revenues. Modern accounting and banking procedures expose economic activity to

---

State surveillance and expropriation. Indeed, as Giddens argues, the assessment and collection of taxation liabilities is one of the ways in which the State extends its penetrative surveillance of society.

**1.2.2. Purposes of Taxation**

We can say that, the state is required to raise its economic resources to provide uninterrupted service to masses. The main sources of funding the state are taxation, fees of charges, gift or charity and involvement of the state in trade, business or commercial activities.

A Welfare state implies a direct transfer of funds from the public sector to welfare recipients, but indirectly, the private sector is often contributing those funds via redistributionist taxation; the welfare state has been referred to as a type of “mixed economy”. The generation of economic resources of the State through taxation and charges has become a preeminent source of financing the State itself for welfare functions. The system of taxation is based on the utilitarian mode of welfare State which insists upon the utility of all resources including individuals for social welfare. An ideal State frames and implements such a policy of taxation which reduces the inequality prevailing in the various sections of the society. In order to reduce inequality, a larger improvement in the utility of relatively rich individuals is required to compensate relatively poor individuals. Therefore various models of taxation have been designed around the world by the economists. These models provide for a variety of taxes in the form of direct taxes, indirect taxes; income tax, sales tax, flat tax, consumption tax, estate tax, excise tax, employment tax, fuel tax, social security tax, service tax, dividend tax and so on. The enumeration of various kinds of taxes imposed by a State reflects that tax is indeed an amount to be paid by persons living within geographical territory of a political region. Thus, the study of taxation is the study of not only economics by also of sociology, political science and law. Tax is imposed by the State through the exercise of

---

its political power by formulating laws to generate economy so that it can render the services and protection to the citizens, which is the main purpose of theory of social contract or in other words, the existence of State. The funds generated by the State are utilized by the State to carry out the governance system by performing various functions like maintenance of law and social order, national defense, protection of citizens and their property, to provide basic amenities of life water, electricity, health, housing, banking, insurance, and to develop public infrastructure. Apart from these functions, the governments also provide useful services in the field of education, healthcare, social security, pension, employment, public transportation and communication.

The important purposes of taxation are as follows;

1. Increase in effectiveness and productivity of the nation;
2. Increase in the quantum of revenue collection;
3. Improvement in services of the government;
4. Improve employment at all industry verticals;
5. Induction of modern technology in to the system;
6. Rationalization of terms and condition of the economic system; and
7. Rationalization of employment terms and conditions.

1.2.3. The History of Taxation

The history of taxation dates back to time immemorial and it is not a recent development by any account. A thorough research on the history of taxation system shows that taxes were levied on either on the sale and purchase of merchandise or livestock.

Further, the history of taxation suggests that the process of levying and the manner of tax collection were unorganized. But it suggests that all historical leaders and head countrymen collected taxes to run its authority. In other words taxes on income, sale, purchase and properties were collected to run the ruling Government machineries. Further, these taxes were collected to meet their military and civil expenditure and also to meet the common needs
of the subjects like maintenance of roads, drainage system, government buildings, administration of justice and other functions of the region. Indian tax machinery is very much based on that laid down foundation.

Although, there were no homogeneous tax rate structures but it depended on the production capacity and commodity of that particular country and region. Moreover, the tax rates and quantum varied according to the annual production. These taxes were collected in cash or in kind and it entirely depended on the type of commodity or service on which it was levied upon. For example, there was a very common practice of selling food crops and cash crops to government machineries against no money. The history of taxation suggests these were done to store government buffer stocks to meet emergencies. Taxes were levied on all classes of citizens. Taxes were paid in the form of gold coins, cattle, grains, raw materials and even by rendering personal service.7

1.2.3.1. The History of Taxation in India

In his work Raguvansa, Kalidas, the greatest Sanskrit scholar of ancient India, observed, “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”.

Arthasastra was the first authoritative text on public finance, administration and the fiscal laws in India. Kautilya’s concept of tax revenue and the on tax revenue was a unique contribution in the field of tax administration. It was he, who gave the tax revenues its due importance in the running of the State and it’s far reaching contribution to the prosperity and stability of the Empire. It is truly a unique treatise. It lays down in precise terms the art of state craft including economic and financial administration.

Vivid accounts of tax system during Mughal rule are found in contemporary court chronicles, particularly Ain-Akbari; the official chronicler of Emperor Akbar, compiled by Abul Fazal, one of Akbar’s courtiers. The work describes,

7 www.taxworld.org (as on April 28, 2011)
inter alia, matters pertaining to taxes, other revenues, expenditure, salaries of public officers etc. travel accounts of visitors, especially those who came from the west, also throw light on the Mughal system of revenue administration.

