

## **Imposition of Tax in Islam and Debate of Jurists in Historical Context**

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### **Islamic Economic Principles:**

Islam has the set of rules both for the relationship between man and the creator and for the relationships among humans in all social, economic, cultural, political, legal, health aspects. Other than the existing resources for the Islamic state to generate income, certain rules for taxes need to be followed within Islamic premises.<sup>1</sup> In Islam, Allah Almighty is the Sovereign power with complete ownership of all resources. Man is the vicegerent of Allah and utilizes these resources according to Islamic principles and refrains from exploitation and greed for accumulation of wealth. An Islamic economic system is concerned with social welfare and in Islam there is a right of poor and needy people in the wealth of rich people of society (al-Quran 2: 262).

### **Financial Sources at the time of the Holy Prophet ﷺ**

In the initial years of development of Islam, *fay and sadaqat* were main financial sources. After the obligation of Zakat in 2<sup>nd</sup> H, it became the main source of revenue for Islamic state.<sup>2</sup> Zakat was levied on cash as well as on livestock, income, mines and treasures as well. Tax on land (*ushr*) was also levied being another source of income for the Islamic state. Though Jizya was another important source but its principles were also not formulated regarding time, method of collection etc. Thus a proper taxation system was not developed<sup>3</sup> and identifiable sources for the collection of tax at the time of Holy Prophet (S.A.W) include; Zakat, *sadaqat*, booty, *jizya* and goods and property received through agreements with non-Muslims.<sup>(4)</sup>

### **Financial Sources at the time of Rightly Guided Caliphs**

There was no change in the revenue sources in the time of Hadrat Abu Bakr (R.A) and he followed the footsteps of the Holy Prophet (SAW). Other than Zakat, Jizya, and *sadaqat*, *khums* was added to generate revenue. Hazrat Abu Bakr received 200,000 *dirhams* as revenue during short time of his caliphate.<sup>(5)</sup> During the caliphate of Hadrat Umar,

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the expansion of Islamic State necessitated the increase in the sources of revenue for controlling state affairs; establishment of *diwan* was another significant step in his era.<sup>6</sup> In Prophetic era voluntary contributions were good enough for maintaining army but later, it became state responsibility. Import duty was lessened from 10% to 5%.<sup>7</sup> Zakat was collected and distributed in the categories mentioned in the Holy Quran as well as on administrative purposes.<sup>8</sup> Hadrat Umar (R.A) also formulated the principle that the acquired land after the war belong to the state; thus making *kharaj* a permanent source of revenue.<sup>9</sup> Jizya was also collected from those people too with whom Islamic State has an agreement.<sup>(10)</sup>

### **Financial Sources at the time of Umayyad:**

After the period of Hadrat Umar, when more people converted to Islam during Umayyad period, *Jizya* and *Kharaj* was exempted on them so they pay *Ushr* if applicable. Custom (*wrf*) was given due importance in imposition of taxes. Thus changes were brought in by Umayyad's to increase the tax net for generating income. Hadrat Umar bin Abdul-Aziz and his follower Nasr bin Sayyar<sup>11</sup> (738–748) brought significant changes in the taxation system. Many a practices like offering expensive gifts to kings in the festivals of Nawruz and Mihajaran during Sassanian rule were re-imposed; and were condemned by Umar bin Abd al Aziz.<sup>(12)</sup>

### **Financial Sources at the time of Abbasids:**

Of the major sources of revenue collection, *kharaj* was of significant importance which was levied on all kinds of lands. *Jizya* was imposed as per the practice of Hadrat Umar and its rates varied from rich to poor giving exemptions to poor. The collection of *sadaqat* was left for the collectors of *kharaj*. Other than a new Import tax, tax was imposed on markets too. Previously Umayyads had imposed new tax *Maks* (tax on ships coming from the sea to Basra), later in the Abbasid period, duties were imposed on goods passing through sea or land other than taxes on waterways and borders. In the late fourth century *ushr* was imposed on salaries and sustenance as well.<sup>(13)</sup>

