

## **NEED TO JUSTIFY TAXING POWER IN A VIRTUAL ECONOMY\***

*This paper focuses on the challenges for justifying the taxing power of the state over activities in the digital world. The digital activities are taking place in a platform created not by the state but by the technology. Taxing of benefits, accrued to persons/entities arising out of transactions in the said platform, lacks a proper justification. The traditional justifications for taxations are generally based on the quid pro quo relation of state and market where state facilitates conditions necessary for earning to the community. The international community has stretched the age-old benefit theory enough to justify the taxing power of the modern state. Later the social contract theory propounded a broad perspective for the taxation process, and later the movement of romanticism has taken the very idea of state to a different dimension which itself has diluted the necessity to justify taxation. Even though scholars vary on their justification for taxation they do recognise the interrelationships of state and market. The state power to tax the virtual economy needs a stable and robust jurisprudential patronage as the present principles are insufficient to stretch the real world power to the virtual world.*

### **INTRODUCTION**

Modern world has been witnessing a confusion of differentiating fiction from fact as technological developments are taking place in such a tempo and manner that those elements which were once part of the fiction have become fact. Technology has been paving the ground for a world where machines shall replace human beings substantially and predominance of machines shall be very pronounced. As the society is moving towards a techno-centric world, how far the anthropo-centric legal system can withstand the challenges put forth by technology is a serious concern.

Society is always subject to transformations resulting out of human acts as well as other factors<sup>1</sup>, and a new system of governance has been evolving in consonance with those transformations. For instance, the controlling factor of power had shifted from property to product when the economy became industrial by substituting the agrarian one<sup>2</sup>. Further priorities of the social system also moved to large scale manufacturing from small scale

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\* Renuka V., Research Scholar, Faculty of Law, School of Legal Studies, Cochin University of Science and Technology (CUSAT), Kochi, Kerala, INDIA.

1 M MAC IVER AND CHARLES H PAGE, SOCIETY-AN INTRODUCTORY ANALYSIS (1950) 509-635.; WILLIAM DURANT, OUR ORIENTAL HERITAGE 1-28 (1954).; JOHN BIESANZ AND MAVIS BIESANZ, SOCIETY- AN INTRODUCTION TO SOCIAL SCIENCE 293-309 (1971).; GUY ROCHER- A GENERAL INTRODUCTION TO SOCIOLOGY- A THEORETICAL PERSPECTIVE 328-440, 480-485 (1972).; JOHN J MACIONIS, SOCIOLOGY 624-646 (2006).

2 ERIC HOBBSBAWM, THE AGE OF REVOLUTION 1789-1848 7-52, 77-88 (1975).

production<sup>3</sup>. The measures of regulation also shifted from controlling conveyance of property to the transaction of products. The legal system adopted tools and techniques to attune with the social changes by incorporating factory laws, labour laws, trade laws etc. Moreover, developments in trade and commercial activities have been getting integrated into the legal system without disturbing the well-established territorial principles of law to a significant level. If industrial society substituted human resources with machines, information society changed human intelligence to artificial one for everything.

Information and communication technology (ICT) has opened an entirely different platform for economic and social activities<sup>4</sup>. The space created by the same has been opening novel models of socialisation<sup>5</sup> and economic values in general perspective itself or in a more convenient way it can be even treated as an extension of real-world activities. The latter convenient approach shall prone to serious challenges considering the fact that there is a paradigm shift in the attributes of this so-called extension. Like industrial development in the period of modernism, ICT imposes challenges to the perceptions of the existing legal system.

The emergence of different regulators diluted the scope of traditional sovereignty at different phases. ICT accelerated the degree of dilution by facilitating borderless models of business and interactions where the role of the state is minimal. Thus it is high time to rethink the means of regulations in such a way to ensure the ultimate end of justice. The taxing power has been theorised and justified depicting the *quid pro quo* relations between the state and its subjects. This paper is an attempt to introspect the scope of such justification to tax virtual/global economy.