The period of British rule in India witnessed some remarkable change in the whole taxation system of India. Although, it was highly in favor of the British Government and its exchequer but it incorporated modern and scientific method of taxation tools and system. In 1922, the country witnessed a paradigm shift in the overall Indian taxation system. Setting up of administrative system and taxation system was first done in the history of taxation system in India. The period thereafter witnessed rapid growth and modernization of the Indian taxation system and present.\(^8\)

### 1.2.3.2. History of Stamp Duty

The idea of raising revenue to a State from the transactions of its citizens originated in Holland. The first stamp law was passed in Holland in 1624. That system was adopted in England during the reign of Charles II, but under the reign of William and Mary it assumed a definite shape and, thereafter, various statutes were passed requiring stamps on various instruments among the English People.

#### 1.2.3.2.1. Stamp Duty in India: British Period

The first stamp law in India was Regulation VI of 1797, which was limited to extent of Bengal, Bihar, Orissa and Benaras. This was followed by Regulation VII of 1800, Regulation XIII of 1806, Regulation VIII of 1807, Regulation VII of 1809, Regulation I of 1810, Regulation XII of 1812, Regulation XVI of 1813, Regulation I of 1814, Regulation X of 1814, Regulation XXVI of 1814, Regulation XVI of 1824, Regulation XVII of 1825, Regulation XII of 1826, Regulation X of 1829. First Regulation in Madras Presidency was VII of 1808, followed by Regulation XIII of 1816, Regulation II of 1825. First Regulation in Bombay Presidency was Regulation XIV of 1815, followed by Regulation XVIII

\(^8\) [www.incometaxindia.org](http://www.incometaxindia.org) (as on March 30, 2011)
of 1827, and Regulation XIV of 1831. Thereafter Act XIV of 1840, Act IX of 1842, were passed for extending the provisions to territories governed by English law and Act XV of 1859 for extending privileges to invention.

1.2.3.2.2. First Stamp Act in India

First Stamp Act applicable to whole of India was Act XXXV of 1860 which came into force from the first day of October, 1860, amended by Act XI of 1860 and Act, LI of 1860, repealed by Act X of 1862, and amended by Act XVIII of 1865 and Act XXVI of 1867, and was finally repealed by Act XVIII of 1869, and this was again repealed by Act I of 1879, which came into force from the first day of April, 1879, was subsequently amended by Acts IX of 1881, I of 1888, V of 1888, XVIII of 1888, VI of 1889, XX of 1890, XII of 1891, VI of 1894 and XIII of 1897, later Act was finally repealed by Act II of 1899, which came into force from 1st July, 1899.9

1.2.3.3. Stamp Duty: The Indian Stamp Act, 1899

The Act originally enacted in 1899 was being amended both by the Central Legislature and by the State Legislation were demarcated as above. The Indian Stamp Act, 1899 as amended by the Union Legislature is in force in the whole of India except the State of Jammu and Kashmir as regards the rates of stamp duties in respect of instruments specified in entry 91 of the Union List i.e., bills of exchange, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. The provision of the various Local Acts which had prescribed duties for them other than those set out in the Act stood repealed with the enactment of Central Act 43 of 1955. Rates of stamp duties on other instruments have formed the subject of State Legislation. This legislation has taken the shape of adding separate Schedules to the main Act applicable to the State concerned, except in Tamil Nadu, Assam and North Eastern States where the changes are made in the Articles of the main Schedule I and except in Gujarat,

Maharashtra, Karnataka, Kerala and Rajasthan where separate Acts have been enacted about them. The Act is also in force in the whole country as regards matters in the Concurrent List as above, but the Legislature have amended various sections and added new sections as applicable to their States. In the five States referred to above, the Act is in force in such matters only as regards instruments specified in entry 91 of the Union List. Thus the Act is now a composite Act amended by the Union Legislature and State Legislature in their respective spheres of legislation.

