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SUPPLEMENTARY VOLUME-II A

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CAUSATIVE FACTORS BEHIND THE CONTINUED BACKWARDNESS OF CERTAIN STATES

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Dr. Amaresh Bagchi was a Member of the Commission from 04.07.2007 to 20.02.2008, the date he unfortunately passed away. The Commission expresses its deep gratitude to late Dr. Bagchi for his signal contribution during his tenure as a Member.

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The Commission on Centre-State Relations presents its Report to the Government of India.

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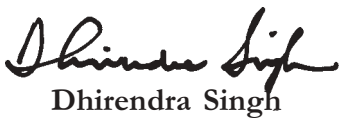

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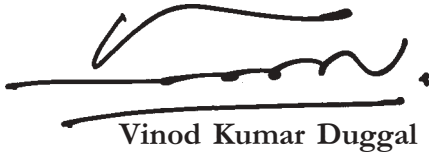

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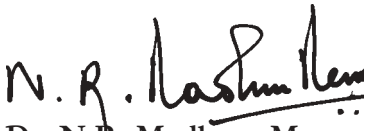

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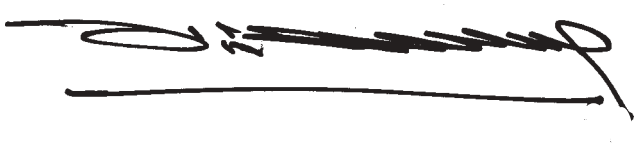

Vijay Shanker
Member

New Delhi
31 March, 2010

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R. R. Prasad

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REGIONAL DISPARITIES IN DEVELOPMENT

"India occupies two worlds simultaneously. In the first, economic reform and social changes have begun to take hold and growth has had an impact on people's lives. On the other, citizens appear almost completely left behind by public services, employment opportunities and brighter prospects. Bridging the gap between these two Indias is perhaps the greatest challenge facing the country today."

-Michael Carter, Country Director for India World Bank

1.1 Introduction

Regional disparity is a ubiquitous phenomenon in both developed and developing economies. But, in the later it is more acute and glaring. National economies are often composed of sets of smaller and localized economies. If the national economy is to prosper then its constituent regional economies must be brought into some sort of harmony. Inequality can have huge social costs, and evidence of social unrest in some disadvantaged regions is growing. Countries, nations, nation-States, and national economies are in fact collections of spaces (regions), each with its own society and its own economic, social, political and power structure. The degree to which these spaces are integrated into a unified national economic, social, political and administrative system varies a great deal from country-to-country, and these variations go a long way in explaining differences in performance from country-to-country. Higgins and Savoie (1995) and Krugman (1991) rightly argued that "one of the best ways to understand how the international economy works is to start by looking at what happens inside nations. If we want to understand differences in national growth rates, a good place to start are by examining differences in regional growth; if we want to understand international specialization, a good place to start is with local specialization".

Regionalism in its various manifestations is an extremely important issue in developing countries. Concern with regional issues in developing countries is on the rise, for at least two reasons. First, particularly since the end of the cold war, nation States are being

challenged as never before (Arndt, 2000). The demise of the former Soviet Union and Yugoslavia are the most prominent examples. Secondly, globalization has profound and potentially unequal effects on regional structures. The more regions are integrated with the global economy, the more quickly they are likely to grow - or contract during a global recession. The extent of global commercial engagement is determined by a range of natural and policy factors: coastal regions adjacent to major shipping and civil aviation routes have a natural advantage. The quality of physical infrastructure - ports, airports, utilities - shape international ties, as do the policy environment and the depth of cross-border commercial connections. Singapore is perhaps the best illustration anywhere of a country intelligently building on location, combining as it does best-practice infrastructure, outward orientation, and minimal government intervention in international commerce. Globalization is on the increase in part because, as governments liberalize, national boundaries matter less. This blurring of national boundaries, in an economic if not a political sense, in the process introduces new forms of regionalism, involving sub-national, cross-border commercial exchange. These arrangements may evolve naturally, with little government involvement (e.g., the Hong Kong/Southern China nexus), or even in the face of official discouragement (e.g., Taiwan/Southern China).

Governments need to be concerned with regional inequality for much the same reason as interpersonal inequality. Governments have to be just as concerned with lagging regions as with disadvantaged individuals. Durable and large gaps in living standards and levels of economic development between regions are unacceptable for societies professing a concern with social justice, and for the preservation of societal harmony. Where these differences coincide with ethnic or religious divisions, such disparities may well constitute the basis for regional insurrections. Regional disaffection may also thrive in resource rich regions in which most of the proceeds of exploitation flow to other regions of the country. Regional development and policy is also of great analytical interest. The more spatially diverse an economy, the more likely it is that national economic policies will have different impacts across regions (Hill, 2000).

1.2 Development Scenario in India: Achievements and Challenges

India was under social democratic-based policies from 1947 to 1991. The economy was characterized by extensive regulation, protectionism, and public ownership, leading to pervasive corruption and slow growth. Since 1991, continuing economic liberalization has moved the economy towards a market-based system. A revival of economic reforms

and better economic policy in 2000s accelerated India's economic growth rate. By 2008, India had established itself as the world's second fastest growing major economy.

The economy of India is the twelfth largest economy in the world by nominal value and the fourth largest by purchasing power parity (PPP). In the 1990s, following economic reform from the socialist-inspired economy of post-independence India, the country began to experience rapid economic growth, as markets opened for international competition and investment. In the 21st century, India is an emerging economic power with vast human and natural resources, and a huge knowledge base. Economists predict that by 2020, India will be among the leading economies of the world.

With some 1.1 billion people, diverse regions, and a vibrant democracy, India has been making progress on a scale, size and pace that is unprecedented in its own history. India's economy has seen rapid growth since 2003-04. The scale of this growth was not anticipated by many of the critics of the neo-liberal economic policies. Rapid growth since 1980 has transformed India from the world's 50th ranked economy in nominal U.S. dollars to the 10th largest in 2005. When income is measured with regard to purchasing power parity, the Indian economy occupies fourth place, after the United States, Japan, and China. In the nearly 60 years since its independence, the country has been successful on a number of fronts:

- It has maintained electoral democracy.
- Banished the specter of famines.
- Reduced absolute poverty by more than half.
- Dramatically improved literacy.
- Vastly improved health conditions.
- Become one of the world's fastest growing economies with average growth rates of 8% over the past three years.
- Emerged as a global player in information technology, business process outsourcing, telecommunications, and pharmaceuticals.
- Is now the world's fourth largest economy in purchasing power parity terms.
- GDP growth has been sustained for five years at high levels, and is widely predicted to continue at high rates well into the future.

- Rapid growth is no longer restricted, as in the past, to the services sector, but has extended to manufacturing.
- There have been unprecedented increases in the rates of savings and investment.

In the twenty-five year period between 1981 and 2005, India has moved from having 60 per cent of its people living on less than $ 1.25 a day to 42 per cent. The number of people living below a dollar a day (2005 prices) has also come down from 42 per cent to 24 per cent over the same period. Both measures show that India has maintained even progress against poverty since the 1980s.

India now has the fourth largest number of billionaires in the world (36, compared with Japan's 24). There are various estimates of India's Gini coefficient for incomes (0.32 to 0.48, the highest value being 1.0 for the most unequal society). But, there is unanimity that it is rising rapidly. According to Merrill Lynch-Capgemini, India had 83,000 High Net Worth Individuals in 2005, each with wealth of $1 million (not counting immovable property). Their number rose by 14 per cent in 2003-2004 and by 19.3 per cent the following year. It now probably stands at 100,000. Their collective wealth probably exceeds 50 per cent of India's national income. The 36 billionaires alone account for one-third of our GDP.

India's large service industry accounts for 54% of the country's GDP while the industrial and agricultural sector contribute 29% and 17% respectively. Agriculture is the predominant occupation in India, accounting for about 60% of employment. The service sector makes up a further 28% and industrial sector around 12%. The labor force totals half a billion workers. Major agricultural products include rice, wheat, oilseed, cotton, jute, tea, sugarcane, potatoes, cattle, water buffalo, sheep, goats, poultry and fish. Major industries include telecommunications, textiles, chemicals, food processing, steel, transportation equipment, cement, mining, petroleum, machinery, information technology enabled services and software.

India's per capita income (nominal) is $1016, ranked 142th in the world, while it's per capita (PPP) of US $2,762 is ranked 129th. Previously a closed economy, India's trade has grown fast. India currently accounts for 1.5% of World trade as of 2007 according to the World Trade Organization (WTO). According to the World Trade Statistics of the WTO in 2006, India's total merchandise trade (counting exports and imports) was valued at $294 billion in 2006 and India's services trade inclusive of export and import was $143

billion. Thus, India's global economic engagement in 2006 covering both merchandise and services trade was of the order of $437 billion, up by a record 72% from a level of $253 billion in 2004. India's trade has reached a still relatively moderate share 24% of GDP in 2006, up from 6% in 1985.

The fastest growing democracy in the world today, India has thrived despite enormous social, economic and geographical diversity. It would be difficult to govern a country as diverse and complex as this - 1.2 billion people, 18 official languages, all the world's major religions - in any other way. Though India in the 21st century is discovering new strengths, conflicting pictures of the country persist.

Despite being the second largest consumer market in the world, with a purchasing middle class of half a billion, almost 200 million Indians remain desperately poor; illiteracy rates are still high and corruption endemic, not to mention the large HIV population. And, the caste system has lost little of its power.

Among the proponents of the current economic policies, these developments seem to prove that India is on its way to join the 'developed world', indeed, even becomes an 'economic superpower'. At the same time, the proponents of the present policies have been unable to explain why, amid this extraordinary boom, the following have persisted:

- Mass malnutrition worse than that of sub-Saharan Africa with average calorie and protein consumption actually declining over the period of liberalization.
- The growth and quality of employment have been abysmal.
- Real wages are stagnant/declining in the economy as a whole.
- Agricultural investment and growth are stagnating/retrogressing.
- There is a profound crisis of the small peasantry (highlighted by their suicides).

For the first decade and a half after independence in 1947, it was widely believed that growth would automatically reduce and eliminate poverty. But, by the end of the 1960s, it had become evident that growth alone was not enough, and that active State intervention through re-designed as well as new policies of income and asset redistribution was necessary. However, thanks to some very Indian complexities, social, cultural and governmental, by the end of the 1980s, the focus once again shifted to growth. The new wave of globalization has only added to this impulse.

On the face of it, the results have been most gratifying. The rate of GDP growth in India has spurted in the last four years to 9 per cent, making it the second fastest-growing economy in the world, after China. But at the same time, the outcome of this growth has not necessarily been pro-poor. If anything, income and asset distribution have worsened during the last decade. The result is a heightened degree of social unrest, mostly in the countryside. In a nutshell, even the basic subsistence needs of millions of people are not being met. That is the bottom line.

Of the many afflictions and adversaries humans have to fight, poverty is perhaps the most stubborn and hardest to eliminate. India recognized the challenge of poverty and made its removal the central aim of its economic planning. Yet, it is also distressingly true that our efforts have met with a limited degree of success than what was originally anticipated. Regardless of which figure one chooses for drawing the poverty line, a quarter of India's population - more than 250 million people - still live in the abject poverty.

India is enjoying a period of unprecedented growth. For the past four fiscal years, real GDP has risen at over 8.5 per cent per year, making India one of the world's fastest growing economies. However, the nature of this growth is such that it accentuates all the existing distortions in India's pattern of development, to an extreme. Questions have been raised about the distribution of the benefits of growth between income groups, especially the poor. A key concern is the perception of two Indias, one shining and the other bleak, referring to the large gap in the standard of living between the rich and the poor (World Bank 2006a, Kohli 2006). Evidence suggests that income inequality is rising and that the gap in average per capita income between the rich and poor States is growing. There is substantial disparity in social indicators between rich and poor States, suggesting that not only income is low in the poorer States but also the quality of life is worse. The persistence of lagging regions, with substantial concentration of the poor, is raising concerns about social and political stability of these regions, with possible fallout for the country as a whole.

Who can miss the most visible manifestations of these distortions - the grotesque gap between the rich and the poor, the metropolises and the countryside, the performance of the stock market and that of agriculture? India still has the largest concentration of poor people in the world. The extent to which India's poor have been able to take up the opportunities provided by an expanding economy, and contribute to its continuing expansion is an important question for the well-being of millions. If large parts of the populations are left behind, even if only in relative terms, the viability of future reforms

may be threatened. The country's achievements have created new challenges. Some of the most prominent are:

Improving the Delivery of Core Public Services

As incomes rise, citizens are demanding better delivery of core public services such as water and power supply, education, policing, sanitation, roads and public health. And as physical access to services improves, issues of quality have become more central.

Education: While India has made huge progress in getting more children into primary school, learning outcomes have yet to make more headway.

Health: Although population growth has fallen below 2% per year due to declining fertility, there has been a little improvement in maternal mortality rates. Despite falling child mortality, rates remain high as they are strongly related to child malnutrition where little progress has been made.

Infrastructure: Power networks, roads, transportation systems and ports are facing huge demands from India's rapidly growing economy. But, shortages are eroding the country's competitiveness and hurting the growth of labor-intensive enterprises, particularly export-oriented manufacturing which has the potential to absorb India's fast-growing working population.

Agriculture: Slow agricultural growth is a concern for policymakers as some two-thirds of India's people depend on rural employment for a living. Current agricultural practices are neither economically nor environmentally sustainable and India's yields for many agricultural commodities are low. Poorly maintained irrigation systems and almost universal lack of good extension services are among the factors responsible. Farmers' access to markets is hampered by poor roads, rudimentary market infrastructure, and excessive regulation.

Jobs: While the services sector booms with promising job opportunities for skilled workers, some 90% of India's labor force remains trapped in low productivity informal sector jobs.

Lagging States: Faster economic growth has seen rising inter-State disparities. While India's higher-income States have successfully reduced poverty to levels comparable with richer Latin American countries, its poorer States - Assam, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Rajasthan, and Uttar Pradesh - have not kept pace and are lagging behind their more prosperous counterparts.

Making Growth More Inclusive

In spite of this significant success, there are still a huge number of people living just above this line of deprivation. This is most evident when we study absolute numbers. The number of people living below a dollar a day is down from 296 million in 1981 to 267 million people in 2005. However, the number of poor below $1.25 a day has increased from 421 million in 1981 to 456 million in 2005. A large proportion of this lives in rural India.

Substantial disparities persist within the country. In a marked departure from previous decades, reforms of the 1990s were accompanied by a visible increase in income inequality. Although this continues to be relatively low by global standards, disparities between urban and rural areas, prosperous and lagging States, skilled and low-skilled workers are growing.

Despite robust economic growth, India continues to face many major problems. The recent economic development has widened the economic inequality across the country. Despite sustained high economic growth rate, approximately 80% of its population lives on less than $2 a day (PPP). Even though the arrival of Green Revolution brought end to famines in India, 40% of children under the age of three are underweight and a third of all men and women suffer from chronic energy deficiency.

States of India have large disparities. One of the critical problems facing India's economy is the sharp and growing regional variations among India's different States and territories in terms of per capita income, poverty, availability of infrastructure and socio-economic development. Although income inequality in India is relatively small (Gini coefficient: 32.5 in year 1999-2000), it has been increasing of late. Wealth distribution in India is fairly uneven, with the top 10% of income groups earning 33% of the income. Despite significant economic progress, a quarter of the nation's population earns less than the government-specified poverty threshold of $0.40/day. 27.5% of the population was living below the poverty line in 2004-2005.

Between 1999 and 2008, the annualized growth rates for Gujarat (8.8%), Haryana (8.7%), or Delhi (7.4%) were much higher than for Bihar (5.1%), Uttar Pradesh (4.4%), or Madhya Pradesh (3.5%). According to a World Bank paper Development Policy Review, $1 a day poverty rates in rural Orissa (43%) and rural Bihar (40%) are some of the highest in the world. Seven low-income States - Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa,

Rajasthan, and Uttar Pradesh - are home to more than half of India's population.[10] Bihar's 80 million people are by far the poorest in India. On the other hand, rural Haryana (5.7%) and rural Punjab (2.4%) compare well with middle-income countries.[9]

In the 1997-98 financial year, the 9 forward States (Punjab, Maharashtra, Haryana, Gujarat, West Bengal, Karnataka, Kerala, Tamil Nadu, Andhra Pradesh) accounted for 58%, while the 6 backward States (BIMARU States: Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh, as well as Orissa and Assam) accounted for nearly 27% of the national income in India. As of 2004, the share of forward States is 60%, and share of backward States is only 25% in total Net State Domestic Product. In other words, the forward States were becoming more forward or richer, while the backward States were becoming more backward and poorer.

The 2009 UN Human Development Report, which ranks countries according to a variety of measures of human health and welfare, the HDI, which refers to 2007, highlights the very large gaps in well-being and life chances that continue to divide our increasingly interconnected world. The HDI for India is 0.612, which gives the country a rank of 134th out of 182 countries with data.

After Independence India adhered to the socialistic path of development planning. It aimed at growth with social and spatial justice. But in practice, it worked for economic growth in sectoral planning framework. The model failed as a redistributive device in the absence of institutional changes required to support the 'trickle down' effect of economic growth. Regional disparity in development was one of the negative fallouts, notwithstanding the balanced regional development as an avowed goal of planning.

Thus, the present conjuncture poses more sharply than ever the question of the pattern of 'growth', and the meaning of 'development'. The planners and policymakers in India have been underscoring higher economic growth as an outcome as well as a prime-mover of development policies. However, while discussing about the economic growth both as an instrument and outcome, the question that inherently arises is whether economic growth has actually been pro-poor and inclusive in nature. In order to understand the nuances of poverty alleviation process in Indian context, an assessment of pro-poorness of economic growth is all the more essential. This assessment is required owing to web of deeply ingrained social, political and structural factors which have a very large bearing on the pro-poorness of development policy, in general, and on the efficacy of the economic growth, in particular.

1.3 Balanced regional development: Problems and Issues

Balanced regional development has always been one of the essential components of the Indian development strategy in order to ensure the unity and integrity of the nation. There is, however, a widespread perception all over the country that disparities among States, and regions within States, between urban and rural areas, and between various sections of the community in India, have been steadily increasing in the past few years and that the gains of the rapid growth witnessed in this period have not reached all parts of the country and all sections of the people in an equitable manner. That this perception is well founded is borne by available statistics on a number of indicators. The economic and social development of our country has not been uniform and there are growing regional imbalances in practically all indicators. Not only have the per capita income in the various States started diverging rapidly during the past decade, the disparities in social attainments also appear to be persistent, and this has been brought out by the National Human Development Report 2001. These trends indicate a growing polarization of the country, which can have a damaging effect on national unity and harmony.

Despite the impressive economic performance in recent years, it is acknowledged that growth has not been sufficiently inclusive. Disparities exist between States (and even within States), between groups and along rural/urban lines in the attainment of socio-economic indicators. Many sections of the population remain without access to basic services such as health, education, clean drinking water and sanitation facilities.

Stark disparities in economic growth between different regions of India are a cause for concern and efforts have to be stepped up to remove the imbalance. The disparities are also a matter of concern as they threaten the nation's hopes of achieving various internationally accepted Millennium Development Goals by 2015. Widening income differentials between more developed and relatively poorer States is a matter of serious concern.

Since not all parts of the country are equally well endowed to take advantage of growth opportunities, and since historical inequalities have not been eliminated, it is necessary to identify the causative factors behind continued backwardness of certain States so that planned intervention could be made to ensure that large regional imbalances do not occur. Policymakers and development analysts have to focus immediate attention on the disparities in levels of development between different sections of the population and different regions in India.

Regional Disparities or imbalance refers to a situation where per capita income, standard of living, consumption situation, industrial and agriculture and infrastructure development are not uniform in different parts of a given region. Regional Disparities are a global phenomenon. The problem of regional disparities in the level of economic development is almost universal. Its extent may differ in different countries. Most of the countries of the world are experiencing the problem of regional disparities. The problem is not a new phenomenon. Even during the earlier periods also there were difference in the level of economic development both in the advanced countries of the Europe and developing countries of Asia and Africa. But due to the lack of statistical measures these imbalances didn't attract notice. However, in recent years they have received a lot of attention because of their adverse implications for balanced economic development.

Policies designed to promote national economic integration may have ambiguous effects on regional economic disparities. Numerous studies have shown that improved transport and communications make markets work better, thus enabling regions to exploit more effectively their comparative advantage. In turn, this should benefit economic agents in hitherto isolated regions. Two factors are actually at work: transport costs are lowered, and more traders operating in the regions results in greater competition and therefore lower trading margins.

But poorer regions may not necessarily benefit from this improved infrastructure. For one thing, improved infrastructure may lead to a loss of 'natural protection' for local producers, as lower transport costs and improved information flows lead to increased competition from national and international suppliers. Consumers of course benefit from this process, but there may be major adjustment costs. Better infrastructure may just as easily lead to resource outflows as to inflows.

Various studies have revealed that rich countries generally characterized by small and diminishing gaps, but they are not free from regional disparities. In many developing countries it has assumed such a magnitude that their very political and economic stability is threatened. Some of the empirical studies have revealed that the less developed countries are characterized by large and growing regional disparities. The problem of widening regional disparities, polarized urbanization and industrial development are currently among the key regional development issues in the less developed countries.

Since the Second World War, there have been a lot of studies by economists in both advanced and less developed countries on the characteristics, problems and strategies for

elimination of regional disparities. Various traditional theories show that in the process of economic development the existence of regional disparities are inevitable. In the era of globalization where profit is the main motto of investment, obviously the regions having developed infrastructure facilities would attract more private investment. Therefore, the market forces tend to increase the regional disparities both in the developed and developing countries.

In India too, area disparities in the level of poverty, unemployment, income infrastructure, agriculture industry and above all the level of living of the people exist substantially across the regions. Numerous measures have been undertaken in the last over fifty years of planning to achieve balanced regional development of the country. Yet, wide disparities in area development continue in this country. The most pitiable situation is that the most resources rich States such as Orissa, Bihar Madhya Pradesh, Assam, and Uttar Pradesh are the regions with high poverty pockets.

Regional scientists in India have ascribed area disparities to the top to bottom approach of national level planning process. The national level planning process lacks specific and local assessment of the problems, resources and productive potentials of the micro level regions in general and of the backward regions in particular. Many have viewed that a necessary step to introduce the regional dimensions into the national level planning process must involve a detailed mapping exercises of the economic structures of the micro level regions, at least of the States if not districts or blocks. Thus, during 1970s there appeared several regional studies for various States of India within multisectoral input output framework in order to facilitates the planning process and achieve there by an efficient utilization of scarce resources at the State-level.

Despite considerable research on the factors causing differences in the growth rates between regions and nations and why inequalities in the living standards between people, regions and nations have persisted and even accentuated, much remains to be understood. Endowment of resources and volume of investments can provide only a partial explanation. The impact of various policies and institutions is equally, if not more, important as they impact on the investment climate and structure of incentives and thereby, the volume of investment and its productivity.

Several factors combine to influence inter-regional variations in growth and development. The extent of agrarian transformation, pace of urbanization, the quality of infrastructure, level of human resources development, and the quality of overall governance are all

important determinants of regional variations in development. Since a large proportion of our population is still dependent on agriculture, differences in the rates of growth of agricultural output and productivity are bound to be an important factor contributing to regional disparities in the level of development and standard of living.

A study of these aspects of development can contribute a great deal to our understanding of regional inequalities. What factors are inhibiting development in the more backward areas of our country? Will political decentralization and administrative unbundling help or hinder the development of less developed regions? What are the relative roles of the State and of Markets in enabling development?

In the present context balanced regional development is highly essential for the integrity and unity of a Nation. In order to keep the people united and work jointly and whole heartedly for the overall prosperity of the Nation balanced development of all the regions are necessary. Keeping this in view, the Commission on Centre-State Relations (CCSR), Ministry of Home Affairs, Government of India, commissioned a research assignment to the National Institute of Rural Development (NIRD), Hyderabad, on "Causative Factors Behind the Continued Backwardness of Certain States" with the following terms of Reference (ToR).

i. To elicit whether the approach of the Centre over the various plan periods, showed consistency and positive discrimination in favor of backward States, in addressing the issue of regional imbalance in terms of determining the criteria of backwardness, formulation of policies & schemes and transfer of funds;

ii. To enquire into the nature and causative factors of change in inter-State disparities in the levels of economic and social development in India;

iii. To make a comparison between India's regional experience in the pre and in the post-reform periods;

iv. To analyze the manner in which inter-State disparities in economic development, as indicated by per capita Net State Domestic Product (NSDP), have changed over time in India;

v. To analyze the patterns of change in the indicators of levels of living like consumer expenditure, % people below poverty line and human development index in different regions of India;

vi. To discern the pattern of inter-regional change in the process of national economic development; and

vii. To analyze not only inter-State disparities in HDI and in per capita NSDP, but also such disparities in per capita value added in manufacturing, disaggregating the sector even further into registered and unregistered manufacturing.

This report has been prepared in the light of the various terms of references given by the Commission on Centre-State Relations. In the light of the extensive literature that exists on regional disparities and regional imbalances in India, the present report also seeks to understand the key causative factors behind the continued backwardness of certain States in India and also assess the pro-poorness of economic growth. Hence, the present report attempts to examine whether the economic growth in India has actually been accompanied by a commensurate improvement in economic and social inequality. The report tries to explain 'pro-poorness' and 'inclusiveness'(or otherwise) of economic growth in terms of some of the proximate determinants, like, quantitative and qualitative pattern of employment; gender inequality in well-being; right to land and institutional reforms related to land; and connectivity through all weather roads. Data used in the report have been collected and compiled from the published secondary sources.

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2

CONCEPT OF REGION AND REGIONAL BACKWARDNESS

2.1 Introduction

The problem of regional imbalances is highly critical for almost all the countries of the world. There have always existed a variety of inter-regional and inter-State variations in terms of all macro indices linked with economic and social issues. There is what is known as 'declining areas' or 'special areas' within the frontiers of each country. These typical areas qualify for special government assistance to uplift them from a State of stagnation or near stagnation, resulting from local unemployment, industrial imbalance, declining industries, over-population, and a variety of other economic and social 'pulling' factors.

The problem is highly alarming in developing countries most of which suffer from acute and lasting differences in prosperity between geographical regions. This phenomenon of regional income differentials is termed as 'regional dualism' or in American terminology as 'North-South problem'. India is no exception to this. The time series data set on various economic and social indices surely supports the hypothesis of regional imbalances in the country.

Such regional imbalances fall within the domain of what we term as 'regional economics'. In order to emphasize its interdisciplinary nature it is also sometimes called 'regional analysis' and also 'regional science'. Apart from economics, it also heavily draws on demography, history, geography, sociology and other disciplines.

The foremost problems of regional economics are concerned with: (a) classifying regions, (b) measuring the inter-regional differences in prosperity/poverty, and (c) pulling, through economic and other measures, the declining areas so that, they are bestowed with equitable and balanced distribution of national prosperity and well being. Let us first look at the first problem, which refers to identifying or defining 'regions'.

2.2 Concept and Meaning of Region

Definitions of 'regions' are often quite arbitrary. They may reflect political or ethnic divisions

rather than constitute natural economic zones. Although analysis has to be dictated by data availability, for some purposes groupings of provinces or States are more appropriate.

Region means a tract of land; any area; a portion of earth's surface. There are two aspects of Region:

i. Spatial dimension-objective reality

ii. Non-Spatial dimension-subjective idea-mental construct-spaceless

Definition of region is limited by the purpose. Region is defined as a large tract of land; a country; a more or less defined portion of earth's surface, as distinguished by certain natural features, climatic conditions, a special fauna and flora or the like. The concept of a region is used to:

i. Divide the space into relatively homogeneous units

ii. Further our analysis and understanding of specific studies

The purpose of using the concept of a region is three-fold:

i. Delineation of the space into homogenous units

ii. To study the human association within a specific regional environment

iii. To facilitate comparison

A region is identified by specified criteria, and its boundaries are determined by the following criteria:

i. Special Regions (each one being unique)

ii. Generic Regions (containing a number of similarities)

iii. Synthetic Regions (made up of a number of contrasting though related parts)

2.3 Types of Regions

The following categories of regions are listed:

A. Single purpose or limited purpose

"Single purpose" or "limited purpose" regions are defined as areas of an intensive development of a specific natural resource - a river basin used mainly for the purpose

of irrigation is given as the most typical example of such regions e.g., Vaigai-Periyar Command Area

B. Frontier Regions

Frontier regions are usually sparsely populated areas having rich natural resources. An intensive explosion of these resources, creation of heavy industries and new towns are characteristic of the development of such regions (e.g., Guyana in South America, Aswan in Egypt. etc.). North-eastern Frontier Region - Arunachal Pradesh.

C. Depressed Regions

Depressed regions -'Problems areas" distinguished by much lower living standards than the country as a whole (North-Eastern Brazil, South Italy, Comilla in Bangladesh). BIMARU States in India.

D. Metropolitan regions

Metropolitan regions and their hinterland (e.g., the Capital City Region - New Delhi).

E. Economic regions

Economic regions or administrative-territorial units established under a nationwide planning of regionalization (e.g., Export zones).

To conclude, there is no universally acceptable method of regionalization.

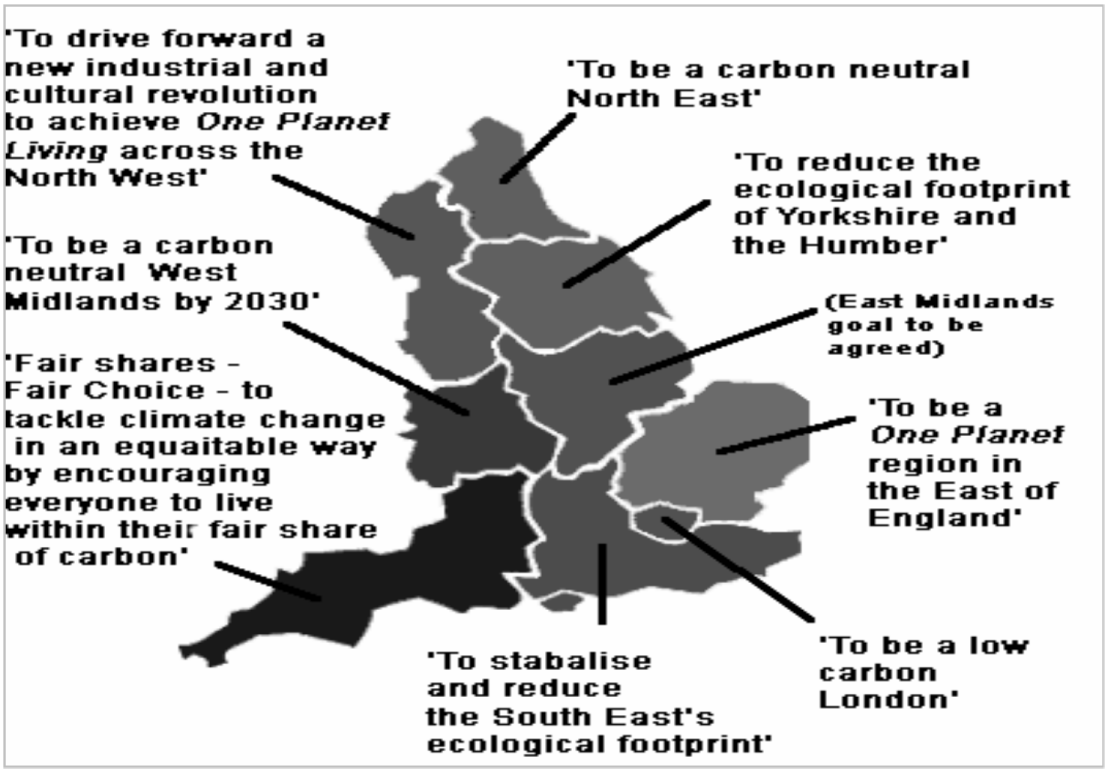
2.4 Popular Region Types

Homogenous Region

They are formal regions and if the basis of homogeneity is topography, rainfall, climate or other geophysical characteristic, they are geographer's darlings. Economic homogeneity is more relevant for planning. The structure of employment, the occupational pattern, the net migration, the density of population, the resource and industrial structure, if similar in a space, the regions become homogeneous in economic sense. The greater the economic similarities, the greater the interest the economists will have in homogeneous regions. Internal differences in a region are unimportant. Sometimes, however, a clear-cut homogeneous region may have, as many differences in sub-regions as to make them quite different yet, a region may remain 'homogeneous'. Scotland or Uttar Pradesh are clear-cut

homogeneous regions, but in topography the hilly districts of Uttar Pradesh have nothing in common with the districts of the plains. Eastern and Western districts are also different, but Uttar Pradesh remains a homogeneous region in administrative terms. Thus, a homogeneous economic region can have differing physical characteristics. Homogeneous region on economic or political criterion may have a lot of heterogeneity from several other standpoints.

A region being a collectivity of people is a sociological phenomenon and thus a region goes parallel to the concept of community also. A homogeneous region is therefore, a homogeneous problem-bound entity.



Polarized/Nodal/Heterogeneous/Functional Regions

Polarized or nodal regions look to a centre - a large town usually - for service. Its influence extends beyond the area of the city. The villages are dependent upon it for services and marketing. There is little concern for uniformity when a polarized or nodal region is taken.

Cohesiveness is due to internal flows, contacts and interdependencies. The city region need not correspond to the administrative region because hinterland of several clear-cut regions may be served by a city. (For example, even the persons of Gwalior may visit Delhi for buying some consumer durables of high value. A capital city may attract customers form several districts around the capital city).

A nodal region will have heterogeneous economy around it. Regional economists are more concerned with what happens within a nodal region and spatial dimension of the nodal region assumes importance. Population and industries agglomerate and there are core regions with higher per capita income generation through higher production of goods and services. Within regions there are dominant cities or nodes to which flows of inputs, goods, people and traffic gravitate. Within the cities there are nuclei that form business and social centers and which are discernible at a glance from an intra-metropolitan traffic-flow density map. If the 'size of the mass' of the nodes is large, then there will be great pull effects of the Centre. However, as the distance increases, the costs of overcoming frictions will rise and the people of different areas will look for a different nodal point. Each region will have one or more dominant nodes and it will be interesting to find and record as to which interior areas form the areas of influence of one or the other node.

Nodal regions provide an understanding of the functional relationship between settlements, which fill up the space. Big, medium, small and tiny settlements dot the space and because of their intra-regional differentiation, flows emanate. These heterogeneous units in rural and urban areas are functionally related because each settlement cannot have all the functions and facilities.

All functions require a particular threshold population and other facilities (each settlement cannot have a college; or, unless there is electricity there cannot be cinema hall; or a bank branch will require not only critical minimum deposit-credit ratio). The size of the settlement and the hierarchy of functions are mutually determining. Lower and higher order functions can naturally be found in the same order hierarchy of the settlements. Thus, between hamlets and metropolitan cities, there are lower and higher order functions in all types of services (from one-man post office to head post office; from primary school to institutions of higher learning and so on). Since not all settlements can afford to sustain all types of functions, they depend upon other settlements/areas for meeting their needs of services and goods and thus, functional linkages develop. Markets of various orders exist. Nothing can be bought unless something is sold and thus all exchanges are ultimately

barter, unless supported by grants, donations and subsidies. Functional linkages are revealed by the flows of men, materials and money. Such linkages result in the emergence of the dominant nodes-focal points, which attract and provide all types of flows. In a hierarchy of settlement we find several nodal points which receive and provide flows and functions. Each node has some settlements to support and receive and provide flows and functions. Each node has some settlements to support and receive sustenance e.g., a city receives its food items from the villages, while the villages receive goods of the secondary sector from the urban nodes. (Nodal points are always urban centers). Thus, a nodal region is composed of heterogeneous units which are closely interrelated with each other functionally. Functional linkages give unity to nodal region and a certain amount of functional coherence/utility/ interdependence is always present.

Nodes attract labor while the hinterland becomes the labor catchment area, if the hinterland cannot provide jobs to the people. In some respects, the boundary of a nodal region may extend far and beyond for some facility e.g., Bombay attracts persons from distant places in Uttar Pradesh and Bihar because the persons can find employment in Bombay. Similarly, even the rural areas of Punjab attract labor from Chhattisgarh region of Madhya Pradesh or from Eastern Uttar Pradesh or Bihar because highly paying (comparatively speaking) employment can be found in Punjab during agricultural operations.

All functional linkages keep in changing in nature and volume. While economic activities are scattered in a homogeneous region, they are concentrated in or around specific foci of activities. Interdependence is a rule in heterogeneous region and thus, nodal region is a heterogeneous region. The demand and supply conditions at different points/settlement in the heterogeneous region differ and that is the reason for interdependence. Around a node (a focal point in space) revolve not only economic but political and cultural activities also. Yet, it can be said that all activities become weak with the distance and ultimately terminate also. The forces of distance weaken the linkages of all types, unless it is the linkage of all areas of the country with capital of the nation. The size of a nodal region shall depend upon the efficiency of means of communications and transportation and all those facilities, which give rise to localization of industries/activities at a certain place. An improvement in transportation, communications finance, accommodation, and other facilities will widen the radius of influence and the hinterland will get enlarged and the node will get further strengthened.

In a sense, there is an element of homogeneity in a nodal region. A nodal region is

homogeneous in that it combines areas dependent in some trade of functional sense on a specific centre (Meyers). There are a number of possible sets of nodal regions depending on the level of activity one is specifying (Smaller node for vegetables; bigger node for automobiles). All nodes have their own periphery but different nodes have interdependence with other nodes outside their region.

Formal Regions and Functional Region

A formal region is homogeneous with reference to some geophysical characteristic such as topography, climate of vegetation. This is physical formal region. Later on, there was a shift from this narrow approach to a broader approach and economic, social and political criteria were also applied. An industrial or agricultural or plantation region is a formal economic region; or a State governed by a particular party is a formal political region. As against this, the functional region is concerned with interdependence. This is a geographical area in which there is economic interdependence. The nodal regions are functional regions between which there are flows of men, material and money.

In practice, the formal and functional regions very rarely overlap neatly, and often vary markedly. We have to "carve out" a planning region after compromising the two approaches. That region becomes the planning region (formal or functional), which is administratively viable. All regions are geographical regions because they exist on space and all regions are economic regions because people cannot remain alive without being economically active.

Functional Regions & Flow Analysis

This is relevant for nodal regions with considerable degree of inter-dependence. The actual flows of men, money, and materials can be studied (flow analysis) and/or simulation may be made as to how they would flow (gravity model). Functional regions can be delineated on the basis of the direction and intensity of flows between the dominant centre and the surrounding satellites. Each flow will show (a) decreasing intensity as it becomes more distant from the main centre and (b) increasing intensity as it approaches another centre. If a small town "A" is 100 km. from Delhi but just 10 km. from another city, then flows to Delhi will be weaker, unless those flows can be exclusively to and from Delhi. Thus, the boundary of the sphere of influence of the dominant centre will be where the flow of intensity becomes minimum.

Export and import of goods, transfer of money, migration of persons in search of jobs etc., are all 'flows'. Students going to colleges in big cities or to specialized hospitals or girls going to the place of their husbands are "Social Flows". People going to pilgrimage are cultural flows, also involving economic flows as the people spend money on the way. Information flows (Newspapers) also involve monetary transactions.

Planning Regions

Planning regions depend upon the type of multi-level planning in the country. A very small country will naturally have one-level planning. Markedly different geophysical or agro-climate areas may be chosen as planning region for special cases e.g., developing a mining or plantation or power grid region. A planning region in a multi-level setup requires regional plan, which is a spatial plan for the systematic location of functions and facilities in relation to human settlements so that people may use them to their maximum advantages. In fact, more important than reducing the regional disparities is the task of ensuring that backward region and rural areas have basic minimum needs. Planning region for different activities can be different and a regional plan will be locational in character for that activity/function. For comprehensive planning, there has to be a national plan and then a State plan and finally district/block plans. Since a planning region is a sub-national area demarcated for the purpose of translating national objectives into regional programs and policies, and since plan formulation and implementation need administrative machinery, administrative regions are generally accepted as planning regions. This may not be wholly correct, as administrative boundaries may be inconsistent with regional boundaries, derived from economic criteria. However, in some cases a planning region can be small, say a city but a village cannot be (and, probably not even a cluster of villages) a planning region unless the objective is too limited.

The hierarchy of planning region would be (i) national level, (ii) macro level, (iii) State-level, (iv) meso level, (v) and micro level. A planning region is (or should be) large enough to enable substantial changes in the distribution of population and employment to take place within its boundaries, yet small enough for its planning problems to be tackled effectively. It should have a viable resource base, a manpower base, and internal homogeneity/cohesiveness. It should be such that satisfactory levels of mutually satisfying levels of production, exchange, and consumption levels obtained.

2.4 Types of Regions - Multi-Level Planning Perspective

Macro Regions

Macro region is naturally bigger. Macro region can be a State of even a group of States, if the States of a country are not big enough. A Macro-major region can be a zone in a country, which may comprise of a few States. For example, in India there are East, West, North, South and Central Zones and 'Zonal Councils' of which function is mutual consultation, developing cooperation and mutual counseling.

In a sense, macro regions are second in hierarchy, next to the national level. It is also possible that a physical macro region may comprise parts of different States of a country for project planning purposes. (e.g., big river valley projects, an electric grid of different States and, for the purpose of a particular activity (facility) planning) the macro region will be parts of different States. State boundaries are not respected in the sense that the macro region may transcend or cut-across administrative boundaries of the States of a country. A macro region may not be uniform or homogeneous in all respects. It may have homogeneity in one respect (physical complimentarity) and may have heterogeneity in other respect (administrative boundaries). A macro region should have a common resource base and specialization in that resource base, so that production activities can develop on the principle of comparative advantage based on territorial division of labor. (India has been divided into 11 to 20 macro regions - agro-climate or resource regions). The Planning Commission of India would have just 5 zonal councils - Eastern, Northern, Central, Western and Southern comprising of certain States, but beyond this there is no macro-regionalization in India.

These so-called macro regions of India have to have inter-State cooperation in the matter of utilization of river water and electricity grids etc.

Meso Regions

Meso region can be identified with a 'division' of a State. Chhattisgarh Region, Bundelkhand Region, Baghelkahand Region, Mahakoshal region is usually a sub-division of a State, comprising of several districts. There should be some identifiable affinity in the area which may even facilitate planning. It can be cultural or administrative region and it will be even better if it is a homogeneous physical region (resource) region. A meso region can also become a nodal region provided the combined micro regions or parts

thereof can be developed in a complementary manner. (NSS of India has identified 58 meso regions of India, but they are not shown on maps as planning regions).

Micro Regions

In multi-level planning, district is the micro region. It becomes the lowest territorial unit of planning in the hierarchy of planning regions. The most important reason why district is the most viable micro region for planning is the existence of database and compact administration. This is the area, which is viable for plan formulation with administration for plan implementation and monitoring.

A metropolitan area can be one micro region and the area of influence can be another micro region. A nodal point is also a micro region, though in many cases micro regions are basically rural areas, which may have a number of minor nodes without any organizational hierarchy influencing the entire area. The basic characteristic of a micro region is its smallness. There can be some specific micro regions such as belts of extraction of mineral or a reclaimed area, or a not-so-big command area of an irrigational project.

Micro - Minor Region

This is the region which is associated with, what is called, the grass-root planning. A micro-minor region can be a block for which also data exists now and for which there may be a plan.

2.5 Regions and Their Types

A region is a subsystem within a system (the country itself) and if subsystems develop greater interconnectivity, the greater will be the efficiency of the system. All regions are 'problem regions' in one way or the other, level of development notwithstanding. A structural set of different types of regions has its own 'dualism' everywhere. The essential task of planning is to bind various regions into a system, in which only those inequalities remain in which simply cannot be obliterated.

A. Regional Economics perspective

i. Homogeneous Regions of various hues. Formal regions.

ii. Nodal, polarized, heterogeneous, or functional regions.

iii. Planning and Programming Regions.

B. Multi-level planner's perspective

i. Macro region.

ii. State region/Micro region.

iii. Micro region.

C. 'Stages-of-development' perspective

i. Developed Region.

ii. Backward and Depressed Region (Vestigial regions also).

iii. Neutral and Intermediate Regions.

D. Activity status analysis perspective

i. Mineral regions.

ii. Manufacturing regions.

iii. Urban and/or Congested regions.

Regions have been delimited on several criteria: economic, administrative, physical or activity regions. Geographers, economists and administrators invariably delimit the regions in different manner.

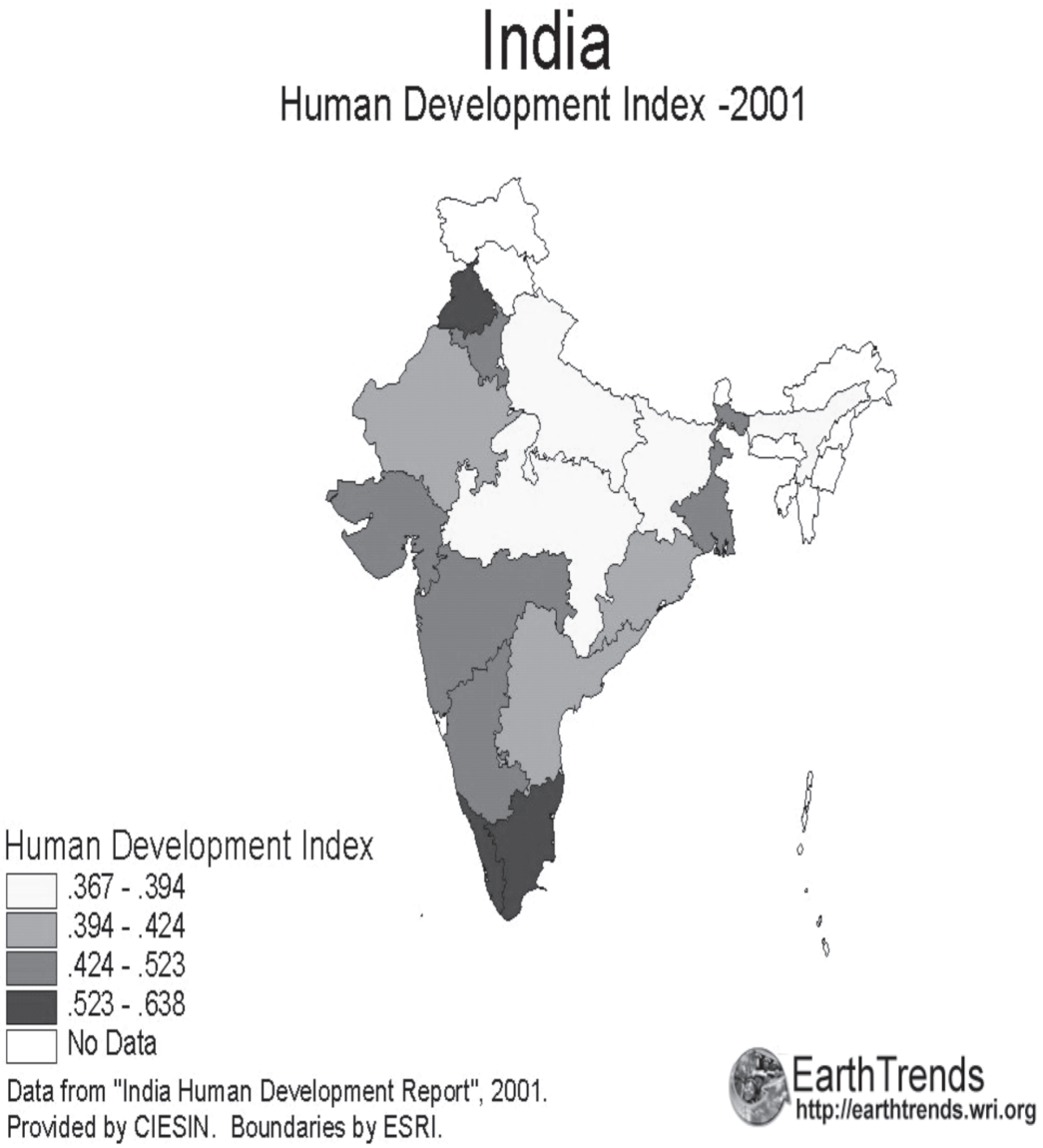
2.6 Types of Regions on the Basis of Stages of Economic Development

Developed/Development Regions

Developed regions are naturally those which are having a high rate of accretion in goods and services i.e., their share in the GDP of the country is relatively higher. This may be with or without rich natural resources by most certainly because of the use of upgraded technology by highly skilled and motivated persons. The locus of infrastructure facilities in abundance will put a region in the State of "nothing succeeds like success" and the region may continue to forge ahead of the backward regions at a higher rate.

A developed region may become 'overdeveloped' in certain respects e.g., it may suffer from the diseconomies of congestion and the Perroux's 'growth pole' becomes over-critical here. Infrastructure costs become very high and people can go into the jitters due to pollution and stresses of various types.

Maps showing Regions Based on Development Index



A developed region is the counterpart of the backward region: the 'positive' side is emphasized in case of the developed region while 'negative' aspects are emphasized in case of the backward region. A developed region is one, which has exploited its potentialities fully, which has removed the bottlenecks and speed breakers of development. Developed regions emerge of their own because of the comparative advantage or may emerge as a result of the diversion of funds by the government. In many cases imbalances emerge between developed and backward regions and these imbalances can be the creation of planners also. Many times disproportionately high amounts of investment are made in the constituencies of the influential politicians and some regions become far more developed than the neighboring regions. In a resource short economy such a development may be at the cost of denying legitimate share of investment to some other regions. Those regions where quick maximization is possible i.e., high outputs are obtained with relatively lower levels of inputs, get further attention and become even more developed.

Backward Regions

There can be 'backward or depressed' regions in the developing as well as the developed economies. Backward economies are thoroughly depressed regions. Regions, in which the economy is largely subsistence one, have in the most coexisted with the modern sector regions since long. There is development even in these regions but these regions have not come out of the low level equilibrium trap. There can be region, which may not be at subsistence level but may be relatively backward. Lack of infrastructure facilities, adverse geo-climate conditions, low investment rate, high rare of growth of population, and low levels of urbanization and industrialization are causes and consequences of backwardness. In less developed countries, even the most ancient occupation (agriculture) is backward and unless it is made progressive with massive real and financial input support, the region cannot come out of backwardness. It will be imperative that for the overall development of the backward regions, those industries should be developed on priority basis which supply vital inputs to agriculture as also those industries which take outputs of agriculture as their inputs. Thus, depressed regions can be very poor underdeveloped regions, which failed to modernize.

Some vestigial regions (as the regions inhabited by the red Indians in USA or tribals in India) can remain backward and may even remain near the subsistence level. The inhibitions may have ancient traditions and may be smug in their surroundings, but the per capita income may be much lower than in the neighboring regions. A region can be backward

because of the high population density or even without it. If we take some selected indicators of development (e.g., road length per sq km., literacy rate, beds per thousand population, percentage of villages electrified, percentage of cultivated land under irrigation, longevity, and availability of low, intermediate and high order functions and facilities) a low total will suggest backwardness.

Depressed regions have rudimentary type of industrial activity; major centers of industrial and economic activities are not in the region and/or are at a distance from the region. Compared to the developed regions, wide chasms exist in most of the economic activities leading to wide differentials in the per capita income and intensity of productive and well paying employment.

Neutral Regions/Intermediate regions

New towns and satellite belts are designated as 'neutral' regions and they promise good prospects of further development, because here further employment generation and income propagation is possible without congestion. Such regions can be demarcated around urban centers.

Intermediate regions are those regions, which are 'islands of development around a sea of stagnation'. Some metropolitan regions are surrounded by areas of utter penury. It should be the task of the planners to develop linkage activities that the hinterland of such intermediate regions also develops.

2.7 Types of Regions based on the activity status analysis

Mineral regions

Many mineral regions promise high growth rates for the region as well as for the prosperity of the country, unless the region suffers from 'Bihar Syndrome'. If mineral-based industries can be developed in the region itself, then industrial development will be less costly because much of the load shedding will be done in the region at low cost. The iron ore deposits of Bailadeela (Bastar District of Madhya Pradesh) are exported abroad if, however, a plant could be established near the ore deposits; it would have brought tremendous development for the region.

As the mines continue to yield sufficient minerals and the costs are also not prohibitive, not only the mineral-producing region develops, but it helps other regions also to develop.

After the minerals exhaust, the region will bear degraded look; people will move away to other areas and the erstwhile area will bear a deserted look. Germany took great pains to rehabilitate such areas and vast pits and trenches were suitably reclaimed for various purposes like water storage, eco-forestry and even cultivation after enriching the soil. If new deposits of minerals cannot be discovered, there can be several ways of reclaiming wasteland and developing non-mineral based activities. Regional planning will require a long-term plan for developing such regions after extraction is no longer a profitable activity. The Middle East countries have made adequate planning to diversify their economies so that after the oil wealth exhausts their economies do not relapse to backwardness.

Manufacturing Regions and Congested Regions

Some regions become big manufacturing regions not because they have natural resources but, because of the infrastructure development, momentum of an early start, continued government support etc. Autonomous, imitative, supplementary, complementary, induced and speculative investments keep in giving strength to the manufacturing regions. It would be prudent not to develop narrow manufacturing base, otherwise territorial specialization can become a problem if the crop supplying the raw materials fails or if the minerals which are base for the industries, exhaust. In such regions the internal and external economies are available in ever-greater measure and such regions keep on developing. When all the thresholds are crossed, such regions become too congested and the diseconomies overwhelm the economies of production - High density, increasing pollution, reduction in the quality of life result.

Cultural Regions

A cultural region can also be quite well demarcated. (French Canada and English Canada are such regions). In India, various States are demarcated on the basis of language and culture primarily. There are affinities of cultural origin in such region. A rich cultured region should be rich in economic terms also.

2.8 Concept of Regionalization

Regionalization is the process of delineating regions, but each time depending upon the purpose for which the region is to be delineated. If the intention is to develop an arid region, the 'region' will be differently defined, including only arid areas. If the congestion is to be removed then the most congested and polluted areas will be included in the

'congested region'. If the intention is substantially reduce poverty and unemployment, then a 'depressed region' is to be delineated. The homogeneity of a region will differ with the purpose for which delineation is being made. Regionalization deals with the differentiation of political measures in space". If the physical region, having homogeneity, is an administrative region also, then all tasks of regional and national planning can be facilitated.

Geographers were always interested in the process of regionalization and were very fond of pictorial characterization rather than scientific explanation. Geographers believed that there is some sort of determinism in economic development. USSR geographers even coined the word fortunatov for a region well endowed with resources. They probably meant that what is physically impossible, money cannot make it possible. However, 'deterministic' situations are not too many and the man and his brainchild-technology - can bring a lot of changes. The neo-determinism underlies the fact that as the techno-economic conditions change, the 'degree determinism' also undergoes a change to be near the reality, we need adjustments by stages. In fact, both 'determinism' and possibilism' are facts of life.

Delineation of Regions in India

Physiographic Regions

The first attempt in classify natural regions or physiographic regions was made by L. Dudley Stamp (1922) who identified 3 Major Natural Regions and 22 sub-regions based on the homogeneity of physiography, structure & climate. JNL Baker made second attempt (1928). It was similar to Stamp's classifications. Spate (1957 & 1967) made another attempt based on Stamp's & Baker's work who identified 3 Macro Regions in the Mountain rim, Indo-gangetic Plain, and in Peninsula besides 34 regions of first order, 74 region of second order, and 225 sub-divisions. SP Chatterjee's (1965) scheme of classification is considered as a standard one and it is frequently quoted by others. Chatterjee's classification may be seen in below given statement.

Economic Regionalization

Regionalization is an exercise of dividing regions of higher order into sub-regions or aggregating regions of lower order (small units) into those of higher order (regions). This is based on homogeneity in the selected characteristics or functional interdependence


Map of India displaying geographic regions as affecting its bio-diversity
Trans Himalayas
W. Himalayan
PAKISTAN
TIBET
NEPAL
Bhutan
Himalayans
DESERT
GANGETIC PLAIN
North East
SEMI ARID
CENTRAL HIGHLANDS
Mynamar
mouth of Ganga
ARABIAN SEA
Konkan coast
DECCAN PLATEAU
BAY OF BENGAL
Western Ghats
Eastern Ghats
Coromandel coast
Malabar coast
Lakshwadeep Is (India)
ANDAMAN & NICOBAR (INDIA) ISLANDS
INDIAN OCEAN
SRI LANKA

S.P. Chatterjee's Classification of Physiographic Regions

The Great Mountain Wall	Western Himalayas	Kashmir Himalayas Punjab Kumaan Himalayas
	Eastern Himalayas	Darjeeling, Sikkim, Assam Himalayas Eastern Bodar Hills & Plateau
The Great Plain Sutlaj, Beas, Ravi Ganga, Upper Ganga Yamuna, BrahmaPutra	North Western Upper Ganga Middle Ganga Delta Assam Valley	North Punjab, South Punjab, Rajasthan Ganga Yamuna, Rohilkhand, Avadh
	North Western	Aravalli Hills, Chambal Basin
	Peninsular	Bundelkhand upland, Malwa
	Peninsular India	Vindhyan Scrap land
	North Eastern	
The Great Plateau of Peninsular India		Baaghelkhand, Chhattisgarh Basin Bastar Plateau, Orissa Hills, Chotnagpur Hills
	Maharashtra	Western Ghats, Lava Plateau, Western Ganga Valley
Peninsular Plateau	Karnataka Plateau	Malnad region, Maiden region
	Tamil Nadu Plateau	
	Andhra Plateau	
Coastal Plains	West Coast	Kutch Peninsular, Kathiawar Peninsular, Gujarat Plains, Konkan Coast, Karnatic Malabar Coast
	East Coast	Tami Nadu Coast, Andhra Coast, Orissa Coast
The Island	Laccadive, Minicoy & Amindivi, Andaman & Nicobar Islands	

between the nodal centre and its hinterland or between the different functional centers of different hierarchic levels.

Application

A. Regionalization for Planning - A strategy for areal development.

B. Nodal Regionalization to create central places and functional integration.

Economic Regionalization in India

Delineation of natural or physiographic regions helps us to understand the basic geography of the country. It describes the existing situation only. But, for the purpose of planning it is necessary to study the natural resources of regions in detail and also to find out areas of potential development and to trace inter-linkages among them (and within them) in such a fashion as to promote maximum development of resources.

By combining physio geographical, economic and socio-cultural variables we can have different homogeneous regions.

Following classifications are frequently quoted in the books:

A. The regionalization scheme proposed by V. Nath

B. The regionalization scheme proposed by Bhat & Rao

C. The regionalization scheme proposed by Sen Gupta & Galina Sdasyuk

D. The regionalization scheme proposed by Vij & Chandra

E. The regionalization scheme proposed by S.R. Hashim

F. The regionalization scheme proposed by Gidabhuly & Bhat

G. The regionalization scheme proposed by Sen Gupta

H. The regionalization scheme proposed by Town & Country Planning Organization

Author	Title	Criteria used	No. of regions
A. V. Nath	Resource development regions & divisions of India	Soil climate topography land use	15 regions
B. Bhat & Rao	Regional planning for India	Distribution of natural resources	11 regions
C. P. Sen Gupta & Galina Sdasyuk	Population resource regions	Population density, growth rate, esource potentiality, levels of socio-economic disparity	3 regions dynamic, prospective, problematic
D. K.l. Vij & K Chandra	Energy resource regionalization	Energy & power	8 regions
E. Sri. S.R. Hashim	Inter-regional linkages & economic regionalization	Movement of 61 commodities	6 macro regions
F. Gidabhuly & Bhat	Economic regionalization	Movement of 5 selected commodities	
G. Sen Gupta		Homogeneity, nodality, production specialization, energy resources	
H. Chandrasekara	Regional development & planning regions	Land & raw materials for industrial development	

A. The Scheme Proposed by V. Nath (1964)

Title: Resource Development Regions and Divisions of India

Objectives:

i. Providing a framework about the physical conditions & resource potential to planners both at the Central & State-level

ii. Based on such identification helping the planners in planning the programs, adjustments in programs, content & pattern

iii. Furnishing a scheme of homogeneous units within the State

Variables Used:

Physical - topography, soils, Geologic Formation and Climate - Agricultural - Land use & cropping pattern.

This study based on the earlier studies:

1. Census 1951
2. Spate scheme
3. Indian Statistical Institute

Nath classified the country into 15 Resource Development Regions (RDRs).It is further classified into 61 RDRs.

1. Western Himalayas
2. Eastern Himalayas
3. Lower Gangetic Plain
4. Middle Gangetic Plain
5. Upper Gangetic Plain
6. Trans Gangetic Plain
7. Eastern Plateaus & Hill Regions
8. Central Plateaus & Hill Regions

9. Western Plateaus & Hill Regions
10. Southern Plateaus & Hill Regions
11. East Coast Plains & Hills
12. West Coast Plains & Hills
13. Gujarat Plains & Hills
14. Western Dry Regions
15. The Islands

B. The Scheme of Bhat & Rao

Title: Regional planning in India.

Variables Used:

Distribution pattern of natural resources as represented in the maps and agricultural land use pattern on the basis of district wise data.

Methodology:

Major regions should have minimum disparities within and distinctiveness from their neighbors in respect of regional character and resources for development. While the regional development norm is common for the major region as a whole, sub-regions are identified depending upon the concentration of resources, problems for development and administrative convenience.

Scheme: 11 Major Regions, 51 Sub-regions.

1. West Coast Region
2. Western Ghats
3. Central Plateau
4. Eastern Ghats
5. East West
6. North-Eastern Plateau

7. The Ganges Plain
8. Assam
9. Gujarat
10. Rajasthan
11. Kashmir

Bhat has made another attempt to classify our country based on the presence of power and metallurgical base.

Macro Economic Regions

1. Southern Region
2. Western Region
3. North Western Region
4. North Central Region
5. Eastern Region Bihar

Group of States

1. Karnataka, Tamil Nadu, Andhra Pradesh, Kerala
2. Maharashtra, Gujarat
3. Punjab, Haryana, Rajasthan, Jammu and Kashmir
4. Uttar Pradesh, Madhya Pradesh, Bihar, Orissa, West Bengal, Assam
5. Nagaland, Arunachal Pradesh, Manipur, Tripura etc.

C. The Scheme proposed by P. Sen Gupta & Galina Sdasyuk

Title: Population Resource Regions

Objective:

To understand the population characteristics in terms of territorial units like States, districts and thereby to assess the latent capacity of the country in supporting population.

Variables Used:

Population (Density and growth rate), resource potentiality, and levels of socio-economic development.

Scheme: 3 Major Regions and 19 Sub-regions.

1 Dynamic regions	1. Parts of West Bengal, 2. Gujarat, 3. Maharashtra, 4. Tamil Nadu, 5. Punjab	The Dynamic Regions supports advanced industrial areas and predominantly urban population.
2 Prospective regions	1. Northern Eastern Peninsula, 2. Godavari Basin, 3. Aravalli Hills & Malwa Plateau, 4. Brahmaputra Valley	The Prospective Regions have immense resource potential but face socio-economic obstacles to technological transformation.
3 Problem regions	1. Parts of Bihar & Uttar Pradesh 2. Orissa Coast, 3. Kerala Coast, 4. Laccadive Islands, 5. Konkan Coast in Maharashtra & Karnataka 6. Rajasthan Desert, 7. North Western Himalayas, 8. East Himalayas, 9. Andaman Islands	The Problem Regions are those, which show little promise of development in the near future.

D. The Scheme proposed by K.L. Vij & C.K. Chandran

Title: Energy Resource Regionalization.

Methodology:

This scheme based on energy and power resources because those resources will play a dominant role in determining the distribution of industrial activities.

Scheme: 8 Macro Regions

E. The Scheme proposed by S.R. Hashim

Title: Inter-Regional Linkages & Economic Regionalization.

Variables Used:

Movement of 61 commodities based on Inland (Rail & River borne) trade accounts.

Scheme: 6 Macro Regions

1. Assam, Manipur, Tripura, Nagaland.
2. West Bengal, Bihar, Orissa and Calcutta.
3. Uttar Pradesh.
4. Punjab, Haryana, Himachal Pradesh, Delhi, Rajasthan, Jammu and Kashmir.
5. Gujarat, Maharashtra, Bombay.
6. Goa, Karnataka, Kerala, Tamil Nadu, Andhra Pradesh.

F. The Study of Gidabhuly & Bhat

Objectives:

To analyze the inter and intra-regional relationship.

Variables Used:

Movement of five selected commodities i.e., Sugar, Cotton, Textiles, Cement, Coal, Iron and Steel.

G. The Scheme Proposed by Sen Gupta

Variables Used & Methodology:

Keeping the natural regions of the country as a base and considerations of homogeneity, nodality, production, specialization, energy resources utilization etc. in view and accepting the State boundaries, Sen Gupta suggested that within a framework of meso regions that resource development of macro regions can take place.

Macro and Meso Regions of India – Sen Gupta's Classification

Macro Region	Meso Region
North-Eastern Region (Assam, Manipur, NEFA Nagaland & Tripura)	1. Upper Brahmaputra Valley, 2. Lower Brahmaputra Valley, 3. Mineralized Plateau, 4. Eastern and Northern Hills
Eastern Region (West Bengal, Bihar and Orissa)	1. Calcutta-Hoogly Region, 2. Damodar Valley area, 3. Chotanagpur and Northern Orissa Plateau, 4. Southern Hills and Plateaus of Orissa, 5. Lower Ganga Plain, Deltas and Coastal Plain 6. Darjeeling Hills and Sub-mountain tracts (duara)
North Central Region (Uttar Pradesh)	1. Northern Himalayan Area, 2. West Ganga Plain, 3. Eastern Ganga Plain
Central Region (Madhya Pradesh)	1. Eastern Madhya Pradesh, 2. Western Madhya Pradesh, 3. Bastar area, Central Madhya Pradesh.

North Western Region (Rajasthan, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh)	1. Punjab Plain, 2. The Union Territory of Delhi, 3. Western Rajasthan, 4. Eastern Rajasthan, 5. Himalayan Hills including Dun Area, 6. Kashmir valley and its surrounding hills.
Western Region (Maharashtra, Gujarat, Dadra and Nagar Haveli, Daman and Diu)	1. Bombay city and its sub-urban area, 2. Intervening area along the railway between Bombay and Nagpur, 3. Coastal part of Maharashtra, 4. Western Maharashtra mainly plateau area, 5. Eastern Maharashtra 6. Central Maharashtra, 7. Gujarat Plain 8. Sourasthra, 9. Kutch
Southern Region (Andhra Pradesh Mysore, Tamil Nadu, Kerala, Pondichery, Yanam, Goa, Andaman & Nicobar and Laccadive, Minicoy and Amindivi	1. Coastal Plain of Andhra Pradesh, 2. Telangana area, 3. Rayalaseema area, 4. South Central Industrial Area, 5. South-Eastern Coast, 6. Anaimalai, 7. Cardamom and Nilgiri Hills,& Western Coast, 8. Malnad and Western Ghat area, 9. Maidan area, 10. Coral Islands.
Macro Regions = 7 Meso Regions = 4 + 6 + 3 + 4 + 6 + 9 +10 = 42	

A. The Scheme Proposed by the Town & Country Planning Organization or C.S. Chandrasekhara's Scheme

Title: Balanced Regional Development and planning regions

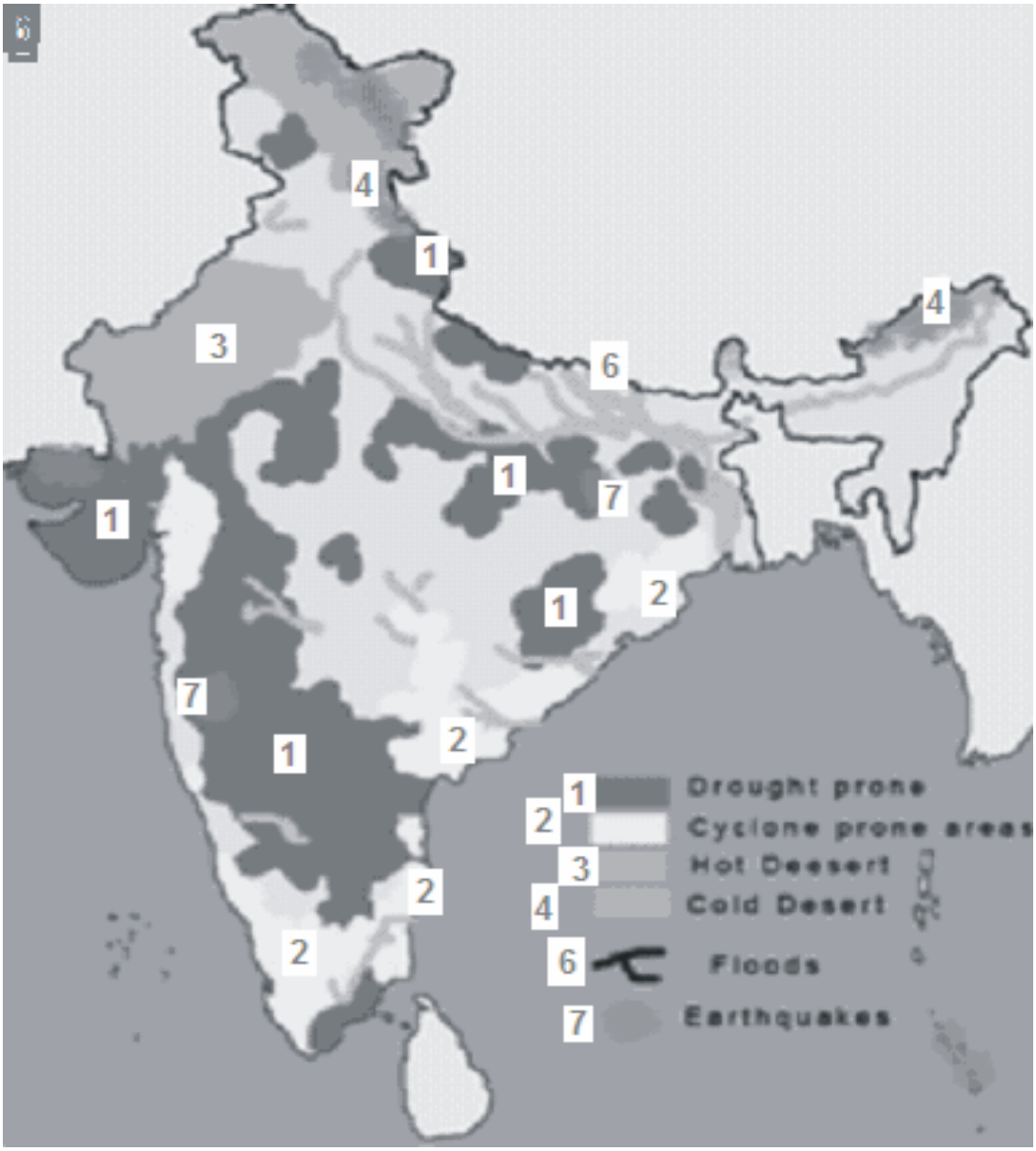
Variables Used & Methodology:

1. Land,
2. Raw materials for industrial development,
3. Power.

These factors will enable each planning region to achieve a degree of self-sufficiency in food, an employment potential in the agricultural and non-agricultural sectors to meet the needs of the region's population and a power base, which will serve the developmental needs of both agriculture and industry.

Scheme: 13 Macro regions divided into 35 Meso regions.

1. South Peninsula,
2. Central Peninsula,
3. Western Peninsula,
4. Central Deccan,
5. Eastern Peninsula,
6. Gujarat,
7. Western Rajasthan,
8. Aravalli Region,
9. Jammu & Kashmir,
10. Indo Gangetic Plain,
11. Ganga Yamuna Plains,
12. Lower Ganga Plains,
13. North Eastern Region.



2.9 Regional Imbalances

The existence of depressed, distressed and disorganized regions virtually affects the process of economic development. Most of the countries of the world are faced with the problem of regional imbalances and regional inequalities. But it assumes a more acute and explosive

form in the developing countries. The problem is assumed to have such a magnitude that their very political and economic stability is threatened. Rivalry and the search for maximal profits (including political advantage) engender the unevenness (disproportionately).

The primary causes of regional imbalance can be located in the region making process itself i.e., geographic and physiographic characteristics, history and cultural experience. But there are much deeper causes as Lenin discovered, "The law unequal economic and political development under capitalism as a universal law characteristic of all stages of capitalist development and embracing all parts of the world capitalist economy".

Whatever may be the causes, if marked differences in economic prosperity of different regions persists overtime, political discontent is bound to emerge sooner or later. The problem becomes further complicated when economic disparities among regions overlap with differences in race, religion, language or culture of the people living in different regions.

Regional inequalities exist not only in the form of income or output levels among regions, but also in other forms such as unequal access of the people of different regions to economic and social services, employment opportunities or political power.

1. e.g., Jharkand, Darjeeling, Rayalaseema, Telangana issues.
2. e.g., North Eastern Part of our country, Cauvery issue.
3. e.g., Intra-regional disparities existing in several States regarding industrial establishment, health services some regions are more represented in the cabinet.

2.10 Regional imbalances: Theoretical Explanations

The incidence of uneven development is, in general, a special characteristic found among the developing nations. With the concentration of development around the center, the peripheries often do not receive even the percolated benefits of such lopsided development. Though the Neoclassical theories postulate that it is through the mobility of capital stock, technology transfer and labor movement, the development gap between the center and the peripheries will eventually reduce, in reality such dynamics itself become a function of a set of other factors like the topography of the region, its geo-political sensitivity, political will of the authority and most important of all the awareness of people for development. The proposition of Growth Pole Theory refers to the concentration of industries around a central core of other industries and acting as channel of growth in

the area. However, it has not been much fruitful to reach its objective even in the developed economies. The most frequently cited example of the attempt to create an artificial growth pole occurred in the Mezzogiorno (south) of Italy, with industrial complexes planned at Taranto and Bari. However, such artificially created growth poles could not bring in regional development to the extent it was expected. Thus, it is quite unlikely that the theory will find more effective application in the backdrop of a developing economy.

On the other hand, the concept of development often confronts with conflict in the academic circle. In fact, the process of economic development itself has undergone paradigm-shifts over time. While, on the one side, such changes were inevitable as they were the timely responses to the contemporary necessities, on the other, the differences among the scholars originate mostly in the interpretation of the concept and in the outcome of various strategies implemented. With the introduction of globalization, the debate has become more intense. In globalization, the market has emerged as the driving force of the economy and the development strategy initiated by this economy operates with its usual exclusion principle. The produce of development reaches that section of

the society, which fits well in the market dynamics, ensuring survival of the fittest. However, the development ethicists have put strong objection to such exclusions. They argue that at least some of the development ideologies should address the

problems of the excluded - mostly the poor and the vulnerable section of the society. A complex and unresolved empirical question regarding the relative contributions of local and global factors to the wealth and poverty of the societies still exists [30].

The notion of convergence is also of much importance when developmental gap exists in the society. A number of theories have been put forward at different point of time. Most of them are based on empirical experimentation on the developed economies. As a matter of fact, even though the incidence of convergence is noticed among the developed countries, the developing nations are still facing widespread regional disparity. The Human Development Reports from such countries show the lacking equal distribution of development there. For example, the UNDP Report of Zimbabwe finds out the level of illiteracy to vary from 33% to just over 6% across the provinces; while access to safe drinking water varies from just above 28% to as low as 1% [33]. According to the Philippine Human Development Report 1997, a comparison of the Human Development Index (HDI) across various provinces between 1990 to 1994, reveals that extent of dispersion varies from an increase of 25% to a decrease of 4%.

Wider regional disparities in terms of Human Development Index and Human Poverty Index (HPI) have been reported in the Human Development Report of the I. R. of Iran 1999. The outcome of such dispersion is found in migration of population - especially the work force - in large scale from provinces with low HDI to provinces with high HDI. Considering the gravity of the problem, it has been suggested that more equitable distribution is needed more specifically in health and education sector along with accelerated economic growth to overcome the problem of 'deprivation' among low ranked provinces.

Some of the important theories dealing with the explanation of regional disparities are given below:

A. In the Classical Economic Theory, the efficiency advantages of the regions deriving from the comparative specialization will eventually contribute to the reduction of territorial disparities in a way that is advantageous for all the participating regions.

B. In the Neoclassical Economic Theory, due to the presumption of the absolute mobility of the factors of production (including technology), all the inequalities in the model - embracing any kind of developmental disparities between regions - decease in the long run.

C. In the Keynesian Economics, the reduction of regional disparities can not be interpreted as the result of spontaneous market processes. The desirable processes are much more linked to the result of certain intended institutional interventions.

D. The Endogenous Growth Theory interprets the productivity growth as an outcome of the spatial diffusion of knowledge and technology, which does not infer any automatism for the reduction of territorial inequalities. However the regional (economic) policy aiming at the deliberate development of the endogenous factors (technology, knowledge and the internal resources of the region) can become an efficient means of reducing regional disparities.

E. New Trade Theory, States that the spatial variation of productivity derives from the varying levels of regional specialization, agglomeration and cluster formation. The spatial equilibrium shaped by centripetal and centrifugal forces is Pareto-efficient, therefore, there exist no market automatisms that would induce spatial disparities.

F. In the New Institutional Economics, due to the constant change deriving from the dynamic interaction of the narrowly meant economic processes and institutional

conditions, the deepening or the reduction of territorial disparities can be well interpreted within the frame of the model.

G. The Porterian Corporate Strategy Economics originates the regional disparities from the basic industries and clusters of the regions. Since it focuses on the "microeconomic foundations" (the resource munificence of the region gains highlight as well), the reduction of territorial disparities characteristically does not occur through market automatisms.

H. In an Evolutionary Economic View, the change in the intensity and extent of a region's innovative activities can significantly shape the regional disparities. Such changes may occur as a result of spontaneous market processes. Therefore, in the evolutionary thinking the reduction of territorial inequalities through the market automatisms can be interpreted.

A. Classical Economist's View:

The Classical economists hardly evinced any interest in the spatial dimension of economic development. They believed that factor flows/market forces would bring equilibrium automatically. They argued that wage and income levels among regions would not last long. They further argued that labor would flow from (migration) low wage region to high wage region, while capital will flow in the reverse direction (i.e., from high wage region to low wage regions). Classicalists view failed, and many economists started questioning the "Self Equilibrating Model" of the classical economists.

B. Marxist View:

Regional disparity is the characteristic feature of capitalism and is aggravated by rivalry and competition and the search of maximal profits is the very nature of capitalist relations of production any by the private ownership of the means of production.

C. Perrouxian View:

French Economist Perroux, in his attempt to understand the modern process of economic development discovered that:

i. Growth does not appear everywhere at the same time.

ii. It manifests itself in points or poles of growth with variable intensities.

iii. It spreads by different channels and with varying terminal effects for the economy as a whole.

Perroux heavily relied on Schumpeter's theory of economic development to explain why growth appears in a particular place. According to Schumpeter, "development occurs as a result of discontinuous spurts in a dynamic world". According to Perroux once growth emerges in a particular place, it becomes centre of growing economic activities and in their turn induces growth in the dependent regions. According to Perroux, the process of economic development is essentially unbalanced, and the centers of growth may give birth to other centers or it may become a centre of stagnation.

D. Myrdal's View:

The outstanding Swedish Economist Gunnar Myrdal was one of the first among western scholars to pay attention to the grave consequences, not only economic but political as well, which may result from the aggravation of disparities in economic development. In his book, "Economic Theory and Underdeveloped Regions", he presented the "Cumulative Causation Model".

According to this model, economic development having started in some advantageous place continues to develop in that place and the play of market forces normally tends to increase rather than decrease inequalities between regions. Myrdal further argued that once growth starts through historical accident in a locality, "the ever increasing internal and external economies - (lower average costs of production from and increased rate of output, availability of trained workers, communication facilities, access to larger markets) tends to sustain the continuous growth at the expense of other localities and regions where instead relative stagnation or regression became the pattern".

Myrdal explained the impact of the growing region (nucleus) on rest of the economy with the help of two opposite kinds of forces, which he calls the "Spread effect" and "Back wash effect".

- **The Spread effect**

"The Spread effect" - refers to all growth inducing effects i.e., inflow of raw materials, new technologies, demand for the agricultural products, If strong enough, these forces may start a cumulative expansionary process in the lagging regions.

- The Backwash effect

"The Backwash effect" - refers to all adverse effects i.e., withdrawal of skilled labor from underdeveloped regions, capital and goods-all of which rush to the dynamic centre of development. Due to the accumulation of concentration advantages, the backwash effect predominates. This of course, increases the relative backwardness of underdeveloped regions. Thus Myrdal made a synthesis of various elements involved in the process of regional growth including agglomeration economies, factor flows, social environment, and role of public policy.

5. Hirschman's View:

Albert Hirschman, an American Economic Professor, explained economic growth process in terms strikingly similar those of Myrdal. Hirschman felt that "Inter-regional inequality of growth is an inevitable concomitant and condition of growth itself". Hirschman explained his concept with the help of two terms i.e., "Trickling-down effect" and Polarization effect". Some economists criticized Hirschman's theory of "economic transmission" - for having created terminological confusion for the terms already accepted in the scientific language).

Kuznets (1955) and Williamson (1965) found an inverted-U relationship between economic growth and interregional inequality. These scholars, therefore, imply that inequality is needed to initiate economic growth up to some point. By analyzing data from 74 underdeveloped countries for the period 1957-68, Adelman and Morris (1973) indicate an asymmetrically U-shape relationship between the level of economic development and the income share of the poorest 60 per cent of the population. A study by Elizondo and Krugman (1992) explained that interregional inequalities, given the degree of federal intervention, tend to decrease as the economy moves from a restrictive trade regime to a liberalized trade regime. This suggests that the openness of an economy is an instrument to achieve both economic growth and geographical dispersion of economic activities.

The foregoing theory and empirical findings suggest that regional economic disparity and the level of economic growth are linked together broadly in the form of an inverted U-shaped curve. While one cannot deny the usefulness of these theories or models in understanding regional disparity, their applicability to reduce regional disparity, however, depends upon the objective of a particular nation.

2.11 The Extent of Regional Imbalances: Problems in Understanding

1. It is a misnomer to use the term "regional imbalance" in our country. It is advisable to use the term 'inter-State imbalances' (States are analogous to regions but they are not regions in the strict academic sense) because information required to understand the spatial imbalances is available collected either at the State-level or district-level.

2. Even the data collected/information available are not comparable. Data/Information available in our country at their best can indicate the 'broad trends' only.

3. Absence of comparable data/information for all the aerial units (districts).

4. The problem of selecting indicators to highlight the imbalances, for example 'per capita' income is widely used to highlight the disparities in our country. But this indicator suffers from many weaknesses. What are they?

A. Incomparability

   i. Price levels are different in different States.

   ii. The commodities included in the compilation of price level by different States are different.

   iii. Weights assigned to different commodities are different in different States.

B. At times underdeveloped regions may possess better infrastructure and other preconditions for development compared with developed regions. Using per capita income may conceal other positive aspects.

C. Some parts of our country are still depending on barter exchange (exchange in kind). Economy is still not fully monetized. So it is unwise to use per capita income which is calculated based on money exchange.

   So on account of all these considerations, per capita income alone cannot be a sufficient indicator of development. If 'Per Capita Income' is not sufficient, what are the other Indicators?

   1) Differences in Industrial Growth

   2) Disparities in Agricultural Growth

   3) Level of Literacy in different States

   4) Percentage of Urban population to total population

5) Percentage of workers in manufacturing industries to total workers
6) Total Road length
7) Infant Mortality rate.

Which indicator to choose	Some value judgment about what is important & unimportant indicator. It depends upon availability of Data Indicator may not be important, but data may be available Indicator may be important, but data may not be available

2.12 New Perspective in Regional Disparities in Development - Indian View

Regional disparities are the manifestation of spatial injustice and should be reduced for attaining the goal of just and egalitarian society. But, in reality the regional disparities in development are more acute and quite persistent at global, national and international level. Therefore, it would be a quite fruitful exercise to explore into the theoretical expositions and actual position in regard to regional disparities at the various scales of spatial units. The findings may be helpful in the plan formulation for the removal of regional disparities, which is a main plank of contemporary development planning of all the developing countries.

Disparities in the development has been a theme of great academic interest and practical significance during the post world war 2nd period when a large number of colonies attained political independence and became conscious of the distressing disparity that existed between those colonies and their erstwhile colonial master. The contemporary world consisted of two-different realms; one that of the west, immensely rich, industrialized, urbanized and with a history of steady development since the industrial revolution, the other of newly independent countries, abysmally poor, agricultural, rural and with an equally long history of exploitation and stagnation. This dualism could not escape the concern of academicians, politicians and administrators.

Several studies were undertaken and numerous theories were postulated to explain the

global duality of development and underdevelopment. Hinderink and Sterkenburg (1978) classified the studies dealing with regional disparities into three types:

- those which use space as a mere framework to describe regional differences in development;
- those which employ space, particularly in terms of physical space and built environment, as an explanatory variable to analyze spatial inequality; and
- those which adopt space with reference to the level and nature of its development, as a variable to be explained through historically developed politico-economic social structure.

Spatial theories of unequal development were also grouped by Nash (1963) into three categories of spatial differentiation, spatial diffusion and spatial integration. This classification was based on the mode of analysis adopted. An improvement upon it was suggested by Browlet (1980) who again offered a three-fold classification of various theories into those which deal with comparative analysis of development pattern, which make inductive study of development stages in a specific region, and which examine the process of spatial diffusion of development. This grouping was done essentially in the context of diffusionist development paradigm which highlights the role of spatial interaction.

For a convenient understanding, theories, explaining development in spatial context may be divided into two categories:

- those which emphasized the play of intra-regional factors leading to development or underdevelopment, and
- those which stressed the role of spatial interaction between developed and underdeveloped regions, largely detrimental to the interest of the later.

What explains development and underdevelopment spatially from the basis of this grouping?

Theory Emphasizing Intra-Regional Factors

Theories in this group assign importance to factors relating to natural resources, technical advancement, and social institutions that hindered or accelerated the process of development in any areas.

A. Nurkse's (1953) 'vicious circle theory':

Nurkse's (1958) 'vicious circle theory' presented an attractive idea that underdeveloped countries were trapped in a series of interlocking problems of poverty and stagnation. The starting point was poverty, which was an insurmountable obstacle to development. If this thesis was valid then it would be difficult to understand as to how the presently developed countries, which were not so always, could make advancement.

B. Boeke (1953):

Boeke (1953) attributed underdevelopment in the oriental world to limited needs, backward sloping supply curves of effort and risk taking, and an absence of profit seeking attitude. He stressed that the eastern society was molded by fatalism and resignation. His gloomy analysis was rightly questioned by a number of scholars including Lewis, Baner, and Yarney

C. McClelland (1961):

McClelland (1961) found a high association between a country's level of achievement motivation and rate of its economic development.

D. Hagen (1962):

Hagen (1962) postulated 'authoritarian theory' holding feudal bringing up of the children responsible for the economic development of a country, in his 'theory of social deviance',

E. Hoselitz (1960):

Hoselitz (1960) assigned key role to 'deviants' in development. He defined deviants as the one who break traditions, adopt innovations and thereby accelerate the process of transformation from underdevelopment to development.

F. George (1981):

George (1981) accused the local elites of the third world countries as the real cause of underdevelopment in postcolonial situation. According to her these elites remained the natural friends of western developed countries and exploited the native poor for their own vested interest and retarded the process of development.

G. Berry (1964):

Berry (1964) underlined the development role of integrated urban hierarchy in which innovations filtered down from cities to towns and from both to their surrounding countryside.

H. Llyod and Dicken (1977):

Llyod and Dicken (1977) observed that definable hierarchy of central places was a characteristic feature of an economically developed region.

Some other theories described the sequence of development phases, and viewed the existing gap between developed and developing countries as a matter of time lag. The chief exponents of this historical thesis were German scholars namely list, Brune, Hilderbrand, Bucher, Schmoller and Sombart.

I. Rostow (1960):

Rostow (1960) borrowing an analogy from the flight of an airplane noted five stages in economic transformation of a capitalist society: traditional society precondition for take-off, drive to maturity and age of High Mass consumption. The different countries of the world could be assigned to a particular stage a given point in time.

Theories reviewed above explain development and underdevelopment in an area and regional disparities accruing out of them through the intrinsic conditions. Role of social, psychological and spatial factors was also emphasized. The historical perspective was strong in most of them.

Theory Emphasizing Spatial Interaction

The second group of theories, with spatial interaction as the main analytical framework, viewed development and underdevelopment as the two facets of the same coin. Development in one region was at the cost of underdevelopment in some other due to operation of 'backwash effect.' Western colonial power exploited the third world through direct control during the colonial period and through tied trade and by extension of their aid and model of development in postcolonial period. The developed world created third world and third world created fourth world in their own countries by the greed of elites, arrogance of bureaucrats, hypocrisy of politicians and of western trained pseudo planners and academicians

In just contrast some theories, such as 'Growth Pole' of Perroux, Boudville and Richardson, 'Spatial Diffusion' of Haggerstrand (1967): and 'Growth Foci' of Misra et al. (1976) gave due recognition to spread effects of development. These theories envisaged that if metropolitan development is sustained at high level, differences between center and periphery may be eliminated, as the economic dynamism of the major cities trickle down to smaller places and ultimately into most tradition bound peripheral areas.

The spatial interaction theories derived their meaning from three different context of space economy; free market mechanism, colonial setting and neocolonial situation. Free market mechanism was always biased in favor of development areas. 'Core-Periphery Theory' by Friedmann (1966), 'Circular and Cumulative Causation Theory' by Myrdal (1957) represented this context. These theories are well known and need no elaboration.

The second was colonial setting in which the imperial powers flourished at the cost of their colonies siphoning off the later resources. This was well illustrated by colonial dependency theory of Kundu and Raza (1982) and in the writing of Marxist scholars such as Davey (1975) and Pavlov et al. (1975).

The third context was postcolonial situation in which the newly independent developing countries remained dependent on developed countries and found it difficult to extricate themselves from the network of exploitation. Amin (1974) called this process 'Peripheral Capitalism' and Santos used the term 'dependent capitalism' (1978). The other exponents of this idea were Baram (1970), Frank (1972), Fanon (1963) and Potekin (1962).

Most of the scholars referred to above tried to explain multifaceted and multi-causal phenomenon of development and regional disparities in development by a one-dimensional theory. This amounted to some distortion of the fact. Therefore to reach on a conclusive result an in-depth analysis of ground realities in regard to development disparities in different regions and various countries of the world is needed.

Hypothesis on Regional Disparities

On the basis of study of trend and pattern of regional disparities in development in different regions and various countries of the world the four hypotheses were extended:

A. Spatial Convergence

The first hypothesis was spatial convergence based on development experiences of the western developed countries. It was Stated that regional disparities tend to lessen with the process of development. The hypothesis found its support in the 'Spread and Backwash Theory' of Myrdal (1957), 'Trickle Down and Polarization Effect Theory' of Hirschman (1958), Urban Hierarchy Thesis for Development Innovation of Berry (1969), Growth Pole Theory of Perraux, Baudville and Richardson, Spatial Diffusion of Haggerstrand (1967) and Growth Foci of Misra et al., (1976).

B. Spatial convergence hypothesis

The spatial convergence hypothesis was falsified in case of third world developing countries where regional disparities increased with the process of development. In these countries the self-perpetuation hypothesis was based on the findings of Latin American and African situation and found its support in colonial and neocolonial dependency theory of Frank (1972), Amin (1974) and Kundu and Raza (1982). Additional point that favored this hypothesis was development planning based on the principle of techno-economic efficiency and demonstration effort. In the capital scarce third world countries the meager development resources were invested in economically efficient regions that accelerated the regional disparities.

I. Concentration cycle hypothesis

The third hypothesis, which was concentration cycle hypothesis, is a synthesis of convergence and divergence hypothesis. It is well known as inverted 'u' shape hypothesis of Williamson (1965). It denotes that regional disparities increases in the beginning of development process remain constant for some time and ultimately decrease with the process of development. It may be true in case of very long duration of time. However, the experience of developing countries showed that there was no visible sign for the decrease of regional disparities in these countries.

Recently some novel facts in regard to regional disparities in development were disclosed:

- At the global level fourth world countries namely Afghanistan, Nepal and Ethiopia which were poorest pocket of the world (Dubey, 1984).

- The degree of regional disparities varied from one area to another within the same country (Tewari, 1985).
- The regional disparities in various components of development do no move with same intensity and some time moved in opposite direction (Singh and Dubey, 1985; Dubey, 1988).

All these facts lead to fourth hypothesis that there is no association between development and regional disparities. In short it may be Stated as 'no trade-off hypothesis.' In the next chapter we shall examine the dimensions of backwardness in India.

3

DIMENSIONS OF BACKWARDNESS

3.1 Understanding Backwardness

Backwardness is a ubiquitous term often encountered in developmental literature. Backwardness cardinally implies Underdevelopment in the relative sense, in terms of the socio-economic and human development parameters being analyzed, in all its dimensions, with intent to attain a holistic view of the entity or entities under focus about its status of development. The notion of "Backwardness of an area" is associated with a relatively low level of per capita product in any given area as compared to the average per capita product in the general economy. Other ancillary indicators like poor communications, sub-optimal provisioning of basic drinking water, education, healthcare, sanitation also contribute to the poor growth of the per capita product and thereby serve as nodal determinants for appraising the extent of backwardness afflicting any given area.

The term backward has been used in a variety of ways. Undeveloped and underdeveloped are often used as synonyms. But these three terms are easily distinguishable. An undeveloped country or backward nation is one which has no prospects of development in the near future. An underdeveloped country, on the other hand, is the one which has potentialities of development, but due to certain structural, physiological or psychological constraints of natural or human origin, has not developed to its fullest potentials. An area might be properly be classified as developed but could contain pockets of Underdevelopment, thereby serve as a crucible for challenges of accomplishing overall sustainable growth. Similarly, some area that is 'undeveloped' may be referred to as 'underdeveloped' when it is not capable of or amenable to development.

'Poor' and 'Backward' are also used as synonyms for 'Underdevelopment'. A poor country does not mean an 'underdeveloped' country. Poverty simply refers to the low level of per capita income of a country in a relative context. It has nothing to do with the country and its inherent cultural distinctions. The term 'backward countries' is a static term like the 'underdeveloped' and thus may be used interchangeably.

Backwardness of any region/place/people (in any given area) is widely attributed to its inherent inability to achieve technological and structural innovation vis-à-vis its sister

regions, in accordance with exigencies of time, space and resource constraints; a historically critical fixture as well as the under-pinning along this quest for competitive growth leading to wholesome development.

The Backwardness of a place and that of the people living there gets impacted upon each other. This is so because the people and places are interwoven in symbiotic relationship. All parts of the country are not equally endowed with rich natural and human resources. Resource-rich areas leave behind their poor counterpart on the path of development. Gradually the gap widens and as a result disadvantaged places and people conscious of the widening gap, demand the measures to mitigate disparity. It also, can be the consequence of certain policies of or investments made by governments. This can be also by free play of market which forces the polarization of economic growth or market at certain favorable locations, resulting in regional inequalities in development.

Backward areas are defined and identified on the basis of purpose. They are also defined on the basis of arrangements. For instance, in the arrangement for fiscal transfers between the Center and the States, backwardness has been defined in terms of the State income below the national average. Similarly in the scheme for concessional finance for industry, industrial backwardness was defined relative to the State averages.

Interestingly in the Indian perception, backwardness is associated with rural areas. While in reality all backward areas are rural, but all rural areas are not backward. Similarly, the majority of population in a backward area comprises of backward people, but all backward people are not found only in backward areas. It implies that in spatial coverage, backward areas and backward people are not synonymous.

Backwardness is relative, multidimensional and perceptional. It differs in time, space and nature. Also, it refers to the spatial was well as structural disparity. Hence, because of its complex characteristics, there is no universally agreed definition or measurement technique of backwardness. Consequently, there are different types of backward areas rather than one type of backward areas, as such.

Backwardness basically has two dimensions viz., one, it is characteristic of the existing living conditions of people, areas or regions. Backwardness of a region and that of the people is interwoven in symbiotic relationship. Different parts of the country are not equally endowed with rich natural and human resources, resource-rich areas leave behind their poor counterparts on the path of development. This results in widening of the gap

between of people of different regions. Backwardness of any region/place/people (in any given area) is widely attributed to its inherent inability to achieve technological and structural innovation vis-à-vis its sister regions, in accordance with exigencies of time, space and resource constraints. Secondly it is the consequence of certain policies of or investments made by governments. This can be also by free play of market which forces the polarization of economic growth or market at certain favorable locations, resulting in regional inequalities in development.

The concept of backwardness evolved more sharply after independence in India and it is evident from the policies and programmes enunciated through plan documents over the decades. During British period the issue addressed was one that of economic development through computing national income and per capita income to assess the standard of living of people across different period and regions.

There are no absolute standards of 'backwardness' as there are no standards of 'development'. Backward areas are defined and identified on the basis of purpose. They are also defined on the basis of arrangements. For instance, in the arrangement for fiscal transfer between the Centre and the States, backwardness has been defined in terms of the State income below the national average. Similarly, in the scheme for concessional finance for industry, industrial backwardness was defined relative to the State averages.

The concept of backwardness has to be operationalized in a manner that is least open to disputation and most likely to attract a consensus of agreement. There are two broad approaches of operationalizing the concept (i) Index-based (ii) Problem area. The first is to rely on some overall index for ranking areas and treat all areas below some cut-off point as backward. The second is to identify problem areas in different categories by specify in the constraints on development that can only be mitigated by special measures.

The areas identified as backward for the purpose of planning must have three characteristics: (i) potential for development, (ii) inhibiting factors preventing them from realizing their potential, and (iii) a need for special programmes and demarcation of backward areas, the geographical unit needs to be defined. The quantitative data, for the units on the indicators chosen must be available.

The variations in conceptualizing the backwardness is reinforced from the fact that Pande Committee (1969) emphasized broadly in terms of the percentage of population engaged in industry, while Chakravarty Committee stressed on the percentage of agricultural

population, irrigated areas, net sown area, and literacy for identifying the backward areas. Sivaraman, Chairman of National Committee on Development of Backward Areas, noted that a backward area is an area with potential, which has not been developed.

In India, both the approaches, index based and problem area, have been adopted. The former was used for identifying industrially backward areas whereas the later for Drought Prone, Desert, Hill etc.

In the colonial past, spatial structure of Indian economy was evolved to suit the colonial interests. The transport network was designed to link areas producing primary commodities for export. Under the system, the port cities became the core of development and the areas growing cotton, sugarcane and tea as enclaves of development, leaving vast areas in the North-East and Central India underdeveloped. The regional disparities, thus created during the colonial period, got further accentuated in Independent India, particularly after the reorganization of States on linguistic basis in 1956. The lingual States that emerged after the reorganization were socially homogeneous but economically heterogeneous (Kundu and Raza, 1982, Krishna, 1989).

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3.2 Variations in nature of backwardness: Two sides of the contemporary Indian reality

As India stands poised for a quantum leap forward in global rankings for economic performance, one of the toughest challenges it faces is the removal of abject poverty and provision of a decent standard of living for all its billion-plus citizens. In recognizing this truth, one cannot, of course, overlook the fact that our country has indeed made considerable progress in recent decades in lifting large numbers of people above the poverty line. It will not be wise to only paint a bleak picture of the socio-economic reality of India in the beginning of the 21st century. Economic reforms have, indeed, put India on the path of prosperity through speedier economic growth in certain sectors and certain areas.

At the same time, we must not overlook the other, negative, side of the current Indian

reality. Large sections of our population continue to be victims of poverty. Equally distressing is the rapidly growing divide between the rich and the poor, on one hand and between cities and villages, on the other, the later having caused the largest ever migration of people from rural to urban areas since the onset of economic reforms in the 1990s. The problem is aggravated by regional disparities in development, with the Northern and Eastern States lagging considerably behind their counterparts in the South and the West.

India is a vast country with a variety of landforms and ethnic groups. The interplay of people with land has brought different patterns of development. In addition, under the federal polity the State Governments are free to evolve development policies suited to their situations. Nevertheless, some strategic, vulnerable and ecologically fragile areas such as hills, desert, drought prone, border areas, industrially backward, tribal and coastal, needing special; attention, require the Union Government's intervention.

The Central and State Governments make huge investments in development projects and regulate development. Hence their policies leave considerable impact on the nature and degree of social and spatial inequalities. Nevertheless, the free play of market forces favors the polarization of economic growth at certain favorable locations, resulting in regional inequalities in development.

Despite the importance given, history is replete with instances where people in the regions and countries with abundant natural resources suffer low levels of living. In India, for example, the 40 per cent of the population of the country living in the six States of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa and Uttar Pradesh generate just about 20 per cent of incomes. Also, while the country has been registering high growth rates, the growth rates registered in these low-income States is much lower. Similar trends are seen in human development indicators. Thus, not only do these States have low incomes, they also have increasing disparities. Inclusive growth calls for identifying the constraints on growth in these States and reforms in policies and institutions to remedy the situation.

The six lagging States have more than a fair share of natural resources but are not able to harness them. Almost 78 per cent of the coal deposits (including proved, indicated and inferred deposits) in the country are concentrated in the six States. Bihar (including Jharkhand) has over 29 per cent of the coal deposits. Similarly, undivided Madhya Pradesh and Orissa each accounted for about a quarter of coal deposits in the country. Bihar, Madhya Pradesh and Orissa also have significant deposits of iron ore, copper and bauxite. Almost 25 per cent of the iron ore comes from Madhya Pradesh, 42 per cent of the

copper ore is produced in Orissa and another 18 per cent in Bihar. Similarly, almost 42 per cent of the estimated deposit of Bauxite is in Orissa, Bihar accounts for another 18 per cent and Madhya Pradesh 10 per cent. These States have an overwhelming proportion of estimated deposits of other major minerals such as lead, zinc and manganese as well. "India's richest lands - with minerals, forests, wildlife, water sources - are home to its poorest people. Mining in India has, contrary to government's claims, done little for the development of the mineral-bearing regions of the country. Majority of the wealthiest districts in terms of natural resources were the poorest and the most underdeveloped districts. If India's forests, mineral-bearing areas, regions of tribal habitation and watersheds are all mapped together, they will overlay one another on almost the same areas. According to the State of India's Environment Report (2009) by the Centre for Science and Environment (CSE), of the 50 top mineral producing districts, 34 fell under the 150 most backwards districts.

The most glaring is the problem of inter-regional disparity. There are States which have adjusted rapidly to the evolving economic circumstances and have benefited from the ongoing growth processes. There are others which are untouched by change and have seen little improvement in their economic conditions. Year after year, one sees the same States at the bottom of the pile on a large number of economic and social indicators. While variations are a natural phenomenon, if they persist over prolonged periods, they can do incalculable harm to the cohesion of our polity. We therefore, need to focus our attention on this as a matter of high national priority.

Several factors combine to influence inter-regional variations in growth and development. The extent of agrarian transformation, pace of urbanization, the quality of infrastructure, level of human resources development, and the quality of overall governance are all important determinants of regional variations in development. Since a large proportion of our population is still dependent on agriculture, differences in the rates of growth of agricultural output and productivity are bound to be an important factor contributing to regional disparities in the level of development and standard of living.

Some of the factors explaining inter-State disparities do not automatically apply in the consideration of intra-State disparities. States are administratively homogenous units. Favorable treatment to, or alleged neglect of, a State by the Central Government cannot be an explanation for uneven development between regions within a State. Nor can financial constraints faced by a State be a reason. These factors are neutral within a State. Yet,

most States have large intra-State disparities. Interestingly, some of the most prosperous States have the largest intra-State disparities.

The other disparity which concerns us is the urban-rural disparity. Often, this is the cause of inter-regional disparity. The quality of life in urban areas is improving more rapidly than in rural areas. This is partly explained by the poor performance of agriculture. While there are limits to which we can raise the growth rate of agriculture, the problem is compounded by the lack of mobility of those employed in agriculture to productive jobs in industry. Therefore, we are faced with this peculiar puzzle whereby on the one side, the growth rate is accelerating to more than 9% but on the other side, the share of agriculture in our GDP has dropped below 20% without any appreciable shift in the proportion of population still dependent on agriculture for livelihood. This is leading to a relative impoverishment of our rural areas. We need to ensure that the rural-urban divide is bridged and take necessary steps to mitigate it. We need to ensure that the quality of education provided in our rural areas, the health services in our rural areas and the infrastructure in rural areas - are all of the same quality and standard as those available in urban areas. This is absolutely essential if we have to mitigate impoverishment and large scale migration from rural areas.

This brings us to another concern - that is the slow reduction in poverty. High growth has not made as much of an impact on poverty reduction as we would have liked. Poverty is coming down, but not fast enough. Too many of our people lack access to basic services especially education, health, housing and clean drinking water. Child malnutrition afflicts millions of our children and is a matter of national shame. To deal with these problems we need a growth process that will achieve a rapid reduction in poverty, accelerate the pace of both industrialization and employment generation, reduce the urban-rural divide and bring measurable benefits to SCs, STs, minorities and other excluded groups.

How did regional disparity in India behave over time since independence? Some initial success toward its reduction was met during 1947-65. The implementation of multipurpose irrigation and power projects in several parts of the country and setting up of industry in backward regions, through the public sector investment, were the main contributory factors. A rise in regional disparity was, however, experienced during 1965-80. This was largely due, first, to a sharp fall in the public sector investment in industry with its adverse effect on backward regions, and secondly to the otherwise benign Green Revolution which remained confined to select areas with an established irrigation system. With the Green

Revolution diffusing spatially, following an extension of irrigation, and with the overall growth rate picking up, a slight tendency toward reduction in regional disparity is observed during the 80s. The 90s are, however, indicating a reversal toward an increase in regional disparity. This is explained by a much enhanced role of private sector, and preference of the multinationals for investment in more developed parts of the country under the new economic regime. On the whole, the public sector did render spatial justice but its operational efficiency left much to be desired.

Why was the hue of the Green Revolution brightest in Punjab? This seems to be the outcome of adoption of a right sequence of policies. These included consolidation of landholdings, extension of irrigation and reclamation of wastelands for agriculture, provision of agricultural services as well as inputs, supply of power, construction of village-link roads, and promotion of agricultural credit societies. The rural base of the political power, coupled with dynamism of its peasantry, facilitated the success of this Revolution.

How do the Indian States differ in terms of disparity within? Is any intra-State disparity a function of their physical size or development level or social structure or ideological orientation? Kerala is noted for the lowest order of internal disparity while Bihar lies on the other extreme. Broadly speaking, disparity within is more pronounced in large, less developed States, such as Uttar Pradesh, Andhra Pradesh, Madhya Pradesh, in addition to Bihar; modest in large, but relatively developed States, such as Gujarat, Maharashtra and Karnataka; and low in small developed States, such as Punjab, Haryana, and Himachal Pradesh, besides Kerala. The internal disparity finds a positive relationship with the physical size and a negative one with the development level of various States (Krishan, 2000).

How far was the development process in various States affected by the degree of homogeneity or heterogeneity of their population composition? An empirical analysis reveals a positive, though modest, relationship between the cultural pluralism and development level on this count. In relative terms, the role of religious heterogeneity has been of the highest order, followed by that of regional (migration-generated), and linguistic heterogeneity. Religious and linguistic pluralism in India seem to have produced more of complementarity than conflict in the domain of development.

How did the caste composition of various States impact their development process? There is some evidence to suggest that the States, such as Punjab, Gujarat and Maharashtra, which have been under the politico-administrative control of middle castes, performed

better than others, such as Bihar and Uttar Pradesh, where the divide between the upper and lower castes is sharp. Things were relatively better in States, such as Tamil Nadu and Karnataka, where this conflict had been resolved, at an early stage, in favor of lower castes. Likewise, the States with a socialist bias, such as Kerala, made a greater thrust in human development while others with a strong competitive ethos, such as Punjab, scored higher on economic front. Persistence of feudal tendencies in States, such as Bihar, Uttar Pradesh, and Orissa, had a dampening effect on the pace of development process.

To what an extent were the Backward Area Development Programmes, which have been a sterling feature of the Indian planning strategy since the Fourth Plan (1969-74), successful in achieving their objective? A doctoral thesis in the Department of Geography, Punjab University, Chandigarh, found that as many as 412 districts out of the total of 466 in 1991 in India, were declared as backward under at least one such programme. No less than 207 districts were categorized as fundamentally backward, being prone to droughts or being desert or hilly in physical disposition. Also 288 districts were declared as industrially backward. The number of socially backward districts, by way of having a relatively high proportion of schedule tribe population, was placed at 185. Several districts were covered by two to five programmes. The overall impact of these programmes has been assessed as just modest. Why has this been so? It seems that our bureaucracy does not have the requisite skill to implement area-based programmes. Such programmes were implemented on the pattern of sectoral ones. Available funds often get distributed, in some form, among target populations in place of getting invested in beneficiary oriented development projects (Krishan, 2000).

A kind of directional bias is manifest on the development map of various States. For example, the North is more developed than the South in Punjab but the picture is in reverse in Karnataka, Kerala and West Bengal. The East is more developed than the west in Haryana but the opposite is true in respect of Madhya Pradesh, Maharashtra and Uttar Pradesh. Locational advantages, coupled with matters of politico-economic history, seem to be at the base of such intra-State contrasts.

By now, there is considerable research evidence on factors underlying the development differential among and within various States in India. In contradiction to the popular belief, this variation is associated more with investment by private sector rather than by public sector. As much as 72 per cent of the gross fixed investment in the country is in private sector and the remaining 28 per cent in public sector, both at the Central and State-levels.

Even otherwise, the picture pertaining to public sector investment in the low income States is not encouraging. Per capita devolution of funds by the Central Government to them was less by 18 per cent in comparison to that to high income States; per capita transfers through the all India financial institutions or priority sector credit facility to them were just one-fifth of that to high income States. The location of central public enterprises in backward States did not succeed in generating the desired spread effects for lack of requisite transport facilities around. It follows that the public sector investment is a necessary but not a sufficient condition for development of backward areas.

Contrary to popular notion, political power does not automatically lead to economic vigor. Notably the four low income States of Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh account for 38 per cent of the seats in the Lok Sabha while the high income States of Punjab, Haryana, Gujarat and Maharashtra are represented to the extent of 18 per cent. Most of the Prime Ministers of India hailed from the above mentioned four low income States. These have no reason to complain of any political neglect or discrimination against. Reasons are to be found perhaps in their own systemic failure (Krishan, 2000).

In a nutshell, we should draw our attention to an important issue, which can be termed as our equity concerns. Equity is the foundation on which our democratic polity has to rest and thrive. It is the basis on which our citizens develop a sense of ownership of the State and its organs. Inequity can lead to large scale migration, disaffection and discord. Both the Centre and the States need to work purposefully to ensure that we can achieve our common developmental and equity goals. Development is a process that should not divide our people but should unite them all. All of us need to zero in on the basic task of development and work with a new sense of direction and a new sense of focus.

3.3 Evolution of India's Growth

This section reviews India's long-term growth in relation to total and per capita GDP growth; the changing composition of growth by the three broad sectors of agriculture, industry, and services; and the growth experience by States. Sectoral composition provides useful information about the relative dynamism of these components and helps explain the link between growth and employment. Similarly, because States have important flexibility in their policies, their growth experience enables a better understanding of the determinants of growth.

In the pattern of India's long-term growth, there are two distinct growth periods: a first phase from 1950 to 1980 (phase I) and a second phase from 1980 to 2006 (phase II). The

first phase is characterized by slow growth in both absolute and per capita terms when compared with growth in phase II. In this period, India grew at an average pace of only 3.6 per cent per year in absolute terms and 1.2 per cent in per capita terms. In the second phase, growth accelerated to 6.0 per cent in absolute terms and 4.0 per cent in per capita terms. Within these two broad phases there are some interesting variations. During phase I, the decades of 1950-60 and 1960-70 experienced almost identical growth rates (4.0 per cent per year). But growth dipped substantially during the 1970-80 decade (3.0 per cent per year), causing per capita annual income to virtually stagnate at below 1 per cent. Indeed, this decade saw the slowest pace of economic expansion since independence. In phase II, the decades of 1980-90 and 1990-2000 both experienced fairly rapid growth (5.8 and 5.5 per cent per year, respectively), but importantly, growth accelerated further during the 2000-06 period (7.3 per cent per year). In addition, if the growth in more recent years is examined, the acceleration becomes quite prominent. Thus, the average annual rate of growth during 2002-06 is estimated at 8.6 per cent and 9.2 per cent in 2006. Fast growth since 1980 has placed India among the top 9 rapidly growing economies of the world.

3.3.1 Sectoral Composition of Growth

The broad sectoral composition of growth by decades is shown in table 1. Agriculture grew the slowest, at only 2.6 per cent per year during 1950-2006. In contrast to that, both industry and services grew more than twice as fast at about 5.8 and 6.0 per cent respectively per year. When compared by growth phases, all sectors show better growth performance in phase II than in phase I.

Table 1: India's Sectoral Composition of Growth, 1950-2006
(per cent per year)

	Agriculture	Industry	Services	Total
1950-60	3.0	6.2	4.3	3.9
1960-70	2.3	5.5	4.8	3.7
1970-80	1.5	4.0	4.4	3.1
1980-90	3.4	7.1	6.7	5.6
1990-2000	2.5	5.6	7.6	5.6
2000-06	2.8	7.7	8.9	7.3
1950-80	2.3	5.2	4.5	3.6
1980-2006	2.9	6.4	7.7	6.0
1950-2006	2.6	5.8	6.0	4.7

Source: World Bank Central Database, May 2007

Within phase I, the decade of 1970-80 was generally a difficult period for growth, especially for agriculture. Industrial growth also slowed in this period. Together, they pulled down GDP growth to only 3.1 per cent per year, the slowest pace of expansion in any decade since 1950. More generally, except for 1980-90, agriculture grew at 3.0 per cent or less, mainly at 2.5 per cent or below. This growth is considerably weaker than in China or even Pakistan. The industrial sector maintained a steady pace of growth, at 5.5 per cent or more per year, for most of the fifty six-year period except for the deceleration during 1970-80. Acceleration in the expansion of the services sector provided the main impetus to the GDP growth surge after 1980. Thus, the annual average services growth climbed from 4.5 per cent during the 1950-80 to 7.0 per cent during 1980-2000.

These differential sectoral growth rates have brought about a major structural transformation in the Indian economy. The agricultural sector's share of GDP shrank dramatically throughout the period, falling from 56.9 per cent in 1950 to only 17.5 per cent in 2006. The industry sector's share of GDP rose from 14.3 per cent to 27.7 per cent during the same period. Most notably, the services sector's share surged from a low of 29.8 per cent in 1950 to more than 54.7 per cent in 2004. Interestingly, industry's share of GDP has increased only marginally during the 1990s, from 27 per cent in 1990 to 28 per cent in 2006, while services' share moved up from 41 per cent to 55 per cent, showing its dynamism.

3.3.2 Regional Pattern of Growth: State-Specific GDP

In India's decentralized political environment where policies, resources, and institutions differ substantially by States, understanding the pattern of growth by States is important. Detailed reviews of State-level growth performance are available in Ahluwalia (2002a), Bhattacharya and Sakthivel (2004), and Krishna (2004).

Unfortunately, reliable State-specific GDP data are available from only 1960 onward. The rates of growth by decade since 1960 are shown in table 2. Not surprisingly, growth has varied significantly by States and by decades. During the low-growth phase (1960-80), most States grew slowly and close to the Indian national average. The exceptions were Haryana, Punjab, and Orissa. The higher growth in these three States was largely due to strong growth in agriculture. During the second phase of rapid national growth (1980-2004), a number of States took the lead in contributing to the growth acceleration: Gujarat, Karnataka, Maharashtra, and Rajasthan. The average growth in these States exceeded the national average.

Table 2: Regional Pattern of India's Growth, 1960–2004 (per cent per annum)

State	1960–70	1970–80	1980–90	1990–2000	2000–03	1960–80	1980–2004
Andhra Pradesh	3.0	3.1	6.3	5.6	4.9	3.1	5.9
Bihar	2.3	3.1	4.8	3.6	0.2	2.7	3.7
Gujarat	4.6	3.5	5.3	6.2	11.0	4.1	6.3
Haryana	5.9	4.5	6.4	4.9	6.3	5.2	5.9
Karnataka	4.2	3.1	5.1	7.8	3.9	3.7	6.2
Kerala	4.0	2.2	3.6	5.5	4.8	3.1	5.1
Maharashtra	2.9	4.6	6.0	5.8	6.7	3.8	6.2
Madhya Pradesh	2.1	3.0	5.1	3.8.	6.7	2.6	4.8
Orissa	9.8	2.9	2.8	4.4	6.7	6.4	4.2
Punjab	4.6	4.8	5.2	4.7	2.8	4.7	4.8
Rajasthan	4.7	1.0	7.4	4.7	5.2	2.9	6.1
Tamil Nadu	2.8	1.7	5.6	6.4	1.4	2.3	5.6
Uttar Pradesh	2.5	3.0	5.0	3.5	1.7	2.8	3.9
West Bengal	2.2	3.1	4.3	6.7	7.1	2.7	5.8
India Average	3.7	3.1	5.6	5.6	6.0	3.4	5.8

Source: World Bank South Asia Regional Database, May 2007.

A few States grew at about the national average, especially Haryana, Andhra Pradesh, West Bengal, and Tamil Nadu. But a number of States significantly lagged behind the national average, especially Bihar, Orissa, and Uttar Pradesh. The faster-growing States on average registered significantly higher rates of expansion in industrial and service sectors as compared with the lagging States.

Given the initial differences in the States' incomes, the differential growth rates along with variable progress in tackling population growth have brought about substantial differences in the per capita income of the States. The gap between the rich and poor States has widened particularly rapidly since the 1990s. The widening income gap between States has generated a substantial debate about liberalization policies and the convergence

of growth (Ahluwalia 2002a; Bajpai and Sachs 1996; Purfield 2006). This divergence in per capita State incomes has also led to large differences in the standard of living across States and progress with poverty reduction. Not surprisingly, the incidence of poverty is among the highest in the poorest States of Bihar, Orissa, and Uttar Pradesh. The State-level income inequalities have contributed to both growth pessimism based on the fear of a social backlash and a populist view that India's rapid growth has not benefited the poor (Ahmed and Varshney, 2008).

3.3.3. The Quality of Growth: Poverty and Human Development

It is now well recognized that the long-term sustainability of growth depends significantly upon proper distribution of the benefits of growth. How has growth affected the poor and what is the progress with improving human development? We now look at these quality dimensions of India's growth.

Poverty and Human Development

As we have already indicated, there is a growing concern that higher growth in India is not benefiting the poor adequately. What is the evidence and what are the key issues? Table 3 summarizes the average poverty and selected human development outcomes for India during the two growth phases. The results are quite striking, although not surprising. Both rural and urban poverty increased during 1951-78, even though income distribution improved, reflecting the stagnation of growth during phase I.

The pace of poverty reduction picked up substantially in phase II, supported by the acceleration in growth. Progress with human development was similarly better in phase II. So, it is reassuring that higher growth did allow India to make faster progress in improving the well-being of its citizens. State-level analysis shows not only that poverty was reduced in all States, but that human development was similarly better in phase II. There is also a positive correlation between growth and poverty. The incidence of poverty tends to be lowest in rapidly growing States and highest in the slow-growing, low-income States (Datt 1997; World Bank 1997, 2000; Deaton and Dreze 2002). So, a part of the development challenge is to find ways to accelerate growth in the lagging regions rather than abandon the growth effort. Nevertheless, there is also evidence that income inequality increased (Deaton and Dreze 2002; Himanshu 2007; Dev and Ravi 2007) and human development indicators remain weak by international standards, including the quality of health and education outcomes. Income inequality increased fairly rapidly in urban areas between

Table 3: India's Development Indicators by Growth Phases

Selected indicator	Phase I (1950-80)	Phase II (1980-2006)
GDP growth (% p.a.)	3.6	5.7
Per capita GDP growth (% p.a.)	1.2	3.8
National poverty incidence (%) a	45.3 (1951-52); 48.4 (1977-78)	43.0 (1983-84); 27.9 (2004-05)
Urban poverty (%)	35.5 (1951-52); 40.5 (1977-78)	35.7 (1983-84); 25.9 (2004-05)
Rural poverty (%)	47.4 (1951-52); 50.6 (1977-78)	45.3 (1983-84); 28.7 (2004-05)
Income distribution [b]	Gini urban: 0.40 (1951); 0.35 (1977-78) Gini rural: 0.34 (1951); 0.31 (1977-78)	Gini urban: 0.34 (1983-84); 0.38 (2004-05) Gini rural: 0.31 (1983-84); 0.31 (2004-05)
Life expectancy (years)	Male: 45 (1962); 54 (1980) Female: 44 (1962); 55 (1980)	Male: 54 (1980); 63 (2003) Female: 55 (1980); 64 (2003)
Infant mortality rate (per '000)	146 (1960); 115 (1980)	115 (1980); 60 (2003)
Adult literacy rate	Male:18.3 (1951); 43.6 (1981) Female:10.0 (1951); 25 (1981)	Male: 43.6 (1981); 73 (2002) Female: 25 (1981); 48 (2002)
Primary enrollment ratio	Boys: 78 (1970); 83 (1980) Girls: 55 (1970); 65 (1980)	Boys: 83 (1980); 101 (2003) Girls: 65(1980); 96 (2003)
Secondary enrollment ratio	Boys: 24 (1970); 30 (1980) Girls: 15 (1970); 20 (1980)	Boys: 30 (1980); 52 (2003) Girls:20 (1980); 42 (2003)

Source: Government of India 2005; World Bank 2000 and Central Database, January 2007.

Notes: a. Poverty and inequality estimates for 2004-05 are preliminary and as reported in Himanshu 2007, and Dev and Ravi 2007. b. Inequality data for 1951 and from Datt 1997.

1993 and 2005 (Himanshu 2007; Dev and Ravi 2007). These facts suggest that along with more rapid growth India needs to pay stronger attention to improving equity.

Labor Force, Employment, and Real Wages

One key link between growth and poverty reduction is through the creation of productive employment. The somewhat unusual pattern of services-led growth has fed some concerns about the sustainability of growth as well as a worry about labor absorption (Kohli 2006). How unusual is India's growth experience in regard to sectoral composition? This issue has been studied in some detail by Kochar et al. (2006). The study concludes that although the share of manufacturing in output and employment in 1981 was at a normal level when compared with countries at a similar level of development and size, this share lagged behind during the 1980-2002 period. In contrast, the share of services in output and employment was below the norm in 1981, but although the output share of services surged ahead during the 1980-2002 period, the employment share lagged behind. The study also finds evidence that India's services and manufacturing sectors tend to exhibit skill-intensive growth that is more typical of advanced industrial countries as opposed to East Asian countries.

Do these findings verify the pessimism expressed by Kohli? Kochar et al. explain this pattern of growth as reflecting partly the policy bias in India's education policies since the early days in favor of higher and scientific education as opposed to basic education and training, and partly the effect of labor market policies that reduce employment flexibility and discriminate against labor-intensive enterprises. Clearly, therefore, this slower than expected growth of manufacturing is in part the result of a policy-induced constraint (inflexibility of the labor market) that has lowered the expansion of labor-intensive manufacturing, rather than an inherent weakness of the growth process in phase II. Similarly, as we shall see later in more detail, the services sector's surge in growth in phase II is the result of reforms, including greater openness to global markets. The downside risks to its sustainability are linked to global downturn and the absence of further reforms, factors that will also hurt manufacturing growth. So, the sustainability of overall growth is not dependent on the relative balance between growths in services and manufacturing.

The issue of low employment creation is a substantial one. What is the evidence? Unfortunately comparable long-term labor force and employment data are not available.

We have more recent data pieced together from various sources in a study done by the World Bank (2006b). On the supply side, labor force grew by 1.7 per cent during 1983-2000 (Table 4). The labor force is becoming better educated although the average level remains very low when compared with the East Asian economies (World Bank 2006b). Also, the education gap between rural and urban workers on the one hand and between female and male workers on the other is quite striking. On the demand side, employment actually grew faster than the supply of labor, although the overall elasticity of employment to GDP growth is low (only 0.3 per cent). The faster aggregate growth of employment relative to the labor supply is also reflected in rising real wages (Table 5).

Table 4: Summary Labor Force and Employment Data, 1983/84–1999/2000

	Growth rate		
	1983/84	**1999/2000**	**(% per year)**
Labor force (million)	312.9	408.8	1.7
Of which:			
Urban	63.1	100.0	2.9
Rural	249.8	308.8	1.3
Employment	265.1	360.9	2.0
Of which:	39.0	57.4	2.4
Regular			
Casual	79.3	120.6	2.7
Self-employed	146.8	182.9	1.4
Employment share:			
Agriculture	66.7	58.7	
Industry	12.0	12.1	
Services	21.3	29.2	

Source: World Bank 2006b.

Table 5: Real Wage Trends, 1983/84–1999/2000 (1993/94 prices)

Real wages	**1983/84 rural**	**1983/84 urban**	**1999/2000 rural**	**1999/2000 urban**
Salaried worker/ casual worker (ratio)	**Male Female**	**Male Female**	**Male Female**	**Male Female**
Agriculture	1.0 2.0 1.9	1.5 2.0 2.1	1.7 1.7 2.4	3.1 2.0 2.7
Non-agriculture	2.3	3.3	3.9	3.7
Casual workers (Rs per day)	**1983/84 Male**	**1983/84 Female**	**1999/2000 Male**	**1999/2000 Female**
Agriculture	16.4 23.8	11.0 11.7	26.0 38.3	18.3 23.9
Non-agriculture	18.0 19.5	11.1 11.9	29.3 31.5	18.9 25.9
All activities				
Public work				

Source: World Bank 2006b.

What then is the employment concern? The employment and real wage concerns are actually driven by low overall employment elasticity of growth, differential sectoral impact of employment, and the differential rates of wage increases between sectors and by gender. First, although real wages grew economy-wide, the growth was slower than the expansion of per capita income for low-skilled workers. This is a reflection of the overall low employment elasticity of GDP growth. Second, real wages grew much slower in agriculture as compared with non-agriculture. That is due to the slow growth in average labor productivity in agriculture, the very low levels of educational attainment of agriculture workers, and the relatively slow growth in demand for labor in low-skill, labor-intensive, non-agriculture activities. As a result, there is continued strong reliance on agriculture for employment. Thus, although the output share of agriculture has fallen from 40 per cent in 1980 to only 25 per cent in 2004, the employment share declined only marginally from 66 per cent in 1983/84 to 59 per cent in 1999/2000 (World Bank 2006b). The much slower growth of employment in industry and services relative to their contribution to growth in output has constrained the overall employment elasticity of output and the growth of real wages economy-wide. This poses the challenge for creating "good jobs"

that provide higher productivity and higher real wages. Third, there are substantial wage differentials between male and female workers. Finally, the wage differential between skilled and unskilled workers has widened (World Bank 2006b).

For the near future, these findings suggest the need to address two key policy challenges. First, there is a need to redress the dualistic pattern of skills by focusing on ways to upgrade the skill profile of the large bulk of the uneducated or low-skill work force through appropriate reforms in education and training policies. Second, there is need to remove the constraints on labor market flexibility to allow a more labor-intensive pattern of growth in the formal manufacturing and services sector.

3.4 Inter-State Comparison

Inter-State variations in the content and quality of governance, degree of efforts towards mobilization of resources, level of effectiveness of decentralized institutions and community-based organizations have now emerged as factors strongly influencing the movement of the concerning State towards achieving higher level of human development (Dreze and Sen, 1995: 51). Within India, the disparities are so great that one could speak of the existence of a Southeast Asian type of situation in some parts of the country and that of a sub-Saharan African situation in others, with the rest falling in between these two well-performing and ill-performing types. Basied on a number of indicators, the six best performing States are Kerala and Tamil Nadu in the South, forming one geographical block and Punjab, Himachal Pradesh and Haryana forming another block in the North-West with Maharashtra in the Middle-West (Gupta, 2009).

The bottom five worst performing States - Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and Orissa - form one single large geographical block that demands a far more serious and concerted public and intellectual attention than it has received so far. One should note that it is not only the BIMARU States (denoting the first four) but, also BIMARU plus, in which Orissa occupies a prominent place. In fact, a more detailed examination reveals that Orissa is closer to Bihar in its non-performance than to Madhya Pradesh and Rajasthan, which seem to show some signs of positive change. The group of these BIMARU States account for nearly 40 per cent of the total population of the country according to 2001 census. All the States, except Assam, Orissa and West Bengal in the backward group had a higher contribution to population growth than their share in population. Thus, Uttar Pradesh's contribution to population growth was 25.8 per cent against its population

share of 16.2 per cent and Bihar's contribution was 28.4 against its share of population of 8.07 per cent.

States like Kerala and Tamil Nadu, which have already reduced their birth rates to the levels, which are comparable to those of developed countries and have achieved the replacement level of Total Fertility Rate (TFR) of 2.1. Total fertility rate means the number of children that would be born to each woman if she were to live to the end of her child-bearing years and bear children at each age in accordance with prevailing age-specific fertility rates (UNDP, 2004: 270). The better performing four States of the country (Haryana, Punjab, Himachal Pradesh and Maharashtra) are expected to reach the replacement level of TFR by 2025, one year in advance of the projected year of attainment of replacement level of TFR by the country. On the other hand, the seven States in the backward group are at different stages of demographic transition. Some of them like Uttar Pradesh, Bihar, Madhya Pradesh and Rajasthan continue to experience high birth rates and fairly low levels of death rates and a significantly high level of TFR. On the other hand, States like Assam, Orissa and West Bengal have somewhat moderate birth and death rates and relatively moderate TFR. These three States are expected to reduce their TFR to replacement level well before the country's TFR comes down to that level. As against this, Bihar is expedited to reduce TFR to replacement level by 2039, Rajasthan by 2048, Madhya Pradesh by 2060 and Uttar Pradesh beyond 2100.

There are wide variations among various States of India, regarding different indicators, such as Income Poverty, Total Literacy Rate, Infant Mortality Rate, Sex Ratio, and many more. Table 6 portrays the profoundly disturbing extremes among the States. The Human Development Index of Kerala in the year 2001 is closer to that of Indonesia and Vietnam (HDI rank 111 and 112 respectively) and at least 20 countries above that of India. The HDI of Bihar is closer to the bottom eight of the total of 177 countries in 2001. In fact, there were only eight countries, all in Africa, that were closer to or less than the HDI value of Bihar. The internal disparity is sharply portrayed by the fact that Bihar's attainment is only half that of Kerala. Examining the Human Poverty Index (HPI), which is a measure of deprivation, the disparity is sharper with Kerala indicating one-fifth of its population as deprived, whereas in Bihar the proportion is more than two-and-a-half times that of Kerala.

Out of the 16 variables selected in table 6, Kerala is the best performing State in nine of the variables while Bihar is the Disparities in Development, Status of Women and Social

Opportunities worst performing State in eight of the above mentioned variables. Himachal Pradesh and Tamil Nadu are best in two variables each, while Maharashtra, Andhra Pradesh, Jammu and Kashmir, Punjab and Gujarat are best performers in one variable each. Among the worst performers, other than Bihar, Orissa's performance is worst in three variables and Assam's in two variables, while Uttar Pradesh, Haryana, Madhya Pradesh and West Bengal share one variable each.

3.4.1 Inter-State Comparison in Economic Status

India is characterized by enormous variations in regional experiences and achievements. Even in terms of the standard economic indicators, these diversities are quite remarkable. For comparing the economic status of various States in India, two variables in the form of Gross State Domestic Product Per Capita (GSDP) and Poverty Estimate (headcount ratio) for States has been gathered and analyzed. Some States, such as Maharashtra, Punjab, Gujarat, and Haryana, have become much richer than others based on a far better growth performance. Compared with India's Gross Domestic Product Per Capita of Rs. 11,433 in 2001, Maharashtra's figure is Rs. 16,865 and Punjab is at Rs. 16,848.iv The worst performer in Gross State Domestic Product Per Capita is Bihar followed by Orissa and Uttar Pradesh at Rs. 3,656, Rs. 6,236, and Rs. 6,500 respectively (see Table 7).

Indian economy has been growing at a rate of around 6.5-7 per cent in recent years as against 2.5-3 per cent earlier. Poverty has come down over the decades, but is still at an unacceptable level. While economic well-being is only one aspect of human development, its absence or denial is a disability, which obstructs access to human well-being in all its dimensions. The removal of poverty must, therefore, remain a priority for public policy, and this requires sustained generation of national wealth and income. In theory, the faster the economy grows the quicker should poverty be removed. But in practice, this does not automatically follow as per expectations. It needs the intervention of strategies and policies for fair and equitable distribution of economic power with a view to enlarge the freedoms and choices of the poor.

While taking into consideration, Poverty Estimate (headcount ratio) for the year 2001, it was observed that the average poverty estimate was 26.10 for whole of India and Orissa, Bihar and Madhya Pradesh were the three States with maximum amount of poverty. In Jammu and Kashmir, Punjab, Haryana and Himachal Pradesh, it was below 10 per cent with Jammu and Kashmir at the top with just 3.48 per cent (see Table 7).

Table 6: Disparities in Performance: The Best and the Worst Performing States in India

Sr.	Indicators	Best performer	Worst performer
1	Human development index (2001) value	Kerala (0.638)	Bihar (0.367)
2	Income poverty, 2001 (percentage of population)	Jammu and Kashmir (3.48)	Orissa (47.15)
3	Total literacy, 2001 (percentage of population)	Kerala (90.9)	Bihar (47.5)
4	Infant Mortality Rate (per 1000 births), 2001	Kerala (16)	Orissa (98)
5	Sex Ratio, 2001 (females per 1000 males)	Kerala (1058)	Haryana (861)
6	Gender disparity index (1991) value	Kerala (0.825)	Bihar (0.469)
7	Female literacy rate, 2001 (percentage of population)	(87.9) Kerala	Bihar (33.6)
8	Total fertility rate, 2005- 06	Andhra Pradesh and Tamil Nadu (1.8)	Bihar (4)
9	Underweight children, 2005-06 (percentage)	Punjab (27)	Madhya Pradesh (60)
10	Households with piped drinking water, 2005-06 (percentage)	Tamil Nadu (84.2)	Bihar (4.2)
11	Kutcha housing, 2005-06 (percentage of households)	Kerala (15.9)	Assam (80.3)
12	Households with toilet facility 2005-06 (percentage)	Kerala (96)	Orissa (19.3)
13	Households with electricity, 2005-06 (percentage)	Himachal Pradesh (98.4)	Bihar (27.7)
14	Married women who participate in household decisions, 2005-06 (percentage)	Maharashtra (63.8)	West Bengal (38.1)
15	Women who have ever experienced spousal violence 2005-06 (percentage)	Himachal Pradesh (6.2)	Bihar (59)
16	Anemic women, 2005-06 (percentage)	Kerala (32.3)	Assam (69)
17	Maternal Mortality Rate, 2001	Gujarat (28)	Uttar Pradesh (707)

Sources:

1. Government of India, Ministry of Health and Family Welfare, National Family Health Survey 3:2005-2006, URL: http://www.nfhsindia.org/pdf/JM.pdf.
2. Indira Gandhi Institute of Development Research, India Development Report 2004-05 (New York: Oxford University Press, 2005).
3. International Institute for Population Sciences, National Family Health Survey-3: State Volumes (Mumbai: IIPS, 2006).
4. Government of India, Census of India, 2001. URL www.censusindia.net/

Table 7: Per Capita Gross State Domestic Product at constant prices (2001) and Poverty Estimate (headcount ratio), 2001: Inter-State Comparison

S. No	States State Domestic	Per Capita Gross State Domestic Product at constant prices (2001)	Poverty Estimate (headcount ratio), 2001
1	Maharashtra	16,865	25.02
2	Punjab	16,842	6.16
3	Gujarat	15,779	14.07
4	Haryana	15,716	8.74
5	Tamil Nadu	13,859	21.12
6	Karnataka	12,619	20.04
7	Himachal Pradesh	12,027	7.63
8	Kerala	11,340	12.72
9	Andhra Pradesh	10,665	33.47
10	West Bengal	10,236	27.02
11	Rajasthan	9569	15.28
12	Madhya Pradesh	8495	37.43
13	Jammu and Kashmir	7399	3.48
14	Assam	6762	36.09
15	Uttar Pradesh	6500	31.15
16	Orissa	6236	47.15
17	Bihar	3656	42.60

Source: Indira Gandhi Institute of Development Research, India Development Report 2004-05 (New York: Oxford University Press, 2005).

3.5 Census 2001: Disturbing inter-State disparities

When one looks at the broader picture presented by the first set of results on Census 2001, despite the frightening growth of population over the last decade, the overall demographic trend brings some good news.

The average annual population growth has declined to 1.95 per cent over the last decade from 2.16 per cent between 1981 and 1991; the literacy rate has jumped to 65.38 per cent from 52.21 per cent and the growth rate in literacy is higher for women; the sex ratio has improved to 933 females per 1000 males from 827 recorded in 1991. In fact, this is the first time in decades that the sex ratio has shown an improvement.

True, the rate of growth of population is still quite high considering the already high population base. The National Population Policy unveiled by the Centre last year assumes that the medium-term objective is to bring down the total fertility rate - the average number of children a woman bears in her lifetime - to 2.1 by 2010 will be achieved.

But even this goal appears beyond reach with the annual population growth still in the region of 1.8 per cent against the earlier estimate of 1.6 per cent arrived at by the Registrar General. Even so, there is room for optimism looking at the broad trends relating to improvements in literacy, sex ratio and per capita income levels.

What is really disturbing, however, is the widening inter-State disparity in the demographic indicators such as the population growth rates, literacy levels, and the sex ratio. For instance, Bihar, with a dismal record of human development indicators, recorded a much higher rate of population growth at 28.43 per cent against 23.38 per cent in the previous decade.

Similarly UP, the most populous State in the country, recorded a higher population growth of 28.43 per cent against 23.38 per cent during 1981-91. Haryana recorded a higher population growth of 28.06 per cent against 27.41 per cent.

Rajasthan also recorded a high rate of population growth at 28.33 per cent against 28.44 per cent in the previous decade. Some of the other States in the North and East have recorded much higher population growth rates. But these are much smaller States both in terms of area and population.

As against this, Kerala recorded the lowest decadal population growth rate of 9.42 per cent, followed by Tamil Nadu (11.19 per cent), Andhra Pradesh (13.86 per cent), and Goa (14.89 per cent). Karnataka recorded a growth of 17.25 per cent.

On the whole, it is seen that Southern region leads the way in bringing down the population growth rate. It has witnessed the lowest population growth of 16 per cent during the past decade as compared to Northern region's 30 per cent and western region's over 40 per cent.

As for literacy, Kerala continued its lead with 90.92 per cent followed by Mizoram (88.49 per cent), Lakshadweep (87.52 per cent), and Goa (82.32 per cent). Maharashtra also recorded a high literacy rate of 77.27 per cent.

As against this, Bihar recorded the lowest literacy rate of 47.53 per cent; the female literacy level in the State was much lower at 33.57 per cent. Incidentally, Bihar also happens to be the only State in the country with a literacy level below 50 per cent.