## **PART II**

### **RE-ANALYSING THE CONCEPT OF STATE AND SOVEREIGNTY**

The concept of state has been used in different time frames to glorify war as just, justify hunt for natural resources, fetching market for products and annihilating alleged threats<sup>6</sup>. The social contractarians like Locke, Rousseau and Hobbes also defended the very emergence of

<sup>3</sup> *Id.* at 168-181.

<sup>4</sup> MANUEL CASTELLS, *THE RISE OF THE NETWORK SOCIETY*, VOL.1 28-215 (2000).; Josh L. Jr. *Wilson, Electronic Village: Information Technology Creates New Space*, 6 *COMPUTER L.J.* 365-386 (1985).

<sup>5</sup> THERESE F TIERNEY, *THE PUBLIC SPACE OF SOCIAL MEDIA* (2013).; Sharon Nelson, John Simek, Jason Foltin, *The Legal Implications of Social Networking*, 22 *REGENT U. L. REV.* 1-34 (2009).

state in a political and socialistic way<sup>7</sup>. These scholars through different means justified the very origin of state, the principle of sovereignty and also the use of law to maintain social order. The state has been entrusted with sovereignty to determine the nature of law within the domain and to avoid intervention by any other external actors over the same. There is a full acceptance for the concept of state within the international community to protect life, liberty and property of individuals<sup>8</sup> and thus these aspects also rationalise the consideration of the same as a useful constituent political tool for ensuring non-intervention in the affairs of a nation state by another. However, to what extent these inherent principles of Westphalia model sovereignty exists in the present context requires an introspection<sup>9</sup>.

Twentieth century sets the trend for bridging the gap between nation-states and for global fraternity<sup>10</sup>. For instance, the world community has been witnessing the effectiveness of human rights law to act as an instrument for the international community to undermine the non-intervention principle to monitor the domestic affairs of a nation-state<sup>11</sup>. Vides this, it can be observed that an alteration in the soft law nature of international law is accomplished by human rights jurisprudence. On the other side, the capitalist movement of globalisation has opened the vistas of domestic markets for multinational enterprises which were once under the direct control of respective nation-states<sup>12</sup>. The economic policy decisions of the state has become a resultant of bargaining between multinationals and national political

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6 BRUCE D PORTER, WAR AND THE RISE OF THE STATE (1994).; JOEL COLTON, GREAT AGES OF MAN- A HISTORY OF THE WORLD'S CULTURE- TWENTIETH CENTURY (1976).; JOSEPH R STRAYER, HANS W GATZKE AND E HARRIS HARBISON, THE MAINSTREAM OF CIVILIZATION TO 1715 (1974).

7 JOHN LOCKE, DAVID HUME , JEAN JACQUES ROUSSEAU, ERNEST BARKER WORLD'S CLASSICS, 511 SOCIAL CONTRACT 1-440 (1947).

8 THOMAS POOLE, REASON OF STATE LAW, PREROGATIVE AND EMPIRE (2015).; MILTON FISK, THE STATE AND JUSTICE- AN ESSAY IN POLITICAL THEORY (1989).; AGOST PULSZKY, THEORY OF LAW AND CIVIL SOCIETY 236-278 (1888).

9 Travis Le Blanc, *Sovereignty Disrupted*, 70 FED. COMM. L. J. 314- 316 (2018).; Walter B. Wriston, *Technology and Sovereignty*, 67 FOREIGN AFF. 63 (1988).

10 THE MAINSTREAM OF CIVILIZATION TO 1500 (1976).; PAUL SCHIFF BERMAN, GLOBAL LEGAL PLURALISM- A JURISPRUDENCE OF LAW BEYOND BORDERS (2012).; Gregory Shaffer, *Transnational Legal Ordering and State Change* and Gregory Shaffer, *The Dimensions and Determinants of State Change* in TRANSNATIONAL LEGAL ORDERING AND STATE CHANGE, 1-49 (GREGORY SHAFFER, ed., 2013).; Adeno Addis, *The Thin State in Thick Globalism: Sovereignty in the Information Age*, 37 VJTL 1-107 (2004). ; Michael C. Ogwezy, *Globalisation: Multinational Corporations, State Sovereignty and Human Rights Challenges in the 21st Century*, 1 SRI LANKA J. INT'L & COMP. L. 111- 150 (2015).