In Karnataka and Kerala States, substantial parts of which were previously comprised in Part B States, special provisions have been made, making the Indian Stamp Act, 1899 as in force in the Madras area applicable to the whole of the State so far as such Act relates to matters specified in entry 44 of the Concurrent List in respect of the instruments specified in entry 91 of the Union List; vide section 72 of the Karnataka Act and section 72 of the Kerala Act. But in the former State of Bombay, where also a separate Act has been passed, the repealing provision therein has expressly saved the application of Indian Stamp Act, 1899 and the Hyderabad Stamp Act, in respect of matters specified in the Concurrent List regarding instruments specified in entry 91 of the Union List. The result in that the Hyderabad Act is still in the statute book though the scope of its application is very limited. So also is the Indian Stamp Act as adapted to Saurashtra area now forming part of Gujarat. These Acts have come in force amendment by the Maharashtra Legislature and Gujarat Legislature along with the Stamp Act, 1899 in respect of certain matters.

As regards other areas which were formerly comprised in Part B States, the Rajasthan State has adapted and extended the Indian Stamp Act, 1899 to the whole State including the areas newly added to the State from erstwhile Part B States and Part C States and the Andhra Pradesh and Madhya Pradesh Legislature have respectively extended the Act in force the main parts of those States before State reorganization to the new areas added to those States from the erstwhile Part B State. It is not necessary to trace the various
stages of this process of consolidation of applicability of the Act as amended in the States.\textsuperscript{10}

1.2.4. Different kind of Taxes and Tax Rates

Public finance theorists generally discuss the principles of a sound tax system in the national context. Equality as between groups and individuals, economic efficiency i.e. promoting the optimum use of resources and growth, elasticity and administrative convenience are the major criteria put forward in judging an existing national tax system or in fashioning a new one, which must of course be also productive. These general principles apply to the State tax system as well. However, the tax system of in federal country is only a sub-system in the sense that it covers only a part of the territory and populace of a nation and its jurisdiction is generally restricted by Constitutional provisions to the activities and transactions that take place within its borders. Moreover, the economy of a State is an open one in the sense that it is closely linked with the national economy and further the tax system of the State structure of taxation all the taxes are important.\textsuperscript{11}

There are different types of taxes in India. The various types of taxes in India fall under the broad category of direct and indirect tax. The system of taxation in India is clearly vested in the hands of authorities such as the Central government, State government and the local Governments. The taxes that are levied by the Central government are on personal income, central excise, customs duties and service tax.

The taxes charged by the State government include; stamp duty, Value Added Tax (VAT), sales tax in states where there is no VAT, state excise, tax on professions and land revenue. Also the local governing bodies levy taxes such as tax on property and water supply and drainage etc.

Over the last one decade or so the system of taxation in India has undergone significant reforms. The tax rates are continuously revised and modified. Every year there are some or the other reforms made in the annual budget. The tax slabs are generally modified keeping in mind factors like recession and other economic downturns. There are separate and different tax slabs for men, women and senior citizens. The tax slabs are generally lower for women and senior citizens.\(^\text{12}\)

The resources taken from the public through taxation is always somewhat greater than the amount which can be used by the government. The difference is called compliance cost, and includes for example the labor cost and other expenses incurred in complying with tax law and rules.

The collection of a tax in order to spend it on a specified purpose, for example collecting tax on alcohol to pay directly for alcoholism rehabilitation centers is called hypothecation. The practice is often disliked by finance authorities, since it reduces their freedom of action. Some economy theorists consider the concept to the intellectually dishonest since in reality money is fungible. Furthermore, it often happens that taxes or duties initially levied to fund same specific government programmes are then later diverted to the government general fund.

Some economists especially neo classical economists argue that all taxation distorts the market and results in economic inefficiency. They have therefore sought to identify the kind of tax system that would minimize this distortion. A theory is that the most economically neutral tax is a tax on land. A government's primary duty is to maintain and defend title to land, and therefore, so the theory goes, it should collect most of its revenues for this unique service. Since, governments also resolve commercial disputes, especially in countries with common law, this doctrine is often used to justify a sales tax or value added tax, others e.g. libertarians argue that most or all forms of taxes are immoral due to their involuntary and therefore eventually coercive/violent nature. The most extreme anti tax and anti State view is

\(^{12}\) Direct Tax Code Bill: Government Keen on early enhancement. The Times of India March 16, 2012
awards capitalism, in which the provision of all social services should be a matter of voluntary private contracts.