Other States that figure at the bottom of the literacy list are Jharkhand (54.13 per cent), Jammu & Kashmir (54.46 per cent), Arunachal Pradesh (54.74 per cent), Uttar Pradesh (57.36 per cent), Orissa (63.61 per cent), Meghalaya (61.31 per cent), and Andhra Pradesh 61.11 per cent).

In respect of sex ratio also, Kerala reported the highest of 1,058 women per 1000 men, while Haryana reported the lowest of 861, among major States. The record of Uttar Pradesh, Bihar and Rajasthan is also not much better on this score.

In general, the southern States, which have been outperforming the Northern and Eastern regions in respect of economic growth, and per capita income, have also shown a better record in respect of population control, literacy and sex ratio.

A study sponsored last year by the Confederation of Indian Industry (CII), and conducted by the National Council of Applied Economic Research (NCAER) had shown that the economies of Northern States had slipped badly in terms of economic growth during the 90s compared to their counterparts elsewhere.

The growing inter-State disparities in respect of population growth and various human development indicators do not augur well for the balanced development of the country and economic and social harmony. The fortunes of the entire country are closely linked with the economic and demographic performance of the laggard States.

Regional Disparity in Infrastructure and Income

An economy's infrastructure network, broadly speaking, is the very socio-economic climate created by the institutions that serve as conduits of commerce. Some of these institutions

are public, others private. In either case, their roles can be conversionary - helping to transform resources into outputs - or diversionary - transferring resources to non-producers. Its role is critical in reducing natural inequality among different regions within a country.

In general, infrastructure is a social concept of some special categories of inputs external to the Decision-Making Units (DMU), which contribute to economic development both by increasing productivity and by providing amenities, thus enhancing the quality of life. It requires a long period of time to create these facilities. The linkage between infrastructure and economic growth is multiple and complex, because not only does it affect production and consumption directly, but also creates many direct and indirect externalities, and involves large flows of expenditure thereby creating additional employment.

Depending on the nature of services delivered, infrastructure can be broadly divided into physical, social and financial categories - all economically desirable. The first of these consists of transport (railways, roadways, airways and waterways), electricity, irrigation, telecommunication, water supply and the like. Notwithstanding their very direct impact on production through external economies, they are beneficial for 'crowding in' of private investment (both domestic and foreign) in the concerned geographical region. In a 'cumulative causation' fashion, physical infrastructure contributes to economic growth through lower transaction cost, and generates 'multipliers' of investment, employment, output, income and ancillary development. On the other hand, social infrastructure through enrichment of human resources in terms of education, health, housing, recreation facilities and the like improves the quality of life. This is primarily responsible for higher concentration of better human resources in a region, and helps improve productivity of labor. Finally, financial infrastructure, incorporating banking, postal and tax capacity of the population represents the financial performance of the State. These three taken together represent the relative income-generating capability of a State within a country. Hence, even in a federal polity, some amount of competition is inevitable among the constituent regions.

Relationship between Infrastructure Facilities

Ghosh and De (2004) have derived Physical Infrastructure Development Index (PIDI) from Transport Facility (Rail + Road) (TF), Gross Irrigated Area (GIA), Per Capita Consumption of Electricity (PCE) and TEL. they also derived Social Infrastructure Development Index (SIDI) from Literacy Rate (LR) , Infant Mortality Rate (IMR) and

Residential Houses (RH). Similarly, they also derived the Financial Infrastructure Development Index (FIDI) from Credit Deposit Ratio of Nationalized Banks (CD), Share of State Tax Revenue in NSDP (TR), and Post Offices (PO). The authors observed some interesting indications come out of these indices. First, the rank correlation coefficients for each of these indices between a successive pair of years have not only remained very high but are also rising at such a fast rate since the 1980s that it almost tends to be one between 1991-92 and 1997-98. These coefficients are given in the notes corresponding to the tables of PIDI, SIDI and FIDI tables. Among others, the inter-State immobility in infrastructure facilities is really alarming in case of social infrastructure. For example, the pair-wise correlation coefficient increased from 0.882 between 1971-72 and 1981-82 to 0.949 between 1981-82 and 1991-92, and to 0.995 between 1991-92 and 1997-98. For the other two indices, the final value has crossed 0.96.

A detailed scrutiny of individual rankings bears clear testimony to the lack of consensus between popular belief and empirical findings towards intense regional imbalance in basic infrastructures. As expected, Punjab, Maharashtra, Haryana, Gujarat and Goa have substantially consolidated their positions in physical infrastructure during the past quarter century. Assam, West Bengal, Orissa, Rajasthan and Madhya Pradesh have consistently represented the lowest profile of physical infrastructure. The most dramatic change has occurred in case of West Bengal - the State that had attained the position of being most developed till the mid-1960s has declined to the 17th position out of 18 States (Rao 1981). In some sense, West Bengal is the only State that has evolved in a way that represents a pro-convergence tendency. But in sharp contrast to general belief, Bihar has performed moderately in physical infrastructure. Notwithstanding these aspects, the relative positions of the States have remained unaltered in terms of physical infrastructure facilities. What is more, the coefficient of variation of PIDI among States has always been found to be very high, although the value of coefficient of variation (CV) has somewhat stabilized after the launch of reforms in 1991. For example, the CV has moved from 0.48 in 1971-72 to 0.39 in 1997-98 through 0.47 in 1981-82 and 0.40 in 1991-92.

The overall picture of PIDI is more or less maintained in SIDI with some additional features. Here, Kerala has outperformed all States in all four points in time. Yet Goa, Himachal Pradesh, Punjab and Maharashtra have achieved higher levels of social development. Moreover, the inter-State CV of SIDI has been found to be the highest among the three indices. Like PIDI, the value of CV of SIDI has declined from 1.22 in 1971-72 to 0.53 in 1991-92 and to 0.52 in 1997-98. On the whole, therefore, Indian

Table 8: Physical Infrastructure Development Index (PIDI)

States	1971-72		1981-82		1991-92		1997-98	
	PIDI	RANK	PIDI	RANK	PIDI	RANK	PIDI	RANK
AP	3.3	11	3.3	11	3.52	10	4.28	8
AM	2.09	17	1.75	17	1.51	18	1.61	18
BH	4.10	9	4.23	8	3.83	9	3.79	11
GA	-	-	-	-	4.63	5	5.44	5
GT	5.16	5	6.24	3	6.33	3	6.19	3
HR	5.10	6	6.04	4	6.38	2	6.57	2
HP	2.65	14	2.82	14	3.26	12	3.79	10
JK	3.33	10	3.26	12	3.11	14	2.82	16
KT	4.81	7	4.45	7	4.16	7	4.18	9
KL	6.47	2	5.43	6	4.12	8	4.56	7
MP	2.62	15	2.55	16	2.89	16	3.22	14
MH	5.91	4	6.41	2	6.05	4	5.81	4
OS	2.98	13	2.88	13	3.13	13	3.24	13
PN	11.10	1	0.44	1	8.82	1	9.38	1
RJ	2.36	16	2.79	15	2.90	15	3.11	15
TN	6.02	3	5.46	5	4.59	6	4.87	6
UP	3.24	12	3.34	10	3.33	11	3.43	12
WB	4.65	8	3.41	9	2.70	17	2.57	17
MEAN	4.47		4.40		4.27		4.49	
SD	2.13		2.05		1.71		1.75	
CV	0.48		0.47		0.40		0.39	

NOTES:

1. The States under consideration are Andhra Pradesh (AP), Assam (AM), Bihar (BH),Goa (GA), Gujarat (GT), Haryana (HR), Himachal Pradesh (HP), Jammu And Kashmir (J&K), Karnataka (KT), Kerala (KL), Madhya Pradesh (MP), Maharashtra (MH), Orissa (OS), Punjab (PN),Rajasthan (RJ), Tamil Nadu (TN), Uttar Pradesh (UP), West Bengal (WB);
2. RANK CORRELATIONS (PIDI) between successive years are as follows: 1971-72 and 1981-82=0.946, 1981-82 and 1991-92=0.969, 1991-92 and 1999-2000=0.968

Table 9: Social Infrastructure Development Index (SIDI)

States	1971-72		1981-82		1991-92		1997-98	
	PIDI	RANK	PIDI	RANK	PIDI	RANK	PIDI	RANK
AP	0.96	11	2.26	11	2.93	12	3.16	12
AM	-1.12	16	1.2	13	2.23	14	2.02	15
BH	-0.93	15	0.64	16	1.95	15	2.06	14
GA	-	-	-	-	6.98	2	7.31	2
GT	1.75	10	4.11	5	5.51	6	5.65	6
HR	3.60	2	3.68	9	4.88	8	5.10	8
HP	2.91	4	5.46	2	6.08	3	6.22	3
JK	2.35	6	3.87	7	4.79	9	5.00	9
KT	2.30	7	3.99	6	3.88	11	4.11	11
KL	6.67	1	8.26	1	9.61	1	9.87	1
MP	0.12	13	0.75	15	1.53	16	1.78	16
MH	3.27	3	4.96	3	5.78	5	5.99	5
OS	0.01	14	0.89	14	1.31	18	1.67	17
PN	2.70	5	4.64	4	5.99	4	6.18	4
RJ	0.47	12	1.92	12	2.67	13	2.50	13
TN	1.96	8	3.77	8	5.27	7	5.14	7
UP	-1.40	17	0.12	17	1.39	17	1.56	18
WB	1.92	9	3.44	10	4.32	10	4.46	10
MEAN	1.62		3.17		4.28		4.43	
SD	1.97		2.06		2.25		2.29	
CV	1.22		0.65		0.53		0.52	

NOTES:

Rank correlations (SIDI) between successive years are as follows: 1971-72 and 1981-82=0.882, 1981-82 and 1991-92=0.949, 1991-92 and 1999-2000=0.995.

Table 9: Social Infrastructure Development Index (SIDI)

States	1971-72		1981-82		1991-92		1997-98	
	PIDI	RANK	PIDI	RANK	PIDI	RANK	PIDI	RANK
AP	0.96	11	2.26	11	2.93	12	3.16	12
AM	-1.12	16	1.2	13	2.23	14	2.02	15
BH	-0.93	15	0.64	16	1.95	15	2.06	14
GA	-	-	-	-	6.98	2	7.31	2
GT	1.75	10	4.11	5	5.51	6	5.65	6
HR	3.60	2	3.68	9	4.88	8	5.10	8
HP	2.91	4	5.46	2	6.08	3	6.22	3
JK	2.35	6	3.87	7	4.79	9	5.00	9
KT	2.30	7	3.99	6	3.88	11	4.11	11
KL	6.67	1	8.26	1	9.61	1	9.87	1
MP	0.12	13	0.75	15	1.53	16	1.78	16
MH	3.27	3	4.96	3	5.78	5	5.99	5
OS	0.01	14	0.89	14	1.31	18	1.67	17
PN	2.70	5	4.64	4	5.99	4	6.18	4
RJ	0.47	12	1.92	12	2.67	13	2.50	13
TN	1.96	8	3.77	8	5.27	7	5.14	7
UP	-1.40	17	0.12	17	1.39	17	1.56	18
WB	1.92	9	3.44	10	4.32	10	4.46	10
MEAN	1.62		3.17		4.28		4.43	
SD	1.97		2.06		2.25		2.29	
CV	1.22		0.65		0.53		0.52	

NOTES:

Rank correlations (SIDI) between successive years are as follows: 1971-72 and 1981-82=0.882, 1981-82 and 1991-92=0.949, 1991-92 and 1999-2000=0.995.

States represent an alarmingly high degree of inequality in social infrastructure during the past quarter century.

Table 10: Financial Infrastructure Development Index (FIDI)

States	1971-72		1981-82		1991-92		1997-98	
	PIDI	RANK	PIDI	RANK	PIDI	RANK	PIDI	RANK
AP	6.72	6	6.67	6	6.11	3	6.17	3
AM	3.31	15	2.62	16	2.76	15	3.13	16
BH	4.35	13	3.75	14	2.98	14	3.37	15
GA	-	-	-	-	0.84	18	0.53	18
GT	5.95	8	5.91	7	5.42	6	5.37	6
HR	6.94	4	6.93	4	5.25	7	5.24	7
HP	1.18	17	2.38	17	2.33	17	2.60	17
JK	3.17	16	3.07	15	2.58	16	3.91	13
KT	6.88	5	7.18	3	6.91	2	6.87	2
KL	7.23	3	7.24	2	6.07	5	6.09	5
MP	5.85	9	5.31	10	4.86	8	4.88	9
MH	8.04	2	6.76	5	6.08	4	6.17	4
OS	4.58	12	4.32	12	4.65	9	4.04	12
PN	5.43	11	5.19	11	4.10	12	4.48	11
RJ	6.27	7	5.47	9	4.48	10	4.50	10
TN	8.84	1	8.31	1	7.24	1	8.04	1
UP	4.27	14	4.16	13	4.03	13	3.64	14
WB	5.68	10	5.54	8	4.27	11	4.93	8
MEAN	5.57		5.34		4.51		4.65	
SD	1.87		1.69		1.71		1.73	
CV	0.34		0.32		0.38		0.37	

NOTES:

Rank correlations (SIDI) between successive years are as follows:
1971-72 and 1981-82=0.966, 1981-82 and 1991-92=0.931, 1991-92 and 1999-2000=0.961

The relative rankings of the States in terms of financial infrastructure, despite being different from those with PIDI and SIDI, are consistent with the prevailing popular perception about the emerging centers of gravity during the post-reform period. For example, Tamil Nadu, Karnataka and Andhra Pradesh have emerged as the newly developed States in financial infrastructure. One notable exception relates to the performance of Goa and Himachal Pradesh. These two States have very low values of credit-deposit ratio of 23.20 and 26.30 respectively, while the mean CD is 49.50. Although both of them performed well in terms of spread of PO, this facility has been accorded negative weights. Thus, unlike PIDI and SIDI, the best performing States in FIDI are located in the south, while the poorly performing ones are the same as in the other two categories. As can be observed from the values of the three indices for all four years, the most stable States have maintained their respective positions in each category. These are Punjab, Maharashtra, Goa, Kerala, Gujarat, Tamil Nadu, Andhra Pradesh and Karnataka. Interestingly, except Punjab and Haryana, the remaining States are coastal, and have at least one major sea port each. Beyond these, West Bengal and Orissa are the only two other coastal States that have failed to club with these stable States. Being landlocked, Punjab and Haryana along with Delhi have been connected to the rest of the country with an effective transport and communication network. This has helped them compensate for the absence of major ports. On the other hand, the most vulnerable States have almost permanently settled in the worst positions in all categories. These are Assam, Bihar, Uttar Pradesh, Madhya Pradesh, Orissa and Rajasthan. A review of the decadal growth rates of individual infrastructure facilities would make it clear that regional infrastructure endowment at the initial period was so iniquitous that growth alone in the subsequent quarter century failed to equalize income generating activities across the States. Therefore, there are sufficient symptoms to warrant the fact that differential infrastructure facilities across the States are primarily responsible for the widening of income disparity.

One of the most important causes underlying chronic poverty is poor access and connectivity. However, access, connectivity, transport links, have not received the attention that is due to them, especially given the importance of transport to levels of economic activity and therefore rates of economic growth. The development of domestic markets that necessarily accompanies rapid economic growth has also created the need to develop internal transport links as well in order to support the increasing levels of economic activity.

3.6 Disparity in rural access to infrastructure

The wide disparity in rural access to infrastructure is evident. The best States in several indicators are five-six times better than the worst States.

Table 11: Habitations Connected by Pucca Roads - The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Habitations Connected by Pucca Roads (%)**	**State**	**Habitations Connected by Pucca Roads (%)**
Delhi, Chandigarh	100.0	Meghalaya	52.0
Haryana	99.9	Madhya Pradesh	46.1
Karnataka	99.3	Assam	46.0
Punjab	96.7	West Bengal	43.8
Tamil Nadu	96.6	Arunachal Pradesh	42.3
Goa	95.4	Bihar	37.6
Andhra Pradesh	94.9	Dadra & Nagar Haveli	17.2

Source: Indian Development Landscape

Regional disparities in electrification of India

Access to modern energy sources is important for human development. Although electrification is an important development goal, a large share of the rural population in India still lacks access to electricity. One observes remarkable regional differences in electrification, with areas in which the rate of electrified households is lower than in others. Despite the striking increase in power generation capabilities, India has been unable to keep up with its domestic demand for electricity.

Table 12: Households with Electricity Connection - The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Habitations Connected by Pucca Roads (%)**	**State**	**Habitations Connected by Pucca Roads (%)**
Lakshadweep	99.6	Meghalaya	58.9
Delhi	99.4	West Bengal	53.7
Dadra & Nagar Haveli	98.7	Orissa	46.9
Himachal Pradesh	98.6	Assam	43.3
Chandigarh	98.3	Jharkhand	38.8
Punjab	97.9	Uttar Pradesh	38.3
Goa	97.3	Bihar	16.4

Source: Indian Development Landscape

The data on village electrification rate in the 16 big States from 1970 - 2000 show that the States like Kerala, Tamil Nadu, Haryana and Punjab already had a high level of electrified villages in the early 1970s and completed all village electrification before 1980. The other States seem to have a similar rate of electrification and differ merely in their initial levels. However, in the States Orissa, Uttar Pradesh, West Bengal, Bihar and Assam, the village electrification process began to stagnate in the 1990s before being completed. Today, 85% of Indian villages are electrified (Srivastava and Rehman, 2006). However, fewer than 60% of households actually consume electricity. In this way, one observes large spatial differences in electrification rate. Moreover, there is a large difference between rural and urban areas. Calculations based on NSS data show that about 81.5% of urban households are electrified, whereas in rural areas this rate is only 46.2% (NSS data for 2000). Even within rural households there is a remarkable spatial heterogeneity in electrification rates, with some areas having a higher share of households without access to electricity than others. Electrification rates are particularly low in the Eastern and

Table 13: Households with Telephone (Landline)- The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Habitations Connected by Pucca Roads (%)**	**State**	**Habitations Connected by Pucca Roads (%)**
Lakshadweep	78.1	Madhya Pradesh	12.3
Delhi	62.0	Assam	12.3
Chandigarh	56.3	Jharkhand	12.0
Goa	52.1	Orissa	9.6
Andaman & Nicobar Islands	50.5	Uttar Pradesh	9.3
Puducherry	44.5	Chhattisgarh	9.1
Himachal Pradesh	43.2	Bihar	8.4

Source: Indian Development Landscape

Table 14: Improvement in Pucca Road Connectivity over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-09
Chhattisgarh	29.3	Kerala	2.7
Tripura	28.6	Maharashtra	2.0
Rajasthan	23.3	Andhra Pradesh	1.3
Sikkim	20.9	Goa	0.9
Assam	20.0	Karnataka	0.5
Madhya Pradesh	15.6	Haryana	0.2
Himachal Pradesh	15.1	Dadra & Nagar Haveli	0.1

Source: Indian Development Landscape

Table 15: Improvement in Electricity availability over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-09
Tripura	42.8	Punjab	6.0
Manipur	27.9	Himachal Pradesh	3.8
Andhra Pradesh	21.6	Goa	3.7
Orissa	20.0	Chandigarh	1.5
Arunachal Pradesh	18.7	Lakshadweep	-0.1
Assam	18.4	Daman & Diu	-0.9
Nagaland	18.1	Jammu and Kashmir	-12.2

Source: Indian Development Landscape

Table 16: Improvement in Telephone Connectivity over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-09
Andaman & Nicobar Islands	29.5	Assam	8.0
Dadra & Nagar Haveli	27.4	West Bengal	6.8
Delhi	27.3	Bihar	6.2
Himachal Pradesh	26.7	Madhya Pradesh	6.1
Puducherry	25.4	Orissa	5.7
Chandigarh	24.2	Chhattisgarh	5.3
Punjab	23.9	Uttar Pradesh	3.7

Source: Indian Development Landscape

North-Eastern regions. The rate of village and household electrification is particularly low in the States of Assam, Bihar, Orissa, Uttar Pradesh and West Bengal.

3.7 Key Indicators on Literacy in India

Kerala, Mizoram and Lakshadweep top in terms of literacy. In terms of improvements, Rajasthan, Chhattisgarh and Madhya Pradesh are the post improved States during this millennium. The top districts in terms of literacy are Aizawl, Serchhip and Mahe. Pakaur, Kishanganj and Shrawasti are the worst districts showing literacy rates in the thirties. Barmer, Chitrakoot and Sarguja are the most improved districts. Yanam is the worst performer, with a 2% decline in literacy rates during the last 7 years.

Table 17: Literacy Status in India

Top States (2008-09 estimates)		Top States (2008-09 estimates)	
State	**Total Literacy (2008-09)**	**State**	**Change in Total Literacy over 7 years**
Kerala	92	Rajasthan	11
Mizoram	92	Chhattisgarh	10
Lakshadweep	89	Madhya Pradesh	9
Andaman & Nicobar Islands	86	Dadra & Nagar Haveli	9
Goa	86	Uttar Pradesh	9
Delhi	85	Orissa	8
Pondichery	85	Andhra Pradesh	8
Chandigarh	84	Arunachal Pradesh	8
Himachal Pradesh	83	Tripura	7
Maharashtra	83	Uttaranchal	7

Source: Indian Development Landscape

Table 18: Female Literacy status in India

Top States (2008-09 estimates)		Top States (2008-09 estimates)	
State	**Total Literacy (2008-09)**	**State**	**Change in Female Literacy over 7 years**
Mizoram	91	Chhattisgarh	12
Kerala	89	Rajasthan	12
Lakshadweep	85	Madhya Pradesh	11
Andaman & Nicobar Islands	80	Andhra Pradesh	10
Goa	80	Uttar Pradesh	10
Chandigarh	79	Uttaranchal	9
Delhi	79	Himachal Pradesh	8
Pondichery	79	Maharashtra	8
Himachal Pradesh	75	Tripura	8
Maharashtra	75	Meghalaya	8

Source: Indian Development Landscape

Table 19: Literacy Rates - The Best and the Worst Districts of India

District	Best Districts by Literacy Rate (2008-09)	District	Worst Districts by Literacy Rate (2008-09)
Aizawl	97.8	Pakaur	34.9
Serchhip	97.0	Kishanganj	36.7
Mahe	96.6	Shrawasti	36.7
Kottayam	95.9	Malkangiri	37.0
Pathanamthitta	94.7	Dantewada	38.4
Ernakulam	93.8	Katihar	39.2
Kolasib	93.6	Purnia	39.4
Thrissur	93.5	Araria	40.5
Kannur	93.3	Sheohar	41.0
Alappuzha	93.1	Balrampur	41.2
Kozhikode	92.9	Madhepura	41.4
Champhai	92.7	Rayagada	42.3
Kollam	91.7	Koraput	42.5
Malappuram	90.6	Bahraich	42.7
Kanyakumari	90.4	Sahibganj	42.8
Idukki	89.8	Nabarangapur	42.9
Mumbai (Suburban)	89.5	Supaul	43.0
Thiruvananthapuram	89.4	Purba Champaran	43.6
Lakshadweep	89.3	Sitamarhi	44.7
Nagpur	88.7	Saharsa	44.8
East	88.6	Paschim Champaran	45.5
Mumbai	88.1	Mon	45.5
Amravati	88.0	Budaun	46.2
Akola	87.8	Rampur	46.7
Lunglei	87.6	Khagaria	46.9
Chennai	87.4	Garhwa	47.0
Rajnandgaon	87.1	Jhabua	47.0
Mokokchung	87.1	Madhubani	47.5
Dakshina Kannada	86.9	Tirap	47.6
Wayanad	86.7	Banka	47.8

Source: Indian Development Landscape

Table 20: Improvements in Literacy Rates over 7 years - The Best and the Worst Districts of India

Top Districts	Improvement over 7 years leading to 2008-09	Worst Districts	Improvement over 7 years leading to 2008-09
Barmer	14.6	Yanam	-2.2
Chitrakoot	13	Alappuzha	-0.3
Surguja	12.8	Pathanamthitta	-0.1
Churu	12.5	Kottayam	0.1
Panna	12.2	Thiruvananthapuram	0.1
Karauli	12.2	Bijapur	0.3
Kawardha	12.1	Kollam	0.5
Umaria	12.1	Ernakulam	0.6
Shivpuri	11.9	Kannur	0.7
Nagaur	11.9	Kozhikode	0.7
Kanker	11.8	Mahe	0.9
Shajapur	11.7	Malappuram	1
Jalor	11.7	Idukki	1.1
Sidhi	11.6	Thrissur	1.2
Jhalawar	11.6	Aizawl	1.3
Guna	11.5	Kasaragod	1.3
Dhaulpur	11.5	Wayanad	1.5
Raisen	11.4	Champhai	1.5
Bastar	11.3	Tuensang	1.5
Jashpur	11.3	New Delhi	1.6
Dausa	11.3	Mumbai	1.7
Bundi	11.2	Palakkad	1.8
Udaipur	11.2	Saiha	1.8
Shahdol	11.1	Gandhinagar	1.8
Ri Bhoi	11.1	Serchhip	1.9
Rajsamand	11.1	Kolkata	2
Koriya	11	Chennai	2.1
Rajgarh	11	Kolasib	2.3
Hanumangarh	11	Chandigarh	2.4
Sikar	11	Bagalkot	2.4

Source: Indian Development Landscape

Table 21: Female Literacy Rates - The Best and the Worst Districts of India

Districts	Best Districts by Female Literacy Rate 2008-09	Districts	Worst Districts by Female Literacy Rate 2008-09
Aizawl	97.8	Shrawasti	23.8
Serchhip	96.6	Kishanganj	23.9
Mahe	95.2	Pakaur	25.0
Kottayam	94.7	Supaul	25.4
Pathanamthitta	93.5	Malkangiri	26.8
Kolasib	93.2	Madhepura	27.1
Ernakulam	91.6	Dantewada	27.4
Champhai	91.4	Purnia	27.7
Thrissur	91.3	Araria	27.8
Alappuzha	90.6	Nabarangapur	28.0
Kannur	90.4	Katihar	28.3
Kozhikode	89.7	Balrampur	28.5
Kollam	89.0	Garhwa	29.8
Kanyakumari	88.1	Sheohar	30.0
Malappuram	87.7	Koraput	30.1
Idukki	86.3	Bahraich	30.1
Thiruvananthapuram	86.3	Rayagada	30.3
Mokokchung	85.2	Purba Champaran	30.9
Lunglei	84.8	Saharsa	31.3
Lakshadweep	84.5	Paschim Champaran	31.9
Mumbai (Suburban)	84.4	Sahibganj	31.9
East	84.2	Madhubani	32.2
Mumbai	83.9	Jamui	32.5
Nagpur	83.5	Sitamarhi	32.7
Chennai	83.5	Budaun	32.7
Wayanad	82.6	Godda	33.3
Amravati	82.5	Nuapada	33.7
Bangalore	82.1	Kupwara	33.9
Akola	82.1	Jhabua	34.3
Palakkad	82.0	Giridih	34.4

Source: Indicus Analytics

Table 22: Improvements in Female Literacy Rates over 7 years - The Best and the Worst Districts of India

Top Districts	Improvement over 7 years leading to 2008-09	Worst Districts	Improvement over 7 years leading to 2008-09
Barmer	16.4	Yanam	-1.8
Chitrakoot	16	Alappuzha	-0.2
Churu	15.4	Pathanamthitta	0.1
Shajapur	15.2	Thiruvananthapuram	0.2
Sikar	15.1	Kottayam	0.3
Karauli	15	Kollam	0.8
Kanker	14.5	Ernakulam	0.9
Raisen	14.2	Kannur	1
Datia	14.1	Kozhikode	1.1
Jhunjhunu	14.1	Bijapur	1.2
Dausa	14	Mahe	1.2
Panna	13.7	Idukki	1.3
Umaria	13.5	Malappuram	1.4
Dhaulpur	13.5	Aizawl	1.5
Nagaur	13.5	Thrissur	1.6
Raigarh	13.4	Gandhinagar	1.7
Surguja	13.4	Kasaragod	1.8
Hanumangarh	13.2	Wayanad	1.9
Kawardha	13.1	New Delhi	2
Rajnandgaon	13.1	Champhai	2.3
Shivpuri	13	Tuensang	2.4
Mahasamund	12.9	Palakkad	2.4
Guna	12.8	Mumbai	2.5
Mandsaur	12.8	Serchhip	2.5
Jashpur	12.7	Chandigarh	2.6
Sehore	12.7	Daman	2.6
Baran	12.7	Sindhudurg	2.7
Bhind	12.6	North	2.9
Jhalawar	12.5	Saiha	2.9
Koriya	12.4	West	3

Source: Indicus Analytics

Education Infrastructure Index

Educational Infrastructure Index measures how good or bad the infrastructure is in a given State or district, on a relative scale. The index scores show a wide variation. For rural India, Daman and Diu tops with an index score of 98 whereas Nagaland is at the bottom with an index score of only 19. In fact, virtually the entire rural North Eastern India suffers from poor infrastructure for education. The urban infrastructure is significantly better than the rural infrastructure and the variation is significantly lower. Yet, the North East stands out as being burdened with very poor infrastructure.

Table 23: Education Infrastructure Index (2001-02) - Rural India

Top States		Top States	
State	**Education Infrastructure Index (2001-02) -Urban India**	**State**	**Education Infrastructure Index (2001-02) -Urban India**
Daman & Diu	98	Nagaland	19
Chandigarh	96	Meghalaya	26
Lakshadweep	94	Manipur	28
Haryana	93	Mizoram	28
Kerala	91	Jammu & Kashmir	38
Delhi	90	Arunachal Pradesh	39
Pondichery	89	Assam	39
Punjab	85	Tripura	42
Rajasthan	85	Sikkim	50
Andaman & Nicobar Islands	75	Bihar	52

Source: Indian Development Landscape

Table 24: Education Infrastructure Index (2001-02) - Urban India

Top States		Top States	
State	**Education Infrastructure Index (2001-02) -Urban India**	**State**	**Education Infrastructure Index (2001-02) -Urban India**
Lakshadweep	100	Sikkim	25
Daman & Diu	96	Bihar	44
Chandigarh	95	Manipur	52
Haryana	95	Mizoram	52
Delhi	93	Nagaland	52
Dadra & Nagar Haveli	92	Meghalaya	54
Kerala	92	Assam	55
Pondichery	92	Jharkhand	61
Rajasthan	92	Arunachal Pradesh	64
Punjab	90	Jammu and Kashmir	64

Source: Indian Development Landscape

3.8 Rural and urban variations in distribution of computers having access to computers in schools

According to a report 'Strengthening Education Management Information System in India, published by the HRD Ministry and the National University of Educational Planning and Administration (NUEPA), the percentage of Primary schools having computers is much lower at 6.51% than that of the other school types. It is high at 18.20% in urban areas and low at 5.34% in rural areas. As many as 50,747 Primary schools in 2006-07 are provided with computers of which 75% is in rural areas and only 25% in urban areas.

The percentage of government schools with computer has shown improvement over the previous year (6.57% in 2005-06 to 8.57% in 2006-07). Compared to 8.57% government schools having computers, the percentage in case of schools under private managements is much higher at 34.43%. This is also true for all other types of schools. About 62%

integrated higher secondary and 59% upper schools under the private managements have computers.

The report also highlights varying regional access to school computers. Barring Delhi, Maharashtra, Southern States, Gujarat and Madhya Pradesh, access to such facilities remains virtually non-existent to most students in the country. Maharashtra has the highest number of schools - 28,882, which constitutes 33.42% of its total schools - that have computers in schools, followed by 19,154 schools in Andhra Pradesh, 16,064 schools in Madhya Pradesh, 13,336 schools in Rajasthan, 11,603 schools in Tamil Nadu. In terms of percentage of schools which have computers in each State, Delhi stands first (68.85), followed by Kerala (60.9), Maharashtra (33.42), Gujarat (24.03) and Tamil Nadu (22.13). Except for Delhi, Chandigarh, Kerala, Gujarat, Lakshadweep, Maharashtra, Orissa, Puducherry, Sikkim and Tamil Nadu, the percentage of computer penetration in primary schools is below double digit in the rest of India.

The lowest numbers, 12 Schools, of computer facility is in the Dadra & Nagar Haveli, followed 15 schools in Daman & Diu, 22 schools in Lakshadweep, and 119 schools in Andaman & Nicobar Islands. In Bihar too, the percentage of schools with computers was found to be low at 2.62 or 1,436 schools. However, the spread of computer education has been limited to just 6.51% of all primary schools in the country. And except for Delhi, Chandigarh, Kerala, Gujarat, Lakshadweep, Maharashtra, Orissa, Puducherry, Sikkim and Tamil Nadu, the percentage of computer penetration in primary schools is below double digit in the rest of India.

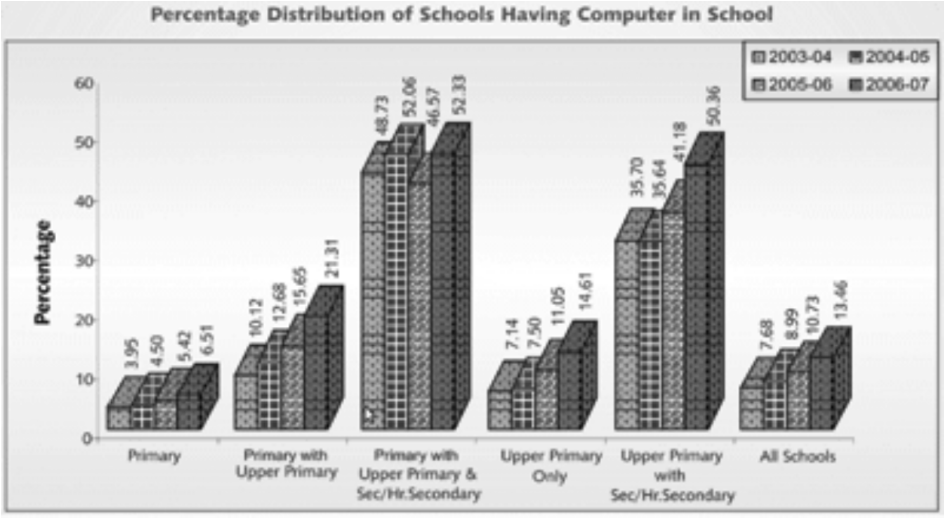


Table 25: Percentage of Schools having computers in School: 2006-07

School Category	Percentage							
	All Areas				Rural Areas	Urban Areas	All Government Manage-ment	All Private Manage ment
	2003-04	2004-05	2005-06	2006-07				
Primary only	3.95	4.50	5.42	6.51	5.34	13.20	4.68	20.33
Primary with Upper Primary & Secondary	10.12	12.68	15.65	21.31	16.55	40.83	15.04	37.65
Primary with Upper Primary & Secondary/ Hr. Secondary	48.73	52.06	46.57	52.33	42.05	68.38	35.81	62.09
Upper Primary only	7.14	7.50	11.05	14.61	11.82	38.66	10.60	27.57
Upper Primary & Secondary/ Hr. Secondary	35.70	35.64	41.18	50.36	45.04	66.99	42.43	59.40
All Schools	**7.68**	**8.99**	**10.73**	**13.43**	**10.33**	**34.94**	**8.57**	**34.43**
Number of Schools with Computers	71,501	93,249	1,20,591	1,60,749	1,07,702	53,047	82,859	77,890

3.9 Inter-State Comparison in Educational Status

Literacy is prerequisite for development. Literacy as a qualitative attribute of the population is one of the most important indicators of the social, economic, political and human development of a society. It is a major component of human resource development and is thus basic to any programme of social and economic progress.

Post-independent India inherited a system of education which was characterized by large scale inter and intra-regional imbalances. The system educated a select few, leaving a wide gap between the educated and the illiterate. Disparities in Development, Status of Women and Social Opportunities Educational inequality were aggravated by economic inequality, gender disparity and rigid social stratifications. Since independence, there has been a growing realization that development would never become self-sustaining unless it is accompanied by corresponding changes in the attitudes, values, knowledge and skills of the people as a whole and the only way this change can be accomplished is through education.

According to 2001 census, the literacy rate for the country is 65.4 per cent. Nine States, comprising of Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Punjab, Tamil Nadu, and West Bengal, have literacy rates above the national average. Their rates vary from 90.9 per cent in Kerala to 67.0 per cent in Karnataka. On the other hand, 8 States out of selected 17 States have literacy rates below the national average. They vary from 64.3 per cent in Assam to as low as 47.5 in Bihar.

3.9.1 Elementary Education Dropout Rate

Elementary education includes schooling in primary and middle school levels, that is, grade 1 through 8 in some States and 1 through 7 in others. The dropout rate measures the percentage of students leaving school before completion. About 40 per cent of student's dropout before completing the primary level and this figure increases with higher classes.

The female dropout rate is higher than males. Poor economic status of families also increases the probability of children to help out in economic and household activities; other factors include lack of interest, low economic returns to education, dropping out of school, therefore, is a combination of a household's requirements, accessibility of educational institutions, and the quality of education.

The quality of school education, pupil to teacher ratios, teaching curricula, etc. have to be in line with the requirements of the beneficiaries (i.e., children and their parents). School infrastructure is also a determining factor of dropout rate. The Indian State aims to make elementary education universal but the high dropout rate points to an overall lack of preparedness, of the schooling system. Schools in India, especially government schools, are marked by widespread neglect and inadequate infrastructure with respect to number of teachers, teaching aids, dilapidated buildings, and lack of essential facilities such as drinking water, working toilets, etc.

Dropout Rate in Indian States

An analysis of the dropout rate indicates an average dropout of 10.64 per cent among primary grades. This shows that as many as 10.64 per cent children enrolled in Grades I to V dropped out from the system before completion of a primary grade. In many States, dropout rate in Grade I is noticed to be alarmingly high which suggests need for

careful examination and appropriate strategies to check dropout rate. In a few States, dropout rate even comes out negative, which is largely because of the inconsistent enrolment data. Among major States, Rajasthan has a very high (24.97 per cent) dropout rate in Grade I. Bihar (14.44 per cent), Haryana (15.08 per cent), Orissa (15.21 per cent), and West Bengal (18.24 per cent) also have very high dropout rate in Grade I. Unlike Grade I, Grade II, III and IV have lower dropout rate and the same varies between 6 to 7 per cent. However, a few States, such as, Andhra Pradesh (Grades II, III and IV), Rajasthan (Grade II and III), Uttar Pradesh (Grade III), Maharashtra (Grade IV) and West Bengal (Grade IV) reported high dropout rates even more than that of the primary grades (Mehta, 2005). Disparities in Development, Status of Women and Social Opportunities Tamil Nadu, Kerala and Gujarat, falls in the group, which has below 5 per cent dropout rate. Assam, Karnataka, Maharashtra, Himachal Pradesh, Bihar, and Punjab have average dropout rate between 5 to 10 per cent. In rest of the States, Orissa, Haryana, West Bengal and Madhya Pradesh have dropout rate in primary classes between 10-15 per cent. Out of 17 States covered, only three States have an average dropout rate of above 15 per cent in primary classes. The States are Uttar Pradesh, Rajasthan and Andhra Pradesh.

3.9.2 Disparities in Elementary Education

The aggregate national picture of educational indicators is of little use in understanding the situation in different parts of the country. Table 21 provides some idea about the disparities in some educational indicators across States and districts within each State.

Similarly, there are huge disparities in enrolment rates, gender gaps in enrolments across States and between districts within a State. The proportion of 'out-of-school children' in the 6-14 year age group was only 0.54 per cent in HP, but as high as 17.4 per cent in Manipur and 10.88 per cent in Jharkhand. There are 50 districts in the country with more than 15 per cent of the children not attending school. The gender gap in enrolment at the upper primary stage was almost non-existent in the north-eastern States of Mizoram and Nagaland, but as high as 25 percentage points in Bihar. The gender disparity in upper primary enrolment varied greatly across districts within each State. For example, in Madhya Pradesh (MP), the gender gap was only 3 percentage points in Katni and Balaghat districts, while it was despairingly high (29-30 per cent) in Jhabua and Sheopur districts.

There are large variations between States, between districts within a State and between blocks within a district with respect to the availability of schools, especially upper primary schools, the physical infrastructure of schools and the availability of teachers. For example, while the Student-Classroom Ratio (SCR) was 15 for Himachal Pradesh (HP) in 2004-05, indicating a comfortable situation, it was 84 for Bihar, reflecting a serious gap in the availability of classrooms. Similarly while the average SCR for Uttar Pradesh (UP) was 62, within the State, it varied widely between districts from 38 in Kanpur Nagar and 90 in Rampur district. Likewise, the Pupil-Teacher Ratio (PTR)-an indicator of the adequacy of teachers and a pre-requisite for quality education-varied from 20 in Jammu and Kashmir (J&K) to 73 in UP at the primary stage. Within UP, the PTR was 45 in Meerut district while it was as high as 125 in Balrampur district. There are 56 districts in the country wherein 50 per cent or more of the primary schools had a PTR of more than 70. The ratio of primary to upper primary schools, which is an indicator of the adequacy of availability of upper primary schools, varied from 1.5 in Gujarat to 5.3 in West Bengal. There are 96 districts in the country that had a ratio of primary to upper primary schools of more than 4:1, indicating a highly inadequate provisioning of upper primary schools.

The repetition rates of students at the primary and upper primary stages and the dropout rates, which reflect the efficiency of the education system in retaining students and ensuring completion of primary/upper primary level education, also vary significantly across the country. About 2.2 per cent of the students repeated a class in Karnataka at the primary stage. This proportion was 15.4 per cent in Chhattisgarh and 22.3 per cent in Sikkim. A total of 45 districts in the country had repetition rates of above 15 per cent. Similarly, there were large variations in the dropout rates across the country. While 115 districts had dropout rates of below 5 per cent, 98 districts had dropout rates of above 20 per cent. Thus all the districts across the country are at different levels in terms of educational infrastructure and outcomes.

Table 26: Disparities in Elementary Education: Some Key Indicators *

State	School Classroom Ratio (Primary)			Pupil Teacher Ratio (Primary)			Primary: Upper Primary School Ratio			Out-of-school (6-14 yr. age group) per cent			Gender Gap (Upper Primary)		
	AVG	MAX	MIN	AVG	MAX	MIN	AVG	MAX	MIN	AVG	MAX	MIN	AVG	MAX	MIN
Andhra Pradesh	31	39	24	28	34	22	2.5	3.5	1.8	3.6	8.1	0.4	5.3	15.1	0.2
Assam	55	107	20	32	85	8	3.3	4.6	2.2	11.3	18.2	4.9	3.1	7.4	0.3
Bihar	84	117	64	78	209	57	3.6	6.6	2.6	10.5	25.9	3.2	24.6	48.2	8.0
Chhattisgarh	36	46	23	38	50	24	3.2	5.3	2.2	9.9	33.0	2.2	9.5	26.3	3.7
Gujarat	32	44	23	41	56	31	1.5	3.4	1.1	3.1	9.0	0.8	12.9	32.1	0.6
Haryana	47	68	34	43	50	34	2.1	8.5	1.4	6.2	15.7	1.2	2.4	16.1	1.3
Himachal Pradesh	18	22	5	22	27	6	2.7	3.5	1.9	0.4	1.6	0.0	4.9	14.7	1.8
Jharkhand	53	81	34	60	89	42	3.8	5.3	2.6	6.8	20.5	1.0	15.8	37.0	2.8
Karnataka	26	39	17	46	169	27	1.9	2.8	1.4	2.1	5.0	0.5	4.5	13.1	0.9
Kerala	25	29	20	26	30	24	1.9	3.3	1.5	0.7	4.3	0.1	3.4	5.4	0.0
Madhya Pradesh	42	322	27	37	77	18	2.8	5.7	1.8	3.0	12.2	0.3	15	35.8	3.0
Maharashtra	34	323	18	33	46	16	1.8	3.3	1.3	2.8	13	0.5	6.6	12.6	0.7
Orissa	32	42	24	40	60	31	2.9	4.6	1.7	3	7.5	1.1	8.5	26.2	4.3
Punjab	29	36	25	33	44	28	2.0	3.8	1.6	2.2	9.0	0.1	7.6	13.0	3.4
Rajasthan	32	101	19	40	62	11	2.8	6.7	1.7	2.0	15.0	0.4	26.4	58.2	8.5
Tamil Nadu	32	50	25	38	45	30	2.7	3.5	1.3	1.5	3.7	0.2	4.1	9.3	1.3
Uttar Pradesh	62	85	41	73	131	46	3.6	7.7	2.1	6.4	16.2	0.9	11.2	36.7	0.6
Uttaranchal	25	44	17	28	41	19	2.9	3.9	2.5	0.5	0.9	0.1	4.6	12.6	0.6
West Bengal	56	106	32	49	72	34	5.3	7.6	2.8	4.7	19.5	1.3	2.8	20.7	0.0

*Note: AVG: Average; MAX: Maximum among districts; MIN: Minimum among districts

Table 27: Some Indicators of 'Worse-off' Districts

Indicators	Number of States	Number of Districts
Student: Classroom Ratio (Primary)-More than 60:1 (Appropriate: less than 40:1)	3	116
Pupil: Teacher Ratio (Primary)-More than 60:1 (Appropriate: less than 40:1)	3	119
Primary to Upper Primary School Ratio-More than 4:1 (At least 2:1 or lower)	1	96
Gender Gap (Upper Primary.)- More than 15 percentage points	3	160
Percentage of Out-of-school Children (6-14 years)-More than 15%	2	50
Dropout Rates (Primary. Stage)-More than 15% Source: DISE data, 2004-05.	8	194

Source: DISE data, 2004-05.

A similar analysis carried out for some districts of the country indicates that there are significant inter-block disparities in educational infrastructure and educational attainments (see Table 28).

Table 28: Intra-district Disparity in Educational Development

District: Nagaon, Assam					
Block	**SCR**	**PTR**	**Primary: U. Primary**	**% Out-of-school Children**	**Dropout Rate (%)**
Batadrava	127	61	3	14.9	29.8
Jugijan	118	82	4	7.0	25.4
Juria	174	69	3	10.4	47.9
Kaliabor	61	36	4	12.4	21.9
Kapili	89	37	4	1.9	44.1
Kathiatoli	91	62	5	6.1	26.8
Khagarijan	61	23	4	5.1	6.5
Lanka	192	86	4	7.0	19.9
Lawkhowa	88	72	4	8.5	20.1
Rupahi	71	44	4	3.8	12.4
Urban	49	23	2	3.6	9.5
District Total	**94**	**50**	**4**	**7.5**	**18.5**

Dropouts and pupil teacher ratio

Rajasthan, Assam and Bihar have very high dropout rates, of the order of 50%. During the last 7 years, Jammu and Kashmir, Uttar Pradesh and Tripura have been the most improved States in terms of dropout rates. Goa, Himachal Pradesh and Pondichery have the best primary to upper primary transition index. In terms of primary to upper primary transition index Mizoram, Andhra Pradesh and Haryana are the most improved States over the last 7 years.

Andaman & Nicobar Islands, Nagaland, Himachal Pradesh, Lakshadweep, Mizoram and Sikkim have the best pupil-teacher ratios, each of them being under 25. The worst ratios are in Bihar, Jharkhand, Uttar Pradesh, Dadra & Nagar Haveli and Madhya Pradesh - Bihar figures being an abysmal 114. It was an incredibly poor performer even 7 years ago with a ratio of 142. In general, pupil-teacher ratios have not improved significantly during the last 7 years in the laggard States.

Table 29: Dropout rates (Class 1 to 4)

Worst States (2008-09 estimates)		**Most improved States (2008-09 estimates)**	
State	**Dropout Rate (Classes I-V)**	**State**	**Change over 7 years**
Rajasthan	52	Jammu and Kashmir	-17
Assam	50	Uttar Pradesh	-17
Bihar	48	Tripura	-16
Nagaland	39	Mizoram	-15
West Bengal	38	Meghalaya	-14
Meghalaya	37	Manipur	-14
Orissa	37	Andhra Pradesh	-14
Arunachal Pradesh	35	Sikkim	-14
Gujarat	33	Orissa	-11
Manipur	26	Karnataka	-11

Source: Indian Development Landscape

Table 30: Primary to Upper-Primary Transition Index

Top States (2008-09 estimates)		Top States (2008-09 estimates)	
State	**Primary to Upper -Primary Transition Index**	**State**	**Change over 7 years**
Goa	73	Mizoram	19
Himachal Pradesh	69	Andhra Pradesh	18
Pondichery	66	Haryana	13
Chandigarh	64	Karnataka	13
Haryana	64	Himachal Pradesh	12
Mizoram	64	Delhi	10
Delhi	62	Maharashtra	10
Kerala	61	Tripura	10
Lakshadweep	60	Dadra & Nagar Haveli	9
Maharashtra	60	Goa	8

Source: Indian Development Landscape

Table 31: Upper-Primary to Higher Grade Transition Index

Top States (2008-09 estimates)		Top States (2008-09 estimates)	
State	**Upper-Primary to Higher Grade Transition Index**	**State**	**Change over 7 years**
Chandigarh	100	Andhra Pradesh	22
Himachal Pradesh	100	Sikkim	20
Tamil Nadu	100	Lakshadweep	17
Lakshadweep	99	Kerala	17
Mizoram	99	Jammu and Kashmir	17
Orissa	98	Dadra & Nagar Haveli	15
Andhra Pradesh	95	Pondichery	13
Pondichery	95	Arunachal Pradesh	13
Kerala	92	Mizoram	12
Uttaranchal	91	Uttaranchal	12

Source: Indian Development Landscape

Table 32: Pupil-Teacher Ratio (Primary) - Top States

Top States (2008-09 estimates)		Top States (2008-09 estimates)	
State	**Pupil-Teacher Ratio (Primary)**	**State**	**Change over 7 years**
Andaman & Nicobar Islands	18	Andhra Pradesh	-13
Nagaland	20	Lakshadweep	-7
Himachal Pradesh	21	Gujarat	-7
Lakshadweep	21	Himachal Pradesh	-5
Mizoram	24	West Bengal	-5
Sikkim	24	Tamil Nadu	-4
Uttaranchal	25	Daman & Diu	-4
Kerala	26	Haryana	-4
Pondichery	26	Arunachal Pradesh	-3
Andhra Pradesh	27	Andaman & Nicobar Islands	-2

Source: Indian Development Landscape

Table 33: Pupil-Teacher Ratio (Primary) - Worst States

Worst States (2008-09 estimates)		Worst States (2008-09 estimates)	
State	**Pupil-Teacher Ratio (Primary)**	**State**	**Change over 7 years**
Bihar	114	Bihar	28
Jharkhand	84	Jharkhand	13
Uttar Pradesh	62	Uttar Pradesh	12
Dadra & Nagar Haveli	60	Dadra & Nagar Haveli	13
Madhya Pradesh	51	Madhya Pradesh	4
Rajasthan	49	Rajasthan	4
West Bengal	48	West Bengal	-5
Meghalaya	48	Meghalaya	5
Assam	48	Assam	7
Delhi	47	Delhi	5

Source: Indian Development Landscape

Table 33: Pupil-Teacher Ratio (Primary) - Worst States

Worst States (2008-09 estimates)		Worst States (2008-09 estimates)	
State	**Pupil-Teacher Ratio (Primary)**	**State**	**Change over 7 years**
Bihar	114	Bihar	28
Jharkhand	84	Jharkhand	13
Uttar Pradesh	62	Uttar Pradesh	12
Dadra & Nagar Haveli	60	Dadra & Nagar Haveli	13
Madhya Pradesh	51	Madhya Pradesh	4
Rajasthan	49	Rajasthan	4
West Bengal	48	West Bengal	-5
Meghalaya	48	Meghalaya	5
Assam	48	Assam	7
Delhi	47	Delhi	5

Source: Indian Development Landscape

Education Infrastructure Index

Educational Infrastructure Index measures how good or bad the infrastructure is in a given State or district, on a relative scale. The index scores show a wide variation. For rural India, Daman and Diu tops with an index score of 98 whereas Nagaland is at the bottom with an index score of only 19. In fact, virtually the entire rural North-Eastern India suffers from poor infrastructure for education. The urban infrastructure is significantly better than the rural infrastructure and the variation is significantly lower. Yet, the North-East stands out as being burdened with very poor infrastructure

Gender Disparity in Enrolment: A District-level Analysis

An analysis of gender gaps in enrolment (the difference in percentage points between the share of enrolment of boys and girls in the total enrolment) at the primary and upper primary stages indicates huge disparities across States (see Tables 36 and 37).

Table 34: Education Infrastructure Index (2001-02) - Rural India

Top States		Bottom States	
State	**Education Infrastructure Index (2001-02) - Rural India**	**State**	**Education Infrastructure Index (2001-02) - Rural India**
Daman & Diu	98	Nagaland	19
Chandigarh	96	Meghalaya	26
Lakshadweep	94	Manipur	28
Haryana	93	Mizoram	28
Kerala	91	Jammu and Kashmir	38
Delhi	90	Arunachal Pradesh	39
Pondichery	89	Assam	39
Punjab	85	Tripura	42
Rajasthan	85	Sikkim	50
Andaman & Nicobar Islands	75	Bihar	52

Source: Indian Development Landscape

Table 35: Education Infrastructure Index (2001-02) - Urban India

Top States		Bottom States	
State	**Education Infrastructure Index (2001-02) - Urban India**	**State**	**Education Infrastructure Index (2001-02) - Urban India**
Lakshadweep	100	Sikkim	25
Daman & Diu	96	Bihar	44
Chandigarh	95	Manipur	52
Haryana	95	Mizoram	52
Delhi	93	Nagaland	52
Dadra & Nagar Haveli	92	Meghalaya	54
Kerala	92	Assam	55
Pondichery	92	Jharkhand	61
Rajasthan	92	Arunachal Pradesh	64
Punjab	90	Jammu and Kashmir	64

Source: Indian Development Landscape

Table 36: Gender Gaps in Enrolment

State	Primary	Upper Primary
Assam	1.36	3.04
Chhattisgarh	3	9.5
Tamil Nadu	3.44	3.9
Uttar Pradesh	3.9	10.1
Orissa	3.9	8.3
Madhya Pradesh	4.7	13.7
West Bengal	4.7	8.3
Gujarat	6.06	11.68
Rajasthan	6.4	24.3
Jharkhand	7.1	15
Bihar	11.4	22.6

Source: DISE data, 2004-05.

Source: DISE data, 2004-05

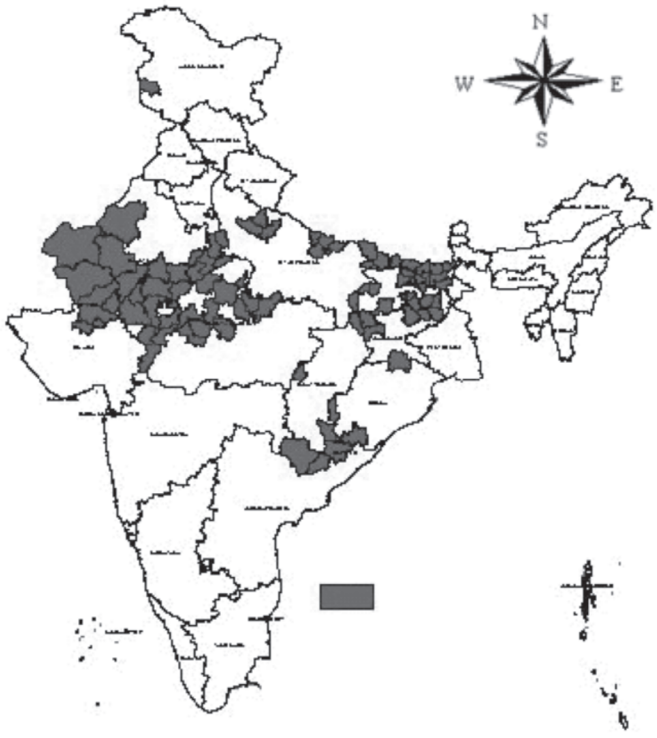
Gender Gap-Extent	Number of Districts
More than 10 percentage points at Primary level	48
More than 15 percentage points at Upper Primary level	160
More than 20 percentage points at Upper Primary level	102

Source: DISE data, 2004-05.

Thus, the districts that have high gender gaps in enrolment can be clearly identified. On a map, their distribution is more revealing (see Maps 1 and 2). Most of these districts are located in western and south-western Rajasthan, northern Gujarat, western Madhya Pradesh, northern Uttar Pradesh (bordering Nepal), Bihar (especially northern Bihar), Jharkhand, southern Chhattisgarh and Orissa.

MAP 1: Districts with Primary Gender Gap > 10 per cent points (2004-05)

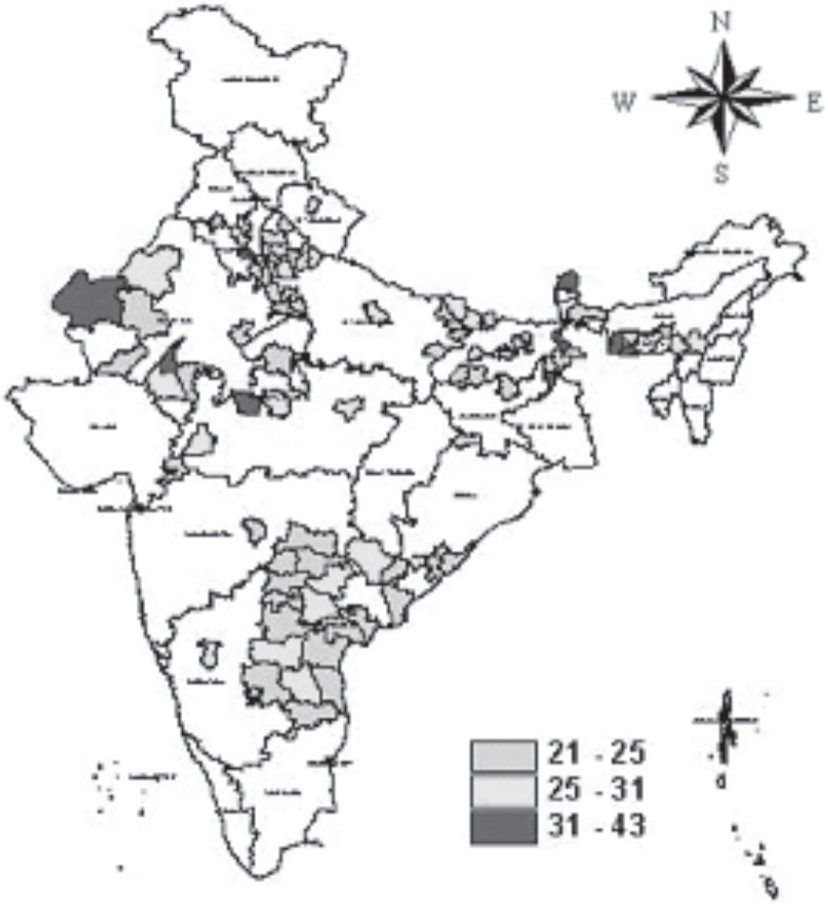
MAP 2: Districts with Upper Primary Gender gap > 20 per cent points (2004-05)



Dropout Rates: A District-Level Analysis

An analysis of the district-wise dropout rates worked out by the National Institute of Educational Planning and Administration (NIEPA) for 2003-04 indicates that there are districts in the country with a dropout rate of more than 20 per cent. These districts (see Map 3) are in the States of Meghalaya, Andhra Pradesh, Rajasthan Uttar Pradesh, Madhya Pradesh, Bihar and Jharkhand. Here again, the spatial distribution of districts with high dropout rates is quite clear.

MAP 3: Districts with high dropout Rates



An analysis of the available databases (mainly DISE and household surveys) indicates that while there is some reduction in the inter-State and inter-district infrastructure gaps, there has been no significant reduction in disparities in the enrolment and completion rates. Disparities in enrolment and retention in gender and social groups across States and districts have declined even more slowly, especially at the upper primary stage.

Given that different districts in the country are at different levels of educational infrastructure and outcomes, any analysis at the aggregate level –- whether at the National level or the State-level — conceals these regional or inter-district disparities.

Measuring Disparities and Deficits: Education Development Index (EDI)

The most important prerequisite for identifying areas that are lagging behind educationally and for assessing the progress in covering deficits in such pockets is the existence of reliable databases at disaggregated levels that provide information on key indicators of educational development.

A. Construction of Education Development-related Indices

Several dimensions of educational development can be included in an assessment of the status of geographical units. Some of the dimensions that can be used to measure educational status are: (a) School Infrastructure, (b) Students' Participation, (c) Teaching-Learning Process, and (d) Educational Attainments.

Some indicators that can be used for identifying the status of States, districts and blocks on these dimensions are as follows:

i. **Indicators for School Infrastructure** — gaps in physical access, requirement of classrooms, drinking water and toilets, and requirement for additional teachers.

ii. **Indicators for Participation** — age-specific enrolment rate, gender gap in enrolment, social category gaps in enrolment, student attendance.

iii. **Indicators for Teaching-Learning Process** — classroom environment, teaching methodology, teaching-learning materials, time-on-task of teachers and students.

i. **Indicators for Educational Attainments** — dropout rates, completion/survival rates, transition rates from primary to upper primary and secondary stages, learning assessment scores of students.

An ideal index of education development should reflect education outcomes. For this particular analysis, one has to develop separate indices for the status of various dimensions of education development as well as a consolidated "Education Development Index" (EDI) indicating the overall progress towards achievement of Universal Elementary Education (UEE).

The EDI constructed for this analysis is a summation of the following indices — input index, equity index and outcome index. The parameters used for this analysis and their definitions are described below:

A. Input Index: This index sums up the different indices that describe the extent of inputs — both physical and qualitative—including those related to access, infrastructure and human resources, i.e., teachers. These indices are:

1. **Access Index**: This summarizes the indicators related to primary school coverage (both in terms of area as well as the number of children in the age group of 6-10 years of age and the availability of upper primary (U. Primary) schools (in comparison with primary schools). It includes coverage of the following:

   i. Primary schools' coverage – an index using primary schools per 1000 child population of 6-10 years and number of primary schools per square km.

   ii. Ratio of number of upper primary schools to primary schools.

2. **Infrastructure Index:** This is an integration of indicators relating to the availability of classrooms, toilets and drinking water facility, at both the primary and upper primary levels. It covers the following:

   i. Percentage of classrooms available against requirement

   ii. Percentage of schools with common toilets

   iii. Percentage of schools with drinking water facility.

3. **Teacher Index:** The Pupil-Teacher Ratio (PTR) at the primary and upper primary levels together has been used for creating an index of teachers.

B. Equity Index: This index includes:

1. Girls' age-specific enrolment ratio (as a percentage of the girls in the 6-14 year age group enrolled in school on the basis of the Census 2001 data). This index also includes the female literacy rate of Census 2001 as a comparison to gauge the current level of girls' enrolment *vis-à-vis* the historical backlog.

C. **Outcome Index**: This index includes the following indicators relating to enrolment and completion rates:

1. Percentage of children enrolled (6-14 years) – Household survey
2. Enrolment in grade V/ Enrolment in grade I (Crude primary completion rate)
3. Enrolment in grade VIII/ Enrolment in grade I (Crude elementary completion rate)

The EDI construction is structurally presented in Figure 1.

Figure 1: Structural Representation of the EDI Index

Dimension	**Indicator**	**Dimension Indices**	**Sub-EDI Indicators**	
Access	Primary School Coverage	Access Index	INPUT INDEX	EDUCATION DEVELOP-MENT INDEX
	Primary: U. Primary ratio			
Infrastructure	Classroom availability	Infrastructure Index		
	Toilets availability			
	Drinking water availability			
Teacher	PTR	Teacher Index		
Enrolment	6-14 years in school	Enrolment Index	OUTPUT/ OUTCOME INDEX	
Completion	Primary school completion U. Primary completion	Completion Index		
Equity	Girls' enrolment	Equity Index	EQUITY INDEX	
	Female literacy			

An outcome index should logically include indicators for assessing the internal efficiency of schooling as well as indicators measuring student achievement levels. Although various parameters for determining school efficiency such as promotion, repetition and dropout rates were considered, they could not be used in the final analysis because of the inconsistency of the time-series DISE data available for several States and districts. Nevertheless, a crude measure of progression, i.e., the ratio of enrolment in the terminal grade to the enrolment in the entry grade in the same year has been used[1]. The data used for EDI construction in this paper is compiled from a variety of sources, including District Information System for Education (DISE)[2]

, State-specific household surveys carried out under the SSA and the 2001 Census. The data on all education indicators relates to the year 2003-04 (TSG, EDCIL, 2005). The EDI analysis has been carried out for 500 districts in 19 States. The districts located in the North-Eastern part of India and in Union Territories (UTs) were not included in this analysis due to the availability of only incomplete data and their non-comparability with other districts.

State and District-level Variations in the EDI

Himachal Pradesh (HP) tops the States with the best input-related indices (especially the access and teacher-related ones)[3], while Kerala leads the States in the equity and outcome-related indices. Overall, Himachal Pradesh, Kerala and Uttaranchal top the EDI rankings. As expected, Bihar, Jharkhand and Uttar Pradesh (UP) figure at the bottom of the EDI rankings. However, within each State, various districts vary widely in terms of EDIs, rendering an overall State-level EDI quite meaningless. For example in HP, the EDI of the best district is 0.77 while that of the worst district is 0.54. Similarly, within Bihar, the EDIs of the best and worst districts are 0.17 and 0.32, respectively. District-level variations in EDI are the least in Kerala wherein the best and worst districts have EDIs of 0.68 and 0.58, respectively (see Table 33).

If we analyze the ranks of the 500 districts for the various indices, the inter-district variations within each State become even starker. The States of Bihar, Uttar Pradesh and Jharkhand account for more than 80 per cent of the districts belonging to the bottom 100 in terms of the overall input index. Similarly, in the outcome index rankings, the top 50 districts are from Kerala (13 districts), TN (12), HP (7), Karnataka (8), Maharashtra (4) and Andhra Pradesh and Punjab (3 each). The lowest ranking districts are mainly from States like Bihar and Jharkhand. Needless to say, there are wide inter-district variations not only across the country, but even within States (see Table 34).

Table 38: State-level Education Development-related Indices and the Worst and Best District-level Educational Indices within States

	State-level Indices				District-level Indices - Indices of Best and Worst Districts							
					Input index		Equity index		Outcome index		ED index	
	Input Index	Equity Index	Outcome Index	EDI Index	Worst	Best	Worst	Best	Worst	Best	Worst	Best
Andhra Pradesh	0.51	0.16	0.70	0.56	0.25	0.46	0.09	0.65	0.49	0.83	0.34	0.57
Assam	0.60	0.50	0.28	0.45	0.21	0.43	0.48	0.78	0.30	0.58	0.28	0.51
Bihar	0.10	0.24	0.01	0.07	0.09	0.18	0.21	0.63	0.17	0.42	0.17	0.32
Chhattisgarh	0.31	0.43	0.27	0.30	0.20	0.27	0.09	0.74	0.16	0.60	0.18	0.45
Gujarat	0.50	0.65	0.56	0.54	0.27	0.40	0.53	0.81	0.32	0.69	0.37	0.55
Haryana	0.36	0.60	0.54	0.47	0.21	0.34	0.47	0.82	0.44	0.77	0.34	0.55
Himachal Pradesh	0.73	0.81	0.90	0.82	0.31	0.74	0.68	0.88	0.69	0.92	0.54	0.77
Jharkhand	0.14	0.37	0.11	0.15	0.12	0.23	0.27	0.72	0.24	0.49	0.21	0.39
Karnataka	0.49	0.68	0.82	0.66	0.25	0.36	0.56	0.89	0.57	0.97	0.43	0.68
Kerala	0.56	0.91	0.99	0.79	0.32	0.40	0.82	0.96	0.77	0.97	0.58	0.68
Maharashtra	0.50	0.73	0.69	0.61	0.25	0.39	0.51	0.88	0.34	0.83	0.32	0.62
Madhya Pradesh	0.32	0.59	0.61	0.48	0.16	0.30	0.31	0.82	0.40	0.79	0.32	0.54
Orissa	0.36	0.58	0.48	0.44	0.20	0.29	0.43	0.82	0.34	0.68	0.30	0.51
Punjab	0.54	0.38	0.76	0.62	0.27	0.37	0.36	0.75	0.50	0.92	0.41	0.63
Rajasthan	0.40	0.54	0.39	0.41	0.19	0.38	0.38	0.78	0.28	0.64	0.28	0.51
Tamil Nadu	0.39	0.77	0.85	0.64	0.22	0.44	0.70	0.94	0.65	0.88	0.50	0.66
Uttar Pradesh	0.25	0.46	0.25	0.27	0.16	0.32	0.35	0.81	0.16	0.59	0.22	0.47
Uttaranchal	0.65	0.74	0.59	0.63	0.25	0.42	0.68	0.84	0.46	0.75	0.42	0.57
West. Bengal	0.38	0.62	0.40	0.41	0.13	0.43	0.37	0.87	0.22	0.63	0.20	0.53

Table 39: Distribution of the Top and Bottom 100 Districts across States on Various Education Development-related Indices

	Total No. of Districts	Input index		Outcome index		Equity index		ED index	
		Top 100 districts	Bottom 100 districts	Top 100 districts	Bottom 100 districts	Top 100 districts	Bottom 100 districts	Top 100 districts	Bottom 100 districts
Andhra Pradesh	23	1		7			17	3	
Assam	23	5			5	1	2		2
Bihar	37		37		35		25		37
Chhattisgarh	13				2		3		3
Gujarat	25	14			1	6		4	
Haryana	17	1		2		2	1	3	
Himachal Pradesh	12	12		10		10		12	
Jharkhand	20		17		17		11		18
Karnataka	27	13		20		7		20	
Kerala	14	14		14		14		14	
Maharashtra	34	13		9	2	18	1	12	1
Madhya Pradesh	45		8	5		4	2	2	1
Orissa	30				5	6	6		2
Punjab	17	10		9			8	8	
Rajasthan	32	3	2		8	2	2		7
Tamil Nadu	29	1		23		17		19	
Uttar Pradesh	70	1	29		22	1	20		26
Uttaranchal	13	11		1		7		2	
West Bengal	19	1	7		3	5	2	1	3

It is also clear, that the districts which are better-off in terms of inputs are also the ones with better output and outcome indicators. The correlation matrix in Table 35 shows that educational inputs and educational outcomes are highly correlated.

Table 40: Correlation Matrix

Indices of:	Access	Infra-structure	Teacher	Input	Outcome	Equity
Access	1					
Infrastructure	0.3300	1				
Teacher	0.4256	0.2888	1			
INPUT	0.7137	0.7773	0.7491			
OUTCOME	0.4119	0.5720	0.4091	0.6317	1	
EQUITY	0.4157	0.4618	0.3434	0.5459	0.6527	1

A. Socio-economically Disadvantaged Districts and EDIs

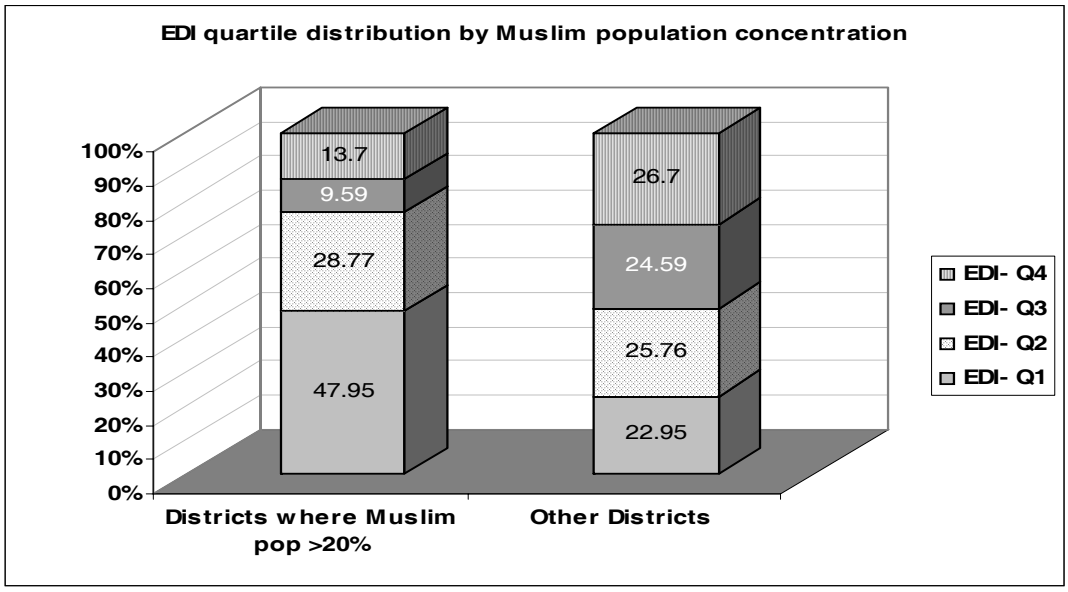
An analysis of the EDIs (as also other related sub-components, especially the Input Index) of districts identified as Special Focus Districts (SFDs) by the MHRD, i.e. districts with a high concentration of socially disadvantaged groups like Scheduled Castes (SCs), Scheduled Tribes (STs) and Muslims as well as districts with more than 50,000 out-of-school children, was undertaken to understand the relationship between social and economic disadvantage, on one hand, and educational development, on the other.

Districts with sizable SC populations are highly dispersed across the EDI and Input Index quartiles and percentiles. In the case of districts with sizable ST populations , the Input Index distribution shows an equitable distribution, indicating that these districts are not deprived specifically of inputs such as access, infrastructure and teachers. However, in the Outcome Index and EDI quartile distribution, more than 80 per cent of these ST districts belong to the lowest two quartiles, indicating that while inadequate infrastructure (input) is not a serious problem in these districts, translating these inputs into outcomes has remained a challenge. Similarly, more than two-thirds of the districts

with high Muslim concentration are in the lowest two quartiles of the Input Index, and more than 77 per cent of them are in the lowest two quartiles of the Outcome Index and EDIs (see Graph 1).

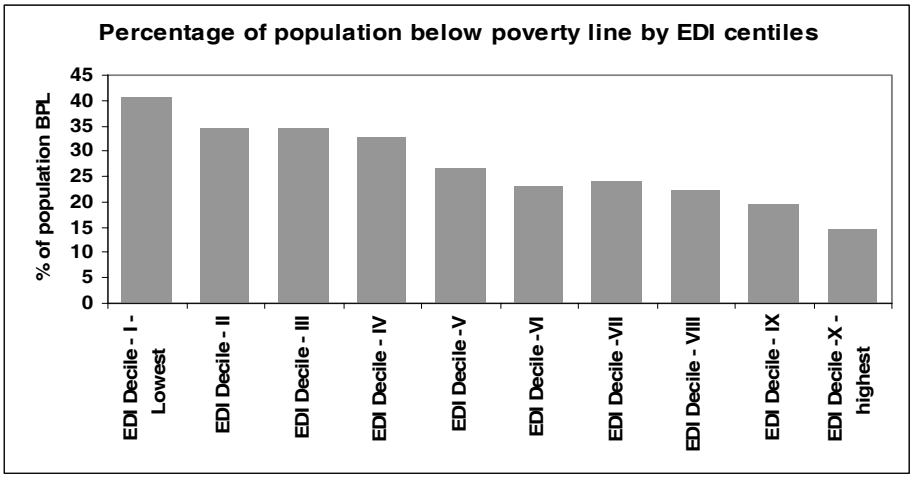
All the districts with more than 50,000 out-of-school children fall in the lower two quartiles of the EDI, and more importantly, 75 per cent of these districts are among the 100 districts of the country with the lowest EDIs. The same pattern is observed in an analysis of the status of these districts for the Input Index. Interestingly, more than 75 per cent of the districts with more than 50,000 out-of-school children are the districts with more than 25 per cent of the BPL population.

Graph 1



A similar analysis was also undertaken for EDIs with a high proportion of BPL population. Around 70 per cent of the districts with more than 25 per cent of the BPL population fall under the lowest two quartiles of input, outcome and overall EDIs (see Graph 2). More than half the districts with a Muslim population of more than 20 per cent are also the districts with a BPL population of more than 25 per cent.

Graph 2



The above analysis indicates that there is a significant correlation between social disadvantage, economic deprivation and educational backwardness. This corroborates the commonly held view point that various kinds of inequalities interact with and reinforce each other. Multidimensional deprivation operates to confine some geographical pockets and social groups in 'inequality traps'. The cause for worry is that these disadvantaged districts and blocks within a district also have relatively poorer school infrastructure. This indicates that various schemes and programmes that provide funds for improving school infrastructure have continued to neglect these areas over the years.

3.9.3 Conclusions and Suggestions

The objective of reducing disparities needs to be brought centre-stage if the goal of universal elementary education is to be realized. The EDI is just one tool that can be used to identify areas with low educational indicators of inputs and outcomes and can help to highlight educational disparities. It can also help track changes in the status of different geographical units across time. Following are some specific suggestions that could help in pursuing a strong equity orientation in our quest for universal elementary education:

" The analysis of district-level indices (EDIs) underlines the significant variations across districts within a State and the country. As a corollary, it can be said that the 'real' needs of different pockets in the country vary widely. Thus, districts and blocks with a large infrastructure gap, greater shortage of teachers, high proportion

of children not attending schools, high dropout rates or high gender gaps in enrolment, would need proportionately higher financial resources to make up for the greater distance they need to cover for achieving universalization of elementary education. It is not our argument that all problems of educational backwardness can be addressed by higher financial investment. But, higher financial allocations under various CSSs or State Plan Schemes for districts and blocks that have clearly identified 'greater needs', would constitute the first step in ensuring an equitable approach to the problem of large educational disparities in our country.

" The Sarva Shiksha Abhiyan (SSA) offers a great opportunity to target educationally backward districts, blocks and urban slums by focusing attention and resources on these pockets and insisting on 'need-based' planning for addressing the specific problems of these areas.

" A major shift in the process of planning for the elementary education sector would require evidence-based targeting of geographical units like districts, blocks and panchayats, and specific social groups that are lagging behind. The use of evidence-based criteria to identify areas/social groups that need greater attention and resources would, in turn, require maintenance of reliable databases for key indicators on a regular basis. The databases and criteria would have to be well-publicized and available for public scrutiny. No initiative for affirmative action would be defensible if the identification of disadvantaged areas is not done in a transparent manner. The district is actually too big a unit for identification as an area that requires special attention and measures. Each State and UT would need to identify blocks, panchayats and villages/towns that deserve differential treatment on account of low educational indicators. Such an aggressive equity-oriented approach is likely to threaten the present arrangements of discretion and irrational allocations of funds or targets across districts, blocks or legislative assembly constituencies. The analysis and use of quantitative information, e.g., schoolwise physical infrastructure; schoolwise availability of teachers; identification of areas with concentration of socially and educationally marginalized groups like SCs, STs, religious or linguistic minorities; disaggregated analysis of children not attending school; and repetition and dropout rates, needs to become an integral part of the planning process. A culture of analyzing and interpreting these databases and using the analysis for planning and prioritizing interventions would need to be nurtured at all levels.

" There is a need to institutionalize a tradition of conduct and use of research to identify the problems and possible strategies for pockets with low educational attainments. The implementation of straitjacketed interventions of a routine nature is not likely to bring about any significant change in the educational status of these pockets. This would require a flexible approach and guidelines of Centrally Sponsored Schemes and State Government initiatives to be able to provide for context-specific interventions. An increase in untied funds to these districts or blocks would help in the implementation of such context-specific interventions.

" The understanding that deprivation is multidimensional and that inequalities of different kinds reinforce each other should lead to the development of more holistic interventions for some very deprived pockets and social groups that are not confined to the education sector alone. Development of education should be seen as a part of the overall process of human development including poverty reduction, health, nutrition, and social and political empowerment. The presently segmented frameworks of our CSSs need to be made more flexible and convergent to allow for such inclusive initiatives in the pockets identified as being severely deprived. Convergence between CSSs like the Sarva Shiksha Abhiyan (SSA), Backward Regions Grant Fund (BRGF), Finance Commission Grants, schemes of drinking water and sanitation, and adult literacy at the State and district-level, would also help in enhancing the effectiveness of the interventions in such educationally backward districts.

" The districts and blocks that have low EDIs also have a weaker administrative set-up. Merely providing more financial resources to such areas would not help improve the educational status. It is likely that there would be under-utilization of the allocated resources in such districts. State Governments could take decisions to place senior, sensitive, result-oriented and dynamic officers in these districts and ensure much higher levels of attention and supervision in these areas. Such areas could receive priority in all processes of review. The involvement of NGOs should also be stressed in these areas.

The reduction of disparities in elementary education across regions and social/religious groups is a daunting challenge and necessitates higher resource allocations, flexible approaches and greater attention to the districts and pockets identified as educationally backward.

3.10 Regional Disparity in Central Government Funding for Providing Quality Higher Education in Science and Technology

According to the CABE committee report, "…a .Quality and equity dimension of higher education also needs serious attention. Despite some improvement in equity over the decades, higher education is still not accessible to the poorest groups of the population. Interregional variations in quality, quantity, and equity dimensions of higher education are marked".

3.10.1 Which are these Deprived States?

The following table shows the human deprivation index for all the States of India based on data collected and tabulated in 2001.

Data for Jharkhand, Chhattisgarh, and Uttaranchal are included in Bihar, Madhya Pradesh, and Uttar Pradesh. Based on the data collected in 2001, the five most deprived States are Orissa, Madhya Pradesh, Bihar, Uttar Pradesh, and Assam. Based on the poverty index alone, the five poorest States are Orissa, Bihar, Madhya Pradesh, Sikkim, and Assam.

We have calculated an index to measure the regional disparity in terms of investments in building centers of excellence for higher education across the States of India. The "Funding Disparity Index" for a State is the ratio of percentage of funding provided by the Central Government to the State for maintaining centers of higher education divided by the percentage in terms of population. Assuming at a macro level, the index with a value of 1 is right level of funding, greater than 1 is more funding than normal and less than 1 is less funding. Since it should be 1 across the country, any State with an index greater than 1 creates regional disparity with a State with the index less than 1.

Data for Chandigarh is included with Punjab and Haryana. We have not included data for some of the Union Territories and North-Eastern States as we do not have reliable data for some of the union territories and investment in North Eastern States have been made only for last few years. The data are approximate.

Based on the "Funding Disparity Index", the Central Government has made the least investment in Rajasthan, Orissa, Gujarat, Bihar, and Kerala in establishing centers of excellence in higher education. Based on the "Funding Disparity Index" and "Deprivation Index", Orissa and Bihar are the two States where the Central Government has made the least investments in infrastructure and no doubt Orissa and Bihar are the two poorest States of India.

Table 41: Human deprivation index for all the States of India

Sl.No	States/UT	Poverty line	Illiteracy	Deprivation Index	Rank
1	Andhra Pradesh	15.77	38.89	40.21	9
2	Arunachal Pradesh	33.47	45.26	40.89	7
3	Assam	36.09	35.72	49.93	5
4	Bihar	42.60	52.47	54.02	3
5	Goa	4.40	17.68	19.35	27
6	Gujarat	14.07	33.57	37.21	12
7	Haryana	8.74	31.41	36.38	16
8	Himachal Pradesh	7.63	24.09	31.90	18
9	Jammu and Kashmir	3.48	45.54	31.34	19
10	Karnataka	20.04	32.96	36.99	13
11	Kerala	12.72	9.08	12.59	30
12	Madhya Pradesh	37.43	35.92	56.77	2
13	Maharashtra	25.02	28.73	34.24	17
14	Manipur	28.54	31.13	28.21	21
15	Meghalaya	33.87	36.69	40.85	8
16	Mizoram	19.47	11.51	17.98	29
17	Nagaland	32.67	32.89	N/A	N/A
18	Orissa	47.15	36.39	60.50	1
19	Punjab	6.16	30.05	30.06	20
20	Rajasthan	15.28	38.97	45.74	6
21	Sikkim	36.55	30.32	39.61	10
22	Tamil Nadu	21.12	26.58	23.54	23
23	Tripura	34.44	29.36	36.59	15
24	Uttar Pradesh	31.15	42.64	52.92	4
25	West Bengal	27.02	30.78	36.92	14
26	Andaman & Nicobar	20.99	18.81	23.06	24
27	Chandigarh	5.75	18.24	18.65	28
28	Dadra & Nagar Haveli	17.14	39.97	39.36	11
29	Daman & Diu	4.44	18.91	N/A	N/A
30	Delhi	8.23	18.18	25.80	22
31	Lakshadweep	15.60	12.48	19.36	26
32	Pondichery	21.67	18.51	20.39	25
33	India	26.10	34.80	43.96	

Table 42: Regional disparity in terms of investments in building centers of excellence for higher education

No	States/UT	Deprivation Index	Central Government Funds in 2005 to maintain the Centers of Excellence in Higher Education (approximate) in Crores	Per Capita Funding	Funding Disparity Index	Funding Disparity Index Rank
1	Andhra Pradesh	40.21	124.6	16.05	0.86	10
2	Assam	49.93	214.0	77.72	4.19	17
3	Bihar	54.02	58.99	5.41	0.29	4
4	Gujarat	37.21	25.63	4.87	0.26	3
5	Haryana	36.38	18.85	8.52	0.46	7
6	Himachal Pradesh	31.90	21.18	33.76	1.82	16
7	Jammu & Kashmir	31.34	15.38	14.51	0.78	9
8	Karnataka	36.99	136.63	25.13	1.35	14
9	Kerala	12.59	25.63	7.90	0.43	5
10	Madhya Pradesh	56.77	67.99	8.50	0.46	6
11	Maharashtra	34.24	172.04	17.09	0.92	11
12	Orissa	60.50	15.68	4.15	0.22	2
13	Punjab	30.06	33.55	13.34	0.72	8
14	Rajasthan	45.74	15.38	2.59	0.14	1
15	Tamil Nadu	23.54	112.77	17.79	0.96	12
16	Uttar Pradesh	52.92	382.93	21.24	1.10	13
17	West Bengal	36.92	232.71	28.10	1.51	15
18	Delhi	25.80	262.83	177.12	9.54	18

3.10.2 Is the Regional Imbalance or Disparity Shrinking?

During the NDA regime, the Central Government decided to create the Indian Institute of Information Technology to impart quality education in the field of information technology. The three centrally funded IIIT are in Allahabad (Uttar Pradesh), Gwallior (Madhya Pradesh), and Jabalpur (Madhya Pradesh). In terms of "Funding Disparity Index", Madhya Pradesh is 6th and Uttar Pradesh is 13th.

During the NDA regime, the Government had established committee under Dr. S.K. Joshi to recommend the next IITs, which by all internal norms are the very best institutes in India. The original list includes Institute of Technology, Benaras Hindu University, Varanasi (Uttar Pradesh), Punjab Engineering College, Chandigarh (Punjab), Government Engineering College, Thiruvananthapuram (Kerala), NIT Suratkal (Karnataka), and a brand new IIT to be set up in Besar (Andhra Pradesh). In terms of "Funding Disparity Index", Kerala is 5th, Punjab is 8th, Andhra Pradesh is 10th, Uttar Pradesh is 13th, and Karnataka is 14th.

When the NDA Government was replaced with UPA, the same committee under Dr. S.K. Joshi replaced their original five sites with seven and the list include Institute of Technology, Benaras Hindu University, Varanasi (Uttar Pradesh), University College of Engineering and College of Technology, Osmania University, Hyderabad (Andhra Pradesh), Bengal Engineering College, Howrah (West Bengal), Jadavpur University's Engineering and Technology Departments, Jadavpur (West Bengal), Zakir Hussain College of Engineering and Technology, Aligarh Muslim University, Aligarh (Uttar Pradesh), Andhra University College of Engineering, Vishakhapatnam (Andhra Pradesh), and Cochin University of Science and Technology (CUSAT), Kochi (Kerala). Two more IITs for West Bengal (already have one at Kharagpur), two more IITs for Uttar Pradesh (already have one at Kanpur), two IITs for Andhra Pradesh, and one for Kerala. Again in terms of "Funding Disparity Index", Kerala is 5th, Andhra Pradesh is 10th, Uttar Pradesh is 13th, and West Bengal is 15th.

Only three colleges out of these seven recommended (ITBHU, Bengal Engineering College, and Jadavpur University) offer some of the postgraduate and doctorate programs under TEQIP (Technical Education Quality Improvement Program, also known as the QIP program). The four remaining colleges do not offer any graduate program under TEQIP. One must question the committee under Dr. Joshi to answer what criteria his committee used to select these seven institutes. Unfortunately, NIT Rourkela in one of the most

deprived States in the country offers some of the postgraduate and doctorate programs under TEQIP and has been ranked higher than many of these seven institutes by various professional societies (e.g., Dataquest, International Data Corporation, and Nasscom).

It is interesting to note that the same committee selected different sites for IITs under two different governments. The role of politics in selecting site needs further analysis and cannot be disputed.

In 2006-2007 budget, the UPA Government has allocated Central Universities of Calcutta, Mumbai and Madras a grant of Rs. 50 crores each to mark the beginning of their 150th year celebrations, with another Rs. 50 crores each to be given at the conclusion of the year; Punjab Agricultural University, Ludhiana to get grant of Rs. 100 crores; status of an autonomous National Institute to be accorded to Rajiv Gandhi Centre for Biotechnology, Thiruvananthapuram, Kerala. Again, in terms of "Funding Disparity Index", Kerala is 5th, Punjab is 8th, Maharastra is 11th, and West Bengal is 15th.

In the 2005-2006 budgets, the UPA Government had allocated Indian Institute of Science (IISc), Bangalore an additional grant of Rs. 100 crores to make it a world class institute. In terms of "Funding Disparity Index", Karnataka is 14th.

During the NDA Government, the Central Government has decided to establish four National Institute of Sciences in Pune (Maharashtra), Chennai (Tamil Nadu), Bhubaneswar (Orissa), and Allahabad (Uttar Pradesh). When the NDA Government was replaced with UPA, the NIS scheme was repackaged at IISER and the committee under Prof Rao recommended Calcutta and Pune. So the Government decided to move a proposed institute from Orissa with "Funding Disparity Index" of 2nd to a State where the "Funding Disparity Index" is 15th. Later the UPA Government has decided to build a third IISER in Chandigarh. One must ask if the decision to grant a new IISER was recommended by the committee under Prof. Rao or was it a political decision.

While the existence of regional imbalance or disparity in the field of higher education is highlighted on the "Indian Science Report" and noted by the President and Prime Minister, it needs explanation how the same leaders agreed to move a proposed institute from Orissa with "Funding Disparity Index" of 2nd to a State where the "Funding Disparity Index" is 15th.

The regional disparity or imbalance in the field of higher education has been detrimental to the growth of the deprived States. Many of the Centers of Excellence in Higher

Education (or Institutes of National Importance) are not fully under Central Government control. For example, most of the faculties of Central University at Calcutta are exclusively recruited from West Bengal. Admissions to the institutions of higher education are often through local level examinations only (Viswa Bharati, Guwahati University, etc.). Students or professionals from the deprived States do not have many opportunities to benefit from the central universities or other institutes of national importance.

According to the report "Regional Growth And Disparity In India: A Comparison of Pre and Post-Reform Decades" by Mr. B.B. Bhattacharya and Mr. Sakthivel, the growth rate of SDP (State Domestic Product) went down for the States Assam, Bihar, Orissa, Punjab, Rajasthan, and Uttar Pradesh in 1990-2000. Since both Assam and Punjab went through a long period of internal turmoil, there are only three States where the growth rate in of SDP in 1990-2000 is slower than 1980-1990.

Table 43: Regional Growth and Disparity In India in Pre-Reform Decades

State	Deprivation Index	Funding Disparity Index	Growth Rate of SDP in 1980-1990	Growth Rate of per Capita SDP in 1980-1990	Population Growth Rate in 1980-1990	Inflation Rate in 1980-1990
Andhra Pradesh	40.21	0.86	4.81%	2.56%	2.19%	9.75%
Assam	49.93	4.19	3.91%	1.74%	2.14%	10.77%
Bihar	54.02	0.29	5.20%	2.97%	2.16%	8.86%
Gujarat	37.21	0.26	5.71%	3.62%	2.02%	8.09%
Haryana	36.38	0.46	6.68%	4.12%	2.46%	7.07%
Himachal Pradesh	31.9	1.82	6.10%	4.36%	1.82%	6.55%
Karnataka	36.99	1.35	6.10%	4.00%	2.03%	8.39%
Kerala	12.59	0.43	4.50%	3.04%	1.42%	9.30%
Madhya Pradesh	56.77	0.46	5.18%	2.74%	2.38%	9.53%
Maharashtra	34.24	0.92	5.85%	3.60%	2.29%	8.10%
Orissa	60.5	0.22	5.14%	3.96%	1.82%	7.47%
Punjab	30.06	0.72	7.17%	3.19%	1.88%	8.30%
Rajasthan	45.74	0.14	7.17%	4.41%	2.64%	8.00%
Tamil Nadu	23.54	0.96	6.35%	4.79%	1.48%	6.91%
Uttar Pradesh	52.92	1.1	5.88%	3.46%	2.33%	8.16%
West Bengal	36.92	1.51	5.20%	2.93%	2.20%	8.21%

Table 44: Regional Growth and Disparity in India in Post-Reform Decades

State	Deprivation Index	Funding Disparity Index	Growth Rate of SDP in 1990-2000	Growth Rate of per Capita SDP in 1990-2000	Population Growth Rate in 1990-2000	Inflation Rate in 19980-2000
Andhra Pradesh	40.21	0.86	5.12%	3.62%	1.72%	9.18
Assam	49.93	4.19	2.47%	0.65%	2.13%	8.49
Bihar	54.02	0.29	3.46%	1.86%	2.14%	7.77
Gujarat	37.21	0.26	8.28%	6.38%	1.76%	8.09
Haryana	36.38	0.46	6.71%	4.42%	2.19%	8.81
Himachal Pradesh	31.9	1.82	6.91%	5.11%	1.71%	10.88
Karnataka	36.99	1.35	7.07%	5.27%	1.49%	8.43
Kerala	12.59	0.43	6.00%	4.78%	1.35%	10.54
Madhya Pradesh	56.77	0.46	5.45%	3.22%	1.98%	7.75
Maharashtra	34.24	0.92	6.80%	5.04%	1.97%	8.65
Orissa	60.5	0.22	3.60%	2.12%	1.81%	9.76
Punjab	30.06	0.72	4.63%	2.71%	1.91%	9.53
Rajasthan	45.74	0.14	6.46%	4.09%	2.06%	8.69
Tamil Nadu	23.54	0.96	6.65%	5.40%	0.98%	6.89
Uttar Pradesh	52.92	1.1	4.33%	1.98%	1.75%	8.48
West Bengal	36.92	1.51	7.24%	5.41%	1.72%	8.35

It is not coincidence that the two States with the Highest Deprivation Index and the lowest Funding Disparity Index had the largest negative growth rate of SDP in a post liberal economy. In a controlled centrally planned economy (as in 1980-1990), the growth rate of SDP is based on the Government controlled economy (on what one can produce and what one can buy). However, as we have reviewed before World Bank aptly suggests that in any modern society, infrastructure plays a pivotal role often decisive role in determining the overall productivity and development of a country's economy, as well as the quality of life of its citizens. Access to quality higher education in Science and Technology is the primary catalyst for mastering these activities and services and the key

to building the right infrastructure. Access to quality higher education in Science and Technology is a key human right for citizens in globalized economies or in post liberalized economies. The health of a nation depends on, among other factors, the health of the State of its Science and Technology. Investment in higher education makes a vital contribution to accelerate the process and rate of economic growth, through increasing human productivity. Government funding must continue to be an essential and mandatory requirement for support to higher education. The Government/State must continue to accept the major responsibility for funding.

In summary, even in a post liberalized economy, States with a higher Funding Disparity Index have a higher probability to succeed and can have resources to provide a better opportunity to their citizens. A State with a higher Funding Disparity Index (such as Uttar Pradesh) does not guarantee success in a post liberalized economy because politics is used to decide the locations for centers of excellence. It is unfortunate that politics has been and still is used to play a major role even in the world of education. In a post-liberalized economy, a State with lower Funding Disparity Index has almost no chance to succeed in a market economy. Basic human rights have been denied to the citizens of States with the highest Deprivation Index and the lowest Funding Disparity Index.

The two States with the highest deprivation index and the least Funding Disparity Index are Orissa and Bihar. Basic human rights have been denied to the citizens of Orissa and Bihar. The UPA Government agrees that there exists a wide disparity or regional imbalance in the field of higher education in India and yet, has contributed the most to expand the gap to a record highest level.

We recommend that the Central Government adopt a similar formula for Orissa and Bihar as it has adopted for the North-Eastern States. In the budget, the North Eastern States get 10% under each expense category. The modified Gadgil formula and the Consensus approach have not worked to alleviate the utter poverty in Orissa and Bihar. Orissa and Bihar need to be included with the North Eastern States and the 10% quota need to be increased to at least 20% to bring Orissa and Bihar to mainstream of development. The Central Government must create the new IITs, IIITs, and IIMs in Orissa, Bihar, and Rajasthan. The Central Government needs to allocate additional funding for Higher Education in Science and Technology as recommended in the "India Science Report" and CABE Committee. A significant tax incentive should be offered for private investment in higher education.

3.11 Inter-State Comparison of Human Development Index (HDI)

The first ever National Human Development Report (NHDR) brought out by the Planning Commission of India has estimated the value of Human Development Index (HDI) of the States and the Union Territories for the years 1981, 1991 and 2001. The HDI is a composite of variables capturing attainments in three dimensions of human development, viz., economic, educational and health care. The HDI for the country as a whole improved from 0.302 in 1981 to 0.472 in 2001. Kerala remains at the top of the NHDR table with an HDI of 0.638 in 2001 while Orissa is almost at the bottom of the list, with an index of 0.267 in 1981, 0.345 in 1991 and 0.404 in 2001. Bihar has the lowest HDI value with 0.367 for 2001. Indian States, which have done well in terms of HDI in 2001, are Punjab (0.537), Tamil Nadu (0.531) and Maharashtra (0.523).

Table 45: Human Development Index (Values) for 1981and 2001: Inter-State Comparison

Sl.No	States	HDI value, 1981	HDI value, 2001
1	Kerala	0.500	0.638
2	Punjab	0.411	0.537
3	Himachal Pradesh	0.398	NA
4	Tamil Nadu	0.343	0.531
5	Maharashtra	0.363	0.523
6	Haryana	0.360	0.509
7	Gujarat	0.360	0.479
8	Karnataka	0.346	0.478
9	West Bengal	0.305	0.472
10	Jammu and Kashmir	0.337	NA
11	Andhra Pradesh	0.298	0.416
12	Assam	0.272	0.386
13	Rajasthan	0.256	0.424
14	Orissa	0.267	0.404
15	Madhya Pradesh	0.245	0.394
16	Uttar Pradesh	0.255	0.388
17	Bihar	0.273	0.367
18	All India	0.302	0.472

Note: No estimate was made for Himachal Pradesh and Jammu and Kashmir in 2001.
Source: Indira Gandhi Institute of Development Research, India Development Report 2004-05 (New York: Oxford University Press, 2005).

While carefully analyzing Table 45, it may be observed that during the last twenty years from 1981 to 2001, the maximum amount of increase in HDI value was in Tamil Nadu, as it ranked at 8th position in 1981 and in 2001 its rank shifted to 3rd position. Moreover, its HDI value shifted from 0.343 in 1981 to 0.531 in 2001, with almost 188 points increase in HDI value. During the last twenty years, Bihar Disparities in Development, Status of Women and Social Opportunities witnessed the slowest growth as its HDI value rose to only 94 points and remained at the bottom position.

3.12 Inter-State Comparison of Status of Women

Inequality between men and women is one of the most crucial disparities in many societies, and this is particularly so in India. Differences in female and male literacy rates are one aspect of this broader phenomenon of gender-based inequality in India. In much of the country, women tend in general to fare quite badly in relative terms compared with men, even within the same families. This is reflected not only in such matters as education and opportunity to develop talents, but also in the more elementary fields of nutrition, health, and survival. Indeed, the mortality rates of females tend to exceed those of males until the late twenties, and even the late thirties in some States, and this - as known from the experiences of other countries - is very much in contrast with what tends to happen when men and women receive similar nutritional and health care (Sen, 1992). One result is a remarkably low ratio of females to males in the Indian population compared with the corresponding ratio not only in Europe and North America, but also in sub-Saharan Africa. The problem is not, of course, unique to India, but it is particularly serious in this country, and certainly deserves public attention as a matter of major priority (Dreze and Sen, 1995: 140).

Thus, for comparing status of women in various States of India, different variables such as female literacy, sex ratio, maternal mortality rate, percentage of anemic women, married women who participated in household decisions, women who have ever experienced spousal violence and gender disparity index for various States have been taken into account.

3.12.1 Female Literacy

The problem of illiteracy is further aggravated by social constraints, which inhibit female literacy and educational development of women. Inequality between genders is one of the most crucial and yet one of the most persistent disparities in India, where differences in female and male literacy rates are glaring, more so in the rural areas and among the disadvantaged sections of society. Since independence, girl's education has been a prime

agenda for national development. However, when India attained independence 60 years ago, it was a formidable challenge that the new government had to face. The national Female Literacy Rate was alarmingly low at 8.9 per cent; Gross Enrolment Ratio (GER) for girls was 24.8 per cent at primary level and 4.6 per cent at the upper primary level (in the 11-14 years age group). Social and cultural barriers to education of women and lack of access to organized schooling were the issues to be addressed immediately after independence.

Significant progress has been made in the field of female literacy, which has been increasing at a faster rate as compared to male literacy from 1981 onwards. Consequently, the male-female literacy differential at 26.62 percentage points in 1981 was reduced to 24.84 percentage points in 1991, which has further been reduced to 21.6 in 2001, when growth in female literacy was higher at 14.41 percentage points as compared to corresponding figure for males at 11.17. All States have registered an increase in literacy rates and 60 per cent male literacy has been achieved without exception (Census of India, 2001).

Census of India 2001 indicates that the gender gap in literacy has come down for the country from 24.8 percentage points in 1991 to 21.7 percentage points in 2001. Now the male literacy is 76.0 per cent and female literacy is 54.3. The gender gap in literacy is as low as 6.3 percentage points in Kerala and as high as 32.1 percentage points in Rajasthan. There appears to exist a strong inverse relationship between the gender gap in literacy and the status of women in society. Also, there is a fairly well established inverse Disparities in Development, Status of Women and Social Opportunities empirical relationship between the female literacy and TFR. The national as well as international experience is that with higher female literacy rate, birth rate comes down irrespective of the social backgrounds, religious beliefs and income levels.

3.12.2 Sex Ratio

India has an exceptionally low female-male ratio or sex ratio. This problem is not, of course, equally acute in every region of India. There are large variations in sex ratio between different States. It is particularly low in large parts of North India, especially the North-Western States (e.g. 861 in Haryana, 874 in Punjab, 898 in Uttar Pradesh and 900 in Jammu and Kashmir), and comparatively high in the South (e.g., 986 in Tamil Nadu, 978 in Andhra Pradesh and 964 in Karnataka), according to 2001 Census of India (see Table 38). In Kerala, the female-male ratio is well above unity; in fact, it is as high as 1058, a figure comparable to that of Europe and North America.

These regional patters of sex ratios are consistent with what is known of the character of gender relations in different parts of the country. The North-Western States, for instance,

Table 46: Male-Female Literacy Rate (2001): Inter-State Comparison

States	Persons	Male	Female	Male-Female Gap
Andhra Pradesh	61.1	70.9	51.2	19.7
Gujarat	70.0	80.5	58.6	21.9
Haryana	68.6	79.3	56.3	23
Himachal Pradesh	77.1	86.0	68.1	17.9
Karnataka	67.0	76.3	57.5	18.8
Kerala	90.9	94.2	87.9	6.3
Maharashtra	77.3	86.3	67.5	18.8
Punjab	70.0	75.6	63.6	12
Tamil Nadu	73.5	82.3	64.6	17.7
Assam	64.3	71.9	56.0	15.9
Bihar	47.5	60.3	33.6	26.7
Madhya Pradesh	64.1	76.8	50.3	26.5
Orissa	63.6	76.0	51.0	25
Rajasthan	61.0	76.5	44.3	32.2
Uttar Pradesh	57.4 7	0.2	43.0	27.2
West Bengal	69.2	77.6	60.2	17.4
All India	65.4	75.9	54.2	21.7

Source: Government of India, Census of India 2001, URL, ww.censusindia.net/

are notorious for highly unequal gender relations, some symptoms of which include the continued practice of female seclusion, very low female labor-force participation rates, a large gender gap in literacy rates, extremely restricted female property rights, strong boy preference in fertility decisions, widespread neglect of female children, and drastic separation of a married women from her natal family. In all these respects, the social standing of women is somewhat better in South India. And Kerala, of course, has a distinguished history of a more liberated position of women in society (Dreze and Sen, 1995: 142-3). Important aspects of this history include a major success in the expansion of female literacy, considerable prominence of women in influential

social and political activities, and a tradition of matrilineal inheritance for an important section of the population.

3.12.3 Maternal Mortality Ratio (MMR)

Table 47: Sex Ratio (2001), Maternal Mortality Rate (2001) and Percentage of Anemic Women (2005): Inter-State Comparison

Sl. No.	States	Sex Ratio (2001) @	Maternal Mortality Rate (2001) #	Percentage of Anemic women (2005) *
1	Kerala	1,058	198	32.3
2	Punjab	874	199	38.4
3	Himachal Pradesh	970	NA	40.9
4	Tamil Nadu	986	79	55.3
5	Maharashtra	922	135	49
6	Haryana	861	103	56.5
7	Gujarat	921	28	55.5
8	Karnataka	964	195	50.3
9	West Bengal	934	266	63.8
10	Jammu and Kashmir	900	NA	53.1
11	Andhra Pradesh	978	159	62
12	Assam	932	409	69
13	Rajasthan	922	670	53.1
14	Orissa	972	367	62.8
15	Madhya Pradesh	920	498	57.6
16	Uttar Pradesh	898	707	50.8
17	Bihar	921	452	68.3
18	All India	933	407	56.2

Note: No estimate of MMR was made for Himachal Pradesh and Jammu and Kashmir in 2001.
Sources:
@ Indira Gandhi Institute of Development Research, India Development Report 2004-05 (New York: Oxford University Press, 2005).
# Government of India, Women and Men in India 2002 (New Delhi, Ministry of Statistics and Programme Implementation, Central Statistical Organization, 2002, p.20.
* International Institute for Population Sciences, National Family Health Survey-3: State Volumes (Mumbai: IIPS, 2006).

Maternal Mortality ratio has already been discussed and analyzed earlier in the section concerning inter-State comparison of health status. Table 38 presents sex ratio of different States along with maternal mortality ratio and percentage of anemic women in every State. These three indicators together point toward the plight of health status of women in different Indian States. As mentioned earlier, the percentage of anemic women in each State depicts the low health status of women's health, which has both, an intrinsic and instrumental importance, influence the overall development and welfare of women. In India 56.2 per cent women are anemic and the worst situation is in the States of Assam (69 per cent), Bihar (68.3 per cent), West Bengal (63.8 per cent), Orissa (62.8 per cent) and Andhra Pradesh (62 per cent), where more than 60 per cent women are anemic. Kerala (32.3 per cent) has the least number of anemic women in India, but its number is still very high as compared to other countries. All other States except four States (Kerala, Punjab, Himachal Pradesh and Maharashtra) have more than 50 per cent of their women, anemic (see Table 47).

3.12.4 Inter-State Comparison of Status of Women

Inter-State Comparison in Health Status

Health is a State of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Everyone have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life (World Health Organization, 2000). Improvement in the health status of a population is recognized as instrumental for increasing productivity and economic growth, as well as it is an end in itself.

For the comparative analysis of health status in Indian States, two variables representing the health condition were taken into account. They were Infant Mortality Rate (IMR) and Maternal Mortality Rate (MMR). The Infant Mortality Rate (IMR) has been declining steadily in India and it had achieved reductions from 146 per 1000 live births in 1951 to 71 per 1000 live births in 2001. Over these years, the real cause of concern was that the rate of decline in IMR slowed considerably after 1993. Prior to 1993, the average decrease in IMR was around 3 points per year, but from 1993 onwards, the decline in IMR recorded has been of the order of only 1.5 points per year. More recently, between 1998-2001, the average rate of decline has picked up and is closer to 2.25 points per year. Among other

interventions, there is need to quickly improve health system response and quality, starting from pregnancy to after delivery, which include increase in skilled birth attendance at childbirth with adequate supplies, equipment and access to referral facilities and simultaneously improve access to essential new born care and management of new born complications.

The average IMR of India is 71 and there are five Indian States that have IMR at more than this level. They are Orissa (98), Madhya Pradesh (97), Uttar Pradesh (85), Rajasthan (83) and Assam (78). The lowest IMR is in Kerala at 16. The diversity in the States regarding this variable is visible from the fact that, on the one hand, there is State like Kerala and on the other there is Orissa and Madhya Pradesh. India has an unacceptably high Maternal Mortality Ratio (MMR) of 407 per 1, 00,000 live births (Government of India, 2002: 26). Maternal mortality is not merely a health disadvantage, but also a reflection of social and gender injustice. The low social and economic status of girls and women limits their access to education, appropriate nutrition, as well as health and family planning services. All these directly impacts pregnancy outcomes. The overriding

causes of the high Maternal Mortality Ratio (MMR) across India are the absence of a skilled birth attendant at delivery, poor access to emergency obstetric care in case of a complication and no reliable referral system (with easy mobility), to ensure that women who experience complications can reach life saving emergency obstetric care in time. Any skilled birth attendant, however proficient she may be, also needs the back up of a functioning health system and cannot succeed without drugs, equipment and infrastructure. Minimal infrastructure for appropriate pregnancy outcomes like access to safe blood, functioning operation theatres (with Disparities in Development, Status of Women and Social Opportunities electricity and running water), anesthetists, and skilled birth attendants is simply not available on the scale required causing high maternal mortality.

While analyzing the Maternal Mortality Ratio (per 1 lakh live births) of seventeen Indian States it was observed that the data for the two States in the year 2001 was not available. Out of the remaining fifteen States, Uttar Pradesh was on the top with maximum amount of maternal deaths (707), while Gujarat was at the bottom with MMR at 28. Gujarat (28) and Tamil Nadu (79) are the two Indian States with MMR below 100. Six States with MMR above 300 were Orissa (367), Assam (409), Bihar (452), Madhya Pradesh (498), Rajasthan (670), and Uttar Pradesh (707). Other States with MMR between 100 and 300 were Haryana (103), Maharashtra (135), Andhra Pradesh (159), Karnataka (195), Kerala

(198), Punjab (199) and West Bengal (266). In Table 48, data related to IMR and MMR concerning various selected States of India has been presented.

Table 48: Infant Mortality Rate (2001) and Maternal Mortality Rate (2001): Inter-State Comparison

Sl. No	States	Infant Mortality Rate (per 1000 live births), 2001 *	Maternal Mortality Rate (per I lakh live births), 2001 #
1	Maharashtra	49	135
2	Punjab	54	199
3	Gujarat	64	28
4	Haryana	69	103
5	Tamil Nadu	53	79
6	Karnataka	58	195
7	Himachal Pradesh	64	NA
8	Kerala	16	198
9	Andhra Pradesh	44	159
10	West Bengal	53	266
11	Rajasthan	83	670
12	Madhya Pradesh	97	498
13	Jammu and Kashmir	45	NA
14	Assam	78	409
15	Uttar Pradesh	85	707
16	Orissa	98	367
17	Bihar	67	452

Sources:

* Indira Gandhi Institute of Development Research, India Development Report 2004-05 (New York: Oxford University Press, 2005).

Government of India, Women and Men in India 2002 (New Delhi, Ministry of Statistics and Programme Implementation, Central Statistical Organization, 2002).

3.13 Key Indicators on Health in India - State-Level

The gap between the best and the worst is significantly high, highlighting the differential development. The so called BIMARU States continue to lag the other regions on most health parameters.

Table 49: Infant Mortality Rate -The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**IMR (per '000' live births)**	**State**	**IMR (per '000'live births)**
Kerala	11	Tripura	56
Puducherry	19	Uttarakhand	56
Daman & Diu	21	Assam	61
Goa	24	Rajasthan	78
Manipur	28	Orissa	79
Nagaland	31	Uttar Pradesh	81
Himachal Pradesh	31	Madhya Pradesh	86

Source: Indian Development Landscape

Table 50: Extent of Antenatal Care - The Best and the Worst States of India

Best Seven (2008-09 estimates		Worst Seven (2008-09 estimates)	
State	**Extent of Antenatal Care (%)**	**State**	**Extent of Antenatal Care (%)**
Puducherry	99.7	Rajasthan	46.7
Tamil Nadu	99.4	Nagaland	46.6
Kerala	99.3	Madhya Pradesh	46.4
Lakshadweep	98.7	Jharkhand	45.1
Andaman & Nicobar Islands	97.4	Uttar Pradesh	36.0
Andhra Pradesh	96.0	Uttarakhand	34.9
Jammu and Kashmir	94.9	Bihar	28.1

Source: Indian Development Landscape

Table 51: Total Fertility Rate- The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Total Fertiliy Rate**	**State**	**Total Fertiliy Rate**
Andhra Pradesh	1.6	Madhya Pradesh	3.0
Tamil Nadu	1.7	Arunachal Pradesh	3.2
Sikkim	1.8	Meghalaya	3.5
Goa	1.8	Jharkhand	3.5
Himachal Pradesh	1.9	Uttar Pradesh	3.7
Punjab	1.9	Nagaland	3.7
Kerala	1.9	Bihar	4.1

Source: Indian Development Landscape

Table 52: Weight for Age - The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Weight for Age (percentage children (0-59 months) with weight lower than -2SD for their given age**	**State**	**Weight for Age (percentage children (0-59 months) with weight lower than -2SD for their given age**
Mizoram	17.3	Haryana	41.6
Sikkim	19.3	Gujarat	44.4
Manipur	20.1	Chhattisgarh	45.4
Kerala	21.4	Meghalaya	52.9
Jammu & Kashmir	22.5	Jharkhand	55.8
Delhi	23.1	Bihar	56.5
Punjab	23.4	Madhya Pradesh	61.9

Source: Indian Development Landscape

Table 53: Improvement in Infant Mortality Rate over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-09
Himachal Pradesh	14	Andhra Pradesh	4
Chhattisgarh	13	Jharkhand	4
Arunachal Pradesh	12	Goa	4
Daman & Diu	11	Uttar Pradesh	3
Lakshadweep	11	Manipur	3
Orissa	11	Rajasthan	1
Meghalaya	10	Chandigarh	1

Source: Indian Development Landscape

Table 54: Improvement in Extent of Antenatal Care over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-09
Punjab	30.9	Tamil Nadu	7.5
Jammu & Kashmir	28.8	Andaman & Nicobar Islands	6.5
Sikkim	28.2	Kerala	5.0
West Bengal	26.8	Goa	4.6
Tripura	26.4	Puducherry	4.5
Manipur	25.7	Lakshadweep	3.6
Haryana	25.4	Delhi	-7.6

Source: Indian Development Landscape

Table 55: Improvement in Child Malnutrition over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-09
Orissa	12.1	Nagaland	-1.1
Maharashtra	11.1	Bihar	-1.5
Rajasthan	9.7	Tripura	-2.8
West Bengal	9.1	Madhya Pradesh	-4.7
Uttar Pradesh	8.5	Haryana	-4.8
Jammu & Kashmir	7.8	Arunachal Pradesh	-7.8
Uttarakhand	7.7	Meghalaya	-10

Source: Indian Development Landscape

3.13.1 Key Indicators on Health in India - Districts

The infant mortality in the best performing districts is as much as 15 times lower than the worst performing districts. The laggard districts are worse off in terms of fertility by a factor of 3.

Table 56: Infant Mortality Rate - The Best and the Worst Districts of India

Best 25 (2008-09 Estimations)		Worst 25 (2008-09 Estimations)	
District	IMR (per thousand live births)	District	IMR (per thousand live births)
Kottayam	6	East Nimar	95
Kannur	7	Chittaurgarh	95
Kasaragod	8	Lalitpur	95

Thrissur	9	Hardoi	96
Kozhikode	9	Maharajganj	96
Malappuram	9	Budaun	96
Idukki	10	Shivpuri	96
Ernakulam	10	Etah	96
Alappuzha	11	Rajsamand	97
Kollam	13	Barwani	97
Pathanamthitta	13	East Kameng	98
Palakkad	14	Allahabad	98
Wayanad	14	Gajapati	98
Udupi	17	Panna	99
Kanniyakumari	17	Kalahandi	100
Mahe	18	Rayagada	101
Thiruvananthapuram	19	Malkangiri	101
Karaikal	19	Nabarangapur	101
Lahul & Spiti	19	Banswara	102
Thoubal	19	Pali	102
North Goa	19	Kandhamal	103
Pondichery	19	Vidisha	104
Imphal West	20	Balrampur	105
Pudukkottai	21	Satna	108
Tirunelveli	21	Damoh	112

Source: Indicus Analytics

Table 57: Extent of Antenatal Care-The Best and the Worst Districts of India

Best 25 (2008-09 Estimations)		Worst 25 (2008-09 Estimations)	
District	**Woman with >3 Antenatal Care (%)**	**District**	**Woman with >3 Antenatal Care (%)**
Yanam	100.0	Kishanganj	17.9
Coimbatore	100.0	Firozabad	17.4
Erode	100.0	Uttarkashi	17.0
Thiruvananthapuram	100.0	Sheohar	16.8
Karaikal	100.0	Araria	16.7
Baramula	99.9	Sant Ravidas Nagar	16.1
Udupi	99.9	Lawngtlai	15.6
Mahe	99.9	Banda	15.2
Pudukkottai	99.9	Siddharthnagar	14.9
Kancheepuram	99.9	Rudraprayag	14.4
Pathanamthitta	99.9	Tuensang	14.2
Namakkal	99.9	Mahoba	14.0
Kanniyakumari	99.8	Samastipur	13.9
Kargil	99.8	Allahabad	13.8
Toothukudi	99.8	Supaul	12.6
Salem	99.8	West Garo Hills	11.8
Thanjavur	99.8	Balrampur	11.3
Theni	99.7	Bahraich	10.0
The Nilgiris	99.7	Chitrakoot	9.7
Hyderabad	99.7	Hamirpur	9.5
Chennai	99.7	Khagaria	8.9
Pondichery	99.7	Mon	7.9
Dharmapuri	99.5	Unnao	7.6
Kasaragod	99.5	Shrawasti	6.5
Ramanathapuram	99.5	Kaushambi	2.0

Source: Indicus Analytics

Table 58: Total Fertility Rate-The Best and the Worst Districts of India

Best 25 (2008-09 Estimations)		Worst 25 (2008-09 Estimations)	
District	**Total Fertility Rate**	**District**	**Total Fertility Rate**
Leh (Ladakh)	1.0	Jaintia Hills	4.2
Chennai	1.2	Ri Bhoi	4.2
Kolkata	1.2	Banka	4.3
Mumbai	1.2	Begusarai	4.3
Udupi	1.3	Kaimur (Bhabua)	4.3
Guntur	1.3	Madhepura	4.3
Hyderabad	1.3	Rampur	4.3
Krishna	1.3	Siddharthnagar	4.3
Sindhudurg	1.4	West Khasi Hills	4.3
Nellore	1.4	Palamu	4.4
West Godavari	1.4	Araria	4.4
Dakshina Kannada	1.4	Purba Champaran	4.4
Erode	1.4	Samastipur	4.4
Kanniyakumari	1.4	Bahraich	4.4
The Nilgiris	1.4	Chitrakoot	4.4
East Godavari	1.5	Phek	4.5
Central Delhi	1.5	Pashchim Champaran	4.5
New Delhi	1.5	Purnia	4.5
East Sikkim	1.5	Khagaria	4.6
Coimbatore	1.5	Sheohar	4.6
Namakkal	1.5	Sitamarhi	4.6
Mumbai (Suburban)	1.5	Budaun	4.6
Chittoor	1.5	Garhwa	4.7
Karimnagar	1.5	Katihar	4.7
Visakhapatnam	1.5	Kishanganj	4.7

Source: Indicus Analytics

Table 59: Child Malnutrition-The Best and the Worst Districts of India

Best 25 (2008-09 Estimations)		Worst 25 (2008-09 Estimations)	
District	**Weight for Age (percentage children (0-59 months) with weight lower than -2SD for their given age)**	**District**	**Weight for Age (percentage children (0-59 months) with weight lower than -2SD for their given age)**
Leh (Ladakh)	2.0	Dindori	66.5
Kargil	2.6	Dumka	66.8
Jharsuguda	8.4	Bulandshahar	67.0
South Sikkim	8.6	Sahibganj	67.5
Nayagarh	9.1	Giridih	67.8
Wokha	9.3	Bhind	68.6
Churachandpur	10.1	Mandsaur	68.6
Cuttack	11.9	Chhatarpur	68.7
Thoubal	12.6	Vidisha	68.9
Chandel	14.2	Guna	69.0
Thrissur	14.4	Neemuch	69.7
Kolasib	14.6	Karimganj	69.8
Idukki	14.6	West Nimar	70.0
Kollam	14.6	Shajapur	70.7
Virudhunagar	15.4	Panna	70.9
Dindigul	15.9	Dhar	72.0
Viluppuram	16.2	Barwani	73.2
South West Delhi	16.4	East Nimar	73.2
Lunglei	16.4	Shivpuri	73.7
Baramula	17.0	Jhabua	74.1
Thiruvallur	17.1	Sagar	74.1
Ariyalur	17.3	Madhepura	74.1
North Goa	17.3	Ratlam	75.8
Nawanshahr	17.4	Rajgarh	77.2
Aizawl	17.4	Sidhi	87.7

Source: Indicus Analytics

Table 60: Improvement in Infant Mortality Rate over 7 years - The Best and the Worst Districts of India

Best Districts	Infant Mortality Rate)	Worst Districts	Infant Mortality Rate
Baleshwar	29	Krishna	1
Bhadrak	29	Churachandpur	1
Jagatsinghapur	21	Ambedaker Nagar	1
Jajapur	21	Chandauli	1
Betul	21	Varanasi	1
Chhatarpur	20	Mathura	1
Kendrapara	20	Jaipur	1
Cuttack	19	Sibsagar	1
Malkangiri	19	Darjeeling	1
Nabarangapur	19	Fatehabad	1
Rayagada	18	Solapur	1
Gajapati	18	Garhwal	1
Kandhamal	18	Coimbatore	1
Shivpuri	18	Khammam	1
Khordha	17	Ballia	1
Sonapur	17	Hugli	1
Yavatmal	17	Guntur	1
Dhamtari	17	Karimnagar	1
Sirmaur	17	Dhanbad	1
Shimla	17	Bishnupur	1
West Kameng	16	Kaimur (Bhabua)	0
Janjgir-Champa	16	Mandya	0
Papum Pare	16	Nandurbar	0
Sehore	16	Pali	0
Mahasamund	16	Namakkal	0

Source: Indicus Analytics

Table 61: Improvement in Woman with >3 Antenatal Care over 7 years - The Best and the Worst Districts of India

Best Districts	Woman with >3 Antenatal Care	Worst Districts	Woman with >3 Antenatal Care
Rajauri	41.6	Uttarkashi	-1.1
Srinagar	40.0	Bahraich	-1.7
Barddhaman	37.6	Lower Subansiri	-2.0
Saiha	37.2	Koriya	-2.1
Zunheboto	36.8	Unnao	-2.3
Korba	36.4	Rudraprayag	-2.7
Seoni	35.9	Surendranagar	-3.0
Lohit	35.6	Washim	-3.4
Muktsar	35.5	Nuapada	-3.6
Tinsukia	35.4	Shrawasti	-3.8
Sonitpur	35.2	Dindori	-4.1
Amritsar	34.9	Dibrugarh	-4.8
North Twentyfour Parganas	34.6	Kaushambi	-6.0
Churachandpur	34.4	North Goa	-7.0
Bokaro	34.1	Sundargarh	-7.1
Hisar	34.1	Nabarangapur	-8.0
Jashpur	33.7	Harda	-8.9
Raigarh	33.7	West Garo Hills	-10.3
Ballia	33.4	Sibsagar	-12.0
Bathinda	32.7	Mon	-12.9
Darrang	32.7	Bellary	-13.5
Mansa	32.5	Champhai	-16.1
Moga	32.4	Punch	-17.0
Gwalior	32.4	Betul	-19.4
Shajapur	32.3	Jorhat	-25.3

Source: Indicus Analytics

Table 62: Improvement in Child Malnutrition over 7 years - The Best and the Worst Districts of India

District	Weight for Age (percentage children (0-59 months) with weight lower than -2SD for their given age)	District	Weight for Age (percentage children (0-59 months) with weight lower than -2SD for their given age)
Bargarh	17.2	Ratlam	-5.7
Sonapur	16.7	Rajgarh	-5.8
Nuapada	16.4	Panchkula	-5.9
Sundargarh	16.2	Panipat	-5.9
Malkangiri	16.1	Kaithal	-5.9
Nandurbar	15.9	West Siang	-6.4
Ganjam	15.8	Gurgaon	-6.5
Sambalpur	15.0	Sidhi	-6.6
Bulandshahar	14.7	Faridabad	-7.0
Gadchiroli	14.6	Changlang	-7.7
Gajapati	14.6	East Siang	-7.7
Kendujhar	14.5	Lower Subansiri	-7.7
Rayagada	14.5	Papum Pare	-7.7
Bhadrak	14.4	Upper Siang	-7.7
Yavatmal	14.2	West Kameng	-7.7
Kandhamal	14.0	Jaintia Hills	-7.9
Chandrapur	14.0	Lohit	-8.6
Ukhrul	14.0	East Khasi Hills	-10.1
Hingoli	13.9	Ri Bhoi	-10.1
Nashik	13.9	South Garo Hills	-10.1
Washim	13.8	West Garo Hills	-10.1
Balangir	13.7	West Khasi Hills	-10.4
Buldana	13.7	Tirap	-11.2
Mayurbhanj	13.7	East Garo Hills	-11.9
Jajapur	13.6	Tawang	-13.4

Source: Indicus Analytics

3.14 Key Indicators on Empowerment - State-level

Under-aged Girl Marriage, Sex Ratio, Female Work Participation Rate, Improvement in Under-aged Girl Marriage over 7 years, Improvement in Sex Ratio over 7 years, Improvement in Female Work Participation Rate over 7 years

Table 63: Under-aged Girl Marriage -The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Under-aged Girl Marriage (%)**	**State**	**Under-aged Girl Marriage (%)**
Andaman & Nicobar Islands	0.6	Uttar Pradesh	34.4
Nagaland	1.9	Madhya Pradesh	36.8
Himachal Pradesh	2.8	Jharkhand	37.2
Goa	3.7	Andhra Pradesh	39.9
Kerala	4.8	West Bengal	41.2
Puducherry	4.8	Rajasthan	42.7
Uttarakhand	6.6	Bihar	45.6

Source: Indian Development Landscape

Table 64: Sex Ratio -The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Sex Ratio**	**State**	**Sex Ratio**
Kerala	1053	Punjab	864
Puducherry	1012	Haryana	853
Lakshadweep	1000	Andaman & Nicobar Islands	840
Chhattisgarh	992	Delhi	810
Tamil Nadu	991	Chandigarh	740
Andhra Pradesh	986	Dadra & Nagar Haveli	738
Manipur	982	Daman & Diu	610

Source: Indian Development Landscape

Table 65: Female Work Participation Rate - The Best and the Worst States of India

Best Seven (2008-09 estimates)		Worst Seven (2008-09 estimates)	
State	**Female Work Participation Rate (%)**	**State**	**Female Work Participation Rate (%)**
Mizoram	50.1	Andaman & Nicobar Islands	19.0
Himachal Pradesh	49.2	Puducherry	18.6
Sikkim	43.8	Chandigarh	16.8
Chhattisgarh	39.3	Daman & Diu	15.9
Manipur	39.0	Kerala	15.1
Nagaland	38.2	Delhi	10.8
Rajasthan	37.5	Lakshadweep	7.1

Source: Indian Development Landscape

Table 66: Improvement in Under-aged Girl Marriage over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-0
Dadra & Nagar Haveli	20.7	Himachal Pradesh	0.1
Tripura	12.5	Goa	-0.1
Nagaland	11.0	Andhra Pradesh	-1.8
Chhattisgarh	10.3	Jammu & Kashmir	-4.8
Maharashtra	10.2	Delhi	-5.9
Uttar Pradesh	10.2	Chandigarh	-5.9
Orissa	9.8	Meghalaya	-10.3

Source: Indian Development Landscape

Table 67: Improvement in Sex Ratio over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-0
Daman & Diu	100	Bihar	-7
Dadra & Nagar Haveli	74	Manipur	-8
Goa	45	Andhra Pradesh	-8
Chandigarh	37	Assam	-9
Punjab	12	Puducherry	-11
Gujarat	12	Jammu & Kashmir	-12
Delhi	11	Lakshadweep	-52

Source: Indian Development Landscape

Table 68: Improvement in Female Work Participation Rate over 7 years - The Best and the Worst States of India

Best States	Improvement over 7 years leading to 2008-09	Worst States	Improvement over 7 years leading to 2008-0
Haryana	9.7	Assam	-0.6
Punjab	8.9	Arunachal Pradesh	-0.7
Himachal Pradesh	5.5	Chhattisgarh	-0.7
Sikkim	5.2	Maharashtra	-1.5
Tripura	4.7	Uttarakhand	-2.0
West Bengal	4.6	Daman & Diu	-2.7
Bihar	4.6	Dadra & Nagar Haveli	-5.8

Source: Indian Development Landscape

3.14.1 Key Indicators on Empowerment - districts

Table 69: Under-aged Girl Marriage -The Best and the Worst Districts of India

Best 25 (2008-09 Estimates)		Worst 25 (2008-09 Estimates)	
District	**Under-aged Girl Marriage (%)**	**District**	**Under-aged Girl Marriage (%)**
Una	0.0	Jhansi	62.1
Anantnag	0.0	Barddhaman	62.9
Baramula	0.0	Medinipur	63.5
Jammu	0.0	Gorakhpur	64.6
Kupwara	0.0	Supaul	65.2
Leh (Ladakh)	0.0	Jehanabad	65.5
Pulwama	0.0	Hardoi	65.6
Punch	0.0	Maharajganj	66.1
Rajauri	0.0	Prakasam	66.2
Udhampur	0.0	Godda	66.5
Alappuzha	0.0	Srikakulam	68.0
Kollam	0.0	Tikamgarh	68.0
Kottayam	0.0	Ujjain	68.0
Pathanamthitta	0.0	Jamui	68.4
Thiruvananthapuram	0.0	West Godavari	70.1
East Khasi Hills	0.0	Samastipur	70.9
Mokokchung	0.0	Mirzapur	71.6
Wokha	0.0	Lalitpur	71.9
Dhalai	0.0	Maldah	73.1
Dimapur	0.1	Sidhi	73.2
Thrissur	0.2	Sawai Madhopur	75.3
Ambala	0.2	Dewas	78.0
Kannur	0.2	Gonda	85.9
Kohima	0.2	Balrampur	86.8
Kodagu	0.2	Sheikhpura	94.3

Source: Indicus Analytics

Table 70: Sex Ratio- The Best and the Worst Districts of India

Best 25 (2008-09 Estimates)		Worst 25 (2008-09 Estimates)	
District	**Sex Ratio**	**District**	**Sex Ratio**
Diu	1,257	Morena	826
Almora	1,153	North Delhi	825
Udupi	1,129	Jaisalmer	822
Bageshwar	1,116	Kargil	822
Garhwal	1,115	Leh (Ladakh)	820
Rudraprayag	1,105	Central Delhi	820
Kannur	1,097	Mumbai (Suburban)	819
Ratnagiri	1,095	Solan	813
Pathanamthitta	1,094	North West Delhi	813
Hamirpur	1,092	West Delhi	812
Alappuzha	1,077	Panipat	809
Mahe	1,075	Panchkula	808
Thrissur	1,074	Ludhiana	803
Kollam	1,071	Surat	792
Kozhikode	1,058	Lahul & Spiti	790
Champawat	1,057	South Delhi	788
Thiruvananthapuram	1,057	New Delhi	785
Malappuram	1,054	South West Delhi	771
Palakkad	1,048	Mumbai	770
Ramanathapuram	1,047	Chandigarh	740
Sindhudurg	1,045	Dadra & Nagar Haveli	738
Toothukudi	1,043	Tawang	727
Rayagada	1,043	North Sikkim	708
Kasaragod	1,042	West Kameng	696
Tirunelveli	1,041	Daman	479

Source: Indicus Analytics

Table 71: Female Work Participation Rate- The Best and the Worst Districts of India

Best 25 (2008-09 Estimates)		Worst 25 (2008-09 Estimates)	
District	**Female Work Participation Rate (%)**	**District**	**Female Work Participation Rate (%)**
Champhai	68.2	Bokaro	10.4
Serchhip	65.2	North West Delhi	10.3
Kinnaur	61.2	Budaun	10.2
Dindori	60.3	Firozabad	10.2
Kullu	59.6	Khordha	9.9
Lakhimpur	56.9	North Delhi	9.8
North Sikkim	56.4	Agra	9.6
Kolasib	55.8	Etawah	9.5
Mamit	55.7	Nagaon	9.3
Lahul & Spiti	55.6	Mainpuri	9.3
Datia	54.8	Ghaziabad	9.1
South Sikkim	54.6	Etah	8.9
Gajapati	54.6	Mahe	8.9
Jalor	54.4	Puri	8.9
Hamirpur	54.1	Jajapur	8.4
Punch	54.0	Dhubri	8.0
Kanker	53.0	Saharanpur	8.0
Jashpur	52.8	Yanam	7.9
Namakkal	52.1	Rampur	7.7
Mandi	51.9	Kozhikode	7.7
Alwar	51.0	Lakshadweep	7.1
Perambalur	50.3	North East Delhi	6.9
Mahendragarh	50.2	Shahjahanpur	6.6
Rewari	50.0	Pilibhit	6.4
Dohad	50.0	Malappuram	5.4

Source: Indicus Analytics

3.15 Inter-State Comparison in provision of Social Opportunities

Social opportunities, which include provision of basic public services such as healthcare, child immunization, primary education, social security, environmental protection and rural infrastructure, are essential aspects of development. For the purpose of research, three variables i.e., percentage of population having electricity, using piped drinking water and having access to toilet facilities, have been taken into account. Data related to these variables was gathered from National Family Health Survey-3 (2005-06).

In table 72, it is observed, that on the one hand, there are five States in India, which have more than 90 per cent of their households having access to electricity facility while on the other hand, there is Bihar with just 27.7 per cent of its households with this facility. Five States with more than 90 per cent electricity facility to households are Himachal Pradesh (98.4 per cent), Punjab (96.3 per cent), Jammu and Kashmir (93.2 per cent), Haryana (91.5 per cent) and Kerala (91 per cent).

Availability of portable water has a direct relationship with health-related indicators. If water sources are equitably distributed, easily accessible and per capita consumption is high, it could alter the lifestyle, result in better health, higher productivity and income, and lead to improvement in school enrolments as well. Villages with piped water supply have higher levels of household and per capita income and relatively higher wage rates and even they had high level of literacy, immunization and contraceptive prevalence rate. According to Human Development Report (1999), villages in which hand pumps are the dominant source of water supply do not show a positive association between levels of income and poverty as appears to be the case in the relatively backward villages (Rizvi, 2006: 365).

The existence of source of drinking water in rural areas is one of the most important indicators of development that reflects the economic prosperity of a village. While analyzing percentage of households using piped drinking water in different States of India, it was observed that Tamil Nadu tops the list with 84.6 per cent, while Bihar was at the bottom with just 4.2 per cent of households using piped drinking water (see table 8). It was surprisingly observed that Kerala, which otherwise is amongst the best performers in almost all variables, lags behind in providing this facility to its population. Only 24,6 per cent of households in Kerala

were using piped drinking water, which is below all other States except Bihar (4.2 per cent), Orissa (10.2 per cent) and Uttar Pradesh (10.3 per cent).

Safe drinking water and basic sanitation were vital human needs for health and efficiency, as death and disease, particularly of children and the drudgery of women are directly

attributable to the lack of these essentials. Poor people who had no toilet facilities defecate in the open air and that causes environmental degradation as well as contamination of water sources that became a primary cause for water-borne diseases. It was also true that maximum numbers of poor households do not have access to toilets both in the rural and urban areas. The percentage of households having toilet facilities in India was estimates to be just 9 per cent in rural areas (Economic Survey, 2000-01).

According to National Family Health Survey-3, the percentage of households having toilet facilities in India improved in 2005-06 and was estimated to be 44.5 per cent. Kerala tops the list of this variable with covering 96 per cent households with this facility and Assam is on the second place with 76.4 per cent of households. Orissa is the worst performer in the provision of this facility with covering only 19.3 per cent, seconded by Bihar at 25.2 per cent (see table 72).

Table 72: Percentage of households having electricity facility, using piped drinking water and having access to toilet facility (2005-06): Inter-State Comparison

Sl.No.	States	Have electricity (2005-06)	Use piped Drinking water (2005-06)	Have access to toilet facility (2005-06)
1	Kerala	91	24.6	96
2	Punjab	96.3	54.6	70.8
3	Himachal Pradesh	98.4	65.1	45.6
4	Tamil Nadu	88.6	84.2	42.9
5	Maharashtra	83.5	78.6	53
6	Haryana	91.5	61.1	52.3
7	Gujarat	89.3	72.7	54.6
8	Karnataka	89.3	57.4	46.5
9	West Bengal	52.5	27.9	59.5
10	Jammu and Kashmir	93.2	56.1	61.7
11	Andhra Pradesh	88.4	67.8	42.4
12	Assam	38.1	11.6	76.4
13	Rajasthan	66.1	45.4	30.8
14	Orissa	45.4	10.2	19.3
15	Madhya Pradesh	71.4	25	27
16	Uttar Pradesh	42.8	10.3	33.1
17	Bihar	27.7	4.2	25.2
18	All India	67.9	42	44.5

Source: International Institute for Population Sciences, National Family Health Survey-3:State Volumes (Mumbai: IIPS, 2006).

3.15.1 Linkages between Social Opportunities, Status of Women and Development

The linkage between investment in education, health and skills; more equitable distribution of income; government social spending; and empowerment of people, especially women have been proved many a times through empirical evidences. Per capita spending on education and health has relatively stronger impact on human development than growth in per capita income per se (Chakraborty, 2003). A major point here would be to emphasis that if governments fail to invest adequately in the health and education of their people, economic growth will eventually peter out because of an insufficient number of healthy, skilled workers. Empirical work looking into these relationships has provided abundant evidence that education, especially in females, tends to improve infant survival and child nutrition, as dose female control over household income (Thomas, 1990). It may be interesting to note that while important casual connections certainly do exist between the economic resource base and HD achievements of a State, these connections are 'not automatic'. The strength of the links varies according to a large range of factors, including the structure of the economy, the distribution of assets, and the policy choices made. The institutional heritage of the society affects these choices and the strength of links at each stage; when people act together to promote their well being, when public

morality is high, when the community monitors malfeasance, and when it participates extensively in public life, ceteris paribus, we would expect all the links to be stronger, i.e., HD achievement is likely to be positively associated with the strength of social capital. And, this is what has exactly happened in case of Kerala (Singh and Nauriyal, 2006: 308-9).

