

# 17

## MY REFLECTIONS ON THE INCOME TAX ADMINISTRATION

*To tax and to please, no more than to love and be wise, is not given to men.*

Edmund Burke

*When a law becomes so impossible to understand that the ordinary citizen must look to the "super expert," the law becomes a trap and not a viable guidance.*

Robert S. Taft

*"The economist Adam Smith laid down some basic principles. Taxes should be "certain, and not arbitrary....clear and plain to the contributor, and to every other person."*

Walter B. Wriston

### **(i) I joined the statutory Civil Service**

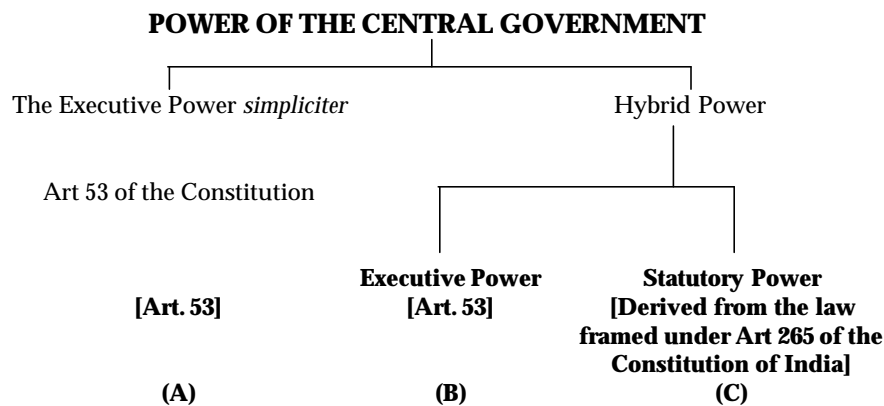
At the IRS (Staff) Training College, Nagpur, Shri V. V. Badami, who later became the Chairman of the CBDT, told us, whilst delivering his first lecture that the Indian Revenue Service was not a general civil service: it was a statutory civil service for which the governing norms were prescribed in the Income-tax Act itself. He told us to keep in view certain constitutional principles of fundamental importance. The Executive Government exercises powers over taxation in accordance with the provisions of our Constitution. In our country, the Executive is a creature of our Constitution with prescribed duties and conferred powers. The executive power is exercised in terms of Articles 53 and 73 of the Constitution. The Article 265 states, with wonderful precision, the norm of Parliamentary control on 'taxation'. An exclusive power over taxation had been acquired by Parliament in England after the Glorious Revolution 1668. The Executive had, thus, lost all powers on 'taxation'; and it could exercise these only in conformity with the law. Our Constitution's provisions are the same as under the British constitution.

We learnt that CBDT was established by the Central Board of Revenue Act, 1963. The Act established separate Central Boards: one for Direct Taxes, and the other for Excise and Customs. The section 3 of the said Act prescribes: "each such Board shall, subject to the control of the Central Government, exercise such powers and perform such duties, as may be entrusted to that Board by the Central

Government or by or under any law.” Section 4 authorizes the Central Government to “make rules for the purpose of regulating the transaction of business by each Board”. The following two important propositions emerge:

- (i) the CBDT “shall, subject to the control of the Central Government, exercise such powers and perform such duties, as may be entrusted to that Board by the Central Government”; and/or
- (ii) the CBDT shall exercise such powers and perform such duties, as may be entrusted to that Board by the Central Government by or under any law.

It follows that in exercise of the functions entrusted to the CBDT by the statutes, the CBDT is not “subject to the control of the Central Government”. It discharges the Parliamentary commission, and for the propriety of its acts, it is accountable only to the Courts on the points of legality. The tax authorities can be mandated to discharge their public duty, and their orders can be quashed on standard grounds for which remedy for Judicial Review is granted by our superior courts (on the counts of illegality, irrationality, procedural impropriety and also breach of proportionality). The Central Government is, thus, interdicted by law from trespassing on the Board’s spheres of statutory functions which are controlled and guided only by the terms of the statutes. But functions, which are analytically administrative, are under the control of the Central Government to be exercised through the CBDT. These provisions reflect certain constitutional principles of fundamental importance. Without going into details, I would state them thus diagrammatically:



**Explanatory comments:**

- (A) Governed by the Business Rules.
- (B) Governed by the Rules of Business.
- (C) Powers to be exercised in accordance with the statute ONLY.