1.2.4.1. Property Tax

Taxation has existed in various forms since civilization began. In days of old the source of wealth was land and its proceeds. Before the existence of monetary system, taxes were paid by a percentage of crops raised. Through most history the tax assessor and the tax collector were the same person. Some of the most common forms of taxation over the millennia were poll taxes, tariffs on goods and property taxes on the value of land, building and other personal property. Property taxes have been major source of revenue for most Government.\(^\text{13}\)

1.2.5. Economics of Taxation

Economics of taxation deals with the economic effects of taxation pertaining to a country. The effects pertaining to the economics of taxation is not singular in nature but it is a series of small and large effects which has significant impacts on the economy of the country. The stability of the system of taxation reflects the performance of the country's economy. The economics of taxation depends on the type of economic structure the government follows such as capitalist economy, socialist economy and mixed economy.\(^\text{14}\)

The system of taxation follows several parameters mentioned in the jurisprudences administrating the economics of taxation. The tax in India considers five different types of income for the purpose of taxation, such as salary head of income, house property head of income, profit in business or profession head of income, capital gains head of income, and other sources head of income. There is a list of rebates and exemptions which can be claimed under the laws governing the system of taxation. The income tax is levied on all kinds of income and collected by the Central government of India apart from the income on agriculture which is not taxable under the Central

\(^{13}\) [www.investpedia.com/p/propertytax](http://www.investpedia.com/p/propertytax) (as on May 15, 2011)

\(^{14}\) Salania, Bernard, The Economics of Taxation (Cambridge, MA; MIT Press 2003 P.38)
government. The State government of India collects the tax pertaining to income from agriculture, value Added Tax (VAT), sales tax, state excise duty, stamp duty, professional tax, land revenue, etc. Taxes imposed by the local bodies are pertaining to octroi tax, water supply utilities, drainage and sewage utilities, and property tax. Pertaining to the economics of taxation, India went through a lot of alterations related to the reforms on taxation.

1.2.5.1. Important Aspects of Tax under Economics of Taxation

- Knowledge of tax burden.
- Knowledge of the taxpayers both individual taxpayers and corporate taxpayers.
- Knowledge of the system of taxation and its development.
- Knowledge of the reforms required for the system of taxation.
- Knowledge about avoiding double taxation.
- Knowledge of establishing a direct connection between the taxes paid and the services received.\(^\text{15}\)

1.2.5.2. Important Concepts of Economics of Taxation

- Taxation is unavoidable defrayments to the government authorities of a country.
- Taxation is referred as transfers made by individuals or corporate sector units to the government authorities of a country and these transfers are compulsory in nature.
- Of all the economic issues taxation is most delicate and controversial.
- The resources reallocated to the government authorities are not directly connected to the services and goods supplied by the government.\(^\text{16}\)

1.2.5.3. Objectives of the System of Tax

- Maintenance of a very low burden of taxation.

\(^{15}\) [www.business.mapsofindia.com](http://www.business.mapsofindia.com) (as on August 14, 2011)

\(^{16}\) ibid
• Maintenance of a wider platform pertaining to taxation as the different rates of taxation helps maintaining a low tax rate.

• Ensuring that the system of taxation is fair and equal to everyone.

• Shifting the weight age pertaining to taxation from tax imposed on income to tax imposed on expenditure.

• Reduction of the rates pertaining to taxation on income of any kind to encourage the provision of more and more incentives and the creation of wealth within the economy.\textsuperscript{17}

1.2.6. Voluntary Taxation

Voluntary taxation theory suggests that taxation which is more off a compelling act should actually be a voluntary act. The theory of voluntary taxation states that the government should not force the people to pay tax or decide how much tax the individual should pay.

The populace should be provided with the option of paying tax and the people should be given the authority to decide how much tax they are going to pay and where they would spend the collected funds. The voluntary taxation theory is based on the libertarian ideologies.

However, the tax system most commonly followed in the world is controlled by the government authorities. The government makes the laws pertaining to the system of taxation. The system of taxation follows several parameters mentioned in the laws that administer the economics of taxation.\textsuperscript{18}

1.2.6.1. Advantages of Voluntary Taxation

• The voluntary taxation theory allows more freedom.

• The voluntary taxation theory executes the function of the collecting the tax for the government and at the same time the providing the populace with the authority to decide where the funds are to be spent.

\textsuperscript{17} \textit{ibid}

\textsuperscript{18} DE Miller, PA Pierce (Winter 1997) State and Local Government Review 29, P. 34
The voluntary taxation theory helps the government to track the demands of the voters and the entire country quite easily. The voluntary taxation theory helps the development of a facility which is urgently required such as health care, transportation facility as the voters can direct the contributions towards the particular area.¹⁹

1.2.6.2. Disadvantages of Voluntary Taxation

- The Central and the State governments would not be able to function properly due to lack of funds.
- The authority of the people to decide whether to pay or not would lead to lawlessness in the country as no one would pay taxes.
- The populace with more money power would run the government and the people without a strong financial backup would suffer.²⁰

1.2.7. Optimal Tax

Optimal Tax is a theory that deals with making the taxation process easily accessible and efficient. Optimal Tax largely focuses on some of the factors in tax system which constitutes a range of welfare programs for the tax system.

