

Studying Social Justice of Taxes in Legal system of Afghanistan

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Abstract

Tax justice is very important to the legitimacy of the tax system in Afghanistan. On the one hand, any taxes cannot be derived from the people without a legal basis, and on the other hand, the taxes should be fair and reasonable. Regarding taxes in Afghanistan, it seems that in some cases, the taxes consisting of direct and indirect taxes are not justifiable. The very major examples are the VAT (Value Added Tax), the tax on credit cards, and some tax on income in the legal system of Afghanistan. During determining tax, the tax authorities should evaluate the life and characteristics of taxpayers to determine whether they have the ability to pay tax or not. These are the concerns regarding the social justice of taxes. So, we are trying to find the response to this question: Is social justice respected and observed in the tax legal system of Afghanistan? No doubt, in some cases, the taxes in Afghanistan are not rightful. The economic conditions of people are not equal. Most people in Afghanistan are very poor. As a result, tax authorities should assess people's living conditions. In addition, the government should codify fair taxes for the people. The method of the research will be descriptive and analytical. The method of collecting data is librarianship. We reviewed books, articles, magazines, and the national laws of Afghanistan.

Key words: Afghanistan, Legal System, Social Justice, Taxes.

Introduction

The taxation system can be divided into three categories: direct taxes such as the individual income tax and corporate income tax; indirect taxes such as the value added tax (VAT), the banking and insurance transaction tax, the special consumption tax, and the telecommunications tax; and other government revenues drawn from factor incomes, social funds, and privatization revenues" (Genckaya, 2018:10). In the case of Afghanistan, through history, the core of Afghan governance has been feudal in nature, which is evident from the rural and agricultural nature of the country's industry and demography. Government revenues have long depended on taxes on farmers and foreign rents (Nijat, 2014:10). So, the question of social justice in taxation is raised. Is it fair and justifiable to impose a tax on farmers and some others who are not able to pay? The answer is negative. No doubt Afghanistan's governments have tried to bring some reforms for social justice, but it's not enough.

Not only in Afghanistan but also in some other regional and international countries, the social justice of taxes is very important. The government should seek to gain the consent of the people. That's why the tax is a bridge between the government and the people. If the people do not accept, the government is not able to impose a tax. Therefore, it's important to study and evaluate the social justice of taxes. Observing and respecting the social justice of taxes encourages people to pay the tax with their own consent.

Research question: Is the social justice respects and observes in tax's legal system of Afghanistan?

Hypotheses: It seems that the system of taxes in Afghanistan is not right. The personalization of taxes that is the legacy of social justice is vague. In some cases, there are no differences between rich and poor people in paying taxes.

Objective of the research:

- 1- In order to find ways of finding solutions for those problems that exist in the way of taxes through legal means,
- 2- Exploring the definite role of the government in generating income for the expenditure of the state through a right path that is fair and justice for the people
- 3- Spread of my knowledge regarding socio-economic, political, trade, and cultural aspects of the taxes.

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Literature Reviews:

The issue of justifiable taxes is not new. There are so many legal bases in Afghanistan in this regard: the abandoned constitution of Afghanistan mentions that any tax cannot be imposed without the canon of law. The measure of tax should be on the basis of social justice by law (Islamic Republic of Afghanistan, 2004: Article 42). Thomas and Nojumi in their articles, *Bringing More Effective Governance to Afghanistan: Pathways to Stability*, In criticizing the systems of tax revenue in Afghanistan, the author raised the problem regarding tax revenue that will not be spent by the municipalities, even though the municipalities collect the taxes themselves. It seems that the author identified the unjustifiability of the tax system in Afghanistan. The authors expressed that the provincial governors should take responsibility for meeting local needs with local resources (Barfield and Nojumi, 2019:4). The author of the research, Nijat, said government revenues have long been dependent on taxes on farmers and foreign rent (Nijat, 2014:10). Although taxation and justice are classic debates, they are also relevant to the changing environment of society and the economic system. The system should adapt a fair and acceptable tax on the basis of reality (Durankey, 2019). The website Tax Justice.Uk expressed that "tax justice is one of the pathways to social justice. Just as the movement for women's rights and labor rights, or the right to health care and education, are important elements of our social fabric, so is the movement for tax justice. Ultimately, we want to build a just society that serves, protects, and promotes the participation of the most vulnerable" (www.taxjustice.uk). Taxation is one of the tools that the government uses to generate revenue, but the important point is the consent of the people (<https://www.lesrencontreseconomiques.fr>). Tax systems can contribute to social justice through issues like raising revenue for public spending on services, redistributing wealth to reduce inequalities between high and low-income groups and between women and men, and supporting accountable governance by giving taxpayers an opportunity to see and comment on how taxes are spent (Abdel Karim, 2018).