The Revenue Department of the Government would be a clear trespasser if it interferes in (C). The Executive Government’s power is derived simply from Art. 53 of the Constitution: and it would be acting *ultra vires* if it interferes in the exercise of the legal duties prescribed by the law framed under the discipline of Art. 265 of our Constitution. The Income-tax Act is framed in exercise of power under Article 265 of our Constitution.

**(ii) The *raison d'être* for the above; the subversion of our Constitution and law that I witnessed**

As this Chapter is a part of my autobiographical Memoir, I would draw only on my experiences to show how frequently our law and Constitution were subverted by our Government itself. What is most worrisome is the way things have become worse and worse, irrespective of the colour and commitments of the political parties in power. I intend to tell you what happened at three different times which I witnessed. These are; (i) what I saw in 1960s when I had investigated into the affairs of the six eminent former Congress Ministers of Bihar (I would call this the Justice Aiyar Commission Phase); (ii) what Justice Shah had noticed as the instances of the gross subversion of the law in his report (I would call this phase simply as the Phase of Emergency); and (iii) the subversion of the law and constitution through administrative acts (I would call this as the Phase of the Nation's loot).

**(a) Those were the best days: My experience in the Aiyar Commission phase**

I have told you about the Aiyar Commission in my Chapter 10 of this Memoir. Even though a Bihari, I was trusted by the Commissioner of Income-tax, Patna, to exercise statutory jurisdiction over the cases of the six distinguished politicians, and very powerful civil servants of the State still occupying high posts. I held jurisdiction over them for almost three years. I investigated their cases, I inspected their places in different parts of Bihar, I interacted with the State of Bihar helping the Aiyar Commission in going ahead with its mission, and also with the very powerful CBI unit headed by DIG, Mr. Hingorani. Those assesses had wide contacts with the high politicians of the day. But neither they tried to obstruct investigation I was carrying on, nor did my administrative superiors ever interfered with my work of investigation, and decision-making.

Those days were different. Once Mr. T.P. Singh, ICS, visited the Central Revenue Building at Patna, and addressed us. He was then the Revenue Secretary. A point cropped up in the meeting: it pertained to a non-recoverable tax demand that deserved to be written off. He was unhappy that that work was pending since long. In his annoyance, he said: "Bring the file, I would order that the demand be waived". Everyone in the Conference was silent, but I sowed my wild oats. I had gained experience of not more than two years. I said, "Sir, You are not competent to do that. Not even the Cabinet can forgo *apaisa* of tax raised in terms of the law. Taxes are raised under the Parliamentary commission. We can only transfer the non-recoverable demands to the Register of dead demands to be periodically reviewed for exploring the possibility of recovery." The Commissioner seemed to wear a frown, and he looked at me with his stern eyes. Mr. Singh came out after a pause, "Yes, the officer is right. I stand corrected".

**(b) Those locust-eaten years reaching its climax in the Emergency**

I have told you about the infamous Emergency in Chapter 11 of this Memoir. The Shah Commission had drawn up its horrendous portrait. The monstrosity that it displayed must have shocked Mrs. Gandhi too. She must have been struck aghast how the baser elements in our public life could subvert our administrative system to promote their unworthy agenda. The Shah Commission, after examin-

ing the excesses done during the Emergency, drew comprehensive accounts showing the noxious crudities wrought by what it called the “Root of All Evil”. Some top politicians and bureaucrats formed an unholy alliance to shock our nation with many instances of the gross subversions of the law and Constitution of our country. I would focus on one instance which had become the subject-matter of our serious discussion at the Central Revenue Building at Patna where I worked for a decade.