11 ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 245-272 (2004).

12 CHRIS BRUMMER, SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM-RULE MAKING IN THE 21<sup>ST</sup> CENTURY (2015).; Guiguo Wang, *The Impact of Globalization on State Sovereignty*, 3 Chinese J. Int'l L. 473-483 (2004).

interests. This is yet another instance of weakening of the Westphalian sovereignty of a nation-state.

As globalisation sowed the seed of internationalisation of trade and commerce, the international community has come up with different instruments to ensure the balancing of interests<sup>13</sup>. Twentieth century witnessed mushrooming of international organisations on different spheres, and all were attempting to homogenise policies of individual nation states in the said spheres. These international organisations like OECD, WTO and UNCTAD have become the determinant factors of activities within nation-states as well as with others. For instance, when incorporation of the TRIPS Agreement into the domestic realm was mandatory, and all nation-states amended their municipal laws in such a way to incorporate the said TRIPS mandates. These international obligations took away domestic interests of the nations in one way or other.

Studies on the formation of societies have identified the limits of transportation and communication as the two primary parameters determining borders of the individual society<sup>14</sup>. A further perusal of the importance of these two parameters precipitates that the same is converging on the scope of interaction of members of the society. The idea of ICT has taken away this concept of space and time by facilitating instantaneous communication means that obliterates the handicaps hitherto generated by ensuring effective interaction. Thus, apart from the earlier mentioned changes in the political sphere, advancements in ICT have taken away the scope of borders created among the nation states to a great level. The idea of the world as a single unit has become more evident and real by ICT<sup>15</sup>.

The history of wars makes it clear that the unequal distribution of natural resources as one of the leading causes of the attack on territories belonging to others. This resulted in a polarisation of power in the world in different periods as well. Unlike property or product, which is used to be the earlier synonym of power, in the post-industrial society information has taken the said place and the same is infinite, non-rivalrous and easy to store. Even though

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<sup>13</sup>GRAHAM COOK, A DIGEST OF WTO JURISPRUDENCE ON PUBLIC INTERNATIONAL- CONCEPTS AND PRINCIPLES (2015).; ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 115-320 (2004).; SOL PICCIOTTO, REGULATING GLOBAL CORPORATE CAPITALISM (2011).

<sup>14</sup>JOHN BIESANZ AND MAVIS BIESANZ, *supra* note 1, 86-107.; JOHN J MACIONIS, *supra* note 1, 88- 112.

<sup>15</sup>MANUEL CASTELLS, THE POWER OF IDENTITY, 303-366 (2004).; Henry H. Jr. Perritt, *Cyberspace and State Sovereignty*, 3 J. Int'l Legal Stud. 155-204 (1997).

the collection of information is as old as society itself<sup>16</sup>, the ICT has the capacity to gather, manipulate and share massive quantities of data or information within a spur of a moment. Hence it has opened up new possibilities for amassing economic power.

The economy of industrialized nations has been focusing on collecting, exchanging and storing more and more data or information, both commercial and personal, for the sake of security and economic enhancement<sup>17</sup>. This information is very crucial in taking decisions in all aspects varying from determining public policy by the state to selling of a product. ICT takes not only the business giants to each and every consumer and their personal preferences but also to their decision making attributes to influence them in accordance of with needs of the said business giants.

In addition to it, the economy has taken up an entirely new format by the emergence of the digitalized economy<sup>18</sup>. The distinct features of this economy have paved the way for new business models distinct from the hitherto experienced models of business. This eventually resulted in the emergence of new economic tycoons. Like Andrew Carnegie, John D. Rockefeller and Henry Ford in the industrial period Larry Page, Sergey Bin, Jeff Bezos, Mark Zuckerberg became the images of industrialists and philanthropists of the digitalised economy. The business models utilised by them are entirely different from that of their predecessors. Taking a cue from these new business models OECD has identified for the digital economy business models like advertisement revenue model, digital content purchase or rental models to name among the many. Thus without any iota of doubt information has become the unit of economic value in the post-industrial economy.

