



# Accountability Of Officers

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Accountability is an essential part of a healthy law enforcement agency. Like any organization, every law enforcement agency needs a strong healthy work culture to operate effectively.

## **Constitution & Accountability**

Constitution of Republic of The Philippines, in Article XI states that “Public office is a public trust hence, public officers must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty & efficiency, act with patriotism and justice & lead modest lives”.

There is no similar provision in our Constitution. However, Part-IV of our Constitution enumerates certain directive principles which are fundamental in the governance of the country & are mandatorily to be applied by the state in making the laws. Article 38 makes it obligatory on the state to strive to promote the welfare of the people by securing & protecting a social order in which justice, social economic & political, shall inform all the institutions of the national life Article 39 prescribes certain specific principles of policy to be followed by the state & Article 39A mandates that the state shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity

also ensuring that any citizen of India is not denied opportunity for securing justice by reason of economic or other disabilities.

Part-III of the Constitution guarantees certain fundamental rights to the citizens of India and article 13 (2) states that the state shall not make any law which takes away or abridges the rights conferred by this part and law made in contravention of this clause shall, to the extent of the contravention, be void. Our government is formed by the people, of the people and for the people and therefore, it is implicit that it is accountable to the people of India. However, there is nothing in our Constitution which makes the public officers accountable for their acts of omission or commission in contravention of law.

Article 261 contained in Chapter-II of Part-XI states that full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every state.

## **Citizen’s Charter**

It has been recognised world over that good governance is essential for sustainable development both economic and social. The three essential aspects emphasized in good governance are transparency accountability and responsiveness of the administration.

The Citizens' Charter initiative is a response to the quest for solving the problems which citizen encounters day in and day out while dealing with the organization providing public services.

The concept of Citizens Charter enshrines the trust between the service providers and its users.

In India for the first time, in conference of chief minister of various states and union territories held on 24/5/1997 in New Delhi presided by the Prime Minister of India an action plan "for effective and responsive government" at the Centre and state levels was adopted and it was decided to formulate Citizen Charter starting with those sectors that have large public interface. On March 2005, 107 Citizen Charters had been formulated by various agencies of state government and union territories.

The first Citizen Charter Bill 2011 was proposed by the Indian Central Legislation in Lok Sabha in December 2011 but it was lapsed due to dissolution of 15th Lok Sabha.

The first Citizens Charter was formulated by Income Tax Department in July 2010 which was their declaration of mission, vision, values and standards of delivery of various services to achieve excellence in service delivery to its taxpayers. This charter substantially talked of obligation of taxpayers and did not utter a word on accountability of tax administrators though timelines in disposing various applications was suggested. The charter was revised on 24/04/2014 which for the first time talked of accountability and transparency in their mission.

Hon'ble Finance Minister Smt. Nirmala Sitharaman, in her first budget 2020 speech, had stated that the tax system requires trust

between taxpayers and tax administrators. This will be possible only when tax-payers' rights are clearly enumerated. In order to enhance the efficiency of the delivery systems of the Income Tax Department, amendments were proposed in the Income Tax Act 1961, as a result of which new section 119A was inserted in the Income Tax Act which mandates that the board shall adopt and declare a Tax-payers' Charter and issue such orders, instructions, directions or guidelines to other Income Tax Authorities as it may deem fit for the administration of such Charter.

Unlike earlier charters, which were largely administrative, the present charter is the first one having statutory backing. It is simpler and has only two parts - the tax departmental commitments and tax-payers expectations. The Tax departmental commitments include a specific commitment to hold its authorities accountable for their action.

The new tax-payers charter launched by the Hon'ble Prime Minister on 13.08.2020 promises to maintain privacy and confidentiality of taxpayers and to reduce the cost of compliance with the tax laws. It aims for clean and corruption free governance. The objective is to end taxpayers harassment or undue scrutiny from the tax officer. While unveiling the "transparent taxation- honouring the honest taxpayers" Prime Minister aimed at easing the tax compliance with the help of technology, data analytics and artificial intelligence. The main objects are :-

- a) To move away from power centric towards people centric administration.
- b) The faceless assessment/appeals having technology driven interface.
- c) Outlining the responsibilities and duties of tax officers.

d) To decrease in complexity/taxes/litigation and increase in transparency/compliance trust by removing physical interface between the department and taxpayers.

In the new Charter, there is an interesting change with respect to accountability. Though the term “Accountability” finds mention in the earlier charter as well, there is a difference in the way it is expressed. The charter commits to hold its authorities accountable for their action.

**Now the question arises as to how the officers would be made accountable and for what actions?** Accountability ensures efficiency in many ways by improving standards of delivery systems. If the tax administration violates rules they lose credibility and break public trust which results in non-compliance of law- Change in the behaviour of the officers is the most important factor in creating the culture of accountability. Tax officials have the perception that every taxpayer is thief or is tax evaders. This mindset is to be changed because the tax-payers are substantially contributing in the welfare of state. Hence the values like integrity and ethics are to be fostered amongst the officials - to hold the officials accountable CBDT must create and enforce policies, procedures and other rules. These policies are to be regularly reviewed so as to be compatible with the passage of time.

**When can accountability provisions be invoked?** Department is supposed to deliver quality services in transparent and efficient manner and in a time bound framework. If such act is not committed or omitted in the manner prescribed under the law and the great prejudice is caused to the assessee then the Income Tax Officers may be made

accountable though there is a provision in the Income Tax Act being section 293 which says that “no suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this act and no prosecution, suit or other position proceeding shall lie against the government or any officer of government for anything done in good faith or intended to be done under this Act”. Thus how the accountability of the officers can be invoked is a matter of great concern.