I would request you to read Chapter IX of the Shah Commission Inquiry Report. It tells us certain unbelievable truths about ‘Baroda Rayon Corporation —Search and Seizure under Section 132 of the Income-tax Act, 1961’. The things which happened then bring to mind what Shakespeare said in Othello: “You are one of those that will not serve God if the devil bid you”. The “Searches and Seizure” were authorised on hurriedly cooked up grounds: they were found later false and irrelevant. Events moved with the strange delirious pace as if the Income-tax Administration was being led, nay dragged, to say in the words of Shakespeare’s Iago, “as tenderly... by the nose as asses are”. The statutory provisions pertaining to the mode of the seizure of the documents, and the provisions governing the post-seizure procedure were blatantly breached. The *dramatis personae* of this morbid drama included the then CBDT Chairman (Shri S. R. Mehta), the then Director of Inspection (Inv.) (Shri Harihar Lal), and Shri Pranab K. Mukherjee, the then Minister for Revenue and Banking. It was shocking how lies and half-truths were traded, how the Administration allowed itself to become the stooges of the politicians. A reading of Chapter IX of the Commission’s *Report*, would convince you that they had played their unworthy role in that strange melodrama. I have already quoted two short extracts from that *Report* in Chapter 11. The great Tulsidas said: “Let us not go on putting gloss on the unseemly”: so I must stop pursuing these points further.

**(c) The Loot of the Nation. Whose Government? This Darkest Chapter**

It is said: there is no ceiling on excellence, but there is no bottom to degradation. We are witnessing how low our public morality has sunk, how grossly our Government can betray our nation’s interest, how dense and asphyxiating the noxious gloom has become! I would come to these points in Book III, but for the present, I would like you to reflect on following lines of Thomas Mann in his novel, *Death in Venice*; and think about our present which stinks with corruption at all levels facilitating amassing of ill-gotten gains in tax havens and secrecy jurisdictions:

“But the city was not swayed by high minded motives or regard for international agreements. The authorities were more actuated by fear of being out of pocket, by regard for the new exhibitions of paintings just opened in the public gardens, or by apprehension of the large losses the hotels and the shops that catered to foreigners would suffer in case of panic and blockade. And the fears of the people supported the *persistent official policy of silence and denial.*” (italics supplied).

Aren’t we passing through a similar situation? Please think about it.

**(iii) Lack of Transparency: its lethal effect**

I saw for more than three decades how our government worked. Nothing is loved by the *entente cordiale* of the vested interests more than 'secrecy'. They are fond of areas of darkness like the tax havens. This love for darkness and opaque system is on account of sinister reasons. Stiglitz aptly says<sup>1</sup> :

'Earlier, in my days at the Council of Economic Advisors, I had seen and come to understand the strong forces that drove secrecy. Secrecy allows government officials the kind of discretion that they would not have if their actions were subject to public scrutiny. Secrecy not only makes their life easy but allows special interests full sway. Secrecy also serves to hide mistakes, whether innocent or not, whether the result of a failure to think matters through or not. As it is sometimes put, "Sunshine is the strongest antiseptic."

I always felt, and also asserted wherever I could, that secrecy provisions created an Opaque System under which our Right to Know and Express (Art. 19 of the Constitution) suffered. The Article 19(1) (a) of the Constitution of India grants to the citizenry of this Republic a fundamental "right to freedom of speech and expression". The fundamental right to "freedom of speech and expression" cannot be exercised properly unless with it goes the Right to Know. Our Supreme Court has recognized the supreme importance of the Right to Know. *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.*<sup>2</sup> says "that the people at large have a right to know in order to be able to take part in a participatory development in the affairs of our democracy."

Now comes the Direct Taxes Code Bill, 2010 (Part 'G' Chapter XVIII of the said Code) introduced in Parliament some time back. It sought to incorporate the core provisions of that Circular 789 of 2000 in the statute itself ensuring the continuance of secrecy provisions, and uninhibited operation of the strategy of deception. Instead of withdrawing the said Circular, there is an effort through the provisions of the Code Bill to authorize the issue of the Certificate of Residency. It is an old device common in several tax havens. It is a practice in tax havens to grant this certificate in order to preclude any investigation into the questions of residency of the entities operating from or through their jurisdictions. In Monaco, a *Carte de Sejour* (residency permit) is granted if small deposits are made in a Monegasque bank. Those who procure the certificates of residence are accustomed to plead that such certificates should be accepted without demur as they are granted by authorities constituted by a sovereign governments.