Optimal Tax looks after a particular set of issues on tax such as commodity tax, income tax, variations of tax rates across commodities, and the advancement programs to be implemented to improve the current tax system. The Optimal Tax System takes into account a range of features while initiating the welfare programs for the tax system. The features of Optimal Tax System are as follows;

- The first feature is to introduce a set of easily accessible tax programs such as commodity taxes along with the revenue requirement of the government to ensure convenience in the government's tax system;
- The second feature is to eliminate the unnecessary heavy taxes that have high chances of affecting the economy of the country;

¹⁹ ibid, P. 36
²⁰ ibid, P. 41-42
• The third feature is to keep an eye on the responses coming from both individual and firms in the tax system. For example, individuals will be more interested in goods and other daily needs while the firms will be focusing upon the technological aspects pertinent for its production;
• The fourth feature is to reduce the extra burden levied by various taxation schemes, yet raising the government's revenue at the same time;
• The fifth feature is to work out the equity concerns to balance upon the tax system for a more efficient functioning;

The uniform commodity taxes are barely optimal but they raise the costs of goods at the same magnitude, thereby ruling out the distortions on tax system. Optimal Tax ensures a flat rate tax system in the taxes of goods but that does not include the taxes on wages. Optimal Tax theory has made the tax system highly feasible and convenient by incorporating various beneficiary schemes on the tax system.\(^{21}\)

1.2.8. Tax Incidence System

The tax Incidence System is classified under 2 broad categories. They are: Initial Incidence and Final Incidence. Initial Incidence deals with the legal tax payment to the government and those who are abiding by the law. The Final Incidence focuses upon those on whom the tax burden has been imposed. A regular presentation of the statistics of tax changes and its impact on various income groups helps the law-makers understand the responses coming from people regarding complex tax changes.

The concept of Tax Incidence does not depend on the government's revenue. It depends on two factors, namely, price elasticity of demand and price elasticity of supply. For example, the tax levied upon the labor class is usually carried out by the owner of the organization or the consumers of the products. The Tax Incidence System has also enlisted a scheme of the distribution of the tax burden between the owner and the worker. It is largely practiced in

\(^{21}\) Ramxy (1927) "A Contribution to the Theory of Taxation" The Economic Journal, 37, no. 145 (Mar 1927) P.47
United States which claims the payment of taxes to be equally divided between the employee and the employer.\textsuperscript{22}

1.2.9. Tax Burden

Tax Burden is also known as Tax Incidence and means the research of the effect of a specific tax on the economic welfare of the people. The Burden of Tax falls on that group of people that has to pay the tax at the end of the day.

Taxes are charged by the state and it is an enforced contribution that the individual or the legal entity has to pay. The various kinds of taxes that have to be paid are income tax, sales tax, property tax, fuel tax, and luxury tax among others. The law of the land states from whom taxes are to be collected but the person who finally pays the Tax Burden is usually decided by the market. It is the market place that decides the person who is going to pay the Burden Tax for the taxes gets embedded with the costs of production.

The Burden of Tax depends on the quantity of product supplied and the demand for it and this is called the elasticity of demand and supply. Depending on it the Tax Burden can be absorbed either by the buyer which it does in the shape of higher prices post tax or it may be absorbed by the seller in the shape of lower prices pre tax. In case the supply elasticity is low then more of the Tax Burden is taken by the supplier. On the other hand if demand elasticity is low then more of the Burden Tax is taken by the customer.\textsuperscript{23}

Tax Burden in the case the seller is a firm that is competitive flows back to the production factors and this includes the capital investors who have to bear in the shape of loss of money to shareholders, entrepreneurs who have to bear in the shape of less salary of superintendence, landowners who have to bear in the shape of low rents, and workers who have to bear in the shape of lower salary.

\textsuperscript{22} \url{www.investopedia.com/terms/tax_incidence} (as on October 16, 2011)
\textsuperscript{23} \url{www.investowords.com/8711/tax_barden.htm} (as on October 18, 2011)
1.2.10. Tax Evasion

Tax Evasion entails the efforts that are made by trusts, individuals, firms, and various other entities to avoid paying taxes by illegal and unfair means. The Evasion of Tax usually takes place when taxpayers deliberately hide their incomes from the tax authorities in order to reduce their liability of tax.