There are many articles and books regarding the social justice of taxes, which I reviewed. Regarding Afghanistan, there isn't any new research about the social justice of taxes. There are inequalities in this regard, and we try our best to find the facts about the inequalities in tax among taxpayers.

Significance of Study

It's considerably important for Afghanistan to find resources for its expenditure. One way of finding resources are taxes, but much more important is to get tax in a rightful way. Since, in some countries if the taxes are injustice so, the government will face with societal problems. Finance and tax system of Afghanistan are not new. Afghanistan codified many laws on these issues but several years wars caused some people cannot pay taxes because of their low income. Because of the above issues, it's very important to work in this research and find a solution.

Methodology

The method of the research is descriptive and analytical. The method of collecting data is for a librarian. The authors review many books, articles, national laws of Afghanistan, and other academic resources.

Theoretical basis of social justice and its relation with tax

Not at all like equity within the broad sense, may social justice be a generally later concept, born of the battles encompassing the mechanical insurgency and the approach of communist (and afterward, in a few parts of the world, social law based and Christian democratic) sees on the organization of society. It could be a concept rooted very dubiously within the Anglo-Saxon political culture. (United Nation: 2014:2)

Religions, thinkers and philosophers support the phenomenon of social justice. Quran Karim says: we create a group of them who recommend for right and implement the right with justice (Quran Karim, Araf: verses of 181).

The other western and socialist thinkers propound their views about relation of justice with tax which are as follows:

The world renowned economist Adam Smith came up with the canons of taxation for the first time in his famous book, 'The Wealth of Nations'. He has been acknowledged as the best tax economist of all times. Smith propagated in his theorem of Welfare Economics that an agile market, of its own accord, will apportion a country's resources most efficiently. He advocated that imposition of taxes must be done only to sustain a government in a restricted way and must satisfy four maxims: equity, transparency, convenience and efficiency. He maintained that maximization of wealth was possible if nations maintained free markets and limited taxes. Taxes must support four legitimate functions: (i) national defense, (ii) justice (iii) universal education; and (iv) good roads and communication.

He states that the above mentioned functions are advantageous to the entire society and may be paid by a common input by the whole society. The user fees must assist in helping to cover roadway expenses and that the rich should pay for their children's education. He thus anticipated both social externalities and user pay principles (Mahajan, 2021: 262) Adam Smith presented Four Principles for the taxes which are as follows:

1. Canon of Equity: The principle of equity states that there must be economic and social justice for people. To achieve this equity, every person must contribute to the government according to his capacity to give. So, the ability to pay' premise logically leads to the richer class paying more. On the other hand, the payer enjoys the security and benefits being provided by the Government.
2. Canon of Certainty: Any tax that has to be levied by the Government must be certain, that is, in fixed terms without any ambiguity. The person who has to pay must know the terms much prior to when he has to pay, the manner of paying and the amount. Any tax that is levied must adhere to the principle of certainty. This would ascertain, to some extent, the total amount by way of tax collection to the Government. Adam Smith specified the words, 'clear and plain', 'to certain' to make it to a common man to pay taxes correctly.
3. Canon of Convenience: The canon of convenience, as the name suggests, aims at the tax-payer's convenience. He must be able to pay his taxes in an easy and simple manner.
4. Canon of Efficiency: This principle propagates that a tax must be planned in such a way that it does not burden an individual while adding to the public treasury of a State. To achieve this, administrative costs and economic distortions must be kept to a minimum as they might hinder the industry of people and avoid from giving employment to people. According to Smith, here the main thrust is on efficiency of a tax that would let the annual produce of the land and labour of society, the real wealth and revenue of a nation the same as before. Simplicity and economy are latent in the last principle (same)

In a capitalist economy, taxes are not just a method of payment for government and public services: They are also the most important instrument by which the political system puts into practice a conception of economic or distributive justice. That is why they arouse such strong passions, fueled not only by conflicts of economic self-interest but also by conflicting ideas of justice or fairness. A graph showing the variation in marginal tax rates, or the percentage of income paid in taxes by different income groups, or the percent of the total tax burden carried by different segments of the population, is bound to get a rise out of almost anybody. While people don't agree about what is fair, there is a widespread sense that tax policy poses the issue of fairness in an immediate way. How much should be paid by whom, and for what purposes, what should be exempt from taxation or deductible from the tax base, what kinds of inequalities are legitimate in after-tax income or in the taxes paid by different people-these are morally loaded and hotly disputed questions about our obligations to one another through the fiscal operations of our common government. Yet while it is clear that these questions have to do with justice, they have generated less sophisticated discussion, from a moral point of view, than other public questions that (Murphy, 2002:3)