**(iv) The encroaching shadow of the WTO on the Laws of Direct Taxes**

I consider it important to tell the Income-tax administrators, and our people in general, that the WTO has already commenced casting its shadow on the laws of taxation which pertains wholly to our own domestic sovereign space. The General Agreement on Tariffs and Trade 1994 ("GATT 1994") was a new version of the General Agreement on Tariffs and Trade (GATT 1947), and it was evolved and structured under the WTO framework. When the GATT 1947 was signed, none thought that the regime sought to be established would ever have any impact on Direct Taxes. The same position existed even when the Uruguay Round Final Act was signed in 1994 setting up the WTO driving the whole

complex multilateral trade regime in terms of the various Agreements done under its common umbrella. There are good materials to think that things are being engineered so that the shadow of the WTO is cast wide on the domestic space of the nations. The WTO-inconsistent Direct Taxes measures are likely to be identified, and would run the risk of being questioned by the WTO-members before the DSB of the WTO. Michael Daly has a point when he says: “Multilateral WTO rules, which are agreed by consensus can therefore be expected to continue to be an important factor in how Members’ shape their tax policies as they will undoubtedly want to avoid having their tax policies successfully challenged in the WTO.” [Michael Daly, ‘The WTO and Direct Taxation’ (Discussion Paper 9, [http://www.wto.org/english/res\\_e/booksp\\_e/discussion\\_papers9\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/discussion_papers9_e.pdf))]. But three things happened to promote an activist approach of the WTO and of its other associate organs and associate agencies. They are:

- (i) The activist approach of the Uruguay Round of Multilateral Negotiations led to annex many new areas of commerce and trade to the WTO province: *viz.* the Trade Related Intellectual Property Rights (TRIPs), the Trade Related Investment Measures (TRIMs) Agreement on Agriculture (AoA), the Agreement on Subsidies and Countervailing Measures (SCM), and General Agreement on Trade in Services (GATS). This expansive approach goes on.
- (ii) Even the WTO’s Disputes Settlement Body and the Appellate Forum adopted in their judicial decision-making expansively creative and activist approaches to make the Body virtually the World’s most powerful judicial tribunal.

Efforts to annex Direct Taxes to the WTO regime were made in various ways, but the most patent ways were through the interpretation of Articles III (National Treatment on Internal Taxation and Regulation) and Article XVI (Subsidies) of GATT 1947, and Article XIV and XXII of General Agreement on Trade in Services (General Exceptions and Consultation). The said Article III prescribes mandatory provisions requiring the members of the WTO to provide “National Treatment”. No more favourable domestic protection can be given to domestic products. This Article was not originally conceived to affect the Laws of Direct Taxes. These provisions affected the product specific taxes, and were concerned with trade and tariffs which came within the purview of Indirect Taxes. But things changed; and Direct Taxes too have been dragged in under the WTO regime.

The General Agreement on Trade in Services, one of the Agreements coming under the umbrella of the WTO, grants, in some circumstances, an effective role to the Council for Trade in Services in the matter of the interpretation of certain disputes pertaining to the treaties relating to the avoidance of double taxation (*see* Articles XIV and XXII). Its provisions prescribe that under certain circumstances the tax disputes can be shifted to an international forum to be decided by an international body. It is amazing how our Government accepted such treaty-terms. No authority for doing so could be derived from Article 265 of our Constitution, or from section 90 of the Income-tax Act. Our Government could not invoke its general executive power to agree to such treaty-terms because ‘taxation’ is not under the domain of the executive power. This is one of the sad consequences of our Executive Government agreeing to the wide terms of the

Uruguay Round Final Act that set up the WTO. That Agreement was made under an opaque system without the people and Parliament knowing the terms of the said treaty.<sup>3</sup>

I consider it an appropriate context to point out that a treaty that transgresses the constitutional competence of our Government must be held by our court as domestically inoperative. I thought of challenging some of the provisions of the WTO treaty and the various Agreements under its umbrella, and also some of the provisions of the Double Taxation Avoidance Agreement, as they, I felt, contravened our Constitution's provisions including the judicially propounded doctrine of the Basic Structure. This exercise involved two questions:

- (i) Whether our superior court could exercise jurisdiction to examine the constitutional validity of a treaty provision, and could hold a treaty with a foreign government domestically inoperative for transgressing such constitutional limitations; and
- (ii) if the answer to (i) is yes, whether the provisions of the WTO treaty and the Agreements<sup>4</sup> under its umbrella, and some of the provisions of the Double Taxation Agreements, suffered from such constitutional infirmity.