Evasion Tax takes place when the people report dishonest tax that includes declaring less gains, profits, or income than what has been actually earned and they even go for overstating deductions. The Evasion of Tax level depends on certain factors such as fiscal equation which means that people's tendency to pay less tax declines when the payment due from taxes becomes obvious. The level of Tax Evasion is also dependent on the tax administration's efficiency and corruption levels.\textsuperscript{24}

The level of Evasion Tax also depends on the chartered accountants and tax lawyers who help companies, firms, and individuals evade paying taxes. Tax Evasion is a crime in all major countries and the guilty parties are subjected to imprisonment and fines.

1.2.11. Ethos of Taxation

To create excellent systems of government, it is important that certain high standard principles are established and adhered to. Such principles should be used as solid guidelines for creating systems of taxation as well. Not very much attention has been paid in any country to establish such important guidelines for taxation and the result has been that no excellent systems of taxation exist in any country.

- The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.

\textsuperscript{24} Tax Evasion or Tax Planning “Indian Express” July 01, 2012.
• The tax which each individual is bound to pay ought to be certain, and not arbitrary.
• Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it.
• Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.
• A tax should not be used to give favorable tax treatment to different people or businesses for any reason or purpose no matter how well intentioned. Any reduction in taxes to some will necessarily increase the rate of taxation to all other taxpayers. There has been always great sentimental debate and implementation of lower or no taxes for people on the lowest rungs of the socio economic ladder. This is, and always has been one of the greatest mistakes and it most often amounts only to shameless vote buying by politicians. The fact is that the paying of taxes by "the poor" gives them the equal dignity of all other taxpayers who contribute equally to the running of their government. The equal paying of taxes does not create the class strife that has been created by the politicians who pretend to care for the poor and the under-classes they are identifying in their election campaigns and whose votes they endeavor to "buy" with money they "steal" from all the rest of the taxpayers by indirectly increasing their tax rates in the process. The "poor" do not benefit from favorable tax treatment because the ironic reality is that their "take home" wages gradually decline by the amount they otherwise would have paid in taxes.
• A tax should be as broad based as possible, resulting in a low percentage rate that offers little incentive for tax evasion and tax avoidance and all the unproductive activities people engage in to lower their taxes.
• A tax code must be formulated in simple language easily understood by all who are subject to it.
• To keep a tax system as simple and clear as possible, it must have as few as possible exemptions or special provisions.
• An optimum tax replacement must be able to be phased in very incrementally to create as little economic and political disruption as
possible. People and their politicians are very risk adverse and will not easily accept a proposal that will create sudden drastic economic and political changes over a short span of time.

- The optimum tax replacement proposal must be attractive enough to be accepted as optimal by multiple countries. The fact that all major countries have totally different tax systems serves as proof that none of them as yet has found or implemented an excellent tax system that many other countries would like to copy.25

1.3. Bombay

After Indian independence and the partition of India in 1947, the new Indian government grouped the former princely states of Gujarat into three larger units; Saurashtra, which included the former princely states on the Kathiawad peninsula, Kutch, and Bombay state, which included the former British districts of Bombay Presidency together with most of Baroda state and the other former princely states of eastern Gujarat. In 1956, Bombay state was enlarged to include Kutch, Saurashtra, and parts of Hyderabad state and Madhya Pradesh in central India. On 1 May 1960, it became the new states of Gujarat and Maharashtra.

The Bombay Stamp Act, 1958 having been assented to by the President of India on 4th June, 1958, came into force by publishing notification in Bombay Government Gazette, on 11th June, 1958. The Government of Gujarat has adapted The Bombay Stamp Act, 1958 by the Gujarat Adaptation of Laws (State and Concurrent Subject) Order, 1960.

The Acts having short title with prefix “Bombay” continued to be in force in the State of Gujarat or part thereof. To intend to amend those short titles so as to substitute the prefix “Bombay” by the prefix “Gujarat”, The Gujarat Short Titles (Amendment) Act, 2011 was passed. By the said Act short titles of 67 Acts are substituted by word “Gujarat”. Bombay Stamp Act, 1958 was one of

25 www.electoratetax.com (as on November 12, 2011)

1.3.1. Duty

The definition of the term duty given by lexicographers is: "something that is due", "obligatory service"; "something that one is bound to perform or to avoid". In this sense we speak of a duty, duties; and, in general, the sum total of these duties is denoted by the abstract term in the singular. The word is also used to signify that unique factor of consciousness which is expressed in the foregoing definitions by "obligatory", "bound", "ought" by and "moral obligation". 27

A duty is form of tax that is only applied through certain special legislation; the difference between a tax and a duty is a matter of tradition rather than meaning: probably tax or duty was chosen for political reasons when the tax / duty were invented. Customs duty and Air Passenger duty are usually called duty.