Unlike all the other changes that were taking inroads to Westphalian sovereignty<sup>19</sup>, ICT opened up a new dimension and platform for interaction whereby the very concept of physical existence has become obsolete. It has even taken the interaction concept as

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<sup>16</sup>DIANE ROWLAND, U A KOHL AND ANDREW CHARLES WORTH, *INFORMATION TECHNOLOGY LAW* 147 (2012).

<sup>17</sup>Antonello Soro, *Vulnerable Person: Data Protection and Digital Society*, 24 *DIGI. NAT'L ITALIAN AM. B. ASS'N L.J.* 117-132 (2016).; Max N. Helveston, *Regulating Digital Markets*, 13 *N.Y.U. J.L. & Bus.* 33 (2016); Kenneth H. Keller, *Science and Technology*, 69 *FOREIGN AFF.* 123-138 (1989-1991).; ANDREW MURRAY, *INFORMATION TECHNOLOGY LAW-THE LAW AND SOCIETY* 35-43 (2010); J Halton, *The Anatomy of Computing*, in *THE INFORMATION TECHNOLOGY* 21-58(T. Forrester ed., 1985).

<sup>18</sup>Natalie M. Banta, *Property Interests in Digital Assets: The Rise of Digital Feudalism*, 38 *CARDOZO L. REV.* 1099-1158 (2017).

<sup>19</sup>Stephen D Krasner, *Sovereignty: Organized Hypocrisy* 3 (1999)- Westphalian sovereignty can be defined physical territory within which political authorities are the sole arbiters of legitimate behaviour.

something between man and machine and machines interse. Also, as mentioned earlier, there is a substantial shift in economic value from property to information and the legal system does not have a reliable solution to regulate the flow of the same. How far conventional nexus based principles legitimise the taxation of the present economy that is relying on ICT is doubtful.

### **PART III**

#### **RE-EXAMINING THE AXIOLOGICAL TERMS OF TAXATION**

As it is quite clear from the above discussion, there is a strong inclination towards the idea of borderless international market, or rather an international market-oriented approach can be inferred from movements like globalisation, internationalisation of trade principle and provisions. The world has been witnessing a liberal economic movement for extending the domestic market to an international level by taking away those barriers affecting the flow of goods and capital. No doubt, at present the plans and policies of a state have been subordinated to or are streamlined with international finance and supranational economy.

Taxation criterion of national constitutions regulates redistribution of national income for social purpose<sup>20</sup>. Most of the modern constitutions reflect provisions guaranteeing a social welfare state for citizens. Taxation has been thus, justified from a social platform to perform social welfare functions of the state. Thus, the purpose of taxation is to redistribute national income for the social purpose by avoiding those extreme situations where only a few take advantage of resources. The fiscal sovereignty and popular sovereignty have been wisely incorporated within the legal system by the modern legal system.

A similar connotation is common in then relied justifications of different scholars for taxation. Those theories in a way or other rely on the inherent materialistic role of state on the economy on one side and also discuss the relevance of taxation to trigger the process of social transformation or freedom from deprivation. In such a context, the state used to regulate the economy for high national income and increased growth in order to materialise its public interest wherein benefit and ability act as standards. The scholars have been defining the

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<sup>20</sup>LIAM MURPHY AND THOMAS NAGEL, *THE MYTH OF OWNERSHIP- TAXES AND JUSTICE* (2002).; Linda Sugin, *Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*, 72 *Fordham L. Rev.* 1991-2014 (2004).

taxing power from the perspective of social state rather than considering any other relevant factors. It is a general presumption that the point of view of scholars is always determined by conflicting interests predominant on a given timeframe and by the attitude of the scholars towards conflicting interests<sup>21</sup>. For example, the mercantile interests of the state in the Lockean period got shifted in the era of Adam Smith to one for achieving primary collective purposes or public interests<sup>22</sup>. Thus, the jurisprudence of taxing power is always attached to the trend of society at a particular period.

