CRUSHING BURDEN OF TAXATION

By

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"People must come to accept private enterprise not as a necessary evil, but as an affirmative good."

—Eugene Black

President, World Bank

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Under the Constitution of India the balance of powers is very well preserved between the Legislature, the Executive and the Judiciary. In actual practice, however, in the eighth year of the Republic it should be clear to any student of constitutional law or public affairs that the Executive has become predominant, and the Legislature and the Judiciary are not given the importance which is necessary to preserve the balance of powers. The Executive's power is unchecked by any effective Opposition inside Parliament or by any mobilised and organised public opinion outside it.

One of the consequences of this state of affairs is that the Executive is able to rush through the Legislature any piece of legislation. There is comfort in the thought that the Supreme Court and the High Courts still serve as the bulwark of civil liberties. But the incorruptibility of the Courts is of little avail if the statutes and executive regulations are so many, so often changed, so complex and so loosely drawn that their effect depends less upon a precise enunciation of a rule of law than upon an almost limitless discretion in the administrative authority.

The recent tax laws of this country provide instances of this type of legislation and present some very dis-

quieting features. One disquieting feature is the haste with which half-baked pieces of legislation are rushed through the Legislature. The speed of a nation's progress does not depend upon the speed with which it converts Bills into Acts. In fact, they are often in converse proportion. The latest instance in point is the enactment of the Gift-tali Act, 1958. The Select Committee was given less than a week to report on the Bill after it was introduced in Parliament. No revenue would have been lost if more time had been given to the Select Committee to report on a piece of legislation which marked the opening of a new chapter in the fiscal legislation of this country. The Act has come into force from April 1, 1958. The Act could as well have been passed by Parliament three months later and brought into effect retrospectively from the same date.

Many important measures do not even go to a Select Committee. The present tendency to introduce important amendments in income-tax and other taxing laws by means of the Finance Bill, which never goes to a Select Committee, is deeply to be deplored.

Hasty legislation of this type has two drawbacks—the loose and ill-considered drafting gives rise to all sorts of problems which could have been easily avoided by better care, closer attention and longer time being bestowed upon the measure. Secondly, such hasty legislation contains provisions which are so ill-conceived that, as the Lord Chief Justice of England said in *Harding* v. Price it is nowadays difficult for the most law-abiding subject to avoid offending against the law.

Some of the provisions of the recent taxing laws take no account whatever of the basic principles of justice and fair play. A law does not become any the less inequitable or any the less tyrannical because it has been passed by a House elected on the principle of universal franchise. Take, for instance, the question of income-tax on registered firms. Till 1956, income-tax was levied on the individual partners of a registered firm and the registered firm itself did not pay any tax. After 1956, income-tax (though at a special low rate) is payable by a registered firm over and above the income-tax payable by the individual partners of the registered firm. A 'firm' is not a legal entity under the Indian Law. Therefore, in form and in substance the same tax is levied twice on the same individuals in respect of the same income for the same year. I am not aware of the income-tax law of any other country where this type of double taxation prevails. The very principle that you should collect tax twice from the same persons in respect of the same income is most obnoxious. I have never heard of a single argument in support of this double taxation on registered firms except that it brings an annual revenue of more than Rs. 1·5 crores to the Government.

Take, for another example, the provisions of the Wealth-tax Act, 1957, which levy wealth-tax both on companies in respect of their assets as well as on the shareholders in respect of their shares, the value of which would be determined to a very substantial extent by the value of the company's assets. Here, technically, there is no double taxation, because the company and the shareholders are two distinct entities in the eye of the law, but convincing arguments have been

urged, which need not be reproduced here, in support of the view that this type of double levy of wealth-tax, both on companies and on shareholders, is neither in the country's economic interest nor justified on grounds of fairness and equity. Montesquieu said two centuries ago that Ministers often levied taxes to satisfy their own crankiness. This is true as much of democracies as of dictatorships.

The bewildering complexity of taxing laws is coupled with the hyper-technical spirit in which the laws are being administered. The words, "The Letter Killeth" should be inscribed over the portals of every Income-tax Office.

The whole object of the rule of income-tax law which provides for registration of firms is that genuine firms should be granted the benefit of apportionment of the firm's income among the partners to avoid the higher rates of income-tax and super-tax which would be attracted by the aggregation of the firm's total income. But in practice registration is refused even to admittedly genuine firms on the slightest technical pretext. The law of registration of firms under the Income-tax Act is itself so loosely drafted and so ambiguous that I have known of leading firms of advocates and attorneys in Bombay and New Delhi, with large income-tax practice, to whom registration has been denied simply because of some technical non-compliance with the rules governing registration. A well-known firm of attorneys in Bombay files four different applications for registration and renewal of registration every year, because it is not sure which is the right type of application to make, If this is the plight of

expert lawyers in this branch of the law, one can well understand what would be the predicament of an ordinary citizen who may not have the resources at his command to take expert advice.