Kerela is often mentioned as an example of a State that has been able to achieve spectacular improvements in terms of basic needs and standards of living. The differences in success rates between Kerala and other States seem to lie more in the quality of education and health facilities and the efficiency with which they are used than in a substantially higher allocation of resources (Dev Mooij, 2005: 105).

Some people have attributed Kerala's success to historical reasons. There is some truth in this argument, but it may also be noted that at the time that the State of Kerala was formed, the Malabar region was very much behind Tarvancore and Cochin on terms of its social development. Nevertheless, by the 1980's, the Malabar region had caught up with the other regions. It was primarily well-directed State action that was responsible for this improvement. Apart from this, public participation and local leadership have also

played an important role. Social movements like caste-based reform movements, missionary activities, and left movements have helped in rising human development and social security for the poor. Women have also played an active role in raising the levels of social development in the State.

Another positive example is Tamil Nadu, which has been a pioneer in the implementation of nutrition schemes and protective social security measures. There are two important State-sponsored special nutrition programmes in Tamil Nadu, namely, the Chief Minister's Nutrition Meal Programme (CMNMP) and the Tamil Nadu Integrated Nutrition Project (TNIP). The first programme, which is considered the largest feeding programme in the world, has increased the nutritional intake of many school-going children. The TNIP experience has showed that a limited package of health-linked nutrition interventions can be successful and that it does not need to be very costly (Dev Mooij, 2005: 105).

Apart from Kerala and Tamil Nadu, some other States have also taken important initiatives. One can refer to the Employment Guarantee Scheme in Maharashtra, primary education in Himachal Pradesh and Madhya Pradesh, public distribution in Andhra Pradesh, and land reforms in West Bengal. By contrast, the less developed States like Bihar and Uttar Pradesh seem to be characterized by apathy, rather than concerted public action. This may well be related to rather extreme forms of social inequality (Dreze and Gazdar, 1997: 128-33). Thus provision of social opportunities has direct link with the overall development of the place, which is further enhanced by improvement in the status of women. This relationship can be proved through statistical calculations with the help if Statistical Programme For Social Sciences (SPSS).

In order to verify the relationships or linkages between the three variables under study, i.e., social opportunities, status of women and development, correlation analysis was done. Human Development Index (HDI) was selected as variable representing development and it was correlated with various variables representing status of women. After the statistical calculations, it was observed that HDI was correlated to female literacy, percentage of anemic women, percentage of women who have ever experienced spousal violence and Maternal Mortality Ratio. The correlation was significant at 0.01 level of significance (two-tailed).

Correlation analysis was also done between HDI (variable for development) and percentage of population having access to electricity, drinking water facility and toilet facility (variables selected for social opportunities). The results showed that they were correlated at 0.01

level of significance (two-tailed). After establishing the linkage of development with status of women and social opportunities, correlation analysis was done, in order to establish the linkage between social opportunities and status of women. Variables of social opportunities (percentage of population having access to electricity, drinking water facility and toilet facility) were correlated with female literacy rate and maternal mortality rate and the results showed that female literacy rate was correlated to the percentage of population having access to toilet facility and maternal mortality ratio was correlated to percentage of population having access to electricity facility and drinking water facility and they were correlated at 0.01 level of significance (2-tailed).

3.16 India's 10 Fastest Growing Cities

A lot has been commented about India's vigorous economic growth with economists forecasting a bright future for the country. But some know of the growing Indian cities that are feeding to the nation's growth. So which are the country's fastest growing cities? Read on to find out.

1. **SURAT -** Growth rate: 11.5% - Surat is Gujarat's 2nd biggest city with a population of 4 million. It is the fastest growing Indian city in terms of economic prosperity. The city has met an annualized GDP growth rate of 11.5% over the past 7 fiscal years, as per the data computed by economic research firm Indicus Analytics. Popular for its thriving diamond and textile industry, Surat is located on the banks of the Tapti River. Over 90% of world's diamonds are cut and shined here. These two industries have hugely shared to the city's growth as the economic powerhouse of India.

   Though always affected by floods and earthquakes, the city has often come out on top. Enhanced infrastructure has been significant to Surat's quick rise. A number of elevated roads and flyovers have contributed the thriving diamond and textile business of the city. The city's Varachcha flyover is claimed to be India's longest. Surat with its low unemployment rates, high job rates and one of the highest per capita small business Credit is the best land for jobs and business. It is told that if you wish to make money, Surat is the place to be in.

2. **BANGALORE -** Growth rate: 10.3% - What was knows as the Pensioners' Paradise 10 years back, has emerged ten-fold now and a study States that the rupee millionaire club in Karnataka's capital is the most crowded in India. Bangalore also boasts of

owing the largest number of households with an annual income of Rs. 10 lakhs (Rs. 1 million) or more. With an estimated population of 6.5 million, Bangalore is one of India's most populous cities. How has this city which was more popular for its gardens and laidback lifestyle modified so much in character? The two reasons that come to every Bangalorean's mind are: the start of the IT industry, and subsequently the boom in real estate prices. Unlike other cities in India, Bangalore's main activity is information technology and information technology-enabled services. Being the prominent contributor to India's IT industry, the city is always referred to as the Silicon Valley of India. Software majors Infosys and Wipro being headquartered in the city, Bangalore contributed 33% of India's Rs. 144,214 crore ($32 billion) IT exports in 2006-07. Businesses comprising large corporate that are either Multinational companies or Indian firms dealing with or serving to MNCs recruit a very large workforce in Bangalore. And although the city's infrastructure has been unable to stay pace with the fast growth of the city, Bangalore still remains one of India's boom towns.

3. **AHMEDABAD -** Growth rate: 10.1% - The Ahmedabad region, comprising Gandhinagar, of Gujarat is the biggest inland industrial centre in western India and has been a significant base of commerce, trade and industry. With a population of 56 lakh (5.6 million) Ahmedabad has kept great prosperity because of its proximity to Surat and its access to the hinterland of Gujarat. Though dusty roads and bungalows used to cover the city once, Ahmedabad is now evident a major construction boom and a rise in population. In recent years, the city has seen an important rise in information technology and scientific industries. Apart from these, chemicals and pharmaceutical industries share to the State's economic growth, with two of the biggest pharmaceutical companies of India - Zydus Cadila and Torrent Pharmaceuticals being based here. Ahmedabad also forms the corporate headquarter of the Nirma group of industries and Adani group. Of late, several foreign companies have plan up their units here. Among them, Bosch Rexroth of Germany, Stork and Rollepaal of Netherlands deserve valuable mention.

4. **MUMBAI -** Growth rate: 8.5% - The commercial capital of India is one of the world's top 10 trade centers. The city aids 25% of industrial output and 70% of capital transactions to India's economy. The city response for about 1% of the total population in India but has a per capita income which is almost 3 times that of India. Mumbai accounts for 14% of India's income tax collections and 37% of the corporate tax collections in the country. The city is the berth of important financial

institutions like the Reserve Bank of India, Bombay Stock Exchange and the National Stock Exchange of India. One of the biggest special economic zones in India is being set up in Navi Mumbai, to be sprawl over an area of around 50 square kilometers. Many corporate and multinational companies have their headquarters in the city that earns migrants from all around India. The city provides countless employment opportunities and is famous for its interesting and high standard of living. The city, with a population of 19 million, is also called as the Indian seat of entertainment as it is the home to the Hindi film industry, the biggest in the world. Most of the city's inhabitants depend on public transport to commute. Transport systems in Mumbai comprise the Mumbai suburban railway, also known as the lifeline of Mumbai, BEST buses, taxis and auto rickshaws.

5. **NEW DELHI -** Growth rate: 8.4% - Though it can't match Mumbai in terms of contribution to the growth of the Indian economy, the capital of India is no pushover. Delhi's, (comprising its 9 districts and adjoining Noida, Ghaziabad, Faridabad and Gurgaon) total GDP stood at Rs. 1,60,739 crore (Rs. 1,607.39 billion). It shares 4.94% to all-India GDP. Connaught Place, one of Northern India's biggest financial centers, is situated in the heart of Delhi. Being a vital commercial centre in South Asia, Delhi has a per capita income of Rs. 53,976, which is more than double the national average. Delhi's main service industries, supported by as strong and well laid out infrastructure, add hotels, banking, IT, telecommunications, media and tourism. In recent times, Delhi's manufacturing industry has emerged considerably and consumer goods industries have established manufacturing units and headquarters in and around the capital. Construction, health, power, telecommunications, community services, and real estate form the backbone of Delhi's economy. The capital's retail industry is one of the fastest growing industries in India. Public transport in Delhi includes buses, auto rickshaws, taxis, suburban railways and metro rail.

6. **HYDERABAD -** Growth rate: 7.8% - Hyderabad, the financial capital of Andhra Pradesh, is also called as the city of pearls. With an estimated population of 7 million, the city is the biggest contributor to Andhra Pradesh's gross domestic product, State tax and excise revenues. As per 2006 statistics, the per capita income of Andhra Pradesh was at Rs. 25,625 (less than Rs. 200 of national average). The city, which utilized to be primarily a service city, is presently the seat of several businesses, adding trade, communication, transport, commerce, storage, and lately IT. Like Bangalore, Hyderabad also has witnessed a real estate boom in recent

times, mainly because of the growth of IT and retail business in the city. Major pharmaceutical companies such as Dr. Reddy's Laboratories, Matrix Laboratories, Aurobindo Pharma Limited and Vimta Labs are landed here. Hyderabad has also done considerable results in the field of biotechnology through initiatives like Genome Valley and Nanotechnology Park. For the advancement of infrastructure in the city, the Andhra Pradesh government is building a skyscraper business district at Manchirevula.

7. **PUNE -** Growth rate: 7.4% - The growth of this major industrial city, situated roughly 150 km east of Mumbai, has turned the topic of discussion these days. Right from automobile majors such as Tata Motors, DaimlerChrysler, Pune will soon house units of international biggies such as General Motors, Volkswagen, Fiat, etc. A number of significant engineering goods industries like Cummins Engines Co. Ltd and Bharat Forge Ltd, electronic goods companies like LG, Whirlpool, food companies like Frito Lay and Coca Cola are also put here. Of late, Pune's software industry has grown by leaps and bounds. IT parks like Rajiv Gandhi IT Park at Hinjewadi, Magarpatta Cybercity, MIDC Software Technology Park at Talawade, Marisoft IT Park at Kalyani Nagar are seats of technology that the city can boast of. To face the demands of this explosive economic growth in Pune, the State of Maharashtra is planning a 1,000 MW power plant to uniquely service to the requirement of Pune. MIDC is the lead agency for the project.

8. **BARDHAMAN -** Growth rate: 6.6% - Located nearly 100 km north-west of Kolkata, Bardhaman is headquarter of the district of the same name. With about 58% of the population gaining their livelihood from agriculture, Bardhaman has received the name of 'granary of West Bengal'. Rice grown in the area is supplied to different parts of India and also exported to the neighboring countries. Though predominantly an agricultural area, Bardhaman also houses a number of industries supported mainly by rich mineral sources available in the area and also imported from the neighboring Indian States of Bihar, Orissa and Assam. The industrial belt of Bardhaman has mainly developed embracing the Asansol and Durgapur sub-division. Two most pioneer industrial units of the area are Durgapur Steel Plant and Durgapur Alloy Steel Plant. Other industries that thrive in the area consisting coal-based industries, chemicals and power plants. The Damodar Valley Project has gone a long away in getting the irrigational need of the region. Indian Iron and Steel Industry (IISCO) form the economic backbone of Asansol area. It is the oldest

pig iron and iron casting unit in India. Chittranjan Locomotive, a government undertaking, supplies locomotive parts all around India. Many cottage industries have also developed in the area that support the area's rural economy.

9. **KOLKATA -** Growth rate: 6.3% - Often termed lovingly as the cultural headquarter of India, the capital of West Bengal has a population of 5 million. Like its several other metropolitan cousins, Kolkata incurred from economic stagnation in post-independence India. However, since 2000, the city has evidenced an economic rejuvenation, thanks to the development of IT industry in Rajarhat in Greater Kolkata. The city's IT sector is developing at 70% annually - double that of the national average. The city has seen a surge of investments in the housing infrastructure sector. Many new projects have come up in recent times. Some reputed companies are headquartered here. Of them, ITC Limited, Birla Corporation, Bata India, Domodar Valley Corporation deserves special mention. Opening of the Nathu La in Sikkim as a trade route has put Kolkata in an beneficial position. Like other metropolitan cities of India, Kolkata continues to struggle with problems such as poverty, pollution and traffic congestion.

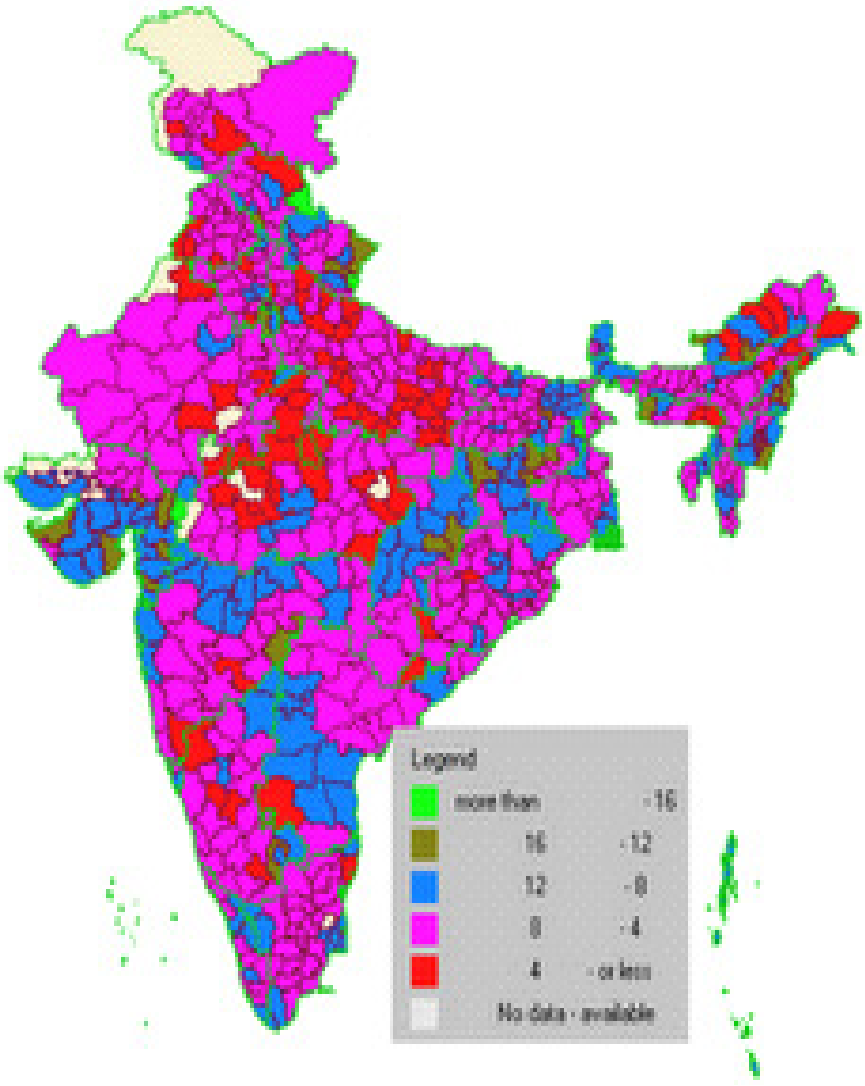
10. **CHENNAI -** Growth rate: 6.2% - The capital of Tamil Nadu, the 4th largest metropolitan city in India, has an estimated population of 7.5 million. The economy of the city is aided by industries like automobile, technology, hardware manufacturing, and healthcare. As per recent report in The Hindu, economists have forecasted that Chennai's per capita income would rise from $468 in 2000 to $1,149 in 2015 and $17,366 in 2050. The city houses India's major automobile companies and happens to be India's second-largest exporter of information technology and information-technology-enabled services, after Bangalore. Buses, trains, and auto rickshaws are the most general form of transport within the city. To counter traffic congestion, the State Government of Tamil Nadu is building a number of flyovers at significant intersections.

3.17 The fastest growing districts in India

The fastest growing districts in India have been Kinnaur, Dohad, Champawat and Sahibganj. They grew at above 16% p.a. over 5 years. The district GDP of India throws light on which pockets have been growing in India. The fast growing districts include for instance Jamnagar, Gurgaon, Gandhinagar, Bhavnagar, Gautam Buddha Nagar, and Chandigarh.

Table 73: The fastest (grew above 16% p.a.)

State	Himachal Pradesh	Gujarat	Uttaranchal	Jharkhand
District	Kinnaur	Dohad	Champawat	Sahibganj



The fastest growing Districts in India between 2001-02 and 2006-07

Table 74: The fast (grew between 12 and 16% p.a.)

State	District
Gujarat	Jamnagar
Uttaranchal	Pithoragarh
Arunachal Pradesh	Tawang
Haryana	Gurgaon
Manipur	Imphal East
Gujarat	Gandhinagar
Nagaland	Tuensang
Uttaranchal	Almora
Jharkhand	Deoghar
Jharkhand	Bokaro
Nagaland	Mon
Jharkhand	Giridih
Bihar	Khagaria
Meghalaya	West Garo Hills
Gujarat	Bhavnagar
Jharkhand	Palamu
Uttar Pradesh	Gautam Buddha Nagar
Chandigarh	Chandigarh
Manipur	Thoubal
Arunachal Pradesh	Papum Pare
Chhattisgarh	Raigarh
Gujarat	Navsari
Nagaland	Zunheboto
Manipur	Chandel
Himachal Pradesh	Solan
Maharashtra	Nanded

3.18 Bihar, India's Poorest State but Fast Growing Since 2006

The economy of Bihar is largely service oriented, but it also has a significant agricultural base. The State also has a small industrial sector. As of 2008, agriculture accounts for 35%, industry 9% and service 55% of the economy of the State. Manufacturing has performed very poorly in the State between 2002-2007, with an average growth rate of 0.38% compared to India's 7.8%. Bihar has the lowest GDP per capita in India, although there are pockets of higher than the average per capita income. Between 1999 and 2008, GDP grew by 5.1% a year, which was below the Indian average of 7.3%. More recently, Bihar's State GDP recorded a growth of 18% between 2006-2007, and stood at 942,510 Crores Rupees ($21 billion nominal GDP). This makes Bihar the fastest growing major State.

The State has a per capita income of $148 a year against India's average of $997 and 30.6% of the State's population lives below the poverty line against India's average of 22.15%. However, Bihar's GSDP grew by 18% over the period 2006-2007, which was higher then in the past 10 years. Hajipur, near Patna, remains a major industrial town in the State, linked to the capital city through the Ganga Bridge and good road infrastructure. The level of urbanization (10.5%) is below the national average (27.78%); and behind States like Maharashtra (42.4%). Urban poverty in Bihar (32.91%) is above the national average of 23.62%. Also using per capita water supply as a surrogate variable, Bihar (61 litres per day) is below the national average (142 litres per day) and that of Maharashtra (175 litres per day) in civic amenities.

India achieved record annual GDP growth, averaging 8.45%, in the five years, 2004-05 to 2008-09. But was this inclusive, and did it benefit the poor masses? We have no data on poverty beyond 2004-05. But the CSO has current data on the economic growth of the States. Historically, the chronically poor States were Orissa plus the BIMARU quartet (Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh), of which three have been sub-divided. Have these eight poor States participated in India's boom?

Yes, absolutely. Indeed, five of India's eight ultra-poor States have become miracle economies, defined internationally as those with over 7% growth. The best news comes from Bihar, historically the biggest failure. From 2004-05 to 2008-09, Bihar averaged 11.03% growth annually. It was virtually India's fastest growing State, on par with Gujarat (11.05%). That represents a sensational turnaround.

3.19 Urbanization in India

Rising incomes are associated with urbanization and India has been lagging behind on this count. The pace of urbanization has actually slowed in the country. During 1971-81, the annual average rate of urbanization was 3.79%, but declined to 3.09% between 1981 and 1991 and to 2.73% between 1991 and 2001. Southern India is the most urbanized. Incomes are, therefore, higher and development more widespread than in the North and the East. If we rank Indian cities by per capita income, 9 cities from this region come in the Top 25, 7 from the Western States, 5 from the North and 4 from the East. The top 4 richest cities are all South of the Vindhyas and 2 are from Maharashtra. They are followed by Ahmedabad, Surat and Delhi, which has the 7th highest per capita income among cities. Since Eastern India is growing rapidly in the last few years, it is expected that more and more cities in the East will cross the small city, large city divide. Ranchi, Raipur, Dhanbad and scores of smaller urban centers are growing rapidly on the back of large-scale manufacturing investments in these areas.

3.20 Is there a clear relationship between credit growth and market growth?

Is there a clear relationship between credit growth and market growth? The evidence is mixed.

Table 75: The fastest growing cities out of 112 top cities of India

Growth rates (CAGR)	Market Size Growth Rate	Deposit Growth Rate	Credit Growth Rate
Silvassa	23	14	71
Gandhinagar	22	10	54
Bokaro	19	7	-4
Surat	17	11	18
Thiruvallur	17	11	28
Agartala	16	13	32
Chandigarh	16	13	7
Thanjavur	16	5	20
Kohima	15	9	26
Noida	15	28	43

Table 76: The slowest growing cities out of 112 top cities of India

Growth rates (CAGR)	Market Size Growth Rate	Deposit Growth Rate	Credit Growth Rate
Guntur	8	7	16
Gwalior	8	6	9
Jabalpur	8	3	0
Nellore	8	7	22
Varanasi	8	6	13
Kanpur	7	7	13
Kavaratti	7		
Vijayawada	7	7	24
Dhanbad	6	12	15
Kancheepuram	2	16	22

With the exception of Bokaro, and to a certain extent Chandigarh, the 10 fastest growing cities grew on the back of high credit growth. However, this is not a general rule as a look at the slower growing cities reveal. Cities such as Vijaywada, Kancheepuram, Nellore and Guntur did not display a robust growth in spite of high credit growth. Deposit growth, on the other hand is an effect of market growth and in general grows in the wake of market growth. This is generally borne out by the facts, though a few notable exceptions exist - Thanjavur, Kohima, Bokaro (among the fast growing cities) and Dhanbad and Kancheepuram (slow growing cities).

3.21 Reflection on Disparity between Rural and Urban Areas

In colonial times, port cities created by British rule, such as Bombay, Madras, and Calcutta, grew with colonial trade, with hardly any spread of industry from these nodes into the interior. While the number and size of cities has grown since then, the contrast between the major cities and the surrounding regions remains glaring even today. The huge investments being made in the urban areas, particularly in the metropolises, stand in stark contrast to the condition of the rural areas in the most basic facilities, such as education, health care, sanitation, drinking water, electrification, rural roads, and communications.

To take a particularly striking example, according to official figures, in April 2005, 42 per cent of habitations more than 100 in population did not have access to potable drinking water within 1.6 km. The Bharat Nirman scheme, announced with much fanfare in 2005, aims at clearing only 72 per cent of this shortfall by 2009; the Eleventh Plan document released in December 2007 admits that there has been a huge shortfall in the implementation of even this scheme. The targets, even if achieved, are no guarantee of continued supply of drinking water: Over 360,000 habitations reported in 1999 to have been "covered" were reported by 2005 to have "slipped back", and no longer had drinking water. Given the State's failure to guarantee such an elementary requirement of life, the gaps in other facilities6 are hardly surprising:

- Nearly half of rural households did not have electricity in 2002.
- With regard to three elementary facilities - drinking water, electricity for lighting, and a latrine - only one in nine rural homes enjoyed all three within the premises.
- Nearly two-thirds of rural homes were made partly or wholly of katcha materials (i.e., unstable construction materials such as mud, grass, reeds, bamboo, etc.).
- More than half the villages were more than 5 km. away from the nearest Primary Health Centre (PHC), and more than one-fourth were more than 10 km away from it, and so on. (Nor is the existence of a PHC any guarantee of medical care: for example, other surveys have shown that only 38 per cent of PHCs have all the critical staff and medicines; only 20 per cent have a telephone; and 31 per cent do not have even a single bed7)

The foregoing discussion may have already given a clue to the reader that the facts reflecting the disparity between rural and urban areas are only a few. While measuring the extent of disparity, the highest political-administrative units within or across the States have been considered as regions in most of the existing studies. However, an attempt has been made here to address the problem of disparities between rural and urban areas of India. Following are some of the important factors that show how disparity reflects.

One can see disparity in terms of the share of rural and urban areas in the total income. The Economic Survey, Government of India (2001-2002), shows that the annual average growth rate of Gross National Product (GNP) at Factor Cost was 6.6 per cent during the period 1991-2 to 1999-2000 at 1993-4 prices. However, this growth rate was 5.4 per cent per annum during the period 1980-81 to 1990-91. But, the growth in the national income

was not uniform between rural and urban areas. The share of rural sector in the national income has been declining in India for quite sometime. The decelerating growth of rural income and the inability to absorb rural workers in non-agricultural activities to improve their income were identified as contributing factors to this declining share (Chattopadhyay et al., 1990). Contrary to this, the share of income of urban areas from industry and services in national income grew on account of bias in the policies towards these sectors as well as urban areas where these sectors were located (Raj 1990). It is also observed that there was distinct productivity advantage of urban located manufacturing units over their rural counterparts. These factors may have deepened the scope and sources of income for urban dwellers and, in turn, led to the rural-urban divide.

The disparity in terms of the percentages of rural and urban population living below the poverty line has been growing. It is to be noted that, with a rapid growth of GNP in the 1990s, the poverty situation seems to have eased. The National Sample Survey Organisation (NSSO) estimated (from its 55th round of survey conducted during July 1999 - June 2000) the poverty ratio at 26.10 per cent for the country as a whole, and 27.09 per cent and 23.62 per cent for the rural and urban areas, respectively. The incidence of poverty (percentage of people living below poverty line) registered a steady decline from 38.9 per cent in 1987-8 to 26.1 per cent in 1999-2000 for the country as a whole. In the case of rural areas, this ratio declined from 39.1 per cent to 27.1 per cent whereas, for urban areas it declined from 38.2 per cent to 23.6 per cent during the same period. This shows that the decline in proportion of people living below poverty line was faster in urban areas as compared to rural areas. Though the incidence of poverty declined at the macro-level, rural-urban and inter-State disparities in the incidence of poverty were visible (Government of India 2001-02). These disparities in the level of poverty despite the higher growth rate of GNP could be attributed to the growing rural-urban divide (Naik 2000).

The slow rate of decline in rural poverty during the 90s is not surprising considering that the share of agriculture sector to the Net Domestic Product (NDP) has declined. The faster growth of the economy during the 90s was largely driven by service and manufacturing activities, which were mainly concentrated in urban areas. The growth rate of agricultural sector, in general, and foodgrains, in particular, witnessed a substantial deceleration during the 1990s. The trend growth rate of production of food grains was 3.29 per cent per annum during 1981 to 1992. The trend growth rate of food grain production sharply declined to 1.36 per cent per annum during the period 1993 to 2001.

Since agriculture is mainly concentrated in rural areas, the slow rate of reduction in the level of rural poverty can be attributed to decelerated growth in agricultural output. The latest estimate by the Planning Commission on poverty for the year 1999-2000 had found that still 193 million people in rural areas were living below poverty line whose primary source of income was agriculture (Government of India 2001-02).

The issue of "disparity" can also be assessed from the level of per-capita consumption expenditure between rural and urban areas. The 55th round of NSSO for July 1999 - June 2000 shows a widening of disparity between rural and urban per capita monthly expenditure at both current and constant prices (Table - 1). In absolute terms, the average monthly per capita consumption expenditure at current prices rose from Rs. 309 in 1994-95 to Rs. 486 in 1999-2000 in rural areas and from Rs. 508 to Rs. 855 in urban areas during the same period. This shows that the gap in the average monthly expenditure per person between rural and urban areas was Rs. 199 in 1994-95 and this gap increased to Rs. 369 by June 2000. Importantly, the average monthly expenditure on consumption per person in rural areas increased by 57.1 per cent during the period of 5 years starting from 1995. However, in the case of urban areas, the consumption expenditure level increased by 68.3 per cent during the same period. At constant prices, the per capita consumption expenditure8 in rural areas increased by only 15.47 per cent and in urban areas by as much as 23.57 per cent during the period 1994-95 to 1999-2000. Based on the level of consumption expenditure at both current and constant prices, it can be suggested that there is a growing gap between rural and urban areas in their consumption expenditure.

Furthermore, the higher gap in expenditure on food and non-food items can also be observed between rural and urban areas at different points of time (Table 77). Importantly, the rates of increase in consumption expenditure on food and non-food items in rural areas were 52.9 per cent and 63.7 per cent, respectively, during the period of 1994-95 to 1999-2000. However, the rate of increase in consumption expenditure on food items in urban areas was less as compared to rural areas, and for non-food items it was relatively more in urban areas. It indicates that the urban expenditure pattern was more influenced by non-food items (such as education, health and so on), which might be considered as present investment for future benefit. Nevertheless, the gap in expenditure pattern between rural and urban areas could be attributed to low level of income. Hence, this gap in the level and pattern of consumption expenditure across the rural and urban areas reflects the rural-urban divide.

Table 77: Average Expenditure Pattern per Person on Consumption (in Rupees)

Type of Consumption	July 1994 - June 1995			July 1999 - June 2000 expenditure			Rate of increase in Consumption (%)	
	Rural	Urban	Rural-Urban Urban gap in consumption expenditure	Rural	Urban	Rural-Urban Urban gap in consumption expenditure	Rural	Urban
Food	188.9	271.5	82.6	288.8	410.8	122.0	52.9	51.3
Non-food	120.5	236.6	116.0	197.4	444.1	246.7	63.7	87.7
Total	**309.4**	**508.1**	**198.6**	**486.2**	**854.9**	**368.8**	**57.1**	**68.3**

Source: Government of India (2001).

The growing gap between rural and urban areas can also be observed in terms of literacy, number of years of schooling, and access to drinking water, sanitation and health services (Table 78). The urban population had better access to drinking water, sanitation and health services. Figures on literacy rate and average number of years of schooling by children show that the access to schooling was better in urban areas as compared to rural areas. The probable consequences of poor literacy and the access to health care services, safe drinking water and sanitation facilities may be observed form the differences in Infant Mortality and Child Mortality Rates between urban and rural areas. This indicates that there is a clear distinction between urban and rural areas in terms of the quantum and access to basic facilities and services. Therefore, an examination of the contributing factors for the rural urban divide is necessary to understand the dynamics of rural urban disparities.

Table 78: Rural-Urban Disparities in India (1991-1996)

Year	Perception of population with access to						
			July 1994 - June 1995			July 1999 - June 2000	
	Literacy (Age 6+ in per cent)	Mean years of schooling	Safe Drinking water	Adequate Sanitation	Health Services	Infant Mortality rate	Child Mortality Rate
1991	**1994**	**1991**	**1996**	**1996**	**1994**	**1994**	
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**
Rural	44.5	3.04	63.6	14	80	80	26.1
Urban	73.1	5.76	90.7	70	100	52	15.7

Source: The data in columns 6 and 7 were obtained from WRI (1998) and those for the rest of the columns from Dutta (1998).

3.21.1 Factors Contributing to Rural-Urban Disparities

In broader terms, disparities can be attributed to three different types of factors: natural differences, socio-cultural conditions and policy decisions.

Among the natural factors, agro-climatic conditions, geographical location, resource endowment etc., play an important role in economic development of a particular area, It is true that good climate, adequate rainfall, and presence of natural and mineral resources contribute to economic development. Improved infrastructure facilities, transport and communication, and irrigation facility, when present in a particular region, may enhance the potential for its development. Namerta (1994) shows that commercialization of agriculture, transport development and emergence of agro-processing units contributed to the growth of market towns in Andhra.

The second set of factors, which include values and rigid traditions, and patron-client relationships, affect social and economic mobility, innovation and entrepreneurship. It is believed that the extended family system in rural areas with patron-client relations help reduce vulnerability and spread the economic risk among family members (ESCAP 2001), These social safety nets may be helpful for weaker members of society, but these work as disincentives for more entrepreneurial behavior since any accumulated wealth would have to be shared with other members. Generally, the extended family system leads to the free-rider problem and adversely affects economic returns given the productive potential capacity of the household members.

Societal restrictions are also important in retarding the development possibilities for some groups of people in rural society. These social restrictions may limit their mobility (social or economic). Rajasekhar (1992) shows that downward economic mobility was more common among the small and marginal farmer households belonging to depressed castes. However, this did not lead to polarization as the small and marginal households felt compelled to stick to small pieces of land on account of lack of income earning opportunities in urban areas, and possibilities of non-farm employment. However, the diversification into non-farm sector was in the nature of distress diversification (Vaidyanathan 1986) and did not result in substantial income increase to them.

The social restrictions also limit access to social services like education, medical care and opportunities for occupational diversification. Bonded labor, prohibitions against women going to school, restrictions on women to work outside the home (Rajasekhar 2002),

forced child labor, jajmani system9 are examples of social restrictions experienced in rural areas, which restrict income earning ability, participation in local decision-making bodies, and so on.

As against this type of situation, urban areas are characterized by higher density of population and occupational diversification with less personal relationships. While defining urban life, Wirth (2000) has stated that cities were relatively dense with permanent settlements of socially heterogeneous individuals. He found that differentiation and specialization were logical outcomes of the large number of people living within a small area. He also stated that an anonymous lifestyle of urbanites and working together without sentimental and emotional ties fostered a spirit of competition and mutual exploitation. Such a specialization and innovation resulted in higher productivity and wealth. Besides, the large size of the urban population created a high demand for goods and services. Moreover, the availability of wide range of resources in a small area promoted specialization and innovation that produced goods and services at lower costs with economies of scale and promoted an increased supply. The backward and forward linkages across sectors created their own demand and supply. Probably, this gave rise to economic growth in urban areas.

It is argued that urban centers/cities have the advantage of more concentration of political power, infrastructure, business, foreign and domestic firms, multinational companies, and foreign aid for developmental activities (Hill 2000). This suggests that the urban areas usually have a strong economy because of the presence of high-value manufacturing and service industries. Being the centers of power, policy and commerce, urban areas are very distinct from the countryside. With the elite in the urban areas and the masses in rural areas (simple and hard working), the distinction between urban and rural society becomes a cultural one. Moreover, owing to the scattered pattern of rural settlements with inadequate communication and transport networks, rural people are disadvantaged in all respects.

Disparities between rural and urban areas have also been attributed to the urban bias in the development policies of the government (Lipton 1977). The biased development policies benefited a small portion of the population, namely, the city dwellers, and ignored the majority of the population that lived in rural areas. One of the important policies, that Lipton narrated, was the price policy by the government. Through price controls on staple foods, the cost of living of the urban population was kept low at the cost of the

farmer's income. This, in turn, increased rural poverty and delayed rural development. Importantly, the bulk of investment by the public and private sectors ended up in the urban areas. While explaining the bias of government policy, Lipton (1977), in some other context, also points out that the scarcity of public funds compelled the government to invest always first in urban areas on physical infrastructure, education and health care and lastly, in rural areas. Another study has argued that the lower budget for social services lead to a decline in the quantity and quality of service delivery in rural areas, in general, and remote rural areas, in particular (ESCAP 2001). Not surprisingly, therefore, the utilization of social services was found to be significantly better in urban areas. For instance, the level of utilization of health care services, considered essential for safe delivery, was found to be higher among those living in urban areas in Karnataka (Raju et al. 2004).

Lipton's study (1977) has also substantiated that the urban dwellers, even the urban poor, were in better position because of their ability to organize and their proximity to the States of government. While explaining the rural-urban divide, Knight et al. (2004) have mentioned that the urban minority were politically more important to government than the rural majority. Based on the foregoing discussion one can argue that the urban biased policies, concentration of infrastructure, firms, commerce, foreign and domestic aid etc., may be attributed to increasing rural-urban disparities.

3.22 Consumer loan activity index

The top ranking districts of India in terms of "Consumer loan activity" are:

Table 79: Top ranking districts of India in terms of "Consumer loan activity"

Ranking based on consumer loan activity index	District
1	Mumbai (Suburban)
2	Chennai
3	Bangalore
4	Delhi
5	Hyderabad
6	Dharmapuri
7	East Godavari
8	Mumbai
9	Tirunelveli
10	West Godavari

The Consumer loan activity index reflects the current level of consumer loan activity. It is accounted for by the variables such as - amount of loan utilized for housing, consumer durables and personal purposes like education, credit card, etc. In addition, variables such as amount of cash loan payable by households to institutional and non-institutional agencies, loans disbursed by SHGs (Self-Help Groups) and small business credit are also incorporated.

3.23 Who is growing and why?

The changing fortunes of Indian States are the result of an interaction between geography and policies

For a long time, India's major States occupied relatively fixed relative positions. Punjab and Haryana had prospered through the Green Revolution and were at or near the top of the heap in rankings of per capita State domestic Product (SDP). Maharashtra and Gujarat also did well, with their commercial cities of Mumbai and Ahmedabad. The 'BIMARU' States were clearly at the bottom: Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh, with Orissa also fitting the category if not the acronym. In the middle came the southern four, plus West Bengal. Now, of course, three of the five poorest States have been split. The table looks at some new data for 16 major Indian states. What does it show?

One can see Haryana racing ahead. This is the Gurgaon effect, as that part of Haryana becomes like Delhi. It has passed and surpassed Punjab in per capita SDP in the last few years. The other winner is Kerala. It used to be the State that had great human development but couldn't manage to translate that into growth. Look at it now. It's got everything going for it: natural beauty, educated people, and decent governance. It's matching Maharashtra's average, but that disguises the extremes of Mumbai and the hinterland. And don't forget Tamil Nadu, which is not far from Punjab now in per capita SDP. In 1981, Tamil Nadu's per capita SDP was less than 60% of Punjab's.

Andhra Pradesh and Karnataka are not doing too badly. Their growth is good to middling (Karnataka did better just a few years earlier) and if they could extend their growth beyond their two biggest cities, they would be on a firm footing for the future. Kerala and Tamil Nadu have the advantage of many cities and towns that have strong economic activity. Their economic geography is more even.

Of the poorer States, recently Rajasthan was doing better: In this period it slips, but Orissa and Bihar improve their relative performance. But Bihar is so, so poor that it will

take a long, long time to catch up. Perhaps one hope is the Bihari migrants and their remittances - remember these are domestic products, and not domestic incomes. We don't know how big the remittances are, but they probably matter a lot for Bihar.

Table 80: Changing fortunes of Indian States

State	Per capita 1999-2000 In Rs	Per capita 2006-2007 In Rs	Growth rank	Structural change rank	
Andhra Pradesh	15,507	22,835	3	14	
Bihar	5,786	8,167	7	9	
chattisgarh	11,629	15,650	9	15	
Gujarat	18,864	27,027	6	16	
Harayana	23,229	37,314	1	2	
Jharkhand	11,549	14,252	12	5	
Karnataka	17,502	22,952	11	1	
Kerala	19,461	30,044	2	4	
Madhya Pradesh	12,384	12,881	16	8	
Maharashtra	23,011	30,982	10	13	
Orissa	10,567	15,528	4	3	
Pubjab	25,631	30,041	14	11	
Rajasthan	13,619	16,450	13	12	
Tamil Nadu	19,432	28,320	5	10	
Uttar Pradesh	9,749	11,334	15	7	
West Bengal	15,488	21,753	8	6	

Source: http://www.livemint.com/2009/10/04220020/Who-is-growing-and-why.html?h=B

The scary part of the story is Madhya Pradesh and Uttar Pradesh. They are not only among the poorest, but are also consistently among the slowest growers. This is the heartland of the heartland, and its stagnation does not bode well. It could also be that the SDP figures paint too bright a picture for Chhattisgarh, Jharkhand and Orissa. Their mix of natural resources and tribal populations suggests that there may be bigger problems than are captured in SDP averages.

The above table also shows a ranking of structural change, based on an index of sectoral shifts. It is positively related to growth. This is new, and bodes well for economic dynamism in the future.

Why the differences? Position matters: history and geography. The southern States share some common features in this respect. So do States with (or close to) the metros where the elite are thriving. Haryana is no longer in Punjab's shadow as an agricultural State. The poor States, or the poor regions of other States such as Maharashtra and Karnataka, are all in India's geographical core. It's hard to escape geography. But policy matters too. You can see it in the fact that States' relative growth rates change so quickly. You can see how policy unlocked the benefits of position. And policy even shaped history, in educating populations and breaking social barriers.

It appears that the fate of Punjab sums up the importance of policy. Its rulers fought over river water while wasting what was there, and destroying the water that is underground. They tried to preserve the economic status quo while the world changed around them. Bad policies and bad governance have squandered the state's position and infrastructure. The good thing is that policies can change, and change quickly. One can always hope.

3.24 Inter-State and Sectoral disparities in NGO presence

It has been observed that in high population growth States like Uttar Pradesh, Bihar, Madhya Pradesh, Rajasthan, Uttranchal, Jharkhand and Chhattisgarh, the contribution of the voluntary sector is also weak compared to more developed States. Data given in Table 81 show that out of the total 12,265 NGOs in the country 4,397 NGOs i.e., 35.9% are in these States. As against this the population of the seven States is about 41% of the country's population. Further most of the 133 most backward districts in the country having fertility rates more than 3.5 belong to these States. It can also be noticed that most of the NGOs work in the Rural Development and HRD Sectors. This may be a reflection of the larger resources being channelised through the NGOs in these sectors.

The number of NGOs in the Health & Family Welfare sector is comparatively fewer. Uttar Pradesh and Bihar are having a fair share of NGOs whereas Rajasthan and Madhya Pradesh have fewer numbers of NGOs. Of course mere numbers cannot give any proper idea about their impact on sectoral programmes. That will depend upon the quality and capacity of the NGOs.

Table 81: Number of NGOs in the Seven Demographically Sensitive States

State	M/O RD	M/O HRD	H&FW	YA&S	Others	Total no of NGO in the State (all sector)	NGOs in the 7 State as a % to total NGOs in the Country
As on	Jul,2000	Oct,2000	Sep,98	May,2000			
Bihar	663	111	98	53	219	1144	9.33
Jharkhand	110	30	4	15	45	204	1.66
Madhya Pradesh	193	164	52	50	92	551	4.49
Chhattisgarh	25	5	1	0	12	43	0.35
Rajasthan	206	60	9	16	62	353	2.88
Uttar Pradesh	1115	218	143	125	342	1943	15.84
Uttaranchal	94	11	4	5	45	159	1.30
Total no. of NGOs in the 7 States	2406	599	311	264	817	4397	
TOTAL (INDIA)	6470	2082	761	592	2360	12265	100
7 States NGOs as a % of total NGO in Each Sector	37.19	28.77	40.87	44.59	34.62	35.85	

Others include NGOs from sectors SJ&E, M/O E&F, Labor, Non-Conven., Textile

Source: Planning Commission, NGO database

3.24.1 The Need for Voluntary Action

The scope and need for NGO involvement is the highest in the high population growth States which are considerably below the national average in important indicators like female literacy rate, underage marriages, coverage of full immunization, full Antenatal care, Infant Mortality Rate, Maternal Mortality Rate and the adoption of family planning

methods. Due to these factors, the fertility rate of these States is also substantially higher than the national average. The data presented in the Table 82 below clearly brings out the considerable scope for improvement in each and every sector.

Though separate data is not available for the new States of Uttaranchal, Chhattisgarh and Jharkhand, their position regarding these indicators cannot be much different from the parent States. There is immediate need for effective intervention to address the various social, economic and demographic problems. Much needs to be done in the area of literacy, education, antenatal care, immunization and for ensuring safe delivery for the mother. The poor nutritional status of the mother and child is also reflected in the high MMR and IMR. Even variables such as Couple Protection Rate (CPR) and the rate of sterilization which are directly relevant for fertility control are lagging behind. No doubt along with governmental efforts, involvement of NGOs in a big way can help solve these problems. Thus, there seems to be a strong case of concentrating NGO activity in the backward States.

3.24.2 NGOs in India

As per data available with the Planning Commission, there are 12265 NGOs in the country of which 91% are involved in social sector activities - 52.75% in Rural Development (RD), 17% in Human Resource Development (HRD), 10.15% in Social Justice & Empowerment (SJ & E), 6.2% in Health & Family Welfare (H & FW), and 4.8% in Youth Affairs & Sports (YA & S).

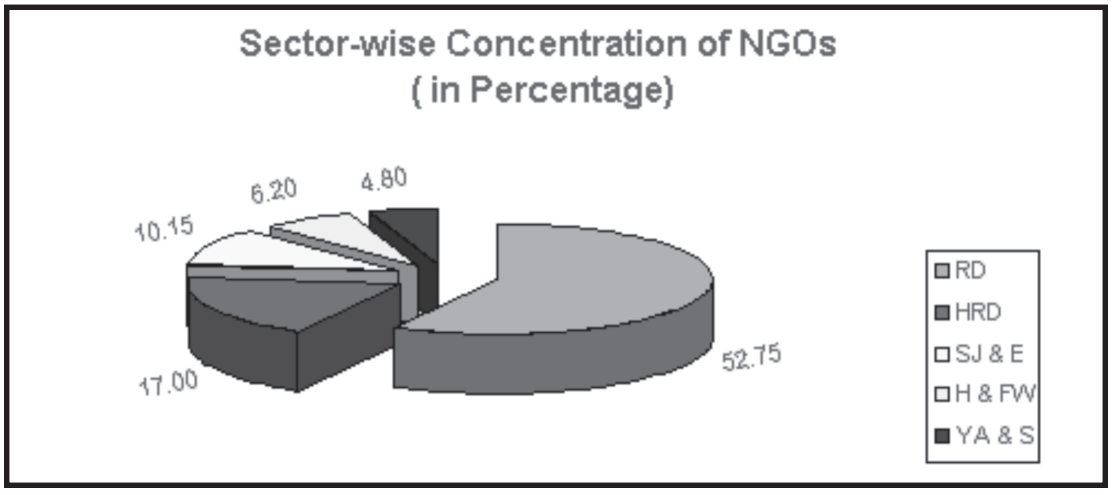


Table 82: Four High Fertility States – Selected Indicators

Indicator	India	Bihar	Madhya Pradesh	Rajasthan Pradesh	Uttar
Female Literacy Rate (7 years and above) (Census 2001)	54.3	33.6	50.3	44.3	43.0
% of women aged 20-24 married before age 18 (NFHS -98-99)	50.0	71	64.7	68.3	62.4
Full Antenatal care (NFHS-98-99)	43.8	17.8	28.1	22.9	14.9
Safe delivery for the mother (NFHS-98-99)	42.3	23.4	29.7	35.8	22.4
Full immunization (RHS 98-99)	54.2	20.1	47.3	36.9	44.5
(NFHS 98-99)	42.0	11.0	22.4	17.3	21.2
Infant Mortality Rate (SRS-99)	70	66	91	81	84
(NFHS 98-99)	68	73	86	80	87
Maternal Mortality Ratio (SRS 1998)	407	452	498	670	707
Couple Protection Rate (Average NFHS-II and RHS 98-99)	44.3	22.3	43.9	40.9	27.2
Estimated number of eligible couples (March, 2001) (in lakhs)	1766.8	147.5	107.5	100.5	279.0
Number of Sterilization per 10,000 Unsterilized Couples (2000-2001)	320	60	386	318	145
Crude Birth Rate (CBR) (SRS 1999)	26.1	30.4	30.7	31.1	32.1

All India (Region-wise) NGOs

About 25% NGOs are working in the southern States of which 10.4% in Andhra Pradesh, 4.15% in Karnataka, 2.84% in Kerala and 7.85% in Tamil Nadu. And about 36% NGOs are working in the demographically weak States including newly formed States - 15.84% in Uttar Pradesh, 4.5% in Madhya Pradesh, 9.33% in Bihar, 2.9% in Rajasthan, 1.7% in Jharkhand, 1.3% in Uttaranchal and 0.35% in Chhattisgarh.

Similarly, about 30% NGOs are working in other major States - West Bengal (9.73%), Orissa (6.78%), Maharashtra (4.95%), Delhi (4.08%), Gujarat (2.59%), Haryana (1.5%) and Punjab (0.36%). 7.35% NGOs are working in North Eastern States - Assam (2.1%), Manipur (2.9%), Meghalaya (0.18%), Mizoram (0.28%), Nagaland (0.47%), Arunachal Pradesh (0.2%) and Tripura (0.37%).

The role of NGOs and their capacity in reaching across to large sections of the population and the quality of reach is undoubted. However, in view of the limited organizational, managerial and financial capacities of NGOs, they cannot, in any way supplant the normal government machinery in addressing the various developmental problems of the social sector.

Summing Up

Based on the above empirical findings an important issue that emerges is why there is increasing inter-regional inequalities in India? In this context, the Planning Commission has reported that decision on resource transfers, agricultural development strategies, and industrial location policies were not always based on a systematic analysis of regional disparities and their underlying causes. In 1983, the Indian National Committee on the Development of Backward Areas reported that major federal incentives like concessional finance for industrial location had primarily benefited the States that were not classified as industrially backward. Further, most of the districts receiving substantial benefits were those in close proximity to relatively developed industrial centres (Lall 1983). It is also argued that inter-State disparities had increased either due to failure of policy implementation or due to the use of inappropriate approaches (Chelliah 1996). The compulsion of achieving higher economic growth rates with limited resources often made it imperative for decision-makers to concentrate their investment in those segments of the economy and those regions of the country where the rates of return were expected to be high. This resulted in widening regional imbalances and strengthening of the dualistic structure of the economy (Sarker 1994).

4

PLANNING FOR REMOVAL OF REGIONAL DISPARITIES

"When India attains her destiny, she will forget the chapter of communal suspicion and conflict and face the problems of modern life from a modern point of view. Differences will no doubt persist, but they will be economic, not communal. Opposition among political parties will continue, but it will be based, not on religion but on economic and political issues. Class and not community will be the basis of future alignments, and policies will be shaped accordingly."

-Maulana Abul Kalam Azad [India Wins Freedom]

4.1 Introduction

Growth with justice is one of the main objectives of planning in India. It promises promotion of socio-economic upliftment of backward people on the one hand and the development of resource potentials of backward areas, on the other. Hence, it involves both social and spatial justice. There has always been a concern for the development of backward areas in Indian Plans. However, it would be quite appropriate here to first discuss in brief the manner in which the backward areas were dealt with in India prior to its independence.

4.2 Mughal period (1500-1750)

India was no exception to the laws of historical development. India during Akbar's time was considered as prosperous a country as the best in the world. Though mainly agrarian, India was a leading manufacturing nation at least at par with pre-industrial Europe. She lost her relative advantage only after Europe achieved a revolution in technology.

The economy was village-based. Though under Muslim rule for over 500 years, the society continued to be organised in Hindu traditions. Caste system was intact. The social disparity often added another dimension to economic exploitation. While the Jajmani system ensured social security, the caste system ensured social immobility.

However, flexibility of the Jajmani system ensured that the artisans working under it were not completely cut off from the market. They were free to sell outside the village the surplus goods left after the fulfillment of community obligations. The traditional economic system based on agriculture and small-scale industries were not disrupted either by the activity of native capital or by the penetration of the foreign merchant capital.

There is historical evidence to indicate that there were food surplus and deficit regions as trade in food grains between regions took place. This contradicts the postulate that a uniform pattern of self-sufficiency for the entire subcontinent existed. For example, rice was being purchased from Konkan coast to be transported through sea to Kerala. Similarly, Bengal rice was sent up the Ganges to Agra via Patna, to Coramandel and round the Cape to Kerala and the various port towns of the West Coast. The best mangoes in Delhi's Mughal Court came from Bengal, Golconda and Goa. Salt to Bengal was imported from Rajputana.

Domestic trade was facilitated by a fairly developed road network. Sher Shah Suri during his short regime laid the foundation of a highway system in India. He alone had built 1700 sarais for the convenience of travellers, mainly traders, on the highways.

India exported common foods like rice and pulses, wheat and oil, for which there was considerable demand abroad. Bengal, Orissa and Kanara Coast north of Malabar were the major grain surplus regions. Besides, Bengal exported sugar and raw silk, Gujarat exported raw cotton, while Malabar sent out its pepper and other spices.

The Indian merchant lived in a keenly competitive world but he accepted important social limits to competition. Business was organized around the family with an occasional trading partner from the same social group.

Agra during Akbar and Delhi during the reign of Shahjahan were no lesser cities that London and Paris of those days. Foreign travellers who visited India during the Sixteenth and Seventeenth centuries present a picture of a small group of ruling class living in great luxury, in sharp contrast to the miserable condition of the masses. Indigenous sources do not disagree; they often dwell on the luxurious life of the upper classes, and occasionally refer to the privations of the ordinary people. Such sharp inequality in living standards was not peculiar to India it existed in a greater or lesser degree everywhere, including Europe.

The Indian village was highly segmented both socially and economically. There was significant inequality in distribution of farm land, though there was plenty of cultivable waste-land available which could be brought under plough if capital, labor and organization were forthcoming.

The share of produce retained by different classes of peasants varied. The general Mughal formula for the authorized revenue demand was one-third or one-half. The precise share depended on a number of factors - nature of the soil, relationship of the peasant with the Zamindar of the area, traditions, etc. Caste might have also played a role. For instance, in some parts of Rajasthan, members of the three upper castes - the Brahmans, the Kshatriyas or Rajputs and the Vaishyas or Mahajans paid land revenue at concessional rates. Because of these factors one would expect considerable inequality within the village. In any case the class and caste distinctions superimposed on each other made the rural society extremely complex and unequal.

In comparison to the rural rich, the urban rich especially the merchants in coastal towns were much wealthier. Some of the merchants of Bengal and Gujarat had stupefying wealth. The pattern of life of the nobility and the upper class in Mughal India has become a byword for luxury and ostentation. There is hardly any evidence to show that the puritan style set up by Aurangzeb had any marked effect on the lives of the nobility. Of course, this consumerism created demand for a horde of luxury items which generated employment, income and general prosperity.

4.3 The British Period (1757-1947)

The debate concerning the level of India's economic development in the pre-colonial era is unlikely to ever reach a satisfactory conclusion as the basic quantitative information is absent.

In the colonial past, spatial structure of Indian economy was evolved to suit the colonial interest. The transport network was designed to link areas producing primary commodities for export. Under the system, the port cities became the core of development, and the areas growing cotton, sugarcane and tea as enclaves of development, leaving vast areas in the North-East and Central India underdeveloped. The regional disparities, thus created during the colonial period, got further accentutated in Independent India, particularly after the reorganization of States on linguistic basis in 1956. The lingual States that emerged after the reorganization were socially homogeneous but economically heterogeneous (Kundu and Raja, 1982, Krishan, 1989).

Dadabhai Naoraji was the first one to make an attempt to estimate national and per capita income in India. He placed per capita income of India at Rs. 30 in 1870 compared to that of England of Rs. 450. However, since necessities in India cost only about one-third as compared to England at that time, the real difference in terms of purchasing power parity was not fifteen times but only five times.

The statistical reporter of the 'Indian Economist' ran a series of articles on the standard of living in India in 1870. One of the items which were given Region-wise was value of per capita agricultural output for 1868-69. According to that it varied from Rs. 21.7 in Central Province to as low as Rs. 11.1 in Madras. Others were Bombay (Rs. 20.0), United Provinces (Rs. 12.1), Punjab (Rs. 17.4) and Bengal, including Bihar and Orissa (Rs. 15.9).

Region-wise birth rates, death rates and life expectancy at birth are given in the table below for the period 1901-1911:

Table 83: Region-wise birth rates, death rates and life expectancy at birth for the period 1901-1911

Region	Birth rate	Death rate	Life expectancy	
			Male	Female
East	52.8	45.8	22.4	22.8
West	48.1	42.1	24.8	23.8
Central	46.6	31.3	31.7	32.7
North	48.6	48.7	21.7	19.2
South	40.3	32.2	29.8	32.3
All India	**47.7**	**41.7**	**24.7**	**24.4**

In 1901, there were 2093 towns in the Indian Sub-continent and about ten per cent of the population was urban. There was considerable variation in the level of urbanization across the country; it varied from 18.8 per cent in Bombay Presidency to five per cent in Bengal Presidency, including Bihar and Orissa.

The dependence on agriculture for livelihood varied considerably across the regions. While the share of cultivators in the male working force in Assam, Bihar, Orissa and Uttar

Pradesh was 55 per cent or more, it was less than 40 per cent in Gujarat, Maharashtra, Kerala and West Bengal in 1911.

Industrialization in India, from the beginning, had been experiencing a duality. European entrepreneurs invested more and more in industries which were mainly export-oriented whereas Indian entrepreneurs concentrated on industries mainly for the Indian markets. Thus jute, tea, etc. were mainly in European hands whereas textile, sugar, etc. were mainly Indian. Apart from other factors, one main reason was that Indian market offered higher profit margins which Indian industrialists found easier to penetrate. Not surprisingly this tendency continues even today.

The benefit of irrigation development was mainly concentrated in Northern, Western and Southern provinces during British period. Central and Eastern India were relatively neglected. This has had serious implications in the post-independence period also. While the former areas were ripe for benefiting from the green revolution package, the latter could not.

From its beginning in 1853, India's railway system expanded rapidly to become, by 1910, the fourth-largest in the world. This network which covered most of the Subcontinent radically altered India's transportation system.

Railways vastly increased the speed, availability and reliability of transportation, reduced the cost, allowed regional specialization and expansion of trade. For attracting private investors, Government of British India assured guaranteed return. Under this scheme, which was used in other parts of the world to build railways, if a company did not attain a minimum rate of return of five per cent, it received compensation for the difference from the Government. Stimulated by an assured rate of return, British investors swiftly made their capital available to the private railway companies. By 1947 all but a few remote districts in far-flung remote regions were served by railways.

The fiscal system during the British rule gradually evolved into a federal system from a highly centralized control. Over the years relations between the centre and the provinces were made more elastic but not much more systematic. In particular, there was no attempt to equalize provincial levels of public services, or the tax burdens on similar classes of tax payers in different States. There were enormous differences in tax incidence and standards of public services in the beginning, and these differences were perpetuated since precedent was followed rather than any principle.

The main source of differences in tax burdens was the variation in the system of land revenue, the largest source of public revenue. This also explained one source of difference in expenditure. Bombay spent much more per head on nearly every head of expenditure than the others. The other provinces clamored for less inequality, but to little effect. Bombay continued to spend far more on every major head than the other provinces, and Bihar and Orissa far less. The poverty of these provinces became evident when they were separated from Bengal in 1912-13.

Table 84: Relative Provincial Expenditure per head on selected services
1876-77 and 1927-28, Bengal = 100

Province	General Administration		Education		Health	
	1876-77	1927-28	1876-77	1927-28	1876-77	1927-28
Bombay	374	411	325	345	285	141
Central	185	169	197	131	142	53
Madras	159	193	112	166	139	98
Punjab	159	103	145	199	135	126
United	244	103	110	123	78	51
Bengal	140	100	100	100	100	100
Assam	100	136	117	120	82	121
Burma	159	292	295	276	260	201
Bihar and Orissa	470	75	---	83	---	51

Many critics also argued that the system did not even encourage economy, but rather extravagance, since the actual expenditure in one period formed the basis of allocations from the Centre in the next. For the same reason, the provinces had little incentive to try to raise their tax revenues. A more or less similar situation exists in India even today when the Finance Commissions assess the revenue gaps of the States and try to fill such gaps by increased transfers.

4.4 Post-Independence Period

At the time of India's independence, the socio-economic scenario was characterized by a predominantly rural economy with feudal structure. There was

widespread poverty, dismal literacy rate, geographically and culturally isolated population, a rigid social structure and extremely poor transport and communication system. The State leaders and policymakers during the initial years of development planning were also not adequately acclimatized to development activities.

In view of the impediments to social and economic development, the fulcrum of the planning process had been pivoted on the strategic goal of 'economic development with social justice'. Thus, the planning process in India, over the years, underscored the development of backward areas and disadvantaged population groups.

The existence of depressed, distressed and disorganized regions virtually affects the process of economic development. Realizing the gravity of the problem, the Indian planners have been making efforts to transform the structure of the Indian economy to accelerate economic development as well as to achieve equitable distribution of the gains of development to the hitherto deprived and neglected regions and sections of the population (Prakash 1977; Singh 1984; Suar 1984; Borbora and Mahanta 2002; Mallikarjun 2002).

Government's economic policies during the colonial period were more to protect the interests of the British economy rather than for advancing the welfare of the Indians. The primary concerns of the Government were law and order, tax collection and defence. As for development, Government adopted a basically laissez-faire attitude. Of course, railways, irrigation systems, road network and modern education system were developed during this period. Railways and road network were more to facilitate movements of goods and defence personnel and to facilitate better administrative control. Irrigation canal system was mainly to fight repeated droughts and famines and to boost land revenue. Education, to begin with, was developed mainly to train lower-ranking functionaries for the colonial administration.

Particularly lacking was a sustained positive policy to promote indigenous industry. Indeed, it is widely believed that government policies, far from encouraging development, were responsible for the decline and disappearance of much of India's traditional industry.

Altogether, the pre-independence period was a period of near stagnation for the Indian economy. The growth of aggregate real output during the first-half of the twentieth century is estimated at less than two per cent per year, and per capita output by half of a per cent a year or less.

There was hardly any change in the structure of production or in productivity levels. The growth of modern manufacturing was probably neutralised by the displacement of traditional crafts, and in any case, was too small to make a difference to the overall picture.

Along with an impoverished economy, independent India also inherited some useful assets in the form of a national transport system, an administrative apparatus in working order, a shelf of concrete development projects and a comfortable level of foreign exchange. While it is arguable whether the administrative apparatus built by the British helped or hindered development since 1947, there is little doubt that its existence was a great help in coping with the massive problems in the wake of independence such as restoring civil order, organising relief and rehabilitation for millions of refugees and integrating the Princely States to the Union.

The development projects initiated in 1944 as a part of the Post-war Reconstruction Programme was of particular value to independent India's first government. Under the guidance of the Planning and Development Department created by the Central Government, a great deal of useful work was done before independence to outline the broad strategy and policies for developing major sectors and to translate them into programmes and projects. By the time of independence several of these were already under way or ready to be taken up. They included programmes and projects in agriculture, irrigation, fertilizer, railways, newsprint and so on.

After independence, India adhered to the socialistic path of development planning. It aimed at growth with social and spatial justice. Growth with justice is one of the main objectives of planning in India. It promises promotion of socio-economic upliftment of backward people on the one hand and the development of resource potentials of backward areas, on the other. Hence, it involves both social and spatial justice.

There has always been a concern for the development of backward areas in Indian Plans. The First Plan (1951-56), in order to remove the gross imbalances in economy - caused by the partition, placed the highest priority on agriculture, including irrigation and power projects.

The realization for redressal of disparity in development came as early as Second Five-Year Plan where the question of regional disparities was discussed. The Plan states 'the pattern of investment must be so devised as to lead balanced regional development' (p.

18). The Second Plan (1956-61) emphasized industrialization to generate employment opportunities outside the farm sector and to remove regional imbalances in industrial development. The three ways to approach the problem of balanced development were (i) programmes for setting up decentralized industrial production, (ii) location of new, public or private, enterprises be considered to ensure a balanced economy of different parts of the country, and (iii) promotion of labor mobility across the country. The Third Plan (1961-66) aimed at self-sustaining growth; hence, it accorded priority to balanced growth of agriculture and industry.

From the above discussion it is clear that India's strategy for development with social justice during the first two decades of planning consisted primarily of two instruments which were: (a) economic growth with balanced regional development; and (b) institutional changes to remove some socio-cultural constraints in accessing development opportunities. The implicit assumption behind the choice of these instruments was that if they perform well then the fruits of planned development would 'trickle down' to the masses. Unfortunately, in the early 1960s itself, the Indian planners began to face serious criticism as the contemporary empirical evidences revealed that the fruits of development had not percolated down to the masses and there were a large number of deprived and deserving communities whose basic needs remained unmet. As a response to this criticism, the Planning Commission came out with a paper in 1962 titled, 'Perspectives of Development: 1961-1976; Implication of Planning for a Minimum Level of Living'. The paper suggested that a GDP growth rate target of 6 per cent per year, accompanied by a stable distribution, would facilitate broad-based improvement in living standards. Thus, the planners for the first time explicitly recognized the importance of distributional policies and considered it necessary to have targeted programmes for employment generation and income support for those who had been left out of the benefits of the growth process. Consequently, some special programmes like public distribution of food grains at reasonable prices, Small Farmers Development Agency (SFDA) and Marginal Farmers and Agricultural Laborers (MFAL) schemes were introduced in the late 1960s and towards the beginning of the 1970s to target the specific disadvantaged groups like the small and marginal farmers.

The Fourth Plan (1969-74), preceded by three Annual Plans (1966-69), focused on removal of structural and regional imbalances in development. Since the initial programmes such as setting up decentralized industrial production contributed to widening of the disparity rather than mitigating it, the disparities seemed invidious; hence, palliative measures were

not sufficient. Therefore, two bold measures were taken in the Fourth Plan (1969-74):

i. The change in the central plan resource transfer formula in favor of backward States, and

ii. Initiation of a number of backward area development programmes.

On the eve of the Fifth Plan (1974-79), the policymakers realised that the institutional changes and the special programmes that had been in operation to complement the low economic growth rate could not succeed in making a significant dent on those excluded from the growth process. It was observed that the set of people, who failed to derive the benefits from the growth process, were much widespread and diverse in character than was originally anticipated in the previous five-year plans. The contemporary empirical research evidences reaffirmed that poverty had been more acute among wage laborers, scheduled tribes and scheduled castes and people inhabiting the backward regions. These findings provided the rationale for complementing growth promoting policies with increasing number of direct measures in the form of targeted programmes intended for a much larger set of disadvantaged population groups.

The development strategy during this period also derived its strength from the idea of poverty-reducing growth process proposed by Prof. Sukhamoy Chakraborty, who suggested that "just a high rate of economic growth is not enough but growth should happen in a manner which increases income much more for the lowest 30 per cent of the population". Thus, a number of targeted income and employment generation programmes were introduced as a component of the development strategy of the Fifth Five-Year Plan with the objective of ameliorating the living conditions of the disadvantaged. The decade of the seventies is thus considered as a landmark with the introduction of a series of programmes based on a three-pronged approach to attack poverty and unequal distribution which included: (i) creation of income-generating asset base for the rural poor, (ii) generation of opportunities for wage employment; and (iii) area development programmes in backward regions like dry land, rain-fed, drought prone, tribal, hill and desert areas. Furthermore, since industrial development was considered as an avenue for large-scale labor absorption, the government also introduced Rural Industrialization Programme (RIP), and Rural Artisans Programme (RAP). Although the strategy for poverty alleviation during this period had yielded fruits in terms of poverty reduction, the extent of poverty reduction was, however, not commensurate with the resources put in. This strategic emphasis on growth with redistribution continued during both the Sixth (1980-85) as well as the Seventh Plan (1985-90) periods.

The Eighth Plan (1992-97) was another important landmark in the development strategy when the limitation of an income and commodity-centric notion of poverty and human well-being was recognized. In line with Prof. Amartya Sen's celebrated work 'Development as a Freedom', poverty came to be

recognized as not simply "a State of low income or consumption" but as the lack of freedom of a person to choose and live the life he has reasons to value. The notion of freedom to choose and live, brought to the fore the process aspect of life defined as capability, which is contingent upon the State of health, level of education, demographic characteristics, socio-cultural environment, which determines the access to development opportunities. This recognition of the multifaceted nature of poverty generated an urge among the policymakers for complementing poverty alleviation strategy with special programmes for building up the capabilities of the poor and the disadvantaged. Accordingly, the Eighth Five-Year Plan document underscored the human and social development policies as crucial components of the strategy for ensuring 'development with social justice'. The focus was primarily on health care and education along with Special Component Plan for Scheduled Castes/Scheduled Tribes (SCs/STs).

Over the late eighties a number of empirical studies brought out the deplorable conditions faced by some vulnerable sections of the society like women, children, the aged and the disabled, despite a promising growth performance and indicated the need for their inclusion in the development policies. The emphasis in the planning process also changed accordingly with the introduction of a large number of programmes meant for these disadvantaged

sections. The decade of the nineties brought the notion of sustainable development to the fore and influenced the planning and policy spheres in addressing the conflicts between growth-promoting policies and degradation of the environment and their implications for the livelihood of the poor.

The Ninth Plan (1997-2002) aimed at growth with social justice and equity. The Planning Commission in its Tenth Plan advocated the area approach and aimed to strengthen decentralization of planning.

The Tenth Five-Year Plan had recognized that the concept of regional disparities would need to go beyond economic indicators and encompass social dimensions as well. Furthermore, the focus on inter-State disparities masked the incidence of intra-State disparities. The Tenth Plan had, accordingly, advocated a multi-pronged approach to

provide additional funding to backward regions in each State, coupled with governance and institutional reforms.

The Tenth Plan was the first Plan that specified targets for the growth rate for each State, in consultation with the State Governments. Through the Eighth and Ninth Plan periods, the rate of growth in the better-off States (i.e. States with per capita income above the national average) had been generally higher than those of the States with a lower than average per capita income. This had led to gradually increasing differences in per capita income amongst the States. The Tenth Five-Year Plan targeted a growth rate of 8% per annum for the country as a whole; however, the Gross State Domestic Product (GSDP) growth rate targets for different States adopted by the Tenth Plan were both higher and lower than this average. The latest available figures show the following growth rates as having been achieved by various States during the Tenth Plan period as compared to the targets. For obtaining a longer term perspective, growth rates achieved in the Eighth and Ninth Plan are also given in the Table 85.

At the beginning of the Eleventh Plan, a widespread perception all over the country was that disparities amongst States, and regions within States, between urban and rural areas, and between various sections of the community, had been steadily increasing in the past few years and that the gains of the rapid growth witnessed in this period had not reached all parts of the country and all sections of the people in an equitable manner. That this perception is well founded is borne by available statistics on a number of indicators. Though there is some evidence to indicate a movement towards convergence on human development indicators across States, one of the reasons for this convergence could also be that most human development indicators have a value cap. However, widening income differentials between more developed and relatively poorer States is a matter of serious concern. The objective of the Eleventh Plan is "faster and more inclusive growth".

The Eleventh Plan has continued the Tenth Plan initiative of working out GSDP growth targets for States. Consistent with the country's overall GDP growth target of 9% per annum for the Eleventh Plan, the following growth targets for each State, broken up into targets for each sector, have been worked out. For the Agricultural sector, the State-wise projection has been made on the basis of a rigorous panel data regression model. The growth target for Industry & Services sectors has been made by linearly projecting the past contribution of each State to the overall growth performance of these two sectors at the national level.

Table 85: Growth Rates in State Domestic Product in Different States

(Per cent per annum)

Sl. No.	State/UT	Eighth Plan	Ninth Plan	Tenth Plan	
				Target	Actuals #
		Non-Special Category States			
1	Andhra Pradesh	5.4	4.6	6.8	6.7
2	Bihar	2.2	4.0	6.2	4.7
3	Goa	8.9	5.5	9.2	7.8
4	Gujarat	12.4	4.0	10.2	10.6
5	Haryana	5.25	4.1	7.9	7.6
6	Karnataka	6.2	7.2	10.1	7.0
7	Kerala	6.5	5.7	6.5	7.2
8	Madhya Pradesh	6.3	4.0	7.0	4.3
9	Maharashtra	8.9	4.7	7.4	7.9
10	Orissa	2.1	5.1	6.2	9.1
11	Punjab	4.7	4.4	6.4	4.5
12	Rajasthan	7.5	3.5	8.3	5.0
13	Tamil Nadu	7.0	6.3	8.0	6.6
14	Uttar Pradesh	4.9	4.0	7.6	4.6
15	West Bengal	6.3	6.9	8.8	6.1
16	Chhattisgarh	N.A.	N.A.	6.1	9.2
17	Jharkhand	N.A.	N.A.	6.9	11.1
		Special Category States			
1	Arunachal Pradesh	5.1	4.4	8.0	5.8
2	Assam	2.8	2.1	6.2	6.1
3	Himachal Pradesh	6.5	5.9	8.9	7.3
4	Jammu and Kashmir	5.0	5.2	6.3	5.2
5	Manipur	4.6	6.4	6.5	11.6
6	Meghalaya	3.8	6.2	6.3	5.6
7	Mizoram	N.A	N.A	5.3	5.9
8	Nagaland	8.9	2.6	5.6	8.3
9	Sikkim	5.3	8.3	7.9	7.7
10	Tripura	6.6	7.4	7.3	8.7
11	Uttaranchal	N.A	N.A	6.8	8.8

Source: CSO (base 1999-2000 constant prices) as on 31.8.2007.

Average of 2002-03 to 2005-06 for all States except Jammu and Kashmir, Mizoram, Nagaland (2002-03 to 2004-05) and Tripura (2002-03 to 2003-04).

The Eleventh Five-Year Plan has attempted in a similar manner to break down the monitorable targets at the national level into State-level targets. These targets will help to focus attention on the extent to which progress has been achieved in the relatively backward States and districts (Table 86).

Table 86: State-wise Growth Target for the Eleventh Five-Year Plan

(Annual Average in %)

S.No	States/UTs	State-wise Growth Target			GSDP Growth
		Agriculture	Industry	Services	
		Non-Special Category States			
1	Andhra Pradesh	4.0	12.0	10.4	9.5
2	Bihar	7.0	8.0	8.0	7.6
3	Chhattisgarh	1.7	12.0	8.0	8.6
4	Goa	7.7	15.7	9.0	12.1
5	Gujarat	5.5	14.0	10.5	11.2
6	Haryana	5.3	14.0	12.0	11.0
7	Jharkhand	6.3	12.0	8.0	9.8
8	Karnataka	5.4	12.5	12.0	11.2
9	Kerala	0.3	9.0	11.0	9.5
10	Madhya Pradesh	4.4	8.0	7.0	6.7
11	Maharashtra	4.4	8.0	10.2	9.1
12	Orissa	3.0	12.0	9.6	8.8
13	Punjab	2.4	8.0	7.4	5.9
14	Rajasthan	3.5	8.0	8.9	7.4
15	Tamil Nadu	4.7	8.0	9.4	8.5
16	Uttar Pradesh	3.0	8.0	7.1	6.1
17	West Bengal	4.1	10.5	9.9	9.1
		Special Category States			
1	Arunachal Pradesh	2.8	8.0	7.2	6.4
	Assam	2.0	8.0	8.0	6.5
3	Himachal Pradesh	3.0	1405	7.5	9.5
4	Jammu and Kashmir	4.3	9.8	6.4	6.4
5	Manipur	1.2	8.0	7.0	5.9
6	Meghalaya	4.7	8.0	7.9	7.3
7	Mizoram	1.6	8.0	8.0	7.1
8	Nagaland	8.4	8.0	10.0	9.3
9	Sikkim	3.3	8.0	7.2	6.7
10	Tripura	1.4	8.0	8.0	6.9
11	Uttaranchal	3.0	12.0	11.0	9.7

The Table 87 shows some indicators of income disparity among the states. The Table 87 also presents summary indicators of disparity in per capita income across the States in India. This does not consider the intra-State distribution of income. The ratio of minimum to maximum per capita GSDP increased for three years from 21.56% in 2001-02 to 22.71% in 2003-04 and then decreased in 2004-05 to 20.11%. The weighted Coefficient of variation also shows an increase over the years. The Gini Coefficient indicated in column (6) of the above table reflects the income inequality across the States which increases from 0.2078 in 2001-02 to 0.2409 in 2004-05. In other words, the income inequality across States is worsening.

However, we also need to reckon with the fact that the slower growing States cannot catch up with the faster growing States within a short time period of five years. What this plan seeks to do is to target the slower growing States, and the backward areas within these States, for higher levels of public investment that will enable the backlog in physical and social infrastructure to be addressed.

While differences in GSDP growth rates, and absolute levels of per capita GSDP, are summary economic indicators of disparities, there are wide variations between the States even on other health, education and infrastructure indicators. In the current scenario where high growth rates have led to a spiral of commercial and service sector activity in the already developed regions, the backward areas continue to lack even basic amenities such as education, health, housing, rural roads, drinking water and electricity. Livelihood options are also limited as agriculture does not give adequate returns and industry is virtually absent leading to limited trade and services. People seeking employment in low skill, low paying jobs is a common manifestation of these constraints in many rural areas. Compounding these problems is the lack of manpower to man essential services such as educational institutions and health centres. A large part of the disparities are probably due to historical reasons, differences in initial conditions and natural resource endowments. However, there is no clear pattern that seems to be applicable to all cases. While the above is the situation as between States, very much the same picture is seen as amongst the different districts and regions within States. Even in highly developed States, there are regions and districts whose indicators are comparable to those of the poorest districts in the most backward States. While some level of intra-State and inter-State disparity is bound to exist even in the best possible situation, the effort of the planning process must be to enable backward regions to substantially overcome the disadvantages they labor under and to provide at least a certain minimum standard of services for their citizens.

Table 87: Disparity in per capita GSDP**

Year	State with lowest Per Capita GSDP	State with highest Per Capita GSDP*	Ratio of Minimum to Maximum Per Capita GSDP	Co-efficient of variation	Gini Co-efficient $
1	2	3	4	5	6
			(in percent)		Weighted
1993-94	Bihar	Punjab	30.527	34.549	0.1917
1996-97	Bihar	Maharashtra	27.586	36.781	0.2071
1999-00	Bihar	Maharashtra	28.899	37.417	0.2173
2001-02	Bihar	Punjab	21.556	35.610	0.2078
2002-03	Bihar	Punjab	21.608	36.686	0.2771
2003-04	Bihar	Punjab	22.705	36.230	0.2290
2004-05	Bihar	Maharashtra	20.105	38.440	0.2409

Note: 1993-94, 1996-97 and 1999-00 as per Twelfth Finance Commission report,(TwFC) based on 1993-94 series; 2001-02 onwards Comparable GSDP 1999-00 Series: Current Prices,
* excluding Goa
$ weighted by Population; 1993-94, 1996-97 and 1999-00 relates to 14 States (Assam and general category States excluding Goa as per TWFC; and 2001-02 to 2004-05 relates to 27 States excluding Goa.

While differences in GSDP growth rates, and absolute levels of per capita GSDP, are summary economic indicators of disparities, there are wide variations between the States even on other health, education and infrastructure indicators. In the current scenario, where high growth rates have led to a spiral of commercial and service sector activity in the already developed regions, the backward areas continue to lack even basic amenities such as education, health, housing, rural roads, drinking water and electricity. Livelihood options are also limited as agriculture does not give adequate returns and industry is virtually absent leading to limited trade and services. People seeking employment in low skill, low paying jobs is a common manifestation of these constraints in many rural areas. Compounding these problems is the lack of manpower to man essential services such as educational institutions and health centres. A large part of the disparities are probably due to historical reasons, differences in initial conditions and natural resource endowments.

However, there is no clear pattern that seems to be applicable to all cases. While the above is the situation as between States, very much the same picture is seen as amongst the different districts and regions within States. Even in highly developed States, there are regions and districts whose indicators are comparable to those of the poorest districts in the most backward States. While some level of intra-State and inter-State disparity is bound to exist even in the best possible situation, the effort of the planning process must be to enable backward regions to substantially overcome the disadvantages they labor under and to provide at least a certain minimum standard of services for their citizens.

4.4.1 Economic Growth, Income Poverty and Inequality

The Condition of the People

The structure of India's economy permits 'growth' to proceed even as the condition of the vast majority declines, market forces do not lead to the automatic spread of development across wider social sections. Rather, they can operate to reproduce, and even strengthen, the existing exclusion of the vast masses from the market: (i) The present pattern of development creates a distorted pattern of employment, with the bulk of the workforce crowded into low-income sectors, and a small section in high-income sectors. (ii) This in turn gives rise to a skewed distribution of income, concentrated at the top. (iii) The different income groups constitute distinct markets. Workers, peasants, and other working people rely to a large extent on the unorganised sector for their needs. By contrast, the high-income groups rely more on the organised sector (including, now organised retail); they identify with an international elite, and their tastes are shaped, indeed their very wants are generated by the sales effort of international firms. (iv) the organized sector (that is, in the main, the private corporate sector) creates less jobs per unit of investment, of which a higher proportion are high-income jobs. On the other hand, the weak purchasing power of the working people depresses demand for the production of the unorganised sector, which is a relatively employment-intensive sector. In this way, the skewed distribution of income gets reinforced. That is, the pattern of distribution is inextricably linked to the pattern of production and employment.

Depression of consumption of the vast majority: Under Nutrition

The sharp growth of inequality and the depression of the living standards of the vast majority are most clearly evidenced in the depression of food consumption. Calorie consumption per head per day has fallen between 1993-94 and 2004-05 by 106 calories,

or nearly 5 per cent, in the rural areas; by 51 calories, or 2.5 per cent, in the urban areas (Table 88).

Table 88: Changes in Per Capita Intake of Calories, 1993-2005

	1993-94	1999-2000	2004-05
Rural	2153	2149	2047
Urban	2071	2156	2020

Source: NSS Report no. 513.

The original basis of the poverty line was a basket of goods which contained at least 2,400 calories per capita per day in the rural areas, and 2100 per capita per day in the urban areas. This basis yields very high levels of poverty: Utsa Patnaik calculates that 87 per cent of the rural population was unable to obtain 2,400 calories per day in 2004-05.

But even if we accept the norms and calculations NSS itself has adopted, two-thirds of the country's population in 2004-5 had a calorie intake below the nutritional norm. Again, going by the NSS's own calculations, there has been a clear deterioration between 1993-94 and 2004-05, see Table 89. The NSS results also show that it is not the idle rich, but the laboring poor, whose consumption is below the norm. Calorie consumption rises with income level, with the highest expenditure class consuming double that of the lowest in both rural and urban areas.

Table 89: Percentage of Population More than 10 Per Cent below NSS 'Norm' of Calorie Intake

	1993-94	2004-05
Rural	42.0	49.1
Urban	48.8	53.6

Source: NSS Reports no.s 405 and 513.

So distorted is the Government's method of calculating poverty, that from the same National Sample Survey data which depict such widespread under-nutrition, the Government has concluded that only 27.5 per cent of the population is below the poverty

line in 2004-05 - down from 36 per cent in 1993-94. This would mean that in 2004-05 another 39 per cent were not officially defined as 'poor' but were nevertheless undernourished. The percentage below the official poverty line is declining even as calorie consumption is declining. Indeed the official poverty line, even as a calorie-based measure, has become meaningless.

The neo-liberal economists also claim that the decline in cereals consumption is not worrying, as people are diversifying their diet, and eating more 'high-quality' foods like milk, meat, fish, eggs, and so on. It is true that a larger percentage of total consumption is composed of such foods. However, as can be seen from Table 90, not only has calorie consumption declined, but so has protein consumption, falling 5 per cent in rural areas during 1993-94 to 2004-05 while remaining at the same level in urban areas. Indeed, even more than the fall in calorie consumption levels, it is the fall in protein consumption levels that conclusively prove the involuntary nature of the deterioration in nutrition. Of course, both calorie and protein measures arise from a single reality, namely, that the consumption of cereals, the main source of both calories and proteins for the vast majority, is declining.

Table 90: Changes in Per Capita Protein Intake, 1993-2005

1993-94	1999-2000	2004-05
Rural	60.2	59.1 57.0
Urban	57.2	58.5 57.0

Source: NSS Report no. 513.

Appalling nutritional outcomes

This is in line with the appalling nutritional outcomes, as brought out by the National Family Health Survey of 2005-06. Almost half of children under five years of age (48 per cent) are stunted, that is too short for their age, an indicator of chronic malnutrition, and 43 per cent are underweight. The proportion of children who are severely undernourished is also notable - 24 per cent are severely stunted and 16 per cent are severely underweight.

Wasting, defined as an abnormally low weight for the child's height, is also a serious problem in India, affecting 20 per cent of children under five years of age. Since NFHS-

2 (1998-99), there has been only a slight improvement in the percentage of young children who are stunted and underweight, and the percentage who are wasted has actually increased slightly.

Moreover, the incidence of anemia among children under three years has actually risen from 74 to 79 per cent. The incidence of anemia among women (ever-married women aged 15-49) has risen from 52 to 56 per cent between 1999 and 2006. Among pregnant women (aged 15-49) the incidence of anaemia has risen from 49.7 to 57.9.

The decline of calorie and protein consumption is a telling indicator of the actual State of consumption of the vast majority of people. It underlines the fact that the surge in luxury consumption is not an indicator of a general rise in incomes and living standards, but is possible because of extreme inequality.

Given the large extent of semi-starvation, a certain number of hunger-related deaths are inevitable, yet such a phenomenon is rarely reported. Does it exist? It would be difficult to gauge this from official statistics, since the authorities have a strong interest in underplaying the extent of this phenomenon. The authorities lay the cause of death at the door of one or the other disease, or merely fail to record the death at all. The former is quite simple, since a man, woman or child weakened by hunger usually succumbs to one or the other illness. Nor is the latter difficult, since such deaths are concentrated in regions which are backward and hidden from the gaze of the mass media. The Child Death Measurement Committee (CDMC, better known as the Bang Committee) set up by the Maharashtra Government, in its report of August 2004, noted the yawning gaps between different estimates of under-five mortality in the state: According to the State Government, under-five mortality in the State was 25,000-40,000 per year; according to the Central Government's Sample Registration System, 120,000; according to a large-sample two-year study carried out by the Child Death Study and Action Group (an NGO group), 175,000 per year.

According to the CDMC, the overwhelming majority of under-five deaths are the result of the combined effect of under-nutrition and bacterial infections. It points out that between 1988 and 2002 there was virtually no improvement in the rate of acute malnutrition (Grade III and IV) among children in the State. The rate of Grade III and IV malnutrition among tribal children is an alarming 15 per cent - double the rate for rural Maharashtra as a whole. Nor does sporadic press attention have any lasting effect. Melghat in Amravati district came to prominence in 1993 when it suffered hundreds of child

malnutrition deaths; according to a writ petition filed by two doctors of Melghat in September 2007, 640 children from the region had died of malnutrition since the start of the year. A proper tabulation of all such hunger-related deaths in India would probably yield a startling figure, a telling comment on the Indian political system.

4.5 Inter-State Disparities and the Role of the Centre

Redressing regional imbalances has indeed been a vital objective of the planning process. However, despite the efforts made, regional disparities have continued to grow and the gaps have been accentuated as the benefits of economic growth have been largely confined to the better developed areas.

Paradoxically, it is the natural resource rich areas which continue to lag behind. This has in turn tightened the stranglehold of the naxalite movement and demands for division of States in these areas. With the removal of controls and the opening up of the economy to external forces, the pressure of market forces may tend to exacerbate inter and intra-State disparities. The role of the Centre in promoting equity among States and regions, therefore, has assumed added importance in the post liberalization era.

Redressing regional disparities is not only a goal in itself, but is essential for maintaining the integrated social and economic fabric of the country without which the country may be faced with a situation of discontent, anarchy and breakdown of law and order.

There is probably no easy answer to the question of what really drives the growth process in the States. In the early years of planning, attempts were made to control a large part of the key drivers of growth and to make them fit into an overall consistency framework. This covered not only fiscal variables, but also other areas such as credit and financial markets, physical investments, locational decisions etc. However, this approach has now long since been given up for reasons that are not required to be discussed here. Over the past several years, the share of public investment in the overall investment made in the country has been steadily declining. In recent years, public investment has been a little over 20% in the aggregate. There is, therefore, a very great limitation on the influence that fiscal quantities, allocations and strategy can directly exert on growth rates, especially at the State-level. States have, therefore, to focus on providing the necessary policy framework and supporting environment that makes economic activity possible and attractive enough for private sector investment.

Here, we attempt to analyze the patterns of resource flows from the Centre to the States and of government spending in order to understand its implications for balanced development.

4.5.1 General Purpose Resource Transfers

In the system of division of powers between the Union and the States, the most productive sources of revenue have been assigned to the Union from the point of view of administrative convenience, uniformity and efficiency. At the same time, the major responsibility for the delivery of social services to the population has been vested with the States, and has now been devolved further downward to the Panchayati Raj Institutions. Given this situation, therefore, a very substantial responsibility falls on the Central Government to ensure that the overall flows of resources from the Centre to the States is such that the relatively backward States are enabled to achieve a level of service delivery at par with the more advanced States. This involves issues of the fiscal capacity available to States to raise revenues, the extent to which such capacity is actually being utilized, and the specific difficulties that the States face which result in increased unit costs of service delivery.

Part of the Center's responsibility in this regard is fulfilled through transfers under the Plan process. At the same time, an equally, if not more, significant volume of transfers takes place through the mechanism of the Finance Commissions. For a proper appreciation of the extent to which Central transfers help in mitigating inter-State disparities, it is necessary to look at transfers by the Finance Commissions also.

The Twelfth Finance Commission has used the following criteria and weights for transfers of Central taxes amongst the States. These have been applied uniformly across all States, both in the Special Category as well as others.

Criteria and Weights

Criterion	Weight (per cent)
Population	25.0
Income Distance	50.0
Area	10.0
Tax Effort	7.5
Fiscal Discipline	7.5

It is seen from the above that the Income Distance criterion (which measures the extent to which the per capita income of a State is below that of the State with the highest per capita income) is given a weight of 50%. This has had the effect of making transfers of the share of Central taxes steeply progressive. The formula for inter se distribution of share of Central taxes is now generally more progressive than the formula used for the distribution of Normal Central Assistance (NCA) amongst the States (Gadgil Mukherjee Formula). Under the NCA Gadgil Mukherjee Formula, the following criteria and weights are used.

	Criterion	**Weight (percent)**
1	Population (1971)	60
2	Per capita income	
	(a) For States with lower than	
	National average	20
	(b) For all States	5
	Performance (Tax effort, fiscal	
3	management, national objectives)	7.5
4	Special Problems	7.5

The Gadgil Mukherjee formula applies only to States that are not in the Special Category. In the case of the Special Category States, 30% of the total NCA is earmarked, and this amount has been apportioned among them in a constant ratio over the years.

The following table shows the share of each State as per Twelfth Finance Commission in the share of Central taxes, share in NCA, the per capita income, and population share of a State in total population of the country. Since there is a difference in the manner in which the NVA is provided to the special Category States and other States, these two groupings are taken separately.

While there could be different points of view about whether relative backwardness should be assigned as much weight as it has been under the Twelfth Finance Commission's award, or otherwise, it would also appear that here does not seem to be any reason any more for continuing with two different formulae for apportionment of share of central taxes and Normal Central Assistance amongst the States. Elsewhere in the Plan, the need to do away with the distinction between plan and non-plan in expenditure has been emphasized.

This would logically imply that the need for two different formulae for resource transfers would not exist any more. Two components of resource flows being distributed to the States on the basis of the same formula could continue. One portion, namely, the share of central taxes, would be entirely untied, while the second could be earmarked for being spent on specific development sectors, with considerable flexibility to States about how exactly to spend the amounts. It needs to be remembered that, in fact, the significance of the NCA amount has got substantially reduced since 2005-06, from which year the Central Government ceased to provide the loan component of the NCA. This revised procedure would have the added advantage of providing for a fresh examination of the formula, criteria and weights by an impartial, professional body once every five years, unlike in the case of the Gadgil formula and its variants, where the process of adapting to change is very time consuming.

4.5.2 Transfers under CSSs and ACA

Apart from the above, the Central government also transfers substantial resources to the States in the form of Centrally Sponsored Schemes (CSSs) and Additional Central Assistance (ACA) for State Plan schemes. These transfers have an inbuilt mechanism for progressivity since they are directed at filling gaps in the provision of basic services in the most backward areas. The instruments being used by the Central Government to channelize funds into sectors and areas which need special attention, include the Flagship Programmes, particularly Bharat Nirman, Backward Regions Grant Fund, and the National Rural Employment Guarantee Programme.

Most of the schemes for rural development and poverty alleviation use poverty as a criterion for distribution of funds and therefore people and areas with low income benefit automatically. The NREGP is self targeting as it is expected that only the unemployed with no other source of income for that period would opt for a programme of wage employment. The NREGP provides an opportunity to States and districts to plan and execute programmes that provide employment and create rural assets that would support further economic activity. The availability of funds on demand distinguishes NREGA from other schemes. The Swaranjayanti Gram Swarozgar Yojana is targeted at BPL families and has inbuilt safeguards for the weaker sections with 50% benefits reserved for the SCs/STs.

Most of the Flagship Programmes also address backwardness in terms of the particular sector. The Table 7.7 gives the State-wise allocation of funds under some of the major

Table 91: Inter-se Shares

Sl. No.	States	Per Capita GSDP 2004-05# (in Rupees)	Population (2001- census)	Share in NCA# (2007-08: BE)	Share per cent as per Twelfth Finance Commission
			Within Group per cent		
			Non-Special Category States		
1	Andhra Pradesh	26655	8.03	6.345	8.011
2	Bihar	7486	8.75	11.062	12.009
3	Chhattisgarh	20336	2.20	2.877	2.890
4	Goa	80392	0.14	0.495	0.282
5	Gujarat	34223	5.35	3.926	3.887
6	Haryana	35893	2.23	1.768	1.171
7	Jharkhand	19908	2.84	3.544	3.660
8	Karnataka	28774	5.57	4.417	4.856
9	Kerala	32818	3.36	3.259	2.902
10	Madhya Pradesh	16597	6.36	6.922	7.308
11	Maharashtra	37235	10.21	6.913	5.442
12	Orissa	18440	3.88	6.257	5.620
13	Punjab	36376	2.57	2.113	1.415
14	Rajasthan	18909	5.95	5.864	6.108
15	Tamil Nadu	31603	6.58	5.943	5.777
16	Uttar Pradesh	13842	17.52	19.481	20.978
17	West Bengal	23145	8.45	8.814	7.685
			100.00	100.000	100.000
			Special Category States		
1	Arunachal Pradesh	23326	1.75	7.928	3.525
2	Assam	18172	41.88	19.532	39.591
3	Himachal Pradesh	36785	9.55	9.656	6.388
4	Jammu & Kashmir	22430	15.92	19.148	15.873
5	Manipur	22457	3.34	5.840	4.430
6	Meghalaya	24978	3.66	4.849	4.540
7	Mizoram	27663	1.43	5.590	2.925
8	Nagaland	22021	3.18	5.908	3.219
9	Sikkim	28332	0.80	3.771	2.778
10	Tripura	26693	5.10	8.243	5.238
11	Uttaranchal	25276	13.38	9.535	11.492
			100.00	100.000	100.000

programmes in the budget estimates for 2007-08. The overwhelming shares of the relatively backward States clearly show that the flagship programmes are a major instrument to direct funds to areas which lack infrastructure.

Under the Indira Awaas Yojana, 75% weightage is given to housing shortage and 25% to poverty ratios. For district level allocations, 75% weightage is given again to housing shortage and 25% to the SC/ST component of the population. In Annual Plan 2007-08, Bihar has been allocated 26% of the total funds while Uttar Pradesh will get 12%.

Under the National Rural Health Mission, 18 focus States which have weak public health indicators and/or weak infrastructure have been identified. These 18 States are Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Jammu and Kashmir, Manipur, Mizoram, Meghalaya, Madhya Pradesh, Nagaland, Orissa, Rajasthan, Sikkim, Tripura, Uttaranchal and Uttar Pradesh. 30% of the funds in 2007-08 will flow to three States, namely, Uttar Pradesh (16%), Bihar and Assam (7% each).

The Sarva Shiksha Abhiyaan tackles backwardness in primary education through the formulation of district plans based on habitation level plans which are to be prepared on the basis of gaps in infrastructure for which norms have been laid down.

In the case of Sarva Shiksha Abhiyan, Uttar Pradesh alone receives nearly 17% of the allocation of the programme, while Bihar has been allocated 11%. In fact, 7 States account for 64% of the total outlay.

The allocation under the Pradhan Mantri Gram Sadak Yojana (PMGSY) to the States is based on, inter-alia, a weightage of 75% for need (share of unconnected habitations in the total unconnected habitations of the country) and 25% on coverage (share of connected habitations in the total unconnected habitations in the country). Keeping the original inter-State allocations intact, the additional allocations on account of cess accruals are distributed to various States based on the target of road length to be connected under Bharat Nirman in each State. Madhya Pradesh, Chhattisgarh and Uttar Pradesh have PMGSY in 2007-08, been allocated one-third of the allocation under PMGSY in 2007-08.

4.5.3 Backward Regions Grant Fund

The development of backward regions has been a major concern of planners in India. However, prior to the Tenth Plan, the issue of development of backward areas was

Table 92: Allocation of Funds to States / UTs during 2007-08 under various Centrally funded schemes

(Rs. in crore)

Name of the State	Population (2001)		PMGSY		NRHM		SSA		IAY		Supplementary Nutrition	
	% share	Allocation	%age	Allocation (Central Share)	%age	Allocation (Central Share)	%age	Allocation (Central Share)	%age	Allocation (Central Share)	%age
Andhra Pr	7.41	105.00	1.62	597.84	6.67	625.00	6.03	360.28	8.93	101.51	5.01
Arunachal Pr	0.11	77.00	1.18	43.39	0.48	57.04	0.55	13.95	0.35	5.32	0.26
Assam	2.59	456.00	7.02	642.28	7.16	498.34	4.81	308.54	7.65	76.71	3.78
Bihar	8.07	457.00	7.03	680.70	7.59	1154.46	11.13	1063.44	26.37	185.15	9.13
Chhattisgarh	2.03	690.00	10.62	225.23	2.51	390.25	3.76	55.71	1.38	59.02	2.91
Goa	0.13	5.00	0.08	13.38	0.15	10.18	0.10	2.22	0.05	1.54	0.08
Gujarat	4.93	65.00	1.00	380.58	4.24	190.97	1.84	176.69	4.38	58.69	2.89
Haryana	2.06	30.00	0.46	137.60	1.53	174.56	1.68	24.81	0.62	40.86	2.01
Himachal Pr	0.59	287.00	4.42	67.70	0.75	61.03	0.59	8.75	0.22	13.19	0.65
J & K	0.99	115.00	1.77	86.77	0.97	169.55	1.64	27.18	0.67	13.96	0.69
Jharkhand	2.62	225.00	3.46	262.92	2.93	668.99	6.45	94.85	2.35	59.58	2.94
Karnataka	5.14	110.00	1.69	395.95	4.41	348.62	3.36	138.80	3.44	108.63	5.36
Kerala	3.10	30.00	0.46	218.57	2.44	81.50	0.79	77.19	1.91	30.19	1.49
Madhya Pr	5.87	890.00	13.69	544.04	6.07	894.21	8.62	110.80	2.75	130.57	6.44
Maharashtra	9.42	145.00	2.23	671.14	7.48	509.11	4.91	217.27	5.39	145.29	7.17
Manipur	0.21	33.00	0.51	66.68	0.74	29.83	0.29	12.11	0.30	9.14	0.45
Meghalaya	0.23	45.00	0.69	62.27	0.69	43.77	0.42	21.09	0.52	8.02	0.39
Mizoram	0.09	52.00	0.80	36.70	0.41	22.03	0.21	4.50	0.11	4.89	0.24
Nagaland	0.19	30.00	0.46	56.19	0.63	29.67	0.29	13.96	0.35	11.69	0.58
Orissa	3.58	543.00	8.35	345.20	3.85	449.34	4.33	208.93	5.18	96.07	4.74
Punjab	2.37	35.00	0.54	161.97	1.81	111.32	1.07	30.68	0.76	36.02	1.78
Rajasthan	5.49	434.00	6.68	548.18	6.11	800.00	7.71	88.79	2.20	97.87	4.83
Sikkim	0.05	30.00	0.46	23.25	0.26	11.66	0.11	2.67	0.07	0.92	0.05
Tamil Nadu	6.07	90.00	1.38	433.16	4.83	345.50	3.33	144.25	3.58	36.59	1.80
Tripura	0.31	40.00	0.62	81.28	0.91	43.45	0.42	27.18	0.67	10.77	0.53
Uttar Pradesh	16.16	675.00	10.38	1459.42	16.27	1759.14	16.96	477.66	11.84	508.84	25.10
Uttarakhand	0.83	130.00	2.00	84.44	0.94	126.36	1.22	23.95	0.59	15.15	0.75
West Bengal	7.79	376.00	5.79	540.20	6.02	700.53	6.75	288.21	7.15	140.88	6.94
UTs	1.61	10.00	0.15	102.63	1.15	64.16	0.62	8.24	0.20	20.38	1.01
Others		290.00	4.46	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	**100.00**	**6500.00**	**100.00**	**8969.68**	**100.00**	**10370.57**	**100.00**	**4032.70**	**100.00**	**2027.44**	**100.00**

approached as primarily one of development of States through the formula for distribution of Central Assistance which was weighted in favour of less developed States and through Special Area Programmes such as Hill Area Development Programme, Border Area Development Programme, Drought Prone Area Programme, Tribal Sub-Plan etc. The emphasis was on backwardness in terms of economic performance, though the impact of historical and social factors in economic matters was also recognized. It was also observed that special development schemes should not be mere palliatives but the potential for growth present in most backward areas needs to be tapped if these schemes are to have an impact.

The Mid-Term Appraisal of the Ninth Plan showed that despite these efforts, one of the most serious problems facing the country was the wide disparity and regional imbalances between States and within a State between districts. It was these pockets of high poverty, low growth and poor governance that were slowing down the growth and development of the country. In the Tenth Plan, it was decided to have a new approach to target these areas through a specific programme for Backward Areas and the Rashtriya Sam Vikas Yojana was introduced in 2003-04.

The Rashtriya Sam Vikas Yojana (RSVY) covered 147 districts. Each district was to receive Rs. 45 crore for schemes that would address the problems of low agricultural productivity, unemployment and fill critical gaps in infrastructure. Each district prepared a Three Year Action Plan, which showed the flow of funds from various schemes into the sector, which was considered for additionally. An amount of Rs. 4,673 crore was released under RSVY during the Tenth Plan period. 33 districts received the full allocation of Rs. 45 crore during the Tenth Plan while others are in various stages of completion of the programme. Keeping in view the experience of the operation of the Programme in the first two years, it was decided that the process of implementation needed to be changed to provide a more participative and holistic approach and to involve PRIs. Thus, the Backward Regions Grant Fund was initiated with two major changes, namely, the involvement of PRIs not only in the choice of schemes, but also in their implementation and supervision, and the preparation of district plans which would ensure convergence and prevent duplication.

The Backward Regions Grant Fund aims to help converge and add value to other programmes, like Bharat Nirman and National Rural Employment Guarantee Programme, which are explicitly designed to meet rural infrastructural needs but, which need

supplementation to address critical gaps. It aims at catalyzing development in backward areas by: (a) providing infrastructure; (b) promoting good governance and agrarian reforms; (c) converging, through supplementary infrastructure and capacity building, the substantial existing development inflows into these districts.

The Fund will accordingly provide financial resources for supplementing and converging existing development inflows into identified districts, so as to:

i. Bridge critical gaps in local infrastructure and other development requirements that are not being adequately met through existing inflows;

ii. To this end strengthen Panchayat and Municipality level governance with more appropriate capacity building to facilitate participatory planning, decision making, implementation and monitoring and to reflect local felt needs;

iii. Provide professional support to local bodies for planning, implementation and monitoring their plans;

iv. Improve the performance and delivery of critical functions assigned to Panchayats, and counter possible efficiency and equity losses on account of inadequate local capacity.

A series of exercises have been undertaken to identify backward areas. Districts identified for coverage under the Rashtriya Sam Vikas Yojana used the criteria recommended by the "Task Force on Identification of Districts for Wage and Self-Employment Programmes" (Planning Commission, 2003). The three criteria used were agricultural wage rate, value of output per agricultural worker and SC/ST population. However, the number of districts to be covered in a Non-Special Category State was based on the proportion of poor in the State while in the case of Special Category States, population was the basis. The districts under the Backward Regions Grant Fund include all the 200 districts covered under the first phase of the National Rural Employment Guarantee Programme (NREGP) which also used the same three criteria. 50 districts (that were not covered under the list of 200 NREGP districts, but were left out of the 170 districts identified by the Inter Ministry Task Group on Redressing Growing Regional Imbalances) were added to make a total of 250 districts for coverage under the Backward Regions Grant Fund.

The Backward Regions Grant Fund will be anchored in a well conceived, participatory district plan by implementation of programmes selected through peoples' participation for which PRIs from the village upto the district level will be the authorities for planning

and implementation. The dominant features include: (i) consolidation of sub-district plans by the District Planning Committees; (ii) convergence of all ongoing Central Sector, Centrally Sponsored and State Plan Schemes operating at the sub-district level; (iii) flexibility in the form of untied grants which may be used by Panchayats and Urban Local Bodies (ULBs) guided by transparent norms for filling critical gaps vital for development; (iv) Capacity building grants for all stakeholders including professional support for preparation and consolidation of district plans; (v) empowerment of the district Local Government institutions with adequate investments for social development such as education, health, food security, etc; (vi) provision for specific social assistance programmes designed to deliver infrastructure and other financial support needed by them; (vii) concentration on pro-poor infrastructure with transparent norms for distribution of funds amongst various levels of rural and urban local bodies with focus on backward areas and disadvantaged people; and (viii) stress on development of assets and livelihood of the economically and socially weaker sections.

The scheme has two components, namely, (a) Districts Component covering 250 districts, and (b) Special Plans for Bihar State and the Kalahandi - Bolangir - Koraput (KBK) districts of Orissa State.

The Districts Component of the BRGF covers 250 districts and has two funding windows, namely, (i) Capability Building Fund, and (ii) a substantially untied grant. The guidelines for BRGF already issued by the Ministry of Panchayati Raj in consultation with the Planning Commission contain detailed provisions for the processes of planning, capacity building, approvals and implementation of the district component.

In addition to the funding of the Districts Component of the programme, the Special Plans for Bihar and the KBK districts of Orissa, which were being funded under the erstwhile Rashtriya Sam Vikas Yojana during the Tenth Plan, will also be funded under the Backward Regions Grant Fund during the Eleventh Five-Year Plan.

The Special Plan for Bihar had been formulated, in consultation with the State Government of Bihar, to bring about improvement in sectors such as power, road connectivity, irrigation, forestry and watershed development. The prime emphasis has been laid on improvement of roads and power projects in the State under the Special Plan. An allocation of Rs. 1,000 crore per annum was being made for the Special Plan during the Tenth Five-Year Plan period. The same allocation i.e., Rs.1,000 crore per annum will continue to be made during the Eleventh Five-Year Plan period.

The KBK region comprises the undivided Kalahandi - Bolangir - Koraput districts situated in the Southern and Western part of Orissa, which have since been divided into eight districts, namely, Kalahandi, Nuapada, Bolangir, Sonepur, Koraput, Nabrangpur, Malkangiri and Rayagada. A Revised Long-Term Action Plan was drawn up for these districts and Planning Commission has been providing Additional Central Assistance to this region since 1998-99. To make the planning and implementation process more effective, the Central Government has been funding Special Plan for these districts since 2002-03 using a project based approach and an innovative delivery and monitoring system. The Special Plan focuses on tackling the main problems of drought proofing, livelihood support, connectivity, health, education, etc. as per local priorities. In the Eleventh Plan, the total allocation for the KBK districts will be protected at Rs. 250 crore per annum. These districts will be funded as per the BRGF district norms and the balance will be provided under the Special Plan.

It has been decided to provide Rs. 5,820 crore per annum during the Eleventh Five Year Plan for the two components i.e. Districts Component and the Special Plans for Bihar and the KBK districts of Orissa. The total provision for the BRGF during Eleventh Five Year Plan would be Rs. 29,100 crore.

4.5.4 Hill Areas Development Programme / Western Ghats Development Programme

The Hill Areas Development Programme (HADP)/Western Ghats Development Programme (WGDP) have been in operation since the Fifth Five-Year Plan in designated hill areas. Under these programmes, Special Central Assistance is given to designated hill areas in order to supplement the efforts of the State Governments in the development of these ecologically fragile areas.

Areas under HADP were identified in 1965 by a Committee of the National Development Council (NDC) and areas to be covered by WGDP were recommended in 1972 by the High Level Committee set up for the purpose. After the formation of Uttaranchal in 2001, the designated areas covered under HADP/WGDP include:

i. Two Hill districts of Assam - North Cachar and Karbi Anglong

ii. Major part of the Darjeeling District of West Bengal

iii. Nilgiris District of Tamil Nadu

iv. 171 talukas of WGDP comprising Western Ghats in Maharashtra (63 talukas), Karnataka (40 talukas), Kerala (32 talukas), Tamil Nadu (33 talukas) and Goa (3 talukas).

The main objectives of the programme have been eco-preservation and eco-restoration with emphasis on preservation of bio-diversity and rejuvenation of the hill ecology. For the hill areas covered under HADP, the sub-plan approach has been adopted. The State Governments concerned prepare their total plan comprising of flow of funds from the State Plan, Special Central Assistance made available under HADP and other sources. In the case of WGDP, the schematic approach was followed since the flow of funds from State Plan to the taluka, which is the unit of demarcation, is difficult to quantify. Under WGDP, the States were advised to prepare their plans on watershed basis. Watershed based development continued to be the basic thrust area of the programme. The allocation for the programme has remained almost static during the Tenth Plan period at Rs. 160 crore. It was only during 2006-07 that the allocation was stepped up to Rs. 250 crore.

4.5.5 Border Area Development Programme (BADP)

Border Area Development Programme (BADP) introduced during the Seventh Plan, aims at making special effort for socio-economic development of the border areas and to promote a sense of security amongst the people living in these areas. The programme was revamped in Eighth Plan and extended to the States adjoining the international border with Bangladesh and it was further extended during Ninth Plan to the States which have borders with Myanmar, China, Bhutan and Nepal.

The programme is a major intervention of the Central Government and is a part of the comprehensive approach to Border Management. The main aim has been to meet the special needs of the people living in remote and inaccessible areas situated near the international land border.

On the basis of the report of the Task Force on BADP, it has been decided that the strategy for its implementation during Eleventh Plan would be as follows:

- To accord high priority to the border areas (villages/blocks) in all the schemes of Bharat Nirman and other flagship programmes of Government of India and to saturate the border areas with full coverage of these schemes/programmes during

the Eleventh Five-Year Plan period or earlier. To this end, appropriate modifications will be made in the relevant guidelines. The Planning Commission has comprehensively identified the border areas (villages/blocks/districts) and this data will be made available to all the Ministries to facilitate early action.

- Ministries/Departments which do have programmes, schemes and projects focused on the border area, would initiate suitable programmes and activities in the border areas.
- The Ministries of Power, Civil Aviation, IT, Telecom, Railways and Road Transport and Highways would prepare comprehensive proposal for infrastructure development in the border areas. These proposals, which would form part of the existing programmes and activities of the Ministries, will then be collated with the overall infrastructure Plan for Border Areas. All incomplete large projects in border areas will receive priority for completion.
- Particular emphasis will be given to skill development and vocational education in the border areas. To this end, the Ministry of Labor and Employment and the Ministry of Human Resource Development would suitably reorient their existing programmes, in consultation with the Planning Commission. Priority will be given to the border districts in the establishment of government sector polytechnics/ITIs/Skill Facilitation Centers.
- While modifying the guidelines the relevant Ministries will also revise the cost norms for border areas (villages / blocks / districts) and provide for necessary flexibility in order to accommodate accessibility issues.
- The Ministry of Finance will ensure by March 31, 2008 that all border blocks have at least one channel of Banking, be it a commercial bank, a cooperative institution or an RRB. The Ministry of Finance would also ensure that appropriate linkages with the overall plan for border development are developed in consultation with NABARD and the Planning Commission.
- The planning process for the preparation of comprehensive perspective and annual plans for Gram Panchayats and the Blocks on participatory basis should be significantly strengthened on the lines of the guidelines issued by the Planning Commission and contained in the report of the Expert Group on the Planning at

the Grass root Level (Ministry of Panchayati Raj, 2006). These plans must show the convergence of the flow of funds for all ongoing Central and States Programmes/ Schemes and identify the gaps in physical and social infrastructure and the livelihood options which should then be filled through funds available from BADP. Preparation of these plans and their use for all development activities including BADP should be insisted upon and arrangements for professional support and capacity development of PRIs, District Autonomous Councils, Traditional Village Bodies and District Planning Committees should be initiated.

- The Ministry of Home Affairs would augment the funds given to Border Military Forces guarding the border areas (viz; BSF, ITBP, Assam Rifles and SSB) so, that they too can undertake some civilian welfare activities in order to enhance their rapport with civil population in these areas.
- Since most of the border areas are in remote and inaccessible areas, to strengthen the institutions and the personnel working in these areas, flexible financing through untied grants for attracting trained staff and participation of NGOs sector should be provided.
- The Home Ministry would also undertake a special review of the infrastructure available at the International Check Posts and Land Customs Stations. If required, additional funds would be earmarked under the Border Areas Development Programme (BADP) for this purpose.

It is clear, therefore, that backward States and districts are being allocated a large proportion of the funds available under the flagship programmes. The effectiveness of these programmes will depend on the absorptive capacity of these States and regions. As administration in these areas tends to be weak and thin, this is an area which will require special attention. BRGF provides for strengthening of administrative machinery to deliver programmes more extensively. Similar provisions are made in NREGP and other Flagship programmes. Local recruitment by Panchayati Raj Institutions can go a long way in ensuring attendance and availability of staff in remote areas. The State Governments also find it easier to invest in better developed areas as implementing agencies are available in these areas. Backward areas also lack the voice and vote as they are often hilly, desert, forested, border or otherwise thinly populated. The other issue is the withdrawal of State Plan Funds from these areas, once Central Funds become available. To circumvent this and ensure attention to these areas, District Plans must be drawn up showing the availability of funds from all sources.

Regional imbalances have been a persistent concern in most of the States. Despite widespread recognition of the inadequacy of per capita income as the sole indicator of well being, single but appropriate substitute has been difficult to devise. Economists have generally acknowledged that development is a much wider and more complex concept than growth in domestic product. Emphasis changed in the early 90s to measuring the people's welfare-human development index applicable to both developed and developing economies. These measures put welfare, basic health, education, and other vital infrastructure development in addition to income on the pedestal.

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5

UNIT AND PARAMETERS FOR DETERMINING BACKWARDNESS

5.1 Introduction

Historically, Soviet Planners were perhaps the first to recognize the significance of a sound regional development strategy along with inter-temporal growth strategy. Right from the beginning of planning era, in 1928, in the former USSR reduction of economic disparity among regions and early liquidation of backwardness of various regions were the prime objectives. The removal of backwardness - of the Central Asian republics such as Uzbekistan, Tadjekistan, Kirgizia, and Turkmenia was initially attempted (Gidadhubli, 1978, p. 43).

Since resource mobilization is one of the problems that backward areas generally face, it was overcome by the Soviet policy of diverting large resources from the central budget to these areas. In addition, resources were also raised within the region. For the speedy economic development of Central Asia, large investments from the central budget were made.

The concern for the development of depressed areas in the United Kingdom has also been documented. In 1934, the British government enacted the Special Area Development and Improvement Act. Barlow Commission Report (1940) has been responsible for attracting the attention of planners, economists and geographers in devising means to identify backward or lagging regions and formulate a strategy to balance regional development in the United Kingdom (Dutt, 1989, p. 193).

Backward regions in the United Kingdom are called Development Areas. These are regions designated as areas in need of assistance through 'positive discrimination' under United Kingdom's current inter-regional planning policy. They represent the latest in a series of Area-Based Policies favouring those regions of below average economic and social performance. The hope of the late 1920's of solving severe regional unemployment

problems through moving workers to areas where work was available was supplanted in 1934 by efforts to bring work into these depressed regions, then termed 'special areas'. Important changes have been made in the types and levels of financial and infrastructural assistance, in the terminology, and in the areas covered. From 1947 onwards, the positive incentives have been supplemented by corresponding negative controls, in non-development areas, through the requirement to obtain industrial development certificates and, between 1965 and 1979, office development permits on substantial manufacturing and office projects respectively (Gohnston, 1981, p. 80).

Backward areas are found both in developed and developing countries. Dutt (1989, p. 194) mentions that the poverty of Appalachia, old industrialised areas of England, the Netherlands's northern and southern provinces have been documented for uneven regional development. Several policies have been set up to ameliorate their backwardness. Regional inequality is probably concomitant with the process of economic development. Hall (1984, p. 48) in his study on Costa Rica concludes that all countries undergo a similar sequence of spatial evolution.

Gradus (1983, p. 399) in his study on Israel mentions that reducing spatial disparity with traditional policy instruments such as economic subsidies and incentives is not sufficient. He further States that it is necessary to transfer authority from national functional organisation to local and regional territorial bodies.

Ackerman (1975, p. 46) in a study on Argentina refers that education must play an important role in depressed areas. It prepares migrants for better employment in their destination areas, and better enables those who remain to cope with their problems. He also emphasises that knowledge of the location, extent, and economic organisation of problem areas is a prerequisite for regional development. .

Berentsen (1981, pp. 135-36) compared the regional planning policies of Austria and erstwhile East Germany. He States that both nations set their national goals toward the enhancement of 'people prosperity'. However, additional emphasis was given in Austria for a 'place prosperity' in which planning strategies were devised to prior expansion of economic activities in lagging regions. Such 'place' emphasis in the planning strategy is partly responsible for greater regional equity in Austria.

Seers (1969, p. 3) stated that poverty will be eliminated much more rapidly if any given rate of economic growth is accompanied by a declining concentration of incomes. He

further outlined that while looking at development in a country one must answer as to what has been happening to poverty, unemployment and inequality? If all three of these have declined from high levels, then beyond doubt this has been a period of development for the country concerned.

India, which has followed policies identical to those of the United Kingdom, is known among the first few developing countries that adopted area-based development policies.

5.2 The Indian Experience

In the case of India, not much theoretical work has so far been done on regional disparity. However, a considerable empirical work has been done in this area. One of the common approaches that have been followed by many of these studies is the identification of backward areas. In some of the earlier studies, an attempt has also been made to examine inter-regional disparities in terms of consumption expenditure (Vaidyanathan 1974; and Chatterjee and Bhattacharya 1974). In recent years, Mathur (1983), Dholakia (1985), Choudhury (1992), and Das, Barua and Ghosh (1993) have examined the nature of inter-State disparities in income as well as in consumption. The other study of Mathur (1987) explains the inter-regional variations in growth rates. Most of the studies on Indian experience show that there is an increase in inter-regional inequalities in income and consumption (Das, Barua and Ghosh 1993). Elsewhere, it is also argued that the Indian economy continues to develop only at the cost of widening regional disparity, particularly in the unorganised sector (Das and Barua 1996).

Based on the above empirical findings an important issue that emerges is why there is increasing inter-regional inequalities in India? In this context, the Planning Commission has reported that decision on resource transfers, agricultural development strategies, and industrial location policies were not always based on a systematic analysis of regional disparities and their underlying causes. In 1983, the Indian National Committee on the Development of Backward Areas reported that major federal incentives like concessional finance for industrial location had primarily benefited the States that were not classified as industrially backward. Further, most of the districts receiving substantial benefits were those in close proximity to relatively developed industrial centres (Lall 1983). It is also argued that inter-State disparities had increased either due to failure of policy implementation or due to the use of inappropriate approaches (Chelliah 1996). The compulsion of achieving higher economic growth rates with limited resources often made

it imperative for decision-makers to concentrate their investment in those segments of the economy and those regions of the country where the rates of return were expected to be high. This resulted in widening regional imbalances and strengthening of the dualistic structure of the economy (Sarker 1994).

The inter-regional inequality in India has received a great deal of attention from economists and policymakers working on the impact of federal policies of tax, subsidies and expenditure. Rao (1992) argues that a squeeze on capital and maintenance expenditure has been much sharper in the less developed regions, leading to aggravated inter-regional growth disparities. Mundie and Rao (1991) also notice the existence of a significant inter-regional disparity in the distribution of social expenditure in health and education sectors. Elsewhere, it is mentioned that the middle-income category States received the highest intergovernmental transfers rather than the low-income States (Gulati and George 1985; and George 1988). This suggests that the process of economic development at the national level is seldom regionally balanced.

5.3 Past Efforts in identifying Backward districts

The problem of regional balance and of backwardness has attracted the attention of planners. The problem has sometimes been seen in terms of inter-State disparities though there is also recognition that there are many disparities within each State also. The emphasis has been on backwardness in terms of economic performance though the impact of historical and social factors on economic matters has been recognised. A clear concept of backwardness seems to be missing and the term is used in a more or less in vague sense to designate areas that do not seem to be benefiting adequately from general development measures. The more concrete steps taken involve mainly special schemes like the subsidies for industry of the social area development programmes. Many of these special schemes are more palliatives that fail to tackle the root of the problems of backwardness. What seems to be missing is the recognition that most backward areas have a potential for growth which can be tapped if certain special initiatives are taken. The important task of planning for backward areas is to identify what these special initiatives are in each type of backward areas.

Several attempts were made in the past to evolve criteria for the identification of backward districts. These have been briefly summarized below:

Committee on Dispersal of Industries

Perhaps the first attempt to determine backwardness of an area was made by the Committee on Dispersal of Industries, which was set up in pursuance of a decision taken at the meeting of the Small Scale Industries Board held in April 1960 to examine the question of industrialization of rural and industrially underdeveloped areas through small and medium scale industries. According to this Committee, unemployment was the general criterion applied to identify backward areas in Europe and USA. Unemployment, however, being a common feature everywhere in India, the Committee considered that several factors based on available data as well as the interaction of several economic criteria should be taken into account for the purpose of determining backwardness of an area.

The Committee further narrowed down on the unit or area as the district. Since the data on different criteria examined by the Committee was available only up to the district level and not below. The Committee recommended following criteria for determining backwardness:

A. Poverty of the people as indicated by:

   i. Low per capita income

   ii. Low per capita consumption

B. High density of population in relation to development of productive resources and employment opportunities as indicated by the following factors:

   i. High ratio of population to cultivable land (50% below the national average of per capita land holding considered as backward)

   ii. Low percentage of population engaged in output (50% or more below the national average considered as backward)

   iii. Absence of under exploitation of other natural resources. i.e. minerals, forests and animals

   iv. Low percentage of population engaged in secondary and tertiary sectors (25% below the national average considered as backward)

   v. Low ratio of urban to rural population (districts where the ratio was Iess than 50% of the national average considered as backward)

vi. Low percentage of factory employment (50% below the national average considered as backward)

C. Poverty of communications as indicated by small lengths of railways and metalled roads per square mile.

D. Districts where the railway and road mileage fall below 50% other national average considered as backward.

E. High Incidence of unemployment and of gross underemployment.

F. Consumption of electric power

Patel Committee Report

A Joint Study Team to suggest suitable steps for the development of 4 eastern districts of Uttar Pradesh namely Ghazipur, Azamgarh, Deoria and Jaunpur was appointed by the Planning Commission in January, 1964. The Study Team suggested the following indicators of development:

i. Agricultural output per capita of rural population and yield per acre of principal

ii. crops

iii. Irrigated Areas

iv. Industrial development - percentage of population dependent on Industry and Industrial Income per capita

v. Electrification

vi. Road Mileage

vii. Facilities for Education and Health

- Percentage of school children going to primary schools
- Hospital bed facilities

All the districts inhabited by a specified percentage of Tribals, Scheduled Castes and other backward class population were regarded as backward irrespective of the information on the basis of the above indicators.

Planning Commission Study Group

In the context of the formulation of the earlier Draft Fourth Plan (1966-71), the Planning Commission had requested the State Governments to devote special attention to the subject of development of backward areas. In this connection the backward areas were classified under five categories viz.:

i. Desert areas

ii. Chronically drought affected areas

iii. Hill areas including border areas

iv. Areas with high concentration of tribal population

v. Areas with high density of population low levels of income, employment and living etc.

As regards the category (e) above, a Study Group was appointed to review a set of indicators of regional development, which has been furnished at the instance of the Planning Commission by the State Governments. This Study Group had recommended the following 15 indicators:

i. Total population and density of population

ii. Number of workers engaged in agriculture including agricultural laborers as percentage of total workers

iii. Cultivable area per agricultural worker

iv. Net area sown per agricultural worker

v. Percentage of gross irrigated area to net sown areas

vi. Percentage of area sown than once to net sown area

vii. Per capita (rural population) gross value of agricultural output

viii. Establishments (manufacturing and repair) using electricity

ix. Number of workers per lakh of population employed in registered factories

x. Mileage of surfaced roads

xi. Number of commercial vehicles registered in a district

xii. Percentage of literate population

xiii. Percentage of school going children

xiv. Number of seats per million population for technical training

xv. Hospital beds per lakh of population

In 1971, another committee known as Gidwani Committee was asked to finalize the list of drought prone districts to be covered under Rural Works Programme. In 1973, the Working Group headed by B.S. Minhas recommended the addition of 18 partially covered districts under the Rural Works Programme for administrative convenience.

Pande Committee Report

The Pande Committee was set up to suggest a strategy whereby existing regional imbalances could be minimized or even eliminated by encouraging the establishment of industries of all sizes in selected backward areas or regions through financial and fiscal incentives including investments from financial and banking institutions, submitted its report in 1968. Since the position regarding the availability of data had not changed much since the time the Committee on Dispersal of Industries had submitted its report, the Pande Committee opted for consideration of criteria for which data was available up to the district level. Keeping in view the general fund constraint, it was felt that it would be desirable to select certain backward districts only in industrially backward States, which may then qualify for special treatment by way of incentives for industrial development. The criteria adopted for this purpose were as follows:

i. Total per capita income

ii. Per capita income from industry and mining

iii. Number of workers in registered factories

iv. Per capita annual consumption of electricity

v. Length of surfaced road in relation to:

- The population, and
- The area of the State

vi. Railway mileage in relation to:

- The population, and
- The area of the State

As regards, the identification of backward districts in industrially backward States and Union Territories the following criteria was recommended:

i. Districts outside a radius of about 50 miles from large cities or large industrial projects.

ii. Poverty of the people as indicated by low per capita income starting from the lowest to 25% below the State average.

iii. High density of population in relation to utilization of productive resources and employment opportunities as indicated by:

- Low percentage of population engaged in secondary and tertiary activities (25% below the State average may be considered as backward)
- Low percentage of factory employment (25% below the State average may be considered as backward)
- Non and/or underutilization of economic and natural resources like minerals, forests etc.

iv. Adequate availability of electric power or likelihood of it's availability within 1-2 years.

v. Availability of transport and communication facilities or likelihood of availability within 1-2 years.

vi. Adequate availability of water or likelihood of availability within 1-2 years.

Wanchoo Committee Report

The Wanchoo Committee was the second Working Group appointed by the National Development Council in 1968 to make a careful study of the issue of regional imbalances. The terms of reference of this Group were:

- To consider the nature of concessions to be given for encouraging the, development of industries in the backward regions and in particular to examine procedural, financial and fiscal incentives.

- To consider the role of the State Governments and financial institutions in the development of industries in backward regions.
- To examine the type of disincentives that should be introduced to avoid concentration in metropolitan or highly industrialized areas.

The Committee went on to recommend a package of concessions - procedural, financial and fiscal - for encouraging the development of industries in the backward regions. The reports of the two Working Groups was considered by the National Development Council, which in consultation with the financial institutions evolved a set of criteria for identification of industrially backward districts, in which the minimum infrastructure facilities were available. They were:

i. Per capita food grains/commercial crops production depending on whether the district was predominantly a producer of food grams/cash crops (for inter-district comparisons, conversion rates between food grains and commercial crop might be determined by the State Government wherever necessary)

ii. Ratio of agricultural workers to population

iii. Per capita industrial output (gross)

iv. Number of factory employees per lakh of population or alternatively number of persons engaged in secondary and ternary activities per lakh of population

v. Per capita consumption of electricity.

vi. Surfaced road or railway mileage in relation to population.

Report on Backward Areas

This Committee headed by Prof. Sukhamoy Chakravarty, was constituted in October, 1972 by the Planning Commission. The Committee could not submit its final Report. The Committee observed that "the approach to the identification of backward areas has, to be based on a set of what may be called partial indicators of development and underdevelopment". The Report further expatiated on the point of data choice and the factors determining this activity at length. "The selection of such a set of indicators is a crucial decision. Only such indicators should be chosen which will best express the relative variations in development among various area units. However, the type and number of indicators that may be used for this purpose is ultimately circumscribed by data availability, Further, the indicators chosen should cover a range of development aspects and should

not seriously overlap each other. So far as the unit area is concerned, the district was the obvious choice since, at this level not only sufficient data available but it is also an administrative organization for the formulation and implementation of plans". After examining the comparable data available at district level, the following variables were chosen for the analysis:

i. Density of population per sq km. of area.

ii. Percentage of agricultural workers to total working force.

iii. Gross value of output of food grains per head of rural population.

iv. Gross value of output of all crops per head of rural population.

v. Percentage of total establishments using electricity establishments (manufacturing and repair).

vi. Percentage of household establishments using electricity to total household establishments.

vii. Percentage of non-household establishments using electricity to total non-household establishments.

viii. Number of Workers in registered factories per lakh of population.

ix. Length of surfaced roads per 100 sq. kms. of area.

x. Length of surfaced roads per lakh of population.

xi. Percentage of male literates to male population.

xii. Percentage of female literates to female population.

xiii. Percentage of total literates to total population.

National Committee on the Development of Backward Areas (NCDBA)

The NCDBA appointed by the Planning Commission in November 1978 under the chairmanship of Shri B. Sivararman, Member Planning Commission, submitted its deliberations in the form of 11 Reports on different aspects of backwardness in 1980-81. It observed that the concept of backwardness has to be operationalized in a manner that is least open to dispute and most likely to attract a consensus of agreement. The national Committee recommended that the primary unit for the identification of backward areas

should be the development block. The National Committee recommended that the following types of problem areas should be treated as backward for purposes of planning.

i. Chronically drought prone areas

ii. Desert areas

iii. Tribal areas

iv. Hill areas

v. Chronically flood affected areas

vi. Coastal areas affected by salinity

These six categories listed above can be viewed as six types of fundamental backwardness. In this sense an area may suffer from the handicap of more than one type of fundamental backwardness.

Hyderabad - Karnataka Development Committee

The Government of Karnataka appointed a Committee known as 'Hyderabad Karnataka Development Committee' in May 1980 under the Chairmanship of Shri Dharam Singh. The Committee submitted its report in October, 1981. For identification of the backwardness of an area, the Committee selected 22 indicators for measuring inter-district variations in the level of development:

i. Density of population

ii. Percentage of urban population to total population

iii. Percentage of non-agricultural workers to total workers

iv. Net area sown as per cent of total geographical area

v. Total cropped area as per cent of net sown area

vi. Net sown area as per cent to cultivable land

vii. Averages yield per hectare in cereals

viii. Average yield per hectare in pulses

ix. Average yield per hectare in oil seeds

x. Area irrigated as per cent of net sown area

xi. Number of industrial establishments as per cent to State total

xii. Number of vehicles per lakh population

xiii. Number of bank offices per lakh population

xiv. Value of turn over per regulated market

xv. Per cent of literates in total population

xvi. Number of schools per lakh population

xvii. Number of University Educational Institutions per lakh population

xviii. Number of health units per lakh population

xix. Number of hospitals beds per lakh population

xx. Number of pump sets energized as per cent of State total

xxi. Road length per 100 sq. kms areas

xxii. Number of towns and villages electrified as per cent of total number or towns and villages.

Fact Finding Committee on Regional Imbalance

A Committee known as 'Fact Finding Committee on Regional Imbalance' in Maharashtra was appointed by the Government of Maharashtra in August, 1983 under the chairmanship of Dr. V.M. Dandekar. The Committee submitted its report in April. 1984 and identified the following criteria:

i. Per capita net domestic product

ii. Per capita consumer expenditures

iii. Per capita net domestic product from agriculture

iv. Per capita net domestic product from registered manufacturing

v. Proportion of urban population

vi. Proportion of workers in non traditional occupations

vii. Consumption of electricity

viii. Per capita bank credit

ix. Literacy

x. Proportion of weaker sections i.e. Scheduled Tribes, Scheduled Castes and Agricultural Labor

Committee for the Development of Backward Areas

'Committee for the Development of Backward Areas' of Gujarat was appointed in December, 1983 under the Chairmanship of Dr. I.G. Patel. The Committee submitted its report in August, 1984.

This Committee used the following 25 indicators:

Economic Indicators

A. Agriculture

   i. Net cropped area per agricultural worker

   ii. Percentage of area sown more than once to net area sown

   iii. Percentage of gross irrigated area to gross cropped area

   iv. Number of electric pump sets and diesel engines per 1000 hectares of gross cropped area

   v. Number of tractors per 1000 hectares of gross cropped area

   vi. Percentage of villages having milk cooperative societies to total inhabited villages

B. Urbanization

   i. Percentage of urban population to total population

C. Industry

   i. Number of registered factory workers per lakh of population

   ii. Number of registered Small Scale Industrial Units per lakh of Population

   iii. Percentage of workers in household industries to total workers

iv. Percentage of secondary and ternary workers to total workers

Infrastructure Indicators

D. Power

i. Percentage of population of electrified villages and town total population of talukas

E. Transport and Communication

i. Length of surfaced pucca roads per lakh of population

ii. Length of surfaced pucca roads per 100 sq. kms of area

iii. Percentage of villages having all weather S.T. facility to total inhabited villages

iv. Number of Post and Telegraph Offices per 100 sq. Kms of area

v. Number of bank officers of scheduled commercial banks per lakh of population

vi. Number of cooperative banks and primary agricultural cooperative credit societies per lakh of population

Quality of Life Indicators

F. Education

i. General literacy rate of taluka

ii. Female literacy rate of taluka

iii. Rural literacy rate of taluka

iv. Number of secondary and higher secondary schools per lakh of population

G. Health

i. Number of hospital beds per lakh of population

ii. Percentage of villages having an allopathic or ayurvedic doctor to total inhabited villages

iii. Percentage of villages having drinking water facility to total inhabited villages

Backward Area Identification for CISS and Industrial Licensing

Selection of districts for the operation of the Central Investment Subsidy Scheme (CISS) and the preference for industrial licensing scheme proceeded on a different footing. In 1969, the Central Government requested the industrially backward States to select two districts/equivalent areas and the other States one district/equivalent areas in the industrially backward States and 3 districts /equivalent areas in the industrially backward States. In this manner, 101 districts/equivalent areas were selected out of the 246 districts already identified as backward for the purpose of CISS.

With a view to stepping up the efforts of industrialization of backward areas the Government decided to give over-riding priority to backward areas for the grant of licenses in the 1980s. In 1981, a quick identification was made of the districts which did not have a single large or medium scale industry. The preliminary identification of such districts was done on the basis of District Industries Centre Action Plan 1979-80 and a tentative list of 83 districts was circulated to the State Government, 93 such districts were identified and these were called 'No Industry Districts'. Following this exercise the backward areas were recategorized into three groups, namely 'A', 'B' and 'C' with effect from March 1, 1983 and were made eligible for graded rates of subsidy.

Intensified Jawahar Rozgar Yojana

On the basis of the experience gained in implementing the wage employment programmes in general and the Jawahar Rozgar Yojana in particular it was felt necessary that the scheme should be intensified in selected backward districts in the country where there is a concentration of underemployed and unemployed rural youth. The selection of 120 backward districts was made on the index of backwardness formulated in consultation with the Planning Commission on the basis of 50% weightage to rural SC/ST population of the districts and 50% weightage to inverse of per capita agricultural labor productivity. The districts in which a majority of blocks were being covered by the Drought Prone Areas Programme (DPAP) were included and those districts which were commercially and industrially advanced were excluded.

Whatever the exercise undertaken and the strategy adopted over time, one aspect stands out, that is the criteria adopted to identify the backward areas be it for the purpose of devising incentives for industry or providing tax concessions to industry has been to a significant extent determined by the data availability. It was also felt that Backward Areas

should preferably be determined in terms of areas smaller than the States. Districts may serve the objective best because of their being defined for administrative purposes. Statistical information necessary for the purpose is also generally available only up to district level without much difficulty. The exercise thus, far carried out for identification of backward districts has been for the purpose of preparing a package of procedural, financial and fiscal incentives to attract industry and thus minimize the regional imbalances prevalent.

Sarma Committee Report for Identification of 100 most Backward and Poorest Districts in the Country 1997.

This committee set up by Government of India as per the mandate in Common Minimum Programme of United Front Government.

Criteria: The choice of criteria would have to reflect not only the existing State of deprivation but also yield pointers to the nature of intervention that would have to be made in order to improve conditions in the selected districts. Therefore, the set of criteria would have to include direct indicators of human deprivation as well as indicators which pertain to the infrastructure that support both economic activities as well as the quality of life of the people.

Indicators of deprivation:

i. The principal indicator of deprivation in the country is the poverty ratio, which is available from the surveys on household expenditure conducted by National Sample Survey Organization (NSSO). This is available only on a regional basis each region comprising of several districts. It was decided by the Committee that all districts which tall within a particular region would be given the poverty ratio region on a uniform basis.

ii. Education: Ratio of female literates to the number of females.

iii. Health: Infant Mortality Rate (IMR).

Indicators of social infrastructure:

i. Number of primary schools per 10,000 population;

ii. Number of primary health sub-centers per 10,000 population;

iii. Number of community health workers per 10,000 population;

iv. Percentage of villages having potable water supply to total number of villages; and

v. Percentage of villages with post offices.

Indicators of economic infrastructure:

i. Cropping intensity in agriculture

ii. Value of agricultural output per hectare

iii. Percentage of workers engaged in non-agricultural activities to total workers, and

iv. Supporting infrastructure:

- Percentages of villages with pucca roads
- Number of railway stations per sq. km.
- Percentages of villages electrified; and
- Bank branches per lakh population.

A better approach to identify backward and poorest district would be to examine the robustness of the aggregated measures of backwardness and deprivation on the basis of a sensitivity analysis pertaining to the weights assigned to the poverty ratio relative to the other indicators. After normalizing the data collected on various parameters listed earlier sensitivity analysis was carried out by assigning appropriate weights to the poverty ratio in comparison to the constant weight of 13 for all other indicators taken together.

The list of 100 most backward and poorest districts in the country as identified by the Committee on the basis of the criteria described earlier and the analysis undertaken above is given in Annexure. The spatial distribution of these districts indicate that backward areas fall under Bihar (38 districts), Madhya Pradesh (19), Uttar Pradesh (17), Maharashtra (10), Orissa (4), West Bengal (4), Rajasthan (2), Sikkim (2), Haryana and Karnataka. Himachal Pradesh and Dadra Nagar Haveli one each. The entire Southern region and Western seemed to have been better placed as per the criteria evolved by the committee. It may be noted that on account of new districts being created subsequent to the 1991 Census, these 100 districts now correspond to 114 districts as per available information.

Infrastructure Development: The Committee defined 'infrastructure" as being "the physical framework of facilities through which the production and distribution of goods and services to the public are mediated".

Economic infrastructure includes transportation, irrigation, power and communications.

Social infrastructures are facilities for health care, education and water supply and sanitation. While availability is necessary, it is not sufficient for ensuring the delivery of the requisite services to the people. The institutional mechanism and the resultant efficiency of the infrastructure services are equally important, but these can only be measured either qualitatively or by considering social indicators, which tend to change only slightly over time. Improvement in the quality of life will require at both social and economic infrastructure be developed together and in a balanced manner so that both physical and the social well being of the people are enhanced simultaneously.