The question at (i) has been answered by the Delhi High Court approving my position as taken by me in the PIL I had filed and argued. I have discussed the decision of the High Court in Chapter 21 (III) of this Memoir.

The question at (ii) was not decided by the High Court. Hence, in the light of the answer to question (i), this question would be decided someday if we can show how the treaty provisions transgress the constitutional limitations on the Government's treaty-making power. I hope someday our superior court would decide such concrete questions with reference to the provisions of a treaty. It seems that our Government would surely not agitate such issues because it is itself party to such treaties, and also because uncontrolled power is loved most by the executive. As the capitalists and their lobbyists are the direct beneficiaries of such treaties, they would surely not act against their own interests. So the only way to agitate such issues before our superior courts would be through a Public Interest Litigation. Let us see when it happens, and with what result.

After the commencement of the neoliberal economic era in 1970s (in our countries, 1980s, but most aggressively from 1990s), things were engineered to ensure that all legal matters touching the foreigners get gradually shifted from our country's domestic fora to the international fora. They realized that they could get over the domestic laws, and the Constitution of India, by devising a favourable regime through treaty terms.<sup>5</sup> The features of the Treaty of Allahabad (1765), the Treaty of Nanking, the Treaty of Wanghia (with the United States in 1844), and the Treaty of Whampoa (with France in 1844) stand incorporated in Article XVI (4) of the Agreement Establishing the WTO.<sup>6</sup> 'Taxation', which is traditionally a subject matter coming only under the domestic sovereign space, is now being shifted slowly to the foreign fora, where not only the law is bent in the favour of the MNCs, and the foreign operators, even our nation is denied the knowledge of things happening in the secret conclaves of persons without democratic accountability. To facilitate the creation of such a system, they are running down our civic administrative culture. They even criticize our judiciary; and try hard to devise, through the treaty-terms, a system under which the final words on the settlement of disputes would not be with our High Courts or the

Supreme Court but with bodies like the DSB of the WTO, and many other bodies constituted outside our country under the terms of bilateral, or multilateral agreements.

**(v) Shouldn't we go in for *droit administratif*?**

It is high time to think of restructuring our civil services keeping in view the French, or even the Japanese models, of the civil services (of course, with appropriate modifications responding to our needs). Justice J.C. Shah in his *Reports* had suggested that the advantages of *droit administratif* deserved to be considered to provide effective protection to the public servants.<sup>7</sup> It is time for us to consider why and how the French Civil Service has been a great success whereas our civil services have deservedly got more brickbats than commendation. H. M. Seervai has perceptively drawn attention to some features of the French Civil Service: I draw certain propositions from his exposition :

- (i) The French Civil Service is not vitiated by morbid fragmentations within the superior civil services. In our country the members of the Indian Administrative Service claim superiority, even paramountacy, because of the wider powers they enjoy, and also because of their closer nexus with the wielders of political power. The effect of this is always to destroy the *esprit de corps*, which is the characteristic feature of the French Civil Service breathing a common ethos in Palais Royal near the Louvre.
- (ii) "The French Civil Service could build a sound tradition of culture and competence, and its members know how to scale excellence through their individual talent." "Their dynamic outlook and missionary zeal in public service transcend politics on account of the training they get in a number of post-entry schools."
- (iii) "The (French) civil servant is not in contractual relationship with the State but enjoys a status determined by an Act enacted in 1946 (as revised in 1959) supplemented by an extensive and important case-law of the *Conseil d'Etat*, under whose jurisdiction fall all disputes touching recruitment, pay, promotion, duties and discipline within '*la fonction publique*'"<sup>8</sup>
- (iv) How many civil servants in our country would go to their administrative superiors with total trust for redressal of their grievances? Like ordinary folk, even they run to the Tribunals and courts with hope, even if in most cases they hope against hope. But in France? The "biggest single category of citizens who resort to the administrative courts are civil servants, and this is itself a testimony from those most competent to judge the efficacy of administrative justice."<sup>9</sup>
- (v) The French administrative law boldly applies the general principles law and justice (*principes generaux du droit*) in its administration of justice.
- (vi) The French civil services have worked well because they submit their actions "to a body of civil servants who are familiar with the problems of executive government, but who are capable of a judicial detachment, which commands public confidence."<sup>10</sup>