### **Debate of Jurists on the Right of Islamic State to Levy Taxes:**

Taxes are levied for the betterment in society in terms of education, development, infrastructure etc. The jurists from all schools of thought unanimously agree that imposition of taxes is the right of Islamic state to meet the needs of poor as well as for running the affairs of the state distributing the wealth and stabilizing the state. This right of the state is defended on the basis of maxim that a smaller sacrifice may be imposed to avoid larger sacrifice and something without which an obligation cannot be discharged is also obligatory.<sup>(14)</sup>

Taxation is an accepted element of social contract levied by the state for mutual benefit of rulers and citizens. This has been supported by various traditions and incidents from the life of Holy Prophet (ﷺ) and the era of companions.<sup>15</sup> Land tax or *kharaj* was introduced by Hadrat Umar to be paid by non-Muslims on the lands that was acquired by Muslim state after the conquest. While on the land owned by Muslims after conquest, *Ushr* was levied. In the present era, tax of *kharaj* varies with respect to land produce. Import duties and trade tariffs, sales tax and excise duties were justified on the ground to promote falah of the people.<sup>16</sup> The right of Islamic state to levy taxes is supported by a tradition of the Holy Prophet (ﷺ) saying that there are other obligations in your wealth, than Zakat.<sup>17</sup> One of the basic principles of Islamic jurisprudence also states that a small benefit may be sacrificed to attain a larger sacrifice.<sup>18</sup> Tax is meant to increase the revenue and a state can lower or raise the tax on the basis of ability of people to pay taxes.<sup>19</sup> Marghinani contended that if the resources of the state are not sufficient, the state should collect funds from the people to serve the public interest; if the benefit accrues to the people it is their obligation to bear the cost.<sup>20</sup> Mawardi emphasized it is iniquitous to take more with respect to the rights of the people whereas it is unfair to take less with respect to the rights of the public treasury.<sup>21</sup> Ibn Khuldun emphasized on the distributing the taxes with equity and justice. The imposition of taxes should also not be beyond the capacity of taxpayers.<sup>22</sup> Qardawi contends that taxes other than *kharaj*, *ghanima* and *fay* are to be imposed only if the state is unable to meet its needs and do not get enough revenue out of the mentioned ones. He relies on the principle that something without which an obligation cannot be fulfilled is also obligatory. He also asserted that tax money is to be spent on public welfare only.<sup>(23)</sup>

Jurists agree that Taxes can be imposed to meet the needs of the state including administration, welfare and development that cannot be done solely by Zakat money. The need to levy taxes is also important because it will lead to public dissatisfaction and violence if the state is unable to meet its needs on account of shortage of resources (avoidance of damage will get priority over doing of good). Imposition of taxes other than Zakat also has got strong arguments from the Holy Quran as well in strong and clear words.<sup>(24)</sup>

The revenue system in the contemporary era can eradicate the evils and discrimination between poor and the rich, though it may differ significantly in terms of composition of taxes from the early Islamic period.<sup>25</sup> Ibn Taimmiyah condemns the unjust taxation when the *shariah* limits to levy taxes were neglected by Mamluks. He listed illegal taxes and argued that the honest application of shariah principles are sufficient and no taxes are to be imposed had they be implemented properly.<sup>26</sup> Ghazali, on the other hand supported to levy taxes if the government is unable to meet the expenses for social welfare and defense.<sup>27</sup> Shatibi opines that if the needs of community require the funds to meet its expenditures which are not available in *Bait ul mal* it is permissible for government to impose taxes to finance certain objectives. He says that public is under obligation to support a ruler by sacrificing its wealth for the safety of faith and believers thus justifying the need of taxes but their limits should be determined.<sup>28</sup> Qurtabi also maintains that other than Zakat, Muslim community can be asked to pay in order to meet the necessary needs of the state.<sup>(29)</sup>