1.3.2. Stamp Duty

Stamp duties are levied on various instruments reduced to writing and not on the transaction per se. The idea of raising revenue to a State from the transactions of its citizens originated in Holland when the first Stamp Law was passed in 1624. In England, Stamp duties were first imposed in 1964 as a revenue raising measure to finance the ongoing war, and this was elaborated in subsequent statutes to cover various instruments. The rate may be either ad valorem or fixed. The statute also sets out how stamp duty is to collected, denoted and the person liable to pay the duty. 28

---

26 This word was substituted for the word “Bombay” by Gujarat Act No. 15 of 2011 (Sr. No.. 56) dt 30-4-2011 and deemed to have substituted on 1-5-1960.
27 www.pw.ntnu.in (as on November 14, 2011)
The most important thing about stamp duty is that unless the instrument fits into one of the heads of charge set out in the First Schedule, then it is not liable to duty. Stamp duty is charged for the benefit of the State Exchequer Fund. If the duty is not paid on time, penalties and interest may be charged in addition to the duty. When an instrument is presented for stamping the appropriate head of charge is determined first. Then the amount of duty due is calculated by reference to the rate of duty applicable to the instrument. Liability to duty, i.e. which head of charge applies, is determined by what the instrument effectively does, rather than what the instrument is called.

As discussed stamp duty is a tax on the value of instruments used in various business transactions. Within this broad definition of stamp duties, there are two sub-classifications: judicial stamp duties and non judicial stamp duties. Judicial stamp duties are fees collected from litigants in courts, and are best viewed as court fees. For most States, judicial stamp duties are relatively small in magnitude, although there are some exceptions. Non judicial stamp duties are typically a onetime charge on the transfer of immovable property; because the charge is a onetime payment whose tax base is the value of the transaction, it can appropriately be seen as a tax on the transaction. The focus of this paper is on these non judicial stamp duties, which will be referred to for convenience as stamp duties.

1.3.3. Indian Stamp Act

In India, Stamp Duties were first imposed in Calcutta on prescribed instruments in 1797 and then in other Presidency States with the objective of abolition of tax levied earlier on traders for the maintenance of police establishments. Provisions were added later for stamping acknowledgments for the receipt of money rates, and on other deeds. The Stamp Act of 1860 replaced the existing regulations of the three Presidencies, and this Act was ultimately replaced by the Act of 1988. This was based to a considerable extent on the English Act. This has undergone only minor changes in substance and the Schedule has been slightly amended in 1956, 1958, 1976,
The Act itself was amended in 1971 and 1976 to a minor extent.

The Indian Stamp Act 1889 is a fiscal measure, enacted to secure revenue for the State on certain classes of instruments. Under it, every instrument, mentioned therein, has to be duly stamped before the same can be admitted in evidence for any purpose. When an instrument is not duly stamped, the procedure for impounding the same and making it admissible thereafter is also provided therein. Proof of a bargain by an instrument, not duly stamped, is exclude, but it does not mean that the Act thus alters the terms of the bargain between the parties. The primary object of the Act being to prevent evasion of the revenue, which it imposes, the Act is neither limited to affording a party a protection, of which he may, or may not, avail himself according to his will nor is enacted solely at the instance of the revenue officials. It is also not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the said Act are conceived in the interest of the revenue. Once the object is secured according to law, the party, staking his claim in the instrument, will not be defeated on the ground of initial defect in the instrument.

1.3.3.1. The Bombay Stamp Act, 1958

Under the Indian Constitution, stamp duties are divided into those imposed under the Union List (or those set by the central government) and those imposed under the State List (or those determined by the individual States). Under Entry 91 of the coming together List I, the central government sets the rates of stamp duties on bills of exchange, bills of lading, cheques, promissory