**(vi) The Problem of Vigilance**

Vigilance is undoubtedly the price of liberty without which 'democracy' cannot survive. Right from my day one in the Income-tax Department, I heard



that 'corruption' ruled in the government services amongst which the worst notoriety was said to have been gained by the Revenue Department. With the experience of all the years that I slogged and trudged in the Revenue Service, I felt much of the canard was on account of ill-acquired habit to dodge paying taxes at all costs. Old habits die hard. Often I was led to feel that our literature would have been poorer if the hapless tax-gatherers would not have been the butt of laughter, or the target of sardonic ridicule. But I have always considered it unfair. Low public morality is endemic in the society of our 'low arousal' people. Prof. Kaldor said in his famous Report: "the general standard of integrity in the Department.... I am sure is very high..." Today we have reached a point where I cannot persuade myself to grant a certificate of integrity to persons in public life. Besides, we know how tainted deeds remain shrouded in darkness in our opaque administrative system, and how a rich industry to promote greed is being run under the able guidance of our greedy professionals.

I consider that whilst 'corruption' in some measure has been endemic in our society since ancient times, the golden age of corruption set in with the advent of Economic Globalization. It has helped many to amass wealth and to park that in safer places outside our country. The real reasons for the government's culpable inaction has been described by a much abler person, H. M. Seervai. He posed a question which he himself answered. The question posed was: "Why was it that nothing effective had been done to eradicate the evil which six Inquiry Commissions had condemned?" He answers: "... If successive Governments took no effective remedial action, there must be deep rooted causes for such culpable inaction. The answer to the question is simple. Government was unwilling to pay the price which such removal required."<sup>11</sup> Haven't we seen corruption at high places going unnoticed? Has anyone been ever dragged from his Olympus to his nemesis? What is obvious needs no explanation. Who will watch the watchers?

#### **(vii) The Union Administrative Services Commission**

It is high time to set up in our country an institution which we may call the Union Administrative Services Commission. It should do for the Administrative Services what the High Court does for the subordinate judiciary. The Civil Services should be under the jurisdiction of the Commission in respect of the disputes touching recruitment, promotions, duties and discipline within services. The members of the Commission should have fixed tenure till the age of retirement, and should have the security enjoyed by the judges of the Supreme Court. Under our administrative jurisprudence, the Courts, under Article 226 or under Article 32 of the Constitution, have played extremely restrictive role in service matters because of their narrow interpretation of their supervisory jurisdiction, and their wider view of the Doctrine of the Presidential Pleasure. For proper discharge of public duties, it is essential that FEAR, the worst of the negative feelings, must be eliminated from the mind of the civil servants. Fear makes men small; and small men cannot achieve great task. Administrative process has to be transparent, and the milk of human kindness should saturate the administrative process. H. M. Seervai too has suggested the setting up of such a commission. I wholly endorse his views.

**(viii) What is obvious is not always known : Herbert Monroe on the British Tax Administration**

At the outset of his 1981 Hamlyn Lectures, Hubert Monroe raised some very interesting questions, each one touching the administration of income-tax in the United Kingdom. As the systems of taxation and the patterns of tax administration in India and the U.K are same, the questions that he posed are relevant even in our own country. He said:

“Why does the law of tax have to struggle to make good any claim to respectability or, indeed, relevance among lawyers? Why are the practitioners and exponents set apart? Why are those whose task is to apply and enforce it regarded so frequently with hostility or, at best, wariness? Why when issues of tax law come before the courts do judges so often adopt an approach quite different to that which they normally adopt in relation to other branches of the law? Is the law of tax fairly castigated as unnecessarily complex and obscure? Are there reasons to account for this inherent in the subject-matter?”