By the end of the twentieth century, the world has been witnessing a shift in the economic power of the nation-state to supranational organisations<sup>23</sup>. These organisations establish a new economic order and policies in consonance with the emergence of the international economy and finance. The liberal economic movements for establishing an international market for trade and business have taken away the priorities and interests set by the nation states to a significant degree. The international institutions set up common standards with the intention to integrate different domestic markets and to form an international market for economic interactions and activities. It is not possible to mark borders for the international market with a territory of a few states excluding others as it includes the network of trade and contractual relationships, often virtual and managed by remote, and therefore it is de-materialised or rather de-territorialised<sup>24</sup>. Thus the extension of fiscal sovereignty to regulate those activities developed over the spatial of a nation in a way or other mismatch with the existing economic trends in the world and taxation by the nation states based on the traditional justifications shall have only a negative impact.

The international community has been trying to reconcile the fiscal sovereignty of nation-state and international market interests by stretching the traditional principles of taxation to

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21JOHN BIESANZ AND MAVIS BIESANZ, *supra* note 1, 88-112.; Isaac William Martin, Ajay K. Mehrotra and Monica Prasad, *The Thunder of History: The Origins and Development of the New Fiscal Sociology* in THE NEW FISCAL SOCIOLOGY TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE 1-27 (ISAAC WILLIAM MARTIN, AJAY K MEHROTRA, MONICA PRASAD, eds., 2009).

22Beverly Moran, *Adam Smith and the Search for an Ideal Tax System* in THE NEW FISCAL SOCIOLOGY TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE 201-215 (ISAAC WILLIAM MARTIN, AJAY K MEHROTRA, MONICA PRASAD, eds., 2009).

23Bob Kelly and Raia Prokhovnik, *Economic Globalization?* In GLOBALIZING WORLD? CULTURE, ECONOMICS, POLITICS 81-120 (David Held 2000) *Bob Kelly and Raia Prokhovnik, Economic globalization?*.

24PIETRO BORIEA, TAXATION- EUROPEAN UNION (2017). The author acknowledges the reliance on the basic ideas mooted in Chapter 13 of this book.

the international arena<sup>25</sup>. Once the nation states enjoyed the patronage of facilitating a platform for economic functions, and it enjoyed the complete discretion of plan of choices and decisions. Situations have already turned down in such a way that now the state is often subordinated and controlled by the international economy and decisions of international organisations. However, to the quiet dismay, there is no common consensus among nation-states to put forth universal standards for taxation other than the models suggested by the international organisations in some limited subjects.

The advancements in ICT have revolutionised the internationalisation of economy where reconstruction of settled principles of taxation law is inevitable. The technology created an economic platform where transactions could easily take place with minimal or no physical presence<sup>26</sup>, and it had taken away the human-made boundaries of nation-states altogether. Thus the virtual or digital economy created by ICT gives another dimension to the economic movement for the borderless international economy.

#### **REFRAMING OF INTERNATIONAL TAXATION LAW**

The international taxation law has been evolving in such a way not affecting the fiscal sovereignty of the nation-states<sup>27</sup>. Taxation treaties, the skeleton of international taxation, are in a way or other, aiming to preserve the maximum freedom of each state to define its income tax system while establishing sufficient coordination to facilitate economic flows between states. The significance of permanent establishment clause in the treaties is an epitome to substantiate the argument further. Thus there is no doubt that international taxation regime has been trying to maintain the Westphalia framework through all possible means.

Even though the Mexican Draft as well as UN Model Draft of 1980 incorporated capital import neutrality with the intention to widen the scope of permanent establishment whereby the source countries, developing countries, can claim tax share from the capital export countries<sup>28</sup>. These actions in a way or other reiterate the vital purpose of taxation, viz. distributive justice, in its real sense. Unfortunately, the developed countries while entering

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<sup>25</sup>MICHAEL KOBETSKY, INTERNATIONAL TAXATION OF PERMANENT ESTABLISHMENTS- PRINCIPLES AND POLICY 1-105 (2011).