Sarma Committee decided that the North-Eastern States, consisting of Assam, Arunachal Pradesh, Nagaland, Manipur, Meghalaya, Tripura, Mizoram and Jammu & Kashmir had problems which were specific and peculiar to them, which would require an approach different from those appropriate for the other poor and backward districts of the country. Indeed, it was felt that the inclusion of these States in any exercise designed to measure backwardness and deprivation would detract from the focus that is required for removing constraints faced by them. It was, therefore, decided that these States would be excluded from the purview of this exercise, and attention should be drawn to the need for considering their developmental concerns separate.

The National Institute of Rural Development (NIRD), Hyderabad, in its "India Rural Development Report: Regional Disparities in Development and Poverty (1999)", made an attempt to assess the status and spatial disparities with regard to social and infrastructure development. For the purpose of analysis and discussion, the following working classification had been made.

Social Indicators: Child mortality, rural population, growth (decadal), total literacy, female literacy and household size.

Infrastructure: Housing, drinking water, sanitation, primary school, medical facility, roads, post and telegraph, electricity, and irrigation

In respect of each of the parameters, the NSS regions had been sequenced and composite ranks were developed. In addition, two composite indices were also developed: First, the Social Development Index (SDI) composed of parameters like female literacy, educational standard, drinking water facility, toilet facility, housing status, electrification and access to PDS, and Second, the Infrastructure Development Index (IDI) comprising the parameters of irrigation, road density, market density, electrification, communication, education, medical facility and drinking water supply. These two indices provided a fairly comprehensive coverage of social and infrastructure variables, and were used for qualitative judgment of disparities across the regions. The SDI and IDI had been developed with a NSS region as a unit since complete data sets were available at this level of disaggregation.

District-Level Deprivation in the New Millennium, 2003

Bibek Debroy and Laveesh Bhandari in their edited book: District-Level Deprivation in the New Millennium, 2003, culled out the list of poorest 100 districts from the data for all the 593 districts in the country based on adjustment of data on household consumer expenditure made available by the National Sample Survey Organization. Adopting the definition of poverty line in monetary terms, as specified by the Planning Commission of India, updating it to the current level, and placing it vis-à-vis the household consumer expenditure data, they generated data on the percentage of population below poverty line for every district. Such estimates are not available elsewhere.

Among the 100 districts, listed in the table and depicted on the map, Rayagada, Nabrangpur and Malkangiri, all in Orissa, are the poorest among the poor. No less than 80 per cent of their population survives below the poverty line. Orissa carries the dubious distinction of sharing almost one-fifth of the 100 poorest districts in the country. Placed together with Jharkhand, Bihar and West Bengal, which were the constituent units of the Bengal province during the colonial days, we get a segment of India which partakes more than one-half of the total districts under reference. A highly exploitative form of absentee landlordism prevailed over here.

In virtual contiguity with this extensive poverty belt, the tribal districts of Chhattisgarh, Madhya Pradesh and Maharashtra form another cluster of such districts. The poorest districts mark their presence in some other States too. In Karnataka, these are located in the drought prone eastern tract, in Uttar Pradesh in the flood prone North-East together with the urban shadow zone of Lucknow, and in Tamil Nadu in the Eastern Ghats to the

north. In overall terms, the poorest 100 districts are concentrated in 12 States, leaving the remaining 16 States and 7 Union Territories free from such a characterization.

Among the 100 districts, about one-half carry a population density lower than the national average of 273 persons per km2. In one-third of them, tribal population makes more than 20 per cent of the total population as compared with 8.2 per cent in India. And in six districts out of every seven, the percentage of urban population is below 20 against the national average of 28. Poverty is not a function simply of man-land ratio; it is rooted in matters of regional history, social structure and population composition. Ironically, among the 147 districts identified by the Planning Commission of India for coverage under the Backward Districts Initiative Scheme in 2003, only 39 belonged to the family of the 100 poorest.

Rashtriya Sam Vikas Yojana, 2003, and the Backward Regions Grant Fund, 2007

The Mid-Term Appraisal of the Ninth Plan showed that despite these efforts, one of the most serious problems facing the country was the wide disparity and regional imbalances between States and within a State between some districts. It was these pockets of high poverty, low growth and poor governance that were slowing down the growth and development of the country. In the Tenth Plan, it was decided to have a new approach to target these areas through a specific programme for Backward Areas and the Rashtriya Sam Vikas Yojana was introduced in 1999.

The Rashtriya Sam Vikas Yojana covered 147 districts. Each district was to receive Rs. 45 crore for schemes that would address the problems of low agricultural productivity, unemployment and fill critical gaps in infrastructure. Each district prepared a Three Year Action Plan which showed the flow of funds from various schemes into the Sector which was considered for additionality. An amount of Rs. 4,673 crore was released under RSVY during the Tenth Plan period. 33 districts received the full allocation of Rs. 45 crore during the Tenth Plan, while others are in various stages of completion of the programme. Keeping in view the experience of the operation of the Programme in the first two years, it was decided that the process of implementation needed to be changed to provide a more participative and holistic approach and to involve Panchayati Raj Institutions. Thus, the Backward Regions Grant Fund was initiated with two major changes, namely, the involvement of Panchayati Raj Institutions not only in the choice of schemes but also in their implementation and supervision, and the preparation of district plans which would ensure convergence and prevent duplication. It aims at catalyzing development in backward

areas by: (a) providing infrastructure; (b) promoting good governance and agrarian reforms; (c) converging, through supplementary infrastructure and capacity building, the substantial existing development inflows into these districts.

The Fund will accordingly provide financial resources for supplementing and converging existing development inflows into identified districts, so as to:

i. Bridge critical gaps in local infrastructure and other development requirements that are not being adequately met through existing inflows,

ii. To this end strengthen Panchayat and Municipality level governance with: more appropriate capacity building; to facilitate participatory planning, decision making, implementation and monitoring; and to reflect local felt needs,

iii. Provide professional support to local bodies for planning, implementation and monitoring their plans,

iv. Improve the performance and delivery of critical functions assigned to Panchayats, and counter possible efficiency and equity losses on account of inadequate local capacity.

Inter-Ministry Task Group on Redressing Regional Imbalance, 2004

The Planning Commission set up an Inter-Ministry Task Group on Redressing Regional Imbalance in 2004. The Inter-Ministerial Group (IMG) identified 170 most backward districts including 55 extremist affected districts on the basis of 17 chosen parameters relating to income deprivation, health and educational status and infrastructural inadequacy, and summed up their ranks on the different parameters and arranged them on the basis on their combined ranking to focus on relative deprivation levels. The IMG believed that districts ranked lowest on the combined ranking list must be considered the most backward in the country.

Some Other Reports on Indicators/Criteria of Backwardness

A. **K.A. Varghese and Azad Mordia of** Rajasthan College of Agriculture, MPUAT, Udaipur, Rajasthan, made an attempt to classify the 32 districts of the State of Rajasthan according to the stages of development. They gave emphasis on the spatial aspect of development using a simple composite index method. Specific development indicators have been worked out under the following broad classes:

i. Demographic factors
ii. Social factors
iii. Economic factors
iv. Agricultural factors
v. Infrastructural factors
vi. Industrial factors

The specific indicators considered in the above broad classes with likely positive or negative impact of each of such factors on the overall development of the districts are given as under:

i. Demographic Factors:

- Positive indicators:

  X1: Sex ratio (No. of females for 000' males)

- Negative indicators:

  X2: Population growth rate (%) (1991 to 2001).

  X3: Density of population i.e. no. of persons per sq, km (2001).

  X4: Share of rural population i.e. rural population as share of total population (2001).

ii. Social Factors:

- Positive indicators:

  X5: Work participation rate i.e. the proportion of workers to total population (2001).

  X6: Literacy rate i.e., the proportion of literate population to total population (2001).

  X7: Rural literacy i.e., the proportion of rural literate to rural population (2001).

  X8: Share of non-agricultural workers i.e., the proportion of workers engaged in service, business and other non-land activities to total working population (2001).

  X9: Share of girls' enrollment i.e., the proportion of number of girls enrolled to total enrolled student (2001).

- Negative indicators:

X10: Share of agricultural laborers i.e., the proportion of agricultural laborers to total workers (2001).

X11: Share of marginal workers (marginal workers are those workers who work for less than 183 days in a year) i.e. the proportion of marginal workers to total workers.

(iii) Economic Factors:

Positive indicators:

X12: Number of economic enterprises per million population.

X13 : Plan outlay in lakh rupees per million population.

X14 : Revenue from stamp duty etc. per million population.

X15 : Number of cooperative societies per million population.

X16 : Number of commercial banks per million population.

(iv) Agricultural Factors:

Positive indicators:

X17: Share of net sown area to geographical area (since the share of net sown area remained less than 50 per cent of geographical area for most of the district, it is treated as a positive indicator.

X18: Share of forest area to geographical area (since One-third of the geographical area is required to be under forest for a balanced eco-system, and the share of forest area being very meager in most of the districts, the share of forest area is also treated as a positive indicator.

X19: Share of net irrigated area to sown area (irrigation being scarce resource in most part of the State, the share of net irrigated area to sown area was treated as a positive indicator.

X20: Rate of fertilizer application (the rate of fertilizer application in nutrient form on unit area basis is treated as a positive indicator).

X21: Number of tractors per 000' hectares of net sown area (since mechanization

has a positive impact on a agricultural production this indicator is treated as a positive contributor towards development).

Negative indicators:

X22: Share of small and marginal holdings (the proportion of land holdings less than 2 hectares to total land holdings is considered as a negative contributor).

X23: Share of area under food grain to gross cropped area (more the area under food grain less will be the scope for area under commercial crop).

(v) Infrastructural Factors:

Positive indicators:

X24: Per cent of villages electrified to total villages in the district

X25: Number of schools in per sq. km area

X26: Road length in per sq. km area

X27: Number of newspaper per million population.

X28: Number of medical institutions (hospitals, dispensaries) per million population.

X29: Number of family welfare centers per million population.

X30: Electricity consumption per million population.

X31: Number of registered vehicles per million population

(vi) Industrial Factors:

Positive indicators:

X32: Industrial output in 000' rupees per unit of population.

X33: Number of industrial centers per district.

2. Regional Disparities and Backwardness in Uttar Pradesh

Uttar Pradesh has been facing the problem of disparities and regional imbalances within the State Regional disparity has been a matter of concern for planners for a long time. Various factors are responsible for regional imbalances but these disparities have arisen

mostly due to geographical factors such as difference in soil types, topography, incidence of flood, drought etc.

Uttar pradesh is one of the largest States in the country. It's share in the total population of the country is 16.2 per cent whereas in terms of area, its share is only 7.3 per cent of the total area of the country. In the recent past, the State's area reduced by 18 per cent as against only 5 per cent reduction in population due to formation of the new State Uttarakhand. The State is still relatively less developed with huge regional disparities.

There are four economic regions in the State namely (i) Western (ii) Central (iii) Eastern, and (iv) Bundelkhand. There are significant inter-regional disparities in respect of development indicators among these four regions. The Eastern and Bundelkhand regions are comparatively less developed as compared to Western and Central regions. However, the followings table shows a comparative picture of area and population in the four regions.

Table 93: Area and Population of the Regions of U.P. 2001

Regions	Population ('000)	Area (Sq. Km.)	Population Density	Population Growth (1991-2001)
Bundelkhand Region	8,232 (4.95%)	29,418 (12.21%)	280	22.35
Central Region	30,159 (18.15%)	45,834 (19.03%)	658	26.24
Western Region	61,195 (36.82%)	79,831 (33.13%)	767	26.38
Eastern Region	66,611 (40.08%)	85,845 (35.63%)	776	25.64
Uttar Pradesh	166,197 (100.00)	240,928 (100.00)	690	25.85

Inter-District disparity in Uttar Pradesh

Level of development of districts in the State is identified on the basis of 36 indicators which include 9 indicators of agriculture and allied activities, 8 of industry sector, 10 of

economic infrastructure and 9 of social infrastructure. On the basis of these 36 indicators a Composite Index has been worked out to identify the position of districts.

Sl. No.	LIST OF INDICATOR S
	Agriculture
1	Gross Value of Agricultural Produce Per Ha. of Gross Area Sown (Rs.) At Current Prices
2	Per Capita (Rural) Gross Value of Agricultural Produce (Rs.) At Current Prices
3	Percentage of Area Under Commercial Crops to Gross Sown Area
4	Percentage of Gross Irrigated Area to Gross Sown Area
5	Distribution of Fertilizers Per Ha. of Gross Sown Area
6	Per Capita Production of Food Grains (Kgs.)
7	No. of Pumpsets on Per Thousand Hectare of Gross Sown Area
8	Percentage of Area Irrigated by Tubewells to Net Irrigated Area
9	Per Capita Milk Production (Kgs)
10	Cropping Intencity
	Industrial Infrastructure
11	Percentage of Domestic Industrial Workers to Total Workers 2001
12	No. of Workers Engaged In Registered Factories Per Lakh of Population
13	Percentage of Industrial Sector to State Domestic Product at Current Prices
14	Gross Value of Industrial Produce Per Capita (Rs.)
15	Invested Capital Per Industrial Worker ("000 Rs)
16	No. of Working Factories Per Lakh of Population
17	Percentage of Consumption of Electricity In Industry to Total Consumption
	Economic Infrastructure
18	Length of Total Pucca Roads Per Lakh of Population (K.M)

19	Length of Total Pucca Roads Per Thousand Sq. K.M of Area (Km..)
20	Per Capita Consumption of Electricity (K.W.H.)
21	Percentage of Electrified Villages to Total Inhabited Villages
22	No. of Telephone Connections Per Lakh of Population
23	No. of Post Offices Per Lakh of Population
24	No. of Scheduled Commercial Banks Per Lakh of Population
25	Credit Deposit Ratio
26	No. of Registered Motor Vehicles Per Lakh of Population
27	Per Capita Net Product From Commodity Producing Sectors (Per Capita Income In Rs.) at Current Prices
	Social Infrastructure
28	Literacy Rate (Total)
29	Percentage Of Enrolled Boys In Primary Schools
30	Percentage Of Enrolled Girls In Primary Schools
31	Percentage Of Enrolled Boys In Upper Primary Schools
32	Percentage Of Enrolled Girls In Upper Primary Schools
33	No. Of Polytechnics Per Lakh Of Population
34	No. Of I.T.Is. Per Lakh Of Population
35	No. Of Allopathic Hospitals/Dispensaries Per Lakh Of Population (Including P.H.Cs
36	No. Of Beds In Allopathic Hospitals/Dispensaries Per Lakh Of Population (Including P.H.Cs.)

On the basis of these selected 36 indicators, index of development has been worked out by Ranking Method at district level. On the basis of this method, the districts have been placed in five ranges, as below:

Table 94: Index of development by Ranking Method at district level

Sl. No.	District	Index	Sl. No.	District	Index
Most Developed Districts (CID 125.00 And Above)					
1	Gautam Buddha. Nagar	388,15	4	Meerut	139,03
2	Ghaziabad	175,12	5	Kanpur Nagar	136,33
3	Lucknow	149,74	6	Agra	127,04
High Medium Developed Districts (CID 105.00-125.00)					
7	Muzaffar Nagar	123,11	14	Kanpur Dehat	111,23
8	Mathura	122,03	15	Jhansi	109,41
9	Sahranpur	120,06	16	Baghpat	107,70
10	Jyotibaphule Nagar	117,58	17	Hathras	107,35
11	Bulandshahar	116,70	18	Moradabad	106,24
12	Varanasi	115,21	19	Gorakhpur	105,14
13	Bijnore	113,06			
Medium Developed Districts (CID 90.00-105.00)					
20	Allahabad	104,51	30	Sonbhadra	98,12
21	Firozabad	104,17	31	Pilibhit	97,57
22	Rampur	104,13	32	Unnao	97,39
23	Bareilly	102,82	33	Sultanpur	97,37
24	Jalaun	102,81	34	Etawah	95,31
25	Aligarh	101,12	35	Mahoba	95,12
26	Farrukhabad	100,98	36	Mainpuri	93,01
27	Faizabad	99,88	37	Shahjahanpur	92,85
28	Kannauj	99,02	38	Lakhimpur Kheri	90,97
29	Barabanki	98,23			

LowMedium Developed Districts (CID 78.00-90.00)

39	Basti	88,80	48	Fatehpur	84,30
40	Budayun	88,70	49	Mau	83,32
41	Sant Ravidas Nagar	88,43	50	Auraiya	81,00
42	Sitapur	88,25	51	Chandauli	80,70
43	Raebareli	88,08	52	Hardoi	80,44
44	Hamirpur	88,01	53	Jaunpur	80,34
45	Ambedkar Nagar	87,81	54	Deoria	79,84
46	Lalitpur	87,72	55	Gonda	78,28
47	Etah	85,43			

Most Backward Districts (CID Below 78.00)

56	Ghazipur	77,68	64	Kushi Nagar	72,01
57	Bahraich	77,51	65	Maharajganj	71,86
58	Pratapgarh	76,56	66	Kaushambi	68,86
59	Ballia	75,39	67	Santkabir Nagr	68,19
60	Balarampur	75,28	68	Chitrakoot	63,52
61	Banda	75,23	69	Shravasti	57,78
62	Mirzapur	75,02	70	Siddharth Nagar	55,76
63	Azamgarh	73,29			

3. In West Bengal, 4612 revenue villages have been identified for special attention. Female literacy and employment opportunity were used as variables to capture the extent of poverty.

4. In Andhra Pradesh backward villages have been selected for saturation/ universalisation under eight schemes/activities under "Indiramma" Village Scheme.

5. The Government of Gujarat had set up a committee (COWLAGI Committee) in 2004 to rank talukas based on 44 indicators. The committee has now identified 30 talukas falling under least developed talukas in the State.

6. Government of Karnataka appointed High Power Committee for Redressal of Regional Imbalances (HPCRRI) under Dr. D.M. Nanjundappa in October 2000. The HPCRRI was asked to study regional disparities existing in the State & to advise the Govt. & recommend appropriate strategies for development to minimise inter-district & inter-regional disparities. The Committee presented the Report in June 2002. The methodology adopted by the HPCRRI to measure disparity comprises a two fold approach:

   a) to determine overall level of backwardness of taluk by evolving Comprehensive Composite Development Index (CCDI) using 35 indicators

   b) to consider taluks which are classified as Most Backward, More Backward and Backward Taluks

   The 35 indicators spread over sectors like Agriculture & Allied; Industry, Trade & Finance; Economic Infrastructure; Social Infrastructure & Population Characteristics

7. Borooah and Dubey (2009) examined regional disparity in India from the perspective of the smallest administartive and geographical units, the district. They used comparable published data on six indicatorts for 593 districts (Annexure-). The six indicators of deprivation that they used in their analysis included the poverty rate; the food scarcity rate; the (gendersensitive) literacy rate; the infant mortality rate; the immunisation rate; and the sex ratio for 0-6 year olds. This exrecise enabled them to focus on pockets of deprivation within States rather than viewing deprivation as a phenomenon affecting a State or a region in its entirety. The central conclusion that emerged from this study is that different districts were "most backward" on different metrics. Districts in Orissa were the poorest; districts in Arunchal Pradesh had the highest rates of food scarcity; districts in Bihar and Jharkhand had the lowest rates of literacy, tribal districts in the North-East, along with districts in Bihar and Jharkhand, had the lowest rates of immunisation; districts in Orissa, Madhya Pradesh and Uttar Pradesh had the highest rates of infant mortality; and districts in Punjab and Haryana had the lowest (0-6 years) sex ratios. The analyses carried out in this analysis, thus, provide important insight for policy and suggest that the effots could be more focussed on these States if Millenium Development Goals targets are to be met as stipulated.

   This study?s first point of departure from existing work on regional disparities in India is that unlike most studies, which focus on States and configurations of States, it examines such disparity from the perspective of the smallest geographical unit

for which a consisent set of data is available: the district. By doing so, it is able to focus on pockets of deprivation rather than viewing deprivation as a phenomenom affecting a State or a region in its entirety: "forward" States have deprived districts while "backward" States have districts which are not deprived.

8. A National Consultation on the Index of Backwardness based on Block as the unit for Backward Region Grant Fund (BRGF) was organised by the Ministry of Panchayati Raj (MoPR), Govt. of India, on 13th January, 2010, at Vigyan Bhawan, New Delhi.

The Secretary, MoPR, during the concluding session, observed based on the deliberations that the following roadmap could be adopted for giving effect to the resolutions of the Workshop:-

(a) While it would be ideal to adopt the village as the unit for determining backwardness, practical considerations would require to adopt CD Block as the unit for the purpose.

(b) The backwardness indicators should be limited in number, say 6-10, and should largely be based on Primary Census Abstract (PCA) and the Census Data, which are available uniformly across the country.

(c) The Block level data should be collected and updated on an annual basis by the States / UTs, as was already being done by some States such as Madhya Pradesh, and uploaded on the "PRI-Profiler" of MoPR's website.

(d) Prof. Ajitava Ray Chaudhuri of Jadavpur University, Kolkata would prepare a note on the parameters to be adopted for determining the sectoral backwardness as well as the composite index using the appropriate econometric model. However, till such time an alternative model is adopted, the model mooted by OKD Institute, Guwahati may be pursued for further refinement.

(e) The selected sectoral indicators may be used for planning and implementation of various sectoral schemes and programmes, whereas the composite index may be used for BRGF and 13th Finance Commission Award and other Policies / Programmes for addressing regional backwardness since ongoing Sectoral Schemes have not addressed this aspect. 11th Plan document chapter on the subject States that the disparities have increased over Plans.

(f) States would continue to populate the BBI Portal floated on the PRI Profiler of MoPR with annual updates.

(g) Specific Indexes would be prepared by the following participants / experts:-

(i) Shri Teeka Ram Meena, Secretary (PR), G/o Kerala would prepare an "Indicator of Backwardness based on Livelihood Parameters".

(ii) Shri Devender Singhai, Principal Secretary (Planning), GoMP and Shri RK Singh, Director, SIRD, Chhattisgarh would prepare an "Indicator of Backwardness for Tribal Areas".

(iii) Prof. Ashwani Kumar of TISS, Mumbai would prepare an "Indicator of Backwardness for LWE Areas".

The aforesaid 3 sectoral indicators would be prepared in the course of the next 2 weeks and sent across to MoPR and other participants / organizations.

5.4 Major Drawbacks in Indicators Used and Measurement of Disparities

A number of studies on the assessment of regional disparity and identification of the backward regions of India have used one or several criteria of development. Perhaps, a per-capita income is the single indicator that has been widely and frequently used to assess the level of economic development of a particular State or district. With per capita income as an indicator, most of the studies emphasise that one can make meaningful assertions about the economic performance of the 'concerned States, and say with some amount of certainty that whether or not some States are economically developed over other States in the country.

However, per-capita income as an indicator for measuring the inter-State or inter-district disparities may not truly represent the non- economic disparities in development (Raj 1990). Another limitation is that the extreme levels of income in a society affect the per-capita income. Factors like climatic conditions, availability of natural resources (like coal, iron ore etc.), electric power, quality of technical personnel, density of population, investment pattern in public and private sectors influence the per-capita income of a particular region. These factors also contribute to large differences in per-capita income across the regions (Majumdar and Kapoor 1980). Thus, as the structure of the economy in one State differs from that of others in a country, per-capita income alone may not be enough to assess the extent of backwardness.

Turning to the issue on "measurement", the existing literature sought to explain the measurement of "disparities" either by taking the average composite index (by considering

more than one sector at a time) or sector specific index at the State or district (the highest political- administrative units) levels. Almost all these studies have used secondary information to measure the extent of disparities.

The first sub-group of the literature measures disparities by developing an Aggregate Composite Index of Development by taking different sectors into account. These sectors may be agriculture, industry, banking, power, education, health and sanitation, transport and communication and so on. Importantly, while constructing the composite index, the studies have included more than one indicator for each sector. The limitations of per-capita income in assessing the magnitude of disparities may have influenced planners, policymakers and scholars to develop a composite index to capture and explain the inter-regional disparities.

Rao (1977) has used the principal component approach by taking 24 indicators representing the sectors of agriculture, industry, banking and education for the identification of backward regions and to examine the trends in regional disparities in India. Dasgupta (1971) has considered 24 indicators and has applied the principal component analysis to classify the districts in India with respect to their levels of development. In order to identify developed, less developed and underdeveloped regions of Rajasthan State, Kulkarni (1977) has applied eight indicators representing urbanisation, population, education and occupational distribution. Suar (1984) has made use of 20 indicators covering different sectors and has developed a composite index by using the principal component analysis to examine regional disparity in Orissa. Mallikarjun (2002) has sought to measure the magnitude of intra-regional disparities in economic development of Andhra Pradesh with the help of 50 indicators representing various sectors of the State economy.

The process of economic development also depends on the pace of development of the important sectors of the economy. Therefore, in order to remove the regional disparities, specific plans and policies were formulated for sectoral development in India. With a great variety of regional character in terms of culture, topography, population size, agro-climatic factors, levels of economic development, marketing conditions, political and economic systems and so on, the sector specific index was considered to be better than a composite index to assess the level of disparities. Thus, the second sub-group of literature measures

disparities at sector level across the States or districts. These sectors might be agriculture, industry, basic infrastructure and services, agricultural labor productivity, productivity in Indian agriculture, educational and health status, and so on.

One of the important limitations of disparity measurement in India (and elsewhere) is that they focus on inter-State or inter-district level within a particular state. This suggests that most of the analyses on issues relating to disparities (by taking either State or district as a unit) prescribed different policies to reduce the level of disparities across regions (States or districts). Hardly any studies have addressed the issue of "disparity" below the district level. Can we, then say that disparity does not exist below the district level? There may be various sub-regions within the district having disproportionate data (situation) and hence, more inequalities (disparities), but non-availability of disaggregated and reliable data below the district level has forced the studies to consider the district as the sampling unit (Suar 1984). Therefore, given the sub- district inequalities, the extent of disparity captured with the help of indicators representing either State or district level may not approximate the existing socio-economic situation. This suggests that the study on disparity has more concern for regions rather than the population (i.e., rural, semi-urban, urban and metropolitan). Hence, the relevant question is, what should be the base to examine "disparity"?

Suryanarayana (2009) has argued that in detrmining the unit and parameters of backwardness, the following issues need to be kept in view:

1. What should be the unit for identifying & measuring regional backwardness: District/ Block/village?
2. What should be the parameters / indicators for determining backwardness?
3. How should the basic data be collected?
4. Expected time & cost involved in the exercise.

While the 2nd report of the Administrative Reforms Commission has recommended 'block' as the geographical unit for determining backwardness, it is necessary to develop a composite criteria for identifying backwardness in terms of indicators of human development and socio-economic infrastructure. A study on identification of backward areas in a country/state/region must begin with a well-defined perspective on the concept, measure and unit of analysis. Suryanarayana , therefore, has attempted to answer the first two questions (a & b) from an integrated perspective on conceptual, methodological and feasibility issues.

The issues that would call for some clarification are as follows:

1. Conceptual Issues:

a) How does one qualify the term 'backward'?

b) Does one refer to economic/social backwardness?

c) If it is economic, what does the term 'economic' refer to?

d) Does one measure it with reference to input, output, outcome, or final impact dimension?

e) What would be the appropriate indicator?

f) What would be the appropriate estimator of a norm identification of backwardness? What would be the appropriate method of aggregation?

g) What is the policy relevant issue: Disparity? Inequality? Or both?

h) What is the unit of analysis: block/district/state?

Going by conventional literature on growth and development, one would be tempted to define economic in terms of some welfare measure like income generation to indicate the potential for welfare generated. One may also use income or consumption distribution to measure realized welfare levels. This would also be the concern of a government institution concerned with choice and implementation of appropriate policies to promote general economic welfare.

However, studies on regional imbalances in development generally use statistical averages of input, output, outcome and final impact indicators. That is, sometimes studies are carried out in terms of measures of development outlays, investment outcomes, and final impact indicators without bothering to study their inter-dependence. Regions differ with respect to resource endowments and investment options; projects in turn differ in terms of ICORs (incremental-capital-output-ratios) and labor intensities and employment opportunities. Indicators differ with respect to time, resource as well as welfare dimensions across sectors and regions. Hence, a meaningful economic interpretation of aggregated indices in terms of the potential generated would be difficult. Even expert groups have approached the problem by defining composite indices of indicators without bothering to examine their perspective, their time-profile and relevance, information availability for monitoring and evaluation. From a conceptual perspective, there is a need to make a

clear distinction between process and indicators. Otherwise, besides the issues related to interpretation, there would also be double counting.

What is it that the policy maker is interested in? If the interest is in policy outcomes and their shortfalls and hence, in identifying the causes of policy failures to pursue correction, then the focus should be on measures like income generation and distribution.

2. Methodological:

From a methodological perspective, two issues may be noted: (i) Aggregation and (ii) Estimator for reference norm.

Aggregation: There is a need to have a disaggregate perspective since aggregation quite often conceals issues related to regional imbalances. For instance, Maharashtra is the richest / second-richest State in terms of per capita income. But this does not reveal anything about the regional disparities prevailing in the state. Mumbai alone accounts for about 30per cent of the income generated. Mumbai, Thane, Pune and Nagpur account for about 50 per cent of the State income whereas Hingoli and Sidhudurg account of half per cent of the State income each. If so, what is the appropriate level of dis-aggregation?

Estimator: Quite often studies use mean-based estimators of averages like per capita measures of variables under review for identifying backward regions. Mean-based estimators are robust only for normal or symmetric distributions. For skewed distributions, they measure changes in the upper percentiles.

This is precisely the methodological error committed by the Eleventh Five Year Plan when it examined change in per capita cereal consumption and calorie intake and interpreted them as reflecting the change sin the levels of living of the poor and deprived. In fact, the profile was otherwise.

Further, "the most common...meaning of economic in relation to regional economic disparities is per capita income" (Cameron, 1981; p. 502).

For the same reason, changes in per capita estimates of income do not reveal status of the deprived or backward regions in Maharashtra.

If so, what is the robust estimator for a skewed-distribution?

3. Information availability:

Human development indicators pertaining to health and education are essentially medium- and long-term indicators. They do not change, unless there occurs some catastrophe, every year or in the immediate short run. At best, estimates on these parameters could be obtained on a medium-term basis. For effective monitoring and periodic revision in policies, it is important to consider information availability and its time scale. Otherwise one may end up correlating non-comparable indicators. This is precisely what the Expert Group on Poverty has done while relating estimates of current consumption to estimates of measures of health status of the population based on measures of body-mass-index for adults and under-weight for children.

4. Policy implementability:

Issues regarding backwardness and policy solutions for them have to be considered with reference to a minimum threshold level for scale of investment. This should not be problem so log as the policy interest is on small-scale investment like primary schools or primary health centers. However, investments with a larger geographical horizon for input- and market-base reasons, it is important to have a larger geographical perspective.

5. Intelligible presentation for administration at the local level.

Finally, it is also important to draw profiles of the status and magnitude of the problem in an intelligible manner for the less educated official at the grass-root level. Hence, instead of complicated econometric terms, simple graphical representations would deliver the message.

Recommendation:

Given these considerations listed above, follow a nested approach to identification backward regions involving (i) annual / quinquennial monitoring of outcomes like income-generation/consumption-distribution at the state/district level; and (ii) policy evaluation in terms of socio-economic infrastructure indicators at the block/village level.

It would be imperative to consider estimates of outcome like income generation, which are available on an annual basis even at the district level, or income distribution parameters like inequality or poverty, which can be obtained at least on a quinquennial basis at the district level. One may classify states/regions/districts with reference to order-based

statistics like quartiles and hence, in terms of Box-Whisker plots. Box-Whisker plots of district-wise estimates of income may be generated to identify districts with income less than the first quartile or some threshold parameter like some defined fraction of the second quartile. Annual assessments of based on such estimates could be complemented with quinquennial estimates of coefficient of inclusion based on income/consumption distribution information (Suryanarayana, 2008). These two sets of estimates would facilitate periodic (annual/quinquennial) evaluations. This is possible since district wise estimates of income are available and need some revamp of the information base and methods.

Causes of policy shortfalls/success may be ascertained in terms of radar profiles of disaggregate economic and social infrastructure indicators across blocks (Box-Whisker plots) and at the block level (Radar profiles). For some illustration for human development indicators across wards (Box-Whisker plots) and at the word level in the city of Mumbai (Radar profiles), refer the Mumbai Human Development Report 2009 (also Annexure to this note).

5.5 Issues in Rural-Urban Disparities and Some Ways Forward

- How to Define Disparity?

In the literature, disparities have been measured in terms of economic backwardness across the States or districts in a state. It is also evident that the economic backwardness has been measured by either sector- specific or composite indices, which often cover more than one sector. But can we accept the economic backwardness across regions as a true representative of disparity? If not, how can 'disparity' be defined?

Three definitions based on these situations relating to differential growth of per capita income between rural and urban areas are provided in Box 1. In the first situation, the disparities exist at the initial period and accentuate at the end period as the growth of income in urban areas is rapid as compared to the rural areas. The second definition suggests that the disparities are wider at the beginning period; but, the gap gets closed as the incomes of rural dwellers grow at a rapid rate while those of urban dwellers decline. In the third situation, the disparities widen as the incomes of rural dwellers are more or less constant while those of urban dwellers increase. It needs to be noted that all these definitions are based on the assumption that there is differential growth rate of incomes between rural and urban areas. The three definitions, though reflect rural urban divide,

may evoke different responses from policymakers and lead to different consequences of policies in response to disparities.

Box 1: Towards a Definition on Disparity

In a country, predominantly inhabited by rural population, the per-capita income of the households has been mainly used to measure disparity. To arrive at a workable definition of "disparity", we must consider the per-capita income of both rural and urban population for at least two points of time, and must assume that there is a gap in rural and urban per-capita income at the initial period.

First Situation: Increasing Disparity

This assumes that the rate of increase in per-capita income in rural area is less than that of urban area. However, the differential per-capita income between urban and rural areas at the initial period was less than that of current period.

Second Situation: Declining Disparity

The rural income has grown at a faster rate than the urban income between two time periods, and the differential per-capita income at the initial period was more than that of the current period.

Third Situation: Rapidly Increasing Disparity

No increase in the rural per-capita income and some increase in the urban per- capita income from the initial to current period.

The differential per-capita income between urban and rural areas represent the existence of disparity.

First, rural urban disparity as emerged from the three definitions calls for policy intervention. Second, the three definitions may evoke different policy responses. The first definition shows disparity both at the beginning and end periods. Such a situation may send a signal to the policymakers that the situation needs rectification. If the policy response is in .terms of focusing on rural areas at the expense of urban areas, the emerging situation may lead to a reduction in the disparity. At the same time, such a policy may contribute to

a situation, which is close to the one shown in the second definition. In the second situation, the disparities have come down due to the twin processes of an increase in the income of rural dwellers and a decline in the incomes of urbanites. This is not an optimal situation since the rural dwellers become better-off at the expense of those in urban areas. The situation obtained through the third definition is lopsided, and the interventions by policy makers, if they are not balanced, may lead to either the first situation or second situation.

Third, the rural urban disparity as emerged in the three situations may lead to differences in the perceptions of researchers/ policymakers and people in both rural and urban areas. While researchers/ policymakers conclude that disparity exists in the first situation, the people in rural areas may not perceive a disparity. This is because the rural dwellers with rising incomes may perceive that they have reasonably good standard of living. In the second situation, the researchers/ policymakers may conclude that the disparities have come down; but the urbanites may perceive worse-off situation as compared to the pa"st. In the third situation, researchers/ policymakers as well as people perceive the disparity.

Fourth, the differential per-capita income between rural and urban areas represents the existence of disparity. The three definitions indicate that some disparity exists both at the beginning and end periods. Some of the early theoretical works also mentioned that some disparity is needed for achieving growth in the economy. Now, the question is what should be the socially acceptable gap between rural and urban areas? How to arrive at such a gap?

Thus, the definition based entirely on per capita income may not be ideal for policy purposes. Such a definition may also lead to differences in the perceptions of researchers/ policymakers and the people. It is, therefore, important that the definition is to be modified. But, the question is on what basis such a modification is to be attempted? Can we include the perceptions of people in so far as definition of rural urban disparity is concerned? It needs to be noted that there is considerable dynamics and notions of disparity and deprivation in the whole issue of rural urban divide. How to capture such a dynamics in a definition? These are some of the unsolved issues.

- **What are the Indicators to be used?**

The foregoing discussion shows that per-capita income has been used as an important indicator to assess the economic development. Importance has been, therefore, given to increase in the per-capita income, on the one hand, and reduction in income inequality

across the regions, on the other hand, in different plan periods. But increasing gap between rural and urban areas, leading to widening disparities in the income levels of people living in these areas, has been observed (Raj 1990; Kundu 1993). It has been argued that the urban biased development policies contributed to the increasing gap between rural and urban areas (Lipton 1977). It is also argued that the rural-urban disparities existed because of differences in natural endowments, socio- cultural conditions and policy decision (Bharadwaj 1982; ESCAP 2001). Since the basic sources of income differ, like regions (either State or districts), the per-capita income alone may not represent the magnitude of disparities in rural and urban areas. In this context, Raj (1990) has argued that judging the growth performance in terms of per-capita income might be necessary but not sufficient condition to assess the rural-urban gap. Knight and Song (1999) have noted that rural-urban divide is not only confined to income but also apparent in accessing education, health care and housing facilities. Mahbub UI Huq, in his foreword to "Human Development in South Asia - 1997" says,

"There is widespread consensus today that the purpose of development is not just to enlarge incomes, but to enlarge peoples choices, and these choices extend to decent education, good health, political freedom, cultural identity, personal security, community participation, environmental security, and many other areas of human well-being" (cited in Government of Karnataka, 2002)

The discussion on 'why' and 'how' disparities exist between rural and urban areas brings out that many factors cause rural- urban divide. Against this background, a serious thought is needed before indicators are chosen to assess the dynamics of disparity. Initially, we propose that the following indicators need to be taken into account while measuring rural and urban disparity.

1. Access to safe and quality of drinking water service!, sanitation, health care and education, essential for leading a healthy life, acquisition of knowledge, employment and income, is equally important for people living in both urban and rural settlements. However, one can observe a clear-cut distinction between urban and rural areas in so far as access to these facilities is concerned. Most of the rural people are uneducated, vulnerable and subject to extortion and this, in turn, increases their poverty. The educational attainment can enhance their knowledge and information for participation in the political decision-making process. The access to health care facility may reduce the infant mortality and child mortality at birth.

2. The people in the countryside often lack access to financial assets like institutional credit. Even if they have access, it may not be timely and adequate. This may adversely affect them in undertaking and obtaining good return from on-farm, off-farm and non-farm activities. In so far as financial assets in urban areas are concerned, there do not seem to be constraints both on account of favourable policies and presence of good infrastructure.

3. Sources with which income is obtained should also be taken into account to assess the rural-urban divide. Generally, income comes from three different sources such as, ol'l'-farm, off-farm and non-farm activities. These indicators may provide better information on the failure/ success/ achievement of our policies and programmes in improving the income, which were undertaken by both government and non-government institutions.

4. Access to physical infrastructure like transport, power and communication (telephones, etc) are critical for the livelihood of the people. Importantly, such infrastructure and services provide an opportunity to rural households to combine on-farm/ off-farm employment with employment in non-farm activities, and improve their income status.

While the above indicators can be taken into consideration for the measurement of rural urban divide, it needs to be noted that they are both indicators of, and contributing factors for the rural-urban disparity. This implies that the above need to be carefully handled in the research design and interpretation of data. For instance, the level of health services should become an indicator to measure the disparity, the impact that differential health services have on the productive potential of the people should be taken as an explanatory factor.

- **How to Measure?**

Should we assess the rural-urban gap separately for each sector or for social and economic benefits obtained by the people? The sector specific measurement may be in a better position to explain the corresponding gap in rural and urban areas and help to adopt the necessary strategy to overcome that. Importantly, this way of measuring will help us to gauge the sectoral backwardness across the regions or between rural and urban areas. However, through this criterion, it may be quite difficult to assess overall backwardness or the level of development. In this context, the concept of composite index will be

useful. So, can we develop a composite index by taking some important sectors to assess the magnitude of rural-urban gap?

- **Do We Have the Data?**

A study on rural-urban divide needs both secondary and primary data. Unfortunately, we do not have a population group-wise database below the district level except in the case of a very few sectors. Hence, the sectoral analysis of population by rural and urban areas below the district level is very difficult. Even for the district as a whole, to .use per-capita income as an indicator to measure the magnitude of disparity between rural and urban areas, we need to have population group-wise gross or net district income to calculate the same. The non-availability of rural- urban break-up of information forces the researchers to consider the district as the sampling unit. In the process the researchers end up with regional disparity without considering the rural-urban gap within the same district. No doubt, we have some database at States and all India levels to calculate the per-capita figure of rural and urban population at this level, but it may not truly represent the heterogeneous character of rural and urban areas within a particular region or district. Thus, with poor database, it is quite challenging to measure the rural-urban disparity.

- **Can We Address the Poor?**

Even if the extent of disparity is measured, can our policy address the poor? It has been observed that government policies aimed at economic development in urban and rural areas often favour the better-off population and discriminate against the poor, irrespective of where they live (ESCAP 2001). With a majority of the people of developing countries living in rural areas and most of them being poor, the failure of the policies to reduce rural poverty is simply more evident.

In most of the cases, the poor are deprived of social and economic benefits because these benefits are simply not available 10 them. Even if they are available, the poor cannot afford the services. Some urban and rural poor cannot access the infrastructure facility or services just because they lack the necessary documents (i.e., registered land or house). As a result, many poor people remain uneducated and in poor health, which limit their ability to impr?ve themselves.

5.6 Right choice of indicators

Since the existence of regional disparities affect the process of economic development, efforts aimed at economic development and equitable distribution of gains to the hitherto neglected regions have been made since the beginning of planning in India. Yet, regional disparities persisted due to the hiatus between policy and practice.

Research in India has focused mainly on inter-State or inter-district disparities. Most of the studies have taken per capita income as an indicator to assess the level of economic development, and find out whether or not some states/ districts are economically developed over the other states/ districts in the country/ state. Taking the per capita income as an important indicator is, however, criticised on the grounds that this may not truly represent the non-economic dimensions of development.

Because of this reason, the studies on regional disparities undertaken in the 1980s and 1990s measured 'disparities' either by taking average composite (by considering more than one sector at a time) or sector specific index at the level of State or district. Almost all the studies have used secondary data to measure disparities. The non- availability of disaggregated and reliable data compelled the studies to focus on the district as the unit of analysis, and resulted in the neglect of analysis at the sub-district or rural-urban disparities. Notwithstanding these limitations, a conclusion that can be reached from the studies on regional disparities is that disparities may occur at any level, and may take any form.

The disparities between rural and urban areas at the macro level get reflected in terms of differential distribution and growth of GNP, incidence of poverty, and level and composition of consumption expenditure. The increasing gap between rural and urban areas can also be observed in terms of literacy, number of years of schooling, and access to drinking water, sanitation and health services. There is a clear distinction between urban and rural areas in terms of the quantum and access to basic facilities and services. These disparities can be attributed to three types of factors: natural differences, socio-cultural conditions and policy decisions.

The literature survey has raised a number of researchable issues relating to definition, indicator, measurement methods, availability of data and the concerns of the poor.

- The definition, based entirely on per capita income, may not be ideal for policy

purposes. Such a definition may also lead to differences in the perceptions of researchers/ policymakers and people. The definition is to be, therefore, revised. But, the question is that on what basis such a definition is to be revised. Can we include the perceptions of the people? There is considerable dynamism in rural urban disparity and it goes beyond per capita income. How to capture such a dynamics in a definition?

- The indicators to measure disparity should, therefore, go beyond the per capita income, and include level and access to basic services and infrastructure. It needs to be, however, noted that these are both indicators of and contributing factors for rural-urban disparity. A challenge is how to make such a demarcation.
- The measurement of rural-urban disparity through sector specific or composite index should be based on specific problem. The strategy of addressing problem-specific issues may capture the dynamics of rural-urban divide better and force policy makers/ researchers to go beyond to cover issues pertaining to all segments of population.

As long as our development policy tends to be lopsided in benefiting better-off region and population, the assessment of gap across the states/ districts or between rural and urban areas may not be that helpful to bridge the gap and for poverty analysis. The research should, therefore, focus on factors hindering worse-off regions and people (particularly the poor) and policy framework aimed at reducing the gap.

In sum, in case of regional disparities in India the convergence hypothesis of regional disparities was not confirmed. It is very difficult to confirm the hypothesis of perpetuation of colonial disparities in post-independence period in the lack of empirical study of regional disparities pertaining to colonial period. The inverted 'U' shape hypothesis of Williamson was also rejected in case of India. With the changing trend of regional disparities from one period to another and from one component to another favoured the no trade hypothesis. It is not the development per se but the strategy of development that matters in case of regional disparities.

The certain dimensions of regional disparities are still dark; it remained unexplored which area contributed in the increase and / or decrease of regional disparities by upward and by downward movements in the process of development. How far the spatial pattern of development changed from colonial to subsequent independent period and how far colonial trend was accelerated or restarted. Whether the intensity of regional disparities changing

from one State to another state? To what extent the Finance Commission was effective in reduction of regional disparities? And how far the trend and pattern of regional disparities of corresponded to that of other development and developing countries of the world are areas having high analytical potential and thus merit immediate exploration.

5.7 Summing Up

There are no absolute standards of "backwardness" as there are not such standards for 'development'. Hence the concept is releative one and in the ranking of areas, as perceived by people, all but the ones at the top are seen to be 'relatively backward'. The root of the problem lies in the lack of clarity on the concept of backwardness and its relevance for the processes of planned development. In multitier democracy it is also necessary that there should be some degree of consensus behind the specific definitions used to make the concept operational.

The index based approach followed so far required specification of the following:

(i) A set of basic indicators;

(ii) A procedure for weighting or aggregating so that these indicators can be reduced to a single measures; and

(iii) A cut-off point below which areas are to be considered backward.

The principal problem with the index based approach is that there is a great deal of arbitrariness at each one of the three stages. This arbitrariness leaves much scope for disputation. The index-based approach does not classify districts into problem categories and in fact further analysis is required in order to do this. There is also no indication that those below the cut-off are all developable and have the requisite potential.

There is a difficulty in the type of indicators chosen. Generally these indicators reflect the results of a development process rather than the casual factors which led to the present situation. There should be emphasis on identification of such a concept of backwardness which requires the identification of areas in need of special measures to alleviate the constraints on development. It is not all clear that the types of socio-economic variables used in the index-based exercises reflect this orientation. The aggregation of a variety of indicators into a single measure poses many difficulties. Since the choice of indicators does not necessarily reflect a prior analysis of relevant factors, there is as yet not acceptable method of aggregation. Poverty and unemployment may be manifestations

of backwardness but are certain ly not causative factors. There are areas which have to be treated as backward even though they do not show a high poverty percentage or rate of unemployment.

Instead of using an overall index it may be easier to define sectoral indices to identify backwardness with respect to specific sectors of development e.g. agricultural backwardness, industrial backward ness educational backwardness, etc. However, such sectoral indicators would also have to face the problem of identifying relevant indicators, aggregating them and defining cut-off points unless there happens to be the same single indicator and a well-defined norm on which there is a fair measure of agreement.

The present position with regard to data availability and the development of methodologies is such that an index-based approach to the identification of backward area cannot be recommended. Such an approach will not be able to take into account all the relevant factors in an objective manner and the subjective judgements regarding the choice of indicators, weighting patterns and cut off points will be open to extensive disputation.

On the whole, the approach to identifying backward areas seems to be varied. Clearly, there is a need to formulate standard criteria for identifying backward areas. According to the the Second Administrative Reforms Commission Report (2008), "it is necessary that human development indicators such as literacy and infant mortality rates should be included within the criteria". The report further suggested that on a balance of considerations, the c riteria adopted by the EAS Sarma committee which encompassed direct indicators of human deprivation and indirect indicatoprs pertaining to the quality of life of the peole, is recommended for adoption. As poverty is the most direct indicator of development, it should be factored in the criteria. Factors such as literacy rates, infant mortality rate and other indicatoprs of social and economic infrastructure should also be included.

As regards the geographical unit for defining backwardness, the Commission is of the view that as recommended by the B. Sivaraman and Hanumantha Rao Committees, the Block should be the unit for identification. The commission had already recommended the block as the unit for planning and implementation for the purpose of NREGA in its report on that programmes. This is because districts encompass fairly large areas and populations with dierse characteristics and at varying stages of development.

After the State specific Block level indices are worked out, they need to be applied not for a given set of development schemes but as general guidelines for allocation of resources

for all development initiatives and in particular allocations from State and district level plan funds. Backward Blocks thus identified should also receive recoginition for the purpose of allocations under the appropriate centrally sponsored schemes. In short, the strategy of reducing and minimizing regional imbalances primarily through targeting attention to Blocks identified as backward within the context of each State needs to be formally accepted by the Planning Commission.

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6

DEVELOPMENT OF BACKWARD AREAS

6.1 Introduction

In the colonial past, spatial structure of Indian economy was evolved to suit the colonial interests. The transport network was designed to link areas producing primary commodities for export. Under the system, the port cities became the core of development and the areas growing cotton, sugarcane and tea as enclaves of development, leaving vast areas in the North-East and central India underdeveloped. The regional disparities, thus created during the colonial period, got further accentuated in Independent India, particularly after the reorganization of States on linguistic basis in 1956. The lingual States that emerged after the reorganization were socially homogeneous but economically heterogeneous (Kundu and Raza, 1982, Krishan, 1989).

Interestingly in the Indian perception, backwardness is associated with rural areas. While in reality, all backward areas are rural but all rural areas are not backward. Similarly, the majority of population in a backward area comprises backward people but all backward people are not found only in backward areas. It implies that in spatial coverage backward areas and backward people are not synonymous. The present study being geographic in nature focuses on backward areas rather than on backward populations in India.

In India, 'Grow More Food Campaign' (1943-50), started in response to the food shortage faced during the Second World War (1939-45), continued even after Independence. Emphasis was placed on increasing area under cultivation by reclamation of the wastelands. Areas under cash crops were diverted to cereal crops to tide over the food shortage. This campaign resulted in increase of food production and reclamation of marginal lands. Though the programme achieved its immediate goals it left behind large areas unfit for further cultivation.

After Independence shortage of capital to invest, rapid growth of population, poor performance of agriculture sector, high expenditure on defence and lack of infrastructure posed serious challenges before the nation. Fiscal austerity reflected in reduced public

investment was the inevitable outcome. 'Where, how and what' were questions pertaining to investment decisions, so as to accomplish the cherished goals of growth with social justice.

The First Plan (1951-56), though very well drafted, could not be translated effectively into reality. The development of rail transport and irrigation network received high priority during this Plan. The Second Plan (1956-61), while favouring structural changes carried forward the interventionist economic philosophy akin to that of the former Soviet Union. The new industrial licensing policy formulated in 1956 was a regulatory measure to control the industrial location. At the same time sufficient investment in social overheads was also made to keep the promise of social justice.

'Self-sufficiency' in food grains was the main thrust of the agricultural policy. Subsidies, both for procurement of food products and supply of inputs to the farm sector, were used as a weapon to ensure cheap supply of food items to urban-industrial workers. The Third Plan (1961-66) did not deviate much from this path due to successes achieved during the Second Plan. However, the circumstances created by the war with China in 1962 and with Pakistan in 1965 followed by the consecutive droughts during 1965-67 trapped India in the serious crisis relating to balance of payments and food shortage.

Decision of the U.S. administration to suspend development aid and food under PL 480 to India in 1965 opened the eyes of Indian planners and policy makers. The aid from western countries became available on the condition of carrying out structural reforms and changing the public investment policy. The 'self sufficiency' slogan was re-framed into 'self- reliance' as a development goal.

The Fourth Plan (1969-74) formulated under these circumstances attempted to bring more and more areas and people into the overall production system. Reaping the resource potential of backward areas was carefully mixed with the use of large surplus labor. A number of programmes for the development of backward areas and the weaker sections of society were chalked out and put to action during the Fifth Plan (1974-79). The Sixth Plan (1980-85) continued efforts in this direction with a slight shift in focus. However, ever enlarging burden of subsidies and strict regularization through bureaucratic system in the industrial sector put a heavy financial burden on the State resources and hampered economic growth.

Gradually realization dawned for lifting the strict control at least from the economic

sectors by allowing market forces to operate. The experiments started in the eighties matured into a full-blown economic reforms programme in June 1991.

India has completed 10 Five Year Development plans. During this period, the development strategy, including that of backward area development has been changing. The regime of strict control and subsidy is almost over and liberalization, delicensing and competition are in place. It is high time to evaluate objectively our successes and failures in the field of development planning, in general, and backward areas development strategy, in particular.

6.2 Evolution of Backward Area Development Programmes In India

There has always been a concern for the development of backward areas in Indian Plans. Even in the First Plan (1951-56), showing concern for the development of scarcity prone areas, an allocation of Rs.150 million was made under the Central Sector allocations. The responsibility of designing and implementing projects for the development of such areas was given to respective states.

During the Second Plan heavy public investment was made to establish large industrial complexes in mineral rich backward areas resided in by the tribals in Central India. The Third Plan (1961-66) warned against growing (social and spatial) disparities and their consequences. It devoted a full chapter on balanced regional development. The Fourth Plan is considered as a watershed in the context of developing backward areas to minimize disparities in development. Initiating a two-pronged strategy, it initiated 'target group' and 'target area' programmes. The former was devised for the removal of social inequalities and the latter for tackling regional backwardness.

The target groups identified during the Fourth Plan included small and marginal farmers, as well as the agricultural laborers. Small Farmers Development Agency (SFDA) targeted the small farmers, households having land holdings of 2 hectares or less. Such households accounted for 52 per cent of total rural households. Marginal Farmers and Agricultural Laborers Development Agency (MFAL) was formed to look after the interests of the marginal farmers and the agricultural laborers. The latter, defined as laborers whose more than half of the total income came from agricultural wages, accounting for about one-fourth of the total rural households (Government of India, 1969, p. 77).

The category of 'target areas' included the hill, border, drought prone and industrially

backward areas. These programmes, conceived during the Fourth Plan (1969-74), were implemented mainly during the Fifth Plan (1974-79).

6.3 Chronology of the Backward Area Programmes

The programmes targeting disadvantaged areas, to counter rising regional disparity in development, were mainly initiated during the Fourth Plan. With the exception of the hill area development programme, identified towards the second half of the Third Plan, most of the other such programmes were identified during this Plan. Indo-China war in 1962 made our planners and policymakers sensitive to the development of hill areas in North and North- eastern India with an eye on national security. The 'Chipko' movement started in Kumaon hills (Uttaranchal) over the social control of forest resources in the mid-seventies further increased this sensitivity.

Industrially backward areas were identified in 1969. Areas characterised by 'structural impoverishment' (Sundaram, 1982 p. 52) such as **Drought Prone Areas** were identified in 1971. The area under the Western Ghats hill development programme was identified in 1972. Areas dominantly inhabited by the socially backward tribal communities were demarcated in 1974 for the Tribal sub-plan projects.

Evidently, a large majority of backward area programmes were identified during the Third and the Fourth Plans, actual implementation taking place from the final years of the Fourth till the end of the Fifth Plan (Table 95).

Table 95: India: Chronology of the Backward Area Development Programme

Plan Period	Name of the programme	Year of starting
Fourth Plan	Industrially Backward Area	1970
(1969-74)	North-East	1972
	Drought Prone Area	1973
Fifth Plan	Tribal Areas	1974
(1974-79)	Hill Area Development including the Western Ghats	1974
	Desert Development	1977
Seventh Plan	Border Area Development	1987
(1985-90)		

Source: Compiled from various official documents of the Planning Commission and Central

In the Sixth Plan (1980-85), no new programme of backward area development was initiated. During the Seventh Plan came the **Border Area Development Programme** in 1987. No new programme has been introduced after the Seventh Plan.

During the Seventh Plan came the Border Area Development Programme in 1987. Earlier, in the Sixth Plan (1980-85) no new programme of backward area development was initiated and no new programme has been introduced after the Seventh Plan. A national level programme for dacoity prone areas in the States of Uttar Pradesh, Madhya Pradesh and Rajasthan was launched in 1985-86. However, the National Development Council in its meeting held in October, 1990 withdrew the national level financial provisions. KBK (Kalahandi-Bolangir-Koraput) district were identified and included under special area programmes in 1998.

The Planning Commission of India implements the area programmes such as the Hill Area Development Programme including the Western Ghats, the Border Area Development, the North East, and the **Rashtriya Sam Vikas Yojana (RS.VY).** The RS.VY is the additional component of the special area programmes during Tenth Plan. It has three components: (i) Special Plan for Bihar, (ii) Special Plan for the undivided K.B.K. districts of Orissa and (iii) Backward district initiatives. Tribal area development programme is with the Ministry of Tribal Affairs (earlier, Ministry of Social Welfare & Development). The Drought Prone Area Programme (DPAP) and the Desert Development Programme are the responsibility of the Ministry of Rural Development. The Desert Development Programme (DDP) was earlier the dual responsibility of the Planning Commission and the Ministry of Rural Development. The Ministry of Industry is assigned the responsibility of the Industrially Backward Area Development Programme.

The **Backward Regions Grant Fund,** introduced in August, 2006, was designed to redress regional imbalances in development. The fund will provide financial resources for supplementing and converging existing developmental inflows into 250 identified districts, so as to:

1. Bridge critical gaps in local infrastructure and other development requirements that are not being adequately met through existing inflows.
2. Strengthen, to this end Panchayat and Municipality level governance with

more appropriate capacity building, to facilitate participatory planning, decision making, implementation and monitoring, to reflect local felt needs,

3. Provide professional support to local bodies for planning, implementation and monitoring their plans

The Programme has two components namely, a district component covering 250 districts and Special plans for Bihar and the KBK districts of Orissa. The existing Rashtriya Sam Vikas Yojana (RS.VY) has been subsumed into the BRGF Programme.

6.4 Classification of Backward Area - Development Programmes

Backward area development programmes (henceforth area programmes) differ widely in terms of their nature, areal coverage, time duration, and nature of financial assistance. The focus of some programmes has been ecological regeneration, while the others focus on industrial or social inequalities. Similarly in areal coverage, the border area programme covered only about 138.1 thousand km2 or 4.2 per cent of the total geographical area of the country, against 2300 thousand km2 or 70 per cent of the total area of the country covered under the industrially backward area programme. The time lag ranges from 1969, the year Industrially Backward Area Development Programme was initiated, to 2003 the year *Rashtriya Sam Vikas Yojana* commenced.

In the following, the area programmes have been classified on the basis of their nature, areal coverage, duration, and the pattern of financial assistance.

(i) Nature of Backwardness

As the reasons for backwardness differ, the nature of backwardness also differs If the backwardness is caused by physiographic handicaps, it demands the highest priority in conservation and restoration of ecology for development. The causes of backwardness may also be the drought and desert conditions. Structural impoverishment is the characteristic of all such types of areas. The term 'intrinsic backwardness' is also used to define such areas. We have classified all such areas under the category of fundamental/physico-geographic backwardness (Table 96).

Table 96: Area Programmes: Classification on the Basis of Nature of Backwardness

Nature of backwardness	Development programme
Fundamental/Physico-geographic backwardness	Drought Prone Area Desert Hill Area
Economic backwardness	Industrially backward area
Social backwardness	Tribal area
Other backwardness	Border area North East region

The backwardness stemming from the lack of industrial development and reflecting the economic backwardness may be rectified by removal of regional disparities in development. The industrially backward area development programme, which reflects such a concern of the national government in India, may be categorized under the category of programmes for removing economic backwardness. The tribal area development programme, reflecting the concern for social inequalities and addressing the social upliftment of remotely located tribal dominant territories, may be called a programme for removal of social backwardness.

Programmes, which do not fit into the above groupings, are categorised under 'other backwardness'. The Border Area and North East Development Programmes are two such programmes. These have varied concerns and contents. For example, north east region development programme is a comprehensive regional development programme, while border area development is concerned with development problems of a specific nature.

Thus, of the seven area programmes, three belong to fundamental backwardness, one each to economic and social backwardness and remaining two to 'other backwardness'.

(ii) Areal-Coverage

The programmes differ widely in terms of areal coverage. The programme with the largest coverage (industrially backward area) is seventeen times the programme with

the smallest coverage (border area development). On the basis of areal coverage, programmes have been classified into four types. The programmes with an areal coverage of 20 per cent or more of the total geographical area of India are categorized as very large coverage programmes, 10-20 per cent as large, 5-10 per cent as medium and below 5 per cent as limited areal coverage programmes (Table 97).

Table 97: Area Programmes: Classification on the Basis of Areal Coverage, 2000

Coverage type	Area as per cent to total geographical area of the country	Name of the programme
Very large	Above 20	Industrially Backward Areas Drought Prone Area
Large	10-20	Tribal Area Desert Development
Medium	5-10	Hill Area Development North East Region
Limited	Below 5	Border Area Development

National level programme is non-operational.

Accordingly, Industrially Backward Area Development and Drought Prone Area have very large coverage; Tribal Area and Desert Development are the large; Hill Area Development and North Eastern Region are the medium; and Border Area Development are the limited areal coverage programmes.

(iii) Duration of the Programme

Similarly, the programmes differ widely in terms of duration. While the Drought Prone Area Programme has been in operation for more than 27 years, the Border Area Development Programme started only 13 years ago. On the basis of duration, programmes running for more than 20 years have been classified as long duration programmer; between 10-20 years as medium duration programmes and below 10 years as the short duration programmes. Most of the backward area programmes belong to the First category. Border area development programme is a medium duration programme while no short duration programmes exist (Table 98).

Table 98: Area Programmes: Classification on the basis of Duration, 2001

Duration (in years)	Programme
More than 20	Hill Area Development, N.E. Region, Industrially Backward Area Development, Drought Prone Area, Desert Development, Tribal Area Development
Less than 20	Border Area Development

(iv) Pattern of Financial Assistance

Even in terms of financing pattern, area programmes differ widely. Some of the programmes are fully financed by the Central Government. These are termed as 'centrally funded' programmes. Backward area programmes falling under the administrative controls of specific States but provided with central assistance, as an additive to the State's plan allocations, are called 'Centrally Assisted' and programmes that are shared on 50:50 basis between Central Government and the concerned States, are known as 'centrally shared programmes' (Table 90).

In the category of centrally funded, the Desert Development and the Border Area Development Programmes are classified. Under the 'Centrally Assisted' category are Industrially Backward Areas, Tribal Areas, and Hill Areas Programmes. Drought Prone is a centrally shared programme. -

Table 99: Area Programmes: Classification on the basis of Pattern of Financial Assistance

Nature of Assistance	Name of the Programme
Centrally funded	Border Area Development Desert Development
Centrally assisted	Hill Area Development North East Region Tribal Area Development Industrially Backward Area Development
Centrally shared	Drought Prone Area

Main Highlights

(i) The concern for regional inequalities in development is a universal phenomenon. The theory and practice of backward area development is the outcome of this concern.

(ii) India is one of the few developing nations to start development programmes for its backward areas. Since its inception, development planning in India has shown its concern for regional inequalities yet the Fourth Plan is a landmark in this direction.

(iii) A large majority of area development programmes in India were identified during the Third and the Fourth Plans to become operative during the Fifth Plan. No such programme came in operation after the Seventh Plan. Hill area development was the First and Border area development was the last in the order of identification' of areas for such programmes. Industrially Backward Area Development Programme was the First to come into operation.

(iv) The responsibility of implementing the area development programmes in India is with the Planning Commission and certain Central Ministries. The Planning Commission implements the hill, the border, the north east and the desert development programmes. Unlike these the programmes for tribal and industrial development are under the administrative controls of the respective Central Ministries.

(v) The development programmes differ widely in terms of their nature, areal coverage, and duration of time and pattern of financial assistance.

(vi) In a large and diversified country like India, fundamental/physico-geographic backwardness is the most widespread. Hence, the majority of area programmes have been launched for the restoration of ecological balances in areas such as drought prone, desert and hill areas. Economic backwardness is no less widespread. Whereas social backwardness is confined to tribal pockets.

(vii) In areal coverage, area programmes differ widely. The largest areal coverage programme (industrial backwardness) was seventeen times larger than that of the smallest coverage programme (Border Area). The former covers nearly 70 per cent of the total area of the country, as against this, however, the latter covers less than 5 per cent.

(viii) Majority of area programmes are in operation for more than two decades. The drought prone area programme has completed a maximum of more than 27 years, while the border area programme is only 13 years old.

(ix) The area programmes differ widely even in terms of financial assistance. While there are three types of financial arrangements, the majority of programmes are centrally assisted. The border and the desert are fully financed by the Centre, against this the drought prone programme is shared between the Central and the respective State governments on 50-50 basis.

6.5 Criteria for Identification of Backward Areas

This section evaluates identification criteria of different area programmes to understand their basis, changes over the period and their impact on areal coverage. The questions in this context are: (i) Were identification criteria evolved scientifically? (ii) Have they changed over time and what was the intended achievement? (iii) For which programmes have the criteria changed frequently? (iv) What has been the impact of change in criteria on areal coverage? and (v) Has change in criteria led to spatial intensification of programme?

In discussions, the programmes were First examined individually and then intra and inter-programme group comparisons have been made.

I. Fundamentally Backward Areas

This group includes programmes, such as the drought, the desert and the hill area development. Oriented to conservation, preservation and regeneration of ecology, these were the First areas to attract the attention of planners and policymakers in India.

(i) Drought Prone Area Programme

Given the typical character of the Indian monsoon, droughts and famines have a long history in India. Bengal famine of 1943 is a well-documented one. During the British period, several administrative measures were undertaken with regard to occurrence and relief distribution during famine. However, no systematic programme was evolved to deal with the problem.

During the First Plan (1951-56), a survey of water resources was conducted by the Ministry of Food and Agriculture in scarcity prone areas of the then Madhya Pradesh,

Hyderabad and Bombay States to bring fresh area under irrigation (Government of India, 1956, p. 139).

During the Second Plan, 45 dry farming projects, each covering an area of about 400 hectares in the affected States, were established with the purpose of demonstrating the benefits of dry farming practices in low and erratic rainfall areas. The real awakening, however, came with the mounting financial burden that was created due to huge expenditure on drought relief measures. In fact, the Central Government had been providing Rs. 250 million (annually) as grant to famine affected areas (Government of India, 1981, NCDBA, p. 17).

In the Third Plan (1961-66), famine endemic, rainfall deficient and agro- climatically-sensitive areas, where even a marginal unfavourable tilt in the natural balance would push them towards the famine conditions received attention from planners The Central Government announced a special economic programme for areas liable to recurring droughts (Government of India, 1976, NCA, p. 127).

Rural Works Programme in the Fourth Plan focused on drought prone areas. An additional amount of Rs.. 250 million was provided in the State Annual Plans to generate employment in drought prone areas (Government of India, 1970-71, p. 60). In addition, areas, where average annual rainfall varied between 375 mm and 1125 mm, were given priority. Nine pilot projects, each covering an area of 800 hectares, were located at Hyderabad (Andhra Pradesh), Rajkot (Gujarat), Hissar (Haryana), Indore (Madhya Pradesh), Sholapur (Maharashtra), Bellary (Mysore), Jodhpur (Rajasthan), Tirunelveli (Tamil Nadu) and Jhansi (Uttar Pradesh) (Government of India, 1971a, pp. 59-60).

However, the growing pressure on financial resources, required to mitigate increasing drought severity, forced the Government to introduce drought proofing measures in 54 districts of 13 States in 1970-71. This gave precedence to preventive over curative measures. In another bold decision, the Rural Works Programme was redesignated as the Drought Prone Area Programme (DPAP) in 1973. Evolved as an integrated area development programme, the DPAP had as its main objective the restoration of ecological balance through optimum utilisation of natural resources (land, water, vegetation and livestock).

- **Identification Criteria**

During 1965-67, India experienced severe drought in different parts. In 1967, the Ministry of Agriculture in consultation with the Planning Commission directed the State governments to demarcate chronically drought-affected areas on the basis of total or almost total failure of crops in the relevant years. Incidence of crop failure was to be assessed once in a period of three, five or ten years in combination of other aspects, not defined precisely. The information thus collected and compiled by the Ministry of Agriculture formed the basis of the national list of drought prone areas (henceforth DPA). In 1970-71, the Union Government started the Rural Works Programme and also set up a Committee of Secretaries to identify for Central assistance the chronically DPAs from the list supplied by State governments. The Committee used data collected earlier in 1967 by State governments and took a note of several other factors including occurrence of rainfall, environmental conditions (like proximity to irrigated land offering higher employment opportunities), other avenues of employment and the existence of schemes amenable to long term economic development. Finally 23 districts in 8 States were identified as drought prone.

Following this, some other States also demanded the inclusion of their area under the Rural Works Programme. Not only this, States already covered under the programme demanded greater coverage.

In response, the Central Committee for the Coordination of Rural Development and Employment in the Planning Commission appointed a sub- committee (Gidwani Committee) in 1971 to examine the whole issue including the identification criteria. The sub-committee was asked to use indicators like the incidence of rainfall over a period of time, extent of irrigated area in the concerned district and chronic liability to drought. In addition, the sub-committee also considered factors such as frequency of revenue remissions as well as famines or scarcity in such areas.

On this basis, the Gidwani Committee identified areas and made its recommendations. On lines of its recommendations, the Government of India selected 54 districts in 13 States. Besides these the contiguous pockets falling in the adjoining 18 districts were also selected and covered under the programme during the Fourth Plan (1969-74)

In 1972, the Union Ministry of Water Resources asked the Irrigation Commission to identify drought-affected areas to extend irrigation facilities in such areas. The criteria

include (a) meteorological data, (b) revenue-remission, (c) frequency of famine and scarcity, and (d) availability of irrigation facilities. These are broadly the same criteria as were used earlier by the State governments in 1967 to identify drought prone areas.

The Commission opined that all districts and talukas within districts falling in the drought zone were not equally susceptible to crop failure. Ensured irrigation works for stabilizing agriculture in such areas. A proportion of 30 per cent cropped area under irrigation was considered as reasonable immunity against drought. The commission stressed two aspects (i) 20 per cent as the critical limit for rainfall shortage, and (ii) presence of adverse water balance in identification of areas vulnerable to drought.

The Commission took the taluka as the unit of identification. Accordingly, 321 talukas in eight States were identified. The Task Force on Integrated Rural Development (1973) and the National Commission on Agriculture (1976) also touched upon the issue of identification. The former, in its report on Integrated Rural Development Programme in the drought prone area, did not favour any change in already identified districts, while the latter desired a regular review of areal coverage under the DPAP. However, contrary to recommendations of both the Irrigation Commission and the Task Force on Integrated Rural Development, certain districts of West Bengal, Bihar and Uttar Pradesh were not excluded from the programme.

Before the start of the Sixth Plan (1980-85), the Government felt a need to review area programmes with a view to evolve guidelines for the future. Therefore, the then Ministry of Rural Reconstruction constituted a Task Force in 1980, headed by Dr. M.S. Swaminathan. The Task Force, in its report submitted in 1982, recommended the relaxation of the yardstick of about 30 per cent cropped area under irrigation for areas receiving (annual) rainfall below 750 mm.

Accordingly, all areas receiving (annual) rainfall below 1125 mm and having irrigated area less than 30 per cent of net sown area were considered for inclusion under the DPAP. In addition, areas having 40 per cent of the net sown area under irrigation but (annual) rainfall of less than 750 mm were also considered for inclusion under the DPAP.

Resultantly, 69 districts from 13 States were selected. However, some State governments

resented this. They objected for' considering 30 per cent as the cut-off point for irrigated areas. Bihar and Haryana faced exclusion of areas under new criteria. Under pressure from the State governments, the Centre appointed an Inter-departmental Group in 1984 to re-examine the recommendations of the Task Force. The group evolved the following criteria for application at block level:

(a) average annual rainfall below 750 mm and irrigated area below 20 per cent of the net sown area;

(b) average annual rainfall between 750-1125 mm and irrigated area below 15 per cent of the net sown area; and

(c) average annual rainfall above 1125 mm but below 1650 mm and irrigated area below 10 per cent of the net sown area.

The criteria were, however, subjected to the condition that the number of blocks to be covered should be at least one-fifth of the total numbers of blocks in a district. Blocks, already covered during the Sixth Plan (1980-85) were made an exception. After this, 615 blocks of 92 districts from 13 States were selected under the DPAP. Nevertheless, some State governments were still not satisfied with the areal coverage.

Again in 1988, a National Committee on the DPAP and the DDP was constituted under the Chairmanship of Dr. Y.K. Alagh. The Committee recommended the transfer of the DPA programme to the States without touching upon the issue of change in areal coverage as demanded by some of the States. The Central Government rejected its recommendation and constituted a Technical Committee under the Chairmanship of C.H. Hanumantha Rao in 1993. The Committee viewed moisture availability as a major factor to measure drought severity. Hence, it devised a moisture index based on precipitation and potential evapotranspiration. The index was to be seen in the broader context of irrigation extent and climatic zones in which that particular area was located to qualify for the DPAP. Moisture index was calculated in the following manner:

M. I. (Moisture Index) = (P-PE)/PE x 100

P = Precipitation

PE = Potential Evapotranspiration

In the light of the above Stated criteria, eligible districts were to be listed from the dry sub-humid and semi-arid climatic zones. From such districts, blocks with following conditions were to be identified: (a) blocks (from the semi-arid districts) having irrigated area up to 20 per cent of net cultivated area (b) blocks from the sub-humid districts having irrigated area up to 15 per cent of net cultivated area. In all, 947 blocks from 155 districts were selected and covered under the programme.

The moisture index thus evolved is a conceptually clear and methodologically sound of criterion for identifying drought prone areas. However, the requisite data on parameters required to calculate moisture index are as yet not available at block level. Hence, conceptual clarity and methodological soundness, which has now been attained in identification criteria, are yet to be translated into ground reality so as to demarcate areal coverage genuinely. Rather, it must be noted that the condition of at least one-fifth of total blocks in a district, as earlier imposed in 1984, does not apply to existing coverage. As a result there were twenty districts where selected blocks did not make one-fifth of the total blocks. Similarly, the total number of districts, each having one drought prone block, is eleven. Hence, paradoxically objective criteria is defied by subjective areal coverage under the drought prone area programme. Nevertheless, change in criteria has led to spatial intensification of programme with shift in identification unit from district to development block.

(ii) Desert Areas Development Programme

Deserts are regions of high aridity. Contrary to the popular belief that desert areas are confined to hot sandy regions, they are found even in glaciated and mountainous areas. Low density of population, low productivity of land, harsh climate and fragile ecology are the most important characteristics of such areas.

India has both hot and cold deserts. The hot deserts are located in the western and the cold ones in the northern parts of the country.

The Desert-Development Programmes, launched in 1977-78, is the culmination of several efforts starting with the appointment of an ad hoc committee of experts by the Government of India on desert areas in 1951-52. In pursuance of its recommendations, the Desert Afforestation Centre was set up at Jodhpur (Rajasthan) in 1952, and elevated to the Central Arid Zone Research Institute (CAZRI) in 1959. In 1960, the Government of Rajasthan appointed a State Land Utilization Committee

to recommend measures for the development of desert and semi-desert areas in the State. Soon after, the Government of India set up a Working Group (1964) which recommended 'pilot' projects for the improvement of selected desert areas and the establishment of a Desert Development Board. Constituted in 1966, the Board recommended pilot projects for desert development in four districts viz., Mohindergarh now Mahendergarh (Haryana), Banaskantha (Gujarat), Barmer and Jaisalmer (Rajasthan) during 1972-74.

The Board appointed an expert committee to evaluate the work done under the pilot projects. The Committee favoured the merger of desert and drought prone area programmes from the Fifth Plan (1974-79). Later on, the National Commission on Agriculture (1976) opined for the revival of a desert development programme. In fact, the very idea of evaluating the programme soon after its initiation was ill conceived. Any programme takes some time to show its impact.

The National Commission on Agriculture (1974), in its Interim Report was the First to identify hot desert areas and to suggest a programme for their development. Also, the report drew attention to the rapid deterioration of desert areas and recommended a IS-year comprehensive and an integrated programme for their development. In its final report, the Commission expressed that 'the problems of desert areas are different from those in semi-arid and dry-sub humid regions and even the southern arid zone (Government of India, 1976, NCA, XIll, p. 130). Hence, similar measures can not be applied to the development of both types of areas. It further Stated that the hardship arising out of drought and aridity required permanent solutions through concerted efforts to improve socio-economic conditions. Hence, the Commission suggested an in-depth study of the problems of the cold deserts of Jammu & Kashmir (Ladakh valley) and Himachal Pradesh (Lahul & Spiti valley and Kinnaur region.

- **Identification Criteria**

Due to the lack of requisite data/information, required to evolve scientific identification criteria, the criterion of identification of desert areas evolved in a phased manner. Perhaps, for this reason the ad hoc Committee of experts, appointed by the Government in 1951-52, failed to evolve any precise criteria for the purpose. The National Commission on Agriculture in its Interim Report on Desert Development (1974) also pointed out such difficulties in the following words: 'exact delineation of desert areas demands a larger number of meteorological observations than are available

at present'. However, the report used the trend of variation in rainfall and temperature amongst the meteorological stations, the moisture index parameters and observable arid region characteristics to delineate hot deserts. Later on in the final report, the Commission identified cold deserts also (Government of India, 1985, p. 347).

In the beginning, areas well recognised but not well defined were covered under the Desert Development Programme. Based on identification by the National Commission on Agriculture, the programme covered twenty districts: 18 in hot and remaining 2 in cold deserts.

Again in 1982, a Task Force broadly identified arid areas on the basis of rainfall and irrigation ability. Areas having less than 400 mm rainfall and below 30 per cent of net sown area under irrigation were declared as arid zones. In 1984, the Interdepartmental Group pointed out that in the context of cold deserts, a mechanical application of rainfall and irrigation criteria will not be appropriate, as most of the rainfall in such areas occurs during the non-agricultural season.

Once again in 1994, the identification criterion was redefined to make it more scientific with the latest information. Based on Thornthwaite's classification, three climate zones were identified: (i) Hot Sandy Arid (ii) Hot Arid, and (iii) Cold Arid. Thereafter a moisture index (M.I) was evolved. Taking less than -66.7 as the critical index value, areas recording values lower than -66.7 and having less than 50 per cent net area sown under irrigation were considered for inclusion under the DDP.

On this basis (moisture index and irritability), the eligible districts were identified. Further, from among these districts, development blocks for the DDP were identified. For this purpose, the cut off point of 50 per cent irrigation kept at the district level was relaxed to 30 per cent at the block level. In this way, 227 blocks from 356 districts in seven States were covered under the DDP (Annexure VIll).

In this way, the criteria for identification of areas for desert development have been evolved in a phased manner. Initially, the National Commission on Agriculture played a crucial role in evolving the DDP as an independent programme and identifying areas for the programme. Nevertheless, it was the Technical Committee (1994) that is credited with evolving the real scientific identification criteria. In the process, identification units also changed to block level from district level, giving spatial intensification to the programme.

(iii) Hill Area Development Programme

As hills and mountains are region specific concepts, there is no common definition of a hill area. Identification of hill areas is thus based more or less on conventional wisdom rather than technical objectivity.

The hill areas in India are estimated to cover about 30 per cent of the total land area and have a critical significance in maintaining eco-balance over a large area in the plains. They are storehouses of certain essential resources such as fresh water, minerals and herbs. The vulnerability of hill ecosystem is increasing over time due to unsustainable use of hill resources. All this forced the Government of India to make serious efforts to resolve developmental problems of the hill areas.

However, the efforts in this direction remained slow. Notwithstanding the identification of hill areas as early as in 1965, by a committee appointed by the National Development Council, no programme was initiated for their development.

It is, however, true that the identification criterion evolved in 1965 was neither well defined nor did there exist a clear vision in the Planning Commission on their development. Nevertheless, it set the ball rolling.

In the meantime, few experimental projects, with foreign aid, were started in Mandi and Kangra districts of Himachal Pradesh, Almora district of Uttar Pradesh (now in Uttaranchal) and Nilgiri district of Tamil Nadu. The Ministry of Agriculture and Irrigation started such projects in Pauri Garhwal (U.P.) and in Nungba Sub division of Manipur district (Manipur State) during 1972-73.

During the Fourth Plan (1969-74), for removal of regional disparities in development a thrust was placed on the development of backward areas. In 1972, a high level committee was also set on the Western Ghats to identify hill areas. All such efforts culminated in the birth of the Hill Area Development Programme in 1974-75.

- **Identification Criteria**

As Stated before, a committee of the NDC was the First to identify hill areas in 1965. The identification was, however, limited to the Himalayan and Sub-Himalayan regions. It appears that the committee followed conventional wisdom in identification of hill areas, otherwise, how could it be possible to overlook the hill areas of the Deccan.

The Committee broadly classified the hill areas into two categories: (i) Hill States and Union territories, and (ii) Designated Hill Areas. The former are self-contained politico-administrative units, whereas the latter are hill pockets within States. The latter category was recommended for the HADP. The former categories of States/Union territories were designated as Special Category States7 for allocating Central Assistance for development. Initially, States of Jammu & Kashmir and Nagaland and Union territories of Himachal Pradesh, Manipur and Tripura were given the status of Special Category Hill States. The designated hill areas covered 8 hill districts of Uttar Pradesh (these hill districts form a separate Uttaranchal State since 2000)/one district of West Bengal, autonomous hill districts of Assam, and the North East Frontier Agency (NEFA)8. In addition, Nilgiri district of Tamil Nadu was also included. Inclusion of Nilgiri district from non-Himalayan Hills and exclusion of northern hill areas from erstwhile Punjab State in the list of designated hill areas, prepared by the Committee, was quite surprising. While inclusion of Nilgiri district from Tamil Nadu is Stated as a historical accident (Government of India, 1985/p. 15)/ no explanation is offered for exclusion of northern hill areas of erstwhile Punjab.

After the reorganisation in the North-East in 1971 and granting of Statehood to Union territories of Himachal Pradesh, Meghalaya, Tripura, and Manipur, the number of hill States rose to 6 in 1972 from two in 1965. Again, with grant of Statehood to Sikkim, Arunachal Pradesh and Mizoram, the number of such States went up to 9 in 1987 (Table 3.3). The number of hill States rose to 10 after the formation of Uttaranchal State in 2000.

Following the delineation of hill areas in the Western Ghats in 1972/the category of designated hill areas now comprises two types: (i) designated hill districts, and (ii) designated hill talukas.

Designated Hill Areas constitute 4.6 per cent of the total land area and 1.5 per cent of the total population of India. It covers three States (West Bengal, Assam and Tamil Nadu), and 163 talukas in five States (Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu). Besides, ten hill States cover additional 12 per cent area and 3.6 per cent population (as per 2001 census) of the country.

In identification of hill areas in Western Ghats, a High Level Committee (1972) took three parameters, namely, (a) taluka, as the basic unit of identification (b) at least one-fifth (20 per cent) of the area of a taluka should have elevation of more than 600 metres

and (c) spatial contiguity to the Western Ghats. Accordingly, 122 talukas from five States, viz, Maharashtra, Kamataka, Kerala, Tamil Nadu and Goa were selected. Town and Country Planning Organisation, asked to do the identification work, used two parameters: (i) Western Ghats Spine (i.e. 600 metre height), and (ii) Administrative Convenience. Accordingly, it recommended 134 talukas of 36 districts from the already covered five States. However, many talukas already covered got excluded. In this way, differences in identification emerged. Finally, 134 talukas, which were identified by the Town and Country Planning Organisation, were selected for the programme.

The National Commission on Agriculture using 'elevation and rainfall' as criteria identified 50 hill talukas in the Western Ghats (Fig. 7). However, it was admitted that the identification was based on approximation due to non- availability of adequate rainfall data.

In view of the tentative nature of and controversy over the identification of hill areas in the Western Ghats, a one man commission under M.S. Swaminathan was appointed in 1981 to finalise the delineation work. Interestingly, the Commission recommended the reinduction of all those talukas which were earlier excluded by the TCPO, but no taluka recommended for inclusion by the TCPO was recommended for exclusion. Consequently, the number of hill talukas increased from 134 to 159. In fact, a policy of appeasement to all is apparent in the recommendations of the Swaminathan Commission.

The same year, the NCDBA considered the question of defining hill areas for evolving a development strategy. This Committee classified hill areas into three broad categories: (i) the entire Himalayan Mountain ranges, irrespective of height, from West to East (ii) hill ranges of 600 metres and more height in the Deccan Plateau, and (iii) hills of less than 600 metres height in the Himalayan foothill zone (Kandi area). Three categories represented (i) the composite hill feature (the Himalayan Mountain ranges) (ii) critical height (Deccan Plateau), and (iii) the fragile ecology (Kandi foothills) respectively. The NCDBA accepted the already covered hill areas in Uttar Pradesh, West Bengal and Assam as backward hill areas belonging to the First category.

Notwithstanding the efforts of a number of committees and working groups, the identification methodology as well as delineation of hill areas remained disputed and doubtful. This necessitated the formation of yet another Working Group in 1984. The group asked one of its subcommittees to examine the existing criteria of delineating hill areas. The Subcommittee worked on both, the theoretical as well as practical aspects of

the issue. For practical considerations9, subcommittees took 30 per cent slope as a cut-off point to delineate hill areas. It recommended that 'areas with an average slope of 30 per cent and above, irrespective of their elevation above the sea-level, may be considered to comprise hill areas'. Further to avoid any ambiguity in the application of criteria, it was stated that, 'all hill areas irrespective of their size should be given special attention in the plans at village, block and project level (Government of India, 1985b, p. 131)'.

Any development block having at least a half of its area under 30 per cent slope was recommended for inclusion under the HADP. Also, the block was taken as the basic unit for distribution of special financial assistance from the Centre. On practical grounds, the area size under 30 per cent slope was reduced to 40 per cent from 50 per cent.

Further, it was recommended that a compact area of minimum 100 km2 having more than 30 per cent average slope be designated as a mini hill-tract for special financial assistance. The logic behind it was that as per norms area size of a block in India is taken as 250 km2, 40 per cent of which comes to 100 km2.

In view of the fact that rapid changes take place in geo-climatic and socio- economic conditions of hill areas with increase in elevation, the Committee suggested a four-fold subdivision of the Himalayan ranges for allocating funds for development purposes. The limits suggested were: (i) 600 metres and below, (ii) 600-1500, (iii) 1500-3000 and (iv) 3000 plus.

Evidently, the criterion suggested by the NCDBA was more logical and scientific than earlier ones. Its acceptance by the Government was bound to change the composition of the existing areal coverage under the HADP.

Interestingly, the Government decided to include new areas as per its recommendations but maintained the status quo in cases of areas already covered. The ultimate result was a further increase in areal coverage under the programme in the Western Ghats. The number of talukas under the programme rose from 156 to 159.

Briefly, it took more than a decade, involving the hard work of five committees/groups to arrive at a rational and scientific criteria for identification of hill areas under the HADP. However, despite having evolved such scientific criteria, the total areal coverage under the programme continues to defy these said criteria. May be our policymakers feared that withdrawal of benefits after a decade from areas facing exclusion from the programme

would have a detrimental effect on the development process in such areas. Hence, the withdrawal of benefits might not have been considered as a wise step. On the other hand it is also not very difficult to understand the kind of political pressures applied by different State governments to include their areas under the programme. Moreover, given the soft nature of the State in India and populist attitude of our political leaders in general, withdrawal of benefits once extended to an area may not be an easy task for the Government in India.

II. Industrially Backward Areas

At the time of Independence, India inherited a highly unbalanced pattern of industrial development, necessitating policy interventions so as to reduce regional inequalities. Initially, State governments made efforts in this direction but the need for a national level programme was felt. At the national level, serious efforts in this direction started in the 60s.

• Identification Criteria

Identification of industrially backward areas was a prerequisite for providing any kind of help to such areas. In 1960, the Small Scale Industries Board addressed the issue of industrial dispersal in backward areas. A Committee appointed by the Board for this purpose suggested three broad parameters: poverty level, population resource ratio, and connectivity. To measure these parameters, the Committee suggested indicators like low per capita income and consumption, low per capita cultivable land, low proportion of population engaged in output activities, absence or under exploitation of natural resources like minerals, forests and animals, low proportion of population engaged in non-farm activities, low degree of urbanisation, low level of factory employment, small length of railways and metalled roads per square mile, high incidence of unemployment or gross unemployment, and low consumption of electricity. Fifty per cent below the national average was suggested as a cut-off point for each indicator, except non-farm employment where it was kept 25.0 per cent, to declare an area/district as industrially backward (Pathak, 1973, p. 41).

During the Fourth Plan, the Planning Commission also appointed a committee under Sukhamoy Chakravarty to examine this issue. It suggested a list of following fourteen indicators for identification of industrially backward areas: (i) density of population,

(ii) percentage of agricultural workers, (iii) gross value of output of food grains per head of rural population, (iv) gross value of output of non-food grains per head of rural population, (v) gross value of output of all crops per head of rural population, (vi) percentage of total establishment using electricity (manufacturing and repair), (vii) percentage of household establishments using electricity, (viii) percentage of non-household establishments using electricity, (ix) workers in registered factories per 100 thousand population, (x) length of surfaced roads per 100 sq. km of area, (xi) length of surfaced roads per 100 thousand population, (xii) percentage of male literates, (xiii) percentage of female literates, and (xiv) percentage of total literates (Government of India, 1981g, pp. 41-45).

Three different methods (i) summation of ranks (ii) indices method, and (iii) principal component analysis were used to arrive at composite index of industrial backwardness. The number of industrially backward districts thus arrived at was 164, 206 and 181 respectively. As many as 160 districts were common to all the three lists. A majority of identified districts was already covered under other area programmes like DPAP, HADP, and Tribal Development.

This exercise was criticized from various angles including the selection of indicators. Hence it failed to generate much interest. In the meantime, regional inequalities in development were growing. Realizing this, the National Development Council appointed, two Working Groups to address the problem of industrial backwardness seriously. B.D. Pande headed one of the two Working Groups, asked to identify industrially backward areas, constituted in 1968.

Industrially backward States were identified with following six indicators: (i) per capita income, (ii) per capita income from industry and mining, (iii) workers engaged in registered factories, (Iv) per capita annual consumption of electricity, (v) length of surfaced roads in relation to population and area, and (vi) rail mileage in relation to population, and area (Government of India, 1981, pp. 58-61). The States having aggregate score value below the national average were identified as industrially backward.

The Committee recommended following six indicators for identification of industrially backward districts within the backward States. These include (i) districts outside the radius of about 50 miles from large cities or large industrial projects, (ii) poverty of the people, indicated by low per capita income (25 per cent below the State average, (iii) high density of population as indicated by low percentage of population engaged in secondary

and tertiary activities (25 per cent below the State average), low percentage of factory employment (25 per cent below the State average), non and/or underutilization of economic and natural resources like minerals, forests etc., (iv) adequate availability of electric power or likelihood of its availability within the next one or two years, (v) availability of transport and communication facilities or likelihood of their availability within the next one or two years, and (vi) adequate availability of water or likelihood of its availability within the next one or two years.

However, the recommendations of the Pande Committee failed to convince the National Development Council (1969). It rightly argued that industrially backward districts are found in developed States also. Therefore, the NDC asked the Planning Commission to suitably modify the recommendations of the Pande Committee to identify backward districts in developed States.

The Planning Commission (1969) recommended a set of six indicators: (i) per capita production of food grains/commercial crops depending on whether the district is predominantly a producer of foodgrains/cash crops (for inter- district comparisons, conversion rates between foodgrains and commercial crops were to be determined by the State governments on a pre-determined basis), (ii) ratio of agricultural workers to total population, (iii) per capita industrial output (gross), (iv) number of factory employees per 100,000 of population or alternatively number of persons engaged in secondary and tertiary activities per 100,000 of population, (v) per capita consumption of electricity, and (vi) length of surfaced roads in relation to population or railway mileage in relation to population (Government of India, 1981b, p. 6).

The Planning Commission asked the State governments to identify backward districts in accordance with its methodology. The average for the respective State in case of each indicator was used as a cut-off point. The districts falling below this cut-off point were identified as industrially backward. However, as a special case some districts in West Bengal, Assam, Himachal Pradesh, Jammu & Kashmir and Madhya Pradesh were declared backward in spite of being above the State average.

On their part, the State governments did not strictly adhere to the Planning Commission methodology. Of the six indicators specified by the Planning Commission, West Bengal did not use any, whereas Bihar, Maharashtra and Himachal Pradesh used all indicators strictly. Other States deviated between the two extremes.

Ultimately, it was not the methodology evolved and supplied by the Planning Commission but the State governments' own methods that decided the category of industrially backward districts. They identified industrially backward districts in their own manner. Out of 3,5610 in 1971, a total of 209 districts were declared industrially backward. In other words, about 60.0 per cent districts covering 70.0 per cent of the total area of the country were identified as industrially backward.

Identified districts were put under special incentives scheme recommended by the Wanchhoo Committee (1969) to encourage industrialists to invest in backward districts. Surprisingly, districts were not classified according to degree of backwardness to get financial concessions under the special incentive scheme. Consequently, all the industrially backward districts were uniformly treated for the purpose of special incentives.

In 1980, the NCDBA, while evaluating area programmes including the industrially backward areas recommended that 100 growth centres be located in urban centres in different parts of the country to propel and diffuse industrial growth in backward areas. A growth centre should have (i) population of 50,000 or more as per 1971 Census, (ii) less than 10,000 workers in non-household manufacturing activities as per 1971 census, and (iii) sufficient distance from existing centres. Of the 126 centres qualifying the criteria (Government of India, 1980a, pp. 34-41), 100 centres were finally selected.

In 1983, the Government reclassified industrially backward districts in three categories on the basis of relative backwardness. 'No Industry Districts' and 'Special Region Districts', which were the most backward, were termed category' 'A' districts. These were selected for the establishment of growth centres in place of those recommended earlier by the NCDBA. Finally, 30 centres were approved. This scheme was reviewed in 1994, but approved centres were allowed to get central assistance up to 1996 (Government of India, Annual Report, 1995-96, Ministry of Industries, pp. 23-24).

Another set of growth centres was proposed in 1988. These are called 'New Growth Centres'. The Government decided to set up 100 New Growth Centres (NGC) throughout the country during 1988-93 period, to act as magnets for attracting industries to backward areas. These centres were to be endowed with infrastructural facilities at par with the best available in the country, particularly in respect of power, water, telecommunication and banking. Each Growth Centre was to get an amount

of Rs.. 250 to Rs.. 300 million for the development of infrastructural facilities. Later, the number of these centres was reduced to 71 from 100.

Identification and establishment of these growth centers was based on the following guidelines:

(a) A Growth Centre shall not be established within 50 kms radius of cities having more than 2.5 million population; 30 kms from two cities with population between 2.5 and 1.5 million and 15 kms from twelve cities with population between 1.5 and 0.75 million. Population figures of 1981 Census formed the base.

(b) The Growth Centres shall be located close to District/Subdivision/ Block/Taluka Head Quarters or any other growing urban centres.

(c) The Growth Centres shall have access to basic facilities such as railheads, national or State highways, adequate and dependable sources of water and power supply, access to telecommunications and good educational and health facilities. However, undue diversion of fertile agricultural lands was to be avoided but sufficient land was to be given for the development of housing facilities and promotion of tertiary activities.

Moreover, a growth centre was not to be located in an ecologically sensitive area leading to denudation of forest. Only industries permitted by the Department of Environment could be located in sensitive areas. In selection of a growth centre, it was envisaged that the sphere of influence of a growth centre would cover a radius of about 20-25 kms.

Unfortunately, the progress on establishing growth centres has been slow. Against the target of setting up 71 such centers only 66 were approved till March 1998 (Government of India, 1999b, p. 586).

Briefly, the problem of industrial backwardness has been perceived and identified differently by various committees/boards/commissions appointed by the government. Since, perception of backwardness, time of identification and indicators used by identifying agencies for the purpose varied widely, there has been no agreement on areal coverage as well as strategy of development for these areas. In fact, most of the incentives offered by the Central Government for the establishments

of industrial units in such areas have now been withdrawn with the initiation of the new economic policy. In its place, 71 growth centres have been proposed for diffusion of industrial process in such areas. However, the policy failed to trickle down and augment the development process.

III. Socially Backward Area

Tribal area development programme is classified in this category. As such, no area can be called tribal. The presence of tribes in majority, over an area, is the broad criterion for recognizing the area as a tribal area.

The history of delineation of tribal areas goes back to British rule in India. During the British rule, predominantly tribal territories were identified and named 'Scheduled Districts' for separate administration of tribal areas. A Scheduled District Act was promulgated in 1874 to appoint special officers for civil and criminal justice, supervise the settlement and collect revenue. Later on in 1919 through another Act, the Scheduled Districts were declared fully independent administrative units. This system, however, was evolved only for North Eastern India. For other parts of the country, the scheduled districts were sub-divided into wholly excluded areas and areas of modified exclusions.

After Independence, the Constituent Assembly appointed two separate subcommittees - One for tribal areas in the North East and another for other areas in the country. The Second Committee recommended that these areas be called 'Scheduled Areas'. Empowered by the Fifth Schedule of the Constitution, the President of India passed two orders: (i) the Scheduled Areas (Part-A States) Order, 1950 and (ii) the Scheduled Areas (Part-B States) Order, 1950, (as amended). Accordingly, the Tribal areas in Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Himachal Pradesh were termed 'Scheduled Areas' and 62 districts fell under this I category (Annexure IX).

The Sixth Schedule of the Constitution refers to the 'Tribal Areas' in the States of Assam, Meghalaya, Mizoram and Tripura (included in 1986). These enjoy full autonomy in all matters falling within their jurisdiction, termed as 'States within a State' (Verma, 1995, p. 143). In all, there are 9 such districts distributed in Meghalaya (3), Assam (2), Mizoram (3) and Tripura (1). Administered by a tribal council, each

represents a particular Scheduled Tribe Districts, where more than one Scheduled Tribe resides, are subdivided into autonomous regions. Notably, in Tripura one such district has been constituted; to cover tribal areas spreading over three revenue districts and covers several. tribes.

- **Delineation Criteria**

The Constitution of India under the Fifth Schedule empowers the President of India to declare any area in the States of the Indian Union as 'Scheduled Areas'.12 Scheduled Area (The Scheduled Areas Part A States, Order, 1950, & Part B States as amended, 1950) denotes the political units under the control of tribal communities, not governed by the 'Act of Parliament'. The areas are distributed in about 62 districts of 8 States viz. Andhra Pradesh, Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Orissa, Bihar and Himachal Pradesh. The Scheduled Areas constitute 12.6 per cent of the total land and 6 per cent of the total population of India (Government of India, 2000, p. 263).

The Constitution of India also refers. to another term i.e. 'tribal area' which applies to areas in four States of Assam, Meghalaya, Mizoram and Tripura (Tripura included in 1986). North Cachar and Mikir Hills (now known as Karbi Anglong) from Assam, United Khasi and Jaintia Hill District (now separated), and Garo Hills District from Meghalya and Chakma, Lakher and Pawi areas from Mizoram fall under the tribal areas. These constitute 2 per cent of the total area and 0.5 per cent of the total population of India (Government of India, 2000, p. 263).

All such areas, in combination, have only 6.5 per cent population of India leading to the derivation that tribal population lives in other parts also.

The tribal population was enumerated in 22 States and 4 Union territories of India out of 25 States and 7 Union territories in 1991. 3 States (Punjab, Haryana and Jammu & Kashmir3) and three Union territories (Delhi, Chandigarh and Pondicherry) did not record any tribal population. This reveals that tribal space is much larger than the officially recognised one.

In 1973-74, when the Fourth Plan (1969-74) was in its closing years, a sub-plan concept was evolved for the development of tribal areas. It was decided to keep the tribal majority States and Union territories including Arunachal Pradesh, Meghalaya,

Nagaland, Mizoram, Lakshadweep and Dadra & Nagar Haveli outside the preview of the programme. The tribal sub-plan concept was thus, confined to 18 States and two Union territories having 94 per cent of the total tribal population in India.

The tribal sub-plan, being an area based concept of tribal development, has evolved a three tier spatial hierarchy of tribal areas, namely districts, blocks14 and clusters of villages. Tribal majority districts are identified and then clusters of villages, a group of villages, when put together, form a majority of tribal population.

To delineate a sub-plan area, all the Scheduled Areas and District/Tehsil/ Blocks having more than 50 per cent tribal population are covered irrespective of size of Scheduled Tribes population in that State. This area is subdivided into operational units for Integrated'Tribal Development Projects (IDTPs), each comprising two to three Blocks/Talukas/Tehsirs 'or' even a district, on the basis of predominance of tribal population, areal contiguity, and administrative viability. These norms are, however, relaxed in case of West Bengal, Karnataka, Kerala, Tamil Nadu, Tripura, Uttar Pradesh, Maharashtra, Madhya Pradesh and Assam to cover areas where tribals are not in majority but make a reasonable proportion of population. Further, in areas where tribal population is not found in contiguous belts, delineation of the ITDP areas has been made still flexible. In States like Maharashtra, Andhra Pradesh and Assam a minimum threshold of about 20,000 persons has been adopted to delineate the tribal sub-plan areas provided that half the population is of Scheduled Tribes. This condition is further relaxed to 5,000 persons in Tamil Nadu and Kerala for implementing the tribal sub-plan. In Tripura and West Bengal groups of villages with more than 50 per cent tribal population are also considered for the purpose. In Karnataka and Uttar Pradesh States even the family based approach has been adopted.

- **Tribal Sub-Plan and its Variants**

Over the period several variants of tribal sub-plan concept have been implemented by the Government of India with the objective of covering almost entire tribal population under the programme. Integrated Tribal Development Projects (ITDPs), Modified Area Development Approach (MADA), cluster of tribal concentration and primitive tribal groups being the major ones.

i. Integrated Tribal Development Projects (ITDP), started in 1974-75, have been set up in District/Blocks or groups of blocks having tribal population in majority

(more than 50 per cent). There are 194 ITD projects falling in 135 districts of 17 States and 2 Union territories.

ii. The MADA (Modified Area Development Approach) pockets formed in 1979-80 to cover a group of villages having population of 10000 or more in tribal majority areas, are 252 in number distributed in 9 States.

iii. The Clusters. of Tribal Concentration, formed in 1988-89 to cover groups of villages having population of 5,000 or more where tribals form a majority, are 79 distributed in 46 districts of 7 States.

iv. Primitive Tribal Groups, identified in 1975-76 following the recommendation of Shilu Ao Committee with the objective of covering widely distributed but numerically small and extremely backward primitive tribal communities are 75 in number. They are distributed in 14 States and one Union Territory.

Evidently, the criteria evolved to identify tribal areas for tribal area development programme is highly elaborate and spatially sound. The effort is to cover entire tribal population under the programme. In fact, in our democratic policy, the development of historically neglected social groups such as tribals is a highly sensitive issue and is one of our constitutional commitments. With modification in identification not only the areal coverage, but also spatial intensification of the programme has enlarged.

IV. Other Backward Area Development Programmes

North Eastern Region and Border Area Development Programme have been classified under this category.

(i) North Eastern Region

North Eastern Region of India, by virtue of its location, is a geo-politically sequestered region. Spreading over 2.55 thousand km2 area and constituting 7.7 per cent of total land area. It has an external frontier of over 4,500 km with Bhutan, China, Myanmar and Bangladesh. It is connected with the mainland only through a narrow corridor (Siliguri Corridor) of 22 km length, (Political Isthmus) often called the Gateway of the North East.

Faced with many problems, which emanate from its ecological setting, the region has remained backward. Any long border with several countries is often inflicted with

problems like infiltration, trafficking, border disputes, insurgency, and turmoil. Besides, undulating topography creates great hindrances in establishing inter-linkages within and outside the region. In fact, the North East region subsumes five different types of backward areas-tribal, hill, chronically flood affected, border and industrial.

The region is one of the most depressed parts of the country. It is lacking in modem industrial sector. The employment potentialities for the educated youth are poor. There is a perceived feeling of being ignored by the National government. All this, combined with other factors, has found a way in separatist and disruptive activities in the region. The policymakers and planners opined that one way to curtail this would be to accelerate the development process in the region. In view of the several problems common to the region as a whole and emerging from its ecological setting, a regional development planning approach was adopted by the National Development Council for the overall development of the North East. A high-powered regional planning authority, North Eastern Council, was established under the North Eastern Council Act 1971. The council which came into operation in August 1972, functions like the Planning Commission for the North-East region. Its Secretariat, acting as an advisory body, is headquartered at Shillong (Meghalaya State). The North East region is a well-defined geo-political unit, hence no fresh identification was needed to start the programme. Of late, Sikkim has also been covered under this programme for its interconnected ecological setting and developmental problems.

(ii) Border Area Development Programme (BADP)

As many as 16 out of 25 Indian States have borders with other countries. Owing to specific problems faced by border areas, such areas need special care for their development. Hence, Government of India evolved the border area development programme.

As such, border areas cannot be demarcated. Therefore, development blocks, having contiguity with international borders, are covered under the problem. Following factors are taken into consideration (i) Nature of our external relations with bordering countries, (ii) Gravity of problems peculiar due to borders, (iii) Degree of illicit trafficking in drugs & weapons along borders, (iv) Insecurity of life and property in border areas, and (v) Infiltration.

Owing to the hostile nature of the border with Pakistan, States bordering this country were given the First priority in coverage under the BADP, followed by those bordering Bangladesh. Recently, Myanmar border has also been considered. However, border areas lying along with China156, Nepal & Bhutan borders have not been covered so far. Perhaps, less hostile nature of these borders in terms of above stated parameters has been the reason for not yet putting them under the programme.

Identification Criteria: An Inter-Programme Comparison

A comparison of identification criteria of different area programmes provides interesting insights. Though identification criteria of all programmes have changed over the period but it has been a regular feature in the case of some programmes, while it happened only once in case of some others. The former type is represented by the Drought Prone and Desert Development Programmes, the North East comes under the latter.

On the positive side each revision of identification criteria contributed to their refinement. In comparative terms, identification criteria for drought prone and desert areas are the most scientific while those of the hill areas are the least. However, non-availability of precise information base on some parameters required in calculation made the application of new identification indices difficult in several cases. Under the circumstances misuse of identification criteria for inclusion in the undeserving areas has remained a problem throughout the entire period. Taking advantage of this situation State governments and interested leaders with greater political clout succeeded to a great extent in getting more and more undeserving areas covered under the different programmes. This is evidently clear from the increase in area coverage under almost all the programmes. The change in identification criteria of different programmes has been independent of their age. For example, hill area programme which commenced in 1974-75, registered change in its criteria only once whereas the desert development programme which commenced in 1977-78, registered as many as four major changes. On the whole, the criteria of the hill and North East region programmes registered the least changes as against the criteria of desert and drought programmes registering the maximum changes. As far as the impact of change in identification criteria on areal coverage is concerned, the tribal, the border and the drought programmes have witnessed the greatest change in their areal coverage due to change in identification criteria as compared to the least change in the case of designated hill areas and North East development programmes. In the former only a few talukas were added till now after its commencement in 1974-75. In the latter programme, Sikkim

has been added only recently. Against this, the number of districts under drought prone area programme has more than doubled.

The parameters used for identification of backward areas for different programmes varied from a high of six indicators in the case of industrially backward areas to a low of only one indicator in the case of designated hill districts. However, common indicators were used to identify the drought prone and desert area programmes. In view of the varied nature of the programmes, identification criteria differed from the social to the economic to the climatic and the strategic.

Another interesting aspect relates to application of identification criteria. While a strict uniformity in application of identification criteria was maintained in the case of the DDP and the North East region, no uniformity was maintained in a majority of the remaining programmes. It is explained partly by the nature of the problem covered under the programme and partly by the difficulties involved in proper application of identification criteria and political pressures from various corners including the State governments. For example, there has been confusion and controversy on the criteria/indicators of identifying industrial backwardness on the one hand. The Planning Commission desired that industrially backward districts in respective States are identified on the basis of criteria evolved by the Commission but the States on the other hand followed their own methodology to identify industrially backward districts/areas.

With change in identification criteria, the unit of identification also changed in a number of programmes, while it has remained the same during the entire life of some others. The district has stayed the unit of identification in the case of industrially backward and designated hill areas programme, while the unit of identification has been changing with each change or modification in identification criteria of tribal development programme.

In the process, tribal area programme has become so spatially identified that in some States its identification unit is at village level, the lowest administrative unit in India. Drought prone areas is another programme which has become spatially intensified with change in identification criteria. In its change, identification unit has come down to the block/taluka from the district at the initial stage. In contrast, identification unit has remained block in the case of border area programme from the very beginning. In this way, unit of identification has remained fixed, irrespective of change in criteria in case of some programmes, while it changed with almost every change in criteria in case of other programmes. In the process, some programmes got spatially intensified, while others registered no change in their spatial intensification.

The area programmes differ widely not only in terms of identification criteria but also in

unit of identification. The unit of identification was as large as the State in the case of North East region development programme, while tribal area programme has gone down even to village level. In general, district or block has been the unit of identification in majority of area programmes.

Main Highlights

- In the absence of an adequate institutional framework, programmes identified in the early stage of the backward area development programme had to wait for years to get implemented. The period of gestation was, however, considerably reduced in the case of programmes evolved at a later stage. The designated hill area programme, which was identified in 1965, was launched in 1974-75. As against this the border area programme was identified and launched in the same year i.e. 1987.
- For a majority of the programmes, identification criteria evolved in the initial stage were subjective, hence lacking scientific rationality. Such a situation was manipulated by the State governments and interested individuals, mainly political leaders, for inclusion of undeserving areas under different programmes. Programmes of industrial, drought and hill backwardness happen to be the main examples of this kind. At one time, more than 70 per cent area of the country was covered under the programme of industrial backwardness.
- Because of ambiguity in identification and lack of experience, the overlap in areal coverage, between the drought and the desert remained for years together in parts of the States of Gujarat, Haryana and Rajasthan.
- Over the period, identification criteria of all the programmes have been rationalized scientifically. Partly due to new data/information and partly from experiences gained after the implementation of various area programmes. In relative terms, identification criteria of drought and desert area programmes are the most elaborate and scientific. Nevertheless, these criteria failed to weed out undeserving areas from different programmes. At times, the lack of scientific and detailed data/information required to calculate newly devised identification criteria, some other times the political pressure, especially from State governments, acted as a stumbling block to implement the scientifically evolved criteria.

- In fact, in the case of some programmes committees were frequently set up under pressure from aggrieved State governments to re-tailor scientific criteria in a manner so that areas facing possible exclusion are retained under the programme. The Western Ghats area programme is a particular illustration. Areas not fulfilling identification criteria are still under this programme. Dual coverage of Nilgiri district (Tamil Nadu) under both designated hill district and the Western Ghats programmes, under pressure from political corners, has now been recognized as the 'historical accident'. Hence, the cherished objective of rationalizing the areal coverage through rationalization of identification criteria of different programmes could not be fulfilled.
- The identification criteria of different programmes vary widely from each other. While six indicators have been used to devise industrially backward areas, only one indicator is used to identify designated hill districts.
- In line with the differing nature of area backwardness programmes, indicators from different dimensions such as social, economic, ecological and strategic have been used to devise identification criteria of different programmes.
- There has been a varying effect of change in identification criteria on areal coverage under different programmes. However, there exists a positive association between the frequency of change in identification criteria and areal coverage. In case of drought, desert and tribal area programmes, where major changes in criteria have been effected three to four times, the change in areal coverage has also been very high. In the case of drought prone programmes where criteria were changed four times, the number of districts covered almost doubled from 74 to 155. In tribal development, three changes in criteria resulted in addition of as many as 72 districts in areal coverage from 113 to 185. In case of border area programme, areal coverage tripled. However, in designated hill districts and North East region, the criteria changed only once and the areal coverage changed only marginally.
- The effect of change in identification criteria also had varied responses on space intensification of different programmes. The tribal development programme became more spatially intensified, right down to village-level. While, in a number of programmes including industrially backward, designated hill, border and North East region plan programmes the identification unit has remained the same, since inception. On the whole, tribal, desert and drought prone programmes typically

represent the case of space intensification while border and industrially backward programmes showed no change in space intensification with change in identification criteria. The unit of identification of programmes differs from as small as the village in case of tribal development to as large as State in case of the North East region.

NOTES

1. The actual decision for the National Committee was taken in 1985 but the Committee was formed in 1988.
2. The government, at the time of taking a decision on the Report of the Task Force on DPAP & DDP, headed by Dr. M.S. Swaminathan (1982) had indicated for a quinquennial review of these programmes.
3. Later on L.C. Jain took over as the Chairman of the Committee because Dr. Y.K. Alagh was inducted in to the Central Cabinet by the then Prime Minister V. P. Singh
4. Desert is defined as 'an arid region characterized by little or no rainfall in which vegetation is scanty or absent' (Penguin 1984, p. 141). According to a botanist, a desert is a place that has little or no vegetation. Places such as ice fields (glaciers) and mountainous areas above the tree line and alpine meadows may also be classified in this category (Koeppe .and De long, 1958, p. 165n). Broadly, geographers also accept this definition. It has also been defined as "a dry land that lacks sufficient moisture to support much vegetation" (New Standard Encyclopedia, Vol. 4, p. 0-127). The Encyclopedia Americana (1995, p. 1) States that a 'desert is any area that, because of dryness or cold, may be characterized as having low potential as a human habitat'.
5. The Drought Prone Area Programme was already in operation, since 1973, in most of the areas identified for the new programme. The areas included in the DDP in 1977-78 remained under DPAP also. This overlapping was removed in 1982.
6. Now 36 districts, after the reorganisation of Udaipur in to two districts of Rajasamand and Udaipur.
7. Special Category States are eleven including Jammu & Kashmir, Himachal Pradesh, Uttaranchal, Sikkim, Assam, Arunachal Pradesh, Meghalaya, Nagaland, Manipur, Tripura, and Mizoram. All but Assam are hill States.
8. The autonomous hill districts of Assam included Garo, United Khasi and Jaintia Hills, United Mikir and North Cachar Hills and Mizo Hills.

9. The NATMO had prepared maps showing average slope in all regions. Areas with 1 per cent, 2 per cent, 8 per cent, 15 per cent, 30 per cent and 60 per cent slopes were demarcated. The cut-off point for delineation of hill areas on slope criterion has to be at one of these levels purely on practical considerations. Generating data on any other level was found to be a time and money-consuming affair. Foresters also use this cut-off point.

10. Excluding Sikkim

11. Existing centre defined as all centres with a level of employment in non- household manufacturing units exceeding 10,000 as per the 1971 Census.

12. The Subcommittee on Tribal areas (1947) recommended that the areas predominantly inhabited by the tribal groups be recognised as 'Scheduled Areas' and special arrangements be made for their administration, cited from Raza, Moonis and Aijazuddin Ahmad (1990): An Atlas of Tribal India, Concept Publishing Company, New Delhi, p. 43.

13. Note In Jammu & Kashmir 12 Scheduled Tribes have been specified vide the Constitution Gammu & Kashmir) Scheduled Tribes order, 1989/as amended by the Constitution (Scheduled Tribes Order Amendment)

14. In case blockwise information on tribal population is not available in any State, then tehsil/talukas are used for identifying tribal majority unit.

15. In 1999/areas from Himachal Pradesh were also covered under the BADP.

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7

DEVELOPMENT OF THE FUNDAMENTALLY BACKWARD AREAS

7.1 Introduction

Growth with justice is one of the main objectives of planning in India. It promises promotion of socio-economic unliftment of the backward people on one hand and the development of resource potentials of backward areas, on the other. Hence, it involves both social and spatial justice.

India is a vast country with a variety of landforms and ethnic groups. The interplay of people with land has brought out different patterns of development. In addition, under the federal policy the State governments are free to evolve development policies suited to their situations. Nevertheless, some strategic, vulnerable and ecologically fragile areas such as hills, deserts, drought prone, border areas, industrially backward, tribal and coastal needing special attention, require the Union government's intervention.

The areas identified as backward for the purpose of planning must have three characteristics: (i) potential for development, (ii) inhibiting factors preventing them from realizing their potential, and (iii) a need for special programmes to remove the bottlenecks. In the identification and demarcation of backward areas, the geographical unit needs to be defined.

The National Committee on the Development of Backward Areas (NCDBA) appointed by the Planning Commission in November 1978 under the chairmanship of Shri B. Sivararman, Member Planning Commission submitted its deliberations in the form of 11 Reports on different aspects of backwardness in 1980-81. It observed that the concept of backwardness has to be operationalised in a manner that is least open to dispute and most likely to attract a consensus of agreement. The national Committee recommended that the primary unit for the identification of backward areas should be the development block. The National Committee recommended that the following types of problem areas should be treated as backward for purposes of planning.

a) Chronically drought prone areas

b) Desert areas

c) Tribal areas

d) Hill areas

e) Chronically flood affected areas

f) Coastal areas affected by salinity

These six categories listed above can be viewed as six types of fundamental backwardness. In this sense an area may suffer from the handicap of more than one type of fundamental backwardness.

India is among the few developing few nations, which have started comprehensive development programmes for their backward areas. In what follows, we shall present briefly the developmental issues in the First four fundamentally backward areas. Subsequently, we shall also discuss issues related to development in border areas.

7.2 Chronically drought prone areas

What is drought? Drought may be defined as an extended period - a season, a year or more - of deficient rainfall relative to the statistical multi-year average for a region. It is a normal and recurrent feature of climate and may occur anywhere in the world, in all climatic zones. Its features or characteristics, of course, vary from region to region.

Simply put, drought is a period of drier-than-normal conditions that lead to water related problems. When rainfall is below normal for weeks, months or even years, it brings about a decline in the flow of rivers and streams and a drop in water levels in reservoirs and wells. If dry weather persists and water supply-related problems increase, the dry period can be called a 'drought'.

The First evidence of drought is usually seen in rainfall records. To determine the start of a drought, definitions specify the degree of departure from the average precipitation or some other climatic variable over a period of time. This is done by comparing the current situation to the historical average, often based on a 30-year period of record.

Drought cannot be confined to a single all-encompassing definition. It depends on differences in regions, needs and disciplinary perspectives. When rainfall in Libya, for instance, is less than 180 mm it can be described as a drought situation. However in Bali, a mere six days without rain can become a drought.

In India, drought essentially occurs due to failure of south-west monsoon (June-September). Areas affected by drought needs to wait till the next monsoon, as more than 73% of annual rainfall in the country is received during the South West Monsoon season.

The available data on rainfall indicate on drought perspective that -

- 16% of the Country's total area is drought prone and annually about 50 million people in the country are exposed to the crisis of drought;
- A total of 68% of sown area is subject to drought in varying degrees;
- 35% of area receives rainfall between 750 mm - 1125 mm and is drought prone;
- Most of drought prone areas lie in the arid (19.6%), semi-arid (37%) and sub-humid (21%) areas of the country that occupy 77.6% of its total land area of 329 million hectares.
- Annual Average Rainfall is 1160 mm in India. However, 85% is concentrated in 100-120 days (SW Monsoon)
- 33% of area receives less than 750-mm rainfall and is chronically drought prone;
- 21% area receives less than 750 mm rainfall (large area of Peninsular and Rajasthan)
- Rainfall is erratic in 4 out of 10 years.
- Irrigation Potential is 140 Million Ha (76 MHa Surface + 64 MHa Groundwater)
- Depletion of Groundwater and limitation of surface water imply that not all net sown area is amenable to irrigation.
- Per Capita Water availability is steadily declining due to increase in population, rapid industrialization, urbanization, cropping intensity and declining ground water level. Problems are likely to aggravate.
- Net Result - Inevitability of Drought in Some Part or Other.

- Chronic drought in India: History and chronology

The major drought years in India were 1877, 1899, 1918, 1972, 1987 and 2002. Large parts of the country perennially reel under recurring drought. Over 68% of India is vulnerable to drought. The 'chronically drought prone areas' - around 33% - receive less than 750 mm of rainfall, while 35%, classified as 'drought-prone' receive rainfall of 750-1,125 mm. The drought prone areas of the country are confined to peninsular and western India - primarily arid, semi-arid and sub-humid regions.

An analysis of 100 years of rainfall data reveals that the frequency of 'below-normal rainfall' in arid, semi-arid and sub-humid regions is 54-57%, while severe and rare droughts occurred once every eight to nine years in arid and semi-arid zones. In these zones, rare droughts of severe intensity occurred once in 32 years, with almost every third year being a drought year.

The 1987 drought was one of the worst droughts of the century, with an overall rainfall deficiency of 19%. It affected 59-60% of the crop area and a population of 285 million.

Table 100: Administrative districts chronically affected by drought conditions

State	District
Andhra Pradesh	Anantpur, Chittoor, Cuddapah, Hyderabad, Karnool, Mehboobnagar, Nalgonda, Prakasam
Bihar	Munger, Nawadah, Rohtas, Bhojpur, Aurangabad, Gaya
Gujarat	Ahmedabad, Amrely, Banaskantha, Bhavnagar, Bharuch, Jamnagar, Kheda, Kutch, Mehsana, Panchmahal, Rajkot, Surendranagar
Haryana	Bhiwani, Gurgaon, Mahendranagar, Rohtak
Jammu and Kashmir	Doda, Udhampur
Karnataka	Bangalore, Belgaum, Bellary, Bijapur, Chitradurga, Chickmagalur, Dharwad, Gulbarga, Hassan, Kolar, Mandya, Mysore, Raichur, Tumkur
Madhya Pradesh	Betul, Datia, Dewas, Dhar, Jhabhua, Khandak, Shahdol,

	Shahjapur, Sidhi, Ujjain
Maharashtra	Ahmednagar, Aurangabad, Beed, Nanded, Nashik, Osmanabad, Pune, Parbhani, Sangli, Satara, Solapur
Orissa	Phulbani, Kalahandi, Bolangir, Kendrapada
Rajasthan	Ajmer, Banaswada, Barmer, Churu, Dungarpur, Jaisalmer, Jalore, Jhunjunu, Jodhpur, Nagaur, Pali, Udaipur
Tamil Nadu	Coimbatore, Dharmapuri, Madurai, Ramanathapuram, Salem, Tiruchirapali, Tirunelveli, Kanyakumari
Uttar Pradesh	Allahabad, Banda, Hamirpur, Jalan, Mirzapur, Varanasi
West Bengal	Bankura, Midnapore, Purulia
Jharkhand	Palamau
Chhattisgarh	Khargaon

Source "Drought: Assessment, Monitoring, Management and Resources Conservation." R. Nagarajan, Capital Publishing Co., Delhi.

The earliest reference to drought and famine in India can be found in the Rig Veda, the Mahabharata, the Jataka tales of the Buddhists and Chanakya's Arthashastra. Marwar (Jodhpur State) faced drought and famine from 1309 to 1313 AD during the reign of Rao Rajpal. Later, in 1570 AD, Emperor Akbar dug the Kukar Talao in Nagaur. Most parts of the country were ravaged by famine in 1783, remembered as chalisa. The famine of 1812-13 is referred to as panchkal. The 1848 famine led to mass migration from Ajmer in Rajasthan. The State was struck again in 1868-69, 1877-78, 1891-92 and 1899-1900.

The most recent, the drought of 2002, ranks 5th in terms of magnitude but is unique when examined in overall terms of magnitude, spacing, dispersion and duration. In July 2002, rainfall deficiency dropped to 51%, surpassing all previous droughts. The impact of the drought spread over 56% of the land mass and threatened the livelihoods of 300 million people across 18 States. The 2002 monsoon was one of the shortest in recorded history.

The total loss in rural employment due to shrinkage of agricultural operations during the drought months was estimated at 1,250 million man-days. The GDP in agriculture shrank by 3.1%. The estimated loss of agricultural income was around Rs. 39,000 crore.

Table 101: Total loss in rural employment due to shrinkage of agricultural operations during the drought months

Period	Number of famines and droughts	Region
5th century BC	1	Kashmir, Ayodhya (Eastern UP), Rajasthan, Gujarat, Maharashtra and Punjab
1st century BC	1	Kashmir
9th century AD	1	Kashmir
10th century AD	2	Kashmir, Punjab, large parts of Northern India
11th century AD	2	Delhi, Bihar, Bengal, Orissa, Rajasthan and Kashmir
13th century AD	4	Orissa, Bihar, Assam, Bengal, Rajasthan, Maharashtra and Gujarat
14th century AD	5	Delhi, Rajasthan, Maharashtra, Mysore, Karnataka, Gujarat
15th century AD	5	Rajasthan, Maharashtra, Orissa, Assam and most parts of India, especially the areas along the rivers Ganga and Yamuna
16th century AD	6	Most of the then Bombay presidency and Punjab, Maharashtra, Delhi, Rajasthan, Kutch and Central India
17th century AD	6	Gujarat, Maharashtra, Rajasthan and Bengal
18th century AD		Bombay presidency, Gujarat, Maharashtra and Madras
19th century AD	38	Rajasthan, Gujarat, Orissa, Maharashtra, Andhra Pradesh, Kashmir, Himachal Pradesh and Bihar

20th century AD	60	Rajasthan, Gujarat, Orissa, Andhra Pradesh, Kashmir, Himachal Pradesh, Bihar, Maharashtra, Jammu and Kashmir

Source: 'Drought of Relief', Down to Earth, May 2001

The impact of drought can be widespread. It has a far-reaching effect on society, the economy and the environment. The impact of drought on society depends not only on climatic variability and quantity of precipitation, but also the demands that people place on food and water supply and their ability to live in harmony with nature (harnessing, conserving the bounties of nature for lean periods, etc.).

- **Causes of drought**

The principal cause of drought may be attributed to the erratic behaviour of the monsoon. The South West monsoon, or 'summer monsoon' as it is called, has a stranglehold on agriculture, the Indian economy and, consequently, the livelihoods of a vast majority of the rural populace. The South West monsoon denotes the rainfall received between the months of June and September and accounts for around 74% of the country's rainfall. The Coastal Areas of peninsular India also receive rain from October to December due to periodic cyclonic disturbances in the Bay of Bengal (the north east monsoon, or post-monsoon system).

An overwhelming majority of cropped area in India - around 68% - falls within the medium and low rainfall ranges. Large areas are therefore affected if the South West monsoon plays truant.

Table 102: Cropped area falling under various ranges of rainfall (percentage distribution)

Rainfall ranges	Classification	%
Less than 750 mm	Low rainfall	33
750 mm to less than 1,125 mm	Medium rainfall	35
1,125 mm to 2,000 mm	High rainfall	24
Above 2,000 mm	Very high rainfall	8

Source: Ministry of Agriculture

Most parts of peninsular, central and North West India - regions most prone to periodic drought - receive less than 1,000 mm of rainfall. The drought of 1965-67 and 1979-80 affected relatively high-rainfall regions, while the drought of 1972, 1987 and 2002 affected low-rainfall regions, mostly semi-arid and sub-humid regions.

While erratic monsoons and drought are intertwined, a host of other reasons, mostly manmade, aggravate drought or create drought-like situations in the country. India, after all, is well-endowed in terms of rainfall, with Cherrapunji receiving an annual rainfall of around 11,000 mm. Even Saurashtra and the Kutch region record rainfall of around 578 mm. India's average rainfall is around 1,170 mm - yet, the country suffers recurrent drought.

Over the past decades, individuals, communities and the Government have all pursued lopsided water management policies, leading to the water scarcity situation we face today. Reckless overexploitation of surface and groundwater, for instance, has been one area of deep concern.

India has seen a sharp decline in groundwater levels, leading to a fall in supply, saline water encroachment and the drying of springs and shallow aquifers. Around 50% of the total irrigated area in the country is now dependent on groundwater, and 60% of irrigated food production depends on irrigation from groundwater wells.

In some regions - North Gujarat, Southern Rajasthan, Saurashtra, Coimbatore and Madurai districts in Tamil Nadu, the Kolar district in Karnataka, the whole of Rayalseema in Andhra Pradesh and parts of Punjab and Haryana - the decline in water levels due to overexploitation has been to the extent of 1-2 metres/year.

Studies have revealed that declining water levels could lead to a 25% drop in harvests in the near future (Seckler, 1998). Currently, over 10% of blocks classified by the Central Groundwater Board have been identified as 'overexploited'; blocks where the exploitation is beyond the critical level have been growing at a rate of 5.5% every year (World Bank, 1999). It is estimated that 36% of blocks in the country will be on the critical list by the year 2017 (Moench, 2000).

Punjab alone - the hub of the Green Revolution - with over a million tube wells has been sucking up groundwater resources relentlessly. Over 61% of the hydrogeological blocks in Punjab are categorised as 'dark' (overexploited); 10% fall in the 'grey' zone where recharge is just about equivalent to groundwater extraction.

As the crisis looms large, Punjab has been endeavouring to move away from 'thirsty' crops like paddy to cash crops that do not necessitate the plunder of water resources. In Maharashtra, western parts of the State continue growing water-guzzling sugarcane even as large parts of the area fall within the drought prone zone. The rapid depletion of forest cover is also seen as one of the reasons for water stress and drought. India has a forest cover of 76 million hectares, or 23% of its total geographical area - much lower than the prescribed global norm of 33%. Although the scientific evidence is inadequate, forest-water linkages are widely acknowledged, especially the watershed functions of forests, greater availability of water, less soil erosion, more rainfall, flood and landslide control, etc. Combined with these and a host of other factors - poor irrigation systems, pressure from the increasing industrial use of water (the confrontation between Coca-Cola and the people of Kerala, for instance) - is the appalling indifference displayed towards rainwater harvesting.

Little has been done over the years to drought proof the country, when community based rainwater harvesting measures could easily accomplish this feat. Even Cherrapunji, which has the highest annual rainfall in the country and is one of the wettest places on earth, faces water shortages for nine months in a year primarily because all this water is not harvested!

India receives most of its rainfall in just about 100 of 8,760 hours in a year. It is imperative that this water is captured and stored for use during the rest of the year. Around 100 mm of rainfall a year, on one hectare of land, even in Barmer (one of the driest regions in India) can yield up to 1 million litres of water - enough to meet the drinking and cooking water needs of 182 people at a liberal 15 litres per day of course it's difficult to capture all the rainwater, but even if a plausible 50% were harvested it would mean half-a-million litres a year.

According to estimates, the land required to meet the drinking water needs of an average Indian village varies from 0.10 hectares in Arunachal Pradesh (average population: 236), where villages are small and rainfall high, to 8.46 hectares in the Delhi region where villages are big (average population: 4,769) and rainfall low. In Rajasthan, the land required varies from a mere 1.68 to 3.64 hectares in different meteorological regions; in Gujarat it varies from 1.72 to 3.30 hectares. Every village in India can, therefore, meet its own drinking water needs if simple water harvesting measures are taken up. Anything more that's harvested can be used for irrigation and other purposes.

Yet, little has been done in this regard, barring a few exceptions of community-led initiatives, exposing the country and its hinterland to drought. Impact of drought has a direct and indirect impact on the economic, social and environmental fabric of the country. Depending on its reach and scale it could bring about social unrest. The Employment Guarantee Scheme (EGS) that the Maharashtra Government put in place was a direct outcome of the 1971-72 drought.

The immediate visible impact of monsoon failure leading to drought is felt by the agricultural sector. The impact passes on to other sectors, including industry, through one or more of the following routes:

- A shortage of raw material supplies to agro-based industries.
- Reduced rural demand for industrial/consumer products due to reduced agricultural incomes.
- Potential shift in public sector resource allocation from investment
- expenditure to financing of drought relief measures.

Most major droughts in India have been followed by recession. Annual Gross Domestic Product (GDP) growth was negative in 1957-58, 1965-66, 1972-73 and 1979-80.8 The 1990s, however, reveal a different picture, unlike in the 50s when a decline in agriculture had a significant bearing on both industrial and overall GDP. The vagaries of nature do not affect the Indian economy as much as they once did. Drought-related shocks and their adverse effect on the economy were limited to a mere 1% of GDP in 2002-03. This can be explained by the fact that the share of agriculture in national income has gradually declined over the decades - from 57% in 1961 and 35% in 1987-88, to 22% in 2002. Even within the manufacturing sector, the share of agro-based industries has come down from 44% in 1961 to 11.4% in 2002.

Another reason why the economy was insulated against the impact of drought was the fact that the country has apparently developed the ability to finance drought relief operations without diverting resources from public investment expenditure in productive sectors Relief operations have also been largely able to retain the purchasing capacity of the rural population. However, the poor and marginalised in the rural hinterland, bereft of productive land and starved of food and water, still reel under the effects of drought in an imperfect and corrupt relief system. Below is a quick run-

through of the impact of drought, from the obvious (availability of potable water, decline in agricultural production, reduced availability of fodder) to the less obvious (its effects on power generation). Much of the data concerns the recent drought of 2002, as the Drought Management Division in the Ministry of Agriculture has documented this drought like no other in the past.

Impact on water resources

- **Surface water resources**

The Central Water Commission (CWC) has been entrusted the task of monitoring the levels of the 71 major reservoirs in the country since 1983. During the month of July 2002, when the monsoons failed, the total storage build-up was just about 2% of the full reservoir level (FRL). It was 13% of FRL in the 1987 drought for the same month.

- **Groundwater sources**

The Central Groundwater Board (CGWB), with over 15,000 hydrograph stations across the country, is responsible for monitoring the country's groundwater. The monitoring, usually done four times a year, is basically a recording of the response of the groundwater regime to natural and artificial conditions, or recharge and discharge. The sustainability of the groundwater regime during 2002 had become a major cause for concern. Analysis of May 2002 with the May decadal mean data showed that in nine of the 10 drought-affected States, over 50% of wells experienced a drop in groundwater levels. The drought had considerably depleted storage. Subsequently, in the month of November, an analysis for the same month over the decade showed that water in more than 55% of wells dropped in all 10 States. In Rajasthan and Gujarat, 22% and 22% of wells, respectively, showed a decline of over 4 m. A poor monsoon had failed to replenish the aquifers, as happens seasonally.

- **Impact on crop production**

No other drought in the past led to such a drop in food production as the 2002 drought. Foodgrain production dipped by 29 million tonnes to 183 million tones (212 million tonnes in 2001). Over 18 million hectares of cropped area were left unsown during the kharif season. The percentage fall of kharif crop acreage, as

compared to the normal, was the highest in Kerala (-59.3%), followed by Rajasthan (-40.9%), Tamil Nadu (-27.3%) and Uttar Pradesh (-19.4%). During the rabi season, Rajasthan led the pack (-52.1%), as only 31.95 lakh hectares were sown against the normal of 66.69 lakh hectares. The other two States affected during the rabi season were Gujarat (-27.9%) and Tamil Nadu (-24.6%).

Table 103: Seasonal impact: Kharif output in drought years

Deficient rainfall years	Monsoon rainfall (% departure from normal)	Rainfall in July (% drop)	Kharif years foodgrain production (% decline)
1972-73	-24	-31	-6.9
1974-75	-12	-4	-12.9
1979-80	-19	-16	-19
1982-83	-14	-23	-11.9
1986-87	-13	-14	-5.9
1987-88	-19	-29	-7.0
2002-03	-19	-49	-19.1

Source: DAC, Ministry of Agriculture

Production of rice fell drastically to 75.72 million tonnes (2002-03) as against 93.08 million tonnes during the previous year. Pulses fell to a level of 11.31 million tonnes. As for commercial crops, production of oilseeds declined by 13.7% during the 2002-03 rabi season. Cotton and sugarcane also recorded negative growths of 7.7% and 7.2% respectively.

Kharif production during 2002 was the lowest ever recorded, as July, normally the wettest month and crucial for a good kharif crop, received the lowest rainfall. Rabi crops are usually supported by irrigation. However, during 2002-03, the fall in rabi output was over 8%, or 8 million tonnes. This makes it the largest rabi drought in any drought year. The drought of 2002 highlighted the vulnerability of irrigated areas to drought.

- **Impact on cattle and fodder**

Small and marginal farmers are the hardest hit on this front. Water and fodder shortages during a drought situation cause considerable stress to this section of farmers, as they own a bulk of the bovine population. Over 150 million of the 296.49 million-strong bovine population, across 18 States, were affected by 2002's drought. In Rajasthan alone, over 226 lakh bovines were affected, followed by Madhya Pradesh (192 lakh), Maharashtra (189 lakh) and Orissa (117 lakh). Consequently, during this period, milk production took a dive in States like Rajasthan (a decline of 22%), Madhya Pradesh (8%) and Tamil Nadu (7%) as the animals were unable to reach peak capacity due to inadequate nutritional support. Gujarat, Karnataka, Orissa and Chhattisgarh, however, showed an increase in milk production despite the drought, thanks to better animal management and feeding practices. During the drought period, prices of fodder went up around 75% above normal. The worst months were November 2002, February 2003 and May-June 2003, despite the large-scale transportation of fodder to affected areas.

- **Impact on the power situation**

Hydroelectric power stations contribute 25% of the total power generated in the country (2001), a fall from 41% in 1961. Today, thermal power constitutes the bulk of the power generated - 72%. Nuclear energy contributes a mere 3%. Any stress on the water situation, as in a drought, can have serious consequences, especially in States already battling a power deficiency.

Chhattisgarh was debilitated during the dry spell of 2002, as power generation in August and September fell 70-80%. The total power generated during the four month period - June, July, August, September - was just about 113.22 MKwh as against the previous year's 206.18 MKwh. The situation was grim in Orissa, Rajasthan and Tamil Nadu.

In Rajasthan, the Chambal complex (Gandhi Sagar, Rana Pratap Sagar) and the Mahi dam did not receive water inflows, with the result that the total energy availability from these hydel stations dropped to 55 MU from a normal of 1,336 MU. The State had to spend over Rs. 200 crore for expensive power from thermal and nuclear power plants. Likewise, Orissa had to spend Rs. 554 crore. For Tamil Nadu, the failure of the South West and North East monsoon translated to a loss of Rs. 690 crore.

The impact of the drought of 2002-03 on hydroelectric power generation led to a decline of 13.9%. The percentage reduction in power generation is the maximum when compared with the drought years of the recent past.

Table 104: Impact of drought on hydroelectric power generation (billion KWh)

Drought year	Expected level	Actual	Loss	% Loss
1979-80	47.1	45.5	1.6	3.4
1982-83	49.6	48.4	1.2	2.4
1987-88	53.9	47.5	6.4	11.9
2002-03	73.9	63.7	10.3	13.9

Source: Ministry of Power/Ministry of Agriculture

Broader economic impact

Apart from the direct, tangible impact, droughts have a bearing on a host of areas that impinge on the dynamics of rural and urban economies. While losses in crop production are evident (the value of crop production losses during the 1987-88 drought was Rs. 24,349 crore), drought impacts the lives of millions who see their livelihood platforms wither away.

Loss of rural employment, emerging out of a drought situation, is a major issue that engages the Central and State. India's rulers and aristocracy, even during medieval times, realised the importance of income-generation when disaster struck. Many of the canals and anicuts we see today were built during those times as relief efforts. Monuments and buildings were erected during times of drought to provide employment to distressed populations.

While it is difficult to put a finger on the precise degree of unemployment caused by drought, a rough estimate can be drawn up from the reduction of coverage in area under various crops. In the recent drought, a total of 18.4 million hectares were left unsown. The man-days utilised vary from crop to crop, ranging from 70 man-days per hectare for oilseeds to 140 man-days per hectare for rice.