There are many provisions under the Income Tax Act, which requires fairness in actions of officers say –

- a) making adjustment in the intimation u/s 143(1)(a)
- b) issuing refunds promptly,
- c) giving fair opportunity before passing assessment order
- d) to pass the assessment order in a fair and reasonable manner based on material
- e) issuing notice u/s 148
- f) special audit u/s 142A
- g) disposing application for stay of demand and granting of installments
- h) disposing applications for rectification.
- i) giving effect to appellate/revision orders
- j) giving approval or granting registration under various provisions of Income Tax Act e.g. section 12AA, section 10(23C), etc.
- k) decision for transfer of cases from one place to another,
- l) taking actions u/s 263 or to decide filing of appeals I the Court of Law

- m) initiation of proceeding u/s 132 or 132A or 133A etc.
- n) assessment u/s 153A/153C
- o) Imposing of penalty
- p) launching of prosecution
- q) attachment of property
- r) withholding of refunds

Many of these provisions involve subjective satisfaction on the part of The Income Tax Authorities. Some of the provisions confer discretion on the Income Tax Officials, but this discretion has to be exercised in a judicious manner else, the actions of the officers can be redressed before the grievance cell, here comes the accountability.

Now a days, Courts are also vigilant to the rights and obligations of the citizens. Where it is explicit that the action of the officer has caused grave injustice to the citizens or their rights are infringed, then the Courts come to the rescue of citizens. On many occasions, in over enthusiasm, Department attaches the bank accounts of the assessee before expiry of the prescribed time for paying the demand or curtail the statutory time of 30 days for paying demand, rejects the application for stay of demand despite having refund payable to the assessee or issuing search warrants or 148 notices without having any reasonable belief based on material, making additions ignoring the judgements of the Apex Court or Jurisdictional High Courts, all these acts are being held arbitrary and Courts take no time to quash the same and even impose the cost on the Revenue and that to be collected from the pocket of concerned officer. In some cases Courts have awarded interest on interest to the assessees. These are some instances where Courts have made the officers accountable.

Courts have also quashed the prosecutions launched by the officers for ulterior motive or in an arbitrary manner.

### **GST Act – Special Mention to the judgement of Supreme Court**

The provisions similar to Income Tax Act are also contained in GST Act. Recently, Hon'ble Supreme Court while dealing with the contours of the powers of provisional attachment of property including bank accounts to protect Revenue under HPGST Act 2017 has commented upon the accountability of the proper officer under the GST Act. This is a case locus classicas. Hon'ble Supreme Court in the case of *M/s Radhakrishan Industries v. State of Himachal Pradesh & Ors (Civil Appeal No.1155 of 2021 decided on 20.04.2021)* observed that Section 83 of the said Act provides that where during the pendency of any proceedings under the Act. The Commissioner is of the opinion that for the purpose of protecting interest of Government Revenue, it is necessary so to do, he may by order in writing, attach provisionally any property including the bank account belonging to the taxable person. The Hon'ble Court emphasized that before Commissioner can levy a provisional attachment, there must be a formation of the "opinion" and that too on the basis of "tangible material" that it is necessary to do so for the purpose of protecting interest of Revenue.

Hon'ble Court opined at the outset that the power to levy a provisional attachment is draconian in nature. And the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. Formation of opinion must bear a proximate and live nexus to the purpose of protecting interest of Revenue. "Necessity" postulate a more stringent requirement than a mere

expectancy. Order in writing does not mean that the order should be like a judgement but it must be shown an application of mind. Doctrine of proportionality demands that a balance has to be maintained between protecting the interest of Revenue and protecting genuine business of the assessee. To allow the Commissioner to get away without passing a reasonable order will make his decision subjective and defeat the purpose of subjecting it to judicial scrutiny.

Hon'ble Court criticized the exercise of power of provisional attachment as a "Pre-emptive Strike". Where there is a likelihood that Revenue will not be able to enforce the assessment order, there may be an order of provisional attachment. Department cannot just go and attach the property because there is an assessment order. Even where huge tax is paid, just because some part of tax is still due, Revenue cannot start attaching the property. If there is an alienation of assets or assessee is winding-up or going into liquidation, it is understandable but just because the Department has the account numbers of the assessee, it cannot start attaching and even block receivables.

Justice Chandrachud in this case, in the anguish spoke of introducing a mechanism of "assessment of Tax Officers" with a view to

inculcate "accountability" stating that where huge demands are arbitrarily created after assessment but are drastically reduced by the higher authorities or Courts then it must go into the assessment of the Tax Officer. Hon'ble Supreme Court also observed that the Parliament had intended the GST to be a citizen-friendly tax structure but its purpose is lost by the manner in which it is enforced.

### Conclusion

In the nutshell, it is concluded that it is not only the tax legislation but the tax administration, fair and impartial, is also important. The country needs to come-out of the tax culture that "businesses are all fraudulent". Now as per the new tax-payers' charter, the Tax Department is committed to treat every tax-payer as honest, unless proven otherwise and provide fair, courteous and reasonable treatment. To shape a healthy culture it is important to have core values like ethics and integrity. Culture can't be dictated, it has to be lived out. Tax administrators and the tax-payers both are the wheels of the chariot of tax system. Hence, honesty and accountability are required from the both the sides. Higher the transparency, honesty and accountability, better the stability of the country's economy.



Infinite patience, infinite purity, and infinite perseverance  
are the secret of success in a good cause

– Swami Vivekananda