The learned lecturer tried to explore their answers in his various lectures in which he examined not only the historical development of the administration of income-tax, but also the roles of Parliament, and Judiciary. He concluded the series with a lecture on ‘The law of tax and the common people’ I am greatly indebted to him.

But the big problem which Monroe articulates through a series of pregnant rhetorical questions, quoted above, has, I believe, a short answer. The problem can be understood by studying the attitudes of the politically dominant class, or those who can call the tune at a given time. After the fall of the Roman Empire, the Roman Catholic Church developed institutions to protect property interest of the Church. The circumstances of history wrought situation which brought about the emergence of the nation states which acquired dominance to work for the dominant classes of property owners, traders, and power wielders. Their collective and collaborative pursuits led to the growth of the sinister geopolitical phenomena of ‘colonialism’ and ‘imperialism’. During this phase of Economic Globalisation pursuing neoliberal paradigm, corporatocracy, has emerged to subjugate the political realm to its corporate *imperium*, by a dexterous operation of the mechanism of the Rule of Market (*Pax Mercatus*) characterized both by ‘democratic deficit’ and ‘moral deficit’. I have always felt that the only political scientist, with right insight into the political systems of the West, was Karl Marx, whose ideas are thus summarised in Nehru’s *Glimpses of World History*:

“The class which controls the means of production is dominant. . . . The State and Government are controlled by this class which controls production, and the first object of the State thus becomes one of protecting this governing class. . . . Laws are made for this purpose, and people are led to believe by means of education, religion, and other methods, that the dominance of this class is just and natural. Every attempt is made to cover the class character of the Government and the laws by these methods, so that the other classes that are being exploited may not find out the true state of affairs, and thus get dissatisfied.”<sup>12</sup>

It was this inordinate lust for 'property' that had made Dr. Samuel Johnson define 'excise' in his famous *Dictionary* (1755) as "a hateful tax levied upon commodities, and adjudged not by common Judges of property, but wretches hired by those whom 'excise' is paid." This definition tells us what he felt about the 'excise' and its gatherer. Hubert Monroe has insightfully observed, after quoting Dr. Johnson: "The same would in due course, and was, said about odious officers of Revenue." The same attitudes towards 'taxation' is portrayed in W.S. Gilbert's comic opera *Ruddigore* from which I have quoted in Chapter 16 an interesting dialogue. Despite the casual observations by some judges in various decisions, and by some experts in their learned writings, the attitudes towards 'taxation' and the 'tax-gatherers' in our times continue to be the same as they were in the past.

**(ix) Classical Indian ideas on 'taxation'.**

Under our Indian thinking (I mean the thinking before the phase of our servitude that began in the medieval India), we held egalitarian attitudes towards society treating 'property' as the necessary wherewithal for common public good in a democratic ethos with steadfast faith in values. It may be worthwhile to read Chapter 20 of this Memoir which contains my reflections on the precious ideas of Krishna, the Buddha, Jesus, Muhammad, Marx and Gandhi. Our great past is forgotten. This philosophy that we had developed had shaped our ideas about 'property' and 'polity', 'taxation' and 'government', and the tax-gatherers'. Dr. Kiran Tandon summarises the view of Chanakya which our other political thinkers of those days shared, and wholly endorsed: (I translate from her Hindi)

—  
 "Acharya Chanakya has identified the taxes and duties, and has prescribed norms to determine fair incidence of taxation so that there is better budgeting and financial management for the nation. Acharya Chanakya has discussed a tax he called '*pranaya kar*' (taxation through the cooperation and love of people). This imposition teaches the administration how best to obtain people's assistance in raising resources in the periods of emergency. No high-handed and tyrannical method is adopted. People are persuaded to pay such a tax. For doing this, emergency and 'state necessity' are pleaded. On such valid reasons, people never mind paying right quantum of taxes. People do understand the needs of the State. People would not grumble paying taxes if Administration really needed resources, not for the benefit of the power-wielders, but for the welfare of people. Under such situations, not only the tax administration succeeds in its tasks, even the tax-gatherers are appreciated and respected by people."<sup>13</sup>