Assuming an average of 100 man-days per hectare, the total loss due to a decline in sown area would be 1,840 million man-days. If the average wage rate for agricultural labor is pegged at Rs. 60, the total loss of rural employment would be a stupendous Rs. 35,000 crore. This is without taking into consideration losses arising out of drought-induced crop yield loss in farms.

As for losses in agricultural income, the figures are as high as those for rural employment. Agricultural income embraces crop production, animal husbandry, forestry and a host of allied activities. The value of the total loss in agricultural production during the major drought years ranged from Rs. 9,289 crore in 1972-73 to Rs. 37,382 crore in 2002-0311 (at 1994-95 prices).

Major droughts are usually followed by industrial recession. Industry sectors like food and beverages, textiles, tobacco, footwear, apparel, rubber products, chemicals and transportation often take a beating. However, the Indian economy has become resilient enough in recent years to absorb the impact of droughts. Although agricultural GDP declined (3.1 in 2002-03; 5.7 in 2001-02), the GDP growth rate was restricted to a fall of only 1%.

As always there were fears of high inflation. The rate of inflation during the most severe drought years was quite high (25.2% in 1974-75 and 17.2% in 1979-80). The fears, however, were unfounded as the impact on prices was minimal during the drought of 2002-03. The annual rate of inflation remained below 4% up to mid-January 2003. It rose to 6.2% by the end of March 2003, primarily due to an increase in the price of nonfood items and crude oil. The average rate of inflation, at 3.3% for the entire year was lower than that of the previous year (3.6%).

7.3 Desert areas

Extremely arid and semi-arid regions that may be categorised as deserts cover about 36% of the earth's surface. A region receiving an average rainfall of less than 250 mm is classified as desert.

Deserts in India are known as hot deserts or hot arid zone and cold deserts or cold arid zone. Indian hot arid zone is spread over 0.32 million km of which 0.29 million km are mainly confined to the States of Rajasthan (19.60 m ha), Gujarat (6.22 m ha), Haryana and Punjab (2.75 m ha) and Peninsular India (3.13 m ha). The total cold zone area is 7.0

m ha which lies in the States of Jammu and Kashmir and Himachal Pradesh. Overall, 60% of arable lands in India are dependent on rainfall and more than half of this area falls under the arid zone. The production and life support systems in hot regions are constrained by low and erratic precipitation (100-420 mm), high evapo-transpiration (1500-2000 mm) annually and poor soil physical and fertility conditions. The Great Indian Thar Desert in Rajasthan accounts for 61% of the hot desert in India. The Aravalli Range which is perhaps the oldest mountain range in the world also lies in Rajasthan. The national zone known as Arid Western plain Zone Ia comprises of Barmer and Jodhpur districts except Bhilwara and Bhopalgarh tehsils, with a total geographical area of 5.3 m ha, cultivable area of 2.7 m ha out of which 93% is rainfed and 7% is under irrigation.

A large area of this zone constitutes deserts and sand dunes with highly hostile climate for most part of the year. Despite inhospitable conditions, the local inhabitants have evolved suitable land-use and management systems of farming which include pastoralism and animal husbandry. Of late, these local survival systems are not being able to fulfil the ever increasing needs.

This has resulted in overexploitation of resources, rapid and widespread land degradation and decline in productivity. Serious issues have come up, particularly in relation to over-use of vegetation. The number of therophytes has increased, basal cover and density have declined, range conditions are worsening and woody perennials are in the process of deterioration and disappearance. There is a change in the ecological status and consequently desertification. In the absence of other alternative sources of employment, communities living in desert areas are facing pressures resulting from scanty and erratic rainfall, limited water for drinking and irrigation, scarce biomass, non-availability of commercial fuel resources, inadequate electrical supply, acute food shortage, unemployment, drudgery and drought which occurs twice in five years. Hence, natives are compelled to depend on agriculture and animal husbandry for their survival.

In spite of severe water shortage in desert regions, water logging is a problem in certain pockets, particularly along the Indira Gandhi Canal. This is not only a waste of water and land resources, but also loss of opportunity for generating year-round employment and income generation. This situation also reflects the lack of technical skills among the local communities to make optimum use of water. Thus, it is necessary to impart training on water management and introduce appropriate technologies

for efficient water use. Animal husbandry plays a significant role as it is a source of livelihood security and economic sustenance even in harsh situations of droughts. With regard to livestock, a sizeable population of cattle as well as small ruminants like sheep and goat also contribute to the economy of farmers Tharparkar and Rathi are native cattle breeds which have the ability to withstand drought and provide milk and draft power.

Rajasthan has the highest livestock population in the country. It is a repository of the best breeds of cattle (Tharparker and Rathi), sheep (Marwari, Jaisalmeri, Magra, Punjal, Nali and Sonadi) and goats (Marwari and Parbatsari). The animal population comprises of 6.07% cattle, 11.17% buffaloes, 16.35% sheep and 14.67% goats. The highest goat population in the country accounting for 9.67% milk, 30.69% wool and 3.41% meat of the total national production is also in the arid region.

In the absence of timely breeding services, depletion of community pastures and lack of feeding and marketing arrangements, there has been a severe decline in their contribution to the rural economy. The cattle density (137/sq. km) is more than the human density (105/sq. km). Heavy population pressure on the available feed resources, degradation in the size and quality of rangelands and reduction in area under fodder production have aggravated the situation. Further, there is genetic mixing due to uncontrolled breeding with any available male. This indicates the need for a breeding policy. While drought results in reduction of small ruminant population, its effect on large ruminants is relatively less. However, livestock owners generally need two years to recover from the ill-effects of drought.

Farmers living in desert regions continuously face natural challenges like thermal stress, erratic rainfall, intense aridity, high wind velocity and drought. Moreover, unsustainable agriculture, deforestation and overexploitation of forests, construction of canals and roads and mining operations resulting in land degradation, selective over-grazing, unsustainable water management, industrialisation and reckless waste disposal pose several challenges. Increase in human and livestock population has led to extensive pressure on biodiversity by disruption of habitat, degradation, over-exploitation, and biological invasion. Hence, it is evident that the problems encountered by local communities are too large to make optimum use of natural resources. These

problems are further intensified due to ignorance in making sustainable use of natural resources for earning their livelihood. Therefore, development of desert areas deserves priority.

7.4 Desert Development Programmes

Hardships of the people living in a degraded environment have necessitated intervention from the Government by introducing the Desert Development Programme (DDP) in Rajasthan, Gujarat, Haryana, cold areas of Jammu and Kashmir and Himachal Pradesh in 1977-78. This scheme was extended to Andhra Pradesh and Karnataka in 1995-96. Since April 1995, this programme is being implemented on a watershed basis. The major objective of this programme is to control desertification and restore the ecological balance. These objectives were achieved through afforestation, sand dune stabilisation, shelterbelt plantations, grassland development, soil moisture conservation and water resources development. The programme aimed at integrated development of the desert area by increasing the productivity, income level and employment opportunities for its inhabitants through optimum use of natural resources. Schemes introduced in Rajasthan under this programme include establishment of shelterbelt plantations, rehabilitation of degraded forests, village fuelwood and fodder plantations, farm forestry, sand dune stabilisation, pasture development and establishment of nurseries. Efficient use of water resources was also taken up. The development of micro-watershed as a unit of planning is considered to be the most scientific approach for optimum use of land, water, human and livestock resources, leading to a balanced development of the area through increased production and productivity. In 1999-2000, a programme known as Combating Desertification Project (CDP) was launched with a cost sharing of 75:25 by the Central and State Governments.

The objectives of this project were:

- Combating desertification;
- Reducing adverse environmental conditions;
- Increasing supply of fuelwood and fodder while generating employment through afforestation on degraded community lands and forest lands;

- Increasing productivity of existing vegetation through proper treatment in addition to planted seedlings;
- Ensuring people's participation in afforestation activities.

Stablised land dunes

Various studies were undertaken by research institutions engaged in desert area development in the country. Desert areas require special attention because they are historically prone to acute water scarcity, drought and environmental degradation. Active involvement of the native communities is critical for the success of programmes implemented in these areas. This can be achieved by addressing the local needs for sustainable livelihood.

Strategies for Promotion of Sustainable Livelihood

1. Water Resources and Land Development

A multidisciplinary approach is required to address the following key sectors for comprehensive development of desert areas of Western India. Water is the most critical factor for ensuring sustainable livelihood and biodiversity in desert areas. Therefore, careful planning is necessary to harvest the rainwater and to make efficient use of it for recharging the ground water. Priority should be given to drinking water followed by water for livestock, forestry, horticulture and agriculture. Cropping systems should also be based on the availability of water. Before developing a new strategy, it is essential to undeRs.tand the traditional methods of water harvesting and conservation and introduce modern techniques of water use to ensure the best use of this scarce resource.

Tanks with underground cistern

Land is another important resource for ensuring food security and sustainable livelihood. The local communities have access to community and pasture land apart from their own holdings. While farmers are keen to make best use of their land for livelihood, development agencies generally emphasise on the development of community lands and forests lands. Therefore, very often there is a clash of interest. To overcome such a situation, it is better to take up the promotion of private and public lands at the same time. While farmers prefer to establish food and cash crops on their private lands, efforts should be made to conserve common properties through tree and grass cover. Development of agriculture on private lands should also include land shaping through contour trenching, contour bunds, and establishment of live hedge on the field bunds to ensure efficient soil and moisture conservation. Subsequently, based on the soil fertility and moisture availability, farmers can select suitable farming systems.

Soil and water conservation: trench and mound

Fortunately, inspite of adverse

weather conditions, arid regions of Rajasthan and Gujarat have a rich tradition of cultivating valuable spice and medicinal crops apart from fruits, vegetables and food crops. While promoting new crops, it is necessary to ensure forward and backward integration so that the farmers are able to reap the anticipated benefits. Afforestation is an essential aspect of a long term strategy to conserve the ecosystem and improve the bio-diversity. Trees play a significant role in stabilisation of sand dunes, control of wind velocity and soil erosion. Therefore, preference should be given to tree cultivation over arable crops. However, on community lands, trees should be an important component of natural resources management either as a part of silvipasture development or as energy plantations or shelterbelt. However, under extreme conditions of drought where chances of survival of woody perennials are low, soil conservation through herbs and grasses may be initiated. The selection of trees is primarily based on their adaptability followed by utility and preference. While preference should be given to fodder, fuel and timber species for establishing common property resources development, species like fruits, nuts and cash crops should also be considered while establishing plantation on private lands.

- **Recommendations**

1. Establish integrated watershed development models for rainwater harvesting, flood water harvesting and efficient water use for improving crop production.
2. Explore scope for groundwater followed by initiatives to recharge and a policy to priorities the use of water for drinking.
3. Improve crop production by conjunctive use of water.
4. Manage waterlogged canal command areas through biodrainage and other reclamation measures suitable for cropping systems and fisheries.
5. Adopt precision agriculture to optimise water and nutrient use.
6. Diversify and manage cropping systems for better productivity, higher profitability and sustainability;
7. Prioritise development of silvipasture on community lands. The preferred species are: Grass: Lasiurus sindicus, Cenchrus ciliaris; Legumes: Stylosanthes guianensis, Vigna trilobata, Aptenia cordifolia; Trees:

Colophospermum mopane, Acacia Senegal, Acacia tortilis and Shrubs: Zizyphus nummularia, Zizyphuz rotundifolia, Caligonum and Polygonide

8. Introduce high value horticultural crops such as date palm, citrus, spices,

Re-seeded pasture with Lasiurus sindicus

vegetables, medicinal plants and underutilised crops through field demonstration and supply of critical inputs.

9. Transfer appropriate technologies for multiplication and distribution of important underutilized plants.

10. Introduce high value horticultural crops such as date palm, cituRs., spices, vegetables, medicinal plants and undertuilised crops through demonstration and supply of critical inputs.

11. Explore the scope for sericulture and agriculture through pilot projects.

12. Create facilities at the village level for training, production of critical inputs like planting material, bio-fertiliseRs. and bio-pesticides.

13. Enhance the income of local communities through post-harvest management and value addition of important agri-horti and medicinal crops.

2. Livestock development

Livestock is one of the most critical resources for providing sustainable livelihood to small and marginal holders in desert areas. Based on the availability of fodder and feed resources, farmers have adopted livestock management in diverse arid and desert regions. Fortunately, these desert areas are also rich in breeds tolerant to drought conditions. It is essential to give priority to conservation of native breeds of different species and to strengthen support services to harness maximum benefits. However, with the denudation of natural resources and shortage of water and feed, livestock are under severe pressure. Therefore suitable support services should be introduced to take care of these deficits. A critical factor for successful livestock husbandry is to conserve the denuded pasture resources, improve the productivity through soil and water conservation and introduce other species which can enrich the pasture while providing income.

Marwari Buck

Tharparkar cow

- **Recommendations**

1. Pilot projects for promoting animal husbandry using native breeds should be initiated in the most backward regions such as Jaisalmer district.

2. Door-to-door services should be provided for livestock training and breeding services along with establishment of backward and forward linkages.

3. The focus should be on Tharparkar and Rathi cattle, Jaisalmeri and Marwari sheep, Jaisalmeri and Marwari goat and Jaisalmeri camel. It is necessary to explore

the use of camel for milk production, with special focus on medicinal use for diabetic and Tuberculosis patients.

4. The programme should start with selective breeds using superior sires followed by Artificial Insemination.

5. Water points should be created along the traditional migratory routes and managed by the community to provide drinking water for migratory animals.

6. Feed and fodder banks should also be established along the migratory routes and in forage shortage areas to improve supply during the drought season.

7. Preventive and curative health care services should be provided in remote areas.

3. Non-farm Employment Opportunities

As the productivity of natural resources is low, it is necessary to tap the potentials of non-farm employment opportunities to generate employment for people living in desert areas. This could include value addition of agricultural commodities produced in the region. There are also opportunities for processing of medicinal herbs and other desert plants for handicrafts. Eco-tourism is another emerging opportunity.

- **Recommendations**

1. Promotion of nursery and vegetative propagation units of economically important plants suitable for the area;

2. Production of vermicompost, bio pesticides and bio-fertilizers.;

3. Processing and dehydration of local farm and forest produce;

4. Production of animal feed blocks and milk processing;

5. Promotion of indigenous food in tribal belts;

6. Processing of medicinal plants, including weeds, herbal products, vegetable dyes, bio crafts and nonedible products (Tumba and Salvadora).

7. Promotion of safe drinking water, using non-conventional technologies;

8. Promotion of drudgery reduction and energy saving activities;

9. Mushroom cultivation and processing;

10. Marketing and trading of consumables and household utilities;
11. Promotion of eco-tourism;
12. Promotion of specifically designed poly houses for arid region for enhanced production of vegetables, ornamental plants, medicinal plants and other high value crops;
13. Entrepreneurship linkages for mass multiplication of solar devices backed up by programme promotion for wider acceptance.

- **Concluding Remarks**

More than 40% of the arable land in India is located in arid zones where farmers encounter failure of agricultural crops at least twice in five years. A part of this arid land is being transformed into desert lands, particularly in Rajasthan and Gujarat due to deforestation, excessive grazing, severe soil erosion and run-off of rainwater. With such degradation of natural resources, the livelihood of the local communities is severely affected due to low productivity and under-employment. Deserts further create an adverse effect on agricultural productivity and agro-ecological conditions, contributing to global warming and climate change. It is necessary to develop a suitable strategy for development of desert areas through sustainable management of the available natural resources and by involving the local communities

The holistic integration of various activities such as establishment of integrated watershed development models, breed improvement and conservation, silvipasture development, conservation and development of pasture lands, biotechnological interventions, processing, marketing and development of non-conventional energy devices can contribute to on-farm as well as off-farm employment opportunities for stakeholders.. Such a multi-disciplinary development programme based on the principle of conservation of natural resources will not only improve the biodiversity and micro-climate of desert areas but also provide sustainable livelihood for people living in these areas.

7.5 Tribal areas

While the Government of India refers to indigenous peoples as "Scheduled Tribes", Adivasi has become the popular term for India's indigenous or tribal peoples. It is a Sanskrit word meaning "original people". Contrary to the official Government

position, this term reflects the widely recognised fact that the people in question are the earliest known settlers on the Indian subcontinent and North East India.

The tribal situation in the country presents a varied picture. Some areas have high Tribal concentration while in other areas; the tribals form only a small portion of the total population. There are some tribal groups, which are still at the food gathering stage, some others practice shifting cultivation, yet other may be pursuing primitive forms of agriculture.

The population of Scheduled Tribes (STs) in India stood at 84.33 million as per the 2001 Census. ST's constitute 8.2 per cent of the total population of the country with 91.7 per cent of them living in rural areas and 8.3 per cent in urban areas. The sex ratio of ST population in 2001 was 978 which was much higher than the national average of 933. The proportion of the ST population to the total population had also increased from 6.9 per cent in 1971 to 8.2 per cent in 2001.

The proportion of STs to the total population in States/Union territories was the highest in the North Eastern region of Mizoram (94.5%) and Lakshadweep (94.5%) followed by Nagaland (89.1%), Meghalaya (85.9%). Within major States, Chhattisgarh (31.8%) had the highest percentage followed by Jharkhand (26.3%) and Orissa (22.1%). Of the total ST population in the country, Madhya Pradesh accounted for the highest proportion of ST population (14.5%) followed by Maharashtra (10.2%), Orissa (9.7%), Gujarat (8.9%), Rajasthan (8.4%), Jharkhand (8.4%) and Chhattisgarh (7.8%). In fact, 68 % of the country's Scheduled Tribes population lives in these seven States only.

The Constitution of India has made several provisions to safeguard the interests of the Scheduled Tribes in Articles 15(4), 16(4), 46, 243M, 243 ZC, 244, First and second provisos to 275(1), Articles 334, 335, 338A, 339(1), and the Fifth and the Sixth Schedules. Besides these, several laws have been enacted by the Central Government like the Protection of Civil Rights Act 1955, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, the Provisions of the Panchayats (Extension to Scheduled Areas) Act 1996, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, as well as by the State Governments relating to prevention of alienation and restoration of tribal land, money-lending, reservations etc.

- **Educational Development**

The Department of Elementary Education and Literacy and the Department of Higher Education in the have provided special incentives to the ST students which includes, text books, uniform, abolition of tuition fee etc. Special focus is also accorded to ST students under District Primary Education Programme, Kasturba Gandhi Balika Vidyalaya, Mid-day Meal Programme, Navodaya Vidyalaya, National Talent Search Scheme etc.

The Post-Matric Scholarship Scheme is in operation since 1944-45, and open to all ST students whose parents' annual income is upto Rs. 1 lakh facilitate students to pursue professional courses. An amount of Rs. 58.9 crore was utilized to benefit 7 lakh ST students in the Tenth Plan. The scheme of establishment of Ashram schools in TSP areas provides funds for construction of school buildings as well as hostels and staff-quarters 78 Ashram schools having 9610 seats were supported at a cost of Rs. 22.34 crore. The scheme of construction of Hostels for ST Boys and Girls provides for construction of new hostel buildings as also extension of the existing hostel buildings. An amount of Rs. 57.84 crore was utilized for construction of 120 hostels for 9884 students. The scheme of setting up Educational Complexes is being implemented for promotion of education among tribal girls in 136 identified low literacy districts of the country. In the Tenth Plan, an amount of Rs. 62 crore was allotted for the scheme to set up 76 complexes. A scheme for vocational training in tribal areas for developing the skills of tribal youth for a variety of jobs as well as self-employment is also in operation.

However, the problem of adequacy of the school building both in number and in facilities still remains. The lack of education in mother language or dialect in primary classes, ignorance of non-tribal teachers about tribal language and ethos, delay in distribution of scholarships, text books, uniforms etc. continue to be sources of worry.

- **Economic Development**

The National Scheduled Tribes Development and Finance Corporation (NSTFDC) – was set up in 2001 with an authorized share capital of Rs. 500 crores. The Corporation supports various income and employment generating activities though loans, marketing support, training etc. Special focus is accorded to ST women

beneficiaries under programmes such as the Adivasi Mahila Shashaktikaran Yojana, which facilitate income generating activities through women's Self-Help Groups. Under NSTFDC, 14.53 lakh STs were benefited during the Tenth Plan. The State ST Development Corporations (STDCs) which function as a channelising agencies in identifying eligible beneficiaries and extending financial and other assistance to them are also supported by the NSTFDC. The STDCs were provided with funds to the tune of Rs. 48.76 Crore in the Tenth Plan. The Tribal Cooperative Marketing Development Federation of India Ltd. (TRIFED) provides marketing assistance and remunerative prices to STs for collection of minor forest produce and surplus agricultural produce to protect them from exploitative private traders and middlemen. In the Tenth Plan States were provided Special Central Assistance of Rs. 2518.07 crore to strengthen their tribal Sub Plans.

Though majority of the tribals are settled cultivators, their farming activity is generally uneconomic and non-viable due to lack of access to necessary agricultural inputs specially assured irrigation. Therefore, a special provision of funds under Grant – in –Aid under Article 275 (1) of the Constitution has been made for financing minor irrigation works.

- **Restoration of Traditional Rights**

The Government took a major initiative in enacting The "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" which was notified in the Gazette of India, extraordinarily, dated 2.1.2007. The Ministry has also framed the draft Rules for implementation of the provisions of the Act. The major rights that are granted under the Act *inter alia* are the right to cultivate forest land to the extent under occupation, (subject to a ceiling of 4 hectares); the right to own, collect, use and dispose of minor forest produce; rights inside forests which are traditional and customary e.g. grazing, etc.

- **Self Governance**

Despite some protective measures and developmental efforts, the emerging tribal scenario characteristically continues to manifest:

i. increasing tribal alienation on account of slipping economic resources like land, forest, common property resources (CPR);

ii. displacement and dispossession of life support systems;

iii. general apathy of official machinery;

iv. escalating atrocities, at times related to assertion of rights;

v. growing clout of market forces; and,

vi. meagre advancement through planned development efforts.

6.65. The scenario calls for a major shift towards entrusting, enabling and empowering the tribal people to look after their own welfare and address issues of development through their own initiative. The extant constitutional-cum-legal-cum-policy framework has been enormously strengthened by the enactment of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 [PESA], a charter of autonomous tribal governance, embodying rights in favour of tribal communities coupled with respect for their ethos.

- **Primitive Tribal Groups**

There are 75 identified Primitive Tribal Groups (PTGs) spread in 17 States/UTs living in utmost destitute conditions. Some of them in *dire straits* also face the threat of extinction. In order to provide focused attention to the survival, protection and development of these PTGs, a special scheme launched in 1998-99 was implemented during the Tenth Plan to provide tribe-specific services and support including, *inter-alia*, housing, land, agricultural inputs, cattle rearing, health, nutritional services, and income generating programmes.

- **Tribal Sub-Plan (TSP) and Special Central Assistance (SCA) to TSP**

The Constitution of India provides for a comprehensive framework for the socio-economic development of Scheduled Tribes and for preventing their exploitation by other groups of society. A detailed and comprehensive review of the tribal problem was taken on the eve of the Fifth Five Year Plan and the Tribal sub-Plan strategy took note of the fact that an integrated approach to the tribal problems was necessary in terms of their geographic and demographic concentration if a faster development of this community is to take place. Accordingly, the tribal areas in the country were classified under three broad categories:

- States and Union territories having a majority scheduled tribes population.
- States and Union territories having substantial tribal population but majority tribal population in particular administrative units, such as block and tehsils.
- States and Union territories having dispersed tribal population.

In the light of the above approach, it was decided that tribal majority States like Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and U.Ts. of Lakshadweep and Dadra & Nagar Haveli may not need a Tribal sub-Plan, as the entire plan of these States/Union territories was primarily meant for the S.T. population constituting the majority. For the second category of States and Union territories, tribal sub-Plan approach was adopted after delineating areas of tribal concentration. A similar approach was also adopted in case of States and Union territories having dispersed tribal population by paying special attention to pockets of tribal concentrations, keeping in view their tenor of dispersal. To look after the tribal population coming within the new tribal sub-Plan strategy in a coordinated manner, Integrated Tribal Development Projects were conceived during Fifth Five Year Plan and these have been continued since them. During the Sixth Plan, Modified Area Development Approach (MADA) was adopted to cover smaller areas of tribal concentration and during the Seventh Plan, the TSP strategy was extended further to cover even smaller areas of tribal concentration and thus cluster of tribal concentration were identified.

At the time of delineation of project areas under the Tribal sub-Plan strategy, it was observed that the ITDPs/ITDAs are not coterminus. Areas declared under Fifth Schedule of the Constitution. The Scheduled Areas as per the Constitutional orders have been declared in 8 States *viz* A.P., Bihar, Gujarat, Himanchal Pradesh, Maharashtra, Madhya Pradesh, Orissa and Rajasthan. As per the provisions contained in the Fifth Schedule of the Constitution, various enactment in the forms of Acts and Regulations have been promulgated in the above States for the welfare of scheduled tribes and their protection from exploitation

Since TSP strategy also has twin objectives namely Socio-economic development of Schedule tribes and protection of tribal against exploitation, the Government of India in Aug., 1976 had decided to make the boundaries of Scheduled Areas co-terminus with TSP areas (ITDP/ITDA only) so that the protective measure available to Scheduled Tribes in Scheduled areas could be uniformly applied to TSP areas for effective implementation of the development programmes in these areas. Accordingly,

the TSP areas have been made co-terminus with Scheduled areas in the State of Bihar, Gujarat, Himanchal Pradesh, Maharashtra, Madhya Pradesh, Orissa and Rajasthan. The State of Andra Pradesh where the TSP areas are not co-terminus with Scheduled.

- **Integrated Tribal Development Projects/Agencies (ITDPs/ITDAs)**

The ITDPs are generally contiguous areas of the size of a Tehsil or Block or more in which the ST population is 50% or more of the total. On account of demographic reasons, however ITDPs in Assam, Karnataka, Tamil Nadu, West Bengal may be smaller or not contiguous Andhra Pradesh and Orissa have opted for an Agency model under the Registration of Societies Act and the ITDPs there are known as ITD Agencies (ITDAs). So far 194 ITDPs/ITDAs have been delineated in the country in the States of Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Karnataka, Kerela, Madhya Pradesh, Maharashtra, Manipur, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, West Bengal and Union territories of Andaman & Nicobar Island and Daman & Diu. In Jammu and Kashmir though no ITDP has been delineated yet the areas having ST Population in the State are treated as covered under the TSP strategy. In 8 States having scheduled areas the ITDPs/ITDAs are generally co terminus with TSP areas. The ITDPs/ITDAs are headed by Project Officer though they may be designated Project Administrators or Project Directors.

- **Modified Area Development Approach (MADA) pockets**

These are identified pockets of concentration of ST population containing 50% or more ST population within a total population of minimum of 10,000. The total number of MADAs identified so far in the various TSP States is 259. Generally, MADA pockets do not have separate administrative structures to implement development programmes. The line Departments of the State Government are expected to implement development programmes in MADA pockets under the overall control of the District authorities.

- **Clusters**

These are identified pockets of tribal concentration containing 50% or more ST population within a total population of about 5,000 or more. As in the case of MADA pockets, there are no separate administrative structures for Clusters. So far 82 Clusters have been identified in various T.S.P. States.

- **Displacement, Rehabilitation and Resettlement**

Ancestral land, villages, habitations and environs belonging to the tribal people have been made available for various development projects as tribal areas possess 60-70 per cent of the natural resources of the country. In such cases, though primary displacement appears small due to low population density, secondary displacement has been extensive, encompassing common property resources that provided supplemental livelihoods, particularly to those with low or no dependence on farming. Estimates of STs displaced on account of acquisition over the past six decades vary between 8.5 and 10 million (roughly about 40% of all oustees).

The widespread secondary displacement in the zone of influence has neither been measured nor was provided for, calling for an accurate verification of actual displacement both, in terms of persons and resource loss. Cash compensation for land having been the practice as per the provisions of the Land

Acquisition Act, 1894, such class of oustees as owning little land, such as wage-labor artisans have hardly figured in the relief and rehabilitation packages. As a result, some groups have continued to suffer successive, multiple displacement.

Land (both owned by community and individuals), is the most important source of livelihood for the tribal people for agriculture (settled and shifting cultivation), horticulture, floriculture, forestry, animal husbandry etc. Several laws and regulations have been in place to prevent alienation of tribal land and private grabbing of such land.

A Report of the Ministry of Rural Development reveals in March 2005:

- 3.75 lakh cases of tribal land alienation have been registered covering 8.55 lakh acres of land;
- Out of the above 1.62 lakh cases have been disposed of in favour of tribals covering a total area of 4.47 lakh acres;
- 1.55 lakh cases covering an area of 3.63 lakh acres have been rejected by the Courts on various grounds; and 57,521 cases involving 0.44 lakh acres of land are pending in various Courts of the country.

Despite the fair rate of disposal, the other related issues such as (a) the time-taken in

disposal, and (b) the number of alienations for which STs found access to Courts difficult, if not impossible, and (c) physical possession of the land need to be addressed comprehensibly.

- **Present Status of Scheduled Tribes**

  - Educational Status of STs

Between 1961 and 2001, the literacy rate of STs increased by 5.32 times, while that of total population increased by 2.69 times. However, the gap between the literacy rates of STs and of the general population continued during the three decades between 1971 and 2001 almost at the same level of 17.70 per cent and above, but with marginal variations. 6.74. The dropout rate is a critical indicator reflecting lack of educational development and inability of a given social group to complete a specific level of education. In the case of tribals, dropout rates are still very high – 42.3 in classes I to V; 65.9 in classes I to VIII; and 79.0 in classes I to X in 2004-05.

About 4.34 lakh ST students were studying at different levels of higher education as on 30th September, 2004.

  - Economic Status

Occupational Category

81.56% of the total ST workers, both rural and urban taken together, are engaged in the primary sector of whom 44.71% are cultivators. and 36.85% are agricultural laborers The corresponding figures for all workers are 31.65% (cultivators.) and 26.55% (agricultural laborers). This indicates that STs are essentially dependent on agriculture.

Availability of Basic Amenities and Infrastructure

Since most of the tribal habitations are located in isolated villages and hamlets in undulating plateau lands coinciding with forest areas; they have limited access to critical infrastructure facilities such as roads, communication, health, education, electricity, drinking water, etc. This widens the gap between the quality of their life and the people in the country.

Access to Income Earning Assets

- **Agricultural Land and Capital Assets**

Scheduled Tribes are mainly landless poor, forest dwellers and shifting cultivators, small farmers and pastoral and nomadic herders. The livelihood strategy would thus have to take into account the land structure, level of skills, socio-economic conditions, low level of human development index (HDI) along with physical infrastructure and natural resource base in the tribal areas.

Extent of Poverty

The incidence of poverty amongst the STs still continues to be very high at 47.30 per cent in rural areas and 33.30 per cent in urban areas, compared to 28.30 per cent and 25.70 per cent respectively in respect of total population in 2004-2005 (Table 6.10). A large number of STs who are living below the poverty line are landless with no productive assets and with no access to sustainable employment and minimum wages. The women belonging to these groups suffer even worse because of the added disadvantage of being denied equal and minimum wages.

Human Development Index (HDI) and Human Poverty Index (HPI) for STs vis-à-vis non-STs

As per the UNDP India Report 2007 on Human Poverty and Socially Disadvantaged Groups in India the HDI for STs at all-India level is estimated at 0.270 which is lower than the HDI of SCs and non-SC/ST for the period 1980-2000. The HPI (explained earlier in this Chapter in the section on Scheduled Castes) for STs is estimated at 47.79 which was higher than SCs and non-SC for the period 1990-2000.

Needed paradigm shift in tribal development

Keeping in view the operational imperatives of the fifth Schedule, TSP 1976, PESA 1996, RFRA 2006; it will be desirable that a paradigm shift in tribal development is brought about to promote a tribal-centric, tribal participative and tribal-managed development process.

- **Self Governance**

Article 243G of the Constitution and PESA Act make it incumbent that State legislations endow power and authority on Panchayats in Scheduled Areas enabling them to function as institutions of self-governance, preparing and implementing schemes of economic development and social justice. The Act confers abundant powers on the four tiers i.e. Gram Sabha, Gram Panchayat (extant since decades), Intermediate Panchayat (development block tier) and Zilla Panchayat (district tier) which need to be given affect in real operational terms. The vision of self governance should be made functional forthwith in keeping with the spirit of PESA.

The Gram Sabha and the three other hierarchical Panchayats would require infrastructure, personnel, and financial resources to carry out their tasks. Apart from other sources, the State Finance Commissions need to provide the necessary devolutions for Scheduled and Tribal Areas, as per Article 243(I) of the Constitution. The Ministry of Tribal Affairs, should ensure direct flow of funds to districts in these areas, to Zilla Panchayats (ZPs) which should apportion them on an equitable basis to the three lower Panchayat bodies for various programmes.

The Fifth Schedule requires to be urgently operationalised. The Tribes Advisory Council (TAC) needs to be made proactive, functioning as an advisory body to the State Government in matters relating to the STs. Second, it should function as a tier in between the ZPs in Scheduled Areas and the State Government. Its jurisdiction should be expanded to cover all matters relating to tribes people, not limited as of now to those which are referred to it by the Governor. The Ministry of Tribal Affairs is required to ensure regular and meaningful annual reports of the Governor as per para 3 of the Schedule. The Ministry of Tribal Affairs should examine the feasibility of insertion in the Fifth Schedule of a suitable provision to the effect that discretionary power may be exercised by the Governor on the advice of the TAC. Lastly, the Scheduled Areas and Tribal Sub-Plan areas should be made co-terminus, enabling protective and legal measures to be available in all TSP areas. To the extent possible, demarcation of Scheduled Areas should be notified down to the village level and other settlements.

- **Educational Development**

The following measures should be taken to accelerate the educational progress among the tribal population.

i. In the deficit areas, the requisite number of primary schools needs to be established. Specific norms for middle schools and high schools for tribal areas will be evolved and deficiencies made up. All schools should have proper school buildings, hostels, water, toilet facilities (particularly for the girls' schools).

ii. Residential high schools for ST boys and girls should be set up at suitable places. At Gram Panchayat level, ensuring girls' hostels will be attached to the existing primary/ elementary schools not having hostels, wherever it is feasible to do so.

iii. Text-books in tribal languages especially at primary level should be produced to enable better comprehension by ST students in classes up to III. Side by side, adequate attention should be paid to the regional language so that children do not feel handicapped in higher classes.

iv. Efforts should be made to set up ITIs in the TSP areas. Other training centres should include community polytechnics, undertaking rural/community development activities through application of science and technology in their proximity.

v. Fellowships, scholarships, text-books, uniforms, school bags etc. should be distributed timely to students.

vi. The ICDS/Anganwadi schemes for tribal areas should be evaluated and shortcomings eliminated.

vii. A larger number of special coaching classes will be organized and the concerned institutions should be suitably aided to enable ST students to compete in entry-level competitive examinations for professional courses.

viii. Adult education should be paid adequate attention.

ix. Steps should be taken to promote tribal languages, culture and heritage through adaptation of pedagogical methods, community participation in school management etc.

x. There is a need to constitute a special committee composed of eminent sociologists, anthropologists, educationists, administratoRs., representatives of scheduled tribe communities etc. to go comprehensively into the problems of ST education and make recommendations for implementation.

- **Health**

Efforts should be made to make available affordable and accountable primary healthcare facilities to the STs and bridge the yawning gap in rural health-care services through a cadre of Accredited Social Health Activists (ASHA) and sectoral convergence of all the related sectors Periodic reviews will be conducted on the delivery system and functioning of the health-care institutions under three broad heads to optimize service in the tribal areas a) health infrastructure, b) manpower and c) facilities like medicines and equipment. Action will be taken to make up the shortfall in the different categories of health institutions, liberalization of norms, addressing infra-structural deficiencies, application of quality standards and revitalization of HSCs, PHCs and CHCs (Details are given in the Chapter on Health).

- **Economic Sectors and Livelihood Opportunities**

An overwhelming proportion of STs depend upon Minor Forest Produce (MFP), cottage and small industries, and horticulture for their livelihood. Towards making the existing tribal livelihoods more productive, intensive efforts should be mounted to restitute, vitalize and expand the agricultural sector. Use of irrigation in agriculture with a preference for organic farming will be a major step. Training centres will be opened to impart skills for diverse occupations to the tribals. Efforts should be made to promote horticulture, animal husbandry, dairy, sericulture, sylviculture, cottage and small industry by extending necessary technology and credit, marketing and entrepreneurial information and training. TRIFED has to shoulder the task of marketing to ensure remunerative price to STs.

Lending by agencies like the State Governments, NSTFDC and TRIFED will be streamlined by better coordination at higher levels and efficient delivery at the field level. Large Scale Multi Purpose Corporate Societies (LAMPS) and such like cooperative institutions in tribal areas should be revived to make them representative, autonomous and professional.

- **Tribal-Forest Interface**

To enable the tribal primary producers, collectors and consumers to enter into transactions with primary cooperatives, monopoly of corporations in certain items procured by them through contractors and middlemen will be replaced, by alternative

market mechanisms like minimum price support with institutional backing. It should be incumbent on the national level organizations like TRIFED and NAFED to play their due role in marketing of the tribal MFP.

Technological support for value-addition should be extended to the Corporations as well as other institutional and private processors. Skills like culling, barking, tapping of gums, storage of sal seeds, preparation of tamarind extracts, need to be upgraded through ITIs, TRIFED, NSTDFC and other training organizations.

As visualized under NFP Resolution (1988), tribal association with forestry should be maximised through tribal cooperatives and self-help groups of tribal women. Specific schemes for quality improvement, higher productivity and regeneration of MFP species will be implemented to facilitate sustainability of this source of tribal livelihood. No outside labor should be engaged where tribal labor is available. Interdisciplinary scientific studies to develop feasible agronomic strategies to make shifting cultivation ecologically compatible and economically viable will be undertaken. Special protection will be extended to Jhumias. 6.93. Rules under the forest Rights Act, 2006 and PESA need to be framed expeditiously.

ST women should be recruited to the posts of forest guards, foresters and forest rangers, by suitably lowering the educational qualifications, if required. Such forest guards and foresters should ensure safety of the women venturing in the forest areas for their livelihood needs.

- **Tribal Sub-Plan and Tribal Policy**

The Tribal Sub-Plan (TSP) should be reformed to restore its dynamic character and make it an effective instrument for tribal development.

- **Tribal Unrest and Socio-Political Movements**

Lack of socio-economic development, physical and economic exploitation, land alienation etc. have led to a situation in which 75 predominantly tribal districts are affected by violence. The situation could be remedied by taken the following steps.

a) Prevention of exploitation of tribals through strict penal action against errant money-lenders, businessmen, traders, middlemen, Government servants and

other exploiters. Effective implementation of the SC and ST (Prevention of Atrocities) Act, 1989.

b) The practice of employment of contractors and middlemen by public sector organizations should be replaced by tribes-benefiting procedures.

c) Amendment of the instruments like Land Acquisition Act, 1894; Forest Act, 1927; Forest (Conservation) Act, 1980; Coal Bearing Areas (Acquisition and Development) Act, 1957; and National Mineral Policy, 1993 to eliminate iniquitous provisions ensuring protection of the interest among the tribals.

d) Displacement should be avoided in the First place. If inescapable, it should be the minimum possible. Land for land will be the general rule. All those displaced need to be identified and rehabilitated suitably.

e) Land reforms should be implemented stringently.

f) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 should be implemented by the States in letter and spirit.

g) Rigorous implementation of the provisions of laws combating land alienation and simultaneous stringent steps to restore the alienated land back to the people.

- **Prevention of Land alienation**

Apart from rigorous implementation of laws for preventing alienation of tribal land and plugging loopholes in such laws, the following measures also need to be taken.

i. Updating and computerization of land records in tribal areas Separate fast-track courts in the Scheduled Areas to deal with cases of tribal land alienation.

ii. Translation of anti-alienation laws into regional languages, and possibly in tribal languages, for wide dissemination in tribal areas.

iii. A law for urban agglomerates in Scheduled Areas on the analogy of PESA Act 1996, needs to be considered for enactment.

- **Rehabilitation and Resettlement**

The Government has recently approved the National Rehabilitation and Resettlement Policy [NRRP] 2007, with the following objectives:

a) Minimize displacement and promote non-displacing or least-displacement alternatives

b) Ensure adequate and expeditious rehabilitation with participation of the PAPs through an independent authority

c) Create obligations on the State to protect the rights of weaker sections, particularly SCs and STs

d) Provide a better standard of living with sustainable income

e) Integrate rehabilitation concerns into development planning and implementation.

Effective follow up action should be taken to operationalise the policy.

- **Infrastructure**

Both the Fifth and Sixth Schedule Areas are considered backward, with poor infrastructure being a major handicap in improving the quality of life. The first proviso to Article 275(1) of the Constitution directs building infrastructure in such areas on par with that of the rest of the areas in the country by providing monies from the Consolidated Fund of India. Focused strategies for infrastructure development in sectors like education, drinking water, PDS, health, minor irrigation, roads, housing, telecommunications and electrification should be pursued.

- **Primitive Tribal Groups (PTGs)**

The strategy should be different for the two distinct groups of PTGs. The approach for heritage groups will place emphasis on conservation of the ecosystem, life-styles and traditional skills along with an economic component. In the case of peripheral communities, the approach will be conservation of the ecosystem, along with stress on economic programmes. For the purpose, the unique attributes of each group should determine specific treatment in planning and implementation.

A National Plan of Action for tribe specific comprehensive conservation-cum-developmental needs to be formulated and executed.

Periodic reviews need to be conducted on the functioning of the healthcare institutions in the tribal areas under three broad heads of: (a) health infrastructure, (b) manpower,

and (c) facilities like medicines and equipment. The NRHM seeks to strengthen the public health delivery system at all levels.

The Department of Drinking Water Supply needs to cover all uncovered tribal area. Urban tribal pockets and other tribal habitations need to be covered with sanitary latrines equipped with minimum basic facilities.

Many tribal areas receive adequate rainfall. Rainwater harvesting structures should be installed appropriately particularly in schools and colleges. 6.107. TPDS will be revamped to ensure its outreach actually extending to tribal areas. The system should convey to them foodstuffs of their choice like course cereals, pulses, edible oil, etc.

There is a need to ensure that the tribal villages automatically are electrified, taking recourse also to non-conventional sources of energy. Universal telecom voice coverage will be ensured in the tribal areas during the Plan period.

In 1975, guidelines to States/UTs were issued by the Centre for taking steps for discontinuation of commercial vending of liquor in tribal areas in pursuance of Excise Policy, 1974. Although the States/UTs have accepted the guidelines, commercial vending of intoxicants continues in tribal areas and stringent measures are needed for its prevention.

7.6 Hill areas

It was realized that the pathways of development adopted in the past had resulted in an uneven distribution of the benefits of economic growth as between geographical areas and also between socio-economic groups. It was in realization of this phenomenon that certain specific target group oriented programmes, such as SFDA arid MFAL were initiated during the Fourth and Fifth Five Year Plan periods. Special programmes for drought prone, desert and tribal areas were also initiated. But in spite of these programmes, certain geographical areas presented some very special ecological and socio-cultural features, which unless specifically taken into account did not permit the present planning process and the schemes developed within it, to be of major assistance to them. The Hill Areas of the country belonged to this category.

The development of the hilly areas in the country, however, cannot be undertaken in isolation from the adjoining plains, with which their economy is closely interrelated.

The hilly areas influence to some extent the climate of the plains; they contain the sources, the catchments and the watersheds of several major river systems which flow to the plains; they abound in forests, plant and mineral wealth as well as hydel energy resources. Our experience of development planning had increasingly underlined the fact that unless adequate programmes are evolved for the conservation and proper realization of the resources of the hill areas, not only the problems of these areas will continue to remain unsolved, but the economy of the plains may also be adversely affected. Symptomatic of this aspect are the rapid siltation of dams, reservoirs, flooding, changes in agro-climatic conditions and pressure on the employment market because of the large-scale migration of people particularly men from hill areas. Development of the resources of the hill areas is hence necessary in order to enable the population living in these areas, who are by and large very poor, to have their share of the benefits accruing from moderp science and technology. But such development, however, has to proceed in a way that the ecosystem constituting the hills and the plains, is not irreversibly damaged, but is preserved in a suitable condition for future generations. There is, therefore, a paramount need for conceiving an integrated strategy for the development of the hill areas based on sound principles of ecology and economics. It was in realization of this need that special hill area development programmes (HADP) were initiated during the Fifth Plan.

The Hill Areas Development Programme (HADP)/Western Ghats Development Programme (WGDP) have been in operation since the Fifth Five Year Plan in designated hill areas. Under these programmes, Special Central Assistance is given to designated hill areas in order to supplement the efforts of the State Governments in the development of these ecologically fragile areas.

Areas under HADP were identified in 1965 by a Committee of the National

Development Council (NDC) and areas to be covered by WGDP were recommended in 1972 by the High Level Committee set up for the purpose. After the formation of Uttaranchal in 2001, the designated areas covered under HADP/WGDP include:

(a) Two Hill districts of Assam – North Cachar and Karbi Anglong

(b) Major part of the Darjeeling District of West Bengal

(c) Nilgiris District of Tamil Nadu

(d) One hundred and Seventy one talukas of WGDP comprising Western Ghats in

Maharashtra (63 talukas), Karnataka (40 talukas), Kerala (32 talukas), Tamil Nadu (33 talukas) and Goa (3 talukas).

The main objectives of the programme have been eco-preservation and eco-restoration with emphasis on preservation of bio-diversity and rejuvenation of the hill ecology. For the hill areas covered under HADP, the sub-plan approach has been adopted. The State Governments concerned prepare their total plan comprising of flow of funds from the State Plan, Special Central Assistance made available under HADP and other sources. In the case of WGDP, the schematic approach was followed since the flow of funds from State Plan to the taluka, which is the unit of demarcation, is difficult to quantify. Under WGDP, the States were advised to prepare their plans on watershed basis. Watershed based development continued to be the basic thrust area of the programme. The allocation for the programme has remained almost static during the Tenth Plan period at Rs. 160 crore. It was only during 2006-07 that the allocation was stepped up to Rs. 250 crore.

The evaluation studies which have been carried out to assess the efficacy of these programmes have shown that while it is not possible to isolate the impact of the programme, the outcome of these programmes are visible in the form of increase in the level of the water table, preservation of forest area, increase in irrigated area, decrease in fallow land, increase in income, etc.

The Hill Areas Development Programme and the Western Ghats Development Programme should be continued in the Eleventh Plan with renewed vigour so that the natural resources of these fragile areas can be used in a sustainable manner based on environment friendly technologies. These programmes need to be continued for the following reasons: First, most of the hill areas lack infrastructure facilities particularly roads, power, education and health facilities. Second, most of the hill areas lack political power and consequently adequate funding. Third, many of the programmes are not suitable to hill areas. For example, wages are often higher in the hill areas than the wages under wage employment programmes and normally machines are required for earthwork as the rocky terrain is not suitable for manual labor. This also holds true for the norms set for some of the programmes as settlements are often small hamlets which do not qualify for coverage or are too expensive to cover. Hence, local solutions have to be found and encouraged. The objectives would be two-fold – ecological balance and preservation as well as creation of sustainable livelihood opportunities.

Keeping in view the existing administrative and fund requirements of HADP areas, it could perhaps be more appropriate to have a different approach for HADP areas compared to WGDP areas. In case of the HADP areas, the district planning guidelines should be followed. District Plans should be prepared based on the vision for the district through a participative process starting from the Grass roots level. This would involve articulation of a vision in each Planning unit right down to the village level. This vision would address the three basic aspects of development, namely, human development, infrastructure development and development of the productive sector.

In the case of the WGDP areas, the plan for these areas should be prepared as part of the district plan. While preparing the district plan, it should be ensured that WGDP areas receive priority and are brought at par with the best developed areas of the State. The ecological and biodiversity issues are to be dealt on high priority. These areas should be given priority under other schemes particularly the flagship schemes including Bharat Nirman, Sarva Shikhsa Abhiyan (SSA), National Rural Health Mission (NRHM) etc. The State Governments need to allocate funds to the more fragile and backward pockets of the Western Ghats talukas.

- **Issues concerning the three Western Himalayan States (Himachal Pradesh, Uttarakhand, and Kammu & Kashmir)**

  A. Core Issues:

  1. Compensation package on account of the eco-services being provided and the opportunity costs incurred by these States in providing these services. The opportunity cost also needs to take into consideration the constitutional and legal constraints imposed on these states.
  2. Continued commitment to creating and upgrading strategic border infrastructure.
  3. The Extension of the Special Industrial Package to the Hill States till March, 2013 including restoration of special dispensations allowed to different Hill States as earlier.
  4. Permission for imposing generation tax in the Hill States to compensate for the environmental losses due to hydro power generation. In addition, share of free power to the States in central sector Hydro Electric Projects needs to be increased from 12% to 25%.

5. Funding pattern in all the Centrally Sponsored Schemes Centrally sponsored Schemes (CSS) should be uniform for all Special Category States. There is an increasing trend in CSS design to distinguish between the North Eastern States and the Western Himalayan States and give a lesser concession to the latter. This perspective does not give due weight to the special circumstances of the Western Himalayan Hill States.

6. Enhanced allocation for construction and maintenance of roads for the Hill States due to the high cost of construction and tack of any alternative modes of communication support for strengthening of transportation infrastructure and compensation for high transportation costs. There is an urgent need to enhance the investment in railways also as there has been very little investment in this sector crucial for the overall development of these states.

7. 20% enhancement in the present income criteria for BPL families of Rs. 443.21 per person per month for the Hill States due to the higher cost of living.

8. Special package for tourism development in the Hill States due to the higher tourism pressure on these States from the rest of the country.

9. Enhanced allocation for calamity relief to the Hill States as these States are prone to high calamity risks and higher restoration costs.

10. Norms for cost of construction for infrastructure and social sector projects/schemes should be enhanced for the hill States as the topographic and climatic conditions of hill States are different than the plains. The per unit cost of social sector projects such as under Indira Awaas Yojana needs to be higher in the hill States due to topography, climatic conditions, distance from rail/road head and requirement of protection against earthquakes as large parts of these States are seismically vulnerable.

(B) Constitutional, Administrative and Structural Mechanism for the

Application of the Principles Determining Positive Discrimination

The following mechanisms are proposed for institutionalizing the principles for positive discrimination in favour of the Western Himalayan Hill States:-

i. There should be a separate Cell in the Planning Commission, Government of India, to ensure that various aspects of positive discrimination towards Western Himalayan

Hill States are kept in view in the framing of central sector and centrally sponsored schemes. This will ensure that both norms for inputs and fund allocation to these States are based on the aspects of positive discrimination and eco-services provided by these states.

ii. There should be a permanent and specific mention of "positive discrimination towards Western Himalayan States" in the terms of reference of the Finance Commission of India to take into account both the revenue and expenditure side disabilities experienced by these States as well as the eco-services provided by these States, so that the Commission recommends devolution of funds to these States keeping in view above factors.

7.7 Border Area Development Programme (BADP)

Border Area Development Programme (BADP) introduced during the Seventh Plan, aims at making special effort for socio-economic development of the border areas and to promote a sense of security amongst the people living in these areas. The programme was revamped in Eighth Plan and extended to the States adjoining the international border with Bangladesh and it was further extended during Ninth Plan to the States which have borders with Myanmar, China, Bhutan and Nepal.The programme is a major intervention of the Central Government and is

a part of the comprehensive approach to Border Management. The main aim has been to meet the special needs of the people living in remote and inaccessible areas situated near the international land border.

The Task Force on BADP has recommended the following strategy for its implementation during Eleventh Plan:

- To accord high priority to the border areas (villages/blocks) in all the schemes of Bharat Nirman and other flagship programmes of Government of India and to saturate the border areas with full coverage of these schemes/programmes during the Eleventh Five Year Plan period or earlier. To this end, appropriate modifications will be made in the relevant guidelines. The Planning Commission has comprehensively identified the border areas (villages/blocks/districts) and this data will be made available to all the Ministries to facilitate early action.
- Ministries/Departments which do have programmes, schemes and projects

focussed on the border area, would initiate suitable programmes and activities in the border areas.

- The Ministries of Power, Civil Aviation, IT, Telecom, Railways and Road Transport and Highways would prepare comprehensive proposal for infrastructure development in the border areas. These proposals, which would form part of the existing programmes and activities of the Ministries, will then be collated with the overall infrastructure Plan for Border Areas. All incomplete large projects in border areas will receive priority for completion.
- Particular emphasis will be given to skill development and vocational education in the border areas. To this end, the Ministry of Labor and Employment and the Ministry of Human Resource Development would suitably reorient their existing programmes, in consultation with the Planning Commission. Priority will be given to the border districts in the establishment of government sector polytechnics/ITIs/Skill Facilitation Centres.
- While modifying the guidelines the relevant Ministries will also revise the cost norms for border areas (village/blocks/districts) and provide for necessary flexibility in order to accommodate accessibility issues.
- The Ministry of Finance will ensure by 31.3.2008 that all border blocks have at least one channel of Banking, be it a commercial bank, a cooperative institution or an RRB. The Ministry of Finance would also ensure that appropriate linkages with the overall plan for border development are developed in consultation with NABARD and the Planning Commission.
- The planning process for the preparation of comprehensive perspective and annual plans for Gram Panchayats and the Blocks on participatory basis should be significantly strengthened on the lines of the guidelines issued by the Planning Commission and contained in the report of the Expert Group on the Planning at the Grass root Level (Ministry of Panchayati Raj, 2006). These plans must show the convergence of the flow of funds for all ongoing Central and States Programmes/schemes and identify the gaps in physical and social infrastructure and the livelihood options which should then be filled through funds available from BADP. Preparation of these plans and their use for all development activities including BADP should be insisted upon and arrangements for professional support and capacity development of PRIs, District Autonomous Councils, Traditional Village Bodies and District Planning Committees should be initiated.

- The Ministry of Home Affairs would augment the funds given to Border Military Forces guarding the border areas (*viz*; BSF, ITBP, Assam Rifles and SSB) so that they too can undertake some civilian welfare activities in order to enhance their rapport with civil population in these areas.
- Since most of the border areas are in remote and inaccessible areas, to strengthen the institutions and the personnel working in these areas, flexible financing through untied grants for attracting trained staff and participation of NGOs sector should be provided.
- The Home Ministry would also undertake a special review of the infrastructure available at the International Check Posts and Land Customs Stations. If required, additional funds would be earmarked under the Border Areas Development Programme (BADP) for this purpose.

It is clear, therefore, that backward States and districts are being allocated a large proportion of the funds available under the flagship programmes. The effectiveness of these programmes will depend on the absorptive capacity of these States and regions. As administration in these areas tends to be weak and thin, this is an area which will require special attention. BRGF provides for strengthening of administrative machinery to deliver programmes more extensively. Similar provisions are made in NREGP and other Flagship programmes. Local recruitment by Panchayati Raj Institutions can go a long way in ensuring attendance and availability of staff in remote areas. The State Governments also find it easier to invest in better developed areas as implementing agencies are available in these areas. Backward areas also lack the voice and vote as they are often hilly, desert, forested, border or otherwise thinly populated. The other issue is the withdrawal of State Plan funds from these areas once Central Funds become available. To circumvent this and ensure attention to these areas, District Plans must be drawn up showing the availability of funds from all sources.

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8

INTER-STATE DISPARITY IN NORTH-EAST INDIA

8.1 Introduction

India's North-Eastern part, comprising of seven States, is a lowly developed, tribal population dominated region in India. Inspite of the common Mongoloid origin and lifestyle of majority of the population residing here, sharp differences exist in the status of their socio-economic development. The present section, through a Statewise analysis made by Neogi (2010), makes an attempt to find out the extent of this disparity, especially on the socio-economic front. It illustrates the situations prevailing in health, education, economic and social cohesion sector. Discussion on the implications of such disparity on social stability finds that the causes of frequent insurgency activities, that have been penetrating the region for a long time, thereby creating communal conflicts, can be traced in the economic deprivation and disparity.

Among the low ranked States of the country, the cluster of States in the North-East India (NEI) is the focus of the present section. The region is economically backward, characterized by low rate of growth and predominance of agriculture as the main source of livelihood. The region comprises of seven States and is dominated by tribal population. The socio-economic status of the seven States of NEI is as diverse and as heterogeneous as the varieties of tribe found in the region. However, their topological similarity is worth mentioning. The existence of huge tea production with widespread market had started to enrich the region long back. The finding of underground coal and oil in Assam had led to the upcoming of forestry and mining in the region. The population started to grow surrounding these centers. Well connectivity with other parts of the country and abroad by rail heads and river through Calcutta and Chittagong had made the region prosperous. Depending upon the economic progress of Assam, the only State in the region to have majority of the area plain, the economies of the other parts of the region, which has more than 80% of the area covered with mountainous range and dense forest, could have also developed. However, the

partition of the country at the time of its independence in 1947 and the consequent reshuffling of the region had left an adverse impact on its economy. Added to that was the commencement of a series of never ending insurgency problem and communal conflicts that crippled the economy further and disrupted the efforts for development of this promising zone.

North East region where India's eight States are clubbed together occupies only 8.74% of the total land area and around 4% of India's total population. Given these small shares, it is easy to say that these States are categorised as small States in the country. As recently Vivek Debroy along with Lavish Bhandari (2005) have put all these North Eastern States except Assam in small States category, where the area of each State is less than 35,000 sq.km. having population less than 5 million each (Debroy & Bhandari, 2005). These small States of India differ from their larger counterparts in many aspects, different and difficult topography, cultures and ethnicities, needs and problems of a different nature than most of the country. These peripheral States with their volatilities do not reflect any steady economic trend over the decades. **It is sad to mention that the each State in the region with rich deposits of natural resources, are highly revenue deficit State and**

Table 105: Small State Profile Ranking in India: 2005

States	Overall Rank	Law and Order	Primary Health	Primary Education	Infra-structure	Consumer Market	Agricu-lture	Invest-ment	Budget and prosperity
Goa	1	4	2	3	2	2	3	2	2
Delhi	2	5	4	9	1	1	2	4	1
Pondichery	3	1	6	4	3	3	1	6	3
Mizoram	4	2	1	2	4	5	8	3	5
Sikkim	5	3	3	1	5	6	9	1	4
Arunachal Pradesh	6	6	5	10	6	8	7	5	6
Manipur	7	9	7	6	7	10	6	8	7
Nagaland	8	8	8	5	8	4	10	7	8
Tripura	9	7	9	7	9	9	4	9	9
Meghalaya	10	10	10	8	10	7	5	10	10

fall under special category due to the lack of economic sustainability.

A comparative study made by Debroy & Bhandari (2005) between the big and small group of States in India shows that in general the latter has been performing better, firstly, because governance is easier in smaller States and secondly, because of their manageable population. But specifically for the North East India, the authors feel that though the environment has gradually been changing with relatively better investment in infrastructure, yet it is substantially dependent on government support and suffers from some major economic stagnation even in the post-reforms period. Tables 105 and 106 show the profile ranking of the smaller and the bigger States in India. Amongst the smaller group, it can be seen that all the North Eastern States are at the bottom and in the larger group, Assam is in the 10th position, followed by UP, Jharkhand and Bihar.

Table 106: Big State Profile Ranking in India: 2005

States	Overall Rank	Law and Order	Primary Health	Primary Education	Infra-structure	Consumer Market	Agricu-lture	Invest-ment	Budget and prosperity
Punjab	1	12	7	7	1	1	1	3	1
Kerala	2	1	1	2	6	4	10	16	9
Himachal Pradesh	3	6	2	1	2	2	16	4	2
Gujrat	7	7	8	12	7	6	5	1	4
Uttaranchal	9	15	10	3	5	9	14	8	10
Rajasthan	12	3	12	16	12	11	9	13	12
West Bengal	13	14	11	14	14	13	8	17	13
Madhya Pradesh	14	5	14	15	13	14	13	15	14
Chattisgarh	15	10	19	17	17	18	20	2	17
Assam	16	18	15	6	15	16	19	19	16
Uttar Pradesh	17	20	18	19	16	15	7	15	15
Jharkhand	19	16	16	18	19	17	18	12	19
Bihar	20	19	20	20	20	20	12	20	20

Source: Debroy and Bhandari, 2005

While looking for the reasons of holding back a booming economic resurgence of the small North Eastern States, the authors show that it is the limitation of their geographical position, beyond the relatively economically stagnant States of east India. Thus if West Bengal and Orissa could achieve their economic resurgence, access to and investment in North Eastern States should also go up.

Another study by Ray & De (2005) shows amazingly that out of total 260 million poor in India, North East accounts for 15 million i.e., 5.77%, where as the region shares only 3.58% of the total Indian population. This high poverty level clearly depicts a lack of economic initiatives here, though it is difficult to think of another area in the world, which can surpass India's North East in terms of its forest, hydro and mineral resources. This typical scenario provokes the scholars with the questions: Why is it that after so many decades of independence and with so many developmental programmes and now with so many reform measures, the entire North East India still is in the bottom line special category States and why it is permanently viewed as such by the rest of India?

8.2 How Dispersed is North East Region in India's Rising GDP Growth Map?

To look at the disparity in the growth rates of State domestic products, the study has made four groups of States, *viz.*, eight North Eastern States of India, rest of the three small States i.e., Delhi, Goa and Pondichery, BIMARU States, i.e., Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh and finally the five prosperous States like Punjab, Himachal Pradesh, Gujrat, Kerala and West Bengal. These prosperous States in the last group have been selected at random to represent each corner of the country. Thus the regions/States with same range of income are clustered together to trace the trajectory of regional dynamics and distribution pattern of income over time. This to a possible extent can capture the degree of dispersion across the regions and States in the country. While finding the growth rates from the available data on Net State Domestic Product (NSDP) provided by Central Statistical Organisation (CSO) for individual State, economists have raised doubts about the quality and consistency of their NSDP data but at the same time, this has not actually hindered the development economists to pursue their studies on inter-State variation in growth performance. The research study carried out by Rakhee Bhattacharya, Fellow, Maulana Abul Kalam Azad Institute of Asian Studies, Kolkata, also has relied upon the same source of data.

A time frame of last 35 years with 1970-71 as the cut-off year is kept in the study frame to capture both the pre-reforms (1970 to 1990) and post-reforms (1990-2004) period of India.

Decadal growth rate for each State is estimated by log linear growth model on Iny=á+ât, where y is the NSDP over the years and t is the time period and á and â are the parameters. The level of significance has been tested at 5% and 1% for each of these growth rates.

The growth rate of the combined NSDP of all 19 States taken together has increased from 3.46% in the pre-globalization period to 6.01% in post-globalization period. This growth trend is similar to all-India GDP growth (3.23% to 5.83%) in national accounts. For the entire period i.e., for last 34 years, the GDP has grown moderately at 4.56% and SDP for 19 States grows at 5.11%. As one would expect, there exists considerable variation in the performance of individual States with some growing faster than the others. It is however, more important to see whether this disparity in growth has widened during the post-reforms period or not. For all the North Eastern States, except Maghalaya and Tripura, the growth rates of NSDP have gone down in the post-reforms period. Of course in post 90s some States have done better, but four years of time is too short to make any conclusion. But looking at other small States, it can be said that their post-reforms growth rates are amazingly well. So these other three areas i.e., Delhi, Pondichery and Goa though small in size are economically stronger. They have done much better in 90s compared to 80s. Goa and Pondichery are accelerating in terms of revenue earnings and Delhi being the capital of the country has additional features with large concentration of Central government's bureaucracy and other industrial and infrastructural backup. Thus there exists a large commendable gap between North Eastern small States and rest of the small States in the country, despite the fact that they also could be revenue surplus States with their existing enormous economic potentialities. North Eastern States are therefore small and at the same time economically week and can be rather compared to BIMARU States, whose growth rates are at the same level of North Eastern region. Rajasthan and Madhya Pradesh have marginally improved over the years. Looking at the larger and stronger counterparts, we can see that except Punjab, rest of the States are growing consistently over the decades and have performed better in post-reforms phase.

Table 107: Growth Rates of Net State Domestic Product at constant Prices

Status	Pre-Reforms Period		Post-Reforms Period		Entire Period
States/Regions	1970-80	1980-90	1990-00	2000-04	1970-04
North Eastern Region	3.55	3.95	3.57	3.65	4.20
Arunachal Pradesh	7.08	7.78	4.67	2.80	7.02
Assam	3.03	4.13	2.40	4.26	2.94
Manipur	6.62	4.50	4.82	10.15	4.71
Meghalaya	-	4.06	5.39	5.88	5.52
Nagaland	-	7.24	5.50	6.72	7.21
Sikkim	-	10.96	3.84	8.58	7.01
Tripura	4.89	4.94	7.50	4.37	5.88
Other Small States	6.02	6.98	8.25	4.46	8.18
Delhi	5.97	7.36	8.22	6.48	8.27
Goa	5.95	5.10	7.81	4.65	7.69
Pondichery	6.71	4.13	9.80	10.10	6.24
All Small States	6.03	6.70	7.74	4.14	8.23
BIMARU States	3.08	4.57	4.05	2.44	4.22
Bihar	2.94	4.99	2.24	1.68	3.34
Madhya Pradesh	2.29	3.51	5.46	5.35	4.14
Rajasthan	1.15	7.52	5.94	6.22	5.15
Uttar Pradesh	3.58	4.64	3.49	2.59	4.29
Himachal Pradesh	3.50	5.22	6.03	5.13	4.73
Punjab	4.92	5.29	4.39	2.55	4.69
Gujarat	4.58	5.06	7.64	11.52	5.51
Kerala	2.18	2.55	6.02	6.03	3.90
West Bengal	3.39	4.49	6.63	6.98	4.73
Total	3.46	4.72	5.21	6.01	5.11
All India GDP	3.23	5.04	5.46	5.83	4.56

Growth rates for each decade have been estimated by fitting log linear trends to the NSDP and NDP data in constant prices obtained from CSO and National Accounts. And the growth rate for the entire period 1970 to 2004 has been estimated by taking all the series in 1993-94 prices. In North East region, figures for Mizoram were not available. For 1970s, the data for Meghalaya, Nagaland and Sikkim were not available.

For a better understanding of regional disparities in standard of living, the growth path of per capita SDP is a better yardstick. It is tempting to suggest that the State of material well being of a nation is captured quite accurately in its per capita income: the per head value of final goods and services produced by the people of the country over a given period of time. The following table 108 highlights the estimated growth results of per capita Net State Domestic Product for same set of States.

Table 108: Growth Rate of Per Capita Net State Domestic Product at constant Prices

Status	Pre-Reforms Period		Post-Reforms Period		Entire Period
States/Regions	**1970-80**	**1980-90**	**1990-00**	**2000-04**	**1970-04**
States					
North Eastern Region	2.26	3.63	1.58	3.66	3.13
Arunachal Pradesh	4.03	4.69	2.50	1.33	4.25
Assam	-0.47	1.09	0.50	3.03	0.65
Manipur	3.71	2.12	5.87	8.15	2.17
Meghalaya	-	1.43	2.71	4.26	2.91
Nagaland	-	3.41	1.02	1.74	2.64
Sikkim	-	8.07	-2.32	4.82	2.65
Tripura	2.01	2.01	5.47	3.02	3.44
Other Small States	2.91	2.79	5.90	4.46	3.91
Delhi	1.76	2.79	4.51	3.40	3.46
Goa	3.99	3.54	6.11	2.14	4.56
Pondichery	4.31	1.25	8.07	8.21	3.71
All Small States	2.93	3.36	4.13	4.13	3.30
BIMARU States	0.03	2.30	2.54	2.45	1.96
Bihar	0.80	2.50	-0.25	-0.35	1.18
Madhya Pradesh	-1.00	1.16	3.38	3.30	1.88
Rajasthan	0.22	3.17	3.28	4.07	2.59
Uttar Pradesh	0.37	2.37	1.22	0.48	1.74
Himachal Pradesh	1.02	3.34	4.26	3.41	2.82
Punjab	3.18	3.43	2.50	1.51	2.74
Gujarat	2.05	4.38	5.82	7.85	3.44
Kerala	-0.11	1.14	4.65	14.21	2.73
West Bengal	0.86	2.31	3.77	5.64	2.82
19 Total	1.80	2.93	3.10	4.70	3.01
All India	1.39	3.01	4.16	4.29	2.90

For Mizoram the data is not available. For Meghalaya, Nagaland and Sikkim data is not available for the time period 1970-71 to 1979-80

Here both All-India PCGDP and PCSDP for 19 States together have grown high over the decades. But for North Eastern States the growths are unsatisfactory again. Except Manipur, Tripura and to some extent Meghalaya, for rest of the States, growth rates have decelerated. North East as a whole has also shown declining growth rates in 90s (1.58%), though in post 90s the region tried to recover and has grown by 3.66% in first four years of the present decade. On the contrary for PCNSDP the small States have grown remarkably well in post-reforms periods of 1990s, though have marginally decelerated in post 1990s, as Goa and Delhi have not done well in the first four years of the present decade. The weaker region of BIMARU States has shown the same unsatisfactory performance like North East region. During post 90s, we need to remember that BIMARU States already had their off springs. Due to the emergence of Jharkhand, Chhattisgarh and Uttaranchal, the economic status of BIMARU has further weakened since the sizable amount of resources and input potentials have shifted to the later group of States. Bihar has shown a negative growth rate during post-reforms phase and Uttar Pradesh also has grown at a very low rate. For the larger and stronger counterparts, the growth scenario is same as their overall NSDP growths. Except Punjab, whose growth rates have gone down significantly, rest of the States like Gujrat, Kerala, West Bengal have done very well in their growth performance. Himachal Pradesh being a hill State, which has same geographical terrain like most of the North Eastern States can be a role model for the later group of States. It is doing consistently well in the growth performance of both NSDP as well as per capita NSDP. Thus in the post-reforms period we can see that instead of showing any catch up sign from the weaker and peripheral States, the degree of disparity between the prosperous and that of non-prosperous States have widened at least in terms of NSDP and PCNSDP growth rates. And the regional shares of aggregate income and economic development in India is highly polarised. The following table 109 does the ranking and ordering of the States in terms of PCNSDP.

The ranking of the 19 States in descending order in terms of their PCNSDP for the years 1970, 1980, 1990, 2000 and 2003 have been shown in the above Table 109. It is highly interesting to see that over all these years irrespective of reform measures the 6 top most States remain the same with minor alteration in ranking among themselves. They are Delhi, Punjab, Gujrat, Goa, Pondichery and Kerala. Similar is the situation for bottom most States. They are along with BIMARU States, Assam, Arunachal Pradesh, Tripura and Manipur. Nagaland, Sikkim and Meghalaya are in the middle group. It is surprising to

see that in Delhi the PCNSDP has gone high from Rs. 9,729 in 1970-71 to Rs. 2,9231 in 2003-04 (200% increase) and Gujarat has shown an increase from Rs. 5,801 in 1970-71 to Rs. 15,721 in 2003-04 (171%). But on the contrary the increase in Bihar is only Rs. 3,559 in 2003-04 from Rs. 2,550 in 1970-71 (39% increase) and in Uttar Pradesh the increase is Rs. 5,702 in 2003-04 from Rs. 3,744 in 1970-71 (52%). It is also highly interesting to see that the share of top six States have gone high from 50% to 52% between 1970-71 to 2003-04, whereas the share for bottom 6 States have gone down from 25% to 17% during the same time period. The top ranking States are improving over the years and doing well because of their better economic performance and focus along with better governance. The other group of small States along with North Eastern States are far in the bottom line with failure in economic performance, competitiveness, awareness and with weak governance and eventually disparity has increased.

Next to measure further the level of inequality and dispersion in per capita NSDP, some fundamental measures like disparity ratio, Gini coefficient, coefficient of variation have been used. Thus disparity ratio is

DR=(Mx-Mi)/m, where Mx is the average income of top most States, Mi is the average income of the bottom most States and m is the average income of 19 Indian States.

Coefficient of variation is

CV=σ/μ, where σ is the standard deviation and μ is the mean income of 19 States.

The Gini coefficient is derived from Lorenz Curve. This coefficient can be computed in various ways for a dataset. This study uses the following formula to estimate Gini coefficient (G).

G= $|\Sigma 1-(Pi-Pi-1)*(Qi+Qi+1)|$, $0<G<1$, where Pi is the cumulative proportion of population in ascending order and Qi is the cumulative proportion of income in ascending order for 19 States.

The following table 110 presents the estimated results of these inequality measures. μl stat

Table 109: Ranking of the Top and Bottom Indian States by Per Capita Income (Rs. at Constant Prices)

Pre-Reform Period				Post-reforms Period					
State	**1970**	**State**	**1980**	**State**	**1990**	**State**	**2000**	**State**	**2003**
A. 6 Top most States									
Delhi	9729	Delhi	11736	Delhi	15862	Goa	26730	Delhi	29231
Punjab	6716	Pondicherry	9880	Goa	14757	Delhi	26497	Goa	28548
Goa	6452	Goa	9504	Punjab	11776	Pondichery	22252	Pondicherry	28107
Pondicherry	5823	Punjab	8442	Sikkim	11722	Punjab	15048	Kerala	16779
Gujarat	5801	Gujarat	6455	Pondicherry	11256	Gujarat	12489	Punjab	15800
Kerala	5325	Himachal Pradesh	5793	Gujarat	8788	Nagaland	11473	Gujarat	15721
Share in total (%)	50	Share in total (%)	46	Share in total (%)	48	Share in total (%)	51	Share in total (%)	52
B. 6 Bottom most States									
West Bengal	4547	Manipur	4406	West Bengal	5991	Rajasthan	8175	Arunachal Pradesh	9678
Uttar Pradesh	3744	Rajasthan	4254	Assam	5574	Madhya Pradesh	7195	Manipur	8751
Manipur	3372	Arunachal Pradesh	4073	Manipur	5400	Manipur	6845	Madhya Pradesh	8284
Tripura	3159	Tripura	4001	Uttar Pradesh	5147	Assam	5943	Assam	6520
Arunachal Pradesh	2850	Uttar Pradesh	3982	Tripura	5026	Uttar Pradesh	5575	Uttar Pradesh	5702
Bihar	2550	Bihar	2733	Bihar	3568	Bihar	3798	Bihar	3557
Share in total (%)	**25**	**Share in total (%)**	**21**	**Share in total (%)**	**20**	**Share in total (%)**	**17**	**Share in total (%)**	**17**

Table 110: Inter-State Disparities in Per Capita Net State Domestic Product in India

Pre-Reform Period				Post-reforms Period					
State	**1970**	**State**	**1980**	**State**	**1990**	**State**	**2000**	**State**	**2003**
Average (19 States)	4989	Average (19 States)	5918	Average (19 States)	8155	Average (19 States)	11702	Average (19 States)	13464
Disparity Ratio	0.502	Disparity Ratio	0.540	Disparity Ratio	0.587	Disparity Ratio	0.717	Disparity Ratio	0.751
COV	35.63	COV	39.58	COV	41.59	COV	56.26	COV	55.95
Gini Coefficient	0.140	Gini Coefficient	0.159	Gini Coefficient	0.169	Gini Coefficient	0.250	Gini Coefficient	0.290

These inequality figures in the above table indicate a high level of inequality in economic performance and development across the Indian States and interestingly these results also indicate an increasing inequality over the years. As the average income is increasing over the years in the country, the inequality is also widening at the same time. Thus disparity ratio (0.502 to 0.751), Gini coefficient (0.140 to 0.290) and coefficient of variation (35.63 to 55.95) have all shown high values over the period from 1970-71 to 2003-04. This shows that growth and inequality are on the same path in India.

The following diagrams showing the trend lines of per capita NSDP for these four set of States can make the picture even clearer. Comparing both the figures 1 and 2, it can be clearly seen that in post-reform period the inequality has sharpened. And the Figures 3 and 4, where the trend line is fitted for North East region versus the rest of India, also shows the same trend of widening gap from pre to post-reforms periods.

All these figures show that North Eastern States are crawling in terms of the increase in per capita NSDP as compared to their counterparts. The gap has visibly widened during the post-reforms period. The evidences of this paper thus clearly prove that the rich State is getting richer and poor State is getting poorer in India, in other words the growth is in divergent path and the gap between top and bottom States have widened in the post-reforms phase. And thus, it is probably right to mention that,

Figure 1

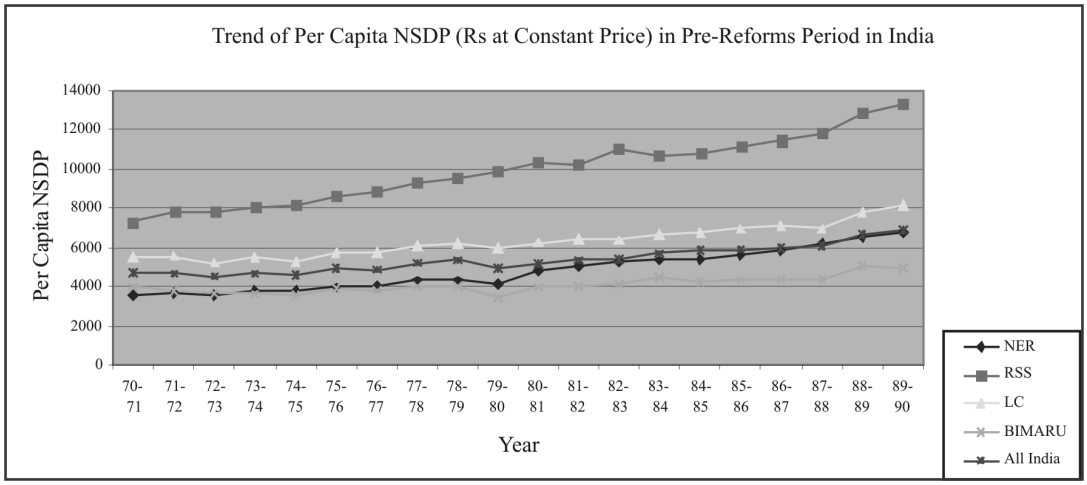


Figure 2

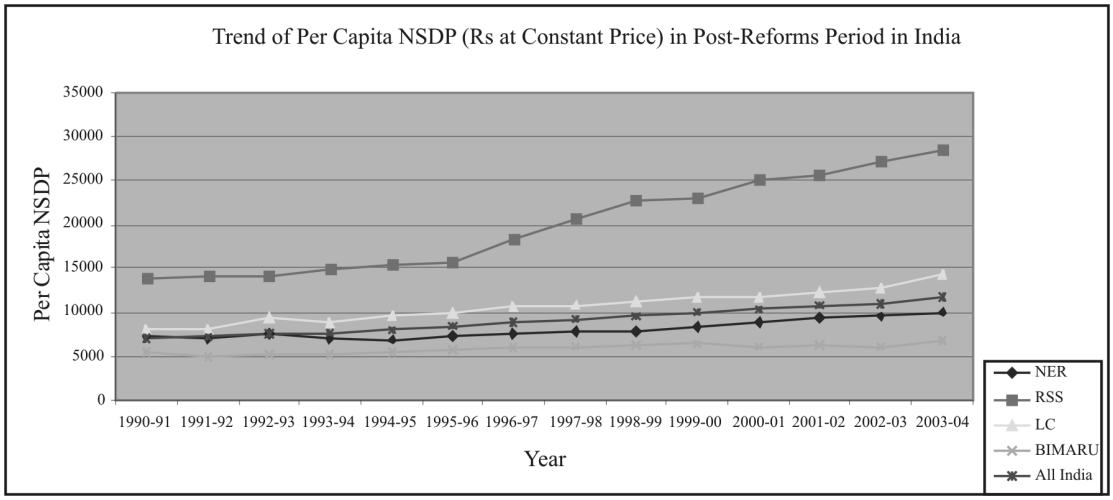


Figure 3

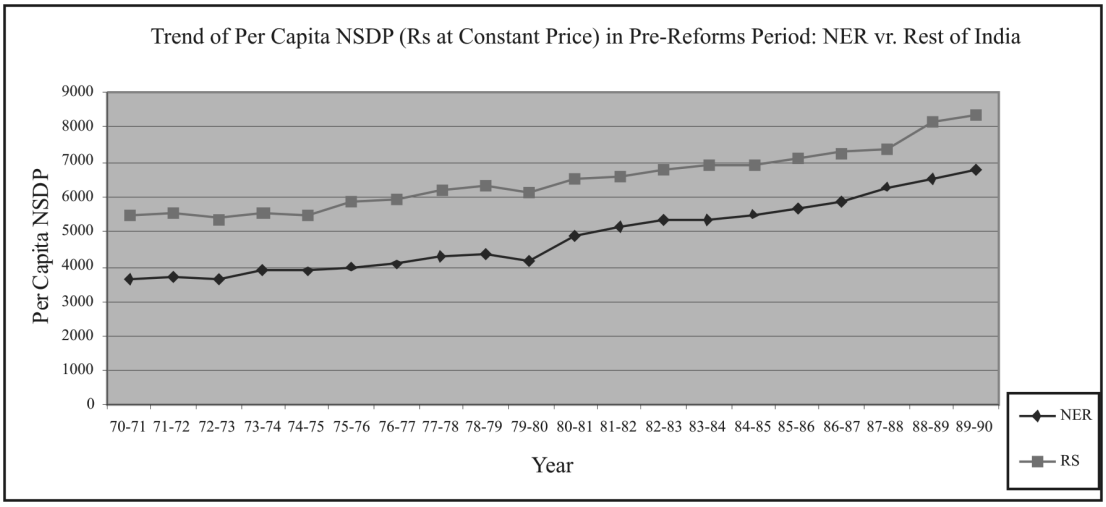
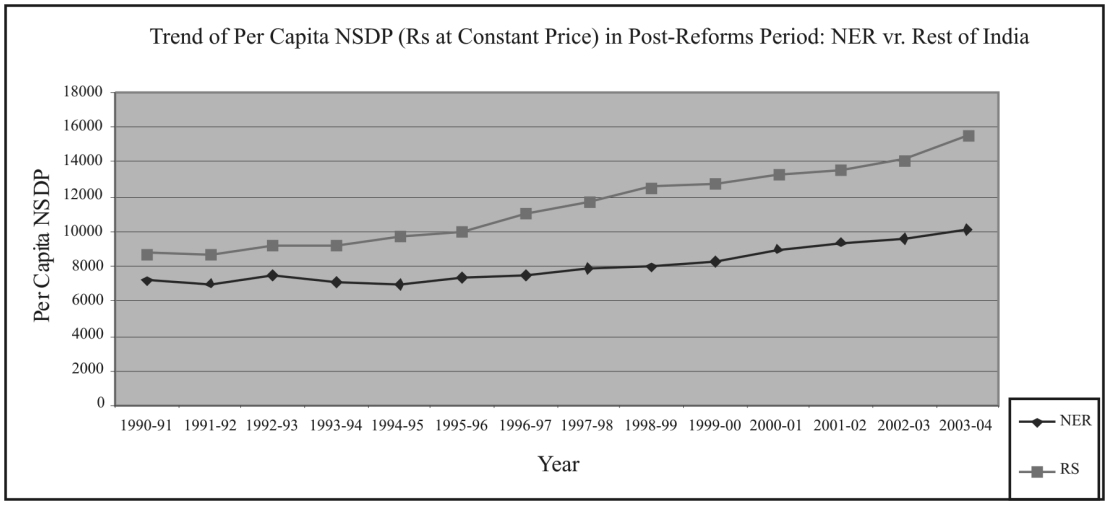


Figure 4



"India seems to be diverging into almost two different countries: prosperous socially stable, rapidly modernizing southern and western regions and poor and politically volatile northern and eastern regions" (Financial Times, 1999).

This chapter also attempts to find out the extent of disparity, especially in the socio-economic front, existing among all the seven States. Since the region is infamous for extremist activities, the implications of asymmetric development, especially on social cohesion and stabilization is also crucial. The focus of the present section is also to determine the comparative State of development of the seven sister-States of the North East India. While the cross section survey highlights the disparity among the States, the time-specific comparison will reveal whether such disparity is reducing or is diverging over time. Two specific periods are chosen for such comparison - one is the years surrounding the mid-1990s i.e., 1995 and the other is one around mid-2000, i.e. 2005. As many as fifteen parameters on different socio-economic aspects are selected to judge the relative progress of the States.

The number of parameters considered for analysis is fifteen. Out of that four parameters - number of primary health centers without doctors, number of primary health centers without any pathological laboratory, population per doctor and proportion of household having access to safe drinking water are used to construct the Health Index. The Education Index also has four components - pupil-teacher ratio, proportion of trained teachers, literacy rate and female literacy rate. The Social Cohesion Index has four components too - literacy rate, female literacy rate, sex ratio and proportion of household living in pucca houses. The index gives an idea of the extent of social inequality. The economic index has five components - per capita income, proportion of gross sown area in agriculture having irrigation facility, NEI's share in the total employments in the small scale industry in the country, volume of registered unemployed as proportion of population and extent of rural electrification. This index, besides highlighting the differences in per capita income, covers performance of the States both in agriculture and in non-farm employment generating sector. The extent of rural electrification has impact on the economic upliftment of the rural masses as it helps in rural industrialization. In all the cases an unweighted arithmetic mean of all the components gives the required indices. All the indices will reveal the Strength Weakness, Opportunities and Threat (SWOT) of each of the States. The study has used a number of statistical tools for the purpose of analysis. The coefficient of variation of the parameters for both the periods will find the relative

variation of the respective parameters across different States of the region. The Ginni C Coefficients for all the parameters suggest the relative concentration of these parameters across the States. A Composite Socio-Economic Index is formulated for both the years. The index is formulated with the

normalized data set following the method used by UNDP in the construction of Human Development Index (HDI). The ranks of the States show the socio-economic progress of each State in comparison to the other. Changes in their ranks between these two years reflect whether the States' performances improved or deteriorated in relative term over the decade. The section Inter-State Disparity in North-East India finds out, using all these measures, the extent of socio-economic disparity existing among the States. The section - Implications of Disparity on Social Stability discusses the effects of such disparity on the social stability. It tries to explain that the ongoing insurgency activities and communal conflicts are rooted partly in such asymmetric development. The entire analysis is based on data collected from secondary sources that includes the related Government published documents. Issues of 1990s and 2000s upto 2007 of Economic Survey, published by Ministry of Finance, Government of India; issues of 2002 & 2006 of Basic Statistics of North-East Region, published by North-Eastern Council, Government of India; issues of 1998-99, 2001-02, 2004-05 and 2006-07 of Statistical Abstracts of Arunachal Pradesh, published by Department of Economic and Statistics, Government of Arunachal Pradesh and issues of 1999-2000 and 2006-07 of Economic Review of Tripura, published by Department of Economic Affairs, Government of Tripura are the sources of the entire data set. Besides that official websites of the Department of Rural Development, Government of India; Ministry of Finance, Government of India and North-East Council, Government of India have also been visited for preparing the contents of this section.

8.3 Inter-State Disparity in North East India

To find the relative variation in the performances of the parameters, the Coefficient of Variation and Gini C Coefficients are calculated separately for each of the parameters both for 1995 and 2005. The results are given in Table 1. The crucial observation from Table 1 is that relative variation has been different for different parameters as far as the measurement of such dispersion are done through coefficient of variation.

The same observation almost holds when the parameters are measured in terms of Gini C Coefficient. In the health sector, variation among the States has increased in provisioning of basic necessities i.e. doctors in the primary health centers. Gap between

the States has also increased in population-doctor ratio. Dispersion has reduced, though marginally, in case of PHCs without any pathological laboratory. Similar improvement has also been noticed in provisioning of safe drinking water to the rural people. In education sector gap increased in provisioning of trained teachers in the schools. In the economic front, inequality increased in terms of availability of irrigation facility in agriculture, level of unemployment and per capita income. All these have aggravated the rich-poor gap among the States. In case of two parameters - teacher-pupil ratio and employment opportunity in the small scale and cottage industries, the convergence or divergence of inequality could not be ascertained. While in case of former, only the Gini C Coefficient, in case of later only the Coefficient of variation indicates increase. However, in both the cases, the other measure indicates the opposite one. Apart from that for the rest of the parameters, over the decade the extent of inequality has decreased. In order to find the overall socio-economic reality of the individual States, a Composite Socio-Economic Index has been constructed incorporating all the indicators. Though the relative importance of the indicators are different for the community as a whole, for the sake of simplicity in analysis, all the indicators are statistically weighted equally in the construction of index. Table 111 gives an account of the index both for 1995 and 2005.

The absolute value of the indices for the two series can not be compared because of the adopted methodology of construction of the indices. However, the ranks of the States in 1995 and 2005 and changes in ranks over the decade can be compared and interpreted in terms of relative improvement or deterioration of the respective States. Thus, though a State might have improved on the socio-economic front, if its rank deteriorates the inference can indicate inadequate development. From this consideration, Arunachal Pradesh, Manipur, Mizoram and Tripura have improved over the decade, while Meghalaya and Nagaland have shown deterioration. The condition of Assam remained the same.

The indicators can be further classified to develop sectorwise indices for health, education, social cohesion and Economic aspects. The poverty index is calculated from the estimates of the proportion of household below poverty line. Table 112 has the indices for 1995 and Table 113 has the same for 2005. The relative position of the States in terms of these parameters can be ascertained from the bar diagram presented in Figure 1.

The ranks of the States in terms of all the indicators suggest that in health sector majority of the States retained the same status. However, Manipur and Nagaland deteriorated, while Tripura has improved a lot within the span of one decade. However, the data

Table 111: Coefficient of Variation and Gini C Coefficient for the Parameters

Parameters	Coefficient of variation		Gini C coefficient	
	1995	2005	1995	2005
Primary health center without any doctor	1.02	1.13	0.50	0.60
Primary health center without any Pathological lab	1.32	1.13	0.56	0.55
Population per doctor	0.53	0.64	0.27	0.32
Percentage of rural household with access to safe drinking water	0.47	0.41	0.25	0.21
Teacher pupil ratio till high school	0.22	0.21	0.11	19.57
Percentage of trained teachers in schools	0.27	0.43	0.13	40.71
Percentage of country 's total employment in SSI	1.16	1.24	0.48	0.28
Percentage of Gross sown areas with irrigation facility	0.51	0.55	0.26	0.28
Registered unemployment as Percentage of total population	0.86	1.00	0.43	0.47
Percentage of rural village electrified	0.41	0.36	0.21	0.18
Literacy rate	0.22	0.16	0.11	0.08
Female Literacy rate	0.30	0.21	0.14	0.10
Per capita income	0.09	0.13	0.04	0.06
Sex ratio	0.04	0.03	0.02	0.02
Percentage of household living in pucca houses	0.55	0.40	0.27	0.19
Poverty	0.01	0.24	0.01	0.13

reveals that in Arunachal Pradesh, number of primary health centers without any laboratory and technical facility increased from 36 to 78. In the same period, the population-doctor ratio has also increased from 2352 to 3755.

In Meghalaya, the health centers without even a single doctor emerged in 2000s. Infect, it grew from 0 to 6. However, one significant improvement is that currently no reported health centers run without lab-tech facility. The population doctor ratio has also improved moderately from 5581 to 5411. In Nagaland, the number of primary health centers increased from 9 to 27, though proportion of doctors has increased relative to that of population. It points to the concentration of medical facilities within a narrow segment. At the same time, the number of health centers without any lab-tech facility has increased. The health facilities remained same in this period for Assam. However, Manipur and Mizoram have improved significantly in this period. In Manipur the health infrastructure has improved a lot. The existence of health centers without any doctor has come down to 0. Similarly, number of health centers without pathological lab has also decreased from 42 to 17. The population per doctor has also shown improvement. In Mizoram, the population-doctor ratio remained stagnant, though the lab-tech facility has improved in the State with drop in primary health centers without

Table 112: Composite Socio-Economic Index of the North Eastern Indian States for 1995 And 2005

State	Composite Socio-Economic Index	Rank	Composite Socio-Economic Index	Rank
Arunachal Pradesh	0.54217	5	0.510492	4
Assam	0.607162	7	0.652122	7
Manipur	0.467432	4	0.48369	3
Meghalaya	0.436182	1	0.429338	2
Mizoram	0.440617	2	0.382661	1
Nagaland	0.447605	3	0.544485	6
Tripura	0.558964	6	0.543514	5

Table 113: Sectorwise Indices for the North East Indian States For 1995

State	Health	Education	Social Cohesion Index	Economic	Poverty
Arunachal Pradesh	0.0686	0.8773	0.8056	0.5337	1.0000
Assam	0.6093	0.7640	0.5132	0.5988	0.6345
Manipur	0.3162	0.6309	0.54567	0.5381	0.0000
Meghalaya	0.2624	0.7600	0.4648	04732	0.1827
Mizoram	0.7711	0.0000	0.0934	0.6818	0.1827
Nagaland	0.3971	0.5305	0.5159	0.3892	0.4315
Tripura	0.4761	0.6425	0.5001	0.6165	0.5279

such facility from 52 to 2. The largest improvement in health sector was, however, noticed in Tripura. With increase in the proportion of doctor, the population doctor ratio in the State has decreased significantly from 4693 to 3720. The number of primary health centers without any doctor has also come down from 9 to 6. With more investment in the health sector, a large number of health centers have been set up, though the laboratory facility is yet to be installed in all these centers. This is indicated by an increase in such health centers in the State without any lab-tech facility.

In education sector also the same trend follows. The Education Index comprises of overall literacy rate and female literacy rate in the State. A comparison of the education index reveals a better picture with most of the States improving in this sector. Infact, all the States have improved both in terms of overall literacy as also in terms of female literacy. Mizoram remained the best performer in this front throughout the decade with its overall literacy increasing from 82% to 89% and female literacy increasing from 79% to 87%. The proportion of literate population in Assam increased from 53% to 63% and that of the female counterpart increased from 43% to 55%. In Manipur the increases were from 60% to 71% and from 48% to 61% respectively. The same for Meghalaya were from 49% to 63% and from 45 to 60%. In Nagaland, the increases were from 62% to 67% for

Fig. 1 Relative position of States with respect to the category-wise Indices for 1995 and 2005

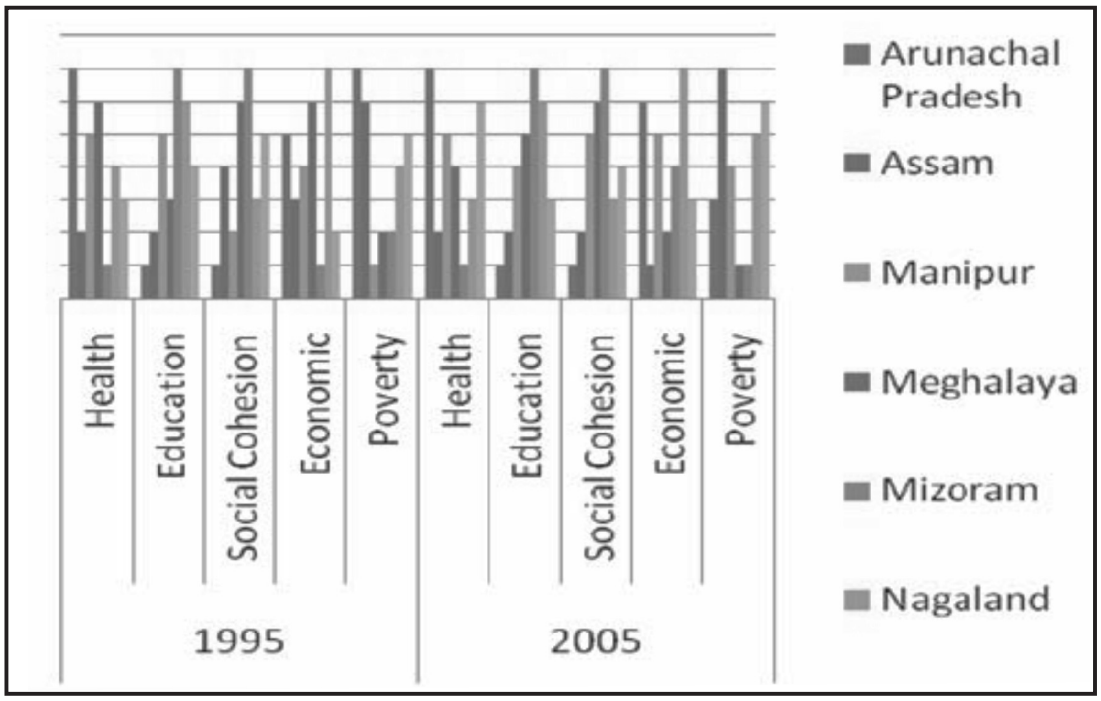


Table 114: Sector-Wise Indices for the North Eastern Indian States For 2005

State	Health	Education	Social Cohesion Index	Economic	Poverty
Arunachal Pradesh	0.1054	0.9380	0.8965	0.4501	0.1576
Assam	0.5847	0.6562	0.6779	0.6492	1.0000
Manipur	0.2937	0.6270	0.5297	0.5021	0.5457
Meghalaya	0.3564	0.6135	0.3524	0.5901	0.0000
Mizoram	0.6458	0.0001	0.2549	0.5039	0.0000
Nagaland	0.5731	0.4805	0.6741	0.4434	0.7492
Tripura	0.2889	06456	0.5688	0.5502	0.9007

overall literacy and from 55% to 62% for female literacy in the State. In Arunachal Pradesh, in 1991 census the overall and female literacy rate estimates were 42% and 30%. In 2001 census the estimates stood at 54% and 44% respectively. As far as teacher-student ratio is concerned, for all of the seven States there have been improvement indicating drop in the ratio. It also indicates availability of more teachers upto high school level. However, such an increase has been associated with decrease in proportion of trained teacher in five of the seven States, though the degree of such decrease has been different. These States are Arunachal Pradesh, Manipur, Meghalaya, Nagaland and Tripura. Only Assam and Mizoram have increased the proportion of trained teachers. Out of that the progress of Mizoram is much better as compared to Assam. Infact, the highest proportion of trained teachers are in Mizoram.

In terms of Social Cohesion all of the seven States have improved on account of standard of living, as in each of them the proportion of households living in pucca houses has increased. One of its components is sex ratio - an indicator of gender structure and progressiveness of the society. The 2001 Census report reveals that all the States have improved in sex ratio - thereby making the society more balanced - over what was there in 1991 Census report.

In employment scenario, represented by a proxy of registered unemployed as proportion of total population, majority of the States have shown improvement with decline in value of the indicator. This reduction has been maximum in Mizoram and minimum in Manipur. However, in Arunachal Pradesh and Tripura the relative unemployment has increased and the increase is more in Tripura. In economic front, however, the relative position of all the States have changed except Nagaland that remained the best performer. Arunachal Pradesh, Manipur, Mizoram and Tripura have improved, while Meghalaya and Assam's position dropped. Infact, in 2000s Assam became the worst performer in economic development. In the agriculture sector, most of the States have improved their coverage of irrigation in sown area. The exceptions are Assam, where the coverage dropped significantly from 13.54% to 5.51%, and Nagaland, where the fall is marginal from 26.83% to 26.01%. In case of rural electrification, all the States have enlarged their coverage of households enjoying the facility of electricity. In the industrial front also most of the States have been able to increase their shares in generating employment opportunities in the small scale sector relative to that at the national level. Between the end of 1999 and end of 2004,

only Arunachal Pradesh and Tripura have shown a downward trend in generating employment in the small scale industries compared to that at the national level. As far as per capita income is concerned in between the years 1994-95 and 2006-07, it grew for all the States. The largest increase of per capita income of over 96% was found in case of Tripura, followed by over about 85% in Arunachal Pradesh. The economy of Mizoram grew at 72%. The Manipur economy grew at 70%. The per capita income of Assam increased at a rate of over 64%. While the growth of per capita income of Nagaland was 53%, the same for Meghalaya was very less - over 25%. The changes in poverty index shows that proportion of households living below poverty line has decreased comparatively in Arunachal Pradesh, Meghalaya and Mizoram in 2005 as compared to 1995. Meghalaya and Mizoram remained the most successful States in poverty alleviation. However, over the decade the situation has become grimmer in Manipur, Assam, Nagaland and Tripura.

It can be easily noticed though many of the States have apparently shown improvement on various accounts, the socio-economic development of the North Eastern region as a whole has deteriorated, though by a very narrow margin, in the 2000s as compared to that in the 1990s. It is manifested when the averages of the composite indices for the two periods are compared. It indicates a moderate deterioration, by 2.65%, from mid-1990s to mid-2000s. More significant part is that all the States, instead of converging towards each other, has actually diverged on these development parameters over the time. The standard deviation, taken as a measure of dispersion indicates that while constructed composite index for the data set of the 1990s is 0.079879, while it is 0.484869 for the data set of 2000s - an increase by 44.26%. This is an alarming situation as it implies increasing inequality among the States.

8.4 Implications of Disparity on Social Stability

India's North-Eastern region has tremendous strategic importance. The longest international border - a total of more than 5000 km, has turned the region into a geo-politically sensitive one. The region, as a whole, has only about 2% of its boundaries attached to the 'Mainland India' and around 98% border with Bhutan (650 km), China (1000 km), Nepal, Myanmar (1450 km) and Bangladesh (1640 km). More than that, the North East India is emerging as a gateway for cross border trade. The importance of the region has further increased with the international proposal to set up a South Asia Development Triangle that connects India through its Eastern and North Eastern corridor with Nepal, Bhutan and Bangladesh. Through this Triangle, India's

connectivity will be further extended to Myanmar, Thailand, Laos and the South Western part of China. The existing Burma Road and the proposed Trans-Asian Highway and railway can facilitate such connectivity. India - especially its North East will, then, have access to a larger market. While on the one hand the potentials for economic development of the nation and also for improving the country's external relations with its neighbours are centered around the region, on the other hand because of such proximity to the long international border, many parts of which is still lacking effective manning and monitoring, and also because of the hilly terrain and dense forest covering over 80% of the land surface, the region is penetrated time and again by the insurgency activities and communal conflicts. Over the past decade, the insurgency activities have increased many folds in Assam, Nagaland Manipur. A number of studies have already pointed to the link between poverty and such extremist activities.

The present study wants to move a step further. The existence of disparity increases the gap between the privileged and unprivileged. This, in turn, generates grudges among one community against the other, which results in communal violence. Though the region is dominated by the tribal population, whose mongoloid origins are associated with similar food habits and lifestyles across all the tribes, the gap erects psychological wall between these two groups. As a result, in recent years the incidence of inter-tribe conflict has increased. For instance, communal clashes between Nyishi and Adi tribes in Arunachal Pradesh and even between two sub-tribes Idu Mishmi and Digaru Mishmi in the same State, besides the commonly held clashes between tribal and nontribal population are the manifestations of the growing intercommunity differences. Given the strategic location of the region, such communal differences create a much larger problem in the broader issue of social imbalance.

One effect of such social imbalance is internal displacement of population. Infact, besides rural to urban migration within the State, across the State movement of population is also noticed in a large scale. It also has negative repercussions. In the era of globalization, when different communities and cultures coexist, as an offshoot of such practice, competitive attitude of people leads to forceful display of the superiority of one culture over the other. This, infact, disturbs their peaceful coexistence. As a result, conflict over the area of domination surfaces. Today, the demand for a separate Bodoland by the Bodo people, for Greater Nagaland by the Nagas or the demand of the Kamtapuris to have a separate State or the demands of ULFA in Assam and Meiti communities of Manipur are the outcome of such ill-effects. Besides the effects of globalization, the persistent regional

imbalance also creates panic among the communities to get control over the limited economic resources. It again leads to communal violence. The case of Karbi-Anlong in Assam, where clashes between Dimasa and Karbi left almost 50,000 people displaced (Internal Displacement Monitoring Center, 2006). The root cause of the clash had been the demand of the United Peoples' Democratic Solidarity, a Karbi militant organization for removal of a designated camp of Dima Halam Dogo, a Dimasa militant outfit based in Karbi-Anlong. The demand for inclusion of common land into their respective proposed homelands led the clashes to escalate further. Urge to get control over the prosperous capital town and its nearby locations in Arunachal Pradesh results, recently, in frequent clashes between Nyishi and Apatani tribes, who had been living peacefully in the neighbouring localities since a very long time.

The course of uneven development and the instance of associated ethnic unrests were again noticed when it was proposed to construct Tipaimukh dam in Hmar region, reactions from within Hmar community were not uniform. While one section welcomed the decision, the other section was skeptical regarding the rehabilitation and loss of agricultural land. The non-Hmar community, however, reacted more vigorously. The people of Zeliangrong Naga villages, which were expected to be the worst affected, opposed the dam construction. They felt it was the development of one community at the cost of others. Similar is the case of Thengal Kachari tribe of Assam. Unfortunately, inspite of their tribal identity, they were never enumerated separately as scheduled tribe community. Not getting proper recognition, soon they started to demand for an autonomous council and get their demand approved.

The long standing border disputes between Assam and Mizoram has also originated out of economic necessity. The problem started during the colonial period, when the land consisting of both sides of the border of the present two States was acquired by the colonial rulers for plantations. The present State of inequality in opportunities for livelihoods also works as a destabilizing force in the society. Given that still over 60% of the population in this region depends on agriculture for their livelihoods, the uneven distribution of irrigation facilities across the States and also within the States leads to differences in the land productivities. The competition to get control over the fertile lands is again a source of intratribe conflict often found in the States like Arunachal Pradesh, Manipur Mizoram and Nagaland. Taking a look at the data on irrigated land reveals that a low proportion of gross sown area, in the entire region has irrigation facility. Out of that in 2005, Manipur has the highest proportion of 38%, followed by 27% in

Nagaland and 22% in Meghalaya. The other States have much lower irrigation facility available. Disparity to this extent can lead the underdevelopment to a vicious circle where unequal distribution of development generates communal conflicts, which in turn, hampers any further development activity.

8.5 Concluding Remarks

As we can see that all these evidences and empirical findings so far are left us with no other choice, but to say that regional disparity and polarisation definitely has widened over the years. The gap between the rich and poor States, between stronger and weaker regions, between core and periphery States has gone high in post-reforms India. The economically stronger States (no matter whether small or big in size) with strong physical infrastructure is possibly attracting more and more FDI and domestic investment and the weaker States are failing to catch up and converge in growth paths of stronger States. North East India thus is one such region, which has become a poor victim of regional economic disparity. This disparity between the peripheral North Eastern States and the core States of India has unfortunately widened over the years. The advanced industrial States have tended to leapfrog in the reforms years, while these corner States have lagged behind. The weaker States of North East India with their perpetual physical infrastructure bottlenecks, bad governance and their socio-political instabilities perennially fail to attract investment and eventually have become economically unsustainable. This scenario traps them irrevocably in the vicious grip of low-income - low investment - low growth. Continuous central assistance in revenue and capital expenditure has not solved the problems of lack of physical infrastructure and low credit absorption in the economy. Interestingly the post-reforms period also did not bring any appreciable relief; rather the region is showing a tendency to disperse more from Indian economic growth map. So, the concluding remarks can be appropriately quoted as follows: "India cannot 'shine', unless we reduce these disparities through better public policies" (Deb, 2004)

The basic focus of any development activity, especially in a lowly developed region, is to combat poverty and thus maintain the social stability. That the development initiatives so far undertaken in North-Eastern part of India is grossly inadequate can be manifested by the existing poverty ratio. However, it is the deterioration in the poverty scenario, as compared to that at the national level becomes more crucial issue than the mere existence of poverty in the region. Data show that, while in informal

cross-border trade, mostly through head-loads and also with the help of other mode of transportation, the need of the hour is to formalize these informal activities. There is potential for a large volume of such trade through Manipur, Mizoram, Tripura and Meghalaya border. If production of those items - especially the agricultural, agro-based industrial and processed food products, which are mostly traded, can be facilitated in the border States through creation of necessary overheads and proper training of local manpower, the level of income in the region will not only increase but, also sustain at a higher level. All these initiatives require proper planning and its implementation. For effective result of any development initiative, the approach should be a need-based one. The measure of disparity exhibited in the present paper points to the differences in the status of the States in the ladder of development. The Strength, Weakness, Opportunity and Threat Analysis (SWOT) analysis, though based on a limited number of parameters, indicates the relative weaknesses of the States which vary from one State to another. So, any initiative should incorporate such diversity of the problems and frame problem-specific and location-specific policy measures to take the States out of underdevelopment and thus break the vicious circle of poverty in the entire region.

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9

GROWTH AND EMPLOYMENT IN INDIA: THE REGIONAL DIMENSION

9.1 Introduction

The regional disparities (inter-State) in economic wellbeing are an unmistakable feature of economic growth and change in India. In the years prior to independence "a pattern of 'agglomerated' growth emerged, with islands of concentrated growth but having very weak dispersal effects. As late as 1948, the presidency States (Bombay, Madras and Calcutta) accounted for 76.7 per cent of the total industrial workers and 77 per cent of industrial production the share of mineral rich States of Bihar, Orissa and Madhya Pradesh were 9.6 per cent (industrial production). The southern region around Madras and Bombay, and especially what became later the State of Gujarat, was better placed and had a better start in terms of agriculture and industry' (Krishna Bhardwaj, 1982, page 609). Later studies of regional disparities during the period of economic planning in India observed that the impulses of growth are more widely dispersed than before but confirmed the persistence of wide disparities in development levels (See Srivastava, 1994 among others). Whether these development disparities have tended to accentuate or diminish in recent years of reforms, trade liberalization and grater integration with the global economy is an important question with social and political economy implications.

The issue of regional disparities in employment in recent years of openness is important simply because labor markets are the key avenue through which international trade and investment openness affects domestic economy. Any social conflict generated due to lack of labor market adjustments will have adverse consequences for the Indian economic growth and poverty reduction initiatives. Obviously, the problem of regional income inequalities has attracted attention of both academic (see Dreze and Sen 1996, Sachs et al 2001) and key policy advisors (Ahluwalia 2001, Bagchi and Kurian 2005) among others. Most of these have focused on the trends in per capita incomes and report a tendency for divergence. Others have examined the trends in monthly per capita consumption expenditure (mpce) in rural and urban areas in different States. Increasing disparities in

urban to rural monthly per capita consumption expenditure is reported.

What mechanisms generated this outcome is a much more difficult and deep question. A proximate key factor would be the inter-State differences in employment opportunities. Studies of regional differences in labor market outcomes (employment and wages) are few. Among them studies by Bhattacharya and Sakthivel (2004) and Ahsan and Pages (2006) constitute the recent key studies with their detailed analysis of inter-State differences in employment outcomes. The time period covered in these two studies span from 1983 to 1999-2000 corresponding to the then availability of NSS employment and unemployment data. Other studies have focused on the impact of labor regulations and trade liberalization on manufacturing employment and labor demand (See, Besley and Burgess (2004) and Hasan, Mitra and Ramaswamy (2007).

These two econometric studies mainly utilize State-level data on manufacturing industries available in Annual Survey of Industries (ASI). Ramaswamy's analysis of employment growth is primarily based on the quinquennial NSS employment and unemployment surveys (EUS) spanning the period 1983 to 2004-05. It covers the longer period and makes possible analysis of cross-State employment growth and structure in the reform years beginning 1991. The NSS surveys based on thick samples are considered most reliable data base for employment analysis (See Srinivasan 2006 for details).

The employment estimates are based on the estimates of all-India population for the four survey years (January-December) 1983; and (July-June) 1993-94, 1999-2000 and 2004-05. This is supplemented by other sources for the organized sector like the Annual Survey of Industries and the data form the employment information system of the Directorate General of Employment and Training (DGE&T).

In this chapter, we shall present the findings of Ramaswamy (2007) who investigated the growth and structure of employment in 14 major States of India during 1983 and 2004-05. This will help maintain comparability with two important recent studies of regional income disparities, namely, Ahluwalia (2001) and Sachs et al (2002). These 14 States have large populations and together have a share more than 93 per cent of India's population (see Table 115).

Following the introduction, this chapter is organized in five sections. Section 2 presents a brief review of the studies of income and employment disparities in India. It contains a sub-section on growth and employment trends in India for the period 1993 to 2003-04.

This sets the background for the State-level analysis. Section 3 pursues the State-level analysis of GSDP growth and employment. This section presents the aggregate growth scenario at the level of 14 selected States. An analysis of concentration and diversification of regional employment structure is presented in Section 4. Section 5 examines inter-State differences in labor productivity and educational attainment of population. Section 6, presents a summary of the main findings and suggests some policy implications.

Table 115: Population Distribution in Major States-1983-2004

	2004-05 State's Share	1999-2000 State's Share	1993-1994 State's Share	1983-1984 State's Share
Andhra Pradesh	7.9	8.0	8.3	8.4
Bihar	11.6	11.4	11.1	10.9
Gujarat	5.3	5.3	5.3	5.3
Haryana	2.2	2.2	2.1	2.0
Karnataka	5.5	5.5	5.7	5.8
Kerala	3.2	3.4	3.6	3.9
Madhya Pradesh	8.6	8.5	8.4	8.2
Maharashtra	10.1	10.1	10.0	9.9
Orissa	3.8	3.9	4.0	4.1
Punjab	2.5	2.5	2.6	2.6
Rajasthan	6.0	5.9	5.7	5.4
Tamil Nadu	6.4	6.6	6.9	7.5
Uttar Pradesh	18.6	18.2	17.8	17.4
West Bengal	8.3	8.4	8.6	8.6
Total of 14 States	100.0	100.0	100.0	100.0
Population Total (million)	**1014.8**	**932.7**	**831.9**	**671.1**
Share in India's Total Population (per cent)	**93.0**	**93.0**	**93.0**	**93.0**

Source: Population Estimates corresponding to the NSS Employment and Unemployment Survey years based on Population Census and Population Projections by the expert group, Office of Registrar General and Census Commissioner (2006)

9.2 Studies of Income and Employment Inequalities in India: A Brief Review

The concern for regional inequalities in income and employment was there quite early in Indian planning and specially constituted committees have examined the role of regulations and incentives in promoting regional dispersal of industries (Sandesara, 1992, Srivastava 1994). This is supposed to bring about regional balance in income and employment as industry is thought to be the sector leading the structural transformation. The Pande Working group suggested the criterion of the number of workers per lakh of the population for identifying the developed State. This was estimated to be 934 for all-India in 1966. States with equal to higher than the India average were considered to be developed States. Only four States attained the status of developed State by this criterion, namely, Gujarat, Kerala, Tamil Nadu and Maharashtra. (Sandesara, 1992). Later, many studies have examined and highlighted inter-State disparities in aggregate and sectoral income in India. They cover the decade of the 1950s to 1990s; many of them on selected major States and few of them on particular States. All of them are based on State Domestic Product (SDP) and per capita SDP. A careful review of the studies is available in Shetty (2003) and Krishna (2004), among others. Interestingly, Williamson (1965), in his early paper on cross-country differences in regional disparities that tried to establish some patterns in regional income inequalities in the process of economic development referred to India. Williamson, suggested that India is in early stages of development (low levels of income) and therefore, likely to experience rising inequalities following the 'inverted U' pattern of regional inequalities (a'la Kuznets). Many later papers have confirmed the trend of rising regional income inequalities in India. In a useful paper, Das and Barua (1996) investigated the pattern of regional income inequalities in India during 1970-1992. They have estimated the Theil entropy measure of inequality for the total economy as well as sectorwise Net State Domestic Product (NSDP) for 23 States. They reported a rising inter-State income inequality in most of the sectors. **An interesting finding was that inequalities were raising more in the unregistered segment of manufacturing compared to the registered segment of manufacturing.** They suggested that the public sector enterprises and planned investment that are part of registered manufacturing sector could have been guided by regional considerations in investment allocation. This is unlike the unregistered sector that consists of small-scale enterprises that would be market oriented in their investment decisions. The recent concern has been the impact of economic reform and trade liberalization (policy shock) on regional disparities. Studies attempt to investigate the changes in a longer time perspective to discern the impact of switchover to market-

oriented policies on regional growth and welfare. The question is whether or not measured inequalities tend to diminish (convergence hypothesis) or accentuate (divergence hypothesis) over time. This set of studies follow the cross-country economic growth literature (Barro and Sala-i-Martin, 1995). Here the focus is on the per capita SDP growth rates over time. Two important but different measures of convergence have been suggested and widely used in the literature (Sala-i-Martin, 1996). First is the sigma-convergence (reduction in the dispersion of regional incomes over time), where the standard deviation of (logarithm) per capita income is estimated for a cross-section of States. If they are found to decline over time, then unconditional convergence is inferred. In the beta-convergence, the growth rate of per capita SDP is regressed on the initial income level and the estimated coefficient is expected to be negative. This suggests that poorer States are growing relatively faster and catching up. Sachs et al (2001) have carried out both sigma and the beta test of convergence for the 14 major States using per capita Gross State Domestic Product (GSDP) data for the period 1980 to 1998. They found that 14 major Indian States for the period are diverging over time. Major States in India exhibited a lack of both sigma and beta convergence. Their analysis leads them to suggest that the forces of convergence are weak in India. Ahluwalia (2001) in his comparative evaluation of economic performance of States observed that the estimated Gini-coefficient (a key measure of income inequality) has increased from about 0.16 in 1986-87 to 0.23 in 1997-98. Ramaswamy estimated the Gini coefficients for two years, 1993-94 and 2004-05, using per capita GSDP data. It is found to have risen from 0.28 in 1993-94 to 0.36 in 2004-05.

An important problem in this context is the comparability of SDP series with two different base years namely, 1980-81 and 1993-94. The two series of SDP differ in addition to the base year prices in terms of production coverage in a number of sectors, particularly, in agriculture, real eState, business services (software) and finance. It has shifted the workforce and occupational data base from the Census to the National Sample Survey. Therefore, the growth rates estimated based on two different series suffer from serious problem of comparability[4]. In order to overcome, this limitation, Bhattacharya and Sakthivel (2004a) have extended the 1993-94 series backwards using separate price correction factors for each State and 13 sub-sectors in the national accounts[5]. Their estimates of growth rates of SDP and per capita SDP, based on a common SDP series, for the selected 14 States of India are reproduced in Table 1.26. I have ranked these 14 States using their NSDP per capita in 1993-94. The following three points deserve attention for a comparison

of pre-reform and post-reform performance. First, except Andhra Pradesh and Kerala, all others have achieved an SDP growth rate of 5 per cent or more (relative to the all India SDP growth rate of 5.6). Eight of the fourteen States have above the average growth rate (mean of the 14 States is 5.7). Rajasthan, Tamil Nadu and Haryana have a significantly higher growth rate relative to others (though Karnataka is quite close). Regional growth appear to be comparatively balanced in the 1980s. In the 1990s, in contrast, except Andhra Pradesh and Punjab, all other higher income States have achieved above average growth rate (of 14 States). Five States have distinctly high growth rates, namely, Maharashtra, Gujarat, Karnataka, Tamil Nadu and West Bengal. All of them relatively more industrialized States. Punjab and Andhra Pradesh are found to be poor performers. In the bottom group of five States, only Rajasthan has a respectable above average growth rate. Regional growth rates have become clearly unbalanced in the 1990s. This is further supported by the estimates of Coefficient of Variation (CV) showing an increase in the 1990s. The growth rates of per capita SDP shown in columns 3 and 4 of Table 116 tells a similar story of increasing inter-State inequalities in the 1990s. Figure 1 illustrates the inter-State differences in per capita SDP growth rates in the 1990s relative to 1980s.

It is useful to note that Bhattacharya and Sakthivel (2004b) documented inter-State differences in employment elasticity of output (ratio of employment growth rate to GSDP growth rate) for four time points corresponding to the four quinquennial NSS rounds, namely, 1983-84 (38th round), 1993-94 (50th round) and 1999-00 (55th round). They presented employment growth and elasticity estimates for the aggregate as well as for three sectors within each State, namely, primary, secondary and tertiary. They experimented with three concepts of employment defined by the NSS surveys, namely, Usual Principal and Subsidiary Status (UPSS), Current Daily Status and the Current Weekly Status. The latter capture the seasonal character of employment better. They reported inter-State differences in the estimates of employment elasticity across the three measures. However, the results confirmed the falling employment elasticity in the reform years of the 1990s across sectors. The problem of within sector changes either in terms of organized v/s unorganized duality or sectoral concentration was not investigated. Ahsan and Pages (2006) is another useful econometric study examined the regional differences in employment rates, participation rates and wage rates. This study used the four quinquennial (thick) rounds of NSS surveys (1983, 1987, 1993-94 and 1999-00) across States and NSS sample defined regions. They reported a clustering low employment rates in the

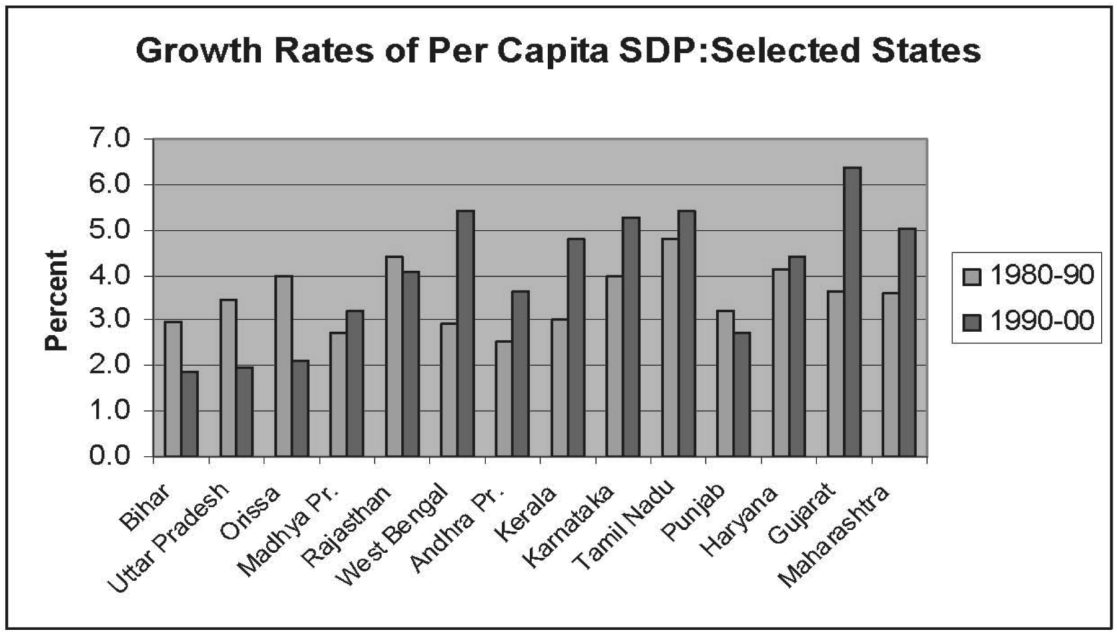
Table 116: Comparative Growth Rates of Selected States in India: 1980-2000

Rank*	State	SDP at Constant 93-94 prices		Capita SDP at Per Constant 93-94 prices	
		1980-90	1990-00	1980-90	1990-00
14	Bihar	5.2	3.5	3.0	1.9
13	Orissa	5.8	3.6	4.0	2.1
12	Uttar Pradesh	5.9	4.3	3.5	2.0
11	Rajasthan	7.2	6.5	4.4	4.1
10	Madhya Pradesh	5.2	5.4	2.7	3.2
9	West Bengal	5.2	7.2	2.9	5.4
8	Andhra Pradesh	4.8	5.1	2.6	3.6
7	Karnataka	6.1	7.1	4.0	5.3
6	Kerala	4.5	6.0	3.0	4.8
5	Tamil Nadu	6.3	6.6	4.8	5.4
4	Gujarat	5.7	8.3	3.6	6.4
3	Haryana	6.7	6.7	4.1	4.4
2	Maharashtra	6.0	6.8	3.6	5.0
1	Punjab	5.1	4.6	3.2	2.7
	Mean for above 14	5.7	5.8	3.5	4.0
	CV	13.1	24.8	18.8	36.3
	All India	**5.6**	**6.0**	**3.4**	**4.1**

Source: Bhattacharya and Sakthivel (2004).Figures rounded off (not in the original) Rank* Ranked according to per capita NSDP in 1993-94 (not in the original)

North Eastern States and in Uttar Pradesh and Bihar. More importantly, their econometric results showed that growth of GSDP and employment are correlated but the effect is found to be statistically significant only for urban areas. This implies that the employment effects of GSDP growth is confined mainly to urban areas. After accounting for wages and other factor, the effect of a percentage change on GSDP on male employment was

Figure 1: Growth Rates of Per Capita SDP: Selected States



found to be 0.2 per cent in rural areas and 0.8 per cent in urban areas. Therefore, urbanized and relatively richer States provide more employment because output growth and employment are positively related in such States. However, after accounting for inter-State heterogeneity by including State dummies, the significant relationship between output and employment disappeared. They concluded that increases in State income are not necessarily related to an increase in employment in that State. This is consistent with the observed jobless growth in the 1990s. Ahsan and Page note that slowing down of urbanization in India in the 1990s is also responsible for lower employment growth. Lall and Chakrovarty (2005), argue that geographical variation in industrialization is a primary cause of geographical variation in average incomes in developing countries. Based on their study, they further argue that liberalization and structural reforms have led to higher levels of inequality in industrialization in India. They have carried out an econometric study using unit level data from the Annual Survey of Industries (ASI) and project information on new investments provided by the Centre for Indian Economy (CMIE) in selected industries. They identify spatial factors that have cost implications for firms and factors that influence location decision of new industrial units. Then they relate these factors to the cost structure of firms and go on to show that local industrial diversity is

the key factor with cost-reducing effects. Therefore, new location decisions are biased in favour of existing industrial and coastal districts, enhancing regional inequality in industrialization. Diversity of economic activity is a significant variable for the analysis of employment disparities in this chapter.

9.3 Employment Growth in India: 1983 to 2004-05

India's growth experience is well documented in many studies (See Panagariya (2004), for a recent assessment). For purposes of this chapter, it is suffice to note that India's GDP grew at the Hindu rate of growth of 3.5 during the period 1951-1980. Growth accelerated to 5.8 per cent per annum in the 1980s and 1990s. More striking is the sectoral growth rates and changes in the sectoral shares. Growth of agriculture and industry decelerated (average of 3.1 and 5.8 per cent in the 1990s) but, services sector growth accelerated to achieve an average growth rate of 7.5 per cent in the 1990s. The share of services sector rose from 38 per cent of GDP in 1980 to 49 per cent in the year 2000. The share of agriculture declined and that of industry stagnated at 27 per cent (Gordon and Gupta,

Table 117: Employment by Sector in India: 1983 to 2004-05 (Millions)

Sector	1983	1993-94	1999-00	2004-05
Agriculture	207.1	239.5	240.3	258.8
Mining & Quarrying	1.8	2.7	2.3	2.5
Manufacturing	32.3	39.8	43.8	55.9
Electricity, water, etc.	0.8	1.4	1.0	1.2
Construction	6.8	12.1	17.5	26.0
Trade (Retail+Wholesale), Hotel and Restaurant	19.1	28.4	40.9	49.6
Transport, Storage and Communications	7.5	10.7	14.6	18.6
Other Services like Financial, Business, Public Administration, Education etc	26.7	39.8	38.1	45.4
All Sectors	**302.3**	**374.3**	**398.4**	**458.0**

Source: NSS Employment and Unemployment Surveys adjusted for population censuses. Employment is measured by number of workers by UPSS Status.

Table 118: Employment Growth Rates by Sector in India: 1983 to 2004-05*

Sector	1993-94 over 1983	1999-00 over 1993-94	2004-05 over 1999-00	2004-05 over 1993-94
Agriculture	1.4	0.1	1.5	0.7
Mining & Quarrying	3.7	-2.8	2.4	-0.4
Manufacturing	2.0	1.6	5.0	3.1
Electricity, water, etc.	4.8	-4.8	3.1	-1.2
Construction	5.7	6.4	8.2	7.2
Trade (Retail+Wholesale), Hotel and Restaurant	3.8	6.3	3.9	5.2
Transport, Storage and Communications	3.4	5.3	4.9	5.1
Other Services like Financial, Business, Public Administration, Education etc	3.9	-0.7	3.6	1.2
All Sectors	**2.1**	**1.0**	**2.8**	**1.9**

*Annual Compound Growth Rates

Source: NSS Employment and Unemployment Surveys adjusted for population censuses. Employment is measured by number of workers by UPSS Status.

2004). In the more recent period, that is 2000-2004, available estimates indicate continuation of similar trends (Bosworth, Collins and Virmani, 2007) However, this structural break of aggregate GDP growth did not bring about any rapid growth in employment, the focus of this paper. The employment growth profile is presented in Table 117 (Absolute numbers) and in Table 1118 (Growth rates). The first fact to be noted is the constancy in the growth rate of aggregate employment in the 1980s (2 per cent during 1983 to 1993-94) and in the period spanning 1993/94 to 2004/05 (1.9 per cent). Second, the declining growth rate of employment in agriculture from 1.4 per cent in the decade of the 1980s to 0.7 per cent in the period 1993/94 to 2004/05. Third, the acceleration in employment growth rate in the construction sector. Third, the recovery of employment growth rate in the manufacturing sector in the recent period that is, 1999/00 to 2004/05. Fourth, relatively higher rates of employment creation in the three service sectors namely, trade and hotels, transport and communication and other services that

include banking and business services. This aggregate picture serves as the background for my State-level analysis.

A word about employment concept used in the NSS surveys would be useful before we move on to the State-level analysis of income and employment. The employment data in India is based the quinquennial surveys carried out by the National Sample Survey Organization of the Ministry of Statistics and Program Implementation. The estimate of employed (worker) according to the usual principal status and subsidiary status includes the person who (a) either worked for a relatively longer part of the 365 days preceding the date of survey and (b) also those persons from among the remaining population who had worked at least 30 days during the reference period of 365 days preceding the date of survey. A detailed discussion of employment measures is available in Srinivasan (2007).

9.4 Growth in Inter-State GSDP and Employment-1993-94 to 2004-05

In this section, we present the growth in GSDP, per capita GSDP and employment for the period 1993-94 to 2004-05. This period is further subdivided into two sub-periods, namely, 1993-94 to 1999-00; 1999-00 to 2004-05. This corresponds to the NSS employment and unemployment survey (EUS) years and enables me to systematically relate output and employment growth across States. The average annual compound growth rates of GSDP based on two end points will be presented7. This is done to maintain consistency with employment growth rates based on the NSS quinquennial EUS data in later sections.

Ramaswamy divided the fourteen States into three groups by ranking each State based on their per capita GSDP for the year 1993-94. The bottom five are States with relatively low income, the middle four are medium income States and the top five are the relatively rich States.

What have been the growth trends in GSDP and per capita GSDP during 1993-94 to 2004-05? The estimates are shown in Table 102. First, the middle four and the top five ranking States (in terms of per capita GSDP) have grown at a faster rate than the bottom four States in the entire period as well as the two sub-periods. Among the bottom five, Rajasthan has performed above average. Andhra Pradesh and Punjab are the under performing States in the medium (middle four) and high income groups (top five). The GSDP growth rate of West Bengal is similar to Gujarat, the fastest growing State in this period. The inter State disparities in per capita income has widened as suggested by the

Table 119: Growth of GSDP and Per capita GSDP in selected States:1993-94 to 2004-05*

Rank**	State	GSDP at Constant Prices*			Percapita GSDP*		
		1993-94 to 1999-2000	1999-2000 to 2004-05	1993-94 to 2004-05	1993-94 to 1999-2000	1999-2000 to 2004-05	1993-94 to 2004-05
14	Bihar	4.4	4.7	4.6	1.7	2.4	2.0
13	Orissa	4.3	5.9	5.0	3.0	4.3	3.6
12	Uttar Pradesh	4.6	4.2	4.4	2.3	1.0	1.7
11	Rajasthan	8.2	4.8	6.6	5.5	2.5	4.1
10	Madhya Pradesh	5.4	2.9	4.3	3.4	0.9	2.2
	Mean of Bottom Five	5.4	4.5	5.0	3.2	2.2	2.7
9	West Bengal	7.1	7.0	7.1	5.4	5.6	5.5
8	Andhra Pradesh	5.5	6.5	5.9	4.1	5.4	4.7
7	Karnataka	7.6	6.1	6.9	6.0	4.7	5.4
6	Kerala	5.6	6.8	6.2	4.5	6.2	5.3
	Mean of Middle Four	6.2	6.2	6.2	5.0	5.5	5.2
5	Tamil Nadu	6.6	4.1	5.5	5.5	3.1	4.4
4	Gujarat	7.8	6.7	7.3	6.1	4.3	5.3
3	Haryana	5.9	6.9	6.3	3.8	4.1	3.9
2	Maharashtra	6.2	5.0	5.7	4.1	3.4	3.8
1	Punjab	4.8	3.9	4.4	1.9	-6.7	-2.1
	Mean of Top Five	6.3	5.3	5.8	4.3	1.6	3.1
	All 14 States	6.1	5.3	5.7	4.1	2.5	3.4
	Coefficient of Variation	23.1	24.5	18.7	36.6	128.2	61.3

Note: *Average Annual Compound Growth Rates. The estimate of group mean is unweighted. **Rank based on per capita GSDP 1993-94

Source: Estimates based on NAS available at www.mospi.nic.in and CMIE-NAS, October 2006

rising CV in the second sub-period (128 from 36.6).

The employment outcome of this differential output growth needs to be analyzed. In Table 119, the estimates of growth rates in employment for the same set of States and for the same period are shown. In Figure 2, the growth rates of employment in the two sub-periods are shown.

The second sub-period (1999-00 to 2004-05) is a period of recovery of employment growth in India. Job creation has reappeared in the Indian economy after a period of job less growth in the 1990s. This is correctly reflected in the Statewise employment growth trends in Table 120. In the 14 major States employment grew by 2.8 per cent annum. This is similar to the all India growth rate that we referred to earlier. This recovery in employment growth is across the 14 States with only Kerala as the exception (growth of 1.3 per cent in the first against 1.2 per cent in the second).

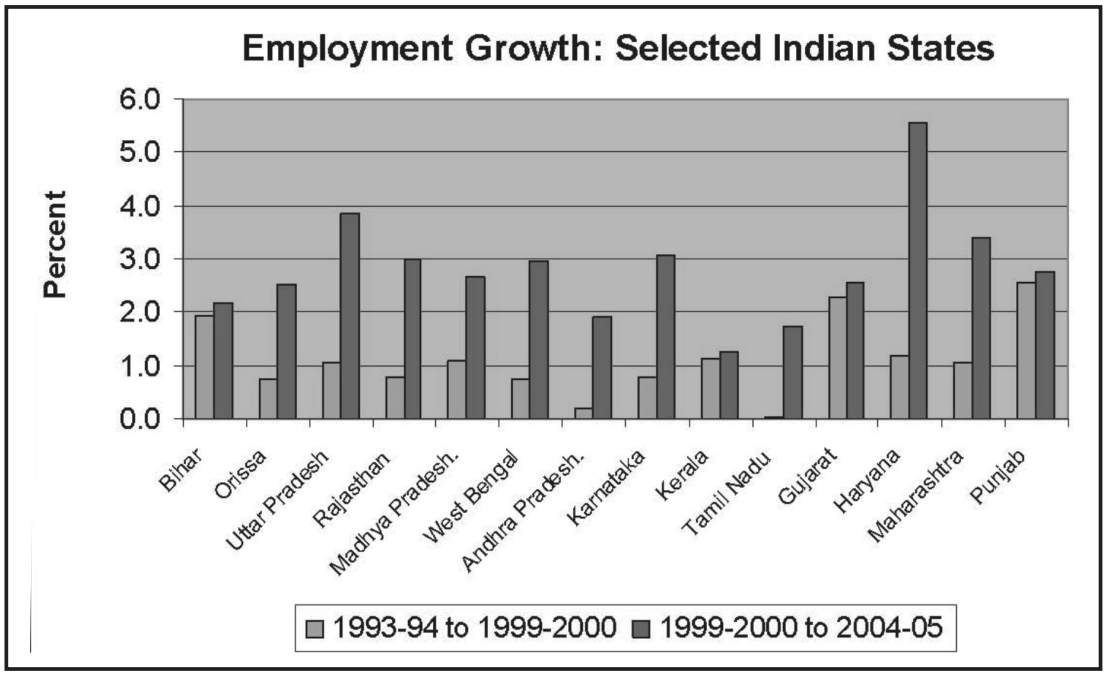
Table 120: Growth of GSDP and Employment in selected States:1993-94 to 2004-05*

Rank*	State	Employment Share in 1993-94	GSDP Growth rates 1993-94 to 2004-05	Employment Growth		
				1993-94 to 1999-2000	1999-00 to 2004-05	1993-94 to 2004-05
14	Bihar	9.0	4.6	2.0	2.2	2.1
13	Orissa	4.1	5.0	0.8	2.5	1.6
12	Uttar Pradesh	15.5	4.4	1.1	3.8	2.3
11	Rajasthan	6.3	6.6	0.8	3.0	1.8
10	Madhya Pradesh	9.1	4.3	1.1	2.7	1.8
	Employment Share of Bottom Five	**43.8**		**1.1**	**2.8**	**1.9**
9	West Bengal	7.6	7.1	0.8	3.0	1.8
8	Andhra Pradesh.	10.3	5.9	0.2	1.9	1.0
7	Karnataka	6.3	6.9	0.8	3.1	1.8
6	Kerala	3.3	6.2	1.1	1.3	1.2
	Employment Share of Middle Four	**27.6**		**0.8**	**2.4**	**1.5**
5	Tamil Nadu	8.1	5.5	0.0	1.7	0.8
4	Gujarat	5.5	7.3	2.3	2.6	2.4
3	Haryana	1.9	6.3	1.2	5.6	3.1
2	Maharashtra	10.9	5.7	1.0	3.4	2.1
1	Punjab	2.3	4.4	2.6	2.8	2.7
	Employment Share of Top Five	**28.6**		**1.4**	**3.2**	**2.2**
	All 14 States	**100.0**	**5.7**	**1.0**	**2.8**	**1.8**

Note: Average Annual Compound Growth Rates. NSS Employment and Unemployment Surveys (See Text).
*Rank based on Per capita GSDP in 1993-94

The bottom five States with a share of more than 44 per cent of the workforce have experienced above average employment growth in the second period. We may note the impressive employment performance of two of the bottom five States, namely, Uttar Pradesh and Rajasthan. Among others, four States have recorded impressive growth rates in the second period, namely, West Bengal, Karnataka, Haryana and Maharashtra. The relevant question is what has been the nature of this employment growth across States in terms of rural urban divide and formal and informal composition? Which sectors have grown and which have fallen behind? This will determine the quality of employment growth in a broader structural perspective.