Consider the absurdity of a law which provides that if a genuine firm bona *fide* admits three minors to the benefits of partnership and the partnership deed gives them an aggregate share of one-fourth in the firm's profits, and their shares in that one-fourth are equal in fact and in law, registration should still be refused on the ground that the shares of the minors are not individually specified in the deed as one-twelfth each.

There are several other rules of our Income-tax law which are equally absurd but nobody gives thought to the necessity of changing them. India is politically and constitutionally one country, and yet the law provides that the movement of accumulated income of past years from Rajkot to Madras or Hyderabad to Calcutta may result in attracting income-tax. It is difficult to see what economic purpose or public interest is served by obliging a citizen to keep his moneys at one town and allowing him to move them to another only on the pain of having to pay income-tax.

The provisions of the successive Finance Acts, subjecting companies to higher super-tax if they declare larger dividends, are really indefensible in principle.

The insensate rule of thumb providing that on so much percentage of dividends in relation to the paid-up capital, the company should pay so much more super-tax, cannot possibly bring about an equitable distribu-

tion of the tax burden. Scores of factors might make it inequitable that a company declaring a large dividend in a given year should be sabjected to higher tax than another company declaring a smaller dividend. For instance, the company declaring a large dividend may have very large reserves and those reserves might have been the result of past sacrifices on the part of the shareholders. If as a result of such reserves, large profits are made and large dividends are declared, there is no rational reason why, after levying full tax on the large profits, a penal tax should be further levied because of the declaration of a large dividend.

Again, apart from the question of reserves, a company which pays 12 per cent dividend may have paid no dividend during the last eleven years. Though its average dividend works out to only 1 per cent, it is subjected to higher super-tax than another company which may have been consistently paying a 6 per cent dividend.

Apart from these anomalies and absurdities, it is difficult to see any justification for the levy of a penal income-tax or super-tax based on the amount of dividend declared. Whatever may be the justification for such a measure during wartime, in times of peace it is altogether wrong that the discretion of even companies in which the public are substantially interested to declare such dividend as they think prudent, should be fettered by the levy of a penal tax.

There is no consistent policy or coherent pattern underlying the tax on companies. If a company in which the public are not substantially interested

declares a low dividend, it may have to pay an additional super-tax under Section 23A of the Income-tax Act; while if it declares a large dividend it would have to pay an additional super-tax under the relevant Finance Act.

It is the policy of the Department to induce people to pay their taxes promptly and in full, and yet if a company to which Section 23A of the Income-tax Act applies utilises its profits of a certain year in paying off the arrears of tax of past years, having no other funds out of which to pay the tax, an order under Section 33A would still be passed on the company, penalising it by the levy of an additional super-tax for not having declared a dividend.

The provision of the English statute, corresponding to Section 23A of our Income-tax Act, provides that no penal tax would be levied if the declaration of a dividend or a larger dividend than that declared would be unreasonable having regard to the current business requirements of the company. Under the Indian law, the current business requirements of the company are not taken into account at all, a fact which is totally inconsistent with the Government's general policy of industrial stability and expansion.

India wants to develop its trade with foreign countries and obviously it is in the national interest that we should have substantial foreign assistance in the industrialisation of this country. But the pernicious doctrine of 'business connection', embodied in Section 42 of the Income-tax Act, has had very adverse consequences on India's trade with foreign countries.

No other country, except Australia, has thought fit to levy tax on the basis of a business connection. I doubt whether the Government have ever made a senous study of the determined effect on India's trade with foreign countries, produced as a result of the levy of income-tax on the basis of business connection, and tried to ascertain whether this detrimental effect does not far outweigh any revenue derived immediately from the application of the doctrine.

One is reminded of the words of Browning:

"O, if we draw a circle premature,

Heedless of far gain,

Greedy for quick return of profit sure,

Bad is our bargain."

Quite a few of the principles on which tax is recovered by the Government are principles, which, in the long run, would dry up the very sources from which the tax is derived to-day.

India is the first country in the world to levy expenditure-tax. Only a supreme sense of irony could have impelled Parliament to impose this unprecedented expenditure-tax on a nation which has so little to expend.