Other tax measures were proposed by Bentham in his pamphlet entitled Proposal for a Mode of Taxation (1794). His idea was to redress the balance between landowners, who suffered a considerable burden in the form of land tax, and the commercial classes, who paid none at all on income such as interest received from loans, government and personal annuities, joint stock company dividends, and profits from trade and professional incomes. He also classified income as temporary or perpetual. Perpetual income could be passed on from generation to generation (for instance, rent). He proposed to tax income received on a graduated basis above a subsistence level.

Bentham also set out his preferred order of taxes. Indirect taxes were preferable to direct ones, because a man could choose not to buy a good on which a tax had been imposed. This is certainly true of taxes on luxury goods, of which Bentham approved, but not of taxes on necessities, which he considered oppressive, although he favored direct taxes in the form of his intestacy tax as best of all, though there was less of a choice in managing it. He condemned tax imposed on law proceedings as the worst tax of all, as it was a tax on the distress of individuals. It should be abolished, together with taxes on medicines, on insurance against disaster, on contracts, and on the media of (political) information, such as on newspapers. Bentham's contribution to tax theory was substantial. He enshrined in his philosophy the idea that a tax can only be imposed by law, moving far away from the social contract theorists, who accepted that tax was something paid in return for protection from the state a voluntary alienation of rights. He did not accept that rights could exist unless granted by law, so he had a diametrically opposed starting point for his philosophy. He had almost made his utilitarian tax philosophy out of Adam Smith's fourth canon efficiency. If tax is conceived of along the lines of least sacrifice/maximum utility, then one does not need any other criteria. However, this concept is predicated on human behavior proceeding along this particular philosophical path, and, while Bentham is consistent in all aspects of his moral, political and economic philosophy, it is, again, an idealized approach (Frecknall,2015:30) So, tax is also a kind of benefit which the government gets that from the people. It is a responsibility which every citizenship of a country should pay it to the government. But one important point is that it should be reasonable and justifiable. In a country like

of Afghanistan, we have both poor and rich but most of the people are poor. There are some kinds of taxes which are levied unequal. In the following, we are going to study them and compare them with the laws which support justice in paying taxes.

1. Value added taxes

Article 2 “Value Added Tax”: An indirect tax imposed on a supply of taxable goods, services and imports; Article 4 (1) Value Added a taxpayer shall levy Tax on a taxable supply and on a taxable import. (2) The rate of Value Added Tax is 10% applied to the value of the taxable supply and taxable import. The above articles 2 and 4 related to the VALUE ADDED TAX LAW, which is issued in the year 2016 and amended in the year 2017. On the base of above law, they coerce the merchants to pay the tax from most of the grocery like flour, oil, sugar etc. These groceries consume by all the people. In fact, the merchant does not pay the taxes. He/she added the value on the value of goods. There are no difference among rich and people. We claim that this tax is not reasonable. Social justice does not observe in this kind of tax. Asian Development Bank data in the year 2020, in Afghanistan 49.4% of the population lived below of the national poverty line. (<https://www.adb.org/>) Therefore, most of the people are poor. It is difficult for them to pay taxes for consuming food ingredients. In Addition most of the people are jobless, which has a negative impact on their social life.

2. Tax on credit cards

On 23rd September 2015 government of Afghanistan declared a statute that each individual of Afghanistan who uses mobile should pay 10% of Tax. This was a change in tax revenue rates which is added in National budget document for fiscal year 2015 (National Budget document: 2015: P 7). Ministry of finance claimed that the economy condition of Afghanistan is impacted by the direct national income. 2014 presidential election and withdrawal of foreign forces from Afghanistan had its negative impact on economy of Afghanistan. Therefore, the government increased and imposed a tax on the mobile credit card. The people raised their voice against this kind of tax but no one heard them. No doubt many countries imposed this kind of tax on their people. But my argument is, the tax should not be equal to all both poor and rich. Those who use more credit cards should pay more, but those who use fewer credit cards should pay less. This is not justifiable that both rich and poor pay the same. Many scholars suggest that tax collectors should receive tax on the base of economic condition of the taxpayers.

3. Occupation tax

Regarding occupation tax the Afghanistan Income tax law notice as follows: Fixed tax on small business (all types) 13 (1) Natural persons, who are engaged in small business activities and are not subject to withholding tax or exemptions stated in this law, shall pay fixed tax according to the provisions of Article 75 of this law. (2) Natural persons mentioned in paragraph (1) of this Article shall be required to file a tax return according to the provisions of this law (Afghanistan Income Tax Law: Article 74).