Figure 2: Employment Growth: Selected Indian States



A comparison of urban and rural employment growth rates between pre-liberalization years and post-liberalization years is presented in Table 121. The urban bias in relative growth rates of employment is evident. Across the 14 States employment has grown faster in urban areas in both the sub-periods of post liberalization period (1993-94 to 1999-00 and 1999-00 to 2004-05). Kerala is the only exception with low growth rates in both urban and rural areas. In top five States the average urban employment growth is

Table 121: Employment Growth by State: Urban v/s Rural

State	Urban			Rural		
	1993-94 over 1983-84	1999-00 over 1993-94	2004-05 over 1999-00	1993-94 over 1983-84	1999-00 over 1993-94	2004-05 over 1999-00
Bihar	0.1	2.4	3.9	1.3	1.9	2
Orissa	3.7	1.5	3.4	1.7	0.7	2.4
Uttar Pradesh	3	2.8	4.6	1.5	0.7	3.7
Rajasthan	3	2	4.3	2.2	0.5	2.7
Madhya Pradesh	3.4	3.1	4.5	1.9	0.7	2.2
Average of Bottom five	2.6	2.4	4.1	1.7	0.9	2.6
West Bengal	2.6	1.6	3.2	2.1	0.4	2.9
Andhra Pradesh	3.9	0.1	4.3	2.3	0.2	1.3
Karnataka	2.9	2.5	3.2	2.1	0.2	3
Kerala	4.3	0.7	0.3	0.2	1.3	1.6
Average of Middle Four	3.4	1.2	2.8	1.7	0.5	2.2
Tamil Nadu	3	3	4.9	1.1	-1.4	-0.2
Gujarat	3.4	2.8	4.4	1.6	2.1	1.8
Haryana	4.2	2.6	5	2.5	0.7	5.8
Maharashtra	3.7	2.4	4.9	1.6	0.4	2.6
Punjab	2.7	3.9	3.9	0.1	2	2.3
Average of Top Five	3.4	2.9	4.6	1.4	0.8	2.5
Total of 14 States	3.3*	2.3	3.8	1.7*	0.7	2.4

Source: Chadha and Sahu (Table 12, 2002) for 1993-94 over 1983-84 and others are authors estimates based on NSS employment surveys (EUS)

higher than that in the bottom five States. A significantly positive development has been the recovery of rural employment, on the average, in the second sub-period (1999-00 to 2004-05) across all the States. However two States have experienced slow down in rural employment, namely, Gujarat and Tamil Nadu. It is negative growth in Tamil Nadu, a State of high urban employment growth. Is there a positive relationship between initial level of urbanization and urban employment growth? We observed a significant positive correlation between initial urbanization in 1993-94 and total urban employment growth

rate for the period 1993-94 and 2004-05 (see Figure 3). This clearly implies that benefits of growth in terms of employment have gone largely to urban areas in the years since liberalization. This is the dark side of employment growth in India first noted perhaps by Bhalla (2002).9 Greater job creation in urban areas has certainly contributed to the aggravation of the rural-urban divide in the post-reform years. Figure 4, exhibits the inter-State differences in rural and urban employment growth rates for the period 1999-00 to 2004-05.

Figure 3: Initial Urbanization and Urban Employment Growth – 93-0410

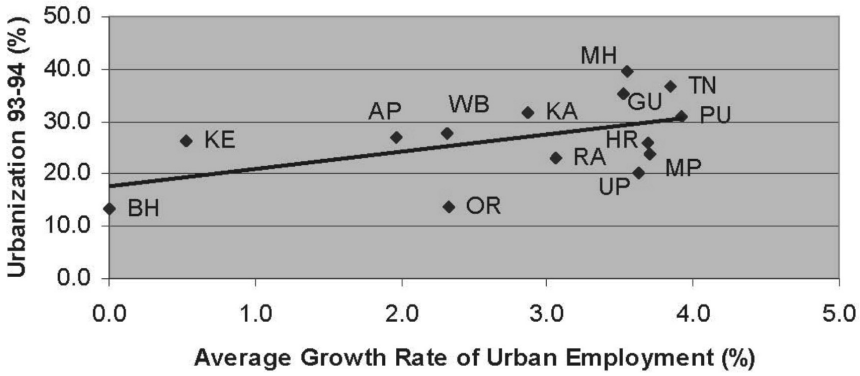
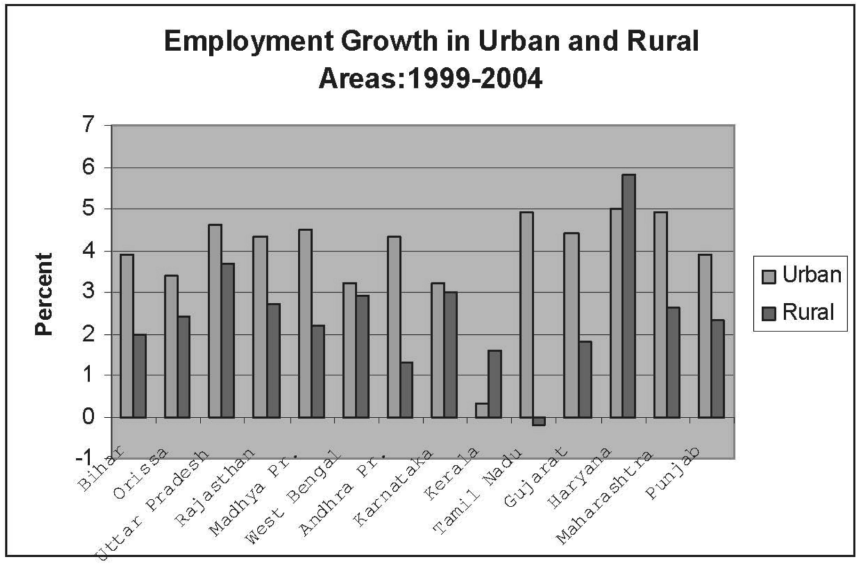


Figure 4: Employment Growth in Urban and Rural Areas: 1999-2004



9.5 Concentration and Diversification of Regional Employment Structure

The traditional Kuznets-Chenery perspective of structural transformation suggests a reallocation of labor from agriculture into manufacturing and services as per capita income rise. The evolution of sectoral shares in India is observed to be unusual and may have far reaching implications for employment growth (Kochhar et al 2006 among others). India's share of services in Gross Domestic Product (GDP) of has risen rapidly from 37 per cent to 49 per cent between 1980 and 2000. However, the rise in employment share is marginal from 18.6 per cent to 22.4 per cent during the same period. This implies a rapid increase in labor productivity in the services sector perhaps due to growth in skill-intensive services (Gordon and Gupta 2004). This all India aggregate picture hides many regional variations.

The regional variations in per capita incomes could perhaps be due to uneven spread of service sector employment both in quantity and quality. Higher income States will have greater share of productive services while the low income States may end up with low productivity employment that is actually spillover of lack of alternative productive employment opportunities. A preliminary look at the evolution of sectoral diversification of State economies is likely to throw some further light on this issue.

The pattern of sectoral diversification along the development path has been recently examined by Imbs and Wacziarg (2003). Their detailed empirical study showed a 'U-shaped' pattern in sectoral concentration. That is countries begin their development journey at a high level of concentration (low income levels) and diversification increases reaches a minimum level and then the economic activity structure starts concentrating again. This scheme, therefore, suggests that there are two stages of diversification in the development process. First one is of increasing diversification and followed by one of increasing concentration. However, the minimum point occurs quite late in the evolution process of sectoral diversification. This is interpreted to suggest that countries diversify most of their development path. They estimate it to occur at the per capita income level of approximately $9,000 (Constant 1985 US dollars). India and the constituent States are far below this level of income and likely to experience increasing diversification. However, it is important to know the level and the speed of change in diversification underlying the present ongoing development process. This will reveal in someway the inertia or structural backwardness constraining the inter-regional differences.

The first cut would be the employment shares of three important sectors, namely,

agriculture, manufacturing and services. This is presented in Table 105 for two selected years 1993-94 and 2004-05, a gap of 11 years. A reasonable period to consider as structural change is a long run process. The interesting question is whether trade and structural reform years would show-up inter-sector labor reallocation or structural inertia.

The study by Wacziarg and Wallack (2004) that examined 25 liberalization episodes could not detect any dramatic or increased structural shift in employment shares across the nine 2-digit sectors. At the all India level Ramaswamy found greater change in employment shares relative to the change during the pre-reform years of 1983-94 (see Table 122). This is an important finding because inertia in employment shares would have suggested absence of resource movements to gain from comparative advantages. Whether this is translated into welfare gains is another issue that we will take up later.

At the sub-national level, expectedly, the bottom five States (lower income) have higher shares in agriculture than the higher income States (middle and the top). Important to note that Madhya Pradesh is the State with the highest share in agriculture and Kerala is the State with the lowest share in agriculture to begin with in 1993-94. However, in 2004-05 the status-quo has been maintained by these two States. More interesting is the case of West Bengal and Tamil Nadu. In 1993-94 West Bengal had employment share (48.8 per cent) that is close to Kerala but had the higher share in manufacturing (19.9 per cent). In 2004-05, Tamil Nadu has become the State with highest share in manufacturing

Table 122: Employment Shares by Sector:1983-2004

	1983	1993	1999	2004
Agriculture	68.5	64.0	60.3	56.5
Mining and quarrying	0.6	0.7	0.6	0.6
Manufacturing	10.7	10.6	11.0	12.2
Electricity, water, etc.	0.3	0.4	0.3	0.3
Construction	2.2	3.2	4.4	5.7
Trade, hotel and restaurant	6.3	7.6	10.3	10.8
Transport and communication	2.5	2.9	3.7	4.1
Other services	8.8	10.6	9.6	9.9
Total	**100.0**	**100.0**	**100.0**	**100.0**

Source: NSS Employment Surveys

(closely followed by Gujarat), the second highest in services and the second lowest share in agriculture (next to Kerala). West Bengal and Tamil Nadu are similar in terms of services sector share. We need to ask whether these similarities and differences imply much more in terms of productivity of employment. This aspect we will take it up again when we discuss inter-State differences in sectoral labor productivity levels (Sectoral NSDP per worker, See Table 123 below).

Table 123: Employment Share by Sector:1993-94 and 2004-05

	1993-94			2004-05		
State	**Agriculture**	**Manufacturing**	**Services**	**Agriculture**	**Manufacturing**	**Services**
Bihar	76.7	4.9	15.6	68.9	7.2	18.0
Orissa	73.7	7.5	15.0	62.3	11.4	19.1
Uttar Pradesh	68.4	8.7	20.1	60.6	12.3	20.9
Rajasthan	69.2	6.2	15.3	61.3	9.1	18.2
Madhya Pradesh	77.7	5.5	13.4	69.1	7.5	18.2
Average of Bottom Five	73.1	6.6	15.9	64.4	9.5	18.9
West Bengal	48.8	19.9	27.1	45.7	17.5	31.6
Andhra Pradesh	67.1	9.2	19.6	58.4	11.0	24.8
Karnataka	65.1	10.7	19.7	60.8	10.6	23.8
Kerala	48.3	14.3	29.6	35.5	14.4	37.7
Average of Middle Four	57.3	13.5	24.0	50.1	13.4	29.5
Tamil Nadu	52.6	18.0	24.8	41.2	21.1	30.9
Gujarat	58.9	15.2	21.4	54.8	17.1	23.1
Haryana	56.9	9.1	27.7	50.0	13.5	27.7
Maharashtra	59.4	11.3	25.1	53.1	12.5	28.7
Punjab	56.4	10.3	28.1	47.4	13.5	29.8
Average of Top Five	56.8	12.8	25.4	49.3	15.5	28.0
All 14 States	**64.5**	**10.5**	**20.7**	**57.0**	**12.4**	**24.1**

Note: The row sum of sectoral shares does not sum to 100 as mining, construction and electricity have been left out.

Source: NSS Employment Survey 1993-94 and 2004-05

9.6 Concentration of Employment: Sectoral and Spatial

Ramasamy used the Herfindhal-Hirschman index (HH-index) of concentration to measure sectoral concentration of employment. The HH-index is one of the most commonly used measures of concentration of output and employment in the literature on regional economics dealing with spatial concentration of activity.11 utilize the 9 sector classification of the National Industrial Classification (NIC-98) followed by the NSS employment surveys. I estimate the HH-index for each of the four quinquennial survey years, namely, 1983, 1993-94, 1999-2000 and 2004-05.

The HH-index is defined as the sum of the squares of (percentage) employment shares in each State.

$$\sum Ei2 ,$$

Where Ei = Employment share of the ith sector in a State and i= 1…9.

The HH-index reaches a maximum value of 10000 (Ten Thousand) when only one sector has all the employment (100 per cent) and has a lower bound of 1111, that is all the sectors have an equal share (Note that the lower bound varies with the number of sectors), in the case of 9-sectors[12]. Lower the estimated HH-index more equal the sector shares and more diversified is the economy (States of India in our case).The estimated HH-index are shown in Table 124. All the 14 States in our sample show clearly the tendency for diversification (the change in HH-index is negative across all States). The HH-index for the aggregate of 14 States show a decline of 18 percentage points over the period 1994 to 2004. Relative to this average, only one State in the low income category, namely, Orissa show a substantial decline (25 per cent). In the middle income group, Kerala's diversification is higher (a decline of 29 per cent). In the top 5 group, Tamil Nadu stands out as a State with greater diversification tendency. Andhra Pradesh and Punjab look

The economies of West Bengal and Karnataka show substantial lower rate of diversification of economic activity relative to the average. It is important to note that low income States have more concentrated structures to begin with and it is changing at a much slower pace. How the level of initial diversification impacted employment growth prospects in different States? More diversified States should have gown faster with opening economy in the 1990s as they would be in a better position to take advantage of trade and growth opportunities. If this is true then a negative relationship between initial HH-index (concentration) and employment growth may be expected.

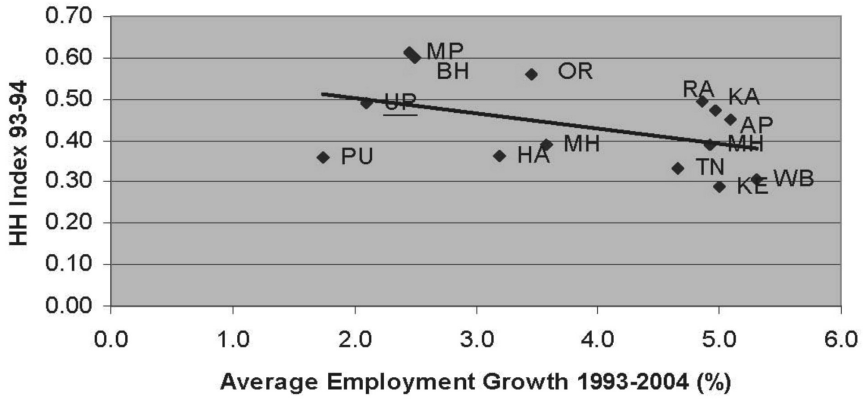
In Figure 5, I plot the HH-index in the beginning year 1993-94 against the subsequent

Table 124: Sectoral Concentration of Employment by State*

State	1983 HH-index	1993-94HH-index	1999-00 HH- index	2004-05 HH-index	Change in HH-Index 2004 over 1994
Bihar	6061.2	6003.6	5500.9	4945.4	-17.6
Orissa	5479.2	5586.9	5186.8	4184.4	-25.1
Uttar Pradesh	5387.5	4910.9	4332.8	4015.7	-18.2
Rajasthan	5964.6	4960.9	4566.6	4049.0	-18.4
Madhya Pradesh	6291.2	6143.3	5599.3	4974.3	-19.0
West Bengal	3818.4	3042.5	2853.9	2740.5	-9.9
Andhra Pradesh	5045.9	4732.5	4525.0	3759.5	-20.6
Karnataka	4940.8	4508.3	4194.3	4009.1	-11.1
Kerala	3709.2	2866.3	2204.9	2019.9	-29.5
Tamil Nadu	3341.2	3317.7	2826.9	2485.1	-25.1
Gujarat	4681.8	3882.1	3868.6	3494.2	-10.0
Haryana	5408.1	3638.5	3219.8	3001.1	-17.5
Maharashtra	5269.6	3882.4	3555.5	3250.5	-16.3
Punjab	4924.1	3596.2	3274.7	2794.2	-22.3
All 14 States	**5057.7**	**4434.1**	**4043.1**	**3630.3**	**-18.1**

Source:* Estimates use employment shares of nine sectors in each State based on NSS employment-unemployment surveys

Figure 5: Initial Diversification and Employment Growth



employment growth rates in the selected 14 States of India. The figure shows a positive correlation between the initial extent of diversification in a State and employment growth in the subsequent years. Inter-State disparities in the level and changes in diversification is obviously the cause of inter-State income disparities.

Slow diversification of some of the major States like Bihar, Uttar Pradesh, Madhya Pradesh and Rajasthan is certainly matter of concern for policy. At the same time there may be concentration within sectors like registered manufacturing as reported by Kochhar et al. (2006), that may accentuate the divergence tendencies. The slow growth of employment in low income States is partly due to slow rate of diversification of economic activity in these economies.

Another important question that is often discussed in this context of regional disparities in developing countries is that of geographic (spatial) concentration of particular sectors (like manufacturing) across locations[13].Due to historical accidents industrialization began in certain States earlier. Ramaswamy examined whether the degree of geographic concentration (note the difference between sectoral concentration mentioned above and geographic concentration) of selected sectors has increased or decreased in recent years. Here for each sector Ramaswamy estimated the spatial (or locational) HH-index. The spatial HH-index is defined as follows:

$$\sum(si - xi)2$$

Where,

si is the employment share of a State in the ith sector and

xi is the State's share in total employment in the economy (or aggregate of selected States)14 and i=1……..14.

This is estimated for three selected sectors, namely, manufacturing, services and a sub-component of services sector, namely, financial, real eState and business services. The services sector is defined as the aggregate of transport, trade, communication and financial services sectors. The last sector is estimated separately because of its nature as a skill-intensive sector that has come to prominence in recent years. The estimates of spatial HH-indices for 3 selected sectors for 4 selected years are presented in Table 125.

Table 125: Geographic Concentration of Sectoral Employment in India: HH-spatial index for Selected Sectors

Sector/Year	1983	1993-94	1999-00	2004-05
Manufacturing	75.9	146.0	94.6	74.0
Services	50.9	51.2	56.2	29.9
Finance, Real EState & Business Services*	189.5	216.2	212.6	223.5

Source: *This includes software services defined since 1999-00. Estimates based on NSS Employment-Unemployment Surveys

Is there a change in the geographic concentration of sectoral employment?

To begin, we note that finance and business services sector is more concentrated than the other two, namely, manufacturing and total services in the initial year, that is, 1983-84. Over the next 20 years, concentration first increases then declines in manufacturing. The level of concentration in 2004-05 is found to be similar to the concentration level in 1983-84. In the services sector, the aggregate of trade, transport and finance, concentration remains flat till 1993-94 and then declines in 2004-05. However, in the subgroup, finance and business services, it rises sharply in 1993-94 and shows some marginal decline in between but raises again in the last year 2004-05. This supports the proposition that skilled labor-intensive activities are getting geographically concentrated. The flatness of aggregate services perhaps, simply reflects the geographical spread of transport, retail and services like telecommunication and public administration with economic development.

9.7 Employment Growth: Organized or Unorganized?

India is well-known as a classic case of Lewisian dual economy with a small organized and a large unorganized sector. Many interesting and provocative question have been asked about the continuity of this dichotomy in India. Is there an intensification of duality in recent years of trade reform? Is service sector more dualistic than the manufacturing sector in terms of wage differentials? All these are pertinent questions. As we noted the stagnation in agriculture sector jobs in the last 20 years, most of the addition to the labor force is absorbed by non-agricultural sector. Actually this absorption mechanism has been driven by the unorganized sector or informal sector.

Are there inter-State differences in this changing structure of duality? What are the implications? It may be noted that official definition of the unorganized sector is much broader than the standard concept of informal manufacturing enterprises. In manufacturing all factories with less than 10 workers or less than 20 if they are not using power are considered informal enterprises. However, the official unorganized sector includes all unincorporated household enterprises, partnership enterprises, cooperative enterprises, private and limited companies. These unorganized sector enterprises have created much employment in India across States. They are characterized low wage and low (labor) productivity activities. The unorganized sector is also known to be the 'waiting' sector, where the migrant from the rural areas locates himself/herself before he can get a job in the urban organized enterprise. The working and labor conditions in this sector are well documented. What has been the experience of Indian States with respect to unorganized employment? How they are estimated? The standard procedure for estimating employment in the unorganized sectors is the residual method. In this method, the estimates of organized sector employment provided by the Directorate General of Employment and Training (DGET), based on their employment information system, are subtracted from the NSS Survey based estimates of total employment in each sector. Following this method, I have estimated the growth rates of unorganized sector employment, absolute change in the private sector within organized sector and the share of organized sector in total employment in each of the 14 States. They are shown in Table 109. As evident from Table 126, unorganized sector employment growth is uniformly positive across the 14 States. More importantly, the private sector within the organized sector has created substantial absolute number of employment in three States, namely, Andhra Pradesh, Karnataka and Gujarat. In the aggregate, public sector in India has shed jobs in the 1990s. At the same time, four States in the bottom of the income ladder (Bihar, Orissa, Uttar Pradesh and Madhya Pradesh) and three States with higher income (West Bengal, Tamil Nadu and Maharashtra) have negative net employment growth in the private sector segment of the organized sector. The organized sector share within each State is lower in the bottom five States. It is lower than the average of 14 States (5.5 per cent). In all the middle four and top five States, the organized sector share is higher than the average except in Andhra Pradesh (5.1 per cent). This provides us with a clue that the low income States are likely to have proportionately more low productivity jobs created in recent years. If this conjecture is true then, the low income States should have relatively lower labor productivity levels across sectors. This is taken up in the next section.

Table 126: Employment Disparities: Organized v/s Unorganized

State	Employment Growth in 2004 over 1994		
	Unorganized Sector: Growth Rate*	Absolute Change in Number of Employees in Private Sector ('000)	Organized Sector Share in Total Employment 2004
Bihar	2.4	-78.1	4.0
Orissa	1.8	-6.4	4.5
Uttar Pradesh	2.7	-40	3.4
Rajasthan	2.1	3.9	4.4
Madhya Pradesh	2.1	-51.9	3.7
West Bengal	2.2	-105.8	6.2
Andhra Pradesh	1.1	181.6	5.1
Karnataka	2.0	255.5	6.7
Kerala	1.4	42.7	9.3
Tamil Nadu	1.0	-14.8	7.4
Gujarat	2.9	74.2	6.5
Haryana	3.8	29.7	7.1
Maharashtra	2.6	-45.0	7.5
Punjab	3.2	22.2	7.7
All India	**2.2**	**267.8**	**5.5**

Source: Estimates based on DGET data on organized sector employment

9.8 Employment, Labor productivity and Education: 1993-94 and 2004-05

Structural transformation process of development is supposed to create greater productive jobs not merely jobs of average rural sector productivity. This greater productivity drives output growth and in turn generates more employment for all. This process of change demands greater skilled (more educated or number of years of schooling) labor. This simple stylization gets complicated in dual economies like India with segmented labor

markets (formal and informal) within sectors, whether it is manufacturing or services. Greater employment growth in the non-agricultural sector may turn out to be low productivity jobs if it is mostly in low technology-low wage-low labor productivity segments. As Ramaswamy observed earlier, **the low income States suffer from lower rate of diversification measured by HH-indices of concentration and added to that they have lower shares of organized sector employment within their economies. Both of these should constrain them lower average labor productivity levels and changes in labor productivity.** In order to test this proposition, Ramaswamy estimated labor productivity for the selected six sectors in 14 selected States for three selected years, namely, 1993-94, 1999-2000 and 2004-05. These years correspond to the three quinquennial NSS surveys. The output data at constant 1993-94 prices is available in National Accounts Statistics. Ramaswamy measured sector output by NSDP at constant 1993-94 prices. Sector employment levels are taken from the estimates based on NSS employment surveys. Ramaswamy excluded electricity and mining sectors as they have different structural features in many ways like regulation, natural resource base etc. The category other services that comprises of education, public administration and social services is also excluded. Growth rates of labor productivity are not presented as the proposition that Ramaswamy focused is whether initial low income States also have depressed or relatively lower productivity levels over time. Recall that that the 14 States were ranked in terms of their per capita income in the base 1993-94.

We may began with the comparison of agriculture and manufacturing sectors in Table 110. Let us focus on comparison of the beginning year (1993-94) and end year (2004-05) levels with a gap of 11 years. As per expectations, manufacturing sector labor productivity level is higher in all States. Manufacturing productivity in the bottom five States is not only lower than the average but it is declining over the years. The top five States have average productivity that is more than the average in both agriculture as well as manufacturing. Tamil Nadu appears to be an exception with lower than average productivity in manufacturing. Recall that Tamil Nadu is a State with a high rate of urban employment growth (in fact employment is entirely urban).

Next, we compare two service sectors that are presumably modern and relatively skill intensive sectors, namely, Transport and Communication (T&C) and Financial and Business services (Table 127). The differences are sharper with the five bottom States have lower productivity and declining in financial and business services. It has three exceptionally high productive States, namely, West Bengal, Andhra Pradesh and Karnataka.

T&C fares better due to high productivity in Madhya Pradesh and Orissa. They are the bright spots in an otherwise dismal productivity levels in these States across sectors.

We move on to a comparison of two well-known unskilled labor intensive sectors, namely, construction and trade, hotel and repair services (Table 128). Surprisingly, labor productivity is declining in both the sectors in the bottom five States. In the trade and hotels sector productivity levels have gone up in the middle four and the top five States. Low income States have a lot of catching up to do even in these sectors.

Table 127: Inter State Differences in Labor Productivity Levels: Agriculture v/s Manufacturing

State	Agriculture			Manufacturing		
	1993-94	1999-00	2004-05	1993-94	1999-00	2004-05
Bihar	5936	6166	7937	25177	24419	21833
Orissa	6870	6570	7509	11063	14202	12677
Uttar Pradesh	8437	10373	9675	21248	18033	16393
Rajasthan	6748	8979	9840	23829	40147	28889
Madhya Pradesh	7620	8116	7589	36344	39020	31692
Average of Bottom five	7122	8041	8510	23532	27164	22297
West Bengal	12962	16390	16439	14311	22085	24593
Andhra Pradesh	7684	8683	10675	19215	29745	26919
Karnataka	9622	12111	9021	27391	34446	45704
Kerala	13858	18051	15598	16570	21018	18532
Average of Middle Four	11032	13809	12933	19372	26824	28937
Tamil Nadu	8943	10870	13933	25744	29714	25552
Gujarat	9133	9025	12292	37975	66077	56802
Haryana	22427	25298	23186	60924	69269	59572
Maharashtra	9366	10865	8704	57020	72803	58433
Punjab	28817	30146	32866	47089	51165	39367
Average of Top Five	15737	17241	18196	45750	57806	47945
Total of 14 States	**9085**	**10398**	**10752**	**28273**	**35116**	**32164**

Note: NSDP from NAS and Employment from NSS surveys

Table 128: Labor Productivity Level Differences: T&C v/s Finance & Business Services (Rupees per worker)

State	Transport & Communication			Financial & Business Services		
	1993-94	1999-00	2004-05	1993-94	1999-00	2004-05
Bihar	24037	10247	27184	134927	154563	141049
Orissa	34861	50024	65545	355060	257256	166289
Uttar Pradesh	25204	28652	41718	181407	205846	173369
Rajasthan	24345	37320	55287	173567	202021	185702
Madhya Pradesh	36847	48261	76019	234735	293653	202015
Average of Bottom five	29059	34901	53151	215939	222668	173685
West Bengal	26668	29208	45237	174297	323040	373785
Andhra Pradesh	29199	38359	54615	199424	239214	231165
Karnataka	24751	43029	62422	164741	185655	239700
Kerala	23250	30476	71306	132699	141270	130422
Average of Middle Four	25967	35268	58395	167790	222295	243768
Tamil Nadu	29739	40906	64429	136076	197724	134751
Gujarat	35733	54128	81614	349738	317093	328620
Haryana	40877	74634	104411	240810	252155	175342
Maharashtra	47964	60571	113641	281750	324470	229480
Punjab	23191	34232	62466	243812	279223	226416
Average of Top Five	35501	52894	85312	250437	274133	218922
Total of 14 States	**31151**	**40013**	**64564**	**207142**	**245729**	**213842**

Note: NAS for NSDP and NSS surveys for employment

Finally, let us note that labor productivity in aggregate manufacturing *per se* is not meaningful as it has a large informal component. Therefore, we may compare two segments within manufacturing, that is, registered and unregistered. We can estimate the ratio of unregistered sector to registered sector labor productivity (see Table 130 below). Within sector differences emerges rather sharply here. The striking fact is the large and widening gap in productivity between registered and unregistered sectors in the bottom five States. Relative productivity of unregistered sector is tending towards abysmal levels. This suggests increasing divergence of productivity between States. The registered sector is

Table 129: Labor Productivity Level Differences: Construction V/S Retail Trade & Hotels

State	Construction			Trade, Repair services and Hotels		
	1993-94	**1999-00**	**2004-05**	**1993-94**	**1999-00**	**2004-05**
State	1993-94	1999-00	2004-05	1993-94	1999-00	2004-05
Bihar	29083	25283	18015	23533	24746	21140
Orissa	33917	23512	11616	20319	21233	20877
Uttar Pradesh	27898	27181	21884	28579	23868	21411
Rajasthan	18017	25525	25293	38561	42807	42842
Madhya Pradesh	47730	61113	42180	38574	29685	24713
Average of Bottom Five	31329	32523	23798	29913	28468	26197
West Bengal	26421	34350	28748	21372	26443	35779
Andhra Pradesh	26199	29445	35609	27512	33240	32610
Karnataka	33293	49135	47509	28033	32183	42012
Kerala	27025	18286	22752	35518	31800	48726
Average of Middle Four	28235	32804	33655	28109	30917	39782
Tamil Nadu	26188	36231	34341	28940	35050	46460
Gujarat	31588	44348	51285	36486	35583	48734
Haryana	43253	43290	31534	43923	43152	71492
Maharashtra	41286	38371	37899	39052	41424	53536
Punjab	38818	33930	36759	41395	37815	39103
Average of Top Five	35579	40560	38765	37100	38802	55056
Total of 14 States	**29983**	**33062**	**30290**	**30811**	**31874**	**36917**

Note: NAS for NSDP and NSS surveys for employment

galloping with high labor productivity growth across States. Informalization of labor force is driving down productivity in the unregistered sector perhaps more intensively in the low income States. Tamil Nadu is perhaps the only State that has maintained the relative productivity of unregistered sector over the years. The reasons for this would be worth exploring.

Table 130: Labor Productivity Ratio: Unregistered to Registered manufacturing

State	Registered		
	1993-94	1999-00	2004-05
Bihar	0.07	0.01	0.01
Orissa	0.09	0.03	0.01
Uttar Pradesh	0.13	0.09	0.07
Rajasthan	0.26	0.10	0.11
Madhya Pradesh	0.25	0.14	0.07
Average of Bottom five	0.16	0.07	0.05
West Bengal	0.18	0.16	0.12
Andhra Pradesh	0.21	0.28	0.14
Karnataka	0.15	0.20	0.13
Kerala	0.23	0.16	0.13
Average of Middle Four	0.19	0.19	0.13
Tamil Nadu	0.16	0.17	0.16
Gujarat	0.18	0.26	0.14
Haryana	0.51	0.33	0.17
Maharashtra	0.21	0.21	0.13
Punjab	0.49	0.26	0.16
Average of Top Five	0.29	0.25	0.15
Total of 14 States	**0.17**	**0.14**	**0.11**

Source: NSA for NSDP and NSS Surveys for employment

9.9 Education, Skill Supply and Labor Productivity

Bosworth, Collins and Virmani (2007), in their detailed study of sources of growth in India, covering the period 1960-2004, call attention to the low levels of educational attainment of the Indian population and workforce. They point out that India has recently attained an average level of schooling comparable to that achieved in other Asian countries a quarter century earlier (Bosworth, Collins and Virmani (2007), Table 7). In term of the educational attainment of the workforce, their estimates indicate that nearly 40 per cent of the workforce is found to be illiterates and those who have completed secondary

schooling account for 14 per cent of workers, while an additional 6 per cent are estimated to have a university degree (Bosworth, Collins, Virmani, 2007). The recent NSS survey on education and Training (NSS Report No. 517) points out that in India, among the persons of age of 15 years and above, only 2 per cent had technical degrees or diplomas or certificates. Table 131 depicts the inter-State differences in educational attainment of persons (rural + urban) in India in 2004-05. Literates with general educational level secondary and above including diploma/certificate course have been considered to be educated (NSS Report 517, page 25). Following this definition, the numbers in Table 132 indicates large inter-State variation in educational attainment. The bottom five States suffer from serious shortage of educated persons. In these States only 17 per cent are found to be educated and more seriously only 12 per cent are found to have secondary education or higher secondary education as against the all-India average of 24 per cent and 16 per cent respectively. Expectedly, Karnataka, Tamil Nadu, Gujarat and Maharashtra emerge as educated States. Educational performance of Kerala is well known. Among middle income States Andhra Pradesh and West Bengal have below average education. In brief high income States also have better potential supply of educated persons. Notice in particular the relative advantage in terms of secondary education attainment in better-off States. This will prove to be a great source of comparative advantage for these States in the years to come.

It is fairly well argued that secondary education is crucial for economic growth (Lewin and Cailods, 2001). Modern industry whether it is manufacturing or services sector like telecommunications emphasizes training and skill acquisition on the job. A workforce with secondary school attainment will turn out to be the best bet for such a job market. What has been the relative position of Indian States in this area of education? In Table 132, data on gross enrolment ratios for upper primary and secondary schooling in India for the 14 States for the year 2003-04 are presented. The relatively better development of education in middle income and high income States emerges clearly. West Bengal lags behind and looks more like bottom five States in this respect. The constraint of skilled labor (human capital) is likely to be the binding constraint for growth and employment in many States in India. This leads me to ask the following question: Do States with better initial gross enrolment ratios (GER) in secondary education have better labor productivity growth? I investigate this in a preliminary way. The results are shown in Figure 6, where I plot the secondary education GER in 1990-91 on the growth rates of non-agriculture labor productivity growth in 14 States for the period 1993/94 to 2004/05. The positive

Table 131 :Educational Differences by State:2004-05

State	not literate	literate & Up to primary	middle	Secon-dary	higher secon-dary	diploma/ certificate	graduate & above	All
Bihar	516	198	118	92	40	2	33	1000
Orissa	412	252	177	75	35	5	43	1000
Uttar Pradesh	478	178	144	82	61	4	52	1000
Rajasthan	524	192	125	62	47	5	44	1000
Madhya Pradesh	456	252	115	61	55	8	54	1000
Average of Bottom five	477	214	136	74	48	5	45	1000
West Bengal	325	321	162	82	49	3	58	1000
Andhra Pradesh	491	193	109	99	45	13	48	1000
Karnataka	382	200	171	124	58	11	55	1000
Kerala	94	268	305	154	63	58	58	1000
Average of Middle Four	323	246	187	115	54	21	55	1000
Tamil Nadu	293	278	160	117	68	18	66	1000
Gujarat	318	229	189	124	63	16	61	1000
Haryana	351	218	117	150	78	15	71	1000
Maharashtra	271	199	226	132	69	29	73	1000
Punjab	315	213	126	175	87	19	65	1000
Average of Top Five	**310**	**227**	**164**	**140**	**73**	**19**	**67**	**1000**
All India	**382**	**228**	**160**	**102**	**58**	**12**	**57**	**1000**

Source: NSS 61st Round Report No.517. Table 3.8.1 (page 66) on per 1000 distribution of persons of 15 years and above by general educational level

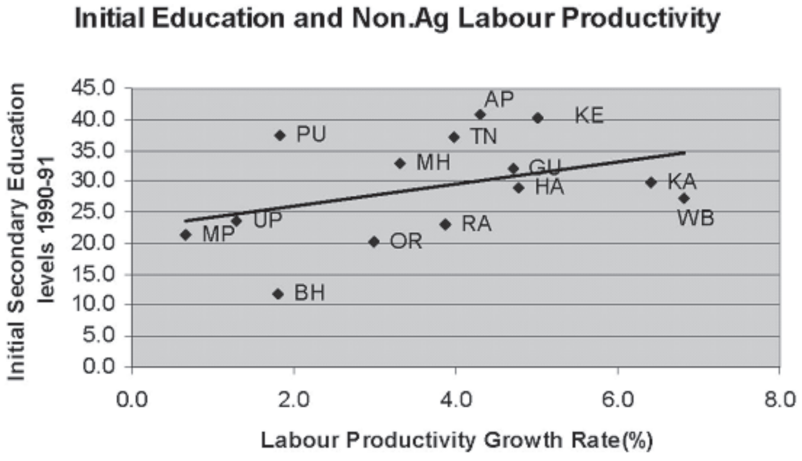
relationship observed is very encouraging. Labor productivity growth is the key proximate determinant of output and employment. States with better supply of secondary school educated workers are likely to get more investment and jobs coming in their way. It is now well established that a major chunk of investment by domestic industrialists and foreign direct investment (FDI) has gone into five selected States, namely, Maharashtra, Gujarat, Karanataka, Andhra Pradesh and Tamil Nadu (See, Bagchi and Kurian (2005). Incidentally, these are all relatively well endowed with educated workforce. This finding is troubling at the same time, because it also reflects the reality of higher unemployment of secondary educated workers. The higher output growth rate has not sufficiently absorbed

the additions to the educated labor force. One might conjecture that it suggests a serious mismatch of demand and supply in the labor market for trained workers. This interesting area needs to be explored further more deeply than possible in this paper.

Table 132:Gross Enrolment ratios at Upper Primary and Secondary Education in India:2003-04

State	Upper Primary (11-14 years)	Secondary (14-18 years)
Bihar	25.3	16.9
Orissa	54.0	32.7
Uttar Pradesh	48.6	37.9
Rajasthan	61.5	32.6
Madhya Pradesh	63.3	34.9
West Bengal	64.3	32.6
Andhra Pradesh	64.9	44.6
Karnataka	76.2	41.7
Kerala	93.6	48.0
Tamil Nadu	100.4	56.9
Gujarat	70.4	40.0
Haryana	65.5	45.5
Maharashtra	87.6	53.9
Punjab	60.1	39.0
All India	**62.4**	**38.9**

Figure 6: Initial Education and Non-Agricultural Labor Productivity



9.10 Summary and Policy Implications

Development is bound to be in egalitarian, as Nobel laureate Arthur Lewis pointed out long ago, because it does not start in every part of the economy at the same time. However, the diffusion of economic and social development across subnational units once the economy growth process is initiated has important implications for future growth and well-being. The structure of employment growth and variation across States in India is a key outcome of this unfolding development process. We have examined some aspects of this regional employment growth in India. My analysis is confined to 14 selected major States in India accounting for 93 per cent of the population. We have divided the fourteen States into three groups by ranking each State based on their per capita GSDP for the year 1993-94. The bottom five are States with relatively low income, the middle four are medium income States and the top five are the relatively rich State. GSDP growth in the high and medium income States grew faster relative to the low income States over the period 1993-94 to 2004-05. As a consequence, the coefficient of variation increased from 36.6 in 1993-94 to 128 in 1999/00-2004/05 suggesting widening of regional disparities in the reform period. Regarding the employment change, the following findings deserve attention:

- Employment has grown at 1.9 per cent per annum for the period 1993-2004. This slow aggregate employment growth is unevenly distributed across States. The second sub-period (1999-00 to 2004-05) is a period of recovery of employment growth in India. Job creation has reappeared in the Indian economy after a period of job less growth in the 1990s. This is correctly reflected in the Statewise employment growth numbers. In the 14 major States employment grew by 2.8 per cent annum.
- However, the disquieting feature is the urban bias in relative growth rates of employment. Urban employment has grown faster in the States with higher initial level of urbanization. Across the 14 States employment has grown faster in urban areas in both the sub-periods of post-liberalization period (1993-94 to 1999-00 and 1999-00 to 2004-05). Greater job creation in urban areas has certainly contributed to the aggravation of the rural-urban divide in the post-reform years. This is the dark side of the employment growth story in recent years of structural reform.
- There has been increasing diversification across sectors on Indian States, though the rate of diversification varies across States. Employment growth is faster in

States that have had initially more diversified economies. It is important to note that low income States have more concentrated structures to begin with and it is changing at a much slower pace. Inter-State disparities in the level and changes in diversification is obviously the cause of inter-State income disparities. Slow diversification of some of the major States like Bihar, Uttar Pradesh, Madhya Pradesh and Rajasthan is certainly matter of concern for State policy. The slow rate of diversification of economic activity is a key factor for the slow growth of employment in low income States.

- Spatial measures of concentration indicate varying changes across sectors. In the subgroup, finance and business services, spatial concentration rises sharply in 1993-94 and shows some marginal decline in between but increases again in the last year 2004-05.This supports the proposition that skilled labor-intensive activities are getting geographically concentrated over time, which may explain the higher regional income disparities observed earlier in the paper.
- Across States unorganized/informal sector has absorbed the additions to the workforce in the period 1993/94 to 2004/05. More importantly, the private sector within the organized sector has created substantial absolute number of employment in three States, namely, Andhra Pradesh, Karnataka and Gujarat. At the same time, the low income States show a net contraction of employment in the private sector. This provides us with a clue that the low income States are likely to have proportionately more low productivity jobs created in recent years.
- Manufacturing labor productivity is higher in the high income States. However, the unregistered manufacturing productivity falling relative to registered manufacturing over time. This is consistent with creation of informal low productivity jobs in recent years.
- Educational attainment differs widely across States, with the low income States having much lower levels of young individuals in secondary and higher secondary education. Non-agricultural labor productivity has grown faster in States with initially higher educational attainment.

9.11 Implications for Future Research and Policy

The structure of inter-State disparities is defined by the employment outcomes. Employment growth is found to be dominated by urban-unorganized sectors. It is defined

by lack of diversity and skill inequality, resulting in concentration of low productivity jobs. The employment inequalities observed in this chapter needs to be further investigated along two lines: First, by examining the inter-State differences in the quality of employment in terms of self-employment, regular employment and casual labor. Second the relationship between employment, labor productivity and wages across States overtime. States with better supply of secondary school educated workers are likely to attract more investment and jobs coming in their way. Creation of labor force, employable and amenable to skill training and upgrading, is an uphill task involving getting the right kind of institutions. States will have to find ways of meeting this challenge.

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10

ECONOMIC REFORMS AND THE LESS DEVELOPED REGIONS: A CASE SSTUDY OF UTTAR PRADESH IN INDIA

Introduction

Uttar Pradesh (UP) is the most populous province in India and occupies 7.3 per cent of the country's area. In 2001 in response to the long term movement of the hilly region for the creation of a separate hill State, UP was bifurcated and a new State, Uttaranchal, comprising thirteen districts of the hilly region, was created3 (Mawdsley, 2003). The State, though gifted with fertile soil and rivers, is one of the poorest States in India. Though endowed with 'Unlimited Potential' (Government of U.P., 2002), UP is often paradoxically called 'ulta Pradesh'4. The State is well known for its success in the green revolution and is the highest producer of food grains and sugarcane in the country, yet the poverty level in the State is very high in comparison to other States, and about 32 per cent of its population lives below the poverty line (Kozel & Parker, 2003). It lags behind not only in economic progress but in terms of indicators of human development too. The State's economy, primarily agricultural, is undergoing a gradual change with a decline in the share of agriculture and an increase in the share of the services sector. Agriculture now constitutes around 30 per cent of the State's domestic product (Figure 1). The State's 66 per cent of the workforce however, is still dependent on the agriculture for its livelihood, with industry and services constituting 5.6 and 28.5 per cent in 2001 (Table 133).

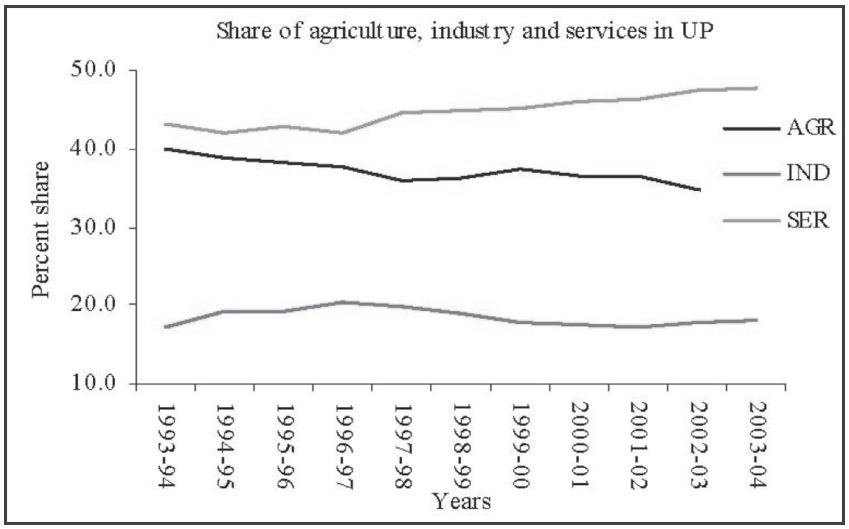
Table 133: Structure of Employment in UP

(In per cent)

Sectors	1981	1991	2001
Agriculture	74.5	72.2	65.9
Industry	9.0	7.6	5.6
Services	15.8	19.3	28.5

Source: Registrar General of India (2002).

Figure



The economic reforms introduced in India in 1991 following the neo-liberal approach have sparked a debate on regional inequalities and the uneven progress of the States. As with the Government of India, the State governments too initiated economic reforms in the early 1990s. In Uttar Pradesh however, the reforms were introduced only in 1998-99 due to political instability, the preoccupation of the Government with the rise of communalism, and casteism (Hasan, 2005). The reforms however, have not led to increased growth rates for the State5. During this period (1993-94 to 2003-04) the State's growth rate at 3.8 per cent was considerably lower than other States, and the country's average growth rate of 6.3 per cent (Table 134).

Table 134: Decadal Growth Rate of Sectors

(In per cent)

Period	Sectors			State Income
	Agriculture	Manufacturing	Services	
1950-51 to 1970-71	1.5	3.5	2.8	2.2
1970-71 to 1980-81	2.0	5.0	3.6	3.0
1980-81 to 1990-91	3.2	9.6	6.4	5.0
1990-91 to 1997-98	2.5	6.9	5.4	4.0
1993-94 to 2003-04	2.3	2.6	4.7	3.8

Source: Government of UP, (2002).

The per capita income of the State also declined over the years with the result that the gap between its per capita income and that of other States has widened (Table 135).

Table 135: Per capita income in UP in relation to other States

(in per cent)

Years	Up/ Guj	Up/ Ap	Up/ Har	Up/ Mah	Up/ Tn	Up/ Pun	Up/ Raj	Up/ Wb	Up/ Bih
1993-94	50.7	69.2	45.5	42.3	57.6	40.4	81.7	77.0	172.4
1994-95	45.3	68.8	45.0	43.6	53.5	41.4	73.8	76.0	164.5
1995-96	44.4	66.8	45.6	40.5	53.0	41.0	73.7	72.9	198.4
1996-97	42.8	68.9	45.4	42.6	55.2	42.2	73.5	75.0	177.9
1997-98	41.5	69.0	44.8	40.2	50.3	-	66.1	68.7	185.3
1998-99	39.4	62.4	43.7	39.8	48.7	39.5	65.4	65.9	177.5
1999-00	41.7	62.1	42.9	38.1	47.8	39.3	67.7	64.4	181.4
2000-01	42.9	56.8	40.7	39.9	44.2	38.2	69.6	60.5	155.4
2001-02	41.0	54.9	39.9	38.9	45.9	37.9	66.2	57.5	176.2
2002-03	37.1	53.5	38.0	36.0	44.8	37.2	71.5	53.6	149.3
2003-04	33.9	52.1	36.9	35.3	44.8	37.3	66.3	51.7	168.8
Average	**41.9**	**62.2**	**42.6**	**39.7**	**49.6**	**39.4**	**70.5**	**65.7**	**173.4**

Also the bank credit to the State in the post-reform period is lower than in the pre-reform period. However, hardly few studies, including the literature on inter-State disparities have focused on this outcome of reforms. This section examines the credit given by the banks to the State at the aggregate level, covering 33 years from 1972-2004 (includes the pre-reform and post-reform period) and explores credit:

- as a route to growth
- as a route to development
- as a source of inequality
- as a source of urban transformation
- as a source of empowerment

Our results indicate that credit has declined in the rural areas and increased significantly to the services sector in urban areas. The share of bank credit to the State in 2004 was even less than its level in 1972. Within the State the disparities across the regions have remained the same both in the pre-reform and the post-reform periods. The paper is organized as follows. Section II, reviews the inter-State literature on disparities and also the literature which has emerged exclusively on the State. Section III, examines the spread of credit to various regions, districts, occupations, population groups (rural/urban), size of credit (large borrowers/small borrowers) and even gender. The last section concludes the study.

10.2 Banks and credit to the State

Banks act as the mobiliser of savings and allocator of credit for production and investment. Banks boost economic growth by identifying the entrepreneurs with the best chances of successfully initiating new goods and production processes (King & Levine, 1993) and facilitate long-run investments in high return projects (Bencivenga & Smith, 1991, p.196). Schumpeter (1934, p.74), assigned an important role to banks in economic development. According to him,

The banker, therefore, is not so much primarily a middleman in the commodity "purchasing power" as a producer - and stands between those who wish to form new combinations and the possessors of productive means. He is essentially a phenomenon of development though only when no central authority directs the social process. He makes possible the carrying out of new combinations, authorizes people, in the name of society as it were, to form them. He is the ephor of exchange economy.

The total scheduled commercial banks in India are 284 of which 28 are public sector banks, 29 private sector banks, 31 foreign banks and 196 regional rural banks. The total number of branches of the banks in India at end March 2004 was 67,062 comprising 32,200 rural branches, 15,023 semi-urban branches and 19,839 urban and metropolitan branches. The average population covered per bank branch in the country was 16,000 in 2004. This was a significant improvement from the population coverage of 64,0000 per bank branch in 1969 at the time of nationalisation of banks. In UP, the total number of bank branches were 747 in 1969, much higher than in most of the States. The average population per bank branch was 114,000, way higher than the all India average. In 2004, the total number of bank branches in the State increased to 8,367 and the population covered came down to 21,000 per bank branch. This however, hides a large disparity

within the State, as the population covered per bank branch ranges from less than 10,000 in two districts of the State to more than 30,000 in at least 4 districts. The average share of bank branches in the Western region of the State during 1991-2004 was 38.1 per cent, lower than its share of 45.6 per cent in 1972-76. The share of the Eastern region rose during the similar period from 28.8 per cent to 35.5 per cent.

The total number of bank branches and branch per population in the States and their per capita income is given in the table 4. Prima facie a relationship exists between the States per capita income and the coverage of population per bank branch. The table shows that the lower the per capita income of the State, the lower the number of bank branches and higher the population per bank branch. This can be observed in the case of Bihar and UP which are less developed, indicating that banks are less inclined to open branches in the less developed States (Table 136).

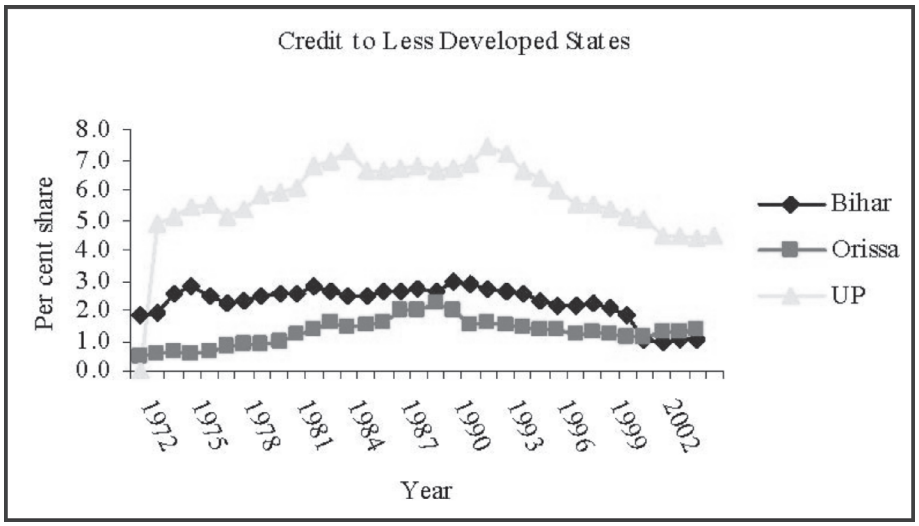
Table 136: Spread of Bank Branches in various States

Selected States	No. of Bank Branches	Population per bank branch(in 000)	States' Per capita real income (in Rs.)
Haryana	1618	13	18067
Punjab	2645	9	17890
Rajasthan	3348	17	10056
Bihar	3560	21$	4088
Orissa	2245	17	7447
West Bengal	4469	19	11998
Madhya Pradesh	3456	19	9414
Uttar Pradesh	8210	21$	6535
Gujarat	3677	14	19673
Maharashtra	6373	15	18614
Andhra Pradesh	5300	15	12792
Tamil Nadu	4768	13	15151
Karnataka	4851	11	13354

$: Includes Uttaranchal in UP and Jharkhand in Bihar Source: RBI (2004), CSO Credit as a source of growth

The total credit to the State in 1972 was 4.9 per cent. In 2004, this has gone down to 4.5 per cent i.e., the share has even reduced from its level in 1972. Figure 2 below shows the share of less developed States in total bank credit.

Figure 2



Has this been accompanied with increase in other forms of credit? Banks still remain the major source of credit to the State and other sources like capital market and development financial institutions (DFIs) formed only a miniscule proportion of total credit. Per capita credit to the State in 2004 at Rs. 2,384 was the second lowest after Bihar, and was only 8.9 per cent of Maharashtra's per capita credit. It was only 3.0 per cent of an emerging State like Delhi. The credit-deposit ratio, (C/D ratio) a ratio used to judge the 'credit direction of banks' (R.B.I., 2005, p.77) of the State, was only 33.0 per cent in 2004 as compared to Tamil Nadu (93.1 per cent), Maharashtra (81.8 per cent), Andhra Pradesh (74.4 per cent) and Karnataka (63.1 per cent). Has credit then worked as the source of growth in UP?

The growth rate of the State's output increased from 2.2 per cent in 1950-1970 to 5.0 per cent in 1980-90. Though the manufacturing output increased at faster rate, agriculture too, during this decade grew by 3.2 per cent. The food grains output of the State increased from 2.3 per cent in 1961-62 to 1968-69 to 4.2 per cent in the period 1971-72 to 1983-84. The production of wheat and rice increased to 7.5 per cent and 5.2 per cent in the Later period (Agarwal, 1996, p.66). The increase in the output of foodgrains during this period and later from 1983-1995 in UP was occurring along with a decline in Punjab and

Haryana's foodgrains output, though this still remained higher than that of UP (Bajpai & Volavka, 2005). The importance of the adoption of capital-intensive technologies in agriculture including credit as an input in agricultural development was realised when high yielding varieties (HYVs) of seeds of wheat and rice known commonly as 'green revolution' were introduced in the western part of the State in the mid-sixties. In fact Basu (2003, p.105) assigns it as an important factor in the nationalization of banks in 1969. The bank credit during this period raised from 14 per cent in total credit in 1972 to 26 per cent in 1981. This however, does not reveal the regional heterogeneity in credit as in the western region, a hub of green revolution, credit to agriculture doubled from 33 per cent to 60 per cent of the total credit to the agricultural sector in the State in 1985.

In the post-reform period, a sort of sectoral readjustment has taken place with the decline in credit to the agriculture and industry and a rise in the share of services sector. While the share of the services credit was 42.4 per cent in 1992-04, its share in total output of the State during this period was slightly higher at 44.9 per cent. The industrial sector, particularly the large industries were receiving highest credit in 1972. Around 60 per cent of credit in the State was to the industrial sector. At the end of March 2004, this had declined to 26.9 per cent (Table 137).

Table 137: Share of Different Sectors in Total credit to UP (averages)

Years	Agriculture	Industry	Services
1972-1982	20.3	54.3	25.4
1983-1992	22.5	40.0	37.0
1993-2004	20.8	36.8	42.4

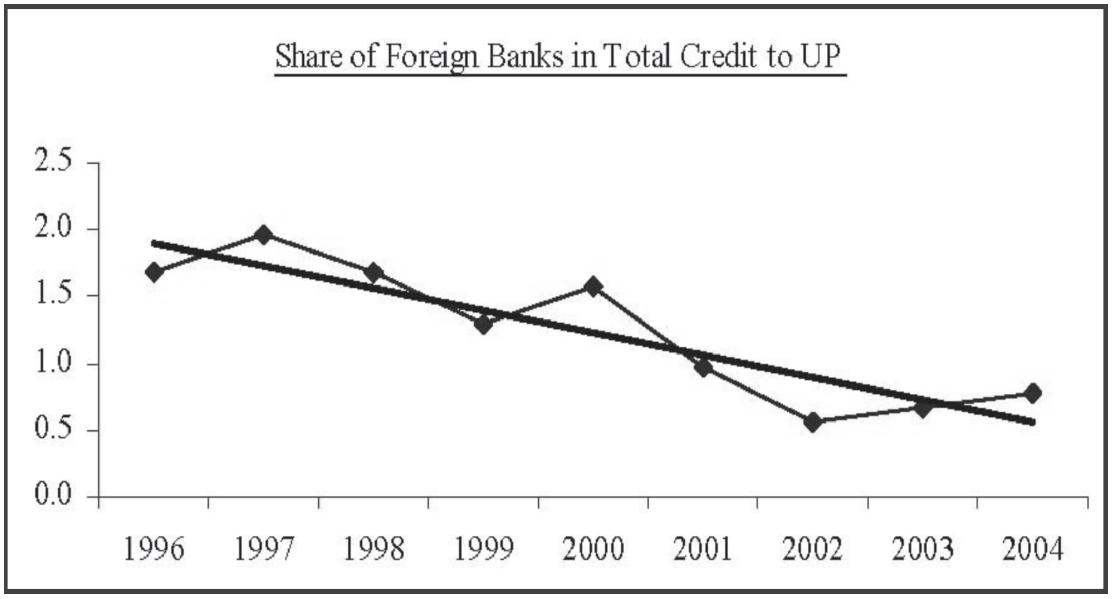
This decline in credit has been accompanied with decline in industrial output too, more so in the registered manufacturing. The decline in credit to agriculture in the post-reform period is often cited as the indicator of structural transformation of the Indian economy, as the share of agriculture in total output too, has declined (Misra, 2003).

i) Bank groups and Credit Growth

Much against the maligning of public sector banks in the Indian literature; it is these banks which have lent the most to the State. Their average share in total credit during 1996-04 was 95.0 per cent and supported 35.0 per cent of the total State output. The

share of private sector banks increased from 2.0 per cent in 1996 to 10.6 per cent in 2004. During the similar period, the share of foreign banks in the State has been negligible, only 1.0 per cent. Even at the all-India level, the share of foreign banks in total credit in 2004 was 7.2 per cent. Only in Delhi, Maharashtra and Tamil Nadu their share in the total credit was more than 12.0 per cent. This too, has gone mostly to the metropolitan areas. Most of the loans given by the foreign banks are in the services sector. What is even more striking is that the share of foreign banks in total credit to the State has been declining (Figure 3).

Figure 3



ii) Regional Output and credit

The four regions of the State - Eastern, Western, Central and Bundelkhand regions, though part of the same State, are at entirely different stages of development economically[7]. The credit needs of these regions, therefore, are also different from each other. Within the regions, two shifts in agricultural output and credit have occurred since the 70s. In 1972, of the total credit to agriculture in the State, the credit to the Central region was highest followed by the Western region. The region received more than 50.0 per cent of the

credit; its share however, halved to around 26.0 per cent between 1975 and 1980 and was only 15.0 per cent in 2004. This shift coincided with the rise of the Western region in agricultural credit, which rose to more than 50.0 per cent during the eighties. The shift rather followed the shift in agricultural output which took place in the Western region. The spread of green revolution, strong farmers movement[8] in the Western part of the State (Brass, 1995), good irrigation system (N. Pant, 2004) were some of the factors explaining agricultural prosperity in Western UP and in the shift from Central to Western UP. The rise and commercialization of agriculture in the region has also been described as capitalist agrarian development. The Eastern region and Bundelkhand during the period received only 10.0 per cent and 3.0 per cent of the total agricultural credit.

The second shift is discerned in the 90s when the shift occurred from the Western to the Eastern region, with the rural credit in the region rising to almost at par with the Western region, even higher than that of the Western region in some of the years. The data on distribution of credit to rural/non-rural areas with their occupational pattern in different districts of the State is not available, but it can be inferred that the non-farm activities, either in the services or manufacturing based in the Western region have increased.

10.3 Credit as the source of development

Typically in the current development literature, credit and development are often associated with microfinance i.e. credit in small quantities given to the poor to help them emerge out of poverty. Microfinance is defined as "the provision of a broad range of financial services such as deposits, loans, payment services, money transfers, and insurance to poor and low-income households and, their micro enterprises" (ADB, 2000). In India too, the microfinance is used as a tool for poverty alleviation. The model of microfinance followed in India is mostly through the Self Help Groups (SHGs) - Bank linkage (around 80 per cent) wherein the Non-Governmental Organisations (NGOs) (which exist for rural development, women, child health etc and microfinance is one of their activities) form the self-help groups and assist the groups in accessing credit from the banks[9]. The role of SHGs in capital accumulation and poverty reduction is limited in the State due to its inadequate outreach. The Southern region in India (comprising the States Andhra Pradesh, Karnataka, Kerala and Tamil Nadu) accounted for 63.0 per cent of SHGs and 79.0 per cent of SHG credit in 2004 Dasgupta (2005). Andhra Pradesh and Tamil Nadu were the leading States. In contrast, Assam, Bihar, Madhya Pradesh and Uttar Pradesh account for much less share of SHGs and SHG credit. In relation to poverty, he concluded that SHGs

are more active where it is lower and reverse in other States. This has been observed by other studies too (P. Basu & Srivastava, 2005). Thus the SHG – bank linkage programme, too, has suffered from the same trend which afflicted bank credit in the post-reform period *viz.*, credit to the more developed States and which have lesser poverty.

Bank credit in small quantities to the small borrowers also assists in the starting of new enterprises and helps them in escaping the low investment -low income trap. In a State like UP, with high poverty levels, this has a different implication than in the State like Maharashtra. Credit per account to the small borrowers in the rural areas of the State was Rs. 635, ranking 9th among the 14 major States. Surprisingly even a State like Maharashtra too ranked 11th among all the States indicating the urban orientation of the credit.

10.4 Credit as the source of Inequality

The literature has focused to a great extent on how inequality affects the economic growth. A large number of studies particularly, in the 90s have burgeoned on the issue, a 'culmination of several studies in the analytical, empirical and policy literature' (Kanbur & Lustig, 1999). The research on the growth and inequality has largely focused on testing the Kuznets hypothesis and the evidence has been inconclusive. In the recent research, focus is on the channels through which inequality could effect economic growth. These include political economy channel (Alesina & Perroti, 1996; Alesina & Rodrik, 1994; Deninger & Squire, 1998; Persson & Tabellini, 1994) according to which unequal societies have higher political instability, which has an adverse effect on investment and growth; income distribution and capital market channel (Banerjee & Newman, 1993; Galor & Ziera, 1993), which relates income distribution and growth through links to capital market. They argued that economic opportunities vary with the unequal distribution of income. Poor people lack opportunities due to lack of capital. Research in this area emphasizes the link between inequality, social conflict and growth. Inequality may cause social unrest and could also lead to violence. The other channel is that of income inequality and social conflict (Fajnzylber, Lederman, & Loayza, 2002). They found evidence to suggest that income inequality is significantly associated with violence levels across the countries The latest World Development Report, 2006 (World Bank, 2005) has even included equity as its theme and defines equity as 'equality of opportunity'.

But could credit be a source of inequality? Investment could lead to inequalities if in a State of existing inequality the financial sector is liberalized, which could lead to control

over finance by few accentuating the inequalities (Claessens & Perotti, 2005). The credit constraints could lead to inequalities in rural-urban credit, which could further foster inequality in incomes. Inequality in credit across the individuals could be examined in terms of geographical spread i.e., rural-urban population or even rural versus rural population and small versus large borrowers. In 1972, about three years after the nationalization of banks, the credit to the non-rural areas of the State was almost 92.0 per cent and, in rural areas only 8.0 per cent. This is supported by the findings of All-India Debt & Investment Surveys (AIDIS). Despite 33 years of massive branch banking and increased focus on agriculture, the credit to rural areas in the State was still only 26.0 per cent in 2004. The average share of the credit in rural and non-rural areas of the State in the post-reform period was 30.0 per cent and 70.0 per cent respectively. The decline in credit to the rural areas has particularly taken place in the 90s. With the increasing focus of banks to services sector and retail lending, the focus shifted to the non-rural areas. The credit-deposit ratio in the rural areas which was 60 per in 1991 declined to almost half of its level in 2004.

10.5 Credit as the source of urban transformation

A shift of credit from the rural to the urban areas can be an indicator of rural–urban inequality, but could also be a source of urban transformation and urbanisation. Urbanisation is usually defined as the effect of rural to urban migration, and natural growth rate of urban population. In most of the studies, urban transformation and urbanisation are used interchangeably (Gugler, 1996). In our study, however, the two are not used interchangeably as the effect of credit would first lead to change and transformation in the urban areas, gradually leading to increased urbanisation *via* urban growth and migration from rural to urban areas. So credit in this sense, assists in fostering change and urbanisation by shifting the loci of activities from agriculture to manufacturing and services.

In UP, the level of urbanisation is low due to high rural to rural migration. Historically, the State had high urbanisation levels. In 1901, UP had 21.0 per cent of India's urban population which declined to 12.9 per cent in 1991. In fact, during the period the 1901--11 in UP, the urbanisation increased by 11.0 per cent as compared to the country's average of 10.8 per cent and during the decade 1931-41 too, the pace of urbanisation was considerably high. Exclusive focus on migration to the existing urban areas and the exclusion of other towns is cited as an important reason in the slowing down of

urbanisation in UP (Parveen, 2005). Table 138 shows the share of urban population in States along with their per capita income in 2001.

Table 138: Urbanisation in Different States in India

States	% of urban population	Per capita income in 2001-02 (Rs.)
Maharashtra	42.4	16797
Andhra Pradesh	27.3	11906
Gujarat	37.4	15962
Haryana	28.9	16395
West Bengal	28.0	11369
Punjab	33.9	17254
Tamil Nadu	44.0	14261
Rajasthan	23.4	9877
Uttar Pradesh	20.8	6539
Bihar	10.5	3712
Orissa	15.0	6787

Source: Census 2001, GOI

The States with low per capita income like UP, Bihar, Orissa also have lower urban population as share of the total population. The percentage of urban population in UP in 1991 was 19.8 and within a span of a decade has just increased to 20.8, an increase of merely .1.0 per cent. On the other hand, the States with higher capita income like Maharashtra, Tamil Nadu and Gujarat had much higher levels of urbanisation. Sachs and Bajpai (2002) too found a strong association between urbanisation and growth in Indian States. Lack of availability of jobs, lesser skills of the rural people and also social exclusion were some of the factors in explaining low rural-urban migration in the State (Parker, Kozel, & Kukreja, 2003).

The increase in credit to the services sector in the Western region is an evidence of increasing credit to the urban areas in the region. It is this region which is more urbanised and the shift to urban activities in the region also reflects the decline of agriculture within the region. Many, among the richer farmers, owning more than 12 acres of agricultural

land in the region, have moved to non-farm employment (C. Jeffrey, 2003; C. Jeffrey & Lerche, 2000). A trend which can be observed from Table 139 is that except the Western region, urban credit has declined in all the other regions of the State.

Table 139: Share of Rural and Non-Rural Areas in Different Regions

Year	ER		WR		CR		BR	
	R	NR	R	NR	R	NR	R	NR
1972	29.3	16.4	55.5	35.9	13.4	38.8	1.8	1.4
1975	28.2	12.0	58.9	39.2	10.9	42.6	2.1	1.3
1980	38.8	20.5	43.9	39.5	13.1	35.3	4.3	3.0
1985	33.9	42.0	40.6	30.4	20.8	25.2	4.7	1.8
1990	38.1	20.2	38.4	41.8	17.5	35.5	5.9	3.1
1995	41.9	22.4	37.4	45.2	14.3	29.3	6.4	2.8
2000	41.5	20.3	39.3	47.0	13.0	29.7	6.3	2.7
2004	38.2	19.5	38.4	47.8	15.3	29.4	8.1	3.3

It is the Western region which is attracting most credit in the urban areas. The credit to the rural sector in the Eastern region has increased in the State and is even more than that of the Western region in the recent years. In the urban areas, it is services sector which has been receiving a large share of the credit. Manufacturing was higher than services till 1998 in the non-rural areas. The turning point came in 1999 when the services share surpassed that of the manufacturing which declined since then.

10.6 Credit as a source of empowerment

Empowerment has become a buzzword since the 90s (See Page & Czuba, 1999). The Concise Oxford English Dictionary defines empowerment as giving authority or power; authorize and give strength and confidence. It has been used in a number of contexts and perspectives, even used as 'fiscal empowerment' (Y. Reddy, 2006). Nevertheless, the word is frequently referred to empowerment of women, socially weaker groups like the disabled and low castes, as in India. Large numbers of studies exist on empowerment of women. In a study of empowerment among women in Eastern UP, (Pandey and Mishra (2004) found that the empowerment of women is extremely low and that access to

ownership of assets, property, credit and education too, has not been important in women's empowerment in this case. They found that decision making was more significant in women empowerment.

Empowerment of women can be not only through education and health, but also economically through access to financial resources, for instance, bank deposits and credit. Credit is associated as the route to empowerment for women, more so with microfinance. Not much information is available on the bank credit to women in the State. The data on credit, according to gender, is available only for small borrowers at the all-India level for the year 2004. Further, breakup for the States is not available which does restrict our analysis. Nevertheless, it does indicate that the share of the credit to women among small borrowers in the rural and non-rural areas is not very different from each other.

Table 140: Percentage Distribution of credit to small borrower accounts

(In per cent)

Area	Individuals				Others			
	Male		Female		Male		Female	
	No. of Account	Amount	No. of Account	Amount	No. of Account	Amount	No. of Account	Amount
Rural	81.7	84.1	17.2	14.1	1.1	1.8	81.7	84.1
Semi-Urban	79.8	81.7	17.7	14.3	2.5	4.0	79.8	81.7
Urban	80.5	81.4	16.4	14.3	3.1	4.4	80.5	81.4
Metropolitan	73.8	79.1	23.2	16.5	3.0	4.4	73.8	79.1
All-India	79.8	82.0	18.2	14.6	2.1	3.4	79.8	82.0

Source: RBI

Since the data on credit is available only for a year, it does not give any idea of women's access to resources in the pre and post-reform period. The table does show that maximum share of the credit among the individuals has gone to males. Only in the metropolitan areas, the share of women is slightly higher as compared to the rest of the areas.

As in credit, the deposits too, are held mostly by the men and the share of women has not changed much over the years.

Table 141: Gender wise Ownership of Deposits in UP (In per cent)

Year	Individuals		Others Year
	Males	Females	
1996	68.7	16.7	14.6
1997	69.0	17.2	13.9
1998	69.6	16.9	13.5
1999	68.7	17.2	14.1
2000	67.8	17.4	14.8
2001	69.6	17.6	12.8
2002	68.7	17.3	14.1
2003	68.7	17.6	13.7
2004	68.2	17.6	14.3

Source: RBI (2005).

The number of women accounts has increased, though this may not be the real indicator of their empowerment, as the accounts of women may be opened to spread the family wealth, and may have nothing to do with their empowerment.

10.7 Conclusion

In the post-reform period an outcome of economic reforms in India has been a decline in bank credit to less developed States. As these States are already less developed, decline in investment affects their ability to come out of the low growth-low income trap. This has been acknowledged by hardly few studies. Even the literature on the State has not focused on this outcome of the reforms. Our study, therefore, using a long-term, time series data covering the period 1972 to 2004, set out to examine the pattern and trend of credit and what the credit means to the State and its regions, their growth and development. The gradual shift taking place in the State as observed by the multidisciplinary studies (R. Jeffrey & Lerche, 2003, among others), reflects in the shift in credit too from Western to Eastern region, rural to urban areas and agriculture to services sector. However, our study does not find evidence of shift from the large to the small borrowers and in the composition of credit/deposit based on gender.

11

SOCIAL GROUP DISPARITIES AND POVERTY IN INDIA

11.1 Introduction

'Economic growth with social justice' or 'growth with equity' has been the basic objective of public policy in India since Independence and refers to a broad based strategy of development, with an emphasis on reduction of poverty. But, whether and the extent to which the poor have actually benefited from the growth process has always been an issue of heated academic debate. In recent years, this debate has focused on the effect of economic liberalization policies on poverty in India. Such debates have not been confined to India, but have been the subject of much empirical enquiry in a global context leading to a vast body of literature on poverty, inequality and growth and their interrelations (Mutatkar, 2005).

However, the focus of much of this literature has been on vertical inequalities i.e., inequalities across income or expenditure classes. In a plural society like India, with people of different castes and religions, it is equally important to focus on 'horizontal inequalities' i.e., disparities between certain identifiable groups in the economy. In India, there are historically marginalized 'social groups' such as the scheduled castes (SC) and scheduled tribes (ST), who comprise a quarter of India's total population (Census of India, 1991). There are separate provisions for their welfare in the 'Constitution of India', which form the basis of targeted development policies by the State to raise the socio-economic status of these groups in absolute terms as well as relative to the rest of society.

Mutatka (2005), has provided a profile of social group disparities and poverty in India (where social groups are classified as SC, ST and other social groups categorized as 'Others') by outlining the trends in growth, poverty and inequality for these subgroups in the economy. He has also examined the factors underlying differences in levels of living (as represented by monthly per capita consumption expenditure) between these groups and for each group separately. The chapter is structured as follows: the next section provides a brief historical overview, which situates the development issues of SC and ST in their

social context. Section 3 describes the data source for the study. Sections 4 and 5 contain a discussion of the empirical issues mentioned herein and the final section summarizes and concludes.

11.2 Historical overview

Scheduled castes (SCs) are a constitutionally declared collection of castes, which suffered from the practice of untouchability. Scheduled tribes (STs) are identified on the basis of certain criteria such as primitive traits, distinct culture, geographical isolation and general backwardness. However, the terms 'scheduled caste' and 'scheduled tribe' are nowhere defined in the Constitution of India. They comprise within them more than four hundred castes and tribes respectively, with large cultural heterogeneity (Singh, 1993; Singh, 1994). The former 'untouchables' were considered to be at the bottom of the Hindu social hierarchy and were not a part of the four-fold 'Varna system' comprising Brahmin, Kshatriya, Vaishya and Shudra. They have been variously referred to as 'Avarna' and 'Ati-Shudra'. The tribal people also referred to as 'Adivasis' meaning original inhabitants of the land were not considered part of the Hindu social hierarchy. It is important to note that scheduled castes have historically suffered from social stigma due to untouchability and thus been socially excluded, though physically they have always been a part of mainstream society. Scheduled tribes on the other hand, have historically been physically or geographically excluded, but did not face any social stigma and are not socially excluded. So, while scheduled castes even today can be found in almost all villages and urban centers in India, except perhaps the exclusive tribal regions, scheduled tribes are generally concentrated in a few geographical regions, which are relatively physically inaccessible, such as hilly regions and forests. These historically rooted different forms of exclusion have very important implications for the present-day nature and causes of poverty among these groups.

11.3 Data Source

The consumer expenditure surveys from the National Sample Survey (NSS) represent the main source of data for the issues addressed in this study. The National Sample Survey Organization was started by the Government of India, in 1950, to collect socio-economic data employing scientific sampling methods. Different subjects are taken up for survey in different rounds of the NSS and the surveys cover the whole of the Indian Union. The household consumer expenditure survey collects data separately for the rural and urban sectors by way of two-stage stratified random sampling. We use data on monthly per

capita expenditure, which is available for social groups from the 38th round (1983) onwards. The Statewise results in all sections of this paper refer to 14 major States of India viz. Andhra Pradesh, Assam, Bihar, Gujarat, Karnataka, Kerala, Maharashtra, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. In the first part of the paper, we use data mainly from three quinquennial rounds viz. the 38th round (1983), 50th round (1993-94) and 55th round (1999-00), which are large sample rounds. The 55th round categorizes social groups as ST, SC, OBC1 and Others. The earlier rounds did not specify a separate OBC category and therefore to maintain comparability, OBC has been combined with 'Others', for the purpose of our computations. Data on monthly per capita expenditure for the 55th round is available using two reference periods viz., the seven-day and thirty day reference period2. The analysis in this paper uses data from the thirty-day reference period.

11.4 Social group disparities and poverty: A profile

The preamble of the Indian constitution resolves to secure to all its citizens, "Justice, social, economic and political". The Constitution directs the State to promote with special care, the educational and economic interests of the scheduled castes and scheduled tribes, and protect them from social injustice and all forms of exploitation. In the spirit of the Constitution of India, there have been a multitude of affirmative action policies for the scheduled castes and scheduled tribes, which include a separate special component plan and tribal sub-plan respectively. In economic parlance, these may be referred to as 'between-group redistributive policies', which in the context of historically marginalized subgroups in the economy have close connections with the notion of 'equity' and 'social justice'. The trends in social group disparities and poverty in India should be evaluated keeping in view these special policies. So, along with absolute poverty, a discussion of relative deprivation also assumes significance. While recognizing the multidimensionality of poverty, we confine ourselves to growth, inequality and poverty defined in the consumption sphere and seek to examine the following issues: -

i) What are the trends in absolute poverty and composition of the poor by social group?

ii) What are the trends in between-group disparities and within-group inequalities and changes in the social group hierarchy in India?

iii) What is the nature and direction of the change in poverty for each social group, with regard to the relative role of growth and changes in distribution?

iv) What is the 'growth elasticity of poverty' for social groups in India?

(A) Incidence of poverty and composition of the poor

The headcount ratio of poverty measures the proportion of the population living below the povert y line. Table 142, provides all-India and Statewise estimates of the headcount ratio by social group3 and indicates that in 1999-00, 45.83% of the ST in rural India were living below the poverty line as compared to 35.89% of the SC and 21.47% of the others. Scheduled castes have the highest incidence of poverty in urban India4. To analyze the trends in absolute poverty of different social groups, we compute the rate of change in the headcount ratio for each period under consideration (Table 143). The results for all-India indicate that for the overall time period under consideration (1983 to 99-00) and the period of the 1990s (1993-94 to 99-00), poverty has declined faster among the others as compared to the SC and ST. From 1993-94 to 99-00, the ST showed the lowest rate of decline in the extent of poverty in both rural and urban India. This is seen to be a common feature across rural areas of almost all States in India (Table 144).

Table 142: Incidence of Rural and Urban Poverty (1999-00)

State	Rural				Urban			
	ST	SC	Others	All	ST	SC	Others	All
Andhra Pradesh	23.07	16.47	7.39	10.53	47.53	42.10	24.15	27.23
Assam	39.16	44.98	39.66	40.15	2.93	21.14	5.84	7.22
Bihar	59.37	59.30	38.21	44.09	42.88	51.37	30.12	33.48
Gujarat	27.50	15.57	7.65	12.36	38.44	26.83	11.44	14.78
Karnataka	24.86	25.67	13.59	16.84	51.68	46.67	20.37	24.61
Kerala	25.04	15.61	8.38	9.37		23.41	19.42	19.84
Madhya Pradesh	57.14	41.21	26.57	37.25	53.44	56.11	34.05	38.48
Maharashtra	44.20	31.64	16.72	23.22	42.75	40.71	23.90	26.75
Orissa	73.10	52.30	33.29	48.14	59.38	72.03	34.18	43.51
Punjab		11.88	2.11	5.99		11.17	2.99	5.47
Rajasthan	24.83	19.52	8.41	13.47	21.80	43.25	13.68	19.43
Tamil Nadu	44.58	31.74	14.40	20.02		45.66	19.29	22.50
Uttar Pradesh		43.38	26.90	31.06		44.33	28.40	30.74
West Bengal	50.05	34.91	28.42	31.66	33.69	28.27	11.23	14.70
All India	45.83	35.89	21.47	26.98	35.61	38.31	20.31	23.44

Source: Author's calculations using NSS household level data from the 55th round. Note: Blank cells indicate estimates not computable due to very low proportion of ST population in the State.

Table 143: Rate of change in headcount ratio (All-India) (% per annum)

	ST	SC	Others	All
Rural				
1983 to 93-94	-2.76	-2.12	-2.64	-2.59
1993-94 to 99-00	-1.34	-4.39	-4.90	-4.09
1983 to 99-00	-2.23	-2.98	-3.50	-3.16
Urban				
1983 to 93-94	-2.47	-1.15	-1.77	-2.46
1993-94 to 99-00	-2.50	-3.73	-5.63	-4.99
1983 to 99-00	-2.48	-2.12	-3.24	-3.42

Source: Author's calculations using NSS data of respective rounds

Table 144: Rate of change in headcount ratio (rural)
(1993-94 to 1999-00) (% per annum)

	ST	SC	Others	All
Andhra	-0.06	-6.30	-4.90	-4.36
Assam	-2.27	-0.88	-1.80	-1.77
Bihar	-2.50	-3.27	-4.79	-4.62
Gujarat	-1.89	-9.31	-12.06	-8.45
Karnataka	-6.20	-7.82	-7.98	-7.89
Kerala	-8.63	-12.93	-17.44	-16.73
Madhya Pradesh	-0.22	-1.66	-0.85	-0.97
Maharashtra	-2.01	-6.80	-8.86	-6.28
Orissa	0.69	0.14	-2.70	-0.42
Punjab		-6.54	-17.33	-10.24
Rajasthan	-3.29	-10.24	-11.31	-8.76
Tamil Nadu	1.37	-4.84	-9.42	-6.41
Uttar Pradesh		-5.16	-4.77	-4.72
West Bengal	-2.08	-4.95	-0.92	-2.45

The composition of the poor is slowly changing in rural India (Table 145). In 1983, the SC and ST together comprised about 37% of the poor in rural all-India. In 1999-00, this share has gone up to 45%, which is much higher than their 31% share in the rural population (NSS estimate), even after accounting for changes in the composition of rural population. This may imply a trend towards a concentration of rural poverty among the SC and ST.

Table 145: Composition of rural population by social group (%)

	38th round ST	SC	Others	55th round ST	SC	Others
Andhra	6.42	18.74	74.83	7.10	22.40	70.49
Assam	18.16	5.70	76.13	15.83	11.13	73.04
Bihar	8.93	17.19	73.89	7.21	21.05	71.74
Gujarat	21.17	9.89	68.94	19.37	10.91	69.72
Karnataka	7.16	14.25	78.60	7.84	19.66	72.50
Kerala	1.86	11.68	86.46	1.70	9.85	88.45
Madhya Pradesh	32.99	13.61	53.39	27.99	14.50	57.52
Maharashtra	13.27	9.81	76.93	16.64	13.02	70.33
Orissa	24.34	16.91	58.75	27.06	20.97	51.97
Punjab	1.31	28.48	70.21	1.06	38.22	60.72
Rajasthan	14.28	18.04	67.69	19.79	16.34	63.87
Tamil Nadu	0.94	23.04	76.01	1.19	30.70	68.11
Uttar Pradesh	1.37	21.96	76.67	1.21	24.73	74.06
West Bengal	7.48	27.60	64.92	6.72	27.26	66.02
All-India	10.28	17.96	71.76	10.51	20.46	69.04

Composition of rural poor by social group (%)

	38th round ST	SC	Others	55th round ST	SC	Others
Andhra	8.57	25.71	65.72	15.55	35.02	49.43
Assam	20.38	5.78	73.85	15.43	12.46	72.11
Bihar	10.26	21.58	68.16	9.69	28.26	62.06
Gujarat	40.74	12.46	46.79	43.10	13.75	43.15
Karnataka	11.26	21.32	67.42	11.56	29.96	58.48
Kerala	2.00	18.67	79.33	4.54	16.41	79.05
Madhya Pradesh	44.48	16.11	39.41	42.94	16.04	41.03
Maharashtra	18.06	12.84	69.10	31.66	17.73	50.61
Orissa	30.95	18.79	50.27	41.17	22.82	36.01
Punjab	1.48	54.46	44.06	2.95	75.72	21.33
Rajasthan	23.48	21.03	55.49	36.47	23.67	39.85
Tamil Nadu	1.18	28.09	70.74	2.65	48.51	48.51
Uttar Pradesh	1.29	27.08	71.63	1.35	34.53	64.12
West Bengal	8.99	31.71	59.30	10.63	30.07	59.30
All-India	14.18	22.75	63.07	17.84	27.21	54.95

Source: Author's calculations using NSS household level data of respective rounds

(B) Between-group disparities and within-group inequalities

The average Monthly Per Capita Expenditure (MPCE) of a social group can be taken as a proxy for the average level of living of that group. We compute compound annual growth rates in average MPCE at constant 1960-61 prices[5] for each time period under consideration, separately for the rural and urban sectors for each social group (Table 146). The figures show that for the period as a whole i.e., from 1983 to 1999-00, the growth rate in average MPCE of the SC and ST was marginally higher than the others in rural areas, while in urban areas, the SC consistently have the lowest growth rate. The ST in rural India had the lowest growth rate in average MPCE in the period of the 90s.

Table 146: Average MPCE (Rs.) and its Growth rate (at constant prices) (All-India)

Rural	Average MPCE (Rs.) (current prices)					Compound Growth Rate (% per annum)			
	ST	SC	Others	All		ST	SC	Others	All
1983	87.15	94.31	120.42	112.31	1983 to 93-94	1.38	0.77	0.68	0.66
1993--94	234.37	238.91	302.09	281.40	1993-94 to 99-00	0.65	1.61	1.34	1.37
1999--00	387.59	418.50	520.84	485.87	1983 to 99-00	1.10	1.09	0.93	0.93
Rural	**Average MPCE (Rs.) (current prices)**					**Compound Growth Rate (% per annum)**			
	ST	**SC**	**Others**	**All**		**ST**	**SC**	**Others**	**All**
1983	133.11	128.95	172.11	165.80	1983 to 93--94	1.63	0.87	1.38	1.28
1993--94	380.54	342.18	480.28	458.04	1993--94 to99-00	1.96	1.64	2.61	2.45
1999--00	690.06	608.78	904.83	854.69	1983 to 99--00	1.75	1.16	1.84	1.72

Source: Author's calculations using NSS data of respective rounds. Note: Average MPCE (Rs.) at constant 1960-61 prices computed using poverty line deflators.

These growth rates also suggest that rural-urban disparities are widening for all social groups i.e., the growth rate in average MPCE for the urban sector is greater than that of the rural sector for each social group, and in the aggregate between each time period under consideration. These growth rates get reflected in the social disparity ratios (ratio of average MPCE of Others: SC and Others: ST), computed separately for rural and urban areas (Table 147).

So, from 1983 to 1999-00, social disparities between SC and Others in rural areas have declined, but in urban areas have increased. Social disparities between ST and Others have however widened at an all-India level between 1993-94 and 1999-00. The disparities between SC and Others in urban areas are wider as compared to rural areas, and the reverse is true for ST.

Table 147: Social Disparity Ratios (All-India)

	Rural			Urban		
	1983	**1993-94**	**1999-00**	**1983**	**1993-94**	**1999-00**
Others: SC	1.277	1.264	1.245	1.335	1.404	1.486
Others: ST	1.382	1.289	1.344	1.293	1.262	1.311

Source: Author's calculations using NSS data of respective rounds. Note: Social disparity ratio refers to the ratio of average MPCE (Rs.) of Others: SC and Others: ST

The State specific variations in social disparities also need to be noted (Table 148) For example, in 1999-00 the average MPCE of the rural SC in Punjab was 68.66% that of Others, but for Assam and West Bengal, it was more than 90% that of Others. Similarly, the ST in rural Orissa had an average MPCE, which was 66.45% that of Others, but the average MPCE of ST in Assam was actually higher than that of Others. Similar variations can be observed for urban areas.

Table 148: Average MPCE of SC and ST (Others=100) (1999-00)

	Rural		Urban	
	SC	**ST**	**SC**	**ST**
Andhra Pradesh	78.95	79.21	76.42	79.00
Assam	97.43	102.81	65.55	88.16
Bihar	81.31	83.21	69.82	83.11
Gujarat	76.97	73.39	68.94	70.02
Karnataka	78.89	76.04	61.34	65.64
Kerala	75.94	85.75	84.61	
Madhya Pradesh	84.20	73.12	71.69	77.28
Maharashtra	80.21	71.80	68.71	70.57
Orissa	81.99	66.45	64.77	71.97
Punjab	68.66		67.10	
Rajasthan	85.49	79.44	69.10	79.85
Tamil Nadu	76.95	69.29	57.66	
Uttar Pradesh	81.52		77.48	
West Bengal	93.75	80.18	63.28	61.40
All-India	**80.35**	**74.43**	**67.27**	**76.26**

Source: Author's calculations using NSS data from 55th round.

A comparison of the average consumption level of different groups provides some measure of the magnitude and direction of between-group disparities. However, disparities between-groups and their change overtime can also be examined by changes in the social group hierarchy, indicated by the population composition of consumption quintiles by social group (Table 149). This is obtained by first dividing the population into quintiles on the basis of their MPCE, and then computing the population composition of each quintile by social group. Q1 in the table refers to the bottom quintile of the population (bottom 20%) and Q5 to the top quintile (top 20%). It can be observed that the proportion of ST and SC decreases as we move to higher quintiles, while the proportion of Others increases. In 1999-00, 83.63% and 92.53% of the top quintile comprise of the Others in rural and urban areas, respectively. The population composition of quintiles by social group indicates that the Others comprise more than 50% of the population in all quintiles, which would be a reflection of their higher overall population.

Table 149: Population composition (%) of quintile by social group (rural)

	1983			1993-1994			1999-2000		
	ST	**SC**	**Others**	**ST**	**SC**	**Others**	**ST**	**SC**	**Others**
Q1	17.56	25.70	56.74	16.93	29.59	53.48	19.48	27.68	52.83
Q2	12.03	21.45	66.52	12.77	24.55	62.67	11.66	25.20	63.13
Q3	9.70	17.15	73.16	10.30	21.18	68.52	9.07	20.30	70.62
Q4	7.13	14.86	78.01	8.18	17.73	74.09	7.20	17.73	75.07
Q5	5.00	10.62	84.39	5.91	12.41	81.68	5.07	11.30	83.63
All	10.28	17.96	71.76	10.82	21.09	68.09	10.51	20.46	69.04

Source: Author's calculations using NSS household level data of respective rounds.

An alternative profile of the social group hierarchy in India is provided by examining the percentage distribution of social group by quintiles i.e., distribution of the population of each social group across quintiles (Table 150 and 151). For the year 1999-00, this shows that 37% of ST and 27% of SC are in the bottom quintile of the rural sector as against 15% of 'Others'. On the whole, more than 50% of ST and SC are in the bottom two quintiles. The proportion of ST in the bottom quintile shows an increase from 34% in 1983 to 37% in 1999-00, while that of SC and Others shows a marginal decline. In urban India, the proportion of both SC and ST has increased in the bottom quintile.

Within-group inequalities have been measured using the Gini coefficient, which is the most commonly used measure of inequality in the empirical literature. A priori, the Others may be expected to be a much more heterogeneous group in terms of average consumption levels, as they include the 'Other Backward Classes' (OBC) as well as high caste groups in Indian society. It can be observed (Table 150), that though inequality within the 'Others' is higher than within the SC and ST, the magnitude of difference is not as large as may be expected. Within-group inequalities in the rural sector have decreased for all social groups, but in the urban sector have increased for the ST and Others[6]. The within-group disparity ratios indicate the ratio of average MPCE of the top quintile to the bottom quintile. The table shows that the average MPCE of SC and ST in the top quintile of the rural sector is 3.36 and 3.86 times respectively, that in the bottom quintile. This ratio is higher in the urban sector and clearly indicates that the SC and ST are not a homogenous group in terms of levels of living.

Table 150: Population composition (%) of quintile by social group (urban)

	1983			1993-1994			1999-2000		
	ST	**SC**	**Others**	**ST**	**SC**	**Others**	**ST**	**SC**	**Others**
Q1	3.97	18.95	77.78	4.24	22.87	72.88	5.19	23.98	70.83
Q2	3.11	14.72	82.16	3.85	17.42	78.73	3.79	18.49	77.72
Q3	2.82	11.85	85.34	3.07	13.64	83.29	3.05	14.32	82.62
Q4	2.29	9.58	88.14	2.98	9.38	87.64	2.74	9.83	87.42
Q5	1.59	6.01	92.4	1.91	5.92	92.18	2.23	5.25	92.53
All	2.76	12.08	85.16	3.21	13.85	82.94	3.40	14.38	82.22

Source: Author's calculations using NSS household level data of respective rounds.

Table 151: Percentage distribution of social group by quintile (rural)

	1983			1993-1994			1999-2000		
	ST	**SC**	**Others**	**ST**	**SC**	**Others**	**ST**	**SC**	**Others**
Q1	34.17	28.64	15.82	31.30	28.06	15.72	37.13	27.09	15.32
Q2	23.39	23.89	18.53	23.61	23.27	18.41	22.24	24.69	18.32
Q3	18.86	19.09	20.38	19.05	20.09	20.14	17.34	19.93	20.54
Q4	13.86	16.55	21.75	15.12	16.80	21.76	13.67	17.29	21.68
Q5	9.71	11.82	23.51	10.92	11.76	23.99	9.63	11.01	24.14
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Author's calculations using NSS household level data of respective rounds.

Total inequality can be decomposed into a within-group and between-group component. The Gini coefficient is not additively decomposable into a within-group and between-group component and this has been done using the Theil's entropy (T) measure (Table 152).

Table 152: Within-Group Inequality

All-India	Gini index (rural)				Gini index (urban)		
	1983	**1993-94**	**1999-00**		**1983**	**1993-94**	**1999-00**
ST	28.06	26.74	24.35	ST	31.56	30.95	32.85
SC	28.54	25.42	23.31	SC	29.46	30.44	27.72
Others	30.85	28.83	26.38	Others	34.12	34.38	34.85
All	**30.90**	**28.59**	**26.32**	**All**	**33.93**	**34.39**	**34.69**

All-India	Within-group disparity ratio (Q5/Q1) (rural)				Within-group disparity ratio (Q5/Q1) (urban)		
	1983	**1993-94**	**1999-00**		**1983**	**1993-94**	**1999-00**
ST	4.32	4.31	3.86	ST	5.14	4.79	5.23
SC	4.34	3.70	3.36	SC	4.72	4.83	4.37
Others	4.71	4.40	3.98	Others	5.68	6.08	5.85
All	**4.76**	**4.35**	**3.98**	**All**	**5.64**	**5.99**	**5.85**

Source: Author's calculations using NSS household level data of respective rounds

The between-group component can be defined as the value of the inequality index for the hypothetical consumption distribution, which assigns to each person within a group, the mean consumption of the group. The within-group component can be defined as the value of the inequality index, when the mean consumption levels for each group are equalized to the overall mean, through an equiproportional change in the consumption of every person within a group.

Table 153: Decomposition of total inequality

	Rural			Urban		
	1983	**1993-94**	**1999-00**	**1983**	**1993-94**	**1999-00**
Within-Group component (%)	95.78	96.4	95.03	98.01	97.27	96.45
Between-group component (%)	4.22	3.60	4.97	1.99	2.73	3.55

Source: Author's calculations using NSS household level data of respective rounds.

The results indicate that between-group disparities comprise less than 5% of total inequality in both rural and urban areas. The between-group component in rural areas is larger than in urban areas and has increased in both these sectors from 1983 to 1999-00.

Thus, from the table it would appear that it is within-group inequalities that are quantitatively more important than between-group disparities within the rural and urban sectors. Kanbur (2003) points out that, the empirical literature on such decompositions for race, gender, spatial units etc in an international context indicates that the between group component has not exceeded 15%, but the policy interpretation needs to be done with caution, since the social weight on these differences might be far greater than their contribution to overall interpersonal inequality. In the context of social group disparities and poverty in India, we may say that it is the existence of differences in average socio-economic status on the basis of caste, across time and across regions, that makes it normatively unacceptable and a cause of policy concern. Whether the unit of action for public policy should be a group or sections within a group could be a matter of debate in which a distinction needs to be made between the social and economic impacts of any such policy.

(C) Decomposition of change in poverty

The proportion of people living below the poverty line as measured by the headcount ratio is a function of the mean consumption level as given by the Monthly Per Capita Expenditure (MPCE) and the inequality in the distribution of monthly per capita expenditure.

Therefore, poverty can be reduced with an increase in mean consumption, with inequality remaining constant; a reduction in inequality with mean consumption remaining constant

or an increase in mean consumption simultaneously accompanied by a reduction in inequality of its distribution. While the first strategy focuses on growth alone and the second on reduction of inequality or redistribution, the third strategy brings about a faster reduction in poverty and is referred to as 'redistribution with growth' or 'growth with equity'.

A change in poverty between two periods can be decomposed into a growth component and a redistribution component. We do this decomposition for the SC and ST in each State and all-India for the rural sector between the time periods under consideration. The results of this decomposition would enable a better understanding of the nature and direction of poverty change for these groups. Alternative methodologies exist for doing this decomposition. We use the Datt and Ravallion (1992) methodology, which decomposes a change in poverty over time periods t and t+n (say) as follows: -

$$P_{t+n} - P_t = G(t, t+n) + D(t, t+n) + R(t, t+n)$$

Here, the three terms on the right-hand side of the equation refer to the growth component, redistribution component and residual component, respectively. The growth component of a change in the poverty measure is defined as the change in poverty due to a change in the mean consumption, with inequality in the distribution of consumption remaining constant. The redistribution component is the change in poverty due to a change in inequality while keeping the mean consumption constant. The residual will vanish only if the mean consumption level or the inequality in the distribution of consumption remains unchanged over the decomposition period.

Table 154 gives the results of the decomposition for all-India8. The table indicates that for the rural sector, both growth and redistribution have contributed to a decrease in poverty, but the growth component dominates the redistribution component. If we include the Statewise decompositions, in general, the following five cases can be distinguished: -

(1) Both growth and redistribution components have contributed to a reduction in poverty, but growth component dominates redistribution component.

(2) Both growth and redistribution components have contributed to a reduction in poverty, but redistribution component dominates growth component.

(3) Growth component has contributed to an increase in poverty, but redistribution component has contributed to a decrease.

(4) Redistribution component has contributed to an increase in poverty, but growth component has contributed to a decrease.

(5) Both growth and redistribution components have contributed to an increase in poverty.

Table 154: Decomposition of change in poverty

	Change in poverty (% points)	Growth Component (% points)	Redistribution component (% points)	Residual component (% points)
All-India Rural				
SC				
1983 to 1993-94	-11.14	-8.21	-1.45	-1.48
1993-94 to 1999-00	-10.99	-9.28	-1.23	-0.48
1983 to 1999-00	-22.13	-16.37	-2.08	-3.68
ST				
1983 to 1993-94	-15.82	-8.00	-0.71	-7.11
1993-94 to 1999-00	-3.79	-3.64	0.00	-0.15
1983 to 1999-00	-19.61	-17.53	-0.86	-1.22

Source: Author's calculations using NSS data of respective rounds.

In case of (3) and (4), the net effect on poverty will depend on the relative magnitude of the growth and redistribution effects. Classifying the Statewise and all-India decompositions for SC, ST, we find that in rural areas, about half the poverty changes can be classified as (1), the next largest component being case (4). We find instances of case (3), (4) and (5), where rural poverty increased due to the particular magnitudes of the growth and redistribution effect. For example, the incidence of rural poverty in Orissa increased among the SC and ST in the period of the 1990s. In the case of the SC, this was because of a decline in mean consumption in real terms, while for the ST a decline in mean consumption was also accompanied by an increase in within-group inequality. In Assam, there has been an increase in rural poverty among the SC between 1983 and 1999-00, due to an increase in within-group inequality, which has negated the positive growth effect.

So, in general we may say that though growth has been the prime mover of changes in rural poverty among the SC and ST in India in the 1980s and 1990s, within group distributional changes have influenced the magnitude of poverty change and in some cases also influenced its direction.

Between-group redistributive policies will have a limited impact on poverty, if it leads to increases in within group inequalities. So, policies to reduce poverty among the SC and ST may be made more effective by way of a growth driven strategy with special emphasis on the lower quintiles within these groups. The key challenge for the policymaker will lie not only in identifying the policies and institutional structures that will promote equitable growth, but also managing the informational and political-economy constraints that may arise in its implementation.

(D) Growth elasticity of poverty for social groups

As noted earlier, scheduled castes and scheduled tribes are historically excluded groups, scheduled castes by way of social exclusion and scheduled tribes by way of physical or geographical exclusion. It is important to know whether and how far they have been excluded from the benefits of economic growth in the contemporary Indian economy. We examine this by analyzing the extent to which a given rate of economic growth reduces poverty among different social groups, or by examining the 'growth elasticity of poverty' for social groups in India. We define State-level economic growth as changes in the per capita net State Domestic Product (PCNSDP) at constant prices, and seek to compute the required estimates of growth elasticity of poverty through panel regressions separately for each social group in the rural and urban sector using Statewise data. The model we posit is as follows: -

$$Ln\ HCR_{it} = a + b\ ln\ PCNSDP_{it} + c\ ln\ GINI_{it} + d\ INF_{i} + e_{it}$$

$$i=1 \text{ to } 14;\ t=1 \text{ to } 4$$

Here the dependent variable and the three explanatory variables refer to the log of the headcount ratio, log of (PCNSDP) (at constant prices), log of the Gini index and the State-level infrastructure index respectively. Our time period is from 1983 to 1999-00, using data from four time points *viz*. 1983, 1987-88, 1993-94 and 1999-00, the years representing the quinquennial rounds of the NSS consumer expenditure survey. We use data for fourteen major States in India. Statewise estimates of headcount ratio and the Gini index for each social group by rural and urban sector are computed using data from

these four survey rounds. Data for per capita net State domestic product at constant prices represents the average of the preceding year and the time point under consideration and is computed from the National Accounts Statistics of India (EPWRF, 2003). The State-level infrastructure index is for the year 1983 (CMIE, 1997) and acts as a control variable for the initial conditions in States. This regression is run separately for each social group in the rural and urban sectors, using their respective headcount ratio and Gini index. Since scheduled tribes are not present in all States, we have 48 observations for scheduled tribes in the rural sector and forty observations in the urban sector. For the panel regression for scheduled castes, 'Others' and in the aggregate we have 56 observations each. The panel regression was run separately for each social group and in the aggregate using both fixed effect and random effect models. The infrastructure variable gets dropped in the fixed effect model. The Hausman test was applied to choose between these two models. The regression coefficient for the log of per capita net State domestic product can be interpreted to be an estimate of the growth elasticity of poverty, controlling for changes in within-group distribution. The resulting estimates of growth elasticity of poverty for social groups in 14 major States of India are given in the table below[9]. These indicate the percentage reduction in poverty for a one per cent rate of economic growth. All these estimates are statistically significant at 1% level of significance.

Table 155: Growth elasticity of poverty

Social groups	Rural	Urban
SC	-0.65	-0.71
ST	-0.90	-0.67
Others	-1.21	-1.59
All	**-1.01**	**-1.13**

The 'Others' are found to have a higher growth elasticity of poverty in both rural and urban sectors. The scheduled tribes and scheduled castes have the lowest growth elasticity in the rural and urban sectors respectively. The growth elasticity in the aggregate is marginally higher in the urban sector as compared to the rural sector. These results imply that economic growth in the 1980s and the 1990s has not equally benefited the different social groups and the rural and urban sectors, as per evidence from 14 major States of India.

11.5 Determinants of average consumption levels

The previous section indicated the presence of social disparities in levels of living, between the SC, ST and Others. It also indicated that the SC and ST are not a homogenous group in terms of levels of living. This section seeks to examine through a cross-section regression analysis the factors underlying differences in levels of living (as represented by monthly per capita expenditure) between the SC and ST as compared to Others and for each group separately. 10 We use household level data from the consumer expenditure survey of the 55th round of NSS, which was conducted from July 1999 to June 2000. The survey was conducted by way of an equal sized sample across four subrounds, each of three months duration[11]. The 55th round consumer expenditure survey collected data from 71,385 households in the rural sector and 48,924 households in the urban sector. We use data from the rural sector where 81% of the scheduled caste population and 93% of the scheduled tribe population is concentrated (Census of India, 1991) and focus on 14 major States of India, which reduces the number of sample households to 59,60112.

In Table 156, we seek to provide a profile of the characteristics of rural households by social group, in the 14 States under consideration. We observe notable differences in the occupational structure, education and land possessed across social groups. More than half of SC households are agricultural labor households, implying that their major source of income is from agricultural labor. 44% of ST households have agricultural labor as their main source of livelihood, but a sizeable proportion (35%) are also selfemployed in agriculture. Compared to these two social groups, the Others have the least proportion of rural labor households and a larger proportion of cultivators and those engaged in other occupations, which includes regular and salaried employed. These occupational differences are related to the average size of land possessed[13] by each social group. While the ST and Others possess on an average about a hectare of land each, the average size of land possessed by the SC households is only 0.4 hectares, which may indicate a higher proportion of landless households. The 'Others' are seen to have a higher level of education than the other two groups, both by way of percentage of literates and the maximum level of education (in years) in a household. There does not seem to be much difference across social groups in demographic factors such as average household size and proportion of females in the household, nor in terms of average proportion of workers[14] in the household.

We first seek to examine the determinants of monthly per capita expenditure for the rural sector as a whole, consisting of all social groups, and then separately for each social

group. The dependent and explanatory variables used in our analysis are described below along with a discussion of the *a-priori* expectations on the signs of the regression coefficients.

Table 156: Characteristics of rural households by social group

	ST	SC	Others	All
% of households	10.87	21.43	67.70	100.00
Average MPCE (Rs.)	373.50	412.20	508.37	474.40
Avg. household size	4.84	4.84	5.12	5.03
Avg. propn. of workers in the household	0.53	0.48	0.43	0.45
Avg. propn. of females in the household	0.48	0.49	0.49	0.49
% of female headed household.	8.10	9.50	10.43	9.98
% of households selfemployed in non-agriculture	5.12	11.80	14.87	13.15
% of agricultural labor households	44.57	54.05	26.88	34.63
% of other labor households	7.96	9.11	7.00	7.55
% of households self employed in agriculture	34.53	16.61	38.16	33.14
% of households in other occupations	7.81	8.44	13.10	11.52
Avg. size of land possessed (hectares)	1.06	0.41	0.99	0.88
% of literates (age >=7)	40.41	45.99	60.08	55.18
Avg. maximum level of education in a household (in years)	3.97	4.46	6.20	5.59
% of Hindu households	93.30	91.98	81.98	85.35

Source: Author's calculations using NSS household level data from 55th round. Note: The figures in this table represent household characteristics from fourteen major States of India.

Dependent variable: The values of monthly per capita expenditure across States are not strictly comparable due to State-specific variations in prices, and therefore we express monthly per capita expenditure at all-India prices, using the Statewise and all-India rural poverty lines, and take the logarithm of the monthly per capita expenditure as the dependent variable.

Explanatory variables:

(A) Demographic factors:

(1) **Household size**: Household size refers to the total number of members in the household, and an increase in the household size may be expected to have a negative effect on the Monthly Per Capita Expenditure (MPCE) of the household.

(2) **Ratio of workers to household size**: It is expected that larger the proportion of working members in a household, higher would be the MPCE.

(3) **Ratio of female members to household size**: Women in India are known to have a lower labor force participation rate as compared to men and there exists evidence for labor market discrimination against women, by way of lower wages. So, an increase in the proportion of female members in a household may lead to a negative effect on MPCE.

(4) **Female-headed household**: Dummy variable, which takes the value 1 if the household is a female-headed household and zero otherwise. Households headed by females, such as widows, may be expected to have a lower MPCE than those headed by men and so the expected sign on the regression coefficient would be negative.

(B) Area of land possessed: In the rural economy, a larger area of land possessed may be expected to have a positive effect on the MPCE of a household. As noted earlier, the average size of land possessed by the scheduled tribes and Others is almost equal, but scheduled tribes have a much larger incidence of rural poverty. It would therefore be of policy relevance to examine the impact across social groups, of a marginal increase in the area of land possessed, on the average MPCE.

(C) Occupation: The NSS classifies households into five occupational types *viz.* 'selfemployed in non-agriculture', 'agricultural labor', 'selfemployed in agriculture', 'other labor' and 'other occupations', depending on the major source of income of the household[16]. We take dummy variables for these occupational types, with the base category being agricultural labor, known to be the occupational group with the highest incidence of poverty in rural India. So, the regression coefficients for the occupation dummies may be expected to be positive in sign.

(D) Seasonal factors: In a rural economy dependent on agriculture, which is predominantly

rainfed, seasonal variations in average consumption levels may be expected. We take seasonal dummies based on the four sub-rounds with sub-round one (July-September) as the base category since it corresponds to the monsoon season, which is a period of food shortage in the rural economy and when the government public work programmes are also not in operation. However, it is difficult to have any *a-priori* expectations on the sign of the regression coefficient in this case, since the cultivators and rural labor households may have different consumption patterns in different seasons.

But, it would be of interest to examine whether the harvesting season for Kharif (October-December) and Rabi (April-June) crops would have any impact, with reference to the base period. It would also be of interest to examine whether the scheduled castes and scheduled tribes, which are the poorer social groups, would have a different seasonal variation in consumption levels as compared to the Others.

(E) Education: The survey classifies the level of education attained by each member of the household into 13 categories, the lowest being illiterate and the highest being graduate and above. We reduce the number of categories to five *viz.* 'literate, but below primary', 'primary, but below secondary', 'secondary, but below graduate', 'graduate and above', and take the maximum education level in the household to be the explanatory variable, with 'illiterate' to be the base category. *A-priori*, it can be expected that the average income level and hence the average consumption level of the household would increase with the maximum level of education attained and hence we would expect the regression coefficients to be positive in sign and increasing in magnitude, with respect to the base category. In the separate regressions for each social group, we take the maximum education in years attained by any member of the household as the explanatory variable by converting the respective category into the corresponding number of years.

(F) Social group and religion: Social group dummies for scheduled caste and scheduled tribe households, with Others as base category, are used as explanatory variables (only in the combined regression for the rural sector), whose regression coefficients could be expected to be negative in sign. The survey categorizes sample households into 8 religions *viz.* Hinduism, Islam, Christianity, Sikhism, Jainism, Buddhism, Zoroastrianism and other religions. We use religion as an explanatory variable with non-Hindus to be the base category. In this context, it would be of interest to examine whether the non-Hindu scheduled castes and scheduled tribes have higher consumption levels than those within the Hindu religion.

(G) Regional characteristics: The National Sample Survey classifies the country into 78 agro climatic regions. For the 14 States used in our analysis, we have 56 NSS regions. We use three regional characteristics as explanatory variables *viz.* regions categorized by the concentration of scheduled caste population, by the concentration of scheduled tribe population and by the level of infrastructure.

(1) Scheduled caste region: We rank the regions in descending order by the composition of scheduled caste population, and define a dummy variable, which takes the value 1, if a household is from any of the first 15 NSS regions defined by the concentration of scheduled caste population, and zero otherwise.

(2) Scheduled tribe region: We rank the regions in descending order by the composition of scheduled tribe population, and define a dummy variable, which takes the value 1, if a household is from any of the first 15 NSS regions defined by the concentration of scheduled tribe population, and zero otherwise.

(3) Infrastructure: The National Institute of Rural Development (NIRD, 1999) has ranked the NSS regions on the basis of their rural infrastructure, using Census of India, 1991 data. We classify the 56 NSS regions in our dataset into regions with high-ranked (top 28 regions) and low-ranked (bottom 28 regions) rural infrastructure. The dummy variable takes the value 1, if the household is from any of the high-ranked infrastructure regions and zero otherwise.

The scheduled caste and scheduled tribe concentrated regions are mutually exclusive, and these regional dummies are not used in the group specific regressions. The population of these regions comprises about 25% and more of scheduled castes and scheduled tribes respectively. The base category in this case will be the remaining 26 regions with a relatively lower composition of both scheduled tribe and scheduled caste population. Other factors remaining constant, a higher level of infrastructure may be expected to have a positive effect on the monthly per capita expenditure of a household.

We specify the four regression equations as follows: -

ST:

$$ln\ (mpce)i = a0 + a1\ lnhsize\ i + a2\ workratio\ i + a3\ femratio\ i + a4\ femhead\ i + a5\ senag\ i$$

$$+ a6\ othlab\ i + a7\ seag\ i + a8\ oth\ i + a9\ rnd2\ i + a10\ rnd3\ i + a11\ rnd4\ i + a12\ relgn\ i + a13\ lnedu\ i + a14\ lnland\ i + a15\ infdum\ i + u\ i$$

SC:

ln (mpce)j = b0 + b1 lnhsize j + b2 workratio j + b3 femratio j + b4 femhead j + b5 senag j + b6 othlab j + b7 seag j + b8 oth j + b9 rnd2 j + b10 rnd3 j + b11 rnd4 j + b12 relgn j + b13 lnedu j + b14 lnland j + b15 infdum j + u j

Others:

ln (mpce)k = c0 + c1 lnhsize k + c2 workratio k + c3 femratio k + c4 femhead k + c5 senag k

+ c6 othlab k + c7 seag k + c8 oth k + c9 rnd2 k + c10 rnd3 k + c11 rnd4 k + c12 relgn k + c13 lnedu k + c14 lnland k + c15 infdum k + u k

All:

ln (mpce)l = d0 + d1 lnhsize l + d2 workratio l + d3 femratio l + d4 femhead l + d5 senag l

+ d6 othlab l + d7 seag l + d8 oth l + d9 rnd2 l + d10 rnd3 l + d11 rnd4 l + d12 lbprim l + d13 prbsec l + d14 sbgrad l + d15 grad l + d16 stdum l + d17 scdum l + d18 stregdum l + d19 scregdum l + d20 relgn l + d21 lnland l + d22 infdum l + ul

ui, uj, uk, ul refer to the respective error terms.

We discuss the results of the ordinary least squares regressions (Table 157 and 158 separately for the rural sector as a whole and by each social group.

Table 157: Determinants of Monthly Per Capita Expenditure: Rural Sector

	All		
Dep. Variable Ln (mpce)	**Coef.**	**t**	**P>|t|**
Ln (household size)	-0.381	-74.96	0.00
Worker ratio	0.081	7.77	0.00
Female ratio	-0.056	-5.11	0.00
Female head	-0.076	-10.86	0.00
Selfemployed in Non-agriculture	0.188	30.09	0.00
Other Labor	0.108	11.63	0.00
Selfemployed in Agriculture	0.115	18.33	0.00
Other occupation	0.231	26.93	0.00
Sub-round 2	0.014	1.54	0.12
Sub-round 3	-0.00	-0.35	0.72
Sub-round 4	30.012	1.30	0.20
Literate, below primary Primary,	0.080	0.554	0.00
below secondary Secondary,	0.165	12.93	0.00
below graduate	0.347	26.70	0.00
Graduate & above	53.54	47.96	0.00
ST-Dummy	0.153	-15.20	0.00
SC-Dummy	0.080	-13.58	0.00
ST-Region-Dummy	0.064	-6.39	0.00
SC-Region-Dummy	0.001	-0.10	0.92
Religion–Dummy	0.049	-6.48	0.00
Ln (land possessed) Infrastructure	0.193	38.75	0.00
- Dummy _cons	0.210	30.65	0.00
	6.340	375.80	0.00
	Sample Size=57252 R-Squared=0.4282		

Source: Author's calculations using NSS household level data from 55th round.

- **Determinants of average consumption levels in the rural sector:**

The regression coefficients of demographic factors such as household size, ratio of workers, ratio of females and gender of the household head are statistically significant at 1% level of significance and have correct signs as per our *a-priori* expectations. An increase in the area of land possessed has a positive and significant impact on the average MPCE of a rural household. The coefficients of the occupational dummies are also statistically significant and positive in sign, indicating a higher average consumption level for those households in 'other occupations', selfemployed in non-agriculture, selfemployed in agriculture and other labor, in that order, as compared to the base category, which is agricultural labor. The regression coefficients of the seasonal dummies are however found to be statistically insignificant, which does not support our hypothesis of seasonal variations in consumption expenditure in the rural sector as a whole. As expected, the education dummies are statistically significant and positive in sign, with higher education levels leading to an increase in average consumption expenditure.

The coefficients of the social group dummies are negative and statistically significant, indicating that the average monthly per capita expenditure of the SC and ST is significantly lower than the Others, so also with the Hindus as compared to the non-Hindus. An important variation exists with regard to the regional dummies for the scheduled tribes and scheduled castes. Other factors remaining constant, the average consumption expenditure, which we regard as a proxy for the level of living, will be lower in a scheduled tribe concentrated region (as defined earlier) as compared to regions with a relatively lower composition of both scheduled caste and scheduled tribe population. However, this does not hold true for a scheduled caste concentrated region.

Table 158: Determinants of Monthly Per Capita Expenditure: Social Group

Dep. Variable Ln (mpce)	ST			SC			Others		
	Coef.	t	P>|t|	Coef.	t	P>|t|	Coef.	t	P>|t|
Ln (household size) Worker ratio Female ratio Female head	-0.348 0.112 -0.044 -0.055	-21.65 3.73 -1.39 -2.40	0.00 0.00 0.16 0.02	-0.334 0.156 -0.053 -0.104	-24.85 6.64 -1.92 -6.58	0.00 0.00 0.06 0.00	-0.403 0.077 -0.044 -0.070	-71.38 6.37 -3.51 -8.39	0.00 0.00 0.00 0.00
Selfemployed in non-agriculture Other Labor Selfemployed in agriculture Other occupation	0.187 0.142 0.109 0.304	6.83 5.33 5.49 9.36	0.00 0.00 0.00 0.00	0.136 0.098 0.102 0.252	11.18 5.10 7.65 12.54	0.00 0.00 0.00 0.00	0.227 0.111 0.140 0.295	30.50 10.22 19.57 30.43	0.00 0.00 0.00 0.00
Sub-round 2 Sub-round 3 Sub-round 4	0.082 0.002 0.062	3.15 0.06 2.40	0.00 0.95 0.02	0.006 -0.007 0.008	0.41 -0.45 0.52	0.69 0.65 0.60	0.006 -0.001 0.005	0.60 -0.10 0.53	0.55 0.92 0.60
Religion-Dummy Ln (education) Ln (land possessed) Infrastructure - dummy _cons	-0.009 0.124 0.129 0.211 6.010	-0.26 15.69 7.81 10.57 110.66	0.80 0.00 0.00 0.00 0.00	-0.082 0.099 0.176 0.201 6.205	-4.35 18.64 13.30 17.48 156.81	0.00 0.00 0.00 0.00 0.00	-0.057 0.174 0.215 0.227 6.229	-6.99 50.23 40.51 31.31 339.56	0.00 0.00 0.00 0.00 0.00
	Sample Size=6254 R-Squared=0.3224			Sample Size=10708 R-Squared=0.302			Sample Size=40290 R-Squared=0.3963		

This implies that a scheduled tribe concentrated region may be associated with economic backwardness of the region as a whole, but scheduled castes could be concentrated in number, even in a relatively affluent region[17]. Controlling for other factors, there is a 23% difference in average consumption expenditure between the high-ranked and lowranked regions in terms of rural infrastructure.

Determinants of average consumption levels by social group:

As in the regression for the rural sector as a whole, slope coefficients of demographic variables such as household size and proportion of workers are statistically significant with the expected sign. However, there exists a variation across social groups regarding the statistical significance of gender related factors such as the proportion of females, in explaining within-group variations in consumption expenditure. For instance, the regression coefficient for the proportion of females in a household is not significant in the case of ST but is significant at 10% and 1% level of significance for the SC and Others respectively. This could be due to a higher female labor participation rate among the ST, which needs to be explored further. In this context, it may be noted that as per Census of India, 1991 data the sex ratio in India is highest among the ST (976 females per 1000 males) as compared to the SC and Others, who have similar and much lower sex ratios (922 and 923 respectively), indicating a comparatively higher social status for women within the ST.

The regression coefficients of the seasonal dummies are statistically significant only for the ST group. Controlling for other factors, the average MPCE of the ST in sub-round 2 (October to December) and sub-round 4 (April-June) is respectively 8.50% and 6.40% higher than in the base period, which is sub-round 1 (July-September). It is difficult to explain these seasonal variations in consumption expenditure for a particular group, based on available secondary data, since the empirical result would reflect the aggregated outcome of complex, multifaceted processes at the micro-level. However, for present purposes, we may note the existence of seasonal variations in consumption expenditure only for the ST, which is the social group with the highest incidence of poverty in rural India, and with higher average consumption expenditure in the period corresponding to the Kharif and Rabi harvest season, as compared to the monsoon season.

The coefficients for the occupational dummies, level of education and area of land possessed are statistically significant at 1% level of significance for all groups and with the correct sign, as per theoretical expectations. Controlling for other factors, the scheduled tribe households in the high-rank infrastructure regions have an average Monthly Per Capita Expenditure (MPCE), which is 23.5% higher than the corresponding households in the low-rank infrastructure regions. The figures for the SC and Others in this regard are

22.31% and 25.54% respectively. The regression coefficient for the religion dummy is found to be statistically insignificant for the ST group, but significant at 1% level of significance for the SC, with a negative sign. This would imply that being a Hindu or non-Hindu would not lead to differences in the levels of living within the ST, but the non-Hindu SC have a higher level of living than the SC, who are Hindus. But the result is not robust if we exclude Punjab, where rural poverty levels for the SC are one third that of the corresponding all-India figure and where scheduled castes comprise 38% of the State's rural population (NSS estimate).

The regression results indicate that controlling for other factors, a 1 per cent increase in the area of land possessed (in hectares) leads to a 12.9% increase in the average monthly per capita expenditure for the ST, the corresponding figures being 17.6% and 21.5% for the SC and Others respectively. Similarly, a comparison of the partial regression coefficients for the education variable indicates that a 1 per cent increase in the maximum level of education attained in a household (in years) leads to a 10% increase in the average monthly per capita expenditure of SC, but 12.4% and 17.4%, respectively in the case of ST and Others. To examine whether these differences in the regression coefficients across social groups are statistically significant, we introduce social group dummies for SC and ST and separate slope dummies for land and education in the specification of the social group regression. The results (Table 12(a), 12(b)), indicate that the regression coefficients of the slope dummies with respect to land and education are negative in sign and statistically significant at 1% level of significance for both the SC and ST group. This implies that a 1 per cent increase in the area of land possessed, and in the maximum level of education attained in a household, has differential impacts across social groups, with the percentage increase in average MPCE being greater for the Others as compared to the SC and ST. The interpretation needs to take into consideration the lower average area of land possessed for the SC, and the lower average levels of education for the SC and ST, as compared to Others. Using the above estimates of elasticity of average MPCE with respect to land and education, a 1 hectare increase in the area of land possessed would increase the average MPCE by Rs. 50.74 for the ST, Rs. 197.34 for the SC and Rs. 130.16 for the Others. Similarly, a one year increase in the maximum level of education of a household would increase the average MPCE by Rs.13.02 for the ST, Rs. 10.20 for the SC and Rs. 16.82 for the Others. For exposition purposes we may refer to these as 'returns to land' and 'returns to education' respectively[18]. So, returns to land are higher for the SC as compared to the Others and are lowest for the ST, while returns to education are lower for both the SC and ST as compared to the Others.

The processes underlying lower returns to education, are however likely to be different

for the SC as compared to the ST. These results can be interpreted better keeping in mind the historically rooted different forms of exclusion, which have been faced by the scheduled castes and scheduled tribes *viz.* scheduled castes being socially excluded, but physically being a part of mainstream society, and scheduled tribes being physically or geographically excluded, but not suffering from any social stigma. That scheduled castes have lower returns to education as compared to the higher caste groups may imply that processes of social discrimination continue to operate in Indian society. The lower returns to land for the ST as compared to the Others can partly be explained by the fact that the scheduled tribes have traditionally been living in difficult terrains such as forests and hilly regions, where the land may not be conducive to cultivation. To obtain a better understanding of the factors which may affect returns to land, we examine some particulars of cultivation practices by social group, using household level data from the 54th round of the NSS. The data pertains to the agricultural year July 1997-June 1998.

The data indicate a marked difference in the cultivation practices of ST as compared to the Others (Table 159). More than half of ST households cultivate only in one agricultural season i.e. either only a Kharif crop or only a Rabi crop[19]. In contrast two-third of the households from the higher caste groups cultivate in both seasons. The percentage of ST households using some form of irrigation facilities (34.77%) is only half that of the Others (69.98%). The difference is notable also in cultivation practices such as the use of mechanization, fertilizers, improved seeds and pesticides or weedicides. It can be observed however that the cultivation practices of SC cultivators are very similar to that of the Others. This can again be explained by the fact that the SC live in mainstream society, in close proximity with the Others, but the ST are geographically isolated.

However, in terms of ownership issues such as the percentage of households owning a well, tubewell, diesel pump or electric pump for irrigation, or the average size of land owned, the proportion of scheduled caste households owning any such asset is lower than the scheduled tribes, though both are lower than the Others. This indicates that access to ownership of an asset may be more difficult for the socially excluded groups as compared to the geographically excluded groups.

Table 159: Cultivation Practices by Social Group

	ST	SC	Others	All
% of households cultivating only Kharif/ only Rabi crops	54.87	38.69	33.24	36.54
% of households using some form of mechanization in cultivation	23.49	58.07	63.33	58.02
% of households using manure in cultivation	77.73	74.90	79.32	78.44
% of households using fertilizers in cultivation	55.27	79.37	83.65	79.78
% of households using improved seeds in cultivation	41.05	50.70	57.79	54.78
% of households using irrigation facilities	34.77	65.98	69.98	65.39
% of households using pesticides/weedicides	34.68	47.76	52.89	50.03
% of households owning well/tube well	14.14	8.73	22.75	18.81
% of households owning any diesel pump for irrigation	5.63	4.02	9.60	7.98
% of households owning any electric pump for irrigation	5.18	2.73	10.44	8.22
Average size of land owned (hectares)	1.07	0.57	1.19	1.06

Source: Author's calculations using NSS household level data from 54th round. Note: The figures in this table are for all-India.

11.6 Regression decomposition of differences in group means:

Given that there are differences in the occupational pattern, level of education and land holding, and returns to education and land across social groups, it would be of an interest to examine the relative importance of different factors in explaining higher levels of living for the 'Others' as compared to the SC and ST. This can be examined by decomposing differences in the group mean of the dependent variable into a part explained by differences

in the endowments or levels of different productivity enhancing characteristics ('characteristics effect') and a part explained by differences in returns to these characteristics ('coefficients effect'). There are variations in the precise decomposition techniques employed in the literature, but the standard technique remains the Blinder-Oaxaca decomposition borrowed from the labor economics literature and illustrated in De Walle and Gunewardena (2001). In the context of the present paper, the decomposition can be explained by the following equations, which illustrate with respect to one explanatory variable X, but can easily be extended to more than one regressor.

$$\ln(mpce)^{*}oth - \ln(mpce)^{*}sc = \beta oth\,(X^{*}oth - X^{*}sc) + X^{*}sc\,(\beta oth - \alpha sc) + (\beta oth\text{-}\alpha sc)$$
$$\ln(mpce)^{*}oth - \ln(mpce)^{*}st = \beta oth\,(X^{*}oth - X^{*}st) + X^{*}st\,(\beta oth - \alpha st) + (\beta oth\text{-}\alpha st)$$

Characteristics Effect Coefficients Effect

The left-hand side expression in the two equations represents the difference between the mean of the dependent variable for the Others group and that of SC and ST respectively. The first expression on the right-hand side represents the difference between the Others and SC, ST in the average value of the characteristic, weighted by the respective regression coefficient of the Others, for whom we expect no 'discrimination' or higher 'returns'. The second expression represents the difference in the regression coefficient of the characteristic, weighted by the average value of the characteristic of the SC, ST group. The difference between intercepts can be regarded as a residual term.

The results of this decomposition, which draws on the regression results discussed in previous sections, are given in Table 160. We have included decomposition results only for the more policy relevant variables, which are occupation, land, education and infrastructure. The numbers in the table indicate the percentage share of the respective characteristics effect and coefficients effect in explaining differences in the group means, and can be interpreted to denote the relative importance of different factors considered, in explaining higher levels of living for the 'Others' as compared to the SC and ST[21].

Table 160: Regression decomposition of differences in group means (of dependent variable)

Share(%)	Between Others and ST		Between Others and SC	
	Characteristics effect	Coefficients effect	Characteristics effect	Coefficients effect
Selfemployed non-agriculture	7.89	0.68	3.15	5.36
Other Labor	-0.53	-0.76	-1.23	0.49
Selfemployed agriculture	0.64	3.91	14.24	3.18
Other occupations	5.85	-0.17	5.01	1.71
Log (Education)	28.49	19.58	29.39	45.91
Log (Land)	-0.89	15.66	28.69	4.53
Infrastructure	15.54	1.39	3.36	5.27

Source: Author's calculations using NSS household level data from 55th round.

The results indicate that in explaining lower levels of living for the ST as compared to the Others, it is the characteristics effect of the different policy relevant factors indicated by employment in the rural non-farm sector, level of education and level of infrastructure, which is found to have a larger magnitude than the corresponding coefficients effect. The left-hand side expression in the two equations represents the difference between the mean of the dependent variable for the Others group and that of SC and ST, respectively.

The first expression on the right-hand side represents the difference between the Others and SC, ST in the average value of the characteristic, weighted by the respective regression coefficient of the Others, for whom we expect no 'discrimination' or higher 'returns'. The second expression represents the difference in the regression coefficient of the characteristic, weighted by the average value of the characteristic of the SC, ST group. The difference between intercepts can be regarded as a residual term.

The results of this decomposition, which draws on the regression results have been discussed in previous sections. We have included decomposition results only for the more policy relevant variables, which are occupation, land, education and infrastructure. The numbers in the table indicate the percentage share of the respective characteristics effect and coefficients effect in explaining differences in the group means, and can be interpreted to denote the relative importance of different factors considered, in explaining higher

levels of living for the Others as compared to the SC and ST.

The results indicate that in explaining lower levels of living for the ST as compared to the Others, it is the characteristics effect of the different policy relevant factors indicated by employment in the rural non-farm sector, level of education and level of infrastructure, which is found to have a larger magnitude than the corresponding coefficients effect, though the coefficients effect for education is also seen to be an important factor. The notable exception relates to being selfemployed in agriculture and size of land holding.

As was discussed in earlier sections, the average area of land possessed by the ST is marginally higher than the Others. The proportion of ST households, whose main source of livelihood is being self-employed in agriculture is also comparable to Others. Therefore, it is clear that with regard to land, it is lower returns to land and not lower area of landholding, which is contributing to the lower levels of living as compared to the Others.

Conversely, in explaining lower levels of living for the SC as compared to the Others, it is the coefficients effect that is of larger magnitude than the corresponding characteristics effect for factors such as selfemployment in non-agriculture, education and infrastructure. This may be interpreted to imply lower returns from being selfemployed in non-agriculture and from education as compared to the higher caste groups, and a lower social access to infrastructure, as compared to physical access. The results indicate the characteristics effect for education to be an important factor contributing to lower levels of living, though the associated coefficients effect is seen to be of a much larger magnitude. On the other hand, the lower average area of land possessed by the SC, which may be a reflection of the larger proportion of landless households within this social group, explains between-group differences in levels of living *vis-à-vis* the higher caste groups much more than the corresponding coefficients effect.

11.7 Summary and Conclusion

Social group disparities and poverty in India may be viewed as a purely distributional issue and by way of the specific factors underlying these disparities. However, these two ways of looking at the issue are interlinked. Empirical evidence suggests that in terms of absolute poverty, the rate of decline in the extent of poverty has been faster for the Others as compared to the SC and ST, in the overall time period under consideration. In particular, rural poverty has been virtually stagnant for the scheduled tribes in the 1990s.

These trends are reflected in the composition of the rural poor, with poverty tending to get concentrated among the SC and ST. The magnitude of social disparities in India is State-specific in nature. The social group hierarchy in India has remained virtually unchanged and scheduled castes and scheduled tribes remain concentrated in the bottom quintiles of the economy. Measures of within-group inequality indicate that the SC and ST are not a homogenous group in terms of levels of living. In quantitative terms, within-group inequalities in the rural sector are of a larger magnitude than between-group disparities, but this does not reflect the social weight on horizontal inequalities. Changes in rural poverty for the SC and ST have largely been driven by growth, but within-group distributional changes have also affected the magnitude of change and in some cases its direction. Since between-group redistributive policies will have a limited impact on poverty, if it leads to increases in within-group inequalities, a high-growth strategy focusing on the lower quintiles within the SC, ST may be more effective. However, the growth experience in major States of India in the 1980s and 1990s suggests that the growth elasticity of poverty has been lowest for the scheduled tribes in rural India and scheduled castes in urban India.

The causes of differing growth elasticities of poverty can be explored through the factors underlying differences in levels of living between social groups, and for each group separately. Demographic and occupational factors, level of education and land holding, and infrastructural facilities are found to be significant factors determining the levels of living in rural India. Seasonal variations in consumption expenditure are found to be significant only for the scheduled tribes. In addition to the levels of physical and human capital, social group disparities in levels of living are also the result of differences in returns to education and land. There are contrasting relative magnitudes with regard to scheduled castes and scheduled tribes, of the 'characteristics effect' and 'coefficients effect' of various policy relevant factors in explaining social group disparities, and indicate the distinct nature and causes of poverty among these groups. This in turn is the result of historically rooted 'social disadvantages', by way of social exclusion and physical exclusion respectively, which continue to operate in contemporary Indian society. Overcoming these 'social disadvantages' will constitute the key challenge in any future policy matrix designed for the development of these groups.

12

IMPACT OF ECONOMIC LIBERALIZATION AND PRIVATE INVESTMENTS

12.1 Introduction

India is a large federal nation and it is well known that there are widespread disparities in the levels of economic and of social development between the different regions of the Indian nation. It is generally recognized that inter-regional economic disparities increase, at least in the initial stages of national economic development. As a result, governments everywhere including India used to initiate deliberate policy measures to reduce these disparities. But with the reaffirmation of faith in the market mechanism in the liberalized economic scenario the world over now, there is a tendency to withdraw such measures under the implicit assumption that the invisible hand will deliver the goods in this regard too. India has also witnessed a sea change in its economic policy in recent years. While there are some who feel that these changes were initiated in the early 80s, all agree that there have been very major changes in this regard particularly since the early 90s. From a closed economic setup having considerable faith in centralized planning and with commanding heights reserved for the public sector, India has now become a highly liberalized and globalised economy with great faith in the efficacy of the market mechanism. It is, hence, a matter of considerable research interest to know the manner in which inter-regional disparities in the levels of economic and social development have changed in India overtime in the past two decades. A comparison of India's regional development experience over the past two decades would therefore give at least a broad idea

There has been a continuous debate over globalization, income inequalities and regional disparities in India. While some scholars say that globalization has cast a favorable impact on the overall economic condition of the country, there are also lots of scholars who argue that factors such as poverty, income inequality and regional disparities have not been affected by globalization. In order to have an idea, one needs to deeply analyze various factors.

Indian economy has achieved remarkable growth after the economic reforms were adopted in 1991. In most of the sectors of the economy, be it agriculture, industry, service, external sector, fiscal performance, human development etc., India has been able to grab the benefits of economic reforms. However, the fruits of this economic development are not equally distributed among the States. India being a federal nation, State governments are also independent economic and political entities. They also hold the responsibilities and power to design their development models. Social scientists and policymakers have observed an intense socio-economic disparity across Indian States. Some of the States like Gujarat, Maharashtra, Andhra Pradesh, Tamil Nadu have been able to achieve an excellent economic and industrial growth rate; even higher than the average growth rate of India. While States like Bihar and West Bengal have failed to reach this level, despite having potential resources to grow. Kerala could not attain greater industrialization, but leads in human development, with 100 % literacy and highest sex ratio.

The issue of regional disparity certainly has not emerged recently. In a large economy like India, the States are bound to have inequality in their geographical area, size of population, natural resources, climatic conditions and so on. Historically, India has been observing inter-State variations as far as the socio-economic-political-geographical aspects are concerned. What is more regrettable or distressful is the widening of inter-State inequality in recent years. The studies reveal that the rich States have grown three times faster than the poor States. The regional imbalance is growing practically in all the indicators like, agriculture, industry, investment, social and human development, environment, fiscal performance and so on. There is now a lot of concern among the policymakers to reduce this regional imbalance, provide support and policy guidance to States in the areas where they are lacking through government bodies like planning commission and finance commission.

Has the regional disparity widened in the post-reform period? This chapter attempts to probe into this by analysing growth rates of aggregate and sectoral domestic product of major States in the pre (1980s) and post-reform (1990s) decades. Our results indicate that while the growth rate of gross domestic product (GDP) has improved only marginally in the post-reform decade, the regional disparity in State domestic product has widened much more drastically. Industrial States are now growing much faster than the backward States, and there is no evidence of convergence of growth rates among States. Even more disturbing is that there is now an inverse relationship between population growth and SDP growth. The inverse relationship is stronger for the per capita income growth

among States. This has a very serious implication for employment and the political economy of India.

It has been observed that when an economy is liberated, especially after controls on investment are lifted, then regions with better infrastructure would attract more investment, especially foreign capital, through market mechanism, and this in turn would lead to regional inequity, at least in the early phase of reforms. The regional disparity in China after economic reform is a classic example of this. In India, the growth rate of gross domestic product (GDP) accelerated since 1980s. The average annual GDP growth rate in the first three decades (1950s to 1980s) was only 3.6 per cent. During the 1980s, the GDP growth rate accelerated to 5.6 per cent, and after economic reforms in the 1990s, it has further accelerated to 6.0 per cent.

The reforms led to a lot of structural changes in the Indian economy, such as, deregulation of investment - both domestic and foreign - and liberalization of trade, exchange rate, interest rate, capital flows and prices. The post-reform period also witnessed a sharp deceleration in public investment due to fiscal constraint. At the aggregate level, the average share of public investment in total investment has declined from 45 per cent in the early-1980s to about one-third in early-2000s. Although, there is very little information on investment at the regional level, the available indicators suggest that more and more investments are now taking place in richer States. The RBI data on capital flows show that four/five developed States have cornered the major chunk of foreign direct investment in India. The poorer States with inadequate infrastructure are not able to attract foreign investment. The poorer States are also investing less because historically they mobilised resources for public investment mainly through grants and assistance from the Centre, which are now declining due to fiscal constraints.

This section analyses the growth and disparity among major States in the pre and post-reform period. In the recent period, a number of studies (for instance, Ahluwalia, 2000 and 2002; Nagaraj, Varoudakis and Veganzous, 1998; Rao, Shand and Kalirajan, 1999; and Shand and Bhide, 2000) have observed that the regional disparity in India has widened, especially during the 1990s. However, these studies have used pre-revised State domestic product (SDP) data. Further, their analyses do not cover adequately the post-reform period, especially the late 1990s when the growth rate has slackened at the aggregate as well as at the regional levels. Ahluwalia's study covers data for the period up to 1998-99, but he has compared the pre and post-reform periods on the basis of two different sets of

SDP data. It may be noted that 1993-94 base GDP (and corresponding SDP series) are based on the United Nations system of national accounts (SNA) 1993. The new GDP and SDP series not only changed base year in terms of price, but also revised the production boundary in a number of sectors, notably, agriculture, real estate and finance. It has also shifted the occupation force database from the Census to the National Sample Survey (NSS). Finally, it has incorporated some new dynamic economic activities, such as, software, which were not included in the earlier series. The SDP growth rates from the earlier series therefore, cannot be compared with the same from the revised series. A proper comparison of pre and post-reform regional growth and equity should be therefore done through a common database. This paper tries to fill this gap by extending the 1993-94 SDP series backwards to compare growth and regional variation across States on a common database.