From the economic point of view, the expenditure-tax is misconceived. It is levied on persons, expenditure by whom would only result in distribution of wealth. It is difficult to see what object is achieved by the Expenditure-tax Act. It is mostly wealthy men who spend above the minimum taxable limit of

Rs. 30,000 and in their case wealth is usually distributed among the different members of the family. Since each individual member of the family can spend upto Rs. 30,000 without attracting expenditure-tax, it is only in rare cases that expenditure-tax' would at all be attracted.

Far from bringing any substantial revenue to the Government, the expenditure-tax may thus have the result of supplying a further incentive to businessmen to let limited companies defray expenses which really should have come out of thier own pockets.

The integrated pattern of taxation is the child of abstract theory and a doctrinaire approach. One wishes that sometimes the Government would take counsel from men of humanity, vision and imagination, men of practical experience and understanding of human affairs and of the national character. Such men would be able to give advice to the Government more precious than that of statistical experts.

On this topic there is a brilliant passage in Charles Morgan's "Liberties of the Mind" which I shall summarise here. Where problems of deep policy are concerned the Government takes advice, Commissions are set up, Ministers appoint Advisory Councils to examine a particular problem and report back. Whoever looks carefully at the constitution of these bodies will note that one element is nearly always absent—a humane counsellor appointed for his quality of humanism. Commissions and Committees generally include (and rightly include) experts on various aspects of the problem to be examined. One or two "fancy" members are sometimes added. Why is no humane counsellor

appointed, a philosopher, a historian, a scholar, a painter—yes, even a poet or a story-teller—the whole value of whose presence would be that he is not a statistical expert and does not represent a vested interest, a party or a society? He might ask the questions, leading to the "real issue", which the others forgot to ask, for it is of the essence of humanism and of all art to ask questions governing the relationship of reality to appearances and of truth to half-truth. Extremely adroit Princes did not regard as valueless the opinion of Voltaire, and the author of Paradise Lost was not considered a helpless dreamer. If such judgments were of value in days when the world was comparatively simple and statesmanship leisurely, of how much greater value would they be to-day!

But our taxing laws overlook the human element altogether. The statistical experts can formulate on paper a beautiful integrated pattern of taxation but completely overlook that their new taxes might provide additional incentives for tax-evasion to the dishonest, and might provide disincentives to working hard and saving to the honest.

In 1791, Genoa issued coins with the following inscription,—"Time is precious: Work and save: Idleness is robbery". This motto has little appeal under a system of taxation where the fruits of work and the results of saving are both taxed at vertiginous heights.

If democracy means the nose-counting method or adult franchise, India is undoubtedly a democracy. One cannot possibly over-rate the importance of this basic principle of democracy. Rut democracy also has

a higher meaning and a nobler purpose, and that is to make the Government responsive to rational arguments and to public opinion and to make them appreciate points of view other than their own. This kernel of democracy is rare and deserves to be sedulously and scrupulously cultivated. The State's desire to get revenue must not get bigger than the sense of justice and fairplay.

Many of the modem taxing provisions seem to have been made with a view to foiling the tax-evader. Really very much sterner measures are required to bring to book tax-evaders and legislation in this direction would have whole-hearted public support. But it is about time that attention was paid to the fact that there are also honest tax-payers in this country, and laws should not be so made or administered as would bear hardly on them.

To-day the position is that despite the integrated pattern of taxation, tax-evasion has not been checked. As Justice Harman observed in *Moorhouse* v. Dooland (36 T.C. 1 at p. 7), there is a growing tendency on the part of the Government to spend time catching the financial sprat, while the mackerel swims free in the ocean. If the income-tax, wealth-tax and expenditure-tax returns of some of the wealthiest men in India were made public, the nation would see for itself how illusory the hopes of the authors of the new pattern of taxation have been.

All the above grievances have been ventilated time and again, but there has been no response from New Delhi.

Czar Peter I once published an edict by which he forbade any of his subjects to offer him a petition until two duplicates had been presented to his officers. On refusal of justice by the officers, the petition could be presented to the Czar, but on pain of death if the petitioner was held to be wrong on merits. History records that after the publication of this edict, no one ever addressed a petition to that Czar. Being unresponsive to public opinion and to the still small voice of reason is an infirmity which the elected representatives of the people sometimes share with the Czar.

Views expressed in this booklet do not necessarily represent the views of the Forum of Free Enterprise.

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Free Enterprise was born with man and shall survive as long as man survive?.

—A. D. Shroff

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