

Indian cess taxes: A call for accountability (Guest blog)

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This piece is about cess taxes levied by the current government in India written for us by Ashrita Prasad Kotha, Assistant Professor at Jindal Global Law School whose work on '**Cesses in the Indian Tax Regime: A Historical Analysis**' has been published as a book chapter in *Studies in the History of Tax Law* by Hart Publishing. The potential of ring-fenced or ear-marked taxes is an interesting one in building public trust in the taxation process and accountability structures, but the path is far from smooth, as Assistant Professor Ashrita Prasad Kotha explains here:

The Indian government is empowered to levy special levies called *cesses*, in addition to taxes and fees. A cess is an earmarked levy, or a ring-fenced tax, its purpose identified by the name. A cess may bear the characteristics of a tax or a fee.

The national government has increased the share of cess taxes from 2% in 1999-2000 to a staggering 10 % in 2016-2017 as you can see in the Receipts Budget of the Union Government. At the heart of their popularity is an exception under Article 270 of the Constitution. While the general rule is that the proceeds from tax revenue must be shared among State governments, the proceeds from a cess tax are national government initiatives, and are not shared. However, in practice, successive national governments have proven to be ill-equipped in administering cess taxes, with large amounts not being utilised.

Firstly, over the years, the statutes imposing cess taxes started using vague language to define the earmarked purpose. For example, the Finance Act, 2015 which introduced the Swachh Bharat (Clean India) cess describes its purpose as '*financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto*'. Thus, the initiatives are not clearly defined in the law. The Clean India campaign was launched by the Narendra Modi-led government in November 2015 with a view to eliminate open defecation, eradicate manual scavenging, and spread awareness about healthy sanitation and its link with public health, etc. Records reveal that the national government has spent approximately USD 15 million on print, radio and TV advertisements to promote this cleanliness project.

Secondly, the allocation and use of funds raised occurs under different ministries or departments with no uniform standards for earmarking. While tax money is supposed to go the Consolidated Fund of India and made available for the government to spend this money for the public good, the earmarked or ring-fenced revenue from cesses should be maintained separately, and it is not supposed to be mixed up with other tax revenue. Maintaining a separate fund within the Consolidated Fund of India would make things easier, in terms of transparency. However, in

many instances, no such separate fund has been maintained within the Consolidated Fund of India.

Thirdly, the track record of utilisation is quite poor. For example, only 43% of the proceeds from the Clean Energy cess have been transferred to the earmarked fund. That data can be found in Chapter Two in this government audit report. Actual utilisation is still a mystery and it is not clear where funds have been spent. Despite this, the national government went on to double the Clean Energy cess mentioned earlier in the 2016 budget.

Fourthly, we know that proceeds have also been diverted for other purposes, such as in the case of the Research and Development cess, as reported in a government audit report also in Chapter Two.

Fifthly, a number of cess taxes bring in less than USD 7 million annually which makes them economically inefficient. This has led to such levies being repealed eventually, as announced by the Finance Minister in this budget speech when he repealed thirteen cesses, although the latest set of repeals took place because of the implementation of India's new Goods and Services Tax. (India has recently reformed its indirect taxes to introduce this, replacing most other indirect taxes). The Research and Development cess, already mired in controversy, is one such repealed levy.

Cess taxes have the potential to be significant instruments for enabling greater transparency and accountability in taxation as far as the public is concerned, as there is a targeted purpose and contributor base. Theoretically, it should be much easier to correlate sums collected with monies spent and tangible results, as opposed to tax monies to cover a multiple set of purposes for a larger/ diffused contributor base. However, checks and balances seem very necessary to be able to facilitate this process. The laws imposing cess taxes must be specific and clear. Earmarking requirements must be standardised and there should be a periodic review of the laws; and as and when funds are collected, a cess tax must be repealed. A record of how the money was spent must be made publicly available.

Issues relating to non-utilisation and diversion are more important now, than ever. Indian taxpayers dislike paying taxes because of their belief that tax money is not spent for the benefit of the public. Therefore transparency and accountability on cess taxes can go a long way in building the credibility of the tax regime.

Another important question is whether ring-fenced taxes have greater potential when introduced by local governments rather than by national governments. It is likely to be stronger when implemented by local governments that have a direct sense of the need of the community they serve, as opposed to national governments that may be pushing a wider agenda or campaign that isn't fine-tuned to needs on the ground.