While the average growth rate of gross domestic product (GDP) increased only marginally in the 1990s, as compared to 1980s, the regional disparity has widened significantly during the 1990s, and so far there is no evidence of convergence. Whether this is due to the ongoing economic reform is a matter of investigation, but the evidence very clearly indicates rise in regional inequity in the post-reform period. Secondly, there has been an inverse relationship between population growth and income growth across States in 1990s. This has a very serious implication not only for growth but also for employment.

12.2 Regional disparity related to disarticulation between sectors

The disparity between fast developing and backward regions has been accentuated in the liberalization period. On the one hand, "there has been little change in the relative position of States in terms of rankings (in per capita income) during the past two decades. In particular, the composition of the top five States and the bottom six States have generally remained unchanged". However, gap between them has been growing: "the top five States, which accounted for 24.7 per cent of the country's total population, had a share of 34.6 per cent of all-States Gross State Domestic Product (GSDP) during the early 1980s. This GSDP share increased to 38.2 per cent by the end of the 1990s. On the other hand, the bottom six States which accounted for a 41.6 per cent share in the total population, have suffered a setback in their GSDP share, from 35.3 per cent to 26.9 per cent, between these two periods. Even the middle five States, the composition of which remained the same, have suffered an erosion in their GSDP share over the last two decades."

Secondly, the urban-rural disparity too has sharpened during this period. The ratio of urban per capita income to rural per capita income grew from 2.34 in 1993-94 to 2.85 in 1999-2000; given the fact that agricultural growth fell further thereafter, and that growth was concentrated in the private corporate sector, this proportion would have shifted much further in favour of urban areas thereafter. There appears to have been a dramatic decline in Government employment in the rural areas: Whereas in 1993-94 the rural areas accounted for 42 per cent of 'community, social and other services' GDP (largely the salaries of Government employees), in 1999-2000 they accounted for just 29 per cent of it.

Significantly, it is not necessary that a State with large metropolises and high urban income rank have a high rural income. Nor is it necessary that a State with a relatively high rural per capita income have the largest and most prosperous cities. Punjab and Haryana are at the top of the rankings in per capita income, because of their better-off agricultural sector, whereas Andhra Pradesh and Tamil Nadu have large prosperous metropolises but merely average per worker income in agriculture. In Maharashtra, which stands first or second in per capita income, agriculture and allied activities still employ half the workforce, but GDP per capita in the agricultural sector has been falling continuously in per capita terms for more than a decade; remarkably, industrial GDP per capita too has stagnated; only services sector GDP per capita has risen rapidly, concentrated in the metropolitan pocket of Mumbai-Thane-Pune. The percentage of agricultural laborers in Maharashtra with wages below the national minimum wage is roughly the same as in the most backward States of the country - Bihar, Chhattisgarh, Madhya Pradesh and Orissa.

Neither is rural growth leading to urban growth, nor does urban growth get diffused to the rural areas. This reflects once again the lack of organic links between the agricultural and non-agricultural sectors.

A study of some of the States at the centre of the current boom - such as Andhra Pradesh, Karnataka, Maharashtra, Tamil Nadu and Gujarat - would reveal a particularly sharp urban-rural disparity, uneven regional spread of growth, low employment growth, and so on. Further, even within backward States the disparity between agro-ecological subregions has worsened.

- **Methodology of Extending 1993-94 SDP Series Backwards**

The Central Statistical Organisation (CSO) has revised the GDP series with base 1993-94. The SDP series for States have also been revised accordingly. The revised series

based on SNA 1993 alter relative growth rates across States, sectors and periods. For a proper comparison of regional growth and disparity over time, the revised series of SDP should be extended backwards. When we began our analysis the revised series SDP data were available only from 1993-94. Since then, CSO has extended the 1993-94 SDP series backwards. However, the CSO has combined the 1980-81 and 1993-94 SDP series by simple splicing method. We have used a slightly more sophisticated method. For this purpose, we first compute the price correction factor (defined as the ratio of implicit deflator for 1993-94 series to the 1980-81 series for the year 1993-94). The price correction factor is computed for each State and sector (13 sub-sectors in national accounts) separately. The aggregate and major 4 sub-sectors - primary, secondary and tertiary - SDP deflators for the years 1980-81 through 1992-93 are then calculated as weighted averages of appropriate sub-sectors' indices. The weights for the period 1980-81 through 1992-93 are assumed to be the same as in 1993-94 series.

12.3 Regional Disparities in Growth SDP Growth

SDP growth rates have shown a fair degree of variation. While some States have witnessed rapid and phenomenal growth, the rest lagged behind the all-India growth rate. For this analysis we have included 17 major States. Jammu & Kashmir is excluded because of political disturbance during 1990s. Pondichery and six smaller States of North-East are excluded because they are too small to reflect general economic behaviour of States in India. Three newly created States, namely, Chattishgarh, Jharkhand and Uttaranchal are also excluded because there are no time-series data on these States. Bihar, M.P. and U.P. therefore refer to undivided States. The comparative average growth rates of SDP for 17 major States at 1993-94 prices for the decades 1980s (1980-81 to1989-90) and 1990s (1990-91 to 1999-2000) as well for the overall period (1980-81 to 1999-2000) indicate that except few States - Andhra Pradesh, Assam and Kerala - all the other major States had recorded over five per cent growth during the 1980s, against the all-India growth rate of 5.6 per cent per annum. Tamil Nadu, Karnataka, Haryana, Himachal Pradesh and Rajasthan have progressed rapidly during the 1980s with over six per cent per annum growth, with Rajasthan recording the highest with above seven per cent. In general, there was a comparatively balanced regional growth during the 1980s, even though the disparity widened across the States. However, the 1990s belongs to the relatively industrialised States. Highly industrialised States like, Gujarat and Maharastra, grew at over 8 and nearly 7 per cent per annum respectively. Goa, a small State, also grew at over 8 per cent.

Among other major States, Karnataka and West Bengal have performed very well with over 7 per cent growth.

- **Coefficient of Variation**

It is interesting to note that West Bengal which is not considered to be a promarket State, has grown not only faster than the all-India average, but also many proreform States, such as, Andhra Pradesh (4.8 per cent) and Punjab (5.1 per cent), during the reform era. These two States have in fact grown much slower than the all-India average, particularly the former. The poor performance of both Punjab and Andhra Pradesh during the reform era came as a surprise. These States have comparatively better infrastructure and known to have pro-market attitude. While Punjab's slow growth may be attributed to stagnation in agriculture and fiscal mismanagement, that of Andhra Pradesh needs a careful scrutiny. It appears that pro-reform policies in Andhra Pradesh have yet to borne

fruits in terms of SDP growth. A detailed study on Andhra Pradesh (Rao and Mahendra Dev, 2003) also confirms this. Among other States, Rajasthan, Kerala, Haryana, Himachal Pradesh and Tamil Nadu have recorded above average growth rate during the reform era.

Some of the high growth States during reform era, notably Gujarat, Maharashtra, Karnataka and Tamil Nadu, got the lion's shares in foreign investment in the 1990s. On the other hand, poor States like, Bihar, Orissa, Assam and U.P. have attracted less foreign capital (and also probably domestic) and performed badly, with SDP growth below 4 per cent per annum. Apart from lack of investment, poor infrastructure combined with poor governance (and terrorism in the case of Assam) might have also restrained growth in these States.

- **Per Capita SDP Growth**

For a better analysis of regional disparities, we should analyse not merely aggregate growth rate but also the growth of per capita SDP. The data on growth of per capita SDP for 17 major States along with all-India average reveal that the regional disparities in standard of living, as measured by per capita SDP at constant prices, have accentuated in the 1990s. In the 1980s, Assam recorded the lowest per capita SDP growth at 1.7 per cent per annum and Tamil Nadu the highest at 4.8 per cent. As against these, the all-India growth rate was 3.4 per cent. In the 1990s, the disparity range has widened from 0.7 for Assam to as high as 6.7 for Goa and 6.4 for Gujarat. In comparison, the all-India rate has improved only marginally: 4.1 per cent in the 1990s against 3.4 in the 1980s. Maharashtra, Tamil

Nadu, West Bengal, Karnataka and Himachal Pradesh have also improved the standard of living by over 5 per cent per annum during the post-reform period. Gujarat's performance is particularly noteworthy, as the growth rate has jumped from a moderate 3.62 in the 1980s to 6.38 per cent in the 1990s. West Bengal has also managed to push up its per capita income growth tremendously, from a mere 2.93 per cent in the 1980s to 5.41 per cent in the 1990s. In Maharashtra and Karnataka also per capita income growth rate jumped significantly in the 1990s.

While the standard of living improved faster in 1990s in comparison to 1980s in most States, the opposite happened in Assam, Bihar, Orissa, Punjab, Rajasthan and U.P. The main reason for this could be the comparatively higher growth of population in these States. In Rajasthan, the per capita growth rate declined in spite of a fairly high SDP growth in 1990s. Punjab, which was the richest State in India in the 1980s, performed relatively worse in terms of per capita income growth in the 1990s. As a result, it is no longer the richest State.

In general the Southern States have performed better than the Eastern and the Central States. West Bengal is a major exception in this regard. The standard of living in the Southern States increased faster in the 1990s due to a combination of slackening of population growth and acceleration of SDP growth. Even in Andhra Pradesh, despite a below national average SDP growth, per capita SDP growth9 accelerated in the 1990s over 1980s due to a significant fall in population growth rate. In the Western States, however, per capita SDP growth accelerated mainly due to higher SDP growth rate.

- **Convergence**

The regional disparity has widened during the 1990s. The coefficient of variation of SDP growth rates among States has jumped from 0.14 in the 1980s to 0.29 in the 1990s. In terms of per capita SDP the coefficient of variation has become even worse in the 1990s: from 0.22 in the 1980s to 0.43 in the 1990s. And this has happened despite a very modest rise in average GDP growth rate at the all-India level, from 5.6 per cent in 1980s to 6.0 in 1990s. This reflects an uneven regional development in the post-reform years. This is corroborated by other studies as well. While Ahluwalia's (2000) study shows significant degree of dispersion in growth across States based on 1980-81 series SDP data, Deaton and Dreze (2002) report wide variation in the growth rate of average per capita consumption expenditure during the 1990s.

Ahluwalia found that while the Gini coefficient remained fairly stable till about the mid-1980s, it had risen since then, from 0.16 in 1986-87 to 0.23 in 1997-98, indicating an increasing regional disparity. The rise in coefficient of variation does not necessarily imply lack of convergence. A proper test of convergence would require estimating marginal impact of an initial level of income (negative value would imply convergence) on subsequent period growth after considering impact of different factors of growth, such as capital, labor, technology etc. At State-level there are no data on capital and other relevant variables for estimating growth function. Pending that, an inference can be derived from the coefficient of correlation between average growth rates of SDP in the 1980s and 1990s. The estimated coefficient turns out to be 0.50, which is positive and statistically significant at 5 per cent level. This means that States with faster growth of SDP in the 1980s continued to grow faster in the 1990s, or there is no evidence of convergence.

12.4 Relationship between SDP Growth and Population Growth

We have noted that the regional disparity has widened in the 1990s, and that there is no evidence of convergence. In general, the poorer States - notably, Bihar and U.P. - with 10 faster population growth have performed badly in terms of SDP growth in the 1990s. It may be, therefore, worth investigating the relationship between SDP growth and population growth at the State-level. Table 3 shows compound growth rate of population in the 1980s and 1990s based on decennial Censuses 1981, 1991 and 2001.

The simple correlation between population growth and SDP growth at constant prices in the 1980s turns out to be positive (0.25) but not significant, which means that SDP growth in 1980s was neutral with respect to population growth. However, in the 1990s, the relationship between population growth and SDP growth became negative (-0.22). The population growth in Orissa, a backward State, was unusually low at 1.5 per cent per annum in the 1990s due to high mortality rate. Assam on the other hand recorded a very poor SDP growth (2.47 per cent per annum) due to terrorism in the 1990s. If a dummy variable is used for abnormal behaviour in these two States, then the correlation coefficient between SDP growth and population growth in the 1990s rises to -0.69 and becomes statistically significant at 1 per cent level.

The inverse relationship becomes even stronger in terms of per capita SDP growth. The correlation coefficient between population growth rate and per capita SDP growth, which was -0.22 in the 1980s, shots up to -0.39 (significant at 10 per cent level) in the 1990s. If

a dummy variable is used for abnormal behaviour in Assam and Orissa, then the correlation coefficient at -0.76 turns out highly significant at 1 per cent level. The direction of causality however, cannot be attributed from this result. It may imply either the faster income growth has begun to slow down population growth, or population growth is constraining development. If the former is true, then it is a positive sign because development is expected to be the best deterrent to population growth. However, if the later is true, then it can create a serious anomaly: faster population and consequently workforce growth with lower SDP and consequently job creation growth means higher unemployment. In the pre-reform era, public investment was made mainly in backward States. Even the private investment was also directed towards backward regions through licensing etc. The policy measures therefore, restrained an inverse relationship between population growth and SDP growth. In the post-reform era, the private investment has become deregulated and public investment has shrunk and consequently the inverse relationship between income and population growth has become a serious problem.

12.5 Relationship between Growth and Inflation

The growth-inflation trade-off is a matter of controversy in development economics, see Bhattacharya (1984). At the State-level, there is no direct measure of inflation. However, we may compute inflation rate as the difference between the SDP growth rate at current and constant prices. The average annual inflation rate in 17 major States in 1980s and 1990s shows that the variation in inflation rate is comparatively smaller than in the SDP growth rate. In the 1980s, the inflation rate varied between 8 to 10 per cent. In the 1990s, the range increased to 7 to 12 per cent. At the all-India level, there has been only a marginal change in average inflation rate between the pre and post-reform decades. Assam, Andhra Pradesh Kerala and M.P. recorded comparatively higher inflation rate in the 1980s, and Kerala, Goa and Himachal Pradesh recorded comparatively higher inflation (double-digit) rate in the 1990s. Bihar, M.P. and Tamil Nadu were among the lower inflation States. There appears to be no geographical pattern in inflation rate.

We examined the relationship between growth of SDP and inflation rate by estimating a simple correlation coefficient between the two. The results indicate that while there was a negatively significant relationship (correlation coefficient -0.69, significant at 1 per cent level) between the growth rate and inflation rate at the State-level in the 1980s, there was no significant relationship between the two in the 1990s (correlation coefficient 0.25). For the overall period also, there is no significant relationship between growth and inflation

at the State-level. The growth-inflation tradeoff therefore does not exist at the State-level. On the other hand, lower inflation promoted higher growth in the 1980s, and vice versa, which reflects the dominance of supply side over the demand side in the determination of prices. The positive correlation (though not statistically significant) in the 1990s, and in particular a big change in the value of correlation coefficient towards a positive number however, indicates a beginning of growth- inflation trade-off in the post-reform period. It is possible that when the market forces become fully operative, the demand sideeffects would become prominent and growth-inflation trade-off may become significant.

12.6 Sectoral Shares and Growth Rates

Sectoral composition and growth rates of SDP showed that except for a few States, the share of primary sector has dwindled drastically from about one-half in the early 1980s to one third or one-fourth in 1999-00. In industrial States, such as Gujarat, Maharashtra and Tamil Nadu, the share of primary sector in SDP has come down to around 15 per cent by the end of 1990s. The drastic reduction in the contribution of primary sector in Gujarat (by 30 percentage point) during this period is partly on account of faster growth in industry and tertiary and partly on account of negative growth of primary sector in the 1980s, the only State to have registered so. In Maharashtra and Tamil Nadu, the two other leading industrial States, where the primary sector has also performed quite well, the share of primary sector in SDP declined more moderately, by about 10 per cent each. Goa, a tourist State, has the lowest share of the primary sector in SDP at below 10 per cent. Even in the poorer States - Bihar, Madhya Pradesh, Orissa, Rajasthan and Uttar Pradesh - the share of the primary sector has declined significantly over the last two decades. In Bihar, for instance, the share of primary sector, which was nearly 60 per cent in SDP in the early 1980s, has now come down to about 30 per cent in the late 1990s.

Poor performance of agriculture, rather than a rapid growth of non-agriculture, has brought this change. In Punjab, an agriculturally prosperous State, the share of primary sector has declined marginally due to a slower growth of non-agriculture. This is despite a slackening of agricultural growth in Punjab in the 1990s. In general, when an economy progressed, the share of primary sector declined and that of the secondary sector increased. After industry gathered momentum, the secondary sector became the dominant sector in the economy. It is only at a later stage when the economy attained a fairly high level of development, typically when it became a middle income country - the tertiary sector

overtook the secondary sector. This was the general pattern of development, especially in the East Asia. In China, for instance, the secondary sector now contributes almost 50 per cent of GDP. However, in India, at the aggregate level, and also at the regional level, the tertiary sector became the largest sector even before the secondary sector predominated the economy, see, Bhattacharya and Mitra (1991). The present analysis further confirms this.

Gujarat is the only exception in this respect, where the secondary sector has become the largest sector with more than 40 per cent share in SDP in 1999-2000. In no other State, the share of secondary sector has risen above 35 per cent. In Maharashtra, a major industrial State, the share of the secondary sector has remained stable around 35 per cent for the last two decades. In Tamil Nadu and West Bengal, the two other industrial States, the share has fallen marginally in the last two decades. The fastest acceleration in the secondary sector growth has taken place in Gujarat with average growth rate of 7.8 and 10.6 per cent in 1980s and 1990s respectively, followed by Haryana (at 7.45 and 11.9 per cent). Maharashtra, Tamil Nadu and West Bengal also performed impressively, with average growth of 7/8 per cent in the he post-reform period.

Surprisingly, secondary sector in Bihar and Rajasthan, two backward States, grew fairly rapidly in the 1980s and 1990s. As a result, the share of the secondary sector in Bihar increased from 22 per cent in 1980-81 to about 28 per cent in 1999-00. In Rajasthan it increased even more significantly during this period, from 19 per cent to close to 30 per cent. In Uttar Pradesh, another poor State, the share of the secondary sector has increased from less than 20 per cent in 1980-81 to 26 per cent in 1999-2000.

The tertiary sector has recorded the fastest growth in most States, both before and after the reforms. In most States, the share of the tertiary sector now exceeds 40 per cent of SDP. During the last two decades, the tertiary sector has grown on an average by 8 to 9 per cent per annum in many States, notably, Gujarat, Haryana, Kerala, Maharashtra, Tamil Nadu and West Bengal. With the exception of Gujarat, the tertiary sector now accounts for almost half of SDP in all rich States. The tertiary, rather than the secondary, sector has become the engine of growth in most States. This reflects a poor pace of industrialisation in India at both aggregate and regional levels.

12.7 Income Inequality in India

The period since the neo-liberal economic reforms were introduced in India has been one

of dramatically increased income inequality. While a minority of the population (around 20 per cent) has indeed benefited greatly from the economic policies and processes of the last decade, for the majority of the rural population and a significant part of the urban population, things have got worse. The most dramatic and remarkable improvement in consumption has been of those who were already the richest people in India - that is the top 20 per cent of the urban population. Their per capita consumption has increased by around 40 per cent since 1989-90, and this increase is likely to have been even more in actuality since the NSS usually underestimates the consumption of the rich.

The other group that seems to have done rather well is the top 20 per cent of the rural population - the rural rich - whose per capita consumption increased by more than 20 per cent since 1989-90. This was similar to the increase in consumption among the next 40 per cent of the urban population.

By contrast, the bottom 40 per cent of the urban population relatively little increase in per capita consumption compared to these other groups, at only around 14 per cent since 1989-90. But the most dramatic evidence is for the bottom 80 per cent of the rural population - well more than half of India's total population. For these people, who now number nearly 600 million, per capita consumption has actually declined since 1989-90. In other words, even the official statistics of the government still show that more than half of India has lower consumption per person than more than 10 years ago, after a decade when national income were supposed to be growing at around 6 per cent.

12.8 Pattern of Private Investment

In the wake of economic reforms initiated in 1991, the role of private investment has acquired a special significance in the context of economic development of various States of the Indian Union. Indeed, there has been an element of competition among States ever since for attracting private investment, both domestic and foreign. Some of the States have been offering various tax concessions and other special facilities to new investors on a competitive basis.

A Statewise data on investment proposals, assistance by all-India financial institutions and assistance by State financial corporations in Table 19 indicates the total investment proposals received by all the States and UTs since the inception of economic reforms in August 1991 till the end of March, 2000 which are worth Rs. 908,888 crore.

The group of forward States accounted for two-third of the amount while the group of backward States accounted for just over 27 per cent of the amount. Indeed, Gujarat and Maharashtra together accounted for 39 per cent of the investment proposals, which is significantly more than the total investment proposals received by all the States in the second group.

While Gujarat which accounted for less than 5 per cent of the population of the country, received over 17 per cent of the private investment proposals; Bihar which accounts for more than 10 per cent of the population of the country, received just a little over 1 per cent of such proposals. This is a clear pointer to the direction of private investment in the coming years.

It may, however, be noted that Mumbai being the headquarters of large number of private companies in the country, it is possible that some of the financial assistance accounted for as Maharashtra's may be actually flowing into other States for actual investment. Here again, the shares of States like Assam, Bihar and Orissa are far below their respective population shares. These figures give a clear indication as to where the resources mobilized through the all-India financial institutions are flowing into.

12.9 Globalization and income inequality

Although globalization has led to the economic development in the country, it has not really helped to minimize income inequalities across the country. Recent surveys say that lots of people across the country still live below the poverty line their standard of living has gone down considerably. In fact, the poverty level in India is much more than that of China. One of the main causes of poverty in India is income inequality. While the effects of globalization, economic liberalization and market growth are being felt in the cities and urban sectors across the country, most of the rural areas are still not so developed and the condition has also not significantly improved. No doubt, there has been some improvement but, still a lot needs to be done.

A significant portion of the rural mass does not have access to the basic amenities such as electricity, education, sanitation, drinking water, and infrastructure. The wealth distribution pattern is also uneven in the country. Recent surveys have shown that the top 10% of the income groups share around 33% of the total income of the country. Even after globalization and economic progress, around a quarter of the population of the country has a earning less than the minimum level of $0.40 per day.

Table 161: Investment Proposals and Disbursal of Financial Assistance for Investment

Sl.No.	State	Percentage share of investment proposals between August 1991 and March 2000	Cumulative share of financial assistance disbursed by all -India Financial Institutions (upto March end 1999)	Cumulative financial assistance disbursed by State Financial Corporations (upto March end 1999)
	(1)	(2)	(3)	(4)
1	Andhra Pradesh	7.5	7.2	7.8
2	Gujarat	17.3	13.5	9.3
3	Haryana	3.4	2.5	4.8
4	Karnataka	4.5	6.1	15.5
5	Kerala	1.1	1.7	4.4
6	Maharashtra	21.7	21.0	11.5
7	Punjab	4.4	2.4	3.6
8	Tamil Nadu	6.8	9.0	10.6
	Sub-total (1 to 8)	**66.7**	**63.4**	**67.5**
9	Assam	0.7	0.5	0.5
10	Bihar	1.1	1.4	2.0
11	Madhya Pradesh	7.2	5.1	3.2
12	Orissa	2.6	1.8	3.7
13	Rajasthan	3.8	4.5	6.1
14	Uttar Pradesh	8.5	7.9	11.1
15	West Bengal	3.5	3.9	2.5
	Sub-total (9 to 15)	**27.4**	**25.1**	**29.1**
	All India	**100(Rs. 908, 888 crore)**	**100(Rs. 312, 502 crore)**	**100(Rs. 20, 896 crore)**

Source: 1. Annual Report 1999-2000, Ministry of Industry, Govt of India.

2. RBI, Report on Currency and Finance 1998-99, Vol.1

Notes: 1. Investment proposals include Industrial Entrepreneurial, Memorandum (IEM) Filed for items under delicensed sector and letter of indent in respect of items under licensed sector.

2. All India Financial Institutions include IDBI, IFCI, ICICI, UTI, LIC, GIC, IRBI and SIDBI.

India's development for the last two decades has been anything but equal. The benefits of liberalization and globalization are still restricted to certain geographical areas of the country and certain economic sectors. The IT boom is concentrated in the Southern metros of India while the petrochemicals sector is thriving mostly in Gujarat, in Western India. Large parts of Northern and Eastern India are severely lagging in economic development. The traditionally poor and populous BIMARU States - Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh - are still largely agrarian economies.

Whilst the Indian economy has grown four-fold over the last two decades, this new wealth has remained in the hands of a small minority of the population. 85% (930 million) of the Indian population lives on less than $2.50 a day, this is more than Sub-Saharan Africa. 75% (822 million) of the Indian population lives on less than $2 a day. 24% (300 million) of the Indian population live on less than $1 a day. This means 41% (444 million) Indians live below the international poverty line of $1.25. 33% of the world's population that lives in poverty resides in India.

12.10 Regional disparity related to disarticulation between sectors

The disparity between fast-developing and backward regions has been accentuated in the liberalization period. On the one hand, "there has been little change in the relative position of States in terms of rankings (in per capita income) during the past two decades. In particular, the composition of the top 5 States and the bottom 6 States have generally remained unchanged". However, gap between them has been growing: "the top 5 States, which accounted for 24.7 per cent of the country's total population, had a share of 34.6 per cent of all-States Gross State Domestic Product (GSDP) during the early 1980s. This GSDP share increased to 38.2 per cent by the end of the 1990s. On the other hand, the bottom 6 States which accounted for a 41.6 per cent share in the total population, have suffered a setback in their GSDP share, from 35.3 per cent to 26.9 per cent, between these two periods. Even the middle 5 States, the composition of which remained the same, have suffered an erosion in their GSDP share over the last two decades."

Secondly, the urban-rural disparity too has sharpened during this period. The ratio of urban per capita income to rural per capita income grew from 2.34 in 1993-94 to 2.85 in 1999-2000; given the fact that agricultural growth fell further thereafter, and that growth was concentrated in the private corporate sector, this proportion would have shifted much further in favour of urban areas thereafter. There appears to have been a dramatic

decline in Government employment in the rural areas: Whereas in 1993-94 the rural areas accounted for 42 per cent of 'community, social and other services' GDP (largely the salaries of Government employees), in 1999-2000 they accounted for just 29 per cent of it.

Significantly, it is not necessary that a State with large metropolises and high urban income rank have a high rural income. Nor is it necessary that a State with a relatively high rural per capita income have the largest and most prosperous cities. Punjab and Haryana are at the top of the rankings in per capita income because of their better-off agricultural sector, whereas Andhra Pradesh and Tamil Nadu have large prosperous metropolises but merely average per worker income in agriculture. In Maharashtra, which stands first or second in per capita income, agriculture and allied activities still employ half the workforce, but GDP per capita in the agricultural sector has been falling continuously in per capita terms for more than a decade; remarkably, industrial GDP per capita too has stagnated; only services sector GDP per capita has risen rapidly, concentrated in the metropolitan pocket of Mumbai-Thane-Pune. The percentage of agricultural laborers in Maharashtra with wages below the national minimum wage is roughly the same as in the most backward States of the country - Bihar, Chhattisgarh, Madhya Pradesh and Orissa.

Neither is rural growth leading to urban growth, nor does urban growth get diffused to the rural areas. This reflects once again the lack of organic links between the agricultural and non-agricultural sectors.

A study of some of the States at the centre of the current boom - such as Andhra Pradesh, Karnataka, Maharashtra, Tamil Nadu and Gujarat - would reveal a particularly sharp urban-rural disparity, uneven regional spread of growth, low employment growth, and so on. Further, even within backward States the disparity between agro-ecological subregions has worsened.

12.11 Globalization and regional disparities

Globalization has also not done much good to reduce disparities between various regions and States across the country. While some States have a high earning, there are also some States which have a very low growth rate. Some of the States which have a high income are Gujarat with 8.8%, Delhi with 7.4% and Haryana with 8.7%. In comparison to these, Bihar with 5.1%, Uttar Pradesh with 4.4% and Madhya Pradesh with 3.5% are some of the lowest ranking States with very little socio-economic growth.

To minimize the income inequalities and regional disparities across the country, the government has taken a number of steps. Lots of rural development programs have been initiated to make the rural mass self-sufficient and financially stable. In this regard, the government has set up village cooperative banks, Regional Rural Banks and so on, to help the poor and the villagers. The government also offers land for farming at cheap rates, tax relief and other incentives to minimize regional disparities and income inequality.

12.12 Conclusions

After nearly 20 years of implementing reforms cities such as Bangalore have risen in prominence and economic importance and have became centers for foreign investment. On the eve of reform India's economy was a mere $317 billion, today the Indian economy has grown to a whopping $1.2 trillion, the 12th largest economy in the world and after China and the world's fastest growing economy.

The liberalization of India's economy has resulted in India transforming from an economy that was dominated by agriculture to one where the service sector generates 54% of the nations wealth. Business services such as IT and business process outsourcing contribute 33% to the total output of services. Several Indian firms were listed among the top 15 technology outsourcing companies in the world in 2009. The growth in India's IT sector has been a result of increased specialization and an availability of a large pool of low cost, but highly skilled and educated workers. However, the share of India's IT industry to the Indian economy is still relatively small and is currently only 7% of the economy. Annual revenues from outsourcing operations in India currently stand at $60 billion and this is expected to increase to $225 billion by 2020.

An analysis of the growth performance and structural changes in domestic product of Indian States in the last two decades reveals that the development process has been uneven across States. While the advanced industrial States have tended to leapfrog in the reform years, other States have lagged behind. The regional disparity in the growth rates becomes sharper in terms of per capita income. The poorer States have not only performed poorly but their failure to stem population growth has left them in even worse position. We also note that the tertiary, rather than the industry, has become the engine of growth in the last two decades.

The growing regional disparity in the post-reform period is now a matter of serious concern. With deregulation of private investment, faster growth in turn would induce more

investment, and this in turn would further accentuate regional disparity. The problem is compounded by the negative relationship between population growth and income growth during the 1990s. Unfortunately, backward States with higher population growth are not able to attract investment - both public and private - due to a variety of reasons, like poor income and infrastructure and probably also poor governance. Our results support the view that there is a strong case for proactive public policy to induce more investment in backward States either through public investment or through fiscal incentives. Simultaneously, efforts should be made to restrain population growth, especially in backward States. Finally, the quality of governance and in particular the efficiency of investment should be given more attention at the Statelevel.

The inverse relationship between population growth and income growth at the State-level in the recent years can become an explosive issue not only economically but also politically. States with higher population growth and lower income growth would tend to have higher unemployment rate. Migration can only partially mitigate this thorny problem. Besides, large-scale migration in a country with wide diversities in religion, language, caste and education levels can create socio-political problems. It is already evident in some States and regions. In China, the social discontent of rising regional disparity and consequent migration is contained by a strict communist party dictatorship.

It is clear that the post-reform period has not altered the spatial pattern of economic development in India. Regional disparity has been a problem in India, since independence and the last 10 years have not changed that. Although the reform program was not explicitly adopted to address this issue, it can be seen that it has not helped alleviate it. If anything it is setting the stage for further deterioration of regional disparity. It is therefore important for the policymakers both at the centre and the State to give serious considerations to this issue.

The problem needs to be addressed from several fronts. Infrastructure is one of them. The Centre should take an active role in ensuring that the disparity between States in Infrastructure is reduced. Infrastructure development is an important key to solving the regional disparity problem. However, eliminating the differences in infrastructure involves a significant lag period. During this time it is likely that the disparity will increase. The immediate changes that can be enacted could be in terms of power generation, telecommunications, roads and rail services. These facilities can be provided in a much shorter time period. Other factors such as improving literacy, lowering population growth,

improving healthcare facilities and increasing the access to such facilities by all, will take time. However, the centre can begin assisting the States in these areas as well.

The New Economic Policy of India has not necessarily diminished the role of State; it has only redefined it, expanding it in some areas and reducing in some others. As it has been said, somewhat paradoxically 'more market' does not mean 'less Government', but only 'different Government'. However, if the public sector is truly to play its role, it needs to improve its efficiency and productivity and generate the necessary surpluses as were originally envisaged. It is only an efficient public enterprise system that can enable the Government to meet its social obligations. If one hears the word 'market' mentioned more often these days, it was only because 'market' was very nearly a dirty word in this country for well over four decades. What is needed is an optimal mix of 'market' and 'State'.

The new approach to market liberalization should not be one of abdication of government controls to market forces, rather a harnessing of market forces for the greater good of the nation.

In India, the democracy is very vibrant. If the inverse relationship between income and population growth persist longer then sooner or later there would be a serious conflict between States in terms of sharing of resources. It is already evident in the allocation of resources through the Planning Commission and the Finance Commission. The social consequences of migration could become an additional source of conflict. The solution, however, does not lie in curbing growth in fast growing and market friendly States, but in accelerating reforms in backward States to attain a balanced regional growth.

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13

SOCIAL DEVELOPMENT AND REGIONAL DISPARITIES

13.1 Introduction

In this section an impact of regional disparities on the status of **Social Development in India in the form of** a composite **Social Development** index (SDl) for all major States across India is being delved into. This is being achieved by considering six major dimensions of social development. They included demographic parameters, health indicators, educational attainments, basic amenities, economic deprivation, and social deprivation. The index was constructed at two points of time, namely, 1991 and 2001, and separately for each State. In the case of larger States with a population of more than 5 million the indexing exercise was done separately for rural and urban areas, whereas in the smaller States a combined area index was used.

The scope of the index has been extended in two particular directions, first by capturing the disparity in development of different social groups, and second by measuring gender disparity in social development. The plan of this chapter concerning these various aspects of the SDl is as follows.

In section I, the sources of data and indicators used in the construction of the composite index are discussed. (For an expository treatment regarding the methodology of computation of the composite index, kindly refer to India social development report 2008; some aspects in this regard have also been given in annexure-III of this report for further reference).

While section II, presents the composite indices differentiating rural from urban areas. This exercise is done separately for larger and smaller States. A comparison of State ranking in 2005 *vis-a.-vis* 2001 is also presented in this section. Section III presents SDl separately for SCs, STs, and the others categories for 2001. Statewise index is constructed only for the larger States. Finally, section IV attempts Statewise, genderwise SDI for 2001 with respect to the major States. The last section V summarizes by highlighting some important findings and drawing out their implications.

13.2 Section I: Sources of Data with Explanatory Notes

Indicators and Database Used in the Estimation of SDI

- **Demographic Indicators**

1. ***Contraceptive prevalence rate*** *(CPR):* It is defined as the proportion of currently married women using any contraceptive method. For all the major States and smaller States data have been compiled from National Family Health Survey (NFHS-III 2005- 6) Statewise fact sheets.

2. ***Total fertility rate*** *(TFR):* It is the number of children a woman of hypothetical cohort would bear during her lifetime if she were to bear children throughout her life at the rates specified by the schedule of age-specific fertility rates for the particular year, and if none of them dies before crossing age of reproduction. For all the major States and smaller States data have been compiled from NFHS-III Statewise fact sheets.

3. ***Infant mortality rate*** *(IMR):* This is the proportion of newborns dying before completion of their first year; in life table terms this is denoted as l~X 1000. IMR is conventionally computed as the number of infant deaths per 1,000 live births in one year, but when data on cohorts is available, as in the case of the NFHS-III, it can be obtained for major States as the proportion noted earlier. For all smaller States data have been compiled from Sample Registration System (SRS; October 2006).

- **Health Indicators**

1. ***Percentage of institutional delivery****:* It represents percentage of delivery that took place in an institution in both public and private sectors in the State. For all the major States and smaller States data have been compiled from NFHS-III State- wise fact sheets.

2. ***Percentage of undernourished children****:* The nutritional status of children calculated according to anthropometric measure (weight-for-age) from NFHS-III, as compared with the nutritional status of an international reference population recommended by the WHO. For all the major States and smaller States data have been compiled from NFHS-III Statewise fact sheets.

- **Educational Attainment Indicators**

1. **Literary rate***:* In the absence of literacy rate data from the census for the year 2005, we have used the literacy data from National Sample Survey (NSS) 61st round (2004-5).

The literacy rate here is defined as the proportion of literates to the population in the age group 15 years and above by level of general education. For all the major States and smaller States data have been compiled from NSS 61st round, report no. 516 (2005-6).

2. **Pupil-teacher ratio***:* It is the ratio of the number of students to a teachers in primary schools in different States of India, and data have been compiled from 7th all-India; Education Survey for the year 2002. For all the major States and smaller States data have been compiled from this source.

3. **School attendance rate***:* Similarly for the school attendance rate, which indicates the percentage of the *de facto* population aged 5 to 14 currently attending school, we have taken the data for all major and smaller States from the NSS 61st round survey (report no. 516), which presents the current attendance rate in educational institutions per 1,000 persons in the population group in question.

- **Basic Amenities Indicators**

In this dimension we have taken four major variables that indicate access to basic amenities. These are percentage of households that: live in a pucca house; have access to safe drinking water; have access to toilet facilities; and have an electricity connection. For all the major States and smaller States data have been compiled from NFHS-III Statewise fact sheets.

- **Economic Deprivation Indicators:**

In regard to economic deprivation indicators chosen are Population below poverty line, Gini ratio for per capita consumption expenditure, and unemployment rate. The Planning Commission, using the Expert Group methodology, has estimated poverty in 2004-5 using both the uniform recall period (URP) consumption distribution and the mixed recall period (MRP) consumption distribution.

Of these, we have taken the MRP consumption distribution because it is comparable with the poverty estimates of 1999-2000. For all the major States and smaller States data have been compiled from published documents of the Press Information Bureau, Gal, March 2007.

1. **Gini ratio for per capita consumption expenditure**: It depicts the Statewise figure of inequality in consumption expenditure. This indicator has been compiled for major States from the Sachar Committee Report 2006. For smaller States the Gini ratio for consumption expenditure has been excluded because of the nonavailability of information.

2. **Unemployment rate:** Current daily status (CDS) unemployment rate is taken as the basis for calculating unemployment. The unit of classification is half day in the CDS. If a person, is not engaged in any work even for one hour, but has been seeking or available for work for four hours or more, he/she was considered unemployed for the entire day.

Unemployment is defined as the number of persons unemployed per 1,009 persons in the labor force. Since NSSO has not provided data at the aggregative level (that is, rural and urban combined), the proportion of population of rural and urban areas have been multiplied by rural and urban figures respectively to obtain aggregative figure in case of smaller States data source is the NSS 61st round, report no. 515.

- **Social Deprivation Indicators**

The computation of the indicator for social deprivation is based upon six major indicators. Three of them concerning literacy are: disparity ratio between SCs and the general population in the literacy rate; disparity ratio between the STs and the general population in the literacy rate; and disparity ratio between females and males in the literacy rate. These disparity ratios indicate educational deprivation of SC/STs and women in a State.

Some other aspects of social deprivation, such as female unemployment, economic deprivation of Muslims, and the disadvantage that the female children face for survival in the early years of life are also taken into consideration. For this purpose, we use the indicators: ratio between female unemployment rates to total unemployment rates; disparity ratio of per capita expenditure of Muslims to that of the total population; and child sex ratio.

For major States all the six indicators are available, but for the smaller States per capita expenditure of Muslims is not available. (Sources are NSS 61st round, report no. 516, Sachar Committee Report 2006 and Office of Registrar General and Census Commissioner of India 2006.)

13.3 Indicators and Data Base of SDI for Social Groups

- ***Demographic Indicators***

In this dimension we use three indicators as for general SDI: CPR, TFR, and IMR. Data have been compiled by social groups, Statewise, from various State reports of NFHS-II (1998-9). For STs Data for Himachal Pradesh was not available.

- ***Health Indicators***

For health indicators we have chosen two variables: percentage of institutional deliveries and percentage of undernourished children. Data have been compiled by social groups at the State-level from various State reports of NFHS-II. For Himachal Pradesh, Kerala, and Tamil Nadu health indicators of STs are not available.

- ***Educational Attainment Indicators***

Literacy rate and dropout rate are used in this dimension. For the former we used Census of India data for the year 2001. The literacy rate here is defined as the proportion of literates to total population in the age group 7 years and above by level of general education. Dropout rate is the percentage of students dropping out of class/classes in a given year. This gives an indication of the wastage of school education, which tends to undermine benefits of increased enrolments.

- ***Basic Amenities Indicators***

In this case we have taken four major variables that indicate access to basic amenities. These are percentage of households with a pucca house; have access to safe drinking water; have access to toilet facilities; and have an electricity connection. All the four variables have been complied from the Office of the Registrar General and Census Commissioner of India (2003).

- ***Economic Deprivation Indicators***

The per cent of population living below poverty line (headcount ratio [HCR]) and unemployment rate (according to CDS) have been adopted in this dimension. For Himachal Pradesh HCR of STs is not available. Data source is NSS 55th round (1999-2000). (For definitions see Section 1:1.)

13.4 Indicators and Database of SDI for Gender

- *Health Indicators*

In this dimension, we use two indicators: IMR and percentage of undernourished children. Data have been compiled for males and females, Statewise, from various State reports of NFHS-II.

- *Education Indicators*

For this dimension two indicators have been used: literacy rate and higher secondary complete and above. Data have been compiled for males and females, State- wise, from State reports of NFHS-II.

- *Economic Deprivation Indicators*

Unemployment rate, and wage rate of men and women have been adopted in this dimension. Definition of unemployment rate same as in technical note. Wage rate is the average daily earnings (Rs.) of men and women in rural labor households in agricultural occupations for 1999-2000. Haryana wage rates have been adopted for Punjab and Delhi in the absence of data for these two States. The female wage rate of Jammu and Kashmir has been derived using Himachal Pradesh male and female wage ratio given the male wage rate of Jammu and Kashmir. Sources are NSS, 55th Round, and National Commission for Enterprises in the Unorganized Sector (NCEUS) Report, p. 275.

13.5 Section II: SDI for 2005 and SDI for 2001

- **Results and Discussion of SDI of Major States and Smaller States**

There are six component indices and the aggregate index. Ranking of States has been done separately for rural and urban areas for larger States. In the case of smaller States only combined index for rural and urban areas has been worked out. For the purpose of classification, all States with a population of 5 million or more are treated as major/larger States, and all those with population less than 5 million are treated as smaller States. Delhi is also included among the smaller States though, it has more than 5 million people. SDl is based on the recent available database for the year 2005. The detailed discussion of the results for the year 2005 is available also in the Council for social Development report 2008.

As far as the rural areas of the larger States are concerned, Kerala had top rank during 2005, followed by Himachal Pradesh. It might be noted that the difference between aggregate index values of these two States was large. The next high ranking States are Jammu and Kashmir, Tamil Nadu, and Punjab during 2005, with aggregate index values varying between 61 and 57.

There are 13 States that have attained an SDI value above the national average, and the remaining seven States- Orissa, Rajasthan, Chhattisgarh, Madhya Pradesh, Uttar Pradesh, Jharkhand, and Bihar - have aggregate index value below the national average. The aggregate index values for the two States at the bottom, namely, Bihar and Jharkhand, are less than one-third of the corresponding index values of the five best performing States, that is, Kerala, Himachal Pradesh, Jammu and Kashmir, Tamil Nadu, and Punjab.

In the case of urban areas, during 2005 Himachal Pradesh was at the top, followed by Kerala, Jammu and Kashmir, Punjab, and Tamil Nadu respectively. The differences of the aggregate index values of the remaining 8 States that rank above the national average, namely, Gujarat, Maharashtra, West Bengal, Uttaranchal, Haryana, Andhra Pradesh, Karnataka, and Assam, are very narrow.

The index values vary from 51.7 in the case of Gujarat to 48.4 in the case of Assam. As against this, there are significant differences in the aggregate index values of the three States at the bottom, that is, Madhya Pradesh, Uttar Pradesh, and Bihar, for which the index values are 32.0, 26.1, and 16.0 respectively. Comparing with the all-India average, there are seven States that were below the national average and the remaining 13 States were above it.

The ranking for the smaller States has been done for combined areas and presented in Figure 18.3. In 2005, Mizoram was top ranking in the composite index value, followed by Delhi. Arunachal Pradesh was at the bottom, preceded by Tripura. Among the smaller States, except Arunachal Pradesh, all others were above the national average.

- **Changes in Ranking of Major States, 2001-05**

Table 18.1 presents rural and urban rankings of major States in 2001 and 2005 on the basis of the SDI. The 2001 rankings of States are as given in SDR for 2006. In rural areas Kerala has been top ranking in SDI among 20 twenty States during both the years. There are 8 States that maintained the same rank during the five-year period. The low-

performance States of Bihar, Jharkhand, Uttar Pradesh, and Madhya Pradesh have retained the same low ranks unchanged in 2005 and 2001.

There are five States that experienced one rank change (Chhattisgarh, Gujarat, Jammu and Kashmir, Maharashtra, and West Bengal), followed by Tamil Nadu, Karnataka, and Orissa, which have improved their position by two places. Major changes are for Haryana (from 5 to 12th place) and Assam (12th place to 8th).

Haryana's rank declined by seven places, and Assam has improved four places during 2001-05. Haryana's rank deterioration is mainly on account of relatively lower performance in health, economic and social deprivation indicators in 2005 as compared to 2001. Improvement in Assam's rank is mainly on account of relative improvement in education, economic, and social deprivation.

In case of urban areas Himachal Pradesh was top ranking during 2001 and 2005. Only three States have retained their ranks: Haryana, Himachal Pradesh, and Uttaranchal. 8 States have changed their ranking by one position, and 9 States by two or more positions. Among them Maharashtra went up 5 places and Tamil Nadu 6. Against this, Andhra Pradesh went down 5 places, and Assam and Karnataka 8. There is need for closer examination of original data to identify more closely the factors that led to their relative improvement or deterioration.

- **Changes in Ranking of Smaller States, 2001-05**

Figure 18.3 shows the ranking of the smaller States during 2001 and 2005. Out of the 9, only 3 States retained their 2001 ranks in 2005, namely, Sikkim, Manipur, and Nagaland. While Mizoram moved up from second to top position, Delhi moved up from 3rd to the 2nd, and Goa was pushed down from 1st to 3rd. Tripura's rank went down from 6th to 8th and Arunachal Pradesh from 8th to 9th. The principal gainer was Meghalaya, which improved its position by three places, from 9th to 6th.

13.6 Section III: Social Development Index by Social Groups

An attempt is made here to assess the status of social development at a disaggregate level by social groups, namely, SCs, STs, and Others (non-SC/ST). The major focus of this section is to examine the status of SCs and STs across States and compare their relative situation with the non-SCs/STs within the State. In order to do so, we have undertaken a

similar exercise of using the same social development framework, indicators, and composite indices of social development. The SDI for SCs, STs, and Others are computed separately.

- **Social Development Index for SCs across States**

The SDI at the all-India level for SCs is estimated to be 24.89, which is significantly lower than that for non-SC/ST at 34.38. Figure 18.5 presents the comparative position of States on the basis of SDI for SCs for 2001 with respect to 16 major States. Values range from 61.55 for Kerala to 10.30 for Bihar. There are 11 States with SDI value higher than the all-India average for SCs, and 5 States with SDI value lower than all-India average for SCs. Kerala at the top is followed by Delhi, but with a substantial gap in the SDI value. Third and 4th ranks are occupied by Himachal Pradesh and Maharashtra respectively. The 5th to 7th places go to Punjab, Gujarat, and Tamil Nadu with very close index values. Karnataka occupies 8th position, followed by Andhra Pradesh, West Bengal, and Haryana in that order with narrow differences in SDI values. Bihar, the lowest ranking State, is preceded by Uttar Pradesh, Orissa, Madhya Pradesh, and Rajasthan in that order.

- ***Social Development Index for STs across States***

The SDI for STs is estimated for 13 out of 16 major States. The all-India level for STs is estimated to be 19.56, which is significantly lower than that for non-SC/STs (34.38) and SCs (24.89). Among the 13 States, the SDl value is highest in Kerala at 50.2, closely followed by Himachal Pradesh with an index value of 49.39.

The 3rd ranking State of Tamil Nadu has an index value about 19 percentage points lower than that of Himachal Pradesh. Figure 18.6 presents the positions of all the 13 States, 9 of which have ranks higher than the all-India average and 4 of them have ranks below it. The last ranking State, Bihar has an index value of just 8.3, which is less than one-sixth of the value of the top ranking State.

- **Social Development Index for Others (Non-SCs /STs*)* across States**

The SDI at the all-India level for non-SC/STs is estimated to be 34.38, which is significantly higher than the separate SDIs for SCs and STs. Across States, the SDI value shows a variation from 68.02 per cent for Kerala to 19.8 per cent for Bihar. There are 11 States above the national average, and the remaining 5 States are below the national average.

Kerala is followed by Delhi, Punjab, Tamil Nadu, and Himachal Pradesh in that order. The gap between 2 two States of Kerala and Delhi is quite high-about 8 percentage points. The lowest ranking State is Bihar, which is preceded by Uttar Pradesh, Orissa, Madhya Pradesh, and Rajasthan in that order.

The regional pattern of SDI by social groups is indicative of the fact that there exists a common group of States where social development is relatively low for all the three groups, and this includes the States of Bihar, Uttar Pradesh, Orissa, and Madhya Pradesh in that order. There is no such corresponding group of States with high ranking in the case of all social groups except Kerala.

The case of Himachal Pradesh is somewhat special. It ranks second with respect to STs, 3rd with respect to SCs, but 5th from the last with respect to others. Given the commonality of States with low values of SDl, in the case of the SCs, STs, and non-SCs/STs (which includes Bihar, Uttar Pradesh, Orissa, and Madhya Pradesh), it is important to examine, first, the factors for such low levels of SDI, and, second, to ascertain whether similar factors are causative of lower levels of social development for all the three social groups.

13.7 Disparity in SDI among Social Groups

After having discussed regional variations with high and low levels of social development for each of the social groups, in this section we look at the disparity levels in social development attainments among social groups. In Table 18.2 we present the values of SPI for the three major social groups, and their variations in terms of both absolute differences (differences in SDI values between SCs and Others, as well as STs and Others), and relative disparity (SDl ratios between the SCs and the others, and the STs and the others). Here, the absolute disparity indicates the actual difference or gap of SCs or STs and Others. On the other hand, the relative disparity indicates the level of achievements SCs or STs have made in relation to others.

For instance, at the all-India level the absolute gap between SCs and Others in SDI is 9.49, and the relative disparity ratio is 0.72. In other words, the SDl value for SCs is about 9 percentage points lower than that of Others, and their social development or attainment is about 72 per cent relative to Others 100 per cent. Herein again, any value of disparity ratio less than 1 means less attainment in social development for the SCs as compared to the Others or Non-SCs or STs.

In all States SDI values were lower for SCs compared to others during 2001. In the case of absolute gap, it was widest in Punjab (21.54 per cent) followed by Delhi (18.52 per cent) and Haryana (17.64 per cent), which means that SCs are far behind others in social development in these States. Maharashtra, Kerala, Himachal Pradesh, West Bengal, and Gujarat have low absolute gap in SDl values between SCs and others.

The relative disparity level was highest for SCs in Bihar (0.52) followed by Haryana (0.62), Punjab (0.64), Orissa, and Uttar Pradesh (0.67) respectively. This means that the attainment of social development of SCs in Bihar is just 52 per cent of that of others, and so on. For SCs, as compared to others, there is less disparity in Maharashtra (9 per cent), Kerala (10 per cent), Himachal Pradesh (14 per cent), and Gujarat (17 per cent).

The lower disparity ratios also happen to be in regions with relatively high social development. It implies that overall social development improves the relative social development of SCs. At the national level in 2001 SDl for STs had an absolute gap of 14.82 percentage points as compared with non-SC/STs. Andhra Pradesh has the highest absolute gap for STs at 19.36, followed by Gujarat (19.19 per cent).

The absolute gap between STs, and Others of Kerala, West Bengal, and Tamil Nadu are also quite high. Himachal Pradesh is the only State where the absolute gap is negative, implying that the SDI for STs is higher than for others. The disparity ratio of STs at the national level was 0.57, which indicates that their social development achievement is just 57 per cent of that of others.

The relative disparity variation ranged from 0.42 in Bihar to 1.05 in Himachal Pradesh during 2001. The other States with relatively low disparity for STs are Uttar Pradesh (83 per cent), Kerala (74 per cent), Rajasthan (72 per cent), and Karnataka (67 per cent). States with relatively high disparity are Orissa (47 per cent), West Bengal (52 per cent), and Andhra Pradesh and Madhya Pradesh (each with 53 per cent).

Among all States, Himachal Pradesh stands out with higher social development attainments for STs in comparison to others. This appears to be largely due to a special characteristic of the STs, which is their being, concentrated in one district, namely, Lahul-Spiti, which is like a cold desert.

The entire population of that district, irrespective of their caste characteristics, is treated as tribals. Further, the Tribal Sub-plan has been relatively efficiently implemented there.

As a result, their social development indicators are relatively high. This explains the exceptional achievement of Himachal Pradesh as far as tribals are concerned.

13.8 Section IV: Social Development Index by Gender

The Indian Constitution is one of the most progressive in the world, and guarantees equal rights for men and women. It firmly asserts the principles of liberty, fraternity, equality, and justice. It emphasizes the importance of the greater freedom for all, and contains a number of provisions for the empowerment of women.

Women's right to equality and non-discrimination are defined as justifiable fundamental rights. The Constitution explicitly clarifies that affirmative action programs for women are not incompatible with the principle of non-discrimination on the grounds of sex.

Specific freedoms essential for women's equality in society for equality of opportunity for health, education, and economic opportunity are guaranteed by the Constitution. In this section SDI for men and women are separately presented Statewise.

This is followed by a presentation of the disparity in social development between men and women, Statewise Gender gap in SDI among different States is also presented.

On the basis of aggregate index values of males, Kerala has the first position, followed by Delhi. The difference between aggregate index values of the top two States is quite large at 25.54 percentage points.

Of the 18 States for which SDI for men have SDI values above the all-India average. It includes all the major States except Uttar Pradesh, Madhya Pradesh, Orissa, and Bihar. The value of SDI for men in Bihar, the State at the bottom, is just one-fourth that of Kerala, the State at the top.

On the basis of aggregate index, values Kerala again have first position, followed by Delhi. Across States the SDI value shows a variation from 74.43 per cent for Kerala to 5.41 per cent for Bihar.

The gap is quite high at about 18.03 percentage points. Delhi is followed by Punjab with a further gap of 11.31 percentage points. The lowest - ranking four States of Uttar Pradesh, Orissa, Madhya Pradesh, and Bihar have significantly low SDl aggregate values ranging from 5.41 per cent to 8.74 per cent.

The absolute gap and relative disparity between genders in social development across the States has been analyzed. The absolute gap is measured by the difference between the SDl value between men and women. Higher the absolute gap, the lower the achievement of social development of women. The absolute gap at the national level is 18.07 percentage points. There are 13 States below the national average and five States above. The biggest gap is in the case of Rajasthan, followed by Tamil Nadu, Uttar Pradesh, Andhra Pradesh, and Haryana respectively. The least gap is in the case of Delhi, followed - by Kerala.

The relative disparity in social development between, men and women is defined here as the ratio of aggregate - SDl for women to that for men. Higher value of the ratio implies lower order of relative disparity. It is lowest in Delhi, followed by Kerala, Jammu and Kashmir, and Punjab in that order.

At the other extreme we have Bihar, followed by Madhya Pradesh, Uttar Pradesh, Rajasthan, and Orissa in that order. It is interesting to note that while absolute disparity in terms of gaps is highest in the case of Rajasthan, the relative disparity is highest for Bihar.

13.9 Section V: Findings and Conclusions

The present section discusses the Statewise SDIs and with the scope of the discussion extended to cover different social classes and genders. We adopted the range equalization method developed by the UNDP to construct the HDI. Unlike the UNDP, we do not ensure comparability of values of the SDI over time.

Nevertheless, comparison of ranks across the States is feasible. Similarly, the index values for a particular year can be compared across States, social classes, and genders. In short, we have only a two time period comparison, but a larger cross-section of States at each given period.

The SDIs for 2005 across the States for rural and urban areas in the case of major States, and combined areas in the case of smaller States indicate that there exist considerable inter-State differences.

Kerala and Himachal Pradesh are at the top of the ladder in rural and urban areas respectively, each with an index value more than 70 per cent. **At the bottom of the ladder is Bihar as it has the lowest rank with respect to both rural and urban areas, with index values below 20 per cent**.

While one can argue with justified skepticism that these index values are not neutral to the data sets and the methodology used, it would be unwise to ignore the absolute magnitudes of the gap, which is more than 50 percentage points.

Thus, at least for the more extreme cases, the results are likely to be reasonably robust statistically. **An inter-temporal comparison *of* the ranking *of* States (that is, ranking for 2001 based on the SDR 2006 and ranking for 2005 worked out in this report) indicates that there is perceptible shift in the relative positions *of* several States.**

A critical question to be addressed is whether such changes are real or on account *of* differences in data sources. Wherever the rank *of* a State shifts by, say, more than two positions in either direction, there is need for closer scrutiny to identify the factors that led to such changes.

It might turn out that some of them are the results of public policies, while some others may simply be because of factors exogenous to developmental efforts, and even more in the nature of a change in statistical sources and definitions. This remains an open question for further exploration.

A more ambitious attempt of the current report is to extend the SDI to capture Social Deprivation. It develops separate SDIs for SCs, STs, and Others on the one hand, and for gender differences on the other. While data availability imposed certain constraints, the effort has yielded results that are worth examining as a first step towards identifying these issues quantitatively.

Interestingly, in the case of SCs social exclusion was rather high in States like Punjab, Delhi, and Haryana, which have otherwise achieved relatively high social and economic development. In contrast, such exclusion was relatively less in Assam, Maharashtra, Kerala, and Himachal Pradesh.

As far as STs are concerned, their exclusion in social development was higher in Andhra Pradesh, Gujarat, Kerala, West Bengal, and Tamil Nadu and lower in Assam, Uttar Pradesh, and Rajasthan. Himachal Pradesh is a special case in the sense that social development of STs is even better than that of others - Gender disparity in social development is high in Rajasthan, Tamil Nadu, Uttar Pradesh, Andhra Pradesh, and Haryana, while it is low in Delhi, Kerala, Himachal Pradesh, and Assam.

Even from these preliminary studies, it appears that there is considerable disjuncture between economic and social development in general as captured *by* the SDI, and the access *of* different social groups to the benefits of development.

This problem needs to be addressed through targeted public policies, and not simply by striving for higher economic growth. Perhaps this is the most important lesson that we need to learn from the various quantitative exercises attempted here. Inclusive development is likely to remain an empty slogan unless this is recognized.

Fig 1: Social Development index for Rural Areas, 2005

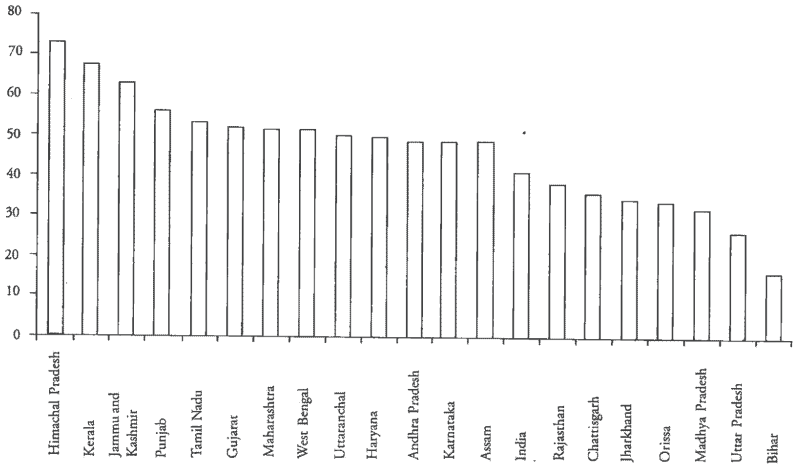


Fig 2: Social Development index for Urban Areas, 2005

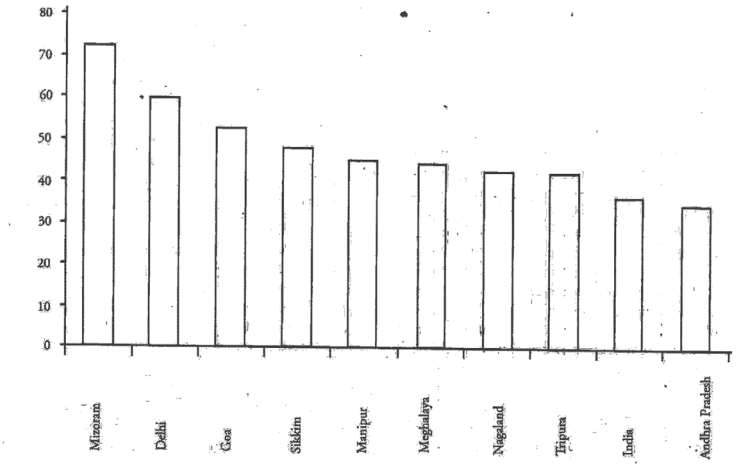


Fig 3: Social Development index for Combined Areas, 2005

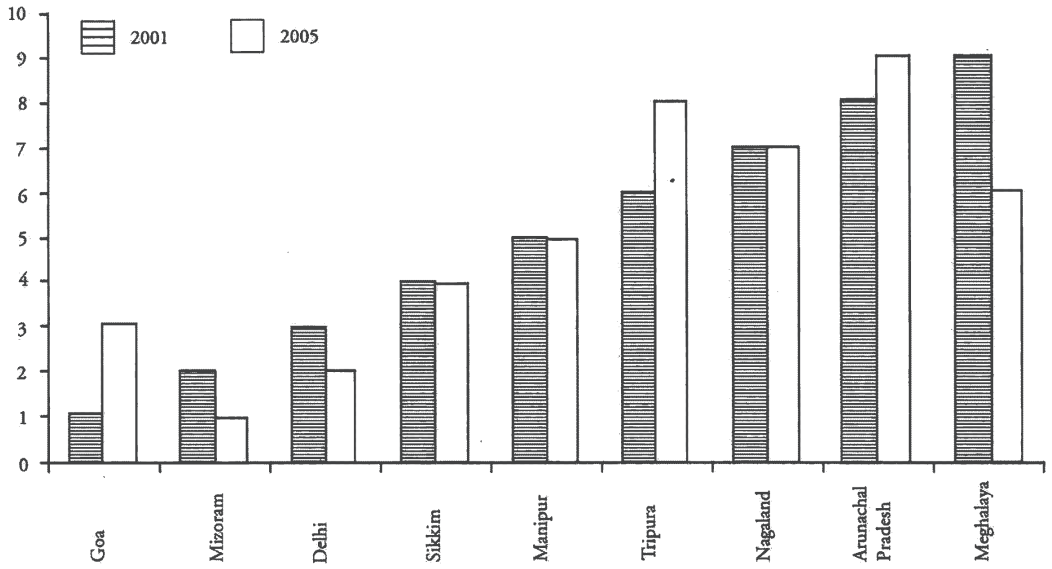


Fig 4: Social Development index for combined areas, 2005

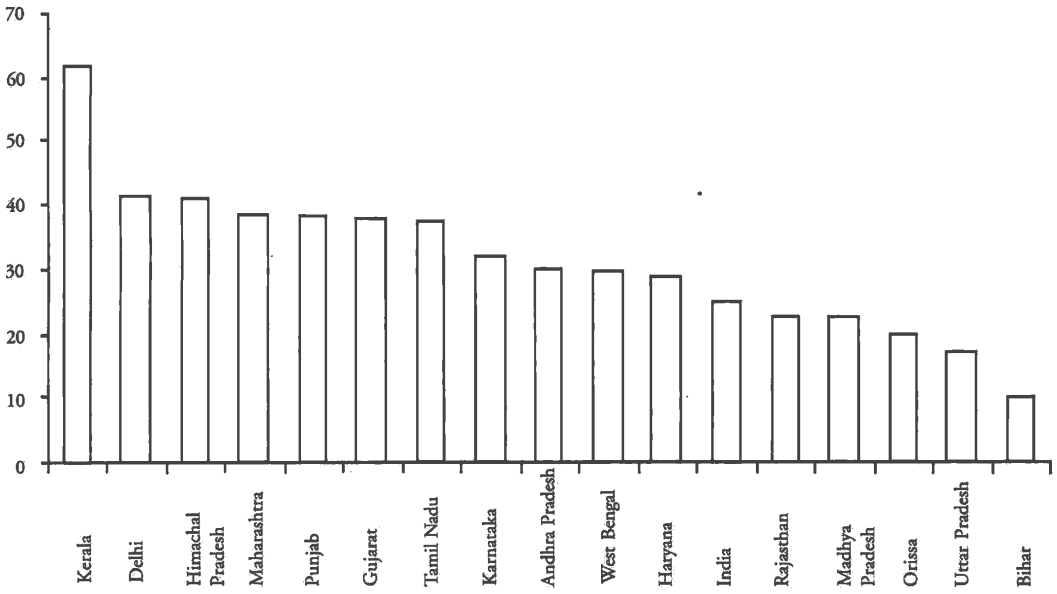


Fig 5: Social Development index for SCs across the States, 2001

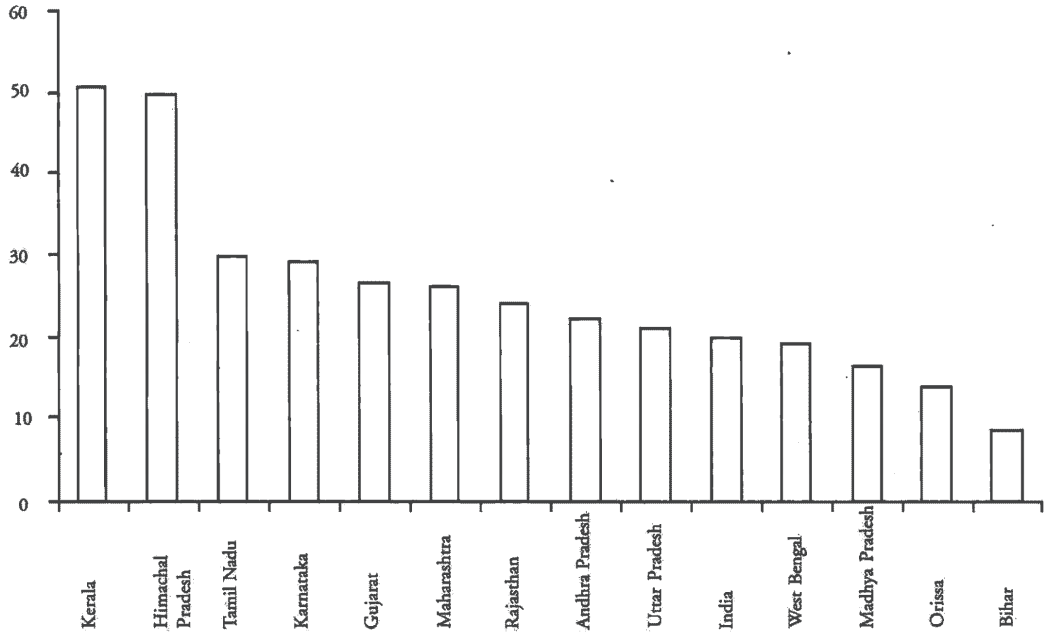


Fig 6: Social Development index for STs across the States, 2001

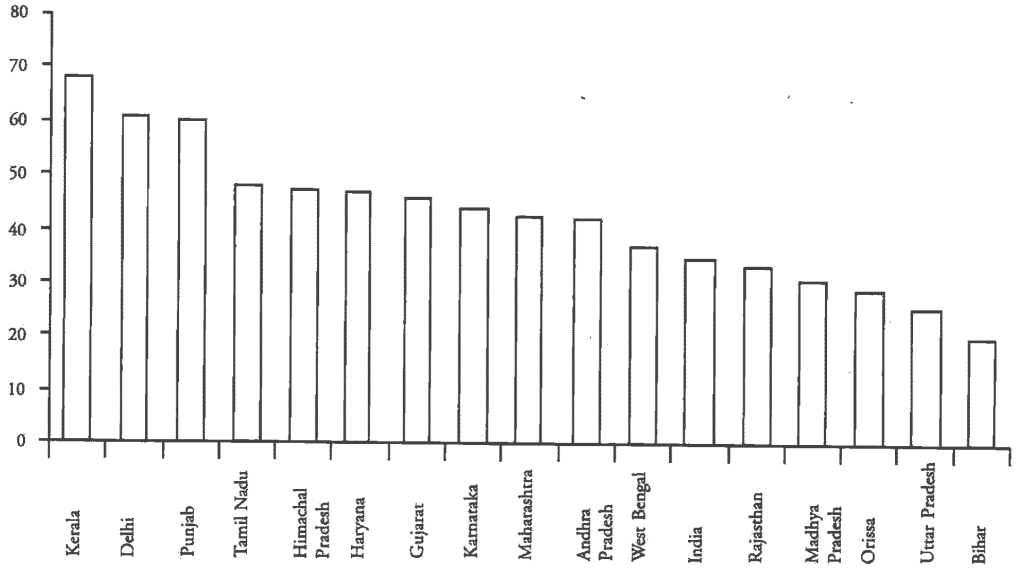


Fig 7: Social Development index for Others (Non-SCs/STs) Across the States, 2001

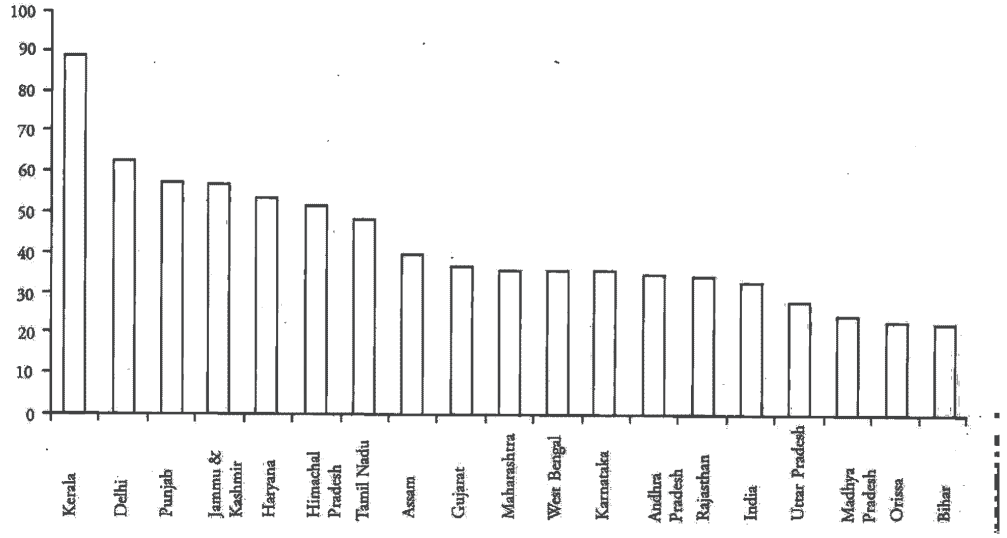


Fig 8: Social Development index for Men, 2005

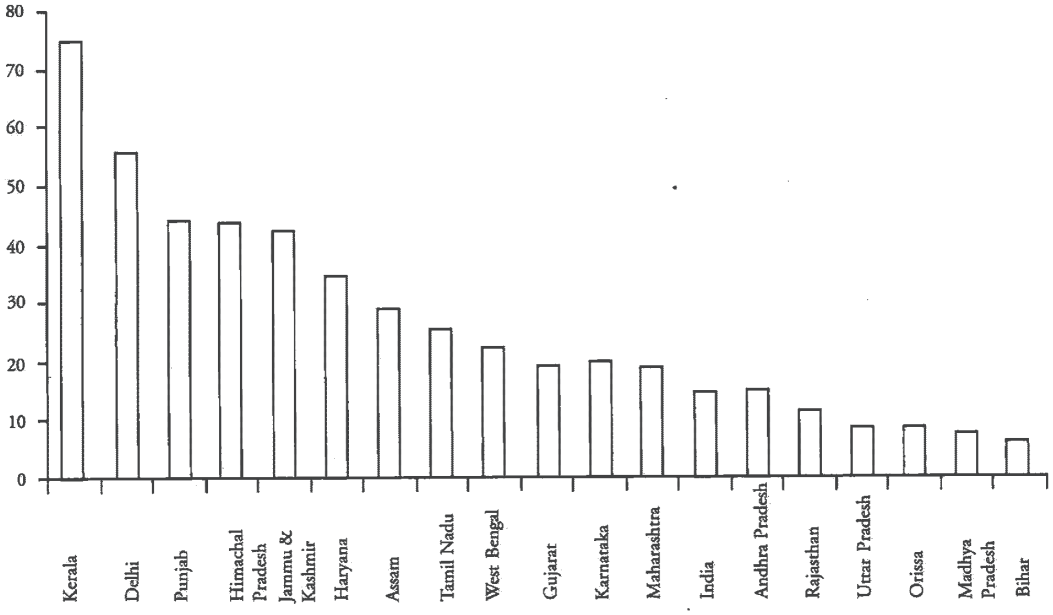
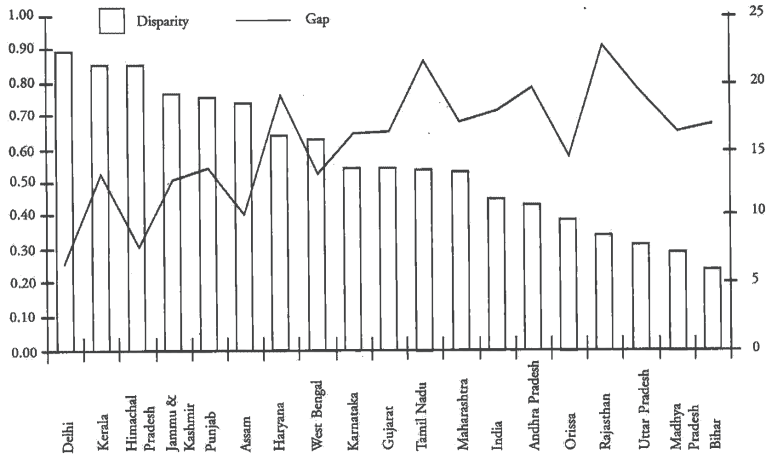


Fig 9: Social Development index for Women, 2005



State	*Rural*		*Urban*	
	2005	*2001*	*2005*	*2001*
Andhra Pradesh	9	9	11	6
Assam	8	12	13	5
Bihar	20	20	20	19
Chhattisgarh	16	15	15	16
Gujarat	10	11	6	8
Haryana	12	5	10	10
Himachal Pradesh	2	2	1	1
Jammu & Kashmir	3	4	3	na
Jharkhand	19	19	16	17
Karnataka	6	8	12	4
Kerala	1	1	2	3
Madhya Pradesh	17	17	18	14
Maharashtra	11	10	7	12
Orissa	14	16	17	15
Punjab	5	3	4	2
Rajasthan	15	13	14	13
Tamil Nadu	4	6	5	11
Uttar Pradesh	18	18	19	18
Uttaranchal	7	7	9	9
West Bengal	13	14	8	7

Changes in Ranking, 2001-05

	Composite index			*Absolute gap*		*Relative disparity*	
	SC	*ST*	*OTH*	*SC-OT*	*SC-OT*	*SC-OT*	*SC-OT*
India	24.89	19.56	34.38	9.49	14.82	0.72	0.57
Andhra Pradesh	29.80	21.89	41.25	11.45	19.36	0.72	0.53
Bihar	10.30	8.30	19.80	9.50	11.49	0.52	0.42
Delhi	41.73	NA	60.25	18.52	NA	0.69	NA
Gujarat	37.59	25.96	45.16	7.56	19.19	0.83	0.58
Haryana	28.61	NA	46.25	17.64	na	0.62	NA
Himachal Pradesh	40.57	49.39	47.17	6.60	–2.22	0.86	1.05
Karnataka	32.27	28.94	43.38	11.11	14.44	0.74	0.67
Kerala	61.55	50.24	68.02	6.48	17.78	0.90	0.74
Madhya Pradesh	22.47	16.33	30.68	8.21	14.34	0.73	0.53
Maharashtra	38.57	26.42	42.30	3.73	15.88	0.91	0.62
Orissa	19.16	13.37	28.60	9.43	15.23	0.67	0.47
Punjab	37.81	NA	59.34	21.54	NA	0.64	NA
Rajasthan	22.54	23.71	33.13	10.59	9.42	0.68	0.72
Tamil Nadu	37.22	30.06	47.62	10.40	17.56	0.78	0.63
Uttar Pradesh	16.86	21.12	25.34	8.48	4.22	0.67	0.83
West Bengal	29.52	19.03	36.75	7.23	17.73	0.80	0.52

Social Development Index: Levels and Disparity, 2001

	Composite index			*Absolute gap*		*Relative disparity*	
	SC	*ST*	*OTH*	*SC-OT*	*SC-OT*	*SC-OT*	*SC-OT*
India	24.89	19.56	34.38	9.49	14.82	0.72	0.57
Andhra Pradesh	29.80	21.89	41.25	11.45	19.36	0.72	0.53
Bihar	10.30	8.30	19.80	9.50	11.49	0.52	0.42
Delhi	41.73	NA	60.25	18.52	NA	0.69	NA
Gujarat	37.59	25.96	45.16	7.56	19.19	0.83	0.58
Haryana	28.61	NA	46.25	17.64	na	0.62	NA
Himachal Pradesh	40.57	49.39	47.17	6.60	–2.22	0.86	1.05
Karnataka	32.27	28.94	43.38	11.11	14.44	0.74	0.67
Kerala	61.55	50.24	68.02	6.48	17.78	0.90	0.74
Madhya Pradesh	22.47	16.33	30.68	8.21	14.34	0.73	0.53
Maharashtra	38.57	26.42	42.30	3.73	15.88	0.91	0.62
Orissa	19.16	13.37	28.60	9.43	15.23	0.67	0.47
Punjab	37.81	NA	59.34	21.54	NA	0.64	NA
Rajasthan	22.54	23.71	33.13	10.59	9.42	0.68	0.72
Tamil Nadu	37.22	30.06	47.62	10.40	17.56	0.78	0.63
Uttar Pradesh	16.86	21.12	25.34	8.48	4.22	0.67	0.83
West Bengal	29.52	19.03	36.75	7.23	17.73	0.80	0.52

14

IMPACT OF THE POLICIES AND APPROACHES

14.1 Introduction

It is not only the economic performance that generate the inequality beyond the economics, there are many factors such as natural resources, historical background, social values and norms, political situations, environmental conditions and many more which make the performance of one State higher or lower as compared to other States.

14.2 Slow Growth in Employment

There has been the extraordinarily slow growth in regular employment. Regular employment in the organized sector over the last decade or so grew at only about 1%, while the rest of the average 6 to 7% growth in GDP came from the growth in output per worker or labor productivity.

In contrast, during the earlier decades, when GDP grew on an average at less than 4%, regular employment grew at the annual rate of 2%. The recent drive to increase labor productivity is related to globalization. International trade means increasing the importance of the external compared to the internal market, while corporations compete in the export market mostly by cutting costs to increase their international competitiveness.

This usually means shedding labor force through mechanization. For instance, if the labor force in a corporation is downsized to half at the same wage, labor cost per unit of output would also be halved. Let one example suffice to illustrate how this process is working in practice. Tata Motors in Pune reduced the number of workers from 35,000 to 21,000 but increased the production of vehicles from 1,29,000 to 3,12,000 between 1999 and 2004, implying labor productivity increase by a factor of four. The aggregate picture broadly conforms to this.

According to the Economic Survey of the government of India (2006-07), total employment in the organized sector declined from 28.2 million in 1977 to 26.4 million in

2004, because the much talked about growth of the private organised sector under the reform policies of the government hardly compensated for the decline in employment by the public sector.

Another telling piece of evidence against the belief that corporate-led industrialization and greater direct foreign investment would promote more employment came from the headlines of The Times of India (7 July 2008). Long hailed as most dynamic in these respects, a recent comparison of the various States of India suggested Gujarat and Maharashtra have been among the slowest growing States in terms of creating either non-agricultural or manufacturing jobs.

With regular employment opportunities growing far too slowly compared to the number of job seekers, more and more people are being pushed into the unorganized sector. Agriculture, in particular, has become even more overcrowded. According to the National Sample Survey (61st round), approximately 110 million agricultural workers (out of a total workforce of 400 million) found employment for 209 days in 2004-05 compared to 220 days in 1999-2000.

People desperate for a livelihood join the ranks of the so-called selfemployed in the unorganized sector, the fastest growing category, marked by long hours of work with negligible earnings, lack of any social security or labor protection and extensive use of child labor.

More than half the hawkers of Kolkata, and more than one-third of the hawkers of Ahemdabad belonging to this category of the selfemployed are retrenched industrial workers, now threatened once more with the corporatisation of retail trade in this era of globalization in the name of economic efficiency. This vast informal sector is increasingly becoming a refuge for people devoid of all hopes, and reminds one of the hell imagined by the great Italian poet Dante. On its gate is written, "You enter this land after abandoning all hopes".

The second reason for growing inequality lies in the style of economic management pursued by the government. While opportunity for regular work is growing at a grossly insufficient pace despite a high growth rate of output, the government has become increasingly weary of spending more for social welfare like health, education, public distribution and social security for the poor (ibid).

Government expenditure remained more or less steady around 22% of GDP throughout 2000-07, with health receiving 1.4% and education receiving 2.9% of GDP, on the average. The apparent reasons given are lack of "money" and poor public delivery system for social services. However, these are superficial justifications, and there is a more compelling reason which has come out into the open due to the financial crisis.

Globalization of finance made the government highly sensitive to the moods of the stock market and the financial sentiments of major players in that market. Even after the recent dwindling, India still has a relatively large foreign exchange reserves ($250 billion), but unlike China which has been enjoying export surplus for several years, our reserves come mostly from capital inflows exceeding balance of payments deficits, like deposits from non-resident Indians and portfolio investments by various international financial institutions.

These are far more fickle in nature and can be withdrawn at a relatively short notice if the mood of the financial market turns sour. A main thrust of the pro-market government policy has been to keep the financial market happy by being on the right side of the International Monetary Fund and the World Bank insofar as they have a central role in shaping international financial opinion for banks, credit-rating agencies, and other financial institutions.

This means following their economic guidelines in formulating policies. As a result, the government minimized its welfare spending by letting it stagnate as percentage of GDP even during the years of high growth. The cost of this squeeze of expenditure on social security, education and health falls mainly on the poor who cannot turn to the market due to lack of purchasing power and job opportunities.

14.3 Style of Industrialization

The third route is paved by the style of industrialization the government has increasingly adopted. It amounts to extending various privileges to the large corporations by the Federal and State governments, irrespective of their professed political color as incentives for promoting corporate-led industrialization.

Land acquisition by the States (land is a State subject under the Constitution) for "public purpose" has become its politically most visible aspect. The Central Government all along has provided the legal and logistical support for land acquisition, and the original

1894 Land Acquisition Act proclaiming the "eminent domain" status for the State was significantly revised successively in 1952, 1963, and 1984 to give greater power to the government to acquire land for the defense sector, companies, cooperatives and public sector companies.

The present government has brought two related bills (of the Land Acquisition Amendment Act, and Rehabilitation and Resettlement Act, both under consideration of parliamentary standing committees) to extend in many ways further the reach of the government. They are all linked directly or indirectly to a view of the model of development for three major purposes, namely (a) mining, (b) land for industrial sites, and (c) Special Economic Zones (SEZs). First, consider the mineral rich usually forested land acquired mostly from the tribal populations, concentrated heavily in Jharkhand, Bihar, Chhattisgarh and Orissa. As has often been pointed out, these are some of the richest lands in the country where the poorest live.

14.4 Mining and the Poor

A startling piece of revealing statistics shows that mining displaces typically the poorest in the country, the adivasis or tribals who constitute some 8% of the population, but account for nearly half of the people displaced in the name of development. The State apparatus takes recourse to silent violence in various ways.

Forcible acquisition of land and dispossession takes place often through manufactured consent of the Gram Sabhas at gunpoint to comply formally with the legal requirements of the Panchayat Extension to Scheduled Areas Act (1996) relating to tribal areas. The "public" purpose is granting possession to "private" corporations of the iron ore rich land in Chhasttisgarh, Jharkhand, Madhya Pradesh, bauxite rich land of Orissa, prospect of diamond mine in Bastar, etc.

Memoranda of Understanding (MOUs) between the large private corporations and the concerned State governments are seldom revealed despite applications under the Right to Information (RTI) Act. The mining land taken from the locals at a unilaterally announced low compensation price (that is frequently not paid) is handed over to large corporations and industrial houses often with supporting infrastructure provided by the government at public cost by displacing more people.

A telling instance of public-private partnership is the proposed SEZ comprising 45 villages in Raigad district of Maharashtra, which has been recently rejected almost unanimously

in a referendum held in 22 villages. While the government had the area under notification for acquisition for a "public purpose", in that very same area agents of the Ambani companies were privately trying to acquire land illegally with direct help from the Maharashtra government. Is all this is done only to pursue a model of industrialization, or does large money also change hands benefiting our political class and many bureaucrats in this process? This is at least a part of the story behind the phenomenal growth in corporate wealth and dollar billionaires in the country in recent years.

Available statistics show that in hardly four years, between 2003-04 and 2006-07 the market value of capital of the companies listed on Bombay Stock Exchange (BSE) grew almost 300%, while until the recent stock market crash India with the majority of its population desperately poor could perversely boast of the highest number of dollar billionaires after the United States.

The logic of a liberalized market mechanism buttressed further by State power to help the private corporations is relentlessly creating unprecedented inequality in India along with high growth. Sub-human poverty for millions and billions of dollars for a handful of citizens has become the name of this game called development.

14.5 Growth Driven by Rich

For this growth process to remain economically viable over time, slow growth of domestic purchasing power of the majority of the population must be countered by a compensating expansion either of our exports or expenditure by the rich. However, because our exports exceed imports and we buy more from the foreigners than we sell to them, the net contribution of the foreign trade sector to the expansion of demand in our economy is negative.

As a result, this anti-poor pattern of growth is being sustained by a rapid expansion of income and expenditure by the richer groups in society (a maximum of the top 20 to 25%). The increasing inequality entailed in such a process of high growth means that the corporations sell their products and realize handsome profits by concentrating mostly on the production of goods consumed by the richer sections of the population.

As a result, some 75% of Indians with a daily per capita purchasing power of less than Rs. 20 have virtually no place in this corporate-led modern economy as consumers. Their space as small rural producers or as small businesses in the unorganized sector also shrinks,

as the goods produced for the high end of the market can mostly be produced only by corporations (e. g., cars, refrigerators, air conditioned malls, State-of-the-art hospitals, etc).

Thus, growing inequality and lack of employment opportunities are coupled, and an output composition oriented towards a rich minority of this country tends to exclude the majority of our fellow citizens and often destroy their livelihoods.

The big dams that we build, the electricity that we generate, the world class cities that we strive for divert even non-reproducible natural resources. The large corporate houses use them efficiently to produce and sell to the rich profitable products, but their efficient utilization of natural resources imply the exclusion of the poor both as producers and as consumers.

The process of growth is sustained by growing inequality, and inequality reinforces growth in a mutually supportive manner. The Swedish economist Gunner Myrdal had called it "cumulative causation", somewhat similar to the engineer's system of strong positive feedbacks, the evolutionary biologist's symbiosis between two species, and perhaps the notion of autocatalysis in chemical reactions.

14.6 Silence of the Majority

While all this has been happening around us for quite some time, most of us refused to see it. The mainstream English language media, largely owned and controlled by large corporate houses, condition us continuously to turn a blind eye and believe that the virtual economy of the hourly fluctuations in the stock market is far more newsworthy than the growing inequality, despair and fury engulfing gradually the countryside.

Most economists who should have known better, fuelled this perception and cheered politicians in power for the rapid emergence of India as a global economic power and, of course, politicians in power never tire of congratulating themselves for their own achievements. When the market boomed they took credit for liberalizing the market, then as the market crashed they took credit for not liberalizing the market.

They took credit for forcing labor market flexibility of "hire and fire" rule; when the market crashed the prime minister begged the captains of industry in a specially called meeting not to fire workers near the time of elections. This hypocritical politics has been going on as business as usual until the recent global financial crisis shook deeply the

confidence in self-regulating free market capitalism with its global reach. The comfortable thought that more economic reform to deregulate the market and speedier integration with global market would lead us rapidly towards an optimal economic State is no longer fashionable.

Like their counterparts in the US and Europe, pro-market reformers of yesterday are now looking for cover; they who had opposed it now want more supervision and regulation of the market in India. However, this is only passing, because as an old English rhyme says: "Those who are convinced against their will/are of the same opinion still". Neo-liberalism has merely gone out of sight, but not out of mind.

Vested interests crystallized around corporations are merely on the defensive at the moment. We are still being misled to support a model of corporate-led industrialization financially helped by the State in difficult times as the way to our economic development, without questioning its relevance in the Indian context. A deep-seated habit of thinking inculcated by the globalization, privatization and liberalization rhetoric's still wants us to believe that this market fundamentalism, practicing developmental terrorism selectively on the poor, will ultimately help them as high corporate growth trickles down.

14.7 Subversive Questions

To keep our conscience comfortable, it claims that the market can substitute for social ethics by deciding what is profitable to produce, and who should be in charge of production. So we no longer question how without extensive public action and State intervention in favor of the poor, in this country of overwhelming poverty the logic of political democracy of one-adult one-vote can be compatible with the logic of the market dictated by the rich with many more votes with their higher purchasing power than the poor.

These are almost subversive questions and yet, the ability to pose them is the first step to liberate ourselves from the ruling system of conventional economic wisdom that has failed us so badly despite the big show of producing precise technocratic economic knowledge, helped by various vested. Would this global financial crisis give us the courage necessary to re-educate ourselves to view the "logic of the market" more logically?

14.8 Internal Migration and Regional Disparities in India

Internal migration is now recognized as an important factor in influencing social and

economic development, especially in developing countries. According to census 2001, the total population of India is 1028 million consisting of 532 million males and 496 million females. India is geographically divided into 28 States and 7 Union Territories. There is a tremendous variation in the aggregate population size across the State. It varies from 0.54 million in Sikkim to 166.2 million in Uttar Pradesh. In 2001, 309 million persons were migrants based on place of last residence, which constitute about 30% of the total population of the country. This figure indicates an increase of around 37 per cent from census 1991 which recorded 226 million migrants.

Out of the total migrants 91 million are males and the rest 218 are females. Thus migrants constitute around 30 per cent of the total population, male and female migrants constituting 18 per cent and 45 per cent of their population respectively. Of the total migrants, 87 per cent were migrants within the State of enumeration while 13 per cent were inter-State migrants. Among the male migrants, 79 per cent moved within the State of enumeration while 21 per cent moved between States. Among females, 90 per cent were intra-State migrants and 10 per cent were inter-State migrants.

In all censuses, rural to rural migration stream has been the most important. Females constitute a significantly higher proportion of rural ward migrants mainly on account of marriage.

As regards long distance (inter-State) movement in India, a clear sex differential is found from census 2001. Among the male inter-State migrants, rural to urban stream emerged as the most prominent accounting for 47 per cent. On the other hand, rural to rural has remained the major pattern of female movement, with 36 per cent of them migrating from rural to rural areas.

14.9 Reasons for migration

98 million persons moved during the decade 1991-2001. Out of this, 33 million are males and 65 million are females. Of the total intercensal migrants, 83 per cent were intra-State migrants and 17 per cent were inter-State migrants. However, among the males, 74 per cent migrated within the State of enumeration while 26 per cent moved between States. A corresponding percentage of females (13 per cent) were recorded as inter-State migrants. This indicates that mobility of Indian population has significantly increased during the 1990s.

In census 2001, the reasons for migration have been classified into seven broad groups - work/employment, business, education, marriage, moved at birth, moved with family and others.

It is observed that employment among males and marriage among females are the main reasons for migration. Associational reasons - movement on account of accompanying parents or any other member of the family is elicited second most important reason among both male and female intercensal migrants. Around 44 per cent of the total intercensal migrants have moved due to marriages. However, it is predominantly led by females as 65 per cent of females have migrated owing to their marriages compared to 2 per cent among males. Among male migrants, employment has continued to be the main reason for migration with nearly 40 per cent of them accounted by it.

When inter-State migration is taken into account, employment emerges as the main reason for migration. Nearly 32 per cent of all inter-State migrants during the intercensal period migrated for the reason of work or employment. This is closely followed by 'moved with household' reason accounting for around 30 per cent of the intercensal inter-State migrants.

However, there is a clear difference between different streams of migration. While nearly 79 per cent of females in intraState rural to rural migrants during the intercensal period reported marriage as the reason for migration, it is only 37 per cent among females in the case of urban to urban interState migrants.

'Moved with household' as a reason also emerges as an important cause for both male and female migration in all streams of migration during the intercensal period.

- **Inter-State migration flows 1991-2001**

Although out-migration and in-migration are enough to measure the amount of net migration, the direction to/from which the migrants moved can be used to explain the structure and pattern of internal migration in a country. Flow matrices are not readily available from the census publications. However a directional flow matrix (28 * 28) between the States can be developed from census data.

From the largest three or four magnitudes of out-migration proportions of each State, it is clear that majority of the migrants have moved to neighboring States only. However there are exceptions for this. For Uttar Pradesh, which constitutes 41 per cent of all our migrants, migration to Maharashtra accounts for 32 per cent even though Maharashtra is

not a border State. Likewise, out migrants from Orissa preferred Gujarat and Maharashtra as the destination even when these States are not border States. Out-migration to these States made up to 34 per cent of total out-migrants from Orissa.

A close look at the pattern of each State's out-migration is as follows. 56 per cent of out-migrants from Uttar Pradesh have gone to Maharashtra, Haryana and Madhya Pradesh. In the case of Bihar, nearly 50 per cent out-migrants have moved to Jharkhand, West Bengal, Maharashtra and Uttar Pradesh. Out-migrants from these two States made up to 70 per cent of total out-migrants. More than one-third of Tamil Nadu migrants moved to Karnataka. The rest of the out-migrants have chosen mainly Kerala, Maharashtra and Uttar Pradesh. More than three-fourth of out-migrants from Andhra Pradesh have moved to the border States namely, Karnataka, Maharashtra and Tamil Nadu. For the out-migrants from Rajasthan, destinations are Maharashtra, Haryana, Gujarat and Madhya Pradesh. Turning to Kerala, about 48 per cent have moved to the neighboring States, Karnataka and Tamil Nadu. However, a slightly more than one-fourth of the out-migrants from Kerala have moved to Maharashtra, which is not a bordering State.

Overall it is observed that majority of the out-migrants have moved to the bordering States. Nevertheless, it is observed that migration to non-bordering States has also been significant. Here, one has to remember the enormous variations in the geographical sizes of Indian States. With the distance covered by an inter-district migrant in State like Rajasthan, a migrant in smaller States can reach another State, thus qualifying as inter-State migration.

From the flow matrix, Maharashtra emerges the most favored destination for migration. Half of the entire inter-State migrants have moved to Maharashtra. Gujarat and Haryana are the other preferred destinations with nearly 30 per cent of the migrants moving to these States. The three States, thus, attracted 80 per cent of all inter-State migrants during the intercensal period 1991-2001.

- **Inter-State migration: socio-economic determinants.**

There is growing evidence in India to suggest that the country is moving fast in the overall development. Structural transformation in the 1990s has propelled the growth of the economy further. The percentage of people below poverty line has reduced and per capita consumption has improved simultaneously. Although Indian economy is predominantly agricultural, the proportion of work force engaged in agricultural activities

has fallen significantly. This reduction is perhaps, a sign of enhanced job opportunities in other sectors.

With this scenario of an optimistic economic growth at the national level, an attempt is made to relate the levels of migration of each State with some social and economic indicators. The following variables have been considered for the preliminary analysis: - proportion urban, per capita income, proportion of non-agricultural workers, density, economic dependency ratio, average earnings of rural labor, sex ratio, proportion age 15-59, and sex ratio of age15-49. Zero order correlation coefficients of these variables with migration levels is expected to provide some insights on the mechanisms of push pull factors of spatial mobility in India. The measurement errors in both the sets of variables, socio-economic variables as well as migration, cannot be summarily ruled out, although efforts will be made to maximize the reliability.

Further, from the host of socio-economic variables, some variables are considered for a linear regression analysis with the levels of in-migration. A quick look at the flow matrix shows that the poorest States in terms of State's per capita income have moved to States with high per capita income. The mean per capita income of Bihar and Uttar Pradesh in the decade 1991-2001 is Rs. 3,209 and Rs. 6,757 respectively. But the preferred destination States, Maharashtra, Gujarat and Haryana have high per capita income of Rs. 16,254; Rs. 13,980 and Rs. 15,386 respectively. On the other hand, Punjab with a higher per capita income of Rs. 16,765 has not attracted migrants in the decade. In overall, it is found that States with less per capita income has migrated to States with higher per capita income, higher wages and better opportunities.

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15

REGIONAL BACKWARDNESS CAUSATIVE FACTORS AND POSSIBLE SOLUTIONS

Determine that things can and shall be done, and then we shall find the way"

- Abraham Lincoln

".....it is not the water in the fields that brings the development; rather, it is water in the eyes, or compassion for fellow beings that brings about real development..."

- Anna Hazare

15.1 Introduction

Inter-regional imbalance and inequity breed serious socio-economic problems. People in socio-economically depressed regions often carry a deep sense of frustration and discrimination against their better-off neighbours. The problems of terrorism, naxalism, increased incidence of crime, deterioration of the law and order situation, and social strife in many pockets can be attributed to social and economic deprivations of the neglected regions.

Improvement in the socio-economic conditions of the people, at large, and mitigating the impact of socio-economic ills like incidence of poverty, regional backwardness, unemployment, morbidity to name a few, have always figured at the core of Indian planning since its inception in the early 50s. However, over the period of time, it became obvious that, growth by itself, was unlikely to eliminate and resolve poverty and other social issues confronting the society and the benefits of economic development were not being adequately reflected in per capita terms due to unprecedented and uncontrolled growth in population, levels of unemployment, regional backwardness etc. India's trajectory over the last sixty years has been remarkable, but there will be reason to truly celebrate this when the overall gains filter down to the poorest and the most deprived sections of India's vast population.

A number of studies substantiates that, economic development, has not been able to solve major problems like poverty, hungers, malnutrition, disparities of income, slums, inequality and poor health. Though, there has been a rise in per capita real income levels, however, the benefits of economic growth has failed to reach the majority of population.

Removal of regional disparity had been an acknowledged goal since the Second (1956–61) and Third (1962–66) Five-Year Plans of India. Moreover, the issue of regional balance has been directly or indirectly addressed in almost every Five-Year Plan in India since the Second Plan (1956–1961) till the recent Tenth Plan (2002–2007). The adoption of planning and a strategy of State-led industrialization were intended to lead to a more balanced growth in the country. This approach has being realized through policies designed to facilitate more investments in the relatively backward areas. It was expected that inter-State disparities would be minimized in the long run. However, the perception is that regional imbalances have actually been accentuated, particularly over the period of economic reforms 1991–2004.

Redressing regional disparities is not only a goal in itself but is essential for maintaining the integrated social and economic fabric of the country without which the country may be faced with a situation of discontent, anarchy and breakdown of law and order. There is probably no easy answer to the question of what really drives the growth process in the States.

We must develop an integrative perspective on development, whereby the economic dimension is only one aspect in the wider context of improving standards of living and sustainable development. This implies an acknowledgement that there are other processes, e.g. in the demographic, social, educational or environmental spheres, that are of relevance for regional development and territorial cohesion. Economic development and social development are mutually reinforcing. Disparities in economic development and social development are also mutually reinforcing. Socially excluded are economically marginalized. Economically marginalized remain socially excluded. The gains of economic development accrue disproportionately to the socially developed groups. The economic gains will help them to further horn up their social skills which in turn will enable them to gain even more from the economic opportunities. On the other hand, socially backward may gain only marginally from economic development which may not be sufficient for them to improve their social skills to enable them to earn more. This vicious circle transcends from generation to generation. There exist several dimensions of economic and social disparities of development in the country.

Various dimensions of economic and social disparity - regional, rural-urban, social class or gender have aggravated in the recent period. That too during a period when India has been achieving accelerated economic growth and has been emerging as a global player. This trend, if not arrested and reversed fast, will have serious adverse implications for the Indian economy, society and polity. As of today, a majority of Indians have been bypassed by the process of economic development either are able to contribute to the growth process or receive any tangible benefits.

15.2 Causative Factors Behind Backwardness

In India, the causes of regional disparity can be seen in three broad phases (Chakravorty, 2005). The first was the period of colonialism (roughly from 1800 to 1945), when the economic logic was mainly to extract industrial raw material, and agricultural goods in large quantities as cheaply available from 'inferior' people. During the colonial period, the structure of incentives, institutions and the spread of infrastructure were evolved predominantly to serve colonial interest. This exercise inevitably has formed inter-regional diversities and the newly independent India had to inherit this form of inequality in the system. Thus the second phase follows with the nationalisation (roughly from 1930 to 1980), which actually was the idealogical fall out of British Raj. The nation-State dichotomy was the basic principle of spatial division in the country. The idea of development actually had emerged with industrialization and modernization (which is clearly reflected in our five-years plans). In this process the formation of cities and metropolis have given rise to an extensive urbanization. As a result, unfavourable terms of trade between urban and rural areas as well as developed and underdeveloped regions were set in (Chakravorty, 2005). The distribution pattern had to be uneven and the development policies and programmes failed utterly to see the 'human face' and could not reach the weaker regions making them even more marginalized and unequal in multidimensional forms. To deal with such severe economic failures, the third phase i.e., globalisation (the period beyond 90s) has inevitably emerged which emphasizes the restructuring of economic system with deregulation and decontrol. A free international trade and curtailment of government intervention in the market was set in with the idea of profit maximization and decentralization through economic competitiveness and efficiency. But, the research evidences show that the country has not come out from the perpetual problem of unevenness of economic growth process. Indian States still experience a great deal of diversity with respect to per capita income, fiscal status and social sector attainment as well as political commitment to the cause of human development. 'It is by

now a well-established fact that the Indian States differ substantially from one another with respect to the levels and rates of growth in per capita income and per capita expenditure' (Choudhury, 1993). The booming Indian economy of today with its ever-widening potentials, possibilities, resource bases and endowments from north to south and from east to west have followed dissimilar growth paths over time. Economic disparity has become one such area, which is a cause of serious concern for the contemporary India and its policy makers.

How can we make the economic growth in India inclusive covering the backward regions, the rural areas, the marginalized social classes and the women? A closer examination of the nature of backward regions in each State will indicate specific reasons for their backwardness. The major cause of backwardness of Vidharba and Marathwada in Maharashtra, Rayalaseema and Telangana in Andhra Pradesh and Northern Karnataka is the scarcity of water due to lower precipitation and lack of other perennial sources of water. On the other hand, backwardness of certain regions in Gujarat, Madhya Pradesh, Bihar and Orissa can be associated with the distinct style of living of the inhabitants of such regions who are mostly tribals and the neglect of such regions by the ruling elite. Topography of a region could also constrain the development of a region; the hills of Uttarakhand and the desert region of Rajasthan are examples of such cases. Historical factors like the attitude of rulers of the former Princely States towards development could have significantly affected the development of a region. For example, the distinctly higher level of social development of the Travancore and Cochin regions of Kerala can be traced back to the enlightened attitude of the former rulers of the Princely States of Travancore and Cochin. On the other hand, the poor social development of Telangana region of Andhra Pradesh and certain other parts of the Deccan could be traced back to the absence of visionary rulers in the respective princely States.

The representatives of the backward regions often attribute the cause of the backwardness as neglect on the part of the rulers of the State, who are often from the well heeled regions. The ruling class may come up with any number of explanations for the underdevelopment of backward regions which are beyond their control. Indeed, there are specific institutional arrangements for development of backward regions in some of the States. Maharashtra and UP are two such examples.

In Maharashtra, there are separate regional plans for the backward regions. In Uttar Pradesh, there is a separate regional plan for the hill region which is characterised as Uttarkhand.

A marked dicotomy between the forward and backward groups of States has been emerging. The forward States are characterised by better demographic and social development higher per capita incomes and more developed economies, lower level of poverty, higher level of revenue receipts and State government expenditure on plan and non-plan, higher per capita resource flows and private investment and significantly better infrastructural facilities. On the other hand, the backward States are characterised by lower level of demographic and social development, lower per capita incomes and backward economies, higher level of poverty, lower level of revenue receipts and lower State government expenditure on plan and non-plan, lower per capita resource flows and private investment and underdeveloped infrastructural facilities.

The pressing requirement of the backward States is more investment in their social and infrastructural sectors. To improve the level of social services massive investment in primary education and primary health services are required. Improvement in literacy especially female literacy and health indicators like infant mortality and expectation of life at birth will bring down the rate of growth of population. Stabilisation of population, especially in the 'BIMARU' States is an important pre-condition for the sustained economic growth of that region. The experience of Kerala and to a considerable extent that of Tamil Nadu clearly indicate that even at comparatively lower level of economic development measured in terms of per capita income, a State can enjoy comparatively higher level of social development. Again, one of the major reasons for the fast economic growth of East Asian economies in the recent decades has been their higher level of investment in human capital development in the preceding decades. Further, it is argued that equitable sharing of the gains of economic growth in the East Asian societies has been facilitated by the universal literacy and better health standards attained by all the citizens in those countries.

Improvement in the basic infrastructural facilities like power, irrigation, transport and telecommunication in the backward States is a precondition of improving the quality of life of the people and to usher in sustainable economic development in those States. Availability of assured power supply, developed transport system and modern telecommunication facilities are important factors to attract private investments into these States. Similarly, development of the irrigation potential fully will go a long way in improving the productivity of agriculture and fully engaging the underemployed rural labor productively, which in turn will improve the rural incomes substantially and reduce the rural poverty significantly. A major problem, however, is the lower user charges for power,

transport and irrigation which lead to heavy losses to the State exchequer. Further, the State Electricity Boards, State Transport Corporations and State Irrigation Departments are starved of essential funds for even proper maintenance of their facilities. Competitive populism practised by State governments often lead to this situation. Because of the very poor fiscal health of SEBs, private power producers are also reluctant to invest in those States because they have to face insolvent SEBs as monopoly power purchasers.

The recent trends in investments, both public and private, indicate that left unaltered by effective public intervention inter-State disparities are likely to further aggravate. The current situation can be stylised as follows. There is need for higher level of investment in social services and infrastructure in backward States as compared to forward States. The governments of backward States are fiscally weak and as such they are unable to find enough resources to meet these investment requirements. Forward States are fiscally better-off to improve their comparatively better social and economic infrastructure further. The better off States are able to attract considerable amount of private investment, both domestic and foreign, to further improve their development potential, because of the existing favourable investment climate including better socio-economic infrastructure. The backward States are unable to attract private investments because of unfavourable investment climate including poor infrastructure. They are unable to improve the investment climate by improving the existing poor infrastructural facilities due to lack of resources. Their lack of resources is linked to their poor development. Thus, they are truly in a vicious circle. The solution lies in breaking this vicious circle.

In the past, especially during the first three decades of planned development, a major catalyst for development of backward regions was the massive Central investment in key sectors. Though such investments might not have invariably triggered regional development, such Central interventions had tremendous positive impact in transforming the face of a number of backward regions in various States. Since the early 1980s, the scope and role of such central investment have been steadily coming down.

The liberalisation process and the various reforms in financial and industrial sectors have further reduced the scope of such Central investments. Further, the Centre has a severe budget constraint which will not allow any sizeable investments in backward regions. The Centre is hard pressed even to take care of critical infrastructural and social sector investments. While resource flows to the States *via* Finance Commission awards and Planning Commission dispensation will continue and are likely to remain positively

discriminating in favour of the backward States, direct public sector investments by the Centre in the States are likely to dry up gradually.

An important factor which influences the speed of socio-economic progress of a State is the quality of governance. It is not a coincidence that, by and large, the States which are in the forward group are better administered as compared to the States in the backward group. A better administered State is more efficient in raising revenues and putting the revenues to better use. Such States are quick inresponding to opportunities which enable them to attract more private investment both from domestic and foreign investments. Again, such States are often able to prepare viable projects and successfully bid for Central assistance or for external funding. Surveys carried out among the private investors clearly indicate that it is efficiency of administration and availability of infrastructural facilities which are more attractive to them rather than the various tax concessions and incentives offered by the State governments. In the backward States, things move slowly. Private sector is willing to deal with politicaland bureaucratic corruption as long as things move faster. In the backward States, often corruption and inefficiency coexist and this is a deadly combination.

Although there are some indications of increases in regional inequality, but they are neither uniform nor overly dramatic. To some extent, increases in regional inequality are driven by factors that are necessary for accelerated growth – in particular, the more efficient allocation of private capital, foreign as well as domestic. Variations in urbanization and infrastructure development are found to be major contributors to regional disparity. Similarly, variations in urbanization and infrastructure development are found to be major contributors to regional disparity. Human resource development also plays a role in affecting regional disparity in India.

There are a number of factors – trade between regions, technology and knowledge diffusion and more generally regional spillovers – that lead to geographically dependent regions. Therefore, geographical location is important in accounting for the economic performances of regions owing to intensive spatial interactions between regions.

An analysis of the regional pattern of poverty in India allows us to identify a number of spatial poverty traps. These are characterized by low levels of geographical capital and social-political marginalization. *Prima facie*, these include vast tracts of dryland regions in the western-southern regions and forest based economies in the central-eastern regions. While the main constraints faced by the former emanate from the regions' weak agro-

climatic conditions, the problems faced by the poor in the forest based regions originate from a complex mix of factors, including physical isolation, low social capabilities and a failure of entitlements to the region's rich natural resources. Apparently these two sets of regions face different kinds of poverty conditions and follow different strategies to cope with that.

Ironically the poverty situation, as reflected in the official statistics, depicts a rather contrary scenario with dryland regions having lower incidence of poverty despite their adverse agro-climatic conditions *vis-à-vis* the forest-based regions. To a large extent this could be due to the relatively more diverse and developed market economies, out-migration as an important livelihood strategy and the fovourable agrarian conditions with better rights over land and other natural resources. Apparently, all these factors are missing the forest based economies, and the socio-political isolation of the people, especially the tribals, makes the situation worse. Understanding these dynamics is very important for formulating a long-term strategy for the amelioration of poverty, especially the chronic poverty, in these regions.

A comprehensive estimation of district-level deprivation made recently by Bibek Debroy of the Rajiv Gandhi Institute for Contemporary Studies, New Delhi, and Laveesh Bhandari of Indicus Analytics in District-level Deprivation in the New Millennium (Konark Publishers, New Delhi; 2003), came up with other significant findings:

- Most highways and rail networks tend to be in areas outside the most backward districts.
- All the most backward districts lie in low-growth regions.
- The most backward districts have the lowest presence of trained personnel during deliveries.
- Districts in eastern India tend to have lower pupil-teacher ratios compared to districts in western India.

Significantly, the report also found that:

- Backwardness does not seem to be linked to vulnerability to frequent drought. In the authors' list of 69 districts, only western Madhya Pradesh and Gulbarga are drought-prone.

- Many of the most backward districts have better access to safe drinking water than other more developed parts of India, including Kerala.

One often touted cause for backwardness is bad governance. All the various lists of most backward districts include notoriously ill-governed regions. However, one cannot pinpoint poor governance or lack of political will as the overriding cause of extreme backwardness. As the authors of District-level Deprivation in the New Millennium noted, Vidharbha and Marathwada in Maharashtra are amongst the most backward regions of India, but they had political clout: Maharashtra's longest-serving chief minister was from Vidharbha. The State had another chief minister from the region and two from Marathwada.

Development of spatially marginalised areas has been an important feature of planning in India. Nevertheless, the growth imperatives superceded these concerns. As a result, poverty got concentrated in certain geographically contiguous areas in the central–east regions. To a large extent, these regions are characterised by adverse agrarian relations, but with better natural capital especially, forest, minerals, and soil.

High incidence of poverty however, is confined not only to the above set of regions. There are pockets of severe poverty even within relatively more developed States like Maharashtra, Karnataka, Andhra Pradesh. Poverty in these regions is linked more closely to the low agronomic potential and frequent shocks like droughts. While poverty, affected by droughts is likely to be more transitory in nature, non-sustainability of natural resource use may lead to situations of endemic poverty in these regions.

Thus, spatial poverty traps thus, could be identified mainly in the two sets of regions, broadly classified as forest-based and dry land. Whereas, the former has high incidence of chronic poverty in duration sense, the latter may have more of transient poverty, which if unattended, could be converted into chronicity.

Given the basic differences in operating environment, coping mechanism also varies across the two sets of regions. Groundwater development, commercialisation of agriculture, economic diversification as well as the associated infrastructural development, and migration, are the major features of coping mechanism in dry land regions. Over depletion of groundwater resources of late, is posing a major challenge to the coping mechanism in these regions. Notwithstanding these, ability to organize drought relief programmes due to better availability of financial resources and also political commitments, may also help in the process of coping with frequent droughts.

The above features are relatively rare in most of the forest-based regions. While migration is a common feature across the two, its dynamics is likely to be different as forest-based regions may still provide some base for livelihood because of the relatively rich natural resources in the region. There are however, areas within forest-based regions, which also have a fair amount of resemblance with dry land conditions but, without the favourable features thereof. This happens because of the severe depletion of forest and the resultant frequent droughts. These areas thus, face a situation of double disadvantages. The coping mechanism in the forest-based regions therefore, has to rest mainly on collective resistance and political representation particularly for reinstating people's stakes in management of the region's rich natural resources.

The analysis of correlates of poverty reconfirmed some of the macro level processes such as critical importance of irrigation and agricultural productivity along with development of non-farm activities. These, in turn, exert positive impact on human capabilities though, there is no direct link between income poverty and human capabilities. There is however, a significant variation in the pattern of correlates of poverty and human capability across the two sets of regions *viz*; dry land and forest based. The present analysis is severely constrained by availability of right kind of indicators at more disaggregated level i.e., for the region as well as districts. A more careful handling of some of the important variables like extent of dryness, quality of forests, and severity of poverty might help understanding the differential patterns of poverty across the two sets of regions. Supplementing these, with carefully conducted micro studies therefore, is essential for taking further the discourse on chronic poverty in India's remote rural areas.

The most important causative factor for the widening regional disparities in the country has been the retrogression of the central and State finances. The root cause of the fiscal crisis at the Centre as well as in the States has been the rise of powerful vested interests that appropriate a major share of public finances to the disadvantage of the rest of the society and economy at large. These powerful lobbies inflict great harm to the public exchequer by ensuring maximum gain from public expenditure with minimum payments.

A number of these States have serious intra-State regional disparities in economic and social developments. Just like the Centre that has the responsibility to address inter-State regional disparities, these State governments have the responsibility to address intra-State regional disparities. Strengthening Central and State finances by

way of raising revenues and cutting wasteful expenditure appear to be the ideal course. In any case, the State cannot abdicate its sovereign responsibility.

Regions which are resource-rich can remain underdeveloped and backward due to infrastructural inadequacies. This can affect human development significantly by reducing access to economic centres and markets, schools and educational institutions and medical facilities. Indicators used to assess infrastructural adequacy relate to road length with reference to both area and population, tele-density, availability of rail connectivity, post offices, motor vehicles and bank branches as well as credit-deposit ratio, spread of cooperative credit institutions and the like. The kind of housing available (*kachha* or *pucca*) and access to the three basic amenities of water supply, electricity and sanitation are also good indicators of the quality of life of the population.

The cardinal cause behind regional disparity, as a manifestation of comparative regional backwardness has been, partly in the initial or pre-reform level of social and economic infrastructure conducive to growth and partly in the rate of capital formation, physical as well as human, in the post-reform period.

Physical and social infrastructures are important for economic growth and higher human development, and in general, there is a positive relationship between infrastructure and growth. As per the report of the Tenth and Eleventh Finance Commission that have provided index of social and economic infrastructure for major Indian States the group containing West Bengal, Maharashtra, Gujarat, Haryana, Tamil Nadu, Kerala and Punjab registered higher growth in the above regard in both 1995 and 2000. However, outliers like Punjab (did not record high growth inspite of high level of infrastructure) while Rajasthan registered high growth inspite of low infrastructure. Similarly, Karnataka and Andhra Pradesh have similar levels of infrastructure but the former recorded much higher growth than the later. Plan expenditure as a percentage of SDP declined in both better performing States as well as poor performing States. The lack of co-relation between State plan ratio and growth rate of GSDP indicates that total investment which includes private investment is more important than State plan expenditure. In the post liberalization period, private, institutional and external investments have tended to become more and more market determined.

Since 1990s the CD ratios have fallen in all regions of the country the decline being much more steep in backward States and regions. For example, in the eastern region the CD ratios had declined from 54 per cent in 1981 to 50 per cent in 1991 and to 37 per cent in

2001. Similarly, in central region (Madhya Pradesh & Uttar Pradesh), the CD ratios declined from 50% in 1991 to 33% in 2001. Similarly, decline in tax – GDP ratio followed by decline in central transfers to State. Other possible causatie factors backwardness is the decline in social and physical infrastructure expenditure in backward regions.

To conclude, if the existing trends in differential rate of socio-economic development continue, regional disparities in India are bound to accentuate. Therefore, it is imperative that the present trends are arrested and preferably reversed. This will require concerted efforts on the part of the concerned State governments and the Centre. Resources may be a major constraint, but not necessarily the only or not even the most important one. The determination on the part of the State government, the ruling elite and the people at large is even more important. Centre's helping hand in the form of focused investment, especially in social sectors and key infrastructural sectors will facilitate the tasks of the concerned States.

15.3 Measures needed to abridge regional disparities in India

The development experiences of various countries of the world reveal that the nations with rich human resources, consisting of healthy and educated people, with a sense of discipline, dedication and work culture could ultimately gear the economy in the desired channels of growth (Sengupta, 1999). Thus, it has became abundantly clear, that economic development has to be supplemented with social development in order to provide sustenance to the overall process of development, which brings into focus the role of human development as a resource and the indispensable role played by the components of social sectors in economic development. The term 'social sector' refers to all those set of activities which contribute to human capital formation and human development. Thus, education, health, medical care, water supply and sanitation, housing etc., have been considered as factors contributing to human development (Panchmukhi, 2000).

Hence, there has been a paradigm shift in the approach to development which has now changed from mere economic growth, to growth with justice and finally to growth for social justice (Kulkarni, 1997; Arunagam, 1999). This strategic shift from welfare to development and from development to empowerment also promotes the concept of holistic and integrated development rather than development in fragmented manner (Singh, 1999). Investment in infrastructure for social development has become priority and therefore no serious planners or policymakers could afford to ignore it. Inadequate

investment in such sector may cause under utilization of productive human resources and lead to wastage of scarce and expensive material resources as well (Sengupta; Ibid).

It needs to be recognised that while there is excess intervention by the government in some spheres of economic activity, there is also an insufficient and ineffective governmental activity in many other fields like education, land reforms, healthcare, social security and promotion of social justice. This inertia is the major contributory factor in the prevalence of widespread poverty and deprivation in India.

The role of government in creating basic capabilities for a more participatory economic growth is crucial for the success of economic reforms. Basic literacy is the most crucial in this context. Provision of basic literacy to the poor and disadvantaged sections will not only provide them with increased economic opportunities but will also enable them to organise better for participating in the political processes by improving their level of awareness about policies. This will also have the beneficial effect of reducing the pressure of organised interest groups' (with vested interests) on the government, imparting it a degree of autonomy in policymaking. Therefore, literacy can play a major role in broadening the base of economic growth by making growth sustainable and help in improving the participation of the poor in political processes. The role of civil society lies in creating pressure on the government for positive action through the organs of the free press, judiciary and mass media, which the democratic polity of India provides.

The growth experience of East Asian countries shows that the modern industries in which these countries excelled demanded only basic skills for which elementary education was essential and secondary education most helpful (Dreze and Sen 1995). Even the ability to benefit from training and "learning by doing" is enhanced by the capability to read and write. The provision of basic education was much better in all the East Asian countries and China when they embarked on economic reforms. The same is not true in the case of India when economic reforms were launched in 1991. This may be one of the reasons for the lack of faster growth rates and employment creation in the post-reform period in India as compared to spectacular growth rates and employment generation in China and East Asia. China and South Korea's economic success was based on the production of goods that did not require a very high degree of skills and technical education, but only simple skills and the ability to follow instructions for quality maintenance. The basic education, with which peoples of these countries were equipped, facilitated this and enabled a much wider participation in the production of such goods, which in turn helped

the poor with a source of income. In contrast, India's post-reforms growth has been confined to a few sectors like computer software, which typically required specialised skills that are beyond the reach of a large mass of people, who do not have access to even basic education. **This may be the reason for the widening disparity in incomes in the post-reform period in India, despite a decline in poverty** (Deaton and Dreze 2002).

If India wants to sustain and raise even higher its current growth the main bottlenecks in the Indian economy will need to be addressed. These are infrastructure (roads, expensive freight rates, power supply, ports and airports), labor and bankruptcy regulations, and the high level of corruption in the government bureaucracy. In addition, the current erratic and low growth pattern of the agricultural sector, and the rising inequality, between States, between rural-urban areas, and within urban and rural areas mainly since the 1990s, are a concern.

While particular areas may have certain limitations and constraints in making very rapid progress on human development, owing to geography and limitations of natural resources, an entitlement in terms of a minimum standard should be attainable for all. There is, thus, a case for setting of public policy goals for achieving defined minimum standards in key indicators of human development for the entire State. One way of starting would be to focus attention on the districts lagging behind, establish feasible and doable levels of desired human development outcomes, and direct priority attention as well as an adequate flow of public resources to those districts.

Putting into place a mechanism to financially or otherwise reward States (whether more or less developed) that have achieved a significant level of intra-State regional balance as assessed by objective district-level indicators. Alternately, there could be a disincentive mechanism that would apply to better-off States that have large regional disparities, in order to encourage all States to proactively strive for greater regional balance.

Infrastructural development is of great help in promoting regional development. This is particularly true if we consider an indicator of level of living like HDI and seems true to some extent also in the case of per capita NSDP. A detailed analysis of the development of industry at the State-level in India also indicates that infrastructural development is particularly helpful for the development of both registered and unregistered manufacturing. There are also two other indications with interesting policy implications. One is the already

accepted finding that agricultural development is beneficial for the development of unregistered manufacturing at the regional-level. The other is the interesting hint here that **measures to reduce poverty in a region do not always go against the objective of improving the relative position of a region in terms of its per capita Net Domestic Product**.

In terms of various dimensions of development, the gap between the backward and forward regions of the country has widened during the last decade. Since the beginning of the 90s private investment has become the principal engine of growth and private investment has primarily gone to States that have well developed infrastructure in terms of power, transport, communication, educational and health facilities, law and order and so on.

One logical solution is to provide infrastructure facilities in the backward States so that they may attract private investment. These are in the public domain, mostly to be provided by the State governments. They, however, have no resources to invest in these critical areas. Most of them are hard-pressed even to meet their committed current expenditure on salary, pension and interest payments. Since the States are poor, their revenue raising potential is also low. In short, these States find themselves in a vicious circle, unable to attract private investment, because they are poor and poor because of an inability to attract private investment.

How does GDP growth translate into economic prosperity for households? Governance and inclusive growth are the two key terms that are finding more and more emphasis among policymakers today. State governments are beginning to realize that better governance cannot only determine their political fortunes, but also has an impact on the economic well-being of their citizens.

If State governments create an enabling environment whereby economic opportunities are enhanced, this will have a direct impact on the levels of household income, expenditure and savings in the State. In the absence of vital infrastructure, many States continue to lag behind in offering job and growth opportunities. Some States are in a better position to attract corporate participation and, thus, offer the right opportunity for socio-economic prosperity their people. Let's consider how households in different States are faring in terms of their income-earning capability. The per capita net domestic product varies significantly, ranging from Rs. 29,137 for Delhi (2004-05, CSO estimates) to Rs. 6,277 in Bihar. The per capita income of DeIhi one of the country's richest regions, is roughly five

times that of Bihar, one of the poorest States. If the States are bunched into three categories – low, middle and high income - based on the level of their per capita income, it is evident that 48% of Indians live in low-income States; 30.6% in middle-income ones and the rest in high-income States.

As per NCAER data, of the 205.6 million households in the country, just 44.3 million of them – with a population of 220 million – earn annual average income of Rs. 89,288. In contrast, 91.7 million households – with 493.3 million population – that live in low-incomes States (Assam, Bihar, Madhya Pradesh, Meghalaya, Orissa, Rajasthan, Uttar Pradesh, Chhattisgarh, Uttaranchal and Jharkhand) have average income of just over half that of households in high-income States (Goa, Gujarat, Haryana, Maharashtra, Punjab, Pondicherry, Chandigarh and Delhi) at Rs. 52,052 per annum. The high-income States have a share of just 21.5% of all the households, but their contribution to total disposable income is nearly 30%. In contrast, low-income States have a share of nearly 45% of all households and their share of total disposable income is about 35.7%.

Low-income States also have a higher concentration of rural population compared to middle and high-income States. For instance, while more than half the population of low-income States lives in villages (54.4%), this is 29.2% for middle-income States (Andhra Pradesh, Himachal Pradesh, Kamataka, Kerala, Tamil Nadu and West Bengal), and just 16.4% for high-income ones. It is not surprising that the average annual rural household income in low-income States is much lower than those for both middle and high-income States: Rs. 44,999, Rs. 55,604 and Rs. 66,121 respectively. Urban households in middle- and high-income States too earn a lot more annually than those in lower-income States: Rs. 89,223, Rs. 116,421 and Rs. 80,948 respectively.

While high-income States may have more households earning higher incomes, the fact is that there is a huge-income inequality among households in these States. The most glaring differences in income are evident when comparing the lowest income quintile group with the top-earning group in the same type of States. For instance, in high-income States, urban households in the top-most income quintile group earn nine times more than their counterparts in the bottom quintile group. Similarly, in low-income States, top quintile rural households earn about seven times more than the first quintile rural households in such States. This implies that the number of urban poor is much higher in urban areas in high-income States. To illustrate, 21% of urban households belonging to the first quintile income group are to be found in high-income States compared to just 10% rural households

belonging to the same-income quintile group. Also, low-income States also have a higher proportion of rural households belonging to the top-income quintile group (34%) compared to urban households (21%). But low-income States have an overwhelming majority of first quintile rural households (70%) whereas middle-income States' share is just about 20%.

Product ownership patterns also vary drastically between rural areas of low, middle and high-income States. For instance, CTVs are found in just 12% rural households in low-income States compared to 36% and 41% respectively in middle and high-income States. Ownership percentages for pressure cookers are 65% and 35% for high and low-income States, respectively while for two-wheelers, the percentages are 44% and 19%. High-end products such as two wheelers, refrigerators and cars are owned by a much-larger section of the urban households in high-income States. Two wheeler ownership is growing rapidly among urban households in middle and low-income States (at 51% and 43%, respectively). A quarter of urban households in low-income States, and nearly half of all urban households in high-income States own cellular phones.

These figures corroborate the growing trends towards rural-to-urban and small town-to-metro migration. Cities in high-income States are coming under more pressure in terms of job creation and infrastructure development. **Also, there is a need for low-income States to create an enabling environment for their people by developing infrastructure and providing job opportunities. Public-private partnership projects are an avenue that could be explored. Another option is attracting FDI through well-targeted initiatives that involve State as well as central government participation. A multipronged approach is needed to ensure that the benefits of high GDP growth rates trickle down to the remotest households in urban and rural India.**

An alternative solution could be Central assistance to these States to upgrade their infrastructural facilities. This could be either through central investments or increased Central transfers to such States. Again, serious constraints exist. To begin with, the Centre's ability to finance large investments either from its own resources or through borrowings has been constrained on account of decelerating growth in Central revenues and its concern with fiscal deficit and debt sustainability. Another problem, perhaps even more serious, is the likely objection which may arise from better performing States to increased Central fund flows to backward States.

While almost all forward States wanted higher weightage in the formula for better performance, most backward States wanted higher weightage for poverty and backwardness. While the forward States complained that they were punished for better performance, the backward States argued that since they are unable to attract private investment, they should be compensated by increased public fund flows.

Such polarized positions of the forward and backward States is certainly not a healthy trend in our federal setup. Of course, there is nothing unusual about such bickering in a federal framework.

The policy measures improving human capital, physical, social and economic infrastructure can have significant effect on long-run growth potential of the States. Since the divergence in per capita income across the States have been due to variations in their steady-States, targeting public investment in human capital and infrastructure for the States with lower steady-State-levels could improve overall growth performance and reduce regional imbalance. **Unless appropriate steps are taken to correct disparities in the spread of infrastructure through regional policies and inter-governmental transfers, divergence in per capita incomes across States will continue to widen.** The existing policy of transferring proportionately larger amount of funds to relatively poorer States appears to be in the right direction. Efficient utilisation of these funds by the States for infrastructural and human development could help greatly to improve their overall growth performance and reduce regional disparities in economic development. The ongoing economic reforms that seem to have led to an increase in the regional disparities of income need appropriate change if the policymakers are interested in reducing regional disparities in development in the country. **There is a need to create a National Authority to tackle important issues pertaining to underdeveloped areas. The Prime Minister should be made Chairman of the Authority at national level, the Chief Ministers of respective States should head it at State-level and progress reports of the development of backward areas should be placed in the Parliament and Assembly on a regular basis.**

Transferring more money may not, in itself, result in higher growth rates. The effectiveness of resource use is very important. Reduction in regional disparities has two facets. First, a trend towards equalization of resources for undertaking development activities and second, to bring about significant improvements in levels of governance, which form the key element of efficient resource utilization. Good governance and institutional reforms

are essential for ensuring efficient use of available resources. Some of the factors explaining interState disparities do not automatically apply in the consideration of intra-State disparities. States are administratively homogenous units. Favourable treatment to, or alleged neglect of, a State by the Central government cannot be an explanation for uneven development between regions within a State. Nor can financial constraints faced by a State be a reason. These factors are neutral within a State. Yet, most States have large intra-State disparities. Interestingly, some of the most prosperous States have the largest intra-State disparities.

To some extent, increases in regional inequality are driven by factors that are necessary for accelerated growth – in particular, the more efficient allocation of private capital, foreign as well as domestic. The State Government policies can make a difference: governments in poorer States such as Madhya Pradesh and Rajasthan have made strides in improving, on average, the relative standard of living of their constituents. Hence, liberalization does not necessarily leave certain States behind.

In order to achieve such a complementarity between the growth and equity objectives in the long run, it is necessary to implement several policy changes at an early date. It is important for the national policymakers to provide economically and geographically well-integrated national markets for all goods and services. This can be done by removing or at least reducing significantly all barriers to the physical movement of goods and services across States. If there are any artificial controls or regulations on such movements, they need to be immediately removed. It will open up the regional markets and production sector to inter-regional competition by reducing all artificial protections under whatever garbs or excuses. Thus, there is a need to equalize all rates of commodity taxation across States. The move to introduce a uniform goods and service tax across States is a welcome step in this context. The direct fiscal incentives given to industries and businesses to any given locations similarly need to be abolished. The incentives can be in terms of provision of better infrastructural facilities and not tax holidays.

Simultaneously, the national policymakers need to worry about integrating all State economies effectively for free movements of the factors of production. Free mobility has two dimensions – legal and economic. Most of the factors (though not all) are legally allowed to move across States in India, but there are significant costs attached to such movements because of linguistic, social and imperfect informational reasons. Aggressive pursuit of schooling drive, provision of relevant information, spreading electronic

networks and communication channels to cover all the geography and compelling States to provide satisfactory healthcare and to use common language on public places would go a long way to reduce barriers to mobility of factors of production. Moreover, wherever restrictions on transfer of ownership rights on property including land exist, they need to be relaxed for the better flow of factors of production across States.

The State governments should consider seriously the challenge of achieving the growth targets assigned to them by the Planning Commission. An economy restricting private initiative and relying exclusively on the public sector usually does not grow rapidly. This has been the case in several States. There is a need to liberalise laws to allow private initiative particularly in those fields where private participation has not been encouraged hitherto like primary education, primary healthcare, sanitation, power supply, surface irrigation, forestry, mining, etc. The success stories of public-private partnerships implemented in different States need to be replicated soon. Similarly, the State bureaucracies need to be friendly to business and industry so as to expedite approval processes. This may require significant administrative reforms at the State-level. Most importantly, the States need to consider seriously liberalizing the land and labor markets by appropriately changing laws and policies. In this regard, the experience of the forward looking performing States would come handy.

Two general observations about the policy framework are pertinent. First, it is important to remember that national economic progress is still the main determinant of regional economic fortunes. Secondly, the totality of regional interventions is generally much greater than officially enunciated 'regional policies', and thus an assessment of policy in this area needs to extend beyond the formal regional policy framework.

Decentralization and regional finance

This is arguably the most important regional policy issue which governments have to deal with. The case for empowering Local governments, as a means of efficiently delivering local services, and being responsive to local needs, is a very strong one. But there are dangers of moving too quickly. In assessing the policy issues, a number of general observations are relevant.

- There is no clear cross-country relationship between national economic performance and the extent of decentralization - good and poor outcomes can be found alongside centralized and decentralized structures.

- Where there are major differences between revenue and expenditure responsibilities of sub-national governments, i.e., significant vertical imbalance, there are inevitably tensions between the two-tiers of administration.
- For a decentralization program to be successful, the macroeconomic fiscal parameters have to be tightly defined; that is, regional finance arrangements have to be constructed in such a way that they do not imperil national fiscal balances.
- Sub-national Governments must face 'hard budget' constraints, and should not operate on the assumption that the National Government will bail them out if they get into financial difficulty.
- Decentralization frequently occurs in the wake of political liberalization, and before local administrative capacities have been sufficiently developed to deliver newly established functions.
- As Local Governments are given additional responsibilities, it is important that mechanisms of fiscal equalization are retained, to ensure that national governments have the capacity to pursue countrywide socio-economic objectives (eg, in areas of health, education, poverty eradication).
- **Inequality is generally more the result of income differences between individuals within a given region than to differences among regions. Therefore, providing more resources to poorer regions will not necessarily address the problem of regional pockets of poverty unless there is also better regional targeting.**
- While there should be every incentive for local governments to improve their revenue effort, their tax policies should be nationally consistent. For example, and to name just two frequentlycited problems, revenue-raising strategies which involve unacceptable environmental practices and constraints on inter-regional commerce should be outlawed.
- It is important to avoid large vertical fiscal imbalances; that is, revenue resources and expenditure responsibilities should be approximately in balance.
- **National government need to ensure that minimum socio-economic standards (e.g., in education and health) are met throughout the country. In pursuit of this goal, transfers to the regions need to incorporate explicit equity objectives.**

Involvement of regional stakeholders

The involvement of regional stakeholders in the early stages of agenda settings implies that the focus of the evidence base should be on local realities. This for example implies the strictly limited use of regional or national average values as a basis for policy making, insofar as these fail to reflect the extent of variations between localities. Policymakers need to take a leading role in questions related to statistical issues in order to move from a ***data-driven*** to a ***problem-driven*** approach to Regional policy. Currently, the lack of appropriate social, environmental and economic data jeopardises the Union Government's ability to maintain a territorial policy in the longer term. A proactive role in respect of statistical issues is also necessary to cover the economic, social and environmental dimensions, particularly from a sustainable development perspective. Meaningful decentralisation of decision making and financial powers with appropriate accountability at all levels will facilitate faster socio-economic development of the backward regions where people are likely to take up considerable share of the developmental responsibilities.

The territorial dimension of disparities should also be highlighted. The territory is indeed a useful 'filter' through which to assess the degree of compliance between the politically defined strategic objectives and the concrete effects of implemented policies. An appropriate use of this 'filter' however presupposes continuous critical debates in respect of all "territorial evidence", as conclusions change dramatically, depending on the spatial scale and the time-span considered. Making territorial data accessible to all stakeholders, and encouraging them to use it proactively in the elaboration of their strategic targets and in their debates, would be one way of progressively allowing a balanced vision of India's territorial structures and trends to emerge.

There is a need to develop a territorially differentiated approach to regional policy, adapted to the particular structural needs and socio-economic profiles of each region. A more dynamic and holistic perspective on regional development would provide a more nuanced picture of regionally-based structural disparities across India.

Cohesion policy can be designed as a framework within which local and regional authorities are guided and encouraged in the formulation of policies seeking to overcome contradictions between the different dimensions of sustainable and economic development.

Access to structuring services, as for instance airports, universities or hospitals, is of

critical importance when assessing regional development perspectives. The lack of such services seriously reduces the perspectives for economically and socially sustainable local development. Service provision and territorial cohesion policies need to be integrated accordingly.

Overcoming regional imbalances in the financial inclusion

Regional imbalances in the financial inclusion process are quite visible. Household access to financial services varies widely across States in ways that are not correlated with income and there is a need to broadbase the effort to make financial inclusion more meaningful and inclusive. It is necessary to develop clear indicators of the extent of the financial exclusion problem and be able to assess the efficiency measures implemented and their impact on financial exclusion. Branch managers are currently not given any incentive to act on such accounts as it is not profitable in the short run. While incentives are purely based on profit one brings to the bank, banks should think of providing incentives to schemes that promote social inclusion.

Strengthen SHG-Bank linkage

This can be regarded as one of the most potent initiatives for delivering financial services to the poor. The inclusiveness of SHG-Bank Linkage, which has involved a partnership between government, NGOs, and a range of rural banks (commercial banks, RRBs, cooperative banks) has already given good results. One of the distinctive features of the SHG-bank linkage programme has been the high recovery rate. However, the spread of SHGs is very uneven and is more concentrated in southern States. This regional imbalance needs to be corrected and special efforts in this regard may have to be taken by NABARD. As suggested by the Committee on Financial Inclusion, NABARD be given additional powers to supervise the SHGs that may be established in the urban areas also. The possibility of the SHGs becoming effective organisations in the urban areas is there and therefore, we should explore this particular possibility. SHGs also need to graduate from mere providers of credit for non-productive purposes to promoting micro enterprises.

Special focus on North-East region

This region has the highest percentage of people who are financially excluded and the number of bank branches, number of rural bank branches, number of cooperatives or post offices are also very less. Special initiatives are required to bring this area into the

mainstream. A common technology infrastructure for financial inclusion should be put up as 100% funded through the Financial Inclusion Technology Fund (FITF).

Major Drawbacks in Indicators Used and Measurement of Disparities

A number of studies on the assessment of regional disparity and identification of the backward regions of India have used one or several criteria of development. Perhaps, per capita incomes is the single indicator that has been widely and frequently used to assess the level of economic development of a particular State or District. With per capita income as an indicator, most of the studies emphasise that one can make meaningful assertions about the economic performance of the 'concerned States, and say with some amount of certainty that whether or not some States are economically developed over other States in the country.

However, per capita income as an indicator for measuring the inter-State or inter-district disparities may not truly represent the non- economic disparities in development (Raj 1990). Another limitation is that the extreme levels of income in a society affect the per capita income. Factors like climatic conditions, availability of natural resources (like coal, iron ore etc.), electric power, quality of technical personnel, density of population, investment pattern in public and private sectors influence the per capita income of a particular region. These factors also contribute to large differences in per capita income across the regions (Majumdar and Kapoor 1980). Thus, as the structure of the economy in one State differs from that of others in a country, per capita income alone may not be enough to assess the extent of backwardness.

Turning to the issue on "measurement", the existing literature sought to explain the measurement of "disparities" either by taking the average composite index (by considering more than one sector at a time) or sector specific index at the State or district (the highest political- administrative units) levels. Almost all these studies have used secondary information to measure the extent of disparities.

The first subgroup of the literature measures disparities by developing an Aggregate Composite Index of Development by taking different sectors into account. These sectors may be agriculture, industry, banking, power, education, health and sanitation, transport and communication and so on. Importantly, while constructing the composite index, the studies have included more than one indicator for each sector. The limitations of per capita income in assessing the magnitude of disparities may have influenced planners,

policymakers and scholars to develop a composite index to capture and explain the inter-regional disparities.

Rao (1977) has used the principal component approach by taking 24 indicators representing the sectors of agriculture, industry, banking and education for the identification of backward regions and to examine the trends in regional disparities in India. Dasgupta (1971) has considered 24 indicators and has applied the principal component analysis to classify the districts in India with respect to their levels of development. In order to identify developed, less developed and underdeveloped regions of Rajasthan State, Kulkarni (1977) has applied eight indicators representing urbanisation, population, education and occupational distribution. Suar (1984) has made use of 20 indicators covering different sectors and has developed a composite index by using the principal component analysis to examine regional disparity in Orissa. MallikarJun (2002) has sought to measure the magnitude of intra-regional disparities in economic development of Andhra Pradesh with the help of 50 indicators representing various sectors of the State economy.

The process of economic development also depends on the pace of development of the important sectors of the economy. Therefore, in order to remove the regional disparities, specific plans and policies were formulated for sectoral development in India. With a great variety of regional character in terms of culture, topography, population size, agro-climatic factors, levels of economic development, marketing conditions, political and economic systems and so on, the sector specific index was considered to be better than a composite index to assess the level of disparities. Thus, the second subgroup of literature measures disparities at sector leve[16] across the States or districts. These sectors might be agriculture, industry, basic infrastructure and services, agricultural labor productivity, productivity in Indian agriculture, educational and health status, and so on.

One of the important limitations of disparity measurement in India (and elsewhere) is that they focus on inter-State or inter-district level within a particular State. This suggests that most of the analyses on issues relating to disparities (by taking either State or district as a unit) prescribed different policies to reduce the level of disparities across regions (States or districts). Hardly any studies have addressed the issue of "disparity" below the district level. Can we, then say that disparity does not exist below the district level? There may be various subregions within the district having disproportionate data (situation) and hence, more inequalities (disparities), but non-availability of disaggregated and reliable data below the district level has forced the studies to consider the district as the sampling

unit (Suar 1984). Therefore, given the sub-district inequalities, the extent of disparity captured with the help of indicators representing either State or district level may not approximate the existing socio-economic situation. This suggests that the study on disparity has more concern for regions rather than the population (i.e., rural, semi-urban, urban and metropolitan). Hence, the relevant question is what should be the base to examine "disparity"?

A National Consultation on the Index of Backwardness based on Block as the unit for Backward Region Grant Fund (BRGF) was organised by the Ministry of Panchayati Raj (MoPR), Govt. of India, on January 13th, 2010, at Vigyan Bhawan, New Delhi. The Consultation has identified certain experts to develop:

- Indicator of Backwardness based on Livelihood Parameters
- Indicator of Backwardness for Tribal Areas
- Indicator of Backwardness for LWE Areas

The indicators to be developed by the experts would help identifying new set of indicators for backwardness.

Summing up

Since the existence of regional disparities affect the process of economic development, efforts aimed at economic development and equitable distribution of gains to the hitherto neglected regions have been made since the beginning of planning in India. Yet, regional disparities persisted due to the hiatus between policy and practice.

Research in India has focussed mainly on inter-State or inter-district disparities. Most of the studies have taken per capita income as an indicator to assess the level of economic development, and find out whether or not some States/districts are economically developed over the other States/districts in the country/State. Taking the per capita income as an important indicator is, however, criticised on the grounds that this may not truly represent the non-economic dimensions of development.

Because of this reason, the studies on regional disparities undertaken in the 1980s and 1990s measured 'disparities' either by taking average composite (by considering more than one sector at a time) or sector specific index at the level of State or district. Almost all the studies have used secondary data to measure disparities. The non-availability of

disaggregated and reliable data compelled the studies to focus on the district as the unit of analysis, and resulted in the neglect of analysis at the sub-district or rural-urban disparities. Notwithstanding these limitations, a conclusion that can be reached from the studies on regional disparities is that disparities may occur at any level, and may take any form. This paper has focused on disparities existing between rural and urban areas.

The disparities between rural and urban areas at the macro level get reflected in terms of differential distribution and growth of GNP, incidence of poverty, and level and composition of consumption expenditure. The increasing gap between rural and urban areas can also be observed in terms of literacy, number of years of schooling, and access to drinking water, sanitation and health services. There is a clear distinction between urban and rural areas in terms of the quantum and access to basic facilities and services. These disparities can be attributed to three types of factors: natural differences, socio-cultural conditions and policy decisions.

The literature survey has raised a number of researchable issues relating to definition, indicator, measurement methods, availability of data and the concerns of the poor.

- The definition, based entirely on per capita income, may not be ideal for policy purposes. Such a definition may also lead to differences in the perceptions of researchers/policymakers and people. The definition is to be, therefore, revised. But, the question is that on what basis such a definition is to be revised. Can we include the perceptions of the people? There is considerable dynamism in rural urban disparity and it goes beyond per capita income. How to capture such a dynamics in a definition?
- The indicators to measure disparity should, therefore, go beyond the per capita income, and include level and access to basic services and infrastructure. It needs to be, however, noted that these are both indicators of and contributing factors for rural-urban disparity. A challenge is how to make such a demarcation.
- The measurement of rural-urban disparity through sector specific or composite index should be based on specific problem. The strategy of addressing problem-specific issues may capture the dynamics of rural-urban divide better and force policy makers/researchers to go beyond to cover issues pertaining to all segments of population.

As long as our development policy tends to be lopsided in benefiting better-off region and population, the assessment of gap across the States/ districts or between rural and

urban areas may not be that helpful to bridge the gap and for poverty analysis. The research should, therefore, focus on factors hindering worse-off regions and people (particularly the poor) and policy framework aimed at reducing the gap.

In sum, in case of regional disparities in India the convergence hypothesis of regional disparities was not confirmed. It is very difficult to confirm the hypothesis of perpetuation of colonial disparities in post-independence period in the lack of empirical study of regional disparities pertaining to colonial period. The inverted 'U' shape hypothesis of Williamson was also rejected in case of India. With the changing trend of regional disparities from one period to another and from one component to another favoured the no trade hypothesis. It is not the development *per se* but the strategy of development that matters in case of regional disparities.

The certain dimensions of regional disparities are still dark; it remained unexplored which area contributed in the increase and/or decrease of regional disparities by upward and by downward movements in the process of development. How far the spatial pattern of development changed from colonial to subsequent independent period and how far colonial trend was accelerated or restarted. Whether the intensity of regional disparities changing from one State to another State? To what extent the Finance Commission was effective in reduction of regional disparities? And how far the trend and pattern of regional disparities of corresponded to that of other development and developing countries of the world. All these areas are very potential ground that needed immediate exploration.

There is a need for a multipronged strategy to be adopted to narrow down regional disparities:

First, investment should be increased in less developed States for higher growth. Public investment is crucial for raising physical (irrigation, power, roads etc.,) and human (health and education) infrastructure. Resources have to be devoted for infrastructure from central assistance including externally aided projects and own State resources. Central Government's role is important in allocating more resources for less developed States. The role of private investment becomes vital in the post-reform period. Government should also act as a facilitator for raising private investment. The ambience for private investment will improve if physical infrastructure and skilled labor are available.

Second, fiscal management of States have to be improved in order to allocate more expenditure for physical infrastructure, health and education. Presently many State

governments are in a better position regarding finances Central Government's approach should be pro-poor in allocation of resources at the State-level.

Third, the less developed States are facing both low economic growth and high population growth. These States will have to focus on policies for reducing population.

Fourth, agriculture sector problems will have to be solved in backward States. Agriculture sector seems to be in a crisis. Public investment seems to have declined. Credit-deposit Ratios for rural areas declined. There seems to be an increase in farmer suicides. There is also a challenge of involving small and marginal farmers in diversification. Investment in irrigation and watershed development is important especially for the dry land areas. Similarly, credit, research and extension support have to be enhanced in the backward regions. Agro-processing has to be initiated in less developed States.

In order to reduce regional disparities in agriculture, a regionally diversified strategy has to be followed Deshpande and Pratichi (2006) propose a policy matrix for five groups of States. The first group consists of Punjab and Haryana which can move towards high commercialization because of advantages of infrastructure and natural resources base. Three southern States *viz*. Andhra Pradesh, Karnataka, and Tamil Nadu form the second group. The first two States have been in the forefront of economic reforms. These three States should develop institutional framework for going into trade oriented production. The third group consisting of Maharashtra and Madhya Pradesh should go for improvement in infrastructure for higher agricultural growth. Gujarat and Rajasthan are in the fourth group. These two States are in the water scarce regions and they should encash on rainfed crops like cereals, oil seeds and pulses. Aasam and west Bengal in the fifth group should go for diversification also apart from paddy cultivation because of abundance of natural resources and good soil quality. Bihar and Uttar Pradesh in this group have to improve their soil productivity in several crops.

Broadly, water-intensive crops should move towards the eastern region while water scarce regions should go for diversification including oilseeds, pulses and horticulture crops. Of course, all the States should go for growth in allied horticulture activities.

It is well known that the **burden of indebtedness in rural India is very great, and that, despite major structural changes in credit institutions and forms of rural credit in the post-independence period, the exploitation of the rural masses in the credit market is one of the most pervasive and persistent features of rural life in India.**

Rural households need credit for a variety of reasons. They need credit to meet short-term requirements of working capital, and for long-term investment in agriculture and other income-bearing activities. Agricultural and non-agricultural activities in rural areas, typically, are seasonal, and households need credit to smoothen out seasonal fluctuations in earnings and expenditure.

Rural households, particularly those vulnerable to what appear to others to be minor shocks with respect to income and expenditure, need credit as an insurance against risk. In a society that has no law of free, compulsory and universal school education, no arrangements for free and universal preventive and curative healthcare , a weak system for the public distribution of food and very few general social security programs, rural households need credit for different types of consumption. These include expenditure on food, housing, health and education. Another important purpose of borrowing, in the Indian context, is to meet expenses on a variety of social obligations and rituals.

If these credit needs of the poor are to be met, rural households need access to credit institutions that provide them a range of financial services, pro- vide credit at reasonable rates of interest, and provide loans that are unencumbered by extra-economic provisions and obligations.

Fifth, technology plays an important role in reducing regional disparities in both agriculture and industry. Green revolution benefited small farmers also. Similarly, biotechnology, information technology and other sunrise technologies can pervasively reduce regional disparities.

Sixth, productive employment should be generated in order to reduce poverty in low-income States. Since the 1990s, employment problem has been the major concern for the Indian economy. Although, it did register some growth in this decade, quality of generated employment still is a problem. Employment can be augmented if the course of economic growth is labor-intensive.

Development of agriculture and rural non–farm sector will improve employment and wages in rural areas. Direct employment programs such as wage and selfemployment schemes have to be effectively implemented in less developed areas.

Seventh, social sector performance and social inclusion should be improved. In social sectors like health and education, insufficient allocations, especially in the post-reform period, poor quality of services, inadequate access for the poorer sections and lack of

accountability of the systems to the community have emerged as the problem areas. In particular, it is necessary to ensure the expansion of public services for the poor at affordable costs, effective public regulation of private services like healthcare, and accountability of these systems, public as well as private to the local communities. Improvement in health and education in backward regions would improve economic growth and human development.

Eighth, more inclusive reform process is important. There is a need to enlist support from wider sections of population including SCs and STs and the other under-privileged groups. For this, we need participatory model of development in poorer States.

Lastly, to improve accountability and development there is an imperative need to devolve more finances, functions and powers for panchayats in order to make these institutions self-sustaining. Governance has to be improved in less developed regions.

There is also a need to launch '**pilot project**' for the integrated development of the backward regions taking village as a unit for planning and development using convergence model in the model of the **Pradhan Mantri Adarsh Gram Yojana (PMAGY)** which envisages developing 45000 villages across the country having 50% or more Scheduled Castes population. Similarly, Government of India may also consider launching piot projects in the model of **AGAMT (Anaithu Grama Anna Marumalarchi Thittam)** of the Tamil Nadu Government which is implemented with 100% assistance of the Government of Tamil Nadu. Every year 1/5 of the Village Panchayats are chosen under the scheme and Rs. 20/- lakhs is provided for each Village Panchayats for fulfilling the **infrastructure needs** of the panchayat. Lkewise, the **Suvarna Gramodaya Yojana** of Karnataka Government is a new initiative for developing vibrant village communities by adopting an **intensive and integrated approach to rural development**. The focus of the **Suvarna Gramodaya Yojana** is on the development of 1000 villages every year by the concerted efforts of the Government, Non-Governmental Organisations, private sector partners and the village communities. The specific objectives of Suvarna Gramodaya are:

(a) to upgrade the physical environment of the selected villages for improving the quality of life;

(b) to fully develop the income generating potential of land based activities;

(c) to provide full and adequate infrastructure for human resources development including education, health services, childcare facilities etc.,

(d) to generate significant levels of non-agricultural employment, especially for educated unemployed youth;

(e) to support community awareness and development through self help groups, cultural associations, etc.

This model can also be suitably replicated across the backward regions of India as a pilot project which will certainly, in the near future, remove regional inequalities in social and physical infrastructure of rural India.

REFERENCES

Adelman, I. And C. T. Morris (1973). *Economic Growth and Social Equity in Developing Countries.* Stanford: Stanford University Press.

Agarwal, M. K. (1996). *Agriculture Industry Linkages in the Economy of Uttar Pradesh.*

New Delhi: Northern Book Centre.

Ahluwalia, M.S. (2001). "State-level Performance under Economic Reforms in India".

Working Paper No. 96, Center for Research on Economic Development and Policy Reform, Stanford University.

Ahluwalia, M. S. (2000). Economic Performance of States in Post-Reforms Period.

Economic & Political Weekly, 1637-1648.

Ahluwalia, Montek S. (2002a). "State-Level Performance Under Economic Reforms

in India." In *Economic Policy Reforms and the Indian Economy*, ed. Anne O.

Kruger. New Delhi: Oxford University Press.

Ahsan, Ahmad and Pages Carmen., (2006), "Some Implications of Regional Differences in Labor Market Outcomes in India", in Institute of Human Development, India: Meeting the Employment Challenge, Conference on Labor and Employment Issues, July 27-29, New Delhi

Ahmed, Sadiq and Varshney, Ashutosh (2008). Battles Half Won: The Political Economy

of India's Growth and Economic Policy since Independence. WORKING PAPER No.15 . The International Bank for Reconstruction and Development / The World Bank. Washington, DC.

Alesina, A., & Perroti, R. (1996). Income Distribution, Political Instability and Investment.

European Economic Review, 40(6).

Alesina, A., & Rodrik, D. (1994). Distributive Policies and Economic Growth. *Quarterly*

Journal of Economics, 109(2).

Arndt, H.W. (2000), 'Separatism', Australian Financial Review, February.

Bagchi, Amaresh, and John Kurian. 2005. "Regional Inequalities in India: Pre- and Post-

Reform Trends and Challenges for Policy". in Jos Mooji (ed), The Politics of Economic Reforms in India, Sage Publications, New Delhi

Bajpai, N., & Volavka, N. (2005). *Agricultural Performance in Uttar Pradesh: A Historical*

Account. Unpublished manuscript, CGSD Working Paper No. 23, Working Paper

Series, Centre on Globalization and Sustainable Development, The Earth Institute at Columbia University.

Banerjee, A., & Newman, A. F. (1993). Occupational Choice and the Process of

Development. *Journal of Political Economy, 101*(2).

Barro, R. and X. Sala-I-Martin. 1995, Economic Growth, MIT Press, Cambridge,

Massachusetts

Basu, K. (2003). *The Indian Economy: upto 1991 and since* (Working Paper): Bureau for

Research in Economic Analysis of Development.

Basu, P., & Srivastava, P. (2005). Exploring Possibilities, Microfinance and Rural Credit:

Access for Poor in India. *Economic & Political Weekly*, pp. 1747-1755.

Bencivenga, V. R., & Smith, B. D. (1991). Financial intermediation and economic growth.

Review of economic studies, 58(194), pp. 195-209.

Berry, B. 1961. City size distributions and economic development. Economic Development and Cultural Change 9: pp. 573–587.

Berry, B. 1964. Cities as systems within systems of cities. Papers and Proceedings of the Regional Science Association 13: p. 147–163.

Besley, Timothy, and Robin Burgess, 2004. "Can Labor Regulation Hinder Economic Performance? Evidence from India". *The Quarterly Journal of Economics,* 119, Issue 1, pp. 91–134

Bharadwaj, Krishna (1982). Regional Differentiation in India: A Note *Economic and Political Weekly,* XVII (14-15-16): pp. 605 - 14.

Bhattacharya, B. B., and S. Sakthivel. 2004. "Regional Growth and Disparity in

India: A Comparison of Pre and Post-Reform Decades". Draft, ICRIER

(Indian Council for Research and International Economic Relations), New

Delhi.

Bhattacharya, Rakhee (2009). Indian Divide on Economic Growth: North East India in the Perspective of Globalisation. *Maulana Abul Kalam Azad Institute of Asian Studies, Kolkata*

Boeke, J.H. Economics and Economic Policy of Dual Societies, New York 1953

Borooah and Dubey (2009). Measuring Regional Backwardness: Poverty, Gender, and

Children in the Districts of India, MPRA Paper No. 19426, posted 25 December 2009. http://mpra.ub.uni-muenchen.de/19426/.

Bosworth, B., Susan, Collins, Arvind, Viramani. 2007."Sources of Growth in the Indian

Economy". NBER working paper no.12091 (2007).

Chakravorty, S. (2006). Fragments of Inequality: Social, Spatial, and Evolutionary

Analyses of Income Distribution. Routledge, New York.

Chakravorty, S. (2006). "The Spatial Dimensions of Structural Reform: Policy, Investment

Location, and the Emerging Economy Geography of India". Report Submitted to the National Science Foundation (Grant no. NSF SBR 9618343). http://astro.temple.edu/~sanjoy/nsfreport.pdf (accessed 20.08.2007).

Chatterjee, G. S. and N. Bhattacharya (1974). On Disparities in Per Capita Household

Consumption in India. In T. N. Srinivasan and P. K. Bardhan (eds.), *Poverty and Income Distribution in India.* Calcutta: Indian Statistical Gender, and Children in the Districts of India, MPRA Paper No. 19426.

Choudhury, U. D. R. (1992). Inter-State and Intra-State Variations in Economic Development and Standard of Living. *A Monograph.* New Delhi: National Institute of Public Finance and Policy. posted 25 December 2009. http://mpra.ub.uni-muenchen.de/19426/.

Claessens, S., & Perotti, E. (2005). *The links between finance and inequality: channels and evidence*. Unpublished manuscript.

Das, S. K. and A. Barua (1996). Regional Inequalities, Economic Growth and Liberalisation: A Study of the Indian Economy. *The Journal of Development Studies,* XXXII (3): pp. 364 - 90.

Das, S. K., A. Barua and M. N. Ghosh (1993). Inter-State Economic Inequality in India: Some Implications for Development Strategy. *Discussion papet; International 7i"ade and Development,* New Delhi: Jawaharlal Nehru University.

Dasgupta, Biplab (1971). Socio-Economic Classification of Districts: A Statistical Approach. *Economic and Political Weekly,* VI (33): pp. 1763 - 74.

Deaton, Angus and Jean Dreze, 'Poverty and Inequality in India: A Re- Examination',

Economic and Political Weekly, Volume 37, Number 36, September 7, 2002, pp. 3729-3748.

Deninger, K., & Squire, L. (1998). New Ways of Looking at Old Issues. *Journal of*

Development Economics, 57.

Dev, Mahendra and C. Ravi, 'Poverty and Inequality: All-India and States, 1983- 2005,

Economic and Political Weekly, Volume 42, Number 06, February 10- 16, 2007, pp. 509-521.

Dev, S. Mahendra, 'Pro-poor Growth in India: 'What Do We Know About the

Employment Effects of Growth', Working paper, Number 161, Overseas Development Institute, 2002, available at: http://www.odi.org.uk/publications/ working_papers/wp161.pdf

Dholakia, R.H. (1985). *Regional Disparity in Economic Growth in India.* New Delhi: Himalaya Publishing House.

Datt, Gaurav. (1997). "Poverty in India 1951-1994: Trends and Decomposition".

Unpublished paper. World Bank, Washington, D.C.

Deaton, Angus, and Jean Dreze (2002). "Poverty and Inequality in India, A

Reexamination". *Economic and Political Weekly* (September): pp. 3729–48.

Dev, S. Mahendra, and C. Ravi (2007). "Poverty and Inequality: All India and

States, 1983–2005." *Economic and Political Weekly* (February 20): pp. 509–21

Dreze, Jean and Sen, Amartya (1995) *India: Economic Development and Social*

Opportunity, New York: Oxford University Press.

Elizondo, R. L. and P. Krugman (1992). Trade Policy and Third World Metropolis. *NBER Working Paper No.* 4238.

ESCAP (2001). *Reducing Disparities: Balanced Development of Urban and Rural Areas and Regions within the Countries of Asia and the Pacific.* New York: United Nations.

Fajnzylber, P. D., Lederman, D., & Loayza, N. (2002). What causes violent crime?

European Economic Review, 46, pp. 1323-1357.

Frank, Andre Gunder (1969). Capitalism and under development in Latin America. Penguin Middlesex

Friedmann, J. (1966) Regional Development Policy A Case Study of Venezuela, MIT

Press, Cambridge Mass.

Galor, O., & Ziera, J. (1993). Income Distribution and Macroeconomics. *Review of*

Economic Studies, 60.

George, K. K. (1988). *Centre-State Financial Flows and Inter-State Disparities.* Delhi: Criterion Books.

Ghosh, Buddhadeb and De, Prabir (2004). How Do Different Categories of Infrastructure

Affect Development? Evidence from Indian States. Economic and Political Weekly October 16, 2004

Government of U.P. (2002). *Tenth Five-Year Plan, 2002-07* (Report). Lucknow: Planning Department (Yojana Bhavan).

Gugler, J. (Ed.) (1996). *The Urban Transformation of the Developing World*. New York: Oxford University Press.

Gulati, I.S. and K. K. George (1985). Central Inroads into State Subjects. *Economic and Political Weekly,* XX(14): pp. 592-603.

Gupta, Deepti (2009). Disparities in Development, Status of Women and Social Opportunities: Indian Experience. *Journal of Alternative Perspectives in the Social Sciences (2009) Volume 1 No 3, pp. 687-719*.

Hagen, E.E. On the Theory of Social Change - How Economic Growth Begins, Homewood 1962.

Hasan, Z. (1995). Shifting Ground: Hindutva Politics and the Farmers' Movement in Uttar Pradesh. In T. Brass (Ed.), *New Farmers' Movements in India* (pp. 165-194). London: Frank Cass & Co. Ltd.

Hasan, Rana, Devashsish, Mitra, and K. V. Ramaswamy 2007. "Trade Reforms, Labor Regulations and Labor Demand Elasticities". Review of Economics and Statistics, 89, No.3, pp. 466-481.

Higgins, B. and D.J. Savoie (1995). Regional Development Theories and Their Application, Transaction Publishers, New Brunswick.

Hill, Hal (2000). Intra-Country Regional Disparities. A Paper Presented at the *Second Asian Development Forum,* June 2000, Singapore.

Himanshu (2007). "Recent Trends in Poverty and Inequality: Some Preliminary Results". *Economic and Political Weekly* (February 10): pp. 497–508.

Hinderink,J., & J.J. Sterkenburg (1978). Spatial Inequality: An Attempt to define

the Concept. *Tijdschrift voor Economische en Sociale Geografie,* 69 (1/2): 5-16.Hirschman, A.O. The Strategy of Economic Development, New Haven 1958.

Hirschman, A.O. The Strategy of Economic Development, New Haven 1958.

Imbs, Jean, and Romain Wacziarg. (2003). "Stages of Diversification". American Economic Review, 93, No.1, pp. 63-85.

Jeffrey, C. (2003). Soft States, Hard Bargains: Rich Farmers, Class Reproduction and the Local State in Rural North India. In R. Jeffrey & J. Lerche (Eds.), *Social and Political Change in Uttar Pradesh: European Perspectives* (pp. 225-245). Delhi: Manohar Publishers.

Jeffrey, C., & Lerche, J. (2000). Stating the Difference: State, Discourse and Class Reproduction in Uttar Pradesh, India. *Development and Change, 31*, pp. 857-878.

Jeffrey, R., & Lerche, J. (Eds.). (2003). *Social and Political Change in Uttar Pradesh: European Perspectives*. New Delhi: Manohar Publishers.

Kanbur, R., & Lustig, N. (1999). *Why is Inequality back on the Agenda?* Washington: World Bank.

King, R. G., & Levine, R. (1993). Finance and Growth: Schumpeter might be right.

Quarterly Journal of Economics, 108(3), pp. 717-738.

Kochar. Kalpana, Utsav Kumar, Raghuram Rajan, Arvind Subramanian, and Ioannis Tokatlidis. (2006). "India's Pattern of Development: What Happened,

What Follows". "Working Paper No. 12023, National Bureau of Economic Research, Cambridge, MA".

Kohli, Atul (1987). "Politics of Economic Liberalization in India". *World Development* 17(3).

2006. "Politics of Economic Growth in India, 1980–2005, Part II: The 1990s and Beyond." *Economic and Political Weekly* (April 8): pp. 1361–70.

Kozel, V., & Parker, B. (2003). A Profile and Diagnostic of Poverty in UP. *Economic & Political Weekly*, pp. 385-403.

Krishna, K. L. (2004). "*Patterns and Determinants of Economic Growth in Indian States*". Working Paper No. 144, Indian Council for Research on International Economic Relations, New Delhi.

Krugman, P. (1991), *Geography and Trade*, MIT Press, Cambridge, MA.

Kulkarni, K.M. (1977). Micro-Regional Variations in Economic Development of Rajasthan. *Indian Journal of Regional Science,* IX (2): pp.117 - 24.

Kundu, Amitabh and Moonis Raza (1982). *Indian Economy - The Regional Dimension*. New Delhi, Spectrum Publishers.

Kuznets, S. (1955). Economic Growth and Income Inequality. *The* American *Economic Revie-* XLV (1): pp. 1-28.

Lall, Somik, and Sanjoy Chakravorty (2005). "*Industrial Location and Spatial Inequality: Theory and Evidence from India*"., Review of Development Economics, 9, No.1, pp. 47-68

Lewin, K., and F.Caillods. (2001). *Financing Secondary Education in Developing Countries: Strategies for Sustainable Growth,* UNESCO, International Institute for Educational Planning, France.

Lloyd, P. E. & Dicken, P. (1977) *Location in Space: A theoretical approach to economic geography.* (London, Harper & Row).

Me Clelland, D. C., *The Achieving Society*, Princeton 1961.

Mawdsley, E. (2003). *Divided We Stand: Identity and Protest in the Demand for a Separate Hill State in the UP Hills*. In R. Jeffrey & J. Lerche (Eds.), *Social and Economic Development of Uttar Pradesh: European Perspectives* (pp. 129-150). New Delhi: Manohar Publishers.

Mazumdar, Dipak and Sandip Sarkar, '*Globalisation, Labor Markets and Inequality in India'*, A Summary of Some Major Findings of the IHD-University of Toronto Study, December 2006, available at: <http://www.utoronto.ca/ai/globalizationasia/

Mishra, P., & Parikh, A. (1997). Distributional Inequality in Indian States. *Journal of Income Distribution, 7*(1), PP. 89-108.

Misra, B. S. (2003). Analytics of Credit-Output Nexus in India. *Reserve Bank of India*

Occasional Papers, 24(1).

Mishra, Yatish (2001). Telecom Infrastructure in Rural India. *Journal of Public Administration*,

July-September, 2001. vol XLVII, No. 3

Mohan, Krishna (2006), *Addressing Regional Backwardness*. Manak Publications

Myrdal, G. Economic Theory and Underdeveloped Regions, London 1957.

Nagaraj, R., Varoudakis, A., & Veganzones, M. A. (1998). *Long-Run Growth Trends and*

Convergence Across Indian States (OECD Technical Papers No. 131): Organisation for Economic Cooperation and Development (OECD).

Nash, M. (1963). "Approaches to the Study of Economic Growth". Journal of Social Issues pp. 19:1-5.

National Sample Survey Organization. (1997). *Employment and Unemployment Situation in India, 1993-1994*. NSS 50th Round, Report No. 409 (New Delhi: Government of India).

National Sample Survey Organization, 2001. *Employment and Unemployment Situation in India, 1999-2000*. NSS 55th Round, Report No. 458 (New Delhi: Government of India).

National Sample Survey Organization (2006). *Employment and Unemployment Situation in India, January – June 2004,* NSS 61st Round, Report No. 515, Part I, (New Delhi: Government of India).

National Sample Survey Organization (2006). *Employment and Unemployment Situation in India, January – June 2004,*NSS 61st Round, Report No. 515, Part II, (New Delhi: Government of India)

National Sample Survey Organization (2006), Status of Education and Vocational Training

in India, 2004-2005, Report No. 517, (New Delhi: Government of India)

NIRD (1999): *Regional disparities in development and poverty*, India Rural

Development Report, National Institute of Rural Development, Hyderabad.

Nurkse, Ragnar (1953). *Problems of Capital Formation in Underdeveloped Countries.*

Oxford: Oxford University Press.

Parveen, S. (2005). *Changing Face and Challenges of Urbanization: A Case Study of Uttar Pradesh*, New Delhi: Concept Publications.

Perroux, F. Les Poles de development et al *"Economic Internationale, The Challenge of Development"*, A Symposium, Jerusalem 1957.

Perroux, F. L'economic du XXe siecle, Paris 1964.

Persson, T., & Tabellini, G. (1994). Is Inequality Harmful for Growth? *American Economic Review, 84*(3), 600-621.

Raj, K.N. (1990). Bridging the Urban-Rural Gap. *Economic and Political Weekly,* XXV (1): pp. 25 - 27.

Rostow, W.W. The Stages of Economic Growth, Cambridge 1960.

Williamson, J. G. (1965). Regional Inequality and the Process of National Development: A Description of the Patterns. *Economic Development and Cultural Change,* XIII (4): pp. 3-83.

Kanbur, Ravi (2003): 'The policy significance of inequality decompositions',

mimeo, Cornell University, Ithaca, New York.

Kurian N. J. (2000), 'Widening Regional Inequalities in India: Some Indicators',

Economic and Political Weekly, 35(7), pp 538–550.

Lipton, M. (1977). *Why Poor People Stay Poor? A Study of Urban Bias in World Development.* London: Temple Smith Ltd.

Mathur, A. (1987). Why Growth Rates Differ Within India: An Alternative Approach. *The Journal of Development Studies,* XXIII (2): pp. 167-99.

Mundie, S. and M. Govind Rao (1991). Volume and Composition of Government Subsidies

in India: 1987-88. *Economic and Political Weekly,* XXVI(18): Pg. 1157.

Mutatkar, Rohit (2005). Social Group Disparities and Poverty in India. Indira Gandhi Institute of Development Research Working Paper Series No. WP-2005-004

Neogi, Debasis (2010). Disparity in Socio-Economic Development and Its Implications on Communal Conflicts: A Study on India's North-Eastern Region, International Journal of Humanities and Social Sciences 4:2, 2010

Page, N., & Czuba, C. E. (1999). Empowerment: What Is It? *Journal of Extension, 37*(5).

Pandey, P. K., & Mishra, S. K. (2004). Levels, Differentials and Determinants of Women Empowerment in Uttar Pradesh. In M. Srivastava (Ed.), *Economy of Uttar Pradesh: Emerging Challenges* (pp. 145-153). Varanasi.

Pant, D. K. (2004). Dealing with Disparities. *Margin, 36-37*(4-1), pp. 139-156.

Pant, N. (2004). Trends in Groundwater Irrigation in Eastern and Western UP. *Economic & Political Weekly*, pp. 3463-3468.

Parker, B., Kozel, V., & Kukreja, M. (2003). *In search of a Chance: Urban Opportunities, Poverty and Vulnerability in Uttar Pradesh, India.* Paper presented at the World Bank Urban Research Symposium.

Ramaswamy, K. V. (2007). Growth and Employment in India: The Regional Dimension. ISAS working paper No. 22, Institute of South Asian Studies, Singapore

Rao, C. H. H., & Dev, S. M. (2003). Economic Reforms and Challenges Ahead: An Overview. *Economic & Political Weekly* (March 22-29), pp. 1130-1141.

Rao, M. G., Shand, R. T., & Kalirajan, K. P. (1999). Convergence of Incomes Across Indian States - A Divergent view. *Economic & Political Weekly* (March 27), pp. 769-778.

Rao, R. K. (2004). Reforms in Andhra Pradesh: Is Mid-Course Correction Called For?

Economic & Political Weekly (September 25), pp. 4350-4356.

Rao, M. Govind (1992). Proposals for State-Level Budgetary Reform. *Economic and Political Weekly,* XXVII(5): pg. 211.

Rao, Hemlata (1977). Identification of Backward Regions and the Trends in Regional Disparities in India. *Artha Vijnana,* XIX (2): pp. 93 - 112.

Sachs, J., Bajpai, N., & Ramiah, A. (2002). *Why some Indian States have grown faster than the others?* Retrieved February 21, 2006

Sandesara, J.C., (1992). Industrial Policy and Planning-1947-91, Sage Publications, New Delhi.

Sarker, P.C. (1994). Regional Imbalances in Indian Economy over Plan Periods. *Economic and Political Weekly,* XXIX (11): pp. 621-33.

Schumpeter, J. A. (1934). *The Theory of Economic Development: An Inquiry into Profits, Capital, Credit, Interest and the Business Cycle* (Translated from the German by Redvers Opie, Trans.). Cambridge, Massachusetts: Harvard University Press.

Shand, R., & Bhide, S. (2000). Sources of Economic Growth - Regional Dimensions of Reforms. *Economic & Political Weekly*, pp. 3747-3757.

Srinivasan, T. N. (2007). "Employment and Unemployment since the early Seventies", Forthcoming in India Development Report 2007, Oxford University Press, New Delhi.

Srivastava, L. and Rehman, I. H. (2006). "Energy for Sustainable Development in India: Linkages and Strategic Direction." Energy Policy. 34: pp. 643-654

Srivastava, Ravi (1994). "Planning and Regional disparities in India", in Terence Byres (Ed), The State and Development Planning in India: Oxford University Press, New Delhi.

Suar, Damodar (1984). Development Indicator Identification and Regional Disparity in Orissa: A Factor Analytic Study. *Indian Journal of Regional Science,* XVI (2): pp. 108 - 20.

Suryanarayana, M.H (2009). Index of Backwardness: Some Issues. Indira Gandhi Institute of Development Research. Mumbai

United Nations Development Programme (UNDP) (2004) *Human Development Report 2004,* New York: Oxford University Press.

Vaidyanathan, A. (1974). Some Aspects of Inequalities in Living Standards in Rural India. In T. N. Srinivasan and P. K. Bardhan (eds.), *Poverty and Income Distribution in India.* Calcutta: Indian Statistical Institute.

Vaidyanathan, A. (1986). Labor Use in Rural India: A Study of Spatial and Temporal Variations. *Economic and Political Weekly.* XXI(52):A- 130.

Varghese, K.A. and Mordia, Azad (-). Classification of Districts of Rajasthan According to Level of Development Using Multivariate Indicators, Rajasthan College of Agriculture, MPUAT, Udaipur (Raj.)

Wacziarg, Romain, and Jessica Wallack (2004). "Trade Liberalization and Intersectoral Labor movements". Journal of International Economics, Vol.64, No. 2, pp. 411-439

World Bank. (1997). *India Achievements and Challenges in Reducing Poverty*. A World Bank Country Study. Washington, D.C.: The World Bank.

———. 2000. *India Reducing Poverty, Accelerating Development*. New Delhi: Oxford University Press.

———. 2003. *Sustaining Reform, Reducing Poverty*. New Delhi: Oxford University Press.

———. (2005a). *World Development Indicators*. Washington, D.C.: World Bank.

———. (2005c). *World Development Report 2006: Equity and Development*. Report No. 32204. Washington, D.C.: The World Bank.

———. (2006a). *Inclusive Growth and Service Delivery: Building on India's Success.*

Draft Development Policy Report, South Asia Region. Washington, D.C.: The World Bank.

World Bank. (2005). *World Development Report 2006: Equity and Development*. Washington: The World Bank.

———. (2006b). *India's Employment Challenge: Creating Jobs, Helping Workers*. South Asia Region Draft Report. Washington, D.C.: The World Bank.

Wu, Yanrui (2008). Comparing Regional Development in China and India. UNU-WIDER Research Paper No. 2008/13.

Van de Walle, D. and D. Gunewardena (2001): 'Sources of ethnic inequality in Viet Nam, *Journal of Development Economics*, Vol. 65, pp. 177-207.

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DIGEST OF

JUDICIAL PRONOUNCEMENTS

RELATING TO THE CENTRE-STATE RELATIONS

(POST SARKARIA

COMMISSION ON CENTRE-STATE RELATIONS)

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4. Administrative Relations
5. All India Services
6. Panchayati Raj Institutions
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8. Emergency Provisions
9. Role of the Governor

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1

ANALYTICAL SUMMARY OF THE ARGUMENTS ON CENTER - STATE LEGISLATIVE RELATIONS UNDER CONSTITUTION OF INDIA (1988-1998)

The distribution of legislative powers between the Center and State is the most important characteristic of federal constitution. There is no mathematical formula of distribution of powers between the Union and the State in the federal Constitution.[1] A basic test applied to decide what subjects should be allotted to the one or the other level of government is that functions of national importance should go to the center and those of local interest should go to the regions.[2]

The Constitution of India contains very elaborate scheme of distribution of powers and functions between the Center and the State from Article 246 to 254 of the Constitution. The scheme of distribution of legislative powers in Indian Constitution is provide under Article 246 and three lists, the Union List, the State List and the Concurrent List, given in the Seventh Schedule. The Scheme of Article 246 is:

1. Article 246 (1) confers exclusive power of the Parliament to make laws in respect of the subjects provided under the Union List i.e. List I[3]. With respect to the subjects in the Union List, the State is prohibited from making any law.

2. Article 246 (3) confers exclusive power on the States to make laws in respect of the subjects provided under the State List (List II). The Subjects are more of local and administrative nature and center is prohibited from making any law in respect of this list.[4]

3. A unique feature in the Indian Constitution is the Concurrent List, List-III[5], in respect of which both the Parliament and the States can make law.[6] The idea behind Article 246(2) is that if in respect of some subjects the Parliament

[1] R.K. Chaubey, *Federalism, Autonomy and Center-State Relations* 61 (2007).

[2] M.P. Jain, *Indian Constitutional Law* 482 (2005).

[3] The Union List has 99 entries. Entries 1 to 81, 93 to 95 and 97 deal with general legislative powers and entries 82 to 92, 96 and 97 deal with powers to levy taxes and fees.

[4] The State List contains 61 entries. Including subjects like maintenance of law and order, lands and agriculture, libraries, museums, health, local government, relief of the disabled etc.

[5] The Concurrent List comprises of 52 items. The States are competent to legislate to legislate with respect to matters in this List, subject to the rule of repugnancy contained in Article 254.

[6] Article 246 (2) provides

does not feel necessary to enact any legislation then the State can make laws.[7] But if any matter is of national importance then the Center can enact necessary laws. And if the Center makes law with respect to subjects of this list then a State my make supplementary laws.

Due to inter-face between entries in three Lists and constitutional provisions like Article 246(2), absurd situations arise when there is inconsistency between two laws, each of equal validity, which could exist side by side within same territory.[8] In 1983 Sarkaria Commission was established to examine distribution of power between the Center and the States and made several recommendations in this respect. Inspite of these recommendations, conflicts between the Center and the States in the field of legislative relations still exists. Some of these conflicts have been resolved by the Supreme Court in the following cases given below:

ARMED FORCES

Under List I Entry 2A the Center has power to deploy its armed forces or any other force under its control in aid of the civil power in a State to maintain public order. The word "any other force" in this entry refers to a force other then an armed force.[9] On the other hand Entry 1 of the State List include "Public Order" but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union…." The Issue in this respect of both these entries came before the Supreme Court of India in Naga People's Movement of *Human Rights* v. *Union of India*.[10] The Issue was regarding the competence to enact the Armed Forces (Special Powers) Act, 1958 and the Court held:

"…..that keeping in view Entry 1 of the State List and Article 248 read with Entry 97 and Entries 2 and 2A of the Union List Parliament was competent to enact the Central Act in 1958 in exercise of its legislative power under Entry 2 of the Union List and Article 248 read with Entry 97 of the Union List and, after the forty-second Amendment of the Constitution, the legislative power to enact the said legislation is expressly conferred under Entry 2A of the Union List and that it cannot be regarded as a law falling under Entry 1 of the State List. Since Parliament is competent to enact the Central Act, it was held that the Central Act is not open to challenge on the ground of being a colourable legislation or a fraud on the legislative power conferred on Parliament."

[7] *Supra* note 2 at 483.
[8] *Supra* note 1.
[9] *Supra* note 2 at 484.
[10] AIR1998SC465

PREVENTIVE DETENTION

Entry 9 of List I empowers the Parliament to enact law of preventive detention for reasons connected with defence, foreign affairs or the security of India. In Attorney *General for India and Ors.* v. *Amratlal Prajivandas and Ors.*,[11] the Issue was, whether the Parliament was not competent to enact COFEPOSA and SAFEMA? The Supreme Court held that the Parliament did have the competence to enact the statutes by virtue of the Entries in list-I and list-III or by virtue of Article 248 read with Entry 97 of list -I.

INTOXICATING LIQUORS

Entry 8 of List II gives power to the State Government in respect of the production, manufacture, possession, transport, purchase and sale of the intoxicating liquors. Competence to enact law in this respect was challenged in few cases. In P.N. Krishna *Lal and Ors.* v. *Govt. of Kerala and Anr.*,[12] it was held that state legislature was competent to enact the Amendment Act as Entry 8 of List II, i.e. State List of the Seventh Schedule to the Constitution read with Art. 246(3) of the Constitution, empowers the State Legislature to enact law relating to intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase or sale of intoxicating liquor and entry 64 deal with offences against law with respect to any of the matters in list II.

In State of *Andhra Pradesh and others, etc.* v. *McDowell and Co. and others, etc.*[13], it was challenged that the power of the State Legislature to make a law with reference to matters enumerated in List-II in the Seventh Schedule to the Constitution (provided by Clause (3) of Article 246) is subject to the Parliament's power specified in Clauses (1) and (2) of the said Article. The court elaborately made following Observations:

"Whenever a particular entry in List-II is sought to be made subject to another entry in List-I or List-III or where a demarcation is sought to be made between the Union and the States within a particular head of legislation, the founding fathers have taken care to say so expressly…. Entry 8 speaks of only intoxicating liquors and does not, therefore, apply to or take in liquors which do not fall within the expression "intoxicating liquors". The power to make a law with respect to production and manufacture of intoxicating liquors (mentioned in Entry 8) is that of the States alone. The prohibition of production and manufacture of intoxicating liquors too squarely falls within the four corners of Entry 8 read with Entry 6 in List-II."

[11] AIR1994SC2179
[12] 1994(5)SCALE1
[13] AIR1996SC1627

LABOUR WELFARE

Entry 22 and 24 of Concurrent List (List-III) contains aspects of labour legislation. Since both the State and the Center can make laws on this subject, in *National Engineering Industries Ltd.* v. *Shri Kishan Bhageria and Ors.*,[14] the question was whether the Industrial Dispute Act, 1947, the central legislation, would prevail or the Rajasthan Shops and Establishments Act, 1958, which was the State legislation. By applying Article 254(2) of the Constitution it was held that "if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that State even if there is an earlier law by the Parliament on a subject in the Concurrent List. Since Chapter 6A including Section 28A was inserted in the Rajasthan Act subsequent to the Industrial Disputes Act, the Rajasthan Act would prevail if there is any repugnancy." Further it was also observed that if there is no inconsistency then both can supplement each other.

EDUCATION

Entry 25 of the Concurrent List contains education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I. Entry 66 of the Union List contains the entry for co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Due to some overlapping of the subject, some important cases have come before the courts.

In *Dr. A.K. Sabhapathy* v. *State of Kerala and others*,[15] the validity of the State Act, Section 38 of the Tranvancore-Cochin Medical Practitioners' Act, 1953, was challenged on the ground of repugnancy under Article 254(1) of the Constitution. Since the Indian Medical Council Act, 1956, the Central Act, was already enacted by the Central Government the State was held to be inconsistent and void to the extent of repugnancy. In *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme* v. *State of Tamil Nadu and Others*,[16] the Tamil Nadu Medical University Act, 1987 which was enacted prior to the Central Act, the Indian Medical Council (Amendment) Act, 1993, was challenged. It was further observed that, "the fact that the State Act has received the assent of the President would be of no avail because the repugnancy is with the Central Act which was enacted by Parliament after the enactment of the State Act. In view of the proviso to sub-Article (2) of Article 254 Parliament could add to, amend, vary or repeal the State Act. In exercise of this power Parliament could repeal the State Act either expressly or by implication" and to the extent of inconsistency was held to be repugnant.

[14] AIR1988SC329
[15] AIR1992SC1310
[16] AIR 1996 SC 2384

Similar Decision was made in *Ramswaroop Meena and Ors.* v. *University of Rajasthan and Ors.*[17], *Dr. Sadhna Devi and others* v. *State of U.P. and others*[18], *Ayurvediya Chikitsa Parishad, U.P. and others* v. *State of U.P. and Others*,[19] and *Government of Andhra Pradesh and Another* v. *J.B. Educational Society,Hyderabad and Anr.*[20], *State of T.N. and Anr.* v. *Adhiyaman Educational & Research Institute and Ors.*[21], in which Central legislation prevailed over State legislation in matter of education and all State legislations were held to be repugnant to the extent of inconsistency.

MOTOR VEHICLE

In *Vijay Kumar Sharma and others* v. *State of Karnataka and others*,[22] the question was regarding the two separate legislation Karnataka Contract Carriages (Acquisition) Act, 1976, which was enacted by the State, and the Motor Vehicles Act, 1988, enacted by the Center, under two different entries of the Concurrent List. The State legislation was under Entry 42 and the Central legislation was under Entry 35 of the Concurrent List. The State Act was challenged to be repugnant to the Central Act and Issue was whether Article 254(1) will apply to this situation or not. The Court held that since two Acts are enacted under two different Entries of the Concurrent legislation with two different objects the question of repugnancy and applicability of Article 254(1) does not arise.

MINES AND MINERALS

Entry 54[23] of Union List and Entry 23[24], 50[25] of List II contains the subject of mines and minerals. In *India Cement Ltd. and Ors.* v. *State of Tamil Nadu and Ors.*,[26] competence of the State Legislature to levy cess on royalities under the State Act was challenged. It was held, "royality is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of list II".

[17] AIR 1997 Raj.35
[18] AIR1997SC1120
[19] 1998(2) AWC1486
[20] 1998 (3)ALD736
[21] 1995(2)SCALE401
[22] AIR1990SC2072
[23] "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."
[24] "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."
[25] "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."

In *State of Orissa and others* v. *Mahanadi Coalfields Ltd. and others*,[27] the Issue was whether the State was competent to enact legislation on subject of mines and minerals under List II. The Court observed:

"Entry 49 of List II is the general entry which enables the State legislature to impose taxes on lands and buildings. A particular category or specie is taken but of the general entry, and is provided by Entry 50 of List II. But the tax that can be levied under List II Entry 50 is subject to limitations imposed by Parliament by law relating to regulation of mines and mineral development. Similarly, under List II Entry 23, though the State Legislature can enact a law relating to regulation of mines and mineral development, it is subject to the provisions of List I (Legislation by Parliament) with respect to regulation and development under the control of the Union."

LAND AND AGRICULTURE

Various entries under List-II deals with land and agriculture like 14, 18 etc. In *Shrikant Bhalchandra Karulkar and Ors.* v. *State of Gujarat and Anr.*,[28] the provisions of the State Act were challenged on the ground of extra-territorial operation and beyond the legislative competence of the State. The court observed, "…the State Legislature has no legislative competence to make laws which have extra-territorial operation…. the State Legislature has the legislative competence to enact the Gujarat Agricultural Lands Ceiling Act 1960 under Entry 18 List-II read with Entry 42 List-III 7th Schedule Constitution of India." Since the lands, governed by the provisions of the Act, were situated within the territory of the State of Gujarat it was held that the territorial nexus is obvious.

In *Jilubhai Nanbhai Khachar, etc.* v. *State of Gujarat and another*,[29] while interpreting Entry 18 of List II observed, "The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it…..Under Entry 18 of the State List, land, i.e. rights in or over land which includes acquisition of the property, entry 23 of List II which is subject to Entry 42 of List III (Concurrent List), provides field of legislation by the State legislature. Article 246(3) of the Constitution gives exclusive power to make law for the State…."

[26] AIR1990SC85
[27] AIR1995SC1868
[28] (1994)5SCC459
[29] AIR1995SC142

In *Krishna Bhimrao Deshpande* v. *Land Tribunal, Dharwad and others*,[30] it was observed, "it is well settled that the legislative power of the State has to be reconciled with that of the Parliament and that in their respective fields each is supreme. Even assuming that the State enactment has same effect on the subject matter falling within the Parliament's legislative competence that by itself will not render such law invalid or inoperative….. The imposition of ceiling on urban immovable property is an independent topic and cannot be construed as to nullify the other subject left in the domain of the State Legislature under Entry 18 inasmuch as imposition of ceiling is a distinct and separately identifiable subject and does not cover the other measures such as regulation of relationship of landlord and tenant in respect of which the State Legislature has competence to legislate." The Court held that if one topic under Entry 18 of the List-II the State legislature has been transferred under Article 252 still rest of the topics remains with the State Legislature.

CIVIL PROCEDURE

Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, is enumerated under the entry 13 of Concurrent List. In *Pt. Rishikesh and Anr.* v. *Salma Begum (Smt)*,[31] Order 15 Rule 5 of CPC was amended by the U.P. State Act and the question was regarding the validity of the Order. The Court held, "To bring repugnancy it is condition precedent that both central and state legislation occupy same field and are collide with each other." Since both the central and state acts were occupying different field they were held not to be inconsistent.

In *Ratan Lal Adukia and Anr.* v. *Union of India*,[32] it was observed that, "….the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) where the further legislation by Parliament is in respect of the same matter as that of the State law. The doctrine of implied repeal is based on the postulate the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts in applying this doctrine are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments."

[30] AIR1993SC883
[31] 1995(3)SCALE354; (1995)4SCC718
[32] AIR1990SC104

TAXES

In *M/s. R.S. Rekchand Mohota Spinning & Weaving Mills Ltd.* v. *State of Maharashtra*,[33] cess was levied on flowing water of river by the State Legislature which was challenged and the Court held, "….it is settled principle of interpretation that legislative Entries are required to be interpreted broadly and widely so as to give power to the legislature to enact law with respect to matters enumerated in legislative Entries…. When the cess has been imposed by virtue of power vested under Section 70 of the Code by the State Government by way of legislation, the power of the State is traceable to the legislative Entry under Entry 45 of List II of the Seventh Schedule to the Constitution. Therefore, the demand made is within the legislative competence and the legislature is competent to enact law in exercise of the power under Article 246."

In *New Delhi Muncipal Committee* v. *State of Punjab etc.*,[34] the Issue was regarding the imposition of tax by the Union on the properties of the States situated in Union Territories under Article 289(1) of the Constitution of India. The Court held, "the levy of property taxes on lands/buildings belonging to the State Government is invalid and Union is incompetent by virtue of the mandate contained in Article 289(1). However, if any land/building is used or occupied for the purpose of any trade or business carried on by or on behalf of the State Government, such land/building shall be subject to levy of property taxes."

In *Parekh Prints* v. *Union of India*,[35] levy of excise duty by union government through Central Act was challenged and it was held that, "Act it cannot be disputed that what it levies is a Union duty of excise referable to Entry 84 of the Union List and in any case to Entry 97 of that List. The Constitution gives to the Parliament in specific and unambiguous terms the power to impose the additional duties of excise and to lay the guidelines for its distribution among the States. Any limitation to these powers of the Parliament is contradictory and destructive of these very powers. The Act does not impinge upon the field of legislation of the States and is within the legislative powers of the Union. The Act certainly does not meddle with the rights of the States to impose sales tax."

WATER

Entry 56 of List I provide for regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. Entry 17 of the State List provides Water, that is to say, water supplies, irrigation and canals, drainage

[33] AIR1997SC2591
[34] 1997 SCC 399
[35] 45(1991)DLT456

and embankments, water storage and water power subject to the provisions of entry 56 of List I. In, In the matter of: CAUVERY WATER DISPUTES TRIBUNAL Special Reference No. 1,[36] Issue was regarding the Ordinance passed by the Governor of Karnataka with respect to the Cauvery river. The Court held, "the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 passed by the Governor of Karnataka is beyond the legislative competence of the State and is, therefore, *ultra vires* the Constitution." It was further observed that, "The effect of the Ordinance is to affect the flow of the waters of the river Cauvery into the territory of Tamil Nadu and Pondicherry which are the lower riparian States. The Ordinance has, therefore, an extra-territorial operation. Hence the Ordinance is on that account beyond the legislative competence of the State and is ultra vires the provisions of Article 245(1) of the Constitution."

Conclusion

The above discussion shows the importance of strong Union and strong States in there respective fields. The Judiciary by taking impartial stand has decided all cases keeping in view the clear picture of legislative relations provided in the provisions of Constitution of India. The Court has kept the States and Center in there allotted spheres. Another point which comes out of whole discussion is that while drafting these provisions and the Lists, the constitutional fathers have considered all the minute details and have laid elaborate list of subjects to avoid conflicts between the center and state. But still when they try to encroach upon the subjects provided to each other, the courts have taken proper care to keep them in there respective spheres by giving detailed and well discussed Decisions. As to the List –III in the Seventh schedule under Article 246(2) some confusion between the Center and the State may arise but it must be appreciated as valuable provision that furthers the federalism yet keeps the India united with strong center.

[36] AIR1992SC522

SUMMARY OF THE ARGUMENTS OF THE CASES

Attorney General for India and Ors. v. Amratlal Prajivandas and Ors.

AIR1994SC2179, [1995]83CompCas804(SC), 1995CriLJ426, JT1994(3)SC583, 1994(2)SCALE925, (1994)5SCC54, [1994]Supp1SCR1

Date of Decision 12/05/1994

(A.M. Ahmadi, P.B. Sawant, K. Ramaswamy, K. Jayachandra Reddy, S.C. Agrawal, S. Mohan, B.P. Jeevan Reddy, G.N. Ray and N. Venkatachala, JJ.)

Composition of the Bench: 9 Judges

Relevant Provisions of the Constitution of India: Articles 14, 19, 21, 22, 22(5), 31B, 245, 246, 248, 352, 358, 359, 359(1) and 359(1A); Constitution of India (Forty-fourth Amendment) Act, 1978 - Sections 1(2) and 3; Constitution of India (Thirty-ninth Amendment) Act, 1975 - Section 5; Constitution of India (Fortieth Amendment) Act, 1976 - Section 3.

Brief Facts:

On June 25, 1975, the President of India proclaimed an emergency under Article 352(1) of the Constitution of India on the ground that "the security of India is threatened by internal disturbance."

During the period the Emergency proclaimed on 25th June, 1975 was in force, several orders of detention were made under Section 3 of COFEPOSA. In view of the provisions of Section 12A, the said detenues were neither supplied with the grounds of detention nor were their cases referred to the Advisory Board. The detenues, however, had no remedy, because of the order under Article 359(1) and the operation of Article 358. The emergency was revoked on March 21, 1977 and the detenues released. Subsequently notices were Issued under Section 6 of the SAFEMA to the said detenues, their relatives and associates calling upon, them to show cause why the properties mentioned in the notices be not declared as illegally acquired properties and forfeited. SAFEMA was being invoked against them because of the orders of detention made against the detenues under COFEPOSA during the period of emergency. The said orders of detentions were the connecting link, the foundation for the action being taken against the detenues, their friends and relatives under SAFEMA.

It is then that the said persons approached the High Courts under Article 226 and this Court under Article 32 for quashing the said notices. In these writ petitions, the Constitutional validity of the COFEPOSA, SAFEMA and of the 39th, 40th and 42nd Amendments to the Constitution of India were questioned.

Issue Involved:

Whether the Parliament was not competent to enact COFEPOSA and SAFEMA?

Decision

The Court held that the Parliament did have the competence to enact the statutes by virtue of the Entries in list-I and list-III or by virtue of Article 248 read with Entry 97 of list-I.

Ratio Decidendi

Parliament is competent to enact that Statute whether by virtue of the Entries in list-I and list-III or by virtue of Article 248 read with Entry 97 of list-I.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of Petitioners:

1. the petitioners argued that COFEPOSA is not relatable to Entry-9 of List-I of the Seventh Schedule to the Constitution inasmuch as the preventive detention provided there for is not for reasons connected with defense, foreign affairs or security of India. Even Entry-3 of List-III, does not warrant the said enactment.
2. it is further argued that as far as SAFEMA is concerned, it is not relatable to any of the Entries (1) to (96) in List-I or to any of the Entries in List-III.

Observations

While delivering the judgment the Court observed that, "COFEPOSA is clearly relatable to Entry 3 of List-III in a smuch as it provides for preventive detention for reasons connected with the security of the State as well as the maintenance of supplies and services essential to the community. While Entry 3 of List-III speaks of "Security of a State", Entry 9 of List-I speaks of "security of India". Evidently, they are two distinct and different expressions. "Security of a State" is a much wider expression. A State with

a weak and vulnerable economy cannot guard its security well. It will be an easy prey to economic colonizers. We know of countries where the economic policies are not dictated by the interest of that State but by the interest of multi-nationals and/or other powerful countries. A country with a weak economy is very often obliged to borrow from International Financial Institutions who in turn seek to dictate the economic priorities of the borrowing State - it is immaterial whether they do so in the interest of powerful countries who contribute substantially to their fund or in the interest of their loan."[37]

"In the modern world, the security of a State is ensured not so much by physical might but by economic strength-at any rate, by economic strength as much as by armed might. It is therefore; idle to contend that COFEPOSA is unrelated to the security of the State. Indeed in the very Preamble to the Act, the Parliament states that the violations of foreign exchange regulations and smuggling activities are having an increasing deleterious effect on the national economy thereby casting serious adverse effect on the security of the State."[38]

The court has placed its reliance on the test laid down in *Union of India v. H.E.S. Dhillon*[39] and observed that, "Parliament is competent to enact that Statute whether by virtue of the Entries in list-I and list-III or by virtue of Article 248 read with Entry 97 of list-I. In this case, it is not even suggested that either of the two enactments in question are relatable to any of the Entries in list-II. If so, we need not go further and enquire -to which Entry or Entries do these Acts relate. It should be held that the Parliament did have the competence to enact them."[40]

[37] Para 25.
[38] *Id.*
[39] MANU/SC/0060/1971.
[40] *Supra* Note 1.

Ayurvediya Chikitsa Parishad, U.P. and others v. State of U.P. and Others.

1998(2) AWC1486

Date of Decision 01.04.1998

(Sudhir Narain, J.)

Composition of the Bench: Single Judge

Relevant Provisions of Constitution of India - Articles 21, 30, 41, 45, 254 and 254(1).

Brief Facts:

The petitioners have challenged the vires of Sections 8 and 9 of U. P. Indian Medical Institutions (Acquisition and Miscellaneous Provisions) Act, 1982. They are running Ayurvedic Educational Institutions. In the year 1982, the State Legislature passed U. P. Indian Medical Institutions (Acquisition and Miscellaneous Provisions) Act. 1982 (hereinafter 1982 Act). This Act was enacted to provide for the acquisition and Management of non-Government institutions mentioned in the Schedule of the Act imparting instructions in Ayurvedic and Unani-Tibbi Systems of Medicine. The grievance of the petitioners relates to Sections 8 and 9 of 1982 Act.

Section 8 requires authorisation by the Central Government or the State Government for establishment of institution. Section 9 of the Act is an exception to Section 8. The Parliament passed Indian Medical Council Act, 1956 (hereinafter 1956 Act) providing for Constitution of Central Medical Council of India and provide for conditions for recognition of medical qualifications. Section 10A provides for grant of permission for establishment of new Medical College.

Issue Involved:

Whether the State Legislature was competent to enact Section 8 of U. P. Indian Medical Institutions (Acquisition and Miscellaneous Provisions) Act, 1982?

Decision

The provisions of Section 8 of U. P. Indian Medical Institutions (Acquisition and Miscellaneous Provisions) Act, 1982 in regard to conferring power on the State Government to authorize any person to open, organize or maintain any Medical College so far as it is in contravention of Section 10A of Indian Medical Council Act, 1956 is ultra vires and invalid. In respect of other provisions under Sections 8 and 9 of the Act is valid.

Ratio Decidendi

The State Government covers the same field which is covered by the provisions of the Indian Medical Council Act, 1956. The State Government cannot authorize an institution to open any Medical College. It will be in contravention of the provisions of Section 10A of the Act

SUMMARY OF THE ARGUMENTS

Contention of the petitioners:

1. The State Legislature was not competent to enact the law which was covered under the Union List. Only Parliament could enact the law providing for imparting education in Ayurvedic and Unani-Tibbi Systems and such legislation can be made under Entry 66 of Union List of VII Schedule.

Contentions of Respondents:

1. 1982 Act was enacted under Entry 25 of Concurrent List III of VII Schedule.
2. Section 8 does not debar any institution to impart instructions in Ayurvedic and Unani-Tibbi Systems of Medicine but the only restriction is that it cannot do so unless such institutions or persons have been authorised by the Central Government or the State Government. The petitioners cannot have any grievance on imposing restrictions to open or maintain such institutions without being granted any recognition by the Central Government inasmuch as the recognition of the Central Government is required under Section 10A of Indian Medical Council Act, 1956.
3. The institutions run by the petitioners are also not recognized by the Medical Council of India.
4. The President of India had granted assent to the U. P. Indian Medical Institutions (Acquisition and Miscellaneous Provisions) Act, 1982 on 7.4.1982 and which will prevail in state according to clause (2) of Article 254 of the Constitution of India.

Observations

The Court while deciding made following Observations:

"The State Legislature cannot enact law under the concurrent list where the Parliament has already passed legislation covering the same field. The repugnancy in the enactment may arise when the State Legislature covers the same field though at times it may not lay down a contrary provision under the enactment."[41]

"The provisions authorising the State Government will hold valid till Section 10A was inserted in the Indian Medical Council Act, 1956 by the Indian Medical Council (Amendment) Act, 1993 (Central Act No. 31 of 1993). After the enforcement of the said provision, the State Government is not entitled to authorize any person to open a Medical College and take such other steps which is covered by Section 10A of the Central Act."[42]

[41] Para 13.
[42] Para 16.

In the matter of: CAUVERY WATER DISPUTES TRIBUNAL Special Reference No. 1

AIR1992SC522, JT1991(4)SC361, 1991(2)SCALE1049, [1991]Supp2SCR497

Date of Decision 22.11.1991

(Ranganath Misra, C.J.I.,K.N. Singh,A.M. Ahmadi,Kuldip Singh andP.B. Sawant, JJ.

Composition of the Bench: 5

Relevant provision of the Constitution of India - Articles 14, 21, 32, 38, 39, 73, 131, 137, 143, 162, 213, 245, 246, 248, 262, 371D and 374

Brief Facts:

On July 27, 1991 the President, under Article 143 of the Constitution, referred to Supreme Court three questions for its opinion.

In exercise of the powers conferred by Section 4 of the Inter-State Water Disputes Act, 1956, the Central Government constituted a Water Disputes Tribunal Called "the Cauvery Water Disputes Tribunal" by a notification dated 2 June, 1990, for the adjudication of the Water Dispute regarding the Inter-State River Cauvery. On 25 June 1991, the Tribunal passed an interim Order, differences have arisen with regard to certain aspects of this Order;

On 25 July 1991, the Governor of Karnataka promulgated the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991. Doubts have been expressed with regard to the constitutional validity of the Ordinance and its provisions.

Issue Involved:

(1) Whether the Ordinance and the provisions thereof are in accordance with the provisions of the Constitution?

(2) (i) Whether the Order of the Tribunal constitutes a report and a Decision within the meaning of Section 5(2) of the Act; and (ii) Whether the Order of the Tribunal is required to be published by the Central Government in order to make it effective?

(3) Whether the Water Disputes Tribunal constituted under the Act is competent to grant any interim relief to the parties to the dispute?

Decision

Sawant J. delivered the judgemnt on behalf of all stating:

The Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 passed by the Governor of Karnataka on 25th July, 1991 (now the Act) is beyond the legislative competence of the State and is, therefore, ultra vires the Constitution. The Order of the Tribunal dated June 25, 1991 constitutes report and Decision within the meaning of Section 5(2) of the Inter-State Water Disputes Act, 1956. The said Order is, therefore, required to be published by the Central Government in the official Gazette under Section 6 of the Act in order to make it effective.

A Water Disputes Tribunal constituted under the Act is competent to grant any interim relief to the parties to the dispute when a reference for such relief is made by the Central Government. Whether the tribunal has power to grant interim relief when no reference is made by the Central Government for such relief is a question which does not arise in the facts and circumstances under which the Reference is made. Hence we do not deem it necessary to answer the same.

Ratio Decidendi

If the ordinance or any Act passed by the State has extra-territorial operation, beyond the territory of the State, it is ultra vires and beyond the competence of the State.

SUMMARY OF THE ARGUMENTS

1. With reference to Question 1 the State of Karnataka contends, in the light of the presumption of constitutional validity which ordinarily attaches to a legislation, that the onus lies heavily on the party challenging the same to show that the impugned Ordinance (now Act) is ultra vires the Constitution. The impugned legislation clearly falls within the competence of the State legislature under Entry 17 as well as Entries 14 and 18 of List II in the Seventh Schedule of the Constitution.
2. With regard to Question 2(i) of the Reference, the State of Karnataka, contends that since the interim order was not preceded by an investigation of the type contemplated by the Act, the said order of 25th June, 1991 could not be described as 'a report' or 'a Decision' under Section 5(2) of the Act and hence there could be no question of publishing it in the gazette. It is, therefore,

contended that no finality can attach to such an order which is neither a report nor a Decision and even if published in the gazette it cannot bind the parties to the dispute and can have no efficacy in law. On Question 2(ii), it is, therefore, contended that since there was no investigation, no findings on facts, no report and no Decision, the Central Government is under no obligation to publish the interim order of the Tribunal.

3. With reference to Question 3, the State of Karnataka reiterates that the scheme of the Act clearly envisages a final report to be given by the Tribunal on conclusion of the investigation and after the Tribunal has reached firm conclusions on disputed questions of fact raised before it by the contesting parties. It is only thereafter that it can in its report record its Decision which on being gazetted becomes final and binding on the parties.

4. On the question of issuance of the Ordinance, the State of Kerala contends, that such a legislation falls within the scope and ambit of Entry 17 and is, therefore, perfectly legal and constitutional and is not in any manner inconsistent with Entry 56 nor does it trench upon any part of the declaration in Section2 of the River Boards Act or any of the provisions thereof. Thus according to Kerala, the legislative competence to pass such a statute vests in the State legislature under Entry 17 and, therefore, the Governor of Karnataka was competent to Issue the Ordinance under Article 213 of the Constitution.

5. The State of Tamil Nadu, therefore, contends that a high powered Tribunal like the present one which is a substitute for this Court must be presumed to have jurisdiction to grant an appropriate interim relief. Such an ancillary and incidental power always inheres in a Tribunal which discharges judicial functions. It is, therefore, contended that Question 3 must be answered in the affirmative.

6. Without prejudice to the generality of the above submission, the State of Tamil Nadu contends that insofar as the question of jurisdiction to grant interim relief concerning the Cauvery water dispute is concerned, the Decision of this Court dated 26th April, 1991 in Civil Appeals Nos. 303, 304 and 2036 of 1991 operates as res judicata and is binding on the contesting parties regardless of the view that this Court may take on the generality of the question referred for Decision. The State of Tamil Nadu, therefore, contends that both parts of Question 2 deserve to be answered in the affirmative.

7. So far as Question 1 of the Reference is concerned, the State of Tamil Nadu contends that the Karnataka Ordinance (now Act) is ultra vires the Constitution for diverse reasons.

8. The State of Tamil Nadu strongly contends that in a civilized society governed by the Rule of Law, a party to a 'lis'-water dispute-cannot be allowed to arrogate to itself the right to decide on the dispute or to nullify an interim order made by a Tribunal in obedience to the Decision of the apex court by abusing the legislative power under Entry 17 under which the impugned legislation purports to be.

9. The State of Tamil Nadu contends that the jurisdiction of this Court under Article 143 of the Constitution is discretionary and this Court should refrain from answering a Reference which is in general terms without background facts and is likely to entail a roving inquiry which may ultimately prove academic only.

10. Pondicherry contends that the Ordinance (now the Act) is constitutionally invalid.

Observations

"The effect of the Ordinance is to affect the flow of the waters of the river Cauvery into the territory of Tamil Nadu and Pondicherry which are the lower riparian States. The Ordinance has, therefore, an extra-territorial operation. Hence the Ordinance is on that account beyond the legislative competence of the State and is ultra vires the provisions of Article 245(1) of the Constitution."[43]

"The Ordinance is also against the basic tenets of the rule of law inasmuch as the State of Karnataka by issuing the Ordinance has sought to take law in its own hand and to be above the law. Such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the Decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other States, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. If the power of a State to Issue such an Ordinance is

[43] Para67

upheld it will lead to the break down of the Constitutional mechanism and affect the unity and integrity of the nation."[44]

"The interim orders passed or reliefs granted by the Tribunal when they are not of purely procedural nature and have to be implemented by the parties to make them effective, are deemed to be a report and a Decision within the meaning of Sections 5(2) and 6 of the Act. The Order is not meant to be merely declaratory in nature but is meant to be implemented and given effect to by the parties. Hence, the order in question constitutes a report and a Decision within the meaning of Section 5(2) and is required to be published by the Central Government under Section 6 of the Act in order to be binding on the parties and to make it effective."[45]

[44] Para68
[45] Para75

Dr. A.K. Sabhapathy v. State of Kerala and others

AIR1992SC1310, JT1992(3)SC66, 1992(1)KLT784(SC), 1992(1)SCALE843, 1992Supp(3)SCC147, [1992]2SCR653, 1992(2)UJ159(SC)

Date of Decision 22.04.1992

(M.S. Fathima Beevi and S.C. Agrawal, JJ.)

Composition of the Bench: 2 Judges

Relevant Provisions of the Constitution of India: Articles 14, 226, 245 and 254.

Brief Facts:

The appeal came before the Court as special leave questioning the validity of the first proviso to Section 38 of the Tranvancore-Cochin Medical Practitioners' Act, 1953 Issued by the Government of Kerala.

The University of Kerala awards a degree as well as a diploma in Integrated Medicine known as DAM. By notification dated May 4, 1977 Issued by the Government of Kerala under the first proviso to Section 38, it was directed that Section 38 of the Act shall not apply to the degree holders of DAM and diploma holders of DAM in practicing modern medicine in the State. The Government of Bihar through the Bihar State Board of Homoeopathic Medicine awards a Diploma in Medicine and Surgery called DMS. By order dated September 28,1978, the Government of Kerala ordered that the said diploma (DMS) awarded by the Government of Bihar will be held in par with the integrated DAM of Kerala University for purpose of continuing in the profession only. The holders of DMS approached the Government with a request to Issue of notification similar to notification dated May 4, 1977 to enable them to practice Modern Medicine. On April 13, 1981 the notification similar to May 4, 1977 was Issued with respect to holders of DMS. The aforesaid notifications dated May 4, 1977 and April 13, 1981 and order dated September 28, 1978 were challenged by the appellant before the High Court of Kerala by filing a Writ Petition under Article 226 of the Constitution. The High Court did not go into the validity of notification dated May 4, 1977 relating to DAM degree holders and DAM diploma holders for the reason that no one who would be affected by the invalidation of the said notification was before the Court. The High Court negatived the challenge to the validity of the first proviso to Section 38 of the State Act on the ground to violation

of Article 14 on the view that the power conferred by the proviso vests in the State Government which is a sufficient safeguard against arbitrary exercise of power. Since the validity of the first proviso, Section 38 of the State Act was upheld the notification dated April 13, 1981 Issued under the said proviso was also upheld as valid by the High Court.

Aggrieved by the Decision of the High Court the appellant came before the Supreme Court challenging the validity of the first proviso to Section 38 of the State Act on the ground of repugnancy under Article 254(1).

Issue Involved:

Whether the provisions of the first proviso to Section 38 of the State Act is repugnant to any provision of the Central Act?

Decision

The first proviso to Section 38 of the State Act in so far as it empowers the State Government to permit a person to practice allopathic system of medicine even though he does not possess the recognized medical qualifications for that system of medicine is inconsistent with the provisions of the Central Act. The said proviso suffers from the vice of repugnancy in so far as it covers persons who want to practice the Allopathic system of medicine and is void to the extent of such repugnancy.

Ratio Decidendi

If State Act is inconsistent with the provisions of the Central Act, the State Act will be void to the extent of such repugnancy.

SUMMARY OF THE ARGUMENTS

On behalf of appellant it was argued –

(1) After the enactment of the Indian Medical Council Act, 1956, by Parliament the first proviso to Section 38 of the State Act, being repugnant and inconsistent with the provisions of Section 15 of the Central Act, has been rendered void and ineffective and the impugned notifications having been Issued in exercise of the power conferred by the said proviso are also void and ineffective.

(2) Section 38 of the State Act does not contain any guidelines for exercise of the power conferred on the State Government and since it confers arbitrary power on the State Government it is violative of the provisions of Article 14 of the Constitution.

On behalf of Respondent it was submitted –

(1) Since DAM of Kerala University had been permitted practice of modern medicine, the Government did not see any reason why the holders of DMS of Bihar Government should not practice.

(2) The order dated September 28, 1978 was passed by the Government after consultation with the University of Kerala and the Director of Indigenous Systems of Medicine and that due consideration was given by the Government to the allopathic subjects taught in the Bihar DMS course.

Observations

While delivering the judgment Justice S.C. Agrawal observed that the Central Act does not lay down an exhaustive code in respect of the subject matter dealt with by the State Act. But the Central Act and the State Act, to a limited extent occupy the same field, viz., recognition of medical qualifications which are required for a person to be registered as a medical practitioner in the allopathic system of medicine. Both the enactments make provision for recognition of such qualifications granted by the universities or medical institutions.[46]

He also observed that the main part of Section 38 insists upon compliance with the requirements of the provisions of the State Act prescribing the conditions for registration as a medical practitioner. The first proviso to Section 38 enables the State Government to dispense with the requirements of the main part of Section 38 in relation to any person or class of persons or in relation to any specified area in the State. As a result a person can be permitted to practice as a medical practitioner even though he does not possess the recognized qualifications which are necessary for a person to be registered as a medical practitioner in a particular system of medicine. This provision in so far as it relates to the allopathic system of medicine, runs contrary to the provisions of the Central Act. Under Section 11(1) of the Central Act medical qualifications granted by any university or medical institution in India which are included in the First Schedule of the said Act alone are the recognized medical qualifications and under Section 11(2) a medical qualification granted by any university or medical institution in India which is not included in the First Schedule can be included in the said Schedule by the Central Government by a notification in the Official Gazette after consulting the Medical Council of India.[47]

[46] Para 15.
[47] Ibid.

Dr. Sadhna Devi and others v. State of U.P. and others

AIR1997SC1120, JT1997(3)SC255, 1997(2)SCALE189, (1997)3SCC90, [1997]2SCR186, 1997(1)UJ458(SC), (1997)2UPLBEC981

Date of Decision 19.02.1997

(B.P. Jeevan Reddy and Suhas C. Sen, JJ.)

Composition of the Bench: 2 judges

Relevant Provisions of the Constitution of India: Articles 14, 15, 21, 32, 162 and 226.

Brief Facts:

A Writ Petition was filed under Article 32 of the Constitution challenging a notification Issued by the U.P. Government providing for reservation for SC/ST/OBC candidates in Post Graduate Speciality and Super-specialty Courses such as M.D. and M.S. The petitioners are medical graduates. They are desirous of getting admitted to Post Graduate Courses. Some of the petitioners took the test conducted by the Government of Uttar Pradesh in January, 1995 for admission to Post Graduate Courses in Medicine and Surgery. The others wanted to take the examination to be held in January, 1996**.**

Issue Involved:

1. Whether the State Government is entitled to do away altogether with the system of obtaining minimum qualifying marks for getting admission to Post Graduate Medical Courses being in conflict with the Regulations framed by the Medical Council of India under Section 33 Indian Medical Council Act?

Decision

The Supreme Court held that the State Government is not entitled to do away with the requirement of obtaining the minimum qualifying marks for the special category candidates as it will be in conflict with the direction given by the Post Graduate Medical Education Committee that students for postgraduate training should be selected strictly on merit.

Ratio Decidendi:

The rules made by the state government to do away with the requirement of obtaining the minimum qualifying marks for the special category candidates are in conflict with the directions given by the the Post Graduate Medical Education Committee.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of the petitioners:

1. It has been contended on behalf of the petitioners that the ultimate power to fix norms and standards for admission to medical colleges vests in Medical Council of India under the Indian Medical Council Act, 1956 read with Indian Medical Council (Amendment) Act, 1993. So far as admissions to medical colleges are concerned, the Regulations framed by the Medical Council of India under Section 33 of the Act will prevail over any law or executive instructions made by any State Government.

Observations

While delivering the judgment Suhas C. Sen, J. observed that, "the position in law that emerges from this Judgment is that all candidates who have successfully completed their MBBS course are eligible for admission to post-graduate medical courses. The Council was entitled to enhance the minimum qualification for admission to the postgraduate courses. But the Council has not done that. There may be more candidates than seats available for admission to the post-graduate courses. For this purpose, the State Government decided to hold tests for selection among the eligible candidates. By reserving seats in these courses for certain categories of persons the State Government has departed from the norm of merit being the only criterion for selection. Eligible candidates of lesser merit may be admitted to the post-graduate courses if they belong to any of the three categories mentioned in the Government Notification. But what is essential is that even the candidates of the three special categories must have an MBBS degree and must obtain the requisite marks in the test to gain admission to MS, MD and other courses." [48]

"Here, the State Government has drawn a distinction between the special category of candidates and candidates belonging to the open category. All the candidates seeking admission to post-graduate medical courses will have to pass a further test. The MBBS degree obtained by the candidates is the minimum qualification required for taking the test. Even thereafter, the candidates will have to secure a minimum percentage of marks in the admission tests to qualify for admission to the post-graduate medical courses. If in the test, the special category candidates obtained lesser marks than the general category candidates, even then they will be eligible for admission within their reserved quotas provided they have secured the minimum qualifying marks in the admission test. They do not have to compete equally with the candidates belonging to the general category."[49]

[48] Para 19.
[49] Id.

He further observed that, "the Government has gone one step further. It has now laid down that it will not be necessary for the special category candidates to obtain even the minimum qualifying marks in the admission tests in order to gain admission to the post-graduate medical courses. In other words, the seats reserved for the three special categories of candidates will be filled up by the candidates belonging to these three special categories even if they fail to obtain the minimum qualifying marks in the tests held."[50] In other words, the candidates belonging to the three special categories who have passed the MBBS examination will have to take the test for admission to postgraduate medical courses but that will be an idle formality because they will qualify for admission to the post-graduate medical courses even though they do not secure the minimum qualifying marks in the tests."[51]

"In our view, this rule comes in conflict with the direction given by the Post Graduate Medical Education Committee that students for postgraduate training should be selected strictly on merit. It was open to the State Government to say that selection to the post-graduate medical courses should be made on the basis of the performance of the candidates in the MBBS examination only. But the State Government has chosen to hold a test among the persons who have passed the MBBS examination in order to select candidates for post-graduate courses. It has laid down minimum qualifying marks for admission. Candidates belonging to the three special categories who secure the minimum qualifying marks will have to be admitted so long as their quota of seats is not filled up. But if the special category candidates fail to secure the minimum marks in the tests held, it is not open to the Government to say that even then the special category of candidates must be selected for the post-graduate courses. If this is done, the merit will be sacrificed altogether."[52]

[50] Para 20.
[51] Id.
[52] Para 21.

Government of Andhra Pradesh and Another v. J.B. Educational Society, Hyderabad and Anr.

1998 (3)ALD736, 1998 (3)ALT584

Date of Decision 28/04/1998

(Umesh Chandra Banerjee, C.J. andSyed Saadatulla Hussaini, J.)

Composition of the Bench: 2 Judges

Relevant Provisions of Constitution of India: Constitution of India - Articles 246, 248, 254 and 372.

Brief Facts:

These three writ appeals arise against the common judgment of the learned single Judge, holding that Section 20 of the A.P. Education Act, 1982 in so far it relates to establishment of Technical Institutions viz., Engineering Colleges and other connected matters, as it overlaps and repugnant to Section 10 of the All India Council for Technical Education Act, 1987 and the Regulations framed there under; as such void and unenforceable and directing the Convener (EAMCET-1997-Engineering Admissions) to allot the candidates to the respondents-writ petitioners Institutions forthwith in accordance with the Rules for the Academic Year 1997-98 subject to grant of affiliation by the concerned University.

In this case the writ petitioners have applied, after fulfilling the terms and conditions laid down under the provisions of the Central Act for establishing Engineering Colleges and imparting Education in different disciplines or courses and also the State Act. Though approval was granted for the Academic Year 1997-98 by the All India Council for Technical Examination as per the norms and standards on 29-5-1997, 22-9-1997 and 26-9-1997 to the respondents-writ petitioners in the above appeals respectively; but the State Government exercising its powers under State Act did not grant permission.

Issue Involved:

1. Whether the provisions under Section 20, (2)(3)(a)(i) and (4) of the State Act enacted under Entry 25 of List III (Concurrent List) to VII schedule to Constitution, are repugnant to Section 10(1)(a) of the Central Act enacted under Entry 66 of List I (Union List) to VII schedule of the Constitution and the Regulations framed under the Act?

2. Whether the State Government has legislative competence to refuse/ withhold permission for establishing private Engineering colleges in covered Revenue Divisions as per State Government's policy after the Council grants approval?

3. Whether the permission of the State Government is necessary for establishment of private Engineering Colleges under the provisions of the State Act?

Decision

With regard to first Issue the court held that Section 20(3)(a)(i) of the State Act trenches and encroaches, in so far with regard to location of private Engineering Colleges, upon the field occupied by Section 10(1)(a) of the Central Act; Section 20(3)(a)(i) is repugnant to the provisions of Section 10(l)(a) of the Central Act and the Regulations framed there under, as such void and inoperative.

In relation to second Issue the court held that the State Government has no legislative competence to refuse/ withhold permission for establishing private Engineering Colleges in covered Revenue Divisions as per the State Government's policy after the Council grants approval.

In relation to third Issue the court held that permission of the State Government is necessary for establishment of private Engineering Colleges.

Ratio Decidendi:

Section 20(3)(a)(i) of the State Act trenches and encroaches, in so far with regard to location of private Engineering Colleges, upon the field occupied by Section 10(1)(a) of the Central Act. Section 20(3)(a)(i) is repugnant to the provisions of Section 10(l)(a) of the Central Act and the Regulations framed there under, as such void and inoperative.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of the respondent

1. Respondent argued that both the Acts viz., the Central Act and the State Act travel, in different directions and they cover different areas and there is no repugnancy with the provisions of these two Acts.

2. The provisions of Section 20 of the State Act are not repugnant as they operate in different fields and do not encroach upon the occupied filed under Section 10 and the Regulations framed there under of the Central Act in respect of the Technical Education. The State Government is competent under Section 20 of the State Act to accord refuse permission.

Observations

While delivering the judgment Syed Saadatulla Hussaini, J. observed the following,

"Realising the imperative need to have a National policy, the Central Act has been enacted by the Parliament and vested with the statutory authority for planning, formulation and maintenance of norms and standards, accreditation, funding of priority, areas, monitoring and evaluation, maintaining parity of certificate es and awards and ensuring and coordinated and integrated development of technical and management Education. Professional Education should be of the highest order and should compete to the International standards - for there has been globalisation of Industry and further, uniformity through out the country should be maintained to avoid dangerous growth of sub-standard technical institutions."[53]

He further observed that "the State Legislature has enacted the A.P. State Education Act for imparting in general the Education throughout the State of Andhra Pradesh, and, as per its preamble, for reforming, organising and developing the Educational system and to provide for matters connected therewith or incidental thereto. Its aim is for establishing and strengthening, consistent with the National policy, a Socialist Secular and Democratic Society and also for promoting National Integration; firmly to link it at all levels with science and technology; to inculcate moral, social and human values and promote respect for manual labour and a sense of patriotism and discipline in the children and to achieve an integrated development of the pupil's personality."[54]

He further observed that, "in view of our comparative analysis of Section 10(1)(a) of the Central Act and the Regulations framed by the Council and Section 20(3)(a)(i) of the State Act that the legislation with regard to the coordination and determination of standards in the institutions for higher education or research and scientific and technical institutions, has always been the preserve of the Parliament and that the criteria laid down on the principle of repugnancy, we hold that Section 20(3)(a)(i) of the State Act trenches and encroaches, in so far with regard to location of private Engineering Colleges, upon the

[53] Para 23.
[54] Para 26.

field occupied by Section 10(1)(a) of the Central Act; as such, we have no hesitation to hold that Section 20(3)(a)(i) is repugnant to the provisions of Section 10(l)(a) of the Central Act and the Regulations framed there under, as such void and inoperative.[55]

[55] Para 47.

India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.

AIR1990SC85, (1990)2GLR764, [1991]188ITR690(SC), JT1989(4)SC190, 1989(2)SCALE953, (1990)1SCC12, [1989]Supp1SCR692

Date of Decision 25.10.1989

E.S. Venkataramiah, C.J., B.C. Ray, G.L. Oza, K.N. Singh, Ranganath Misra, S. Natarajan and Sabyasachi Mukharji, JJ.

Composition of Judges: 7 Judges

Relevant Provisions of the constitution of India: Articles 245, 246 and 265.

Brief Facts:

This case came before this court by way of a special leave petition filed against the judgment given by the High court of Madras.

The appellant is a public limited company incorporated under the Indian Companies Act, 1913. The Company at all relevant times, used to manufacture cement in its factory at Talaiyuthu in Tirunelveli district, and at Sankaridrug in Salem district of Tamil Nadu. By G.O.Ms. No. 3668 dated 19th July, 1963, the Govt. of Tamil Nadu sanctioned the grant to the appellant mining lease for limestone and kankar for a period of 20 years over an extent of 133.91 acres of land in the village of Chinnagoundanur in Sankaridrug Taluk of Salem district. Out of the extent of 133.91 acres comprised in the mining lease, an extent of 126.14 acres was patta land and only the balance extent of 7.77 acres Govt. land. The lease deed was in accordance with the Mineral Concession Rules, 1960. The rates of royalty, dead rent and surface rent, were as follow:-

Royalty :

1. Limestone

Government Lands ; Rs. 0.75 per tonne, but subject to a rebate of Rs. 0.38 per tonne to be given on limestone beneficiated by froth flotation method.

Patta Lands: Rs. 0.38 per tonne but subject to a rebate of Rs. 0.19 per tonne to be given on limestone beneficiated by froth flotation method.

2. Kankar

Government Lands : Five per cent of the sale price at the pit's mouth.

Patta Lands: 2 1 / 2% of the sale price at the pit's mouth

Dead rent:

Government lands: Rs. 25 (Rupees twenty-five only) per hectare per annum.

Patta lands : Rs. 12/50 (Rupees twelve & naye paise fifty only) per hectare per annum.

Surface rent and water rate.: At such rate as the land revenue and cess assessable on the land are paid.

The appellant started mining operations soon after the execution of the lease deed and has ever since been paying the royalties, dead rents and other amounts payable under the Deed.

Under Section 115 of the Madras Panchayats Act (XXXV of 1958), as amended by Madras Act XVIII of 1964, the appellant was required to pay local cess at 45 paise per rupee as royalty. The imposition of tax was with retrospective effect along with local cess surcharge under Section 116 of the Act.

The Collector on 10th April, 1965, demanded cess on royalty payable under the Act on minerals carried on during the period 1-7-1961 to 31-12-1964, and the petitioner was threatened of serious consequences in case of default of payment on receipt of that communication. Thereafter, writ petition No. 1864/65 was filed in the High Court of Madras. By the judgment delivered and order passed on 23rd February, 1967, a learned single Judge of the Madras High Court Justice Kailasam dismissed the writ petition holding that the cess levied under Section 115 of the Act is a tax on land and, as such, falls under Entry 49 of the State List of the Schedule VII of the Constitution, and was within the competence of the State legislature. The Division Bench also dismissed the appeal.

Issue Involved:

1. Whether levy of cess on royalty paid by appellant for mining operation in execution of lease deed under section 115 of the Act, is within the competence of the State Legislature under Entry 49, of List 2?

Decision

The Supreme Court held that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of list II. The Court further held that cess on royalty cannot be sustained under Entry 49 of list II as being a tax on land and section 115 imposing the cess is ultra vires.

It was further held by the court that in any event, royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to entries 23 & 50 of list II, and not entry 49 of list II. But as the fee is covered by the central power under entry 23 or entries 50 of list II, the impugned legislation cannot be upheld.

Ratio Decidendi:

Tax levied on royalty is outside the jurisdiction of the State legislature under scheme of Sections 115 of the Act read with Entry 49 List 2.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of appellant:

1. appellant contended that the impugned measure being a tax, not on share of the produce of the land but on royalty; royalty being the return received from the produce of the land revenue was payable for winning minerals from the land. It cannot be attributable to entry 45 of list II of the 7th Schedule, being not a land revenue.

Arguments on behalf of respondent:

1. respondent contended that levy of tax could be justified under Entries 49 and 50 of list II of the 7th Schedule as taxes on lands and buildings.
2. he further contended that the State has a right to tax minerals. If tax is levied, it will not be irrational to correlate it to the value of the property and to make some kind of annual value basis of tax without intending to tax the income.
3. tax is imposed under Section 115 is not a cess on the mining rights or on royalty but is a tax on land which clearly falls within the authority of the State Legislature in Entry 49 of List II.

Observations

While delivering the judgment Sabyasachi Mukharji, J. observed that, "it is obvious that the said amendment was intended to bring royalty within the Explanation and the definition of land revenue in Section 115 as well as Section 116 of the Act, and was effected by the Gazette Notification of 2nd September, 1964 by Act No. 18 of 1964. In order to appreciate the controversy, it has to be understood that in this case royalty was payable by the appellant which has prescribed under the tease deed, the terms whereof have been noted hereinbefore. The royalty had been fixed under the statutory rules and protected under those rules. The royalty was fixed under the Mines and Minerals (Regulation and Development) Act, 1957 which is a central Act by which the control of mines and minerals had been taken over by the Central Government. It was an Act for the regulation of mines and development of minerals under the control of Union of India. That Act was to provide for the regulation of mines and the development of minerals under the control of the Union of India."[56]

He further observed that, "the extent to which regulation of mines and mineral development under the control of the Union is declared by Parliament by law to be expedient in the public interest, to the extent such legislation makes provisions will denude the State Legislature of its power to override the provision under entry 50 of list II.In view of the Parliamentary legislation under entry 54, list I and the declaration made under Section 2 and provisions of Section 9 of the Act, the State Legislature would be overridden to that extent. Section 2 declares that it is expedient in the public interest that Union should take under its control the regulation of mines and the development of minerals to the extent provided therein."[57]

While giving the concurring judgment G.L. OZA, J. observed that, "that unit of charge of royalty is not only land but land + Labour + Capital. It is therefore clear that if royalty is a tax or an imposition of a levy, it is not on land alone but it is a levy or a tax on mineral (land), labour and capital employed in extraction of the mineral. It therefore is clear that royalty if imposed by the Parliament it could only be a tax not only on land but on these three things stated above.[58]

"It is not in dispute that the cess which the Madras Village Panchayat Act proposes to levy is nothing but an additional tax and originally it was levied only on land revenue, apparently land revenue would fall within the scope of Entry 49 but it could not be

[56] Para 14.
[57] Para 26.
[58] Para 40.

doubted that royalty which is a levy or tax on the extracted mineral is not a tax or a levy on land alone and if cess is charged on the royalty it could not be said to be a levy or tax on land and therefore it could not be upheld as imposed in exercise of jurisdiction under Entry 49 List II by the State Legislature.[59]

"Thus it is clear that by introducing this explanation to Section 115 Clause (1) widening the meaning of words 'land revenue' for the purposes of Sections 115 and 116. When the Legislature included Royalty, it went beyond its jurisdiction under Entry 49 List II and therefore clearly is without the authority of law. But this also may lead to an interesting situation. This cess levied under Section 115 of the Madras Village Panchayat Act is levied for purposes indicated in the scheme of the Act and it was intended to be levied on all the lands falling within the area but as this cess on royalty is without the authority the result will be that the cess is levied so far as lands other than the lands in which mines are situated are concerned but lands where mines are situated this levy of cess is not in accordance with that law."[60]

"This anomaly could have averted if the Legislature in this explanation had used words 'surface rent' in place of royalty. Even if the lands where mines are situated and which are subject to licence and mining leases even for those lands there is a charge on the basis of the surface of the land which is sometimes described as surface rent or sometimes also as 'dead rent'. It could not be doubted that if such a surface rent or dead rent is a charge or an imposition on the land only and therefore will clearly fall within the purview of Entry 49. List II and if a cess is levied on that it will also be justified as tax on land falling within the purview of Entry 49 and it will also be uniform as this cess would be levied in respect of the lands- irrespective of the fact as to whether the land is one where a mine is situated or land which is only used for other purposes for which land revenue is chargeable."[61]

[59] Para 41.
[60] Para 42.
[61] Id.

Jilubhai Nanbhai Khachar, etc. v. State of Gujarat and another

AIR1995SC142, JT1994(4)SC473, 1994(3)SCALE389, 1995Supp(1)SCC596, [1994]Supp1SCR807

Date of Decision 20/07/1994

(K. Ramaswamy and N. Venkatachala, JJ.)

Composition of the Bench: 2 Judges

Relevant Provisions of the Constitution of India: Articles 13(2), 14, 19(1), 21, 30(2), 31A, 39, 51A, 162, 246, 300A and 368.

Brief Facts:

Five appeals were filed challenging the constitutionality of the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982.

In the erstwhile State of Saurashtra, the Rulers entered into agreements with Taluqadar and estate holders and also created a class of interested people known as Barkhalidars or Girasdars. The rulers granted various parcels of lands together with all rights in or interest over those lands for cultivation on payment of revenue etc. with a right of succession in favour of Girasdars or Barkhalidars. The appellants are successors of Barkhalidars and Girasdars.

This land tenure system was done away with by progressive different land tenures conferring permanent ryotwari settlements on the tiller of the soil through the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 which later became the Act, the Saurashtra Land Reforms Act, 1951; the Saurashtra Barkhali Abolition Act, 1951 and the Saurashtra Estates Acquisition Act, 1952. Under the respective statutes the rights and liabilities of Girasdars or Barkhalidars have been determined.

Later on Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982 were adopted. Section 69 of the Code, was adapted to the Saurashtra region of the Gujarat State.

Issue Involved:

1. Whether by enacting Section 69A of the Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982 which covers the field of mines and minerals, the state legislature has encroached upon the field reserved to the centre?

Decision

The Supreme Court held that state has not encroached upon the power of centre and the said section has been enacted by State Legislature under Entry 18 (land) and Entry 23 (Regulation of Mines and mineral development) of part II of the State List of Seventh Schedule and Entry 42 of List III of the Seventh Schedule (Acquisition of Property).

Ratio Decidendi:

When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of the appellant:

1. The counsel for the appellant contended that, under Entry 54, of List I of the Seventh Schedule to the Constitution, since Regulation of Mines and Minerals Development Act, 1957 occupies the field of mines and minerals covered in Section 69A of the Amendment Act, it is void and is ultra vires of the Constitution.

Observations

While delivering the judgment K. Ramaswamy, J. observed that, "it is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related Articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may

have the widest amplitude. Burden is on the appellants to prove affirmatively of its invalidity."[62]

He further observed that, "it must be remembered that we are interpreting the Constitution and when the court is called upon to interpret the Constitution, it must not be construed in any narrow or pedantic sense and adopt such construction which must be beneficial to the amplitude of legislative powers. The broad and liberal spirit should inspire those whose duty is to interpret the Constitution to find whether the impugned Act is relatable to any entry in the relevant List."[63]

He further observed that, "it is seen that under Entry 18 of List II (State List) 'land', that is to say, right in or over the land.... Entry 23 (Regulation of Mines and Mineral Development) subject to the provision of List I in respect of regulation and development under the control of the Union Govt. So it relates to regulation and development of mines and minerals. Entry 42 of List III (Concurrent List) concerns Acquisition and Requisition of property as amended by Section 26 of the Constitution (7th Amendment Act, 1956). These specify the field of legislation given to the Gujarat State Legislature Subject to Entry 54 of List I (Union List). It is seen that under Entry 18 of the State List, land, i.e. rights in or over land which includes acquisition of the property. Entry 23 of List II which is subject to Entry 42 of List III (Concurrent List), provides field of legislation by the State legislature. Article 246(3) of the Constitution gives exclusive power to make law for the State of Gujarat or any part thereof. It is seen that Amendment Act had received the assent of the President."[64]

"Land in Entry 18 is not restricted to agricultural land alone but includes non-agricultural land etc. The words 'rights in' or 'over land' confer very wide power which is not limited by rights between the land holders inter se or the land holder or the State or the landholder or the tenant. It is seen that restriction or extinction of existing interest in the land includes provision for abolition and extinguishment of the rights in or over the land. Resumption of the estate is one of the objectives of the government and the Act seeks to serve that object. Resumption includes all ancillary provisions, cancellation or extinguishment of any existing grant by the ex-Rules or lease by grant with retrospective effect."[65]

[62] Para 7.
[63] Id.
[64] Para 9.
[65] Para 10

Krishna Bhimrao Deshpande v. **Land Tribunal, Dharwad and others**

AIR1993SC883; JT1992(6)SC149; 1992(3)SCALE10; (1993)1SCC287; [1992]Supp2SCR331

Date of Decision 03/11/1992

(L.M. Sharma and K. Jayachandra Reddy, JJ.)

Composition of the Bench: 2 Judges

Relevant Provisions of the Constitution of India: Articles 249, 250 and 252.

Brief Facts:

This case came before the Supreme Court as special leave petition challenging the validity of the Karnataka Land Reforms Act, 1961 as amended in 1974.

In 1972, the Karnataka Legislature passed a resolution under Article 252 of the Constitution to the effect that all the matters connected with imposing a ceiling on urban immovable property and the acquisition of such property in excess of the ceiling limit for public purposes shall be regulated in the State by Parliament by law. The State Legislature thus divested itself of the legislative competence to enact law in respect of subject-matter of the resolution. On 1/04/1974 the amended Karnataka Land Reforms Act was enacted and under the said Act the tenant of the land covered by the Act is entitled to the grant of occupancy rights after making an application under the Act. This Act came into force on 02/01/1985 but for the purpose of grant of occupancy rights 01/04/1974 was the relevant date. In the year 1975 the Governor of Karnataka passed the Urban Agglomeration Ordinance where under all lands between the peripheries of 8 K.Ms. of the municipal limits of Hubli Dharwad were declared as urban agglomeration land. In the year 1976 the Parliament passed the Ceiling Act for imposition of ceiling on urban properties and the Act was made applicable to Karnataka also in view of the resolution passed by the State Government. The petitioners challenged the conferring of occupancy rights on the tenants before the High Court.

Issue Involved:

1. Whether the provisions of the Karnataka Land Reforms Act, 1961 as amended in 1974 cease to be applicable in all respects to the lands which came within the purview of the Urban Land (Ceiling and Regulation) Act, 1976?

Decision

The court decided that there is no conflict between the two Acts. The imposition of ceiling on urban immovable property is an independent topic and cannot be construed as to nullify the other subject left in the domain of the State Legislature under Entry 18 inasmuch as imposition of ceiling is a distinct and separately identifiable subject and does not cover the other measures such as regulation of relationship of landlord and tenant in respect of which the State Legislature has competence to legislate.

Ratio Decidendi:

Imposition of ceiling on urban land is a distinct and independent subject as compared to imposition of ceiling on owning or holding agricultural land or any other kind of property which do not attract the Urban Ceiling Act. Likewise it cannot be said that the pith and substance of the law governing the conferment of ownership of land on the tenant is a law regulating the imposition of ceiling on land holding.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of petitioner:

1. The counsel for the petitioner argued that the lands involved in these cases were within the purview of the Ceiling Act and therefore the provisions of the Land Reforms Act had no application to such lands on the ground that the provisions of the State Act were repugnant to the provisions of the Central Ceiling Act.

Arguments on behalf of respondent:

1. The counsel for the respondent on the contrary submitted that imposition of ceiling is a distinct and separately identifiable subject and is the power carved out of Entry 18 and vested in the Parliament to legislate and that the power of the State to legislate in respect of the remaining part of the subject-matter is unaffected.
2. He further contended that when two distinct powers have come into existence, vesting law making competence in the State and Parliament, the pith and substance of the laws made by each of them has to be examined to see whether any one of them encroaches the field set apart as falling within the competence of the other body.

Observations

While delivering the judgment K. Jayachandra Reddy, J. observed that, "entire power to legislate in respect of several matters falling under the wide scope of Entry 18 List II is not transferred by the resolution made by the state of Karnataka. The power transferred is only in respect of imposition of ceiling on urban immovable property. There can be several topics in respect of the subject matters of regulatory legislations governing the lands or other immovable properties. The imposition of ceiling on owning property is one such topic and there can be laws regulating ceiling on owing the property, relationship of lessor and lessee, payment of rent, manner of granting the lease, conferment of ownership on the lessee etc."[66]

"It is the concept of a welfare State which is the underlying object in such welfare legislations. It cannot be said that the pith and substance of the law imposing the ceiling on land holding covers the subject of conferring ownership of land on the tenant. These are two distinct powers and therefore the law making competence can be in two different legislative bodies. Consequently it is difficult to hold that the provisions of Chapter III of the Karnataka Land Reforms Act are outside the legislative competence of the State Legislature."[67]

He further observed, "it is well settled that the legislative power of the State has to be reconciled with that of the Parliament and that in their respective fields each is supreme. Even assuming that the State enactment has same effect on the subject matter falling within the Parliament's legislative competence that by itself will not render such law invalid or inoperative."[68]

"The imposition of ceiling on urban immovable property is an independent topic and cannot be construed as to nullify the other subject left in the domain of the State Legislature under Entry 18 inasmuch as imposition of ceiling is a distinct and separately identifiable subject and does not cover the other measures such as regulation of relationship of landlord and tenant in respect of which the State Legislature has competence to legislate. Thus the one topic that is transferred in the resolution passed under Article 252 is distinct and separately identifiable and does not include the remaining topics under Entry 18 in respect of which the State alone has the power to legislate."[69]

[66] Para 5.
[67] Id.
[68] Para 6.
[69] Id.

"An examination of the various provisions of the State Act makes this aspect clear. The object underlying the Act is to make a uniform law in the State of Karnataka relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings etc. Chapter II of the Act contains general provisions regarding tenancy, deemed tenancy, regulation of relationship between landlord and tenant etc. Sections 44 to 62 of Chapter III provide for vesting of tenanted lands in the State Government with effect from 01/03/1974 and conferment of occupancy rights on the tenants. Chapter V controls the eligibility to purchase or possess agricultural lands. Chapters VI to XI have many other provisions regarding agrarian reforms."[70]

"However, a ceiling provision under Section 45(2) provides for computation of the area in respect of which the tenant may be granted occupancy rights. But it is clear that ceiling on the area in this context is only for the purpose of Section 45. These are all topics regarding the conferment of occupancy rights on the respective tenants and they do not in any way conflict with the subject matter transferred to the Parliament by the resolution passed under Section 252."[71]

[70] Id.
[71] Id.

M/s. R.S. Rekchand Mohota Spinning & Weaving Mills Ltd. v. State of Maharashtra

AIR1997SC2591, 1997(4)SCALE339, (1997)6SCC12, [1997]Supp1SCR238

Date of Decision 07/05/1997

(K. Ramaswamy, S.Saghir Ahmed and G.B. Pattanaik, JJ.)

Composition of the Bench: 3 Judges

Relevant Provision of the Constitution of India: Article 246

Brief Facts:

This case came before this court by special leave petition against the judgment made by division bench of the Bombay High Court.

The appellant had installed a mill in the year 1989 and has been drawing water for industrial purpose from the river Wana by installing water pumps at its bank with the help of artificial contrivance. The Government of Maharashtra passed Resolution on June 5, 1972 Under Section 70 of the Maharashtra Land Revenue Code, 1966, and imposed cess on the use of water for non-agriculture purpose. The Tehsildar of Hinganghat on the appellant levied cess in the sum of Rs. 18,348.30 for the period from 1967-68 to 1973-74 on the use of water for industrial purpose.

Issue Involved:

1. Whether the State legislature has power to levy rates of cess on use of flowing water from the river 'Wana'?

Decision

The court held that the legislature is competent to enact law in exercise of the power under Article 246. The Government has power under Section 70 read with Section 20 of the Code to levy water cess on the use of water by the Resolution which came to be passed by the State Government determining the rate at which water cess is accessible on use of water for industrial purpose.

Ratio Decidendi:

The State Government is empowered under section Section 70 read with Section 20 of the Code to levy water cess on the use of water by the Resolution which is passed by the

State Government to determine the rate at which water cess is accessible on use of water for industrial purpose.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of appellant:

1. Counsel for the appellant contends that the Code envisages collection of land revenue from agriculturists for use of water for cultivation purpose. Admittedly, the use of water by the appellant, is for industrial purpose. By operation of Section 70 read with Section 20 of the Code, land revenue is relatable to levy on land of cess on the water used for agricultural purpose. Therefore, the Resolution is clearly illegal. Even if it is construed that the Resolution is valid, the legislature lacks competence to enact law since neither Entry 18 nor Entry 45 or Entry 49 of List are available to sustain the demand under Section 70; therefore, it cannot be construed that Section 70 is law made under any of the Entries.

Arguments on behalf of respondent:

1. The counsel for the respondent contends that though the appellant has been using the water for industrial purpose, he is using the water by artificial contrivance, drawing water from the flowing river; the levy of cess stands vested in the State; and, therefore, the State has power to regulate the payment of cess.

2. The Resolution came to be passed in exercise of the power under Section 70 of the Code relating to the mode of payment and the manner in which the land revenue or cess can be computed. List II Entries, namely, Entries 18, 45 and 49 are to be read with reference to the use to which land and water are put. Water is nothing but integral part of land; without land, water does not exist.

3. Section 70 would come within Entry 45 since it relates to the use of land or water regulated in the rural India. Entry 49 relates to use of land or water in the urban area. Since the factory of the appellant is situated in a rural area, Entry 45 is the appropriate Entry and is required to be broadly interpreted so as to bring back within the legislative competence under Article 246 of the Constitution.

4. He further contends that though the appellant had been using the water for a period of 70 years, he does not have a natural right which right is exercised with the help of artificial contrivance for carrying on industrial activity.

Observations

The court while delivering the judgment observed that, "it is settled principle of interpretation that legislative Entries are required to be interpreted broadly and widely so as to give power to the legislature to enact law with respect to matters enumerated in legislative Entries. Substantive power of the legislature to enact law is under Article 246 of the Constitution and legislative Entries in the respective Lists 1 to 3 of the Seventh Scheduled are of enabling character, designed to define delimit the respective areas of legislative competence of the respective legislature. The substantive power in Article 246 and all other related articles."[72]

It further observed that, "when the cess has been imposed by virtue of power vested under Section 70 of the Code by the State Government by way of legislation, the power of the State is traceable to the legislative Entry under Entry 45 of List II of the Seventh Schedule to the Constitution. Therefore, the demand made is within the legislative competence and the legislature is competent to enact law in exercise of the power under Article 246. The Government has power under Section 70 read with Section 20 of the Code to levy water cess on the use of water by the Resolution which came to be passed by the State Government determining the rate at which water cess is accessible on use of water for industrial purpose. It would accordingly be exigible from levy of tax. It is true that the appellant has been using the water for over 70 years but that cannot be construed to mean that it has a right to draw water by artificial contrivance from the flowing river for use in its factory for industrial purpose. Having used the water for industrial purpose, it is taxable as incidence on cess on water as land cess and, therefore, it is liable to pay water cess at the rates prescribed, by the Government."[73]

[72] Para 11.
[73] Para 14.

Naga People's Movement of Human Rights v. Union of India

AIR1998SC465, 1998(1)ALD(Cri)220, JT1997(9)SC431, 1997(7)SCALE741, (1998)2SCC109, [1997]Supp5SCR469

Date of Decision 27.11.1997

(J.S. Verma, C.J., M.M. Punchhi, S.C. Agrawal, A.S. Anand and S.P. Bharucha, JJ.)

Composition of the Bench: 5 Judges

Relevant Provisions of the Constitution of India - Articles 14, 22, 22(1), 22(2), 245, 246, 248, 254, 257A, 352, 355 and 356

Brief Facts:

These writ petitions and appeals raise common questions relating to the validity of the Armed Forces (Special Powers) Act, 1958 (as amended) enacted by Parliament (hereinafter referred to as 'the Central Act') and the Assam Disturbed Areas Act, 1955 enacted by the State Legislature of Assam (hereinafter referred to as 'the State Act').

The Central Act was enacted in 1958 to enable certain special powers to be conferred upon the members of the armed forces in the disturbed areas in the State of Assam and the Union Territory of Manipur. The State Act was enacted with a view to make better provision for the suppression of disorder and for restoration and maintenance of public order in the disturbed areas in Assam.

Writ petitions were filed in the Gauhati High Court challenging the validity of the Central Act as well as the State Act. All these Civil Writ Petitions and the appeal were transferred to the Delhi High Court. The High Court has upheld the validity of the Central Act and has held that Parliament was competent to enact the Central Act in exercise of statutory power conferred under Entries 1 and 2 of List I read with Article 246 of the Constitution. As regards the State Act the High Court has held that the Assam Rifles is a part and parcel of other armed forces of Union of India as postulated in Entry 2 of List I of the Constitution and the State Legislature of Assam could not legislate with regard to Assam Rifles.

Civil Appeals were filed by the petitioners against the said judgment of the Delhi High Court in the Gauhati High Court which were disposed of by a Division Bench of the

Gauhati High Court. The High Court held that the questions regarding the validity of the Central Act and the State Act were concluded by the earlier judgment of the Delhi High Court and the same cannot be reopened.

Civil Appeals were filed by the Union of India, the State of Assam and other respondents in the writ petition against the said judgment of the Gauhati High Court. The Writ Petitions was filed under Article 32 of the Constitution cahallenging the validity of the Central Act and the State Act as well as the notifications Issued the said enactments declaring disturbed areas in the State of Assam, Manipur and Tripura have been challenged.

Issue Involved:

1. Whether the Parliament was competent to enact the Armed Forces (Special Powers) Act, 1958?
2. Whether the Armed Forces (Special Powers) Act, 1958 is colourable piece of legislation?
3. Whether the provisions of Sections 4 and 5 of the State Act are repugnant to the provisions contained in Cr.P.C. and the Arms Act?

Decision

As regards the competence of Parliament to enact the Central Act it was held that keeping in view Entry 1 of the State List and Article 248 read with Entry 97 and Entries 2 and 2A of the Union List Parliament was competent to enact the Central Act in 1958 in exercise of its legislative power under Entry 2 of the Union List and Article 248 read with Entry 97 of the Union List and, after the forty-second amendment of the Constitution, the legislative power to enact the said legislation is expressly conferred under Entry 2A of the Union List and that it cannot be regarded as a law falling under Entry 1 of the State List. Since Parliament is competent to enact the Central Act, it was held that the Central Act is not open to challenge on the ground of being a colourable legislation or a fraud on the legislative power conferred on Parliament

In respect of third Issue it was held that in pith and substance the State Act is a law enacted in exercise of powers under Entry 1 of List II relating to public order. It is not a law enacted under any of the entries in the Concurrent List (List III). The question of invalidity of the said provisions in the State Act on the ground of being repugnant to a central legislation, e.g., Cr.P.C., enacted under Entry 2 of List III under Article 254 of the

Constitution does not, therefore, arise and Sections 4 and 5 of the State Act cannot be assailed on the ground that the same being repugnant to the provisions of Cr.P.C. are unconstitutional in view of Article 254 of the Constitution.

Ratio Decidendi:

Sections 4 and 5 of the State Act only provide for effective enforcement of the provisions of the Arms Act in the disturbed areas and it cannot be said that they, in any way, encroach upon the field covered by the Arms Act. The challenge to the validity of Sections 4 and 5 of the State Act is, therefore, negatived.

SUMMARY OF THE ARGUMENTS

Petitioners assailed the validity of the Central Act on the ground that it is beyond the legislative competence of Parliament and made following contentions:

1. Under Entry 1 of the State List the State Legislature has been conferred the exclusive power to enact a law providing for maintenance of public order.
2. The use of armed forces in aid of the civil power and that Parliament has been empowered to make a law in that regard and this position has been made explicit by Entry 2A of the Union List. The submission is that the use of the armed forces in aid of the civil power contemplates the use of armed forces under the control, continuous supervision and direction of the executive power of the State and that Parliament can only provide that whenever the executive authorities of a State desire, the use of armed forces in aid of the civil power would be permissible but the supervision and control over the use of armed forces has to be with the civil authorities of the State concerned.
3. The expression "civil power" in Entry 1 of the State List as well as in Entry 2A of the Union List refers to civil power of the State Government and not of the Central Government.
4. The power to deal with "public order" in the widest sense vests with the States and that the Union has the exclusive power to legislate and determine the nature of the use for which the armed forces may be deployed in aid of the civil power and to legislate on and determine the conditions of deployment of the armed forces and the terms on which the forces would be so deployed but the State in whose aid the armed forces are so deployed shall have the

exclusive power to determine the purposes, the time period and the areas in which the armed forces should be requested to act in aid of civil power and that the State retains a final directorial control to ensure that the armed forces act in aid of civil power and do not supplant or act in substitution of the civil power.

5. After the Forty-Second Amendment the legislative power of Parliament in respect of deployment of armed forces of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power flows from Entry 2-A of the Union List. The expression "in aid of the civil power" in Entry 1 of the State List and in Entry 2 A of the Union List implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State.

6. The power to make a law providing for deployment of the armed forces of the Union in aid of the civil power in the State does not comprehend the power to enact a law which would enable the armed forces of the Union to supplant or act as a substitute for the civil power in the State.

7. The Central Act is ultra vires the legislative power conferred on Parliament inasmuch as it is not an enactment providing for deployment of armed forces in aid of the civil power, but is an enactment with respect to maintenance of public order which is a field assigned to the State legislature under Entry 1 of the State List.

8. The Central Act is, in pith and substance, a law relating to 'armed rebellion' and that the subject of armed rebellion falls within the ambit of the emergency powers contained in Part XVIII (Articles 352 to 360) of the Constitution and that in exercise of its legislative power under Entry 2A of the Union List Parliament has no power to legislate on the subject of armed rebellion.

9. The Central Act was enacted to deal with a disturbed or dangerous condition which is no less than armed rebellion and the Parliament is seeking to by-pass Article 352 or Article 356 of the Constitution and the Central Act is, therefore, unconstitutional.

10. The Central Act deals with the situation and the circumstances which are broadly similar to the circumstances of 'internal disturbance' and 'armed rebellion' in which a proclamation under Article 352 would be made for a part of the territory of India and that such a proclamation under Article 352 is the only and exclusive method to deal with such circumstances and the Parliament is dis-empowered from enacting legislation dealing with 'armed rebellion' terrorism or insurgency in any part of India.

11. The circumstances covered by the Central Act and Article352 are similar, the Central Act is a colourable legislation and a fraud on the Constitution since it does not incorporate within it constraints similar to those contained in Article 352 which have the effect of limiting its application within stringent limits and enabling a responsible and effective monitoring of its use and abuse.

12. The provisions of Sections 4 and 5 of the State Act are repugnant to the provisions contained in Cr.P.C. and the Arms Act, it may be said that in pith and substance the State Act is a law enacted in exercise of powers under Entry 1 of List II relating to public order.

Respondents Contended:

1. The proclamation of Emergency under Article 352 has a far reaching consequence and can effect very seriously the legislative and executive powers of the State and that the power that has been conferred under the Central Act is of a very limited nature.

2. After the insertion of "armed rebellion" in Article 352 by the Constitution (Forty-fourth Amendment) Act, 1978, a clear distinction had been drawn between 'internal disturbance' and 'armed rebellion' and the power under Article 352 can be invoked only when there is a threat to the security of India by armed rebellion or war or external aggression and the situation of internal disturbance would not justify invocation of Article 352. Nor would it justify the invocation of the drastic provisions of Article 356 by the President. But, at the same time, the situation would entitle the Union Government to invoke its power and indeed perform its duties under Article 355.

Observations

"Entry 2-A of the Union List and Entry I of the State List is that in the event of deployment of the armed forces of the Union in aid of the civil power in a State, the said forces shall

operate in the State concerned in cooperation with the civil administration so that the situation which has necessitated the deployment of the armed forces is effectively dealt with and normalcy is restored."

The Sarkaria Commission on Center-States Relations was also dealt with above aspect. The Commission has observed:

"...Clearly, the purpose of deployment which is to restore public order and ensure that effective follow up action is taken in order to prevent recurrence of disturbances, cannot be achieved without the active assistance and co-operation of the entire law enforcing machinery of the State Government. If the Union Government chooses to take unilateral steps to quell an internal disturbance without the assistance of the State Government, these can at best provide temporary relief to the affected area and none at all where such disturbances are chronic.

Thus, practical considerations, as indicated above, make it imperative that the Union Government should invariably consult and seek the cooperation of the State Government, if it proposes either to deploy suo motu its armed forces in that State or to declare an area as "disturbed", the constitutional position notwithstanding. It need hardly be emphasised that without the State Government's cooperation, the mere assertion of the Union Government's right to deploy its armed forces cannot solve public order problems.

We recommend that, before deploying Union armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or before declaring an area within a State as a "disturbed area", it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought by the Union Government. However, prior consultation with the State Government is not obligatory."

"… it has to be borne in mind that Articles 352 and 356 contain emergency powers which can be invoked by the President exercising the executive power of the Union subject to such action being approved by both the Houses of Parliament within a specified period. The Central Act, on the other hand, has been enacted by Parliament in exercise of its legislative power under Articles 246 and 248.[74]

"Article 355 of the Constitution where under a duty has been imposed on the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the

[74] Para 34

Constitution. In view of the said provision the Union Government is under an obligation to take steps to deal with a situation of internal disturbance in a State. There can be a situation arising out of internal disturbance which may justify the issuance of a proclamation under Article 356 of the Constitution enabling the President to assume to himself all or any of the functions of the Government of the State. That would depend on the gravity of the situation arising on account of such internal disturbance and on the President being satisfied that a situation has arisen where the Government of the State cannot be carried on in accordance with provisions of the constitution…….. The provisions of the Central Act have been enacted to enable the Central Government to discharge the obligation imposed on it under Article 355 of the Constitution and to prevent the situation arising due to internal disturbance assuming such seriousness as to require invoking the drastic provisions of Article 356 of Constitution. The Central Act does not confer on the Union the executive and legislative powers of the States in respect of which a declaration has been made under Section 3. It only enables the personnel of armed forces of the Union to exercise the power conferred under Section 4 in the event of a notification declaring an area to be a disturbed area being Issued under Section 3. Having regard to the powers that are conferred under Section 4, we are unable to appreciate how the enactment of the Central Act can be equated with the exercise of the power under Article 356 of the Constitution.[75]

"The use of the expression "colourable legislation" seeks to convey that by enacting the legislation in question the legislature is seeking to do indirectly what it cannot do directly. But ultimately the Issue boils down to the question whether the legislature had the competence to enact the legislation because if the impugned legislation falls within the competence of the legislature the question of doing something indirectly which cannot be done directly does not arise."[76]

In Para graph 79 the following conclusions were laid:-

(1) Parliament was competent to enact the Central Act in exercise of the legislative power conferred on it under Entry 2 of List I and Article 248read with Entry 97 of List I. After the insertion of Entry 2 A in List I by the Forty-Second Amendment to the Constitution, the legislative power of Parliament to enact the Central Act flows from Entry 2A of List I. It is not a law in respect of maintenance of public order falling under Entry I of List II.

(2) The expression "in aid of the civil power" in Entry 2A of List I and Entry 1 of List II implies that deployment of the armed forces of the Union shall be

[75] Para 36
[76] Para 39

for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State.

(3) The word "aid" postulates the continued existence of the authority to be aided. This would mean that even after deployment of the armed forces the civil power will continue to function.

(4) The power to make a law providing for deployment of the armed forces of the Union in aid of the civil power of a State does not include within its ambit the power to enact a law which would enable the armed forces of the Union to supplant or act as a substitute for the civil power in the State. The armed forces of the Union would operate in the State concerned in co-operation with the civil administration so that the situation which has necessitated the deployment of armed forces is effectively dealt with and normalcy is restored.

(5) The Central Act does not displace the civil power of the State by the armed forces of the Union and it only provides for deployment of armed forces of the Union in aid of the civil power.

(6) The Central Act cannot be regarded as a colourable legislation or a fraud on the Constitution. It is not a measure intended to achieve the same result as contemplated by a Proclamation of Emergency under Article 352 or a proclamation under Article 356 of the Constitution.

(7) Section 3 of the Central Act does not confer an arbitrary or unguided power to declare an area as a "disturbed area". For declaring an area as a "disturbed area" under Section 3 there must exist a grave situation of law and order on the basis of which the Governor/ Administrator of the State/Union Territory of the Central Government can form an opinion that the area is in such a disturbed or dangerous condition that the use of the armed forces in aid of the civil power is necessary.

(8) A declaration under Section 3 has to be for a limited duration and there should be periodic review of the declaration before the expiry of six months.

(9) Although a declaration under Section 3 can be made by the Central Government suo moto without consulting the concerned State Government, but it is desirable that the State Government should be consulted by the Central Government while making the declaration.

(10) The conferment of the power to make a declaration under Section 3 of the Central Act on the Governor of the State cannot be regarded as delegation of the power of the Central Government.

(11) The conferment of the power to make a declaration under Section 3 of the Central Act on the Central Government is not violative of the federal scheme as envisaged by the Constitution.

(12) The provisions contained in Sections 130 and 131 Cr.P.C. cannot be treated as comparable and adequate to deal with the situation requiring the use of armed forces in aid of civil power as envisaged by the Central Act.

(13) The powers conferred under Clauses (a) to (d) of Section 4 and Section 5 of the Central Act on the officers of the armed forces, including a Non-Commissioned Officer are not arbitrary and unreasonable and are not violative of the provisions of Articles 14, 19 or 21 of the Constitution.

(14) While exercising the powers conferred under Section 4(a) of the Central Act, the officer in the armed forces shall use minimal force required for effective action against the person/persons acting in contravention of the prohibitory order.

(15) A person arrested and taken into custody in exercise of the powers under Section 4(c) of the Central Act should be handed over to the officer-in-charge of the nearest police station with least possible delay so that he can be produced before nearest magistrate within 24 hours of such arrest excluding the time taken for journey from the place of arrest to the Court of Magistrate.

(16) The property or the arms, ammunitions, etc : seized during the course of search conducted under Section 4(d) of the Central Act must be handed over to officer-in-charge of the nearest police station together with a report of the circumstances occasioning such search and seizure.

(17) The provisions of Cr.P.C. governing search and seizure have to be followed during the course of search and seizure conducted in exercise of the powers conferred under Section 4(d) of the Central Act.

(18) Section 6 of the Central Act in so far as it confers a discretion on the Central Government to grant or refuse sanction for instituting prosecution or a suit or

proceeding against any person in respect of anything done or purported to be done in exercise of the powers conferred by the Act does not suffer from the vice of arbitrariness. Since the order of the Central Government refusing or granting the sanction under Section 6 is subject to judicial review, the Central Government shall pass an order giving reasons.

(19) While exercising the powers conferred under Clauses (a) to (d) of Section 4 the officers of the armed forces shall strictly follow the instructions contained in the list of "Do's and Don'ts" Issued by the army authorities which are binding and any disregard to the said instructions would entail suitable action under the Army Act, 1950.

(20) The instructions contained in the list of "Do's and Don'ts" shall be suitably amended so as to bring them in conformity with the guidelines contained in the Decisions of this Court and to incorporate the safeguards that are contained in Clauses (a) to (d) of Section 4 and Section 5 of the Central Act as construed and also the direction contained in the order of this court dated July 4, 1991 in Civil Appeal No. 2551 of 1991.

(21) A complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act shall be thoroughly inquired into and, if on enquiry it is found that the allegations are correct, the victim should be suitably compensated and the necessary sanction for institution of prosecution and/ or a suit or other proceeding should be granted under Section 6 of the Central Act.

(22) The State Act is, in pith and substance, a law in respect of maintenance of public order enacted in exercise of the legislative power conferred on the State Legislature under Entry 1 of List II.

(23) The Expression "or any officer of the Assam Rifles not below the rank of Havildar" occurring in Section 4 and the expression "or any officer of the Assam Rifles not below the rank of Jamadar" in Section 5 of the State Act have been rightly held to be unconstitutional by the Delhi High Court since Assam Rifles are a part of the armed forces of the Union and the State Legislature in exercise of its power under Entry 1 of List II was not competent to enact a law in relation to armed forces of the Union.

(24) The rest of the provisions of Sections 4 and 5 of the State Act are not open to challenge under Article 254 of the Constitution on the ground of repugnance to the provisions contained in Cr.P.C. and the Arms Act."

National Engineering Industries Ltd. v. Shri Kishan Bhageria and Ors.

AIR1988SC329; JT1987(4)SC569; (1988)ILLJ363SC; 1987(2)SCALE1301; 1988Supp(1)SCC82; [1988]1SCR985; 1988(2)SLJ23(SC)

Date of Decision 11.11.1987

Name of Judges: G.L. Oza and Sabyasachi Mukharji, JJ.

Composition of the Bench: 2 Judges

Relevant Provisions of the Constitution of India: Articles 14, 22, 22(1), 22(2), 245, 246, 248, 254, 257A, 352, 355 and 356.

Brief Facts:

Shri Shri Kishan Bhageria, respondent, was working under the appellant-company as an Internal Auditor. The appellant alleged that the respondent started absenting himself from 28-1-78 and as such was not entitled to any salary for any period beyond 28-1-78. The respondent on 4th of May, 1978 filed an application under Section 33C(2), Industrial Disputes Act, 1947 claiming the total sum of Rs. 4,746.40 on account of salary from 1st of January, 1978 to 30th of April, 1978 at the rate of Rs. 1,186.60 per month. On or about 9th of November, 1978 the appellant passes an order dismissing the respondent from service.

The respondent thereafter on 2nd of January, 1979 filed an application under Section 28A, Rajasthan Shops and Establishments Act, 1958 which was dismissed on 31st of July, 1979 on the ground of limitation. The Labour Court on 2nd of August, 1979 held that the respondent was doing clerical duties and as such was a workman under the Act and he was entitled to Rs. 2,060/- as salary from 1-1-78 to 9-3-78. The appellant filed Writ Petition in the Rajasthan High Court against the order of the Labour Court allowing the said salary. The respondent also filed another writ petition being for declaration that he was entitled to receive Rs. 2,066.98 as salary from 9-3-78 to 30-4-78. These aforesaid writ petitions were disposed of by the learned single Judge of the Rajasthan High Court on 16-3-82 holding that the respondent was not a workman. On 17th of October, 1986 the Division Bench reversed the judgment of the learned single Judge and held that the respondent was a workman. Aggrieved by the aforesaid orders the appellant has come up in these appeals before this Court.

Issue Involved:

Whether the Industrial Dispute Act, 1947 would prevail or the Rajasthan Shops and Establishments Act, 1958 would apply?

Decision

The state law, the Rajasthan Act will prevail over central legislation, the Industrial Disputes Act, in case the subject falls under the Concurrent List, if the state law has received the assent of the President. Since there is no repugnancy or inconsistency between the two acts the both are supplement to each other.

Ratio Decidendi:

In case of subjects which come under Concurrent List the state law which has received the assent of the President would prevail even if there is an earlier law by the Parliament.

SUMMARY OF THE ARGUMENTS

On behalf of the appellant it was contended that an application under Section 28A of the Rajasthan Act, by respondent, was dismissed on ground of limitation and that there would be inconsistency or repugnancy between the two Decisions, one given on limitation and the other if any relief is given under the Industrial Disputes Act.

Observations

Sabyasachi Mukharii, J. observed that under Article 254(2) of the Constitution if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that State even if there is an earlier law by the Parliament on a subject in the Concurrent List. Since Chapter 6A including Section 28A was inserted in the Rajasthan Act subsequent to the Industrial Disputes Act, the Rajasthan Act would prevail. If there is any repugnancy then Rajasthan Act will prevail.[77]

Both these Acts deal with the rights of the workman or employee to get redress and damages in case of dismissal or discharge, but there is no repugnancy because there is no conflict between these two Acts, in pith and substance. There is no inconsistency between these two acts. These two Acts are supplemental to each other.[78]

[77] Para 12.
[78] Ibid.

He also observed that the period of limitation is provided under the Rajasthan Act of six months but there is no period of limitation as such provided under the Industrial Disputes Act. The Section 37 of the Rajasthan Act declares that law should not be construed to curtail any of the rights of the workmen. Therefore in no way the Rajasthan Act could be construed to curtail the rights of the workman to seek any relief or to go in for adjudication in case of the termination of the employment. In the premises, there is no conflict between the two Acts and there is no question of repugnancy.[79]

[75] Para 14.

New Delhi Municipal Committee v. State of Punjab, etc.

AIR1997SC2847, JT1997(1)SC40, 1996(9)SCALE613, (1997)7SCC339, [1996]Supp10SCR472

Date of Decision 19.12.1996

(A.M. Ahmadi, C.J.I., J.S. Verma, S.C. Agrawal, B.P. Jeevan Reddy, Dr. A.S. Anand, B.L. Hansaria, S.C. Sen, K.S. Paripoornan and B.N. Kirpal, JJ.)

Composition of the Bench: 9 Judges

Referred Provision of the Constitution of India - Articles 54, 133, 142, 239, 240, 241, 242, 243, 244, 245 to 255, 256 to 263, 285, 289(1), 357, 367 and 372.

Brief Facts:

The Punjab Municipal Act, 1911, is applicable to the union territory of Delhi and under the provisions of this Act, the NDMC had been levying property tax on the immovable properties of the respondent states situated within Delhi. The respondents challenged the imposition of this Act before the Delhi High Court contending that it would fall with the exception provided for under Article 289(1) of the Constitution. The Delhi High Court in Its Judgment accepted this contention, relied upon the relevant Observations of the nine bench Constitution Bench of Supreme Court in Sea Customs Act, 1878, Section 20(2) to quash the assessment and demands of house tax in respect of the properties of the State and restrained the NDMC from levying such a tax in future.

The NDMC filed an application under Article 133(1) (c) of the Constitution seeking the grant of the certificate for leave to appeal to the Supreme Court. While granting the certificate the High Court observed that the principle question before it had grave constitutional implications which require an authoritative Decision by this court.

A Division bench of Supreme Court directed that the NDMC could continue to make assessments but it was not to Issue demand notices or make any attempts towards realization of the tax. Later another Division Bench of Supreme Court referred the matter to a Constitutional Bench which referred the matter to nine judge Bench.

The Bench observed that it had concluded in the Decision in the Sea Customs Case. The point at Issue was covered therein. However the argument advanced was not considered

by the earlier Decisions, were plausible and required consideration which necessitated the setting up of a nine judge bench to hear the matter.

Issue Involved:

Whether property of States situated in union territory namely NCT of Delhi exempt from Union tax?

Whether Parliament in exercise of powers imposes tax on trading and business activities of state Governments within NCT?

Decision

Majority held that levy of property tax on such land/buildings which were not used or occupied for purposes of any trade or business, carried on by the state government with profit motive is invalid and incompetent by virtue of Article 289(1). However, if levy on such land/buildings is used or occupied for any trade or business carried on by or on behalf of state governments would be valid by virtue of Article 289(2).

Minority held that the states are entitled to exempt from levy of property tax on their lands/ buildings situated within NCT Delhi including those occupied for purposes of any trade or business.

SUMMARY OF THE ARGUMENTS

Appellants Contended that:

1. Even while exercising its powers under Article 246(1), Parliament can levy taxes directly on property.
2. The phrase "Union Taxation" used in Article 289(1) of the Constitution has not been defined either in the text of the Constitution or in any of the Decisions rendered by this Court. Pointing out the difference between Articles 285 & 289, it was stated that (i) the former exempts "all taxes" whereas the latter limits its exemption to taxes relating to "property and income"; and (ii) the former uses the words "imposed by a State or by any authority within a State" whereas the latter uses the phrase "Union Taxation".
3. Article 289(1) and Section 155 of the 1935 Act by pointing out that while Section 155(1) uses the words "lands & buildings", Article 289(1) uses the word "property".

4. Two possible meanings could be ascribed to the phrase "Union Taxation" : (i) Taxes that are levied by Parliament in exercise of its powers under Article 246(1) and pertain only to entries in List I of the Seventh Schedule; (ii) Any tax that is levied as a result of a law passed by Parliament including those that are relatable to entries in List II and List III of the Seventh Schedule.

5. When Parliament makes laws in exercise of its powers under Article 246(4) and in doing so, legislates on entries in List-II, it is doing so in a different capacity and the character of these laws is different from ordinary Union legislations. To drive home the argument certain other provisions of the Constitution, such as, Articles 249, 250, 252 and the Emergency Provisions in Part XVIII of the Constitution which empower Parliament to make laws on entries in List II were referred.

6. A Union Territory is an independent Constitutional entity akin to a State and that it has an identity separate from that of the Union Government.

7. Referring to the two Decisions of this Court on the interpretation of Article 289(1) rendered in the Sea Customs case and the APSRTC case, it was contended that the Issue arising before this Court in the present matter had not arisen for adjudication in either of these two cases. It was submitted that the Observations made by Sinha, CJ. in the former case would, therefore, have to be regard as obiter dicta since the Issue of laws relating to Union Territories was not before the Court. Further it was explained that such an Observations was made in the context situations where Parliament can directly impose a tax on property to counter the argument that only States could levy taxes directly on property under the Constitution. It was stated that the Observations was founded on misconceived premises and that there were other, more appropriate situations where Parliament could impose taxes directly on Property, such as, in the case of Entry 3, List I which deals with Cantonments and the Cantonments Act, 1924 which allows Parliament to levy taxes for Cantonments. It was then contended that such a power would be available to Parliament even when it enacts legislation by using Entry 49, List I which relates to patents, inventions and designs, and also in the case of a few other entries in List I.

8. In any event, the taxes levied by NDMC would not amount to Union Taxation because they are in the nature of a Municipal Tax. Attention in this regard was drawn to the Constitution (Seventy-Fourth) Amendment Act, 1992 which incorporated Part IXA, dealing with Municipalities in our Constitution. It was argued that Municipalities now have an elevated Constitutional status and that since they have their own machinery for collecting taxes besides having control over the fixing and charging of the taxes, these taxes cannot be regarded as part of "Union Taxation".

9. The relevant provisions of the Act, the New Delhi Municipal Corporation Act, 1994 and the Delhi Municipal Corporation Act, 1957 indicate that each of these bodies has been vested with wide powers of fixing the rates of taxes, collecting them and then using the proceeds, which go to specially created Municipal funds, towards securing their objectives. Drawing sustenance from the language of Article 285, which specifically exempts taxes imposed by local authorities, it was submitted that since an express exemption is not referred to in Article 289(1), municipal taxes were not meant to be covered within its exemption and, therefore, the States are bound to pay these taxes to the NDMC and the MCD.

10. Article 265 which incorporates an important constitutional limitation on the power of taxation when it states that "no tax shall be levied or collected except by authority of law". In India, there are only two legislatures that are competent to tax : 'Parliament for the Union' and the 'legislature of a State'. Therefore, all taxation must fall within either of the categories-Union Taxation or State Taxation. Municipalities and other local authorities cannot have an independent power to tax and that is why there can be no exemption for Municipal taxes independent of the exemption for State of Union Taxation. Article 289 exempts only Union Taxation without mentioning municipal taxes which would imply that the States would not be exempt from paying the latter, cannot be accepted.

11. It is not the identification of the legislature that imposes the law which is determinative of the Issue of "Union Taxation". To determine the true character of Union Taxation, the subject of the levy must be analyzed. When Parliament makes use of its power under Article 246(4), it does so in an unusual

circumstance where the 'theme' of the legislation undergoes a change. In determining the scope of "Union Taxation" attention must be paid to the 'theme', (i.e., the context and the specific circumstances in which the tax is levied) rather than to the 'author' (i.e. the body which is levying the tax). Therefore, submitted that the interpretation of "Union Taxation" should be restricted to situations where Parliament makes laws imposing taxes under Article 246(1).

12. Articles 285 and 289 do not exhaust the entire area of taxation under the Constitution. Referring to certain other provisions where Parliament is required to make laws, Articles 249, 250, 252, 253 and 357, were referred.

13. It was submitted that these provisions envisage unusual situations where, although Parliament is the law making body, the resulting laws are not Union laws in the ordinary sense and the taxes imposed by these laws cannot be said to form part of "Union Taxation".

14. Taws made by Parliament under Article 246(4) are not the norm and cannot be said to form part of "Union Taxation".

15. Analysis would reveal that though Union 'Territories are not States; they are akin to States, being nascent States. In most cases, when a territory is acquired by the Union and before it is admitted to the Indian Union as a full-fledged State, it is groomed for Statehood by being nurtured as a Union Territory.

Respondent States:

1. The doctrine of immunity of instrumentalities, which is said to be the legal basis for the incorporation of Articles 285 and 289 into our Constitution, postulates that in a federal set up, there should be inter-governmental tax immunities between the federal and State wings. Such immunity is a Constitutional limitation on the law-making power of the respective legislatures in the field of taxation as a whole. Though both the 1935 Act as well as the Constitution had incorporated such reciprocal tax immunities, they were not adopted to the same extent as in Canada and Australia. However unlike in these countries, the Union of India has sizeable territory of its own comprising all the Union territories specified in the First Schedule. The power to make laws including authorizing levy or collection of taxes of all kinds is conferred ex-

clusively on the Union Parliament and these territories would form an important part of the reciprocal tax immunities.

2. On to the definition of the term "Union Taxation", it was pointed out that in Article 285 the term "State Taxation" has been defined as "all taxes imposed by a State or by any authority within a State'. To adopt a similar interpretation for "Union Taxation" even though