<sup>26</sup>Corkery, Jim, Forder, Jay, Svantesson, Dan and Mercuri, Enrico, *Taxes, the Internet and the Digital Economy*, Revenue L. J. 1-23 (2013).

<sup>27</sup>MICHAEL KOBETSKY, *supra* note 29, 1-105.

<sup>28</sup>SOL PICCIOTTO, REGULATING GLOBAL CORPORATE CAPITALISM 207-257(2011).



into taxation treaties with the developing nations generally, with their economic position, bargain to incorporate resident principle rather than tax share provisions. This approach shall result in the accumulation of wealth in the hands of a few. Not only that, but this approach also causes tax avoidance and tax planning by multi-national entities and other agents. These expose the loopholes or limitations of the Westphalian framework in an internationally integrated economy.

The Westphalian framework or the very concept of state has developed for maintaining social order. It is only a kind of working model for governance as it ensures stability, certainty and objectivity within the legal system. It is quite clear from the discussion in Part II that the very nature of international law has undergone a substantial change from the time of Grotius to post-modern world<sup>29</sup>. By the ever-increasing international relations and movements, the drive for increased production of international law and of organisational structures is the need of the hour<sup>30</sup>. Taxation law is not an exception.

#### **RELEVANCE OF MARKET-ORIENTED APPROACH FOR TAXATION**

In a broad sense, globalisation is a defining feature of the contemporary age and hitherto priorities are destined to change and principles of system of governance are also prone to the changes. Therefore, it is time to consider the drive for an international framework with strict legal principles of regulation, organisations for governance and involvement of non-state bodies. A global legal system to administer international finance and taxation based on the common market is more appropriate and flexible. The repeated emphasis on deterritorialization and deconstruction in different fields intimate the upcoming global law regime. The question of the legitimacy of such law is one of the major concerns. It is not practical to use those tools of positive law in a strict sense to determine the legitimacy of global law on taxation. In this context, those mechanisms introduced for internationalising human rights law and economic trade and commerce is a justification for attempting the same for taxation laws.

The international community has been struggling to fix the targets of international tax law as it is changing from avoidance of double taxation, harmful tax competition to gaps and

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<sup>29</sup>NEIL WALKER, *INTIMATIONS OF GLOBAL LAW* (2015).

<sup>30</sup>JOEL P. TRACHTMAN, *THE FUTURE OF INTERNATIONAL LAW-GLOBAL GOVERNMENT* (2013).

frictions between tax systems to avoid base erosion and tax planning<sup>31</sup>. These trends in a way or other indicate a race between the static legal system and dynamic market to take advantage of one another. The attempts of the international community to reconcile between national interest and the international market regime is evident at every phase of international taxation. However, the inefficiency and limitations of the same to handle those challenges posed by the single market are quite clear from the ever-increasing tax avoidance tendencies.

The international taxation regime is trying to figure out means to regulate the global economy on one side without compromising the established principles of law. However, the source of power has shifted from state to economy. In such a situation, controlling economy with present principles is illogical and does not serve the purpose of taxation. Therefore what most suitable is to regulate the international economy by framing taxation principles in tune with the features of or foreseeing the upcoming challenges of the international market. Otherwise, the financial structure of the nation-states shall collapse within no time.

The possibilities of the virtual economy are unending and unpredictable. The economy is equipped to accommodate machine made interaction where little human intervention would remain. In such a situation, tracing the thin line of nexus between nation-state principles and global economy will not serve the purpose. In this situation the common market theory approach relied by EU can be cited as an effective alternate<sup>32</sup>.

This model treats taxation power of the state as a regulatory one rather than sovereign function<sup>33</sup>. The EU has adopted such a mechanism to ensure the free flow of trade and capital within the Union. The traditional taxing power forbids the integration of cross border markets and thereby the overall development. EU reconstructs the power of taxation as a regulatory function of the nation-state so as to avoid interference with the structure of a common market. Thus, there is a strong inclination towards political and institutional structures of liberal type, in which decisions on redistribution system of general income are assigned precisely to the natural composition of the market, as a consequence of the crisis of the welfare state.