I must mention that those days the tax-gatherers were not subject to criticism. But during the days of Asoka, the Government functionaries had come up for severe criticism. To keep vigilance, certain government officials had been appointed: they were called *mahamatras* (high officers). But it is an irony of history that too much surveillance and strictness destroyed much of their initiative. But what I emphasize here is the general assumptions shared by the society and Government in the matter of the levy of taxes, and the tax-gathering.

**(x) Conclusion**

When the Patna High Court was monitoring the Fodder Scam Cases, a new aspect of our tax administration came under our sharp focus. The High Court was conducting an intensive monitoring of what we were doing in investigating the cases pertaining to that Scam. I recall, once some officers resented this monitoring calling it a judicial intrusion in what was wholly an administrative matter. They felt that this sort of monitoring would destroy the hierarchic discipline in the Civil Service. Their view made me reflect on the problem of judicial monitoring by the High Court, or the Supreme Court. I told them that the High Court was just exercising its constitutional jurisdiction under Article 226 of our Constitution which authorized it to issue mandamus, or continuing mandamus, to ensure that public duties, required by the statute, are done by the public servants. In fact, it was wrong to see any conflict in the exercise of the statutory power, and the exercise of the Court's constitutional jurisdiction. The High Court exercised its power, under Article 226 because the non-discharge of statutory duties by the public servants could defeat the fundamental rights of people, and also frustrate the operation of the Rule of Law. Besides, our Constitution requires the public servants, including civil and judicial authorities, to assist the superior courts in exercising their jurisdiction. I was glad that all the officers involved in the investigation of the Fodder Scam within the region of the Chief Commissioner, Patna, (*i.e.* Bihar and Jharkhand) worked hard, and whole heartedly. They received words of appreciation from the High Court for the dedication to duties they showed. As I have written comprehensively about the Fodder Scam Cases in Chapter 12 of this Memoir, I need not go into further details about the Scam.

**NOTES AND REFERENCES**

1. Stiglitz, *Globalization and its discontents* (Penguin) pp. 228-229
2. AIR 1989 SC 190 [Coram: Sabyasachi Mukharji, and S. Ranganathan, JJ.]
3. *Report of the Peoples' Commission on GATT* by V.R. Krishna Iyer, O. Chinnappa Reddy, D.A. Desai, the former Judges of the Supreme Court, and Rajinder Sachar, the former Chief Justice of Delhi High Court (published by System of Study of Global Trade System and Development, New Delhi); Muchkund Dubey, *Unequal Treaty* Chapt.1 (New Age International Ltd, New Delhi.)
4. *Report of the Peoples' Commission on GATT* says at page. 164: "Such a treaty is not constitutionally binding within the Indian Constitutional system and, in the facts and circumstances cannot be given effect to."; and again at page 179 : "If the Constitution is what the Judges have told us it is and the text with the Preamble explicates it, the TRIPS part *vis-a-vis* Indians will in all probability be *ultra vires*."
5. See Shiva Kant Jha, *Judicial Role in Globalised Economy* Chapter 1.
6. "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."
7. *The Shah Commission of Inquiry*, the third and Final Report p. 231
8. Brown and Garner, *French Administrative Law* 3rd ed. Quoted by H.M. Seervai, *Constitutional Law of India* 4th ed p. 3058
9. Brown and Garner, *French Administrative Law* 3rd ed. Quoted by H.M. Seervai, *Constitutional Law of India* 4th ed p. 3058
10. H.M. Seervai, *Constitutional Law of India* 4th ed p. 3059
11. H.M. Seervai, *Constitutional Law of India* 4th ed p. 3057
12. Nehru, *Glimpses of World History* p, 545
13. Dr. Kiran Tandon, *Sanskrit Sahitya mei Rajniti* p. 581 (Eastern Book Linkers, Delhi)