Determining fixed tax on small business activities (All Types)¹⁴ (1) Where natural persons mentioned in paragraph (1) of Article 74 of this law have income (sales) of up to Afs. 150,000 from sources subject to tax within a tax year they shall be exempt from tax. (2) Where persons mentioned in paragraph (1) of this Article have income (sales) of more than Afs. 150,000 up to Afs. 10,000,000 for a tax year, they shall be required to pay 1.5 % fixed tax from their total annual sales after excluding exempt income set forth in paragraph (1) of this Article. (3) Where natural persons mentioned in paragraph (1) of this Article have income (sales) of more than Afs. 10,000,000 for a tax year they shall be required to pay 1.5% fixed tax from their total annual sales after excluding exempt income set forth in paragraph (1) of this Article (Afghanistan Income Tax Law: Article 75). But guidance No 25 Stabilizing the fixed tax of guilds for the fiscal year 1401 decrease the tax from 1.5 % to 0.5 %.

It imposed the above taxes on shopkeepers, toiletry, barbers, butchery, bakery, doctors, technicians and some other individuals who work and gain income. The new guidance and regulations gave some discounts to the taxpayers. But the problem is about fixing and calculating taxes. There is a very complicated procedure for receiving taxes. According to the current policy, the measurement and stabilization of the taxes should be done as self-assessment. Based on this method, the taxpayer must calculate and pay the tax payable according to the rules of the tax laws.. However, because of the lack of professional capacity, a real person who is engaged in small economic activities cannot measure the tax and cannot list the real tax, therefore the relevant tax administration is obliged (Guidance No-25, 2022).

The civil servants go to the Natural person’s shops, who are engaged in small business activities. They specify the time, for example, for an hour and calculate the income of the person and by that calculate the day, then the month and then the year. After exemptions, deductions and expenses, civil servants imposed the tax on the taxpayers. I believe we cannot observe justice with this method of collecting tax from the individuals. One problem is the method of collecting tax. The second problem; during collecting tax, civil servants do not observe the principle of making taxes personal.

The above principle means that in order to calculate and collect taxes from each person, we should take his special situation in terms of expenses into consideration and only his income should not be the criterion for tax determination.

Equal income holders do not have to pay equal taxes; because they may have different expenses (9:47), in this principle, the type of income and expenses and the characteristics of each taxpayer should also be considered. For example, in most tax systems, they differentiate between income from capital and income from work, and tax income from capital more than income from work (Rahmani, 2018:47)

4. Increase in total tax

Tax progress is said to be total when all taxable objects are subject to a single percentage and this percentage rises with the rise of the taxable object. For example, if the income of 0 to 1 million Afghanis is subject to 10% tax and the income of 1 to 2 million is subject to 15% tax, and generally the income of 2 to 3 million is subject to 20% tax. It has a major flaw and that is that there will be a major injustice in the amount of tax payable at the border between the two limits. For example, based on the above-mentioned composition, we consider two people, one of whom earns 19,500,000 and the other earns 2,000,000 Afghanis. The first one will pay 292,500 Afghanis and the second one will pay 41,000 Afghanis. It can be seen that the difference of 100,000 Afghanis causes an increase of 17,000 Afghanis in the tax. This major difference shows a type of tax gross injustice is at the boundary between two categories (The same source, 2018:66).

Conclusion

Tax and social justice related closely with each other. In Afghanistan any law, regulation, procedures and guidance can't implement efficiently without social justice. In fact most of the laws and regulation designed in the arena of social justice principles. But in some cases the procedures can't support the poor people. Particularly, in the area of indirect tax on credit cards, value added taxes and taxes on guilds. However, it's very important that the people also support the government by paying their taxes. People and government are two side of one coin. They should support each other. Afghanistan's economy need to be supported and should be stands by its own legs. Therefore, the government should bring some amendments in the laws and regulations on the base of the values and socio-economic status of its people.

Recommendations

1. The bureaucratic process of taxation is very complicated. So, the tax system in Afghanistan should be modernized.
2. Social Justice is the cornerstone of the tax system in Afghanistan, so the government should design the tax fair and justifiable.
3. The scholars do research and work more in tax in Afghanistan.
4. The lawyers review the tax's laws and regulation and point out the weakness and strengthen of them. The government held conferences and encouraged the lawyers and economists to do field research in order to solve the challenges of the tax system.
5. The government encourages Specialized person to work in the tax administration honestly in order to help economic development.

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