---

30 Govind Ram Paliwal v. Radha Mohan, 1971 ALL WR (HC) 26, 28 : AIR 1971 ALL 280 (FB)
31 Kumar Barja Mohan Singh v. Lachmi Narain Agarwala, AIR 1920 Pat 50 affirmed in Lachmi Narain Agarwala v. Rameshwar Prosan Singh, AIR 1924 PC 221; see also Sethuraman v. Ramanathan, AIR 1946 Mad 437; Naraindas v. Jassonmal, AIR 1921 Sind 80; Tukaram v. Sonaji, 10 IC 702.
32 Surajmull v. Triton Insurance Co., AIR 1925 PC 83:52 Cal 408
notes, letters of credit, insurance policies, share transfers, debentures, proxies, and receipts. The collection of the duties is the responsibility of the State government in which the transaction occurs, and the State government retains all revenues collected by the State, although the States sometimes allocate a portion of the duties to the local government in which the collection occurs. Under Entry 63 of the State List II, State governments have the exclusive power to fix the stamp duties for other instruments listed on the State List. The specific items taxed vary by State. For example, Gujarat imposes stamp duty on 58 items; Karnataka imposes stamp duties on 55 separate items; Andhra Pradesh on 56 separate items; Kerala on 58 items; and Assam, Bihar, Himachal Pradesh and Nagaland on 65 items.

The stamp duties imposed by the Bombay Stamp Act, 1958 on instruments fall into five main categories:

- Instruments that relate to conveyance and property transfer;
- Instruments that are connected with loans and advances;
- Instruments that related to capital market transactions;
- Instruments that are used in daily business and commercial transactions; and
- Instruments that are executed under other statutes for record-keeping purposes.

The bulk of stamp duty revenues come from the tax on a “conveyance” (or a deed of sale). Duties collected on conveyances typically account for approximately seventy to ninety percent of total (non-judicial stamp duty) revenues in the States.

1.4. Object

Stamp duty is currently in broad terms a tax on document that transfers property. The objective of the research suggestion and recommendations are:

- Modernization: To create a legal framework for stamp duty in line with more modern taxes, providing a level playing field and creating a charge
that is based more on the substance of transactions. The intended effect of the revised regime is therefore e-enabled streamlined and clearer charge, which applies fairly to all relevant transactions.

- **Fairness:** The Government is concerned about the increasing extent to which stamp duty is being avoided. The research suggests and recommends the ways to control, monitor and regulate the tax avoidance and evasion.

- **E-Business:** To create an administrative system that supports the Governments in future for e-business agenda.

- **Simplification:** To simplify the Act in such a way that execution of the Act can be more effective.

- **Empowering:** To empower the authority for enforcement of the Act.

1.5. Significance

The study scrupulously examines various legislations relating to immovable properties and economic transactions. The study basically revolves around the improvement in Bombay Stamp Act, 1958, by which state revenue can be increased; cost of collection can be reduced. Social changes can be achieved and overall target of simplification of the Act can be made.

1.6. Hypothesis

This study revolves around the language of the Act, judgments of various Hon’ble High Courts of the Indian States and Hon’ble Supreme Court of India, on stamp duty and relevant aspect of the subject.

Hypothesis of the researcher has set up a focused question; how revenue of the State can be increased by making the changes in the Act? Secondly; how simple, quicker and effective procedure can help the state to collect the revenue? And how modern, fair, simple and empowered system can be introduced through amendments in the Bombay Stamp Duty Act?

This study is justifying the hypothesis; the State can make use of stamp duty as one of the major source of State’s own revenue. An act can contribute
more to state’s own revenue and play an important role in development of the State.

1.7. Tools of Analysis

The researcher, for analytical and comparative study of the subject, has mainly relied upon the books written by eminent authors, law journals published by the authorized publication houses, articles and reports written by eminent jurists and legal experts, decided case laws of Indian and foreign Courts as well as all the possible information available on the Web-sites. The researcher has also studied the time-series data (1950-51 to 2012-13) on tax revenues of Central and State Governments of India. Various Government Reports and recommendations of various committees are also analyzed during research. The list in brief is given below:

- Related literatures on stamp duty;
- Research of various documents;
- Sample survey;
- Informal interviews;
- Visit of various Government Departments.
- Perception of various public offices.
- Intercommunication with Subject Experts.
- Interaction with people.
- Reports published by Government.
- Information available on Internet.

1.8. Research Design

The study undertaken is of course, on vast compass i.e. an analytical study of decision of various Hon’ble Courts, the books written by eminent authors and article written by eminent experts. Various Government reports and recommendations of various committees are also analyzed. The research has also conducted a sample survey by framing questionnaire. The method adopted by researched is both analytical as well as critical. It is mainly doctrinal, reparative study. This doctrinal research combines with empirical, descriptive, evaluative, critical and explanatory study.