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<sup>31</sup>SOL PICCIOTTO, *Supra* note 32.

<sup>32</sup>MANUEL CASTELLS, *END OF MILLENNIUM* Vol III 338-365 (2004).

<sup>33</sup>PIETRO BORIEA, *Supra* note 27, 189-206.

First major criticisms against the common market approach is that it lacks the fundamental pre-conditions of sovereignty like lack of democratic legitimacy as people have little role in determining fiscal sovereignty<sup>34</sup>. Secondly, possibilities for the concentration of economic power in the hands of a few dominant individual agents are also on the cards which may lead to unhealthy situations in the economy. Even though these two apprehensions are genuine, the existing taxation framework also gave opportunities to a few to take a superior position. Need for an international taxation regime is resultant of internationalisation of other legal regimes and its incorporation into the domestic realm.

One of the strongest criticisms against market approach is its anti-sovereign nature. However, it is clear from Part II discussion that anti-sovereign regime has already triggered. Taxation is a useful tool for redistributing national income and thereby to realise the public interest. The state has been regulating the flow of income to ensure economic justice. As international organizations have already undertaken many of the sovereign functions of a state, there is no threat in shifting this power to another international organization. If a multilateral instrument is framed with common standards, the tax share among the beneficiary states can be controlled effectively. Even though OECD has been taking extensive efforts to regulate the tax avoiding tendencies and base erosion incompatible with the national interests; these instruments are only recommendatory. Just as the individual players of economy take advantage of technology it is high time for the legal system to counter the same using technology<sup>35</sup>.

### CONCLUSION

Human community always have inhibition or protest to come out of the comfort zone created from time to time<sup>36</sup>. From a broader perspective, it will not be wrong to infer that the idea of state emerged out of the urge to create that comfort zone. For instance, the Westphalian model has developed out of the prolonged standing uncertainty and insecurities prevailed in society. The idea of a state with sovereign functions is thus, a need of the hour to regulate and maintain social order and peace. No doubt, it has been providing certainty, security and

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<sup>34</sup>*Id.* at 198-199.

<sup>35</sup> For example AI can be of a great usage in assisting and ensuring compliances of taxation by the authority concerned.

<sup>36</sup>GUY ROCHER A GENERAL INTRODUCTION TO SOCIOLOGY- A THEORETICAL PERSPECTIVE 319-320 (1972).

liberty within the defined territory. However, to what extent the idea of state, put forth by the community, can withstand contemporary changes, those are beyond its control, are disputable and thereby its taxing power.

All attempts to impose taxation principles over the international economy is an outcome of this psychological imprints<sup>37</sup>. The virtual economy is creating a borderless world free from all the limitations of the real world which facilitates different kinds of interactions unknown hitherto. Extending the principles of taxation or approaching these challenges from state perspective shall not serve the purpose. It is better to adopt those means which facilitate economic liberalisation rather than a democratic approach because international taxation is nothing but an output of the former one.

Taxation has been introduced in the modern age with an object to ensure substantial equality. A nation-state imposes tax in proportion to the economic position enjoyed by each. Thus, it is an effective process to avoid accumulation of income within the hands of a few and redistribute the same in such a way to avoid possible inequalities in the society. The state thus has been playing a significant role to promote distributive justice. The establishment of an international organization does not take away the regulatory role of a state but facilitates to regulate emerging tax avoiding tendencies and thereby the object of substantial equality<sup>38</sup>.

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<sup>37</sup>WILLIAM DURANT, *Supra* note 1, 23-25.

<sup>38</sup>John Rawls, *The Law of Peoples* 271-312, & Hillel Steiner, *Just Taxation And International Redistribution*, 219-240 in *EQUALITY AND JUSTICE: DISTRIBUTION TO WHOM?* Vol 3 (PETER VALLENTYNE ed.,2003).