Another important view in this respect assert that if there is a genuine need to impose taxes, it should be levied on rich class of the society. Aistisam insist that in the earlier period of Islamic history, there was no need to levy taxes as the financial needs were fulfilled by available resources in the presence of less governing agencies but in the present era, need to impose taxes over and above usual taxes is lawful.<sup>30</sup> Ibn Hazm was especially concerned over the nature of the tax collection system. Abusive and exploitative means of collecting taxes must be prevented. Taxes were to be collected by not transgressing the limits of Shari'ah.<sup>(31)</sup>

Some scholars view that it is unlawful to levy tax in addition of Zakat. Ibn Hazm refuted it by convincing arguments in his book "*al-muhhala*" that it is an obligation of rich people of society to provide sustenance to the poor people of their region. If the rich people deflect from their responsibility the head of the state should compel them to give a part of their wealth for the maintenance of the poor and needy.

In Sunan ibn-i-Majah it has been narrated that the Holy Prophet (ﷺ) showed his anger on the waste of wealth and enjoined believers to expend his wealth in all four directions, meaning, his near ones including kinsmen, needy, neighbors and orphans.<sup>32</sup> In Sahih Bukhari another tradition has been stated that when the Holy Prophet (ﷺ) sent Muadh to

Yemen, he instructed him to teach people that Zakat is obligatory upon them to be taken from wealthy and given to the poor.<sup>(33)</sup> Besides poor due the poor have more rights in the wealth of the rich.<sup>(34)</sup>

### **Fatwas on Taxation:**

During the Crusades military campaigns against Middle Eastern Muslim countries, Muslim *fuqaha* issued fatwa stating *Shariah* permissibility of collecting taxes from Muslims for purposes of defense. These fatāwā were justifiable by shortage of public revenues for defence. The rulers in the later period of the Abbasid State as well as during the Ottoman State imposed other taxes on all citizens (Muslims and non-Muslims) to strengthen the armies as well as to finance expenditures of their extravagant style of living.<sup>35</sup> Islamic jurists clearly assert that Islamic state has the right to impose taxes in addition to *Zakat* to meet emergency and welfare needs. The justifications are given on the following grounds:

1. A state provides socio-economic infrastructure, education, medical relief, employment and civil amenities to meet the needs but finances are limited as the older sources of revenue Jizya, Kharaj, spoils of war etc are no more available, thus taxes are imposed to generate income.
2. The heads of expenditure of *Zakat* (al-Quran 9:60) are fixed thus Islamic state has to expand its sources to generate income to meet financial needs. Several other categories mentioned in the Holy Quran (2:177; 2:219) to be taken care of; gives a ruling to the Islamic State to impose for welfare activities. The tradition of the Holy Prophet (ﷺ) in Tirmidhi “*there are other claims too on the wealth of a person besides Zakat*”<sup>36</sup> is interpreted as an authority to impose taxes.
3. The jurists supported the contributions, extra taxes or compulsory contribution (*Nawa'ib*) in emergency needs like war, flood; and they take its precedent form the time of Holy Prophet (ﷺ) when he took contributions for the battle of Tabuk.
4. Umar (R.A) imposed duties on imports and included the horses in the list of material goods chargeable to *Zakat* which had not been subjected to *Zakat* in the time of the Prophet.
5. An important legal maxim says nothing is prohibited, unless it is against Islamic principles. Thus, Islamic state can impose taxes for the welfare of the Ummah.<sup>(37)</sup>

**Conclusion:**

On the basis of the legal evidences and historical study it has been held that the Islamic state has the authority to levy and collect taxes and to use these funds for the projects of social welfare. Imposition of such taxes does not violate any tenant of shariah and it was practiced by the Holy Prophet (ﷺ) and his companions. Islamic state can impose extra taxes provided the taxes are levied for benefit of the people in emergencies, or genuine needs of the state; tax income is carefully applied & honestly spent; and the charge, assessment and collection of taxes should be governed by principles of equity, justice and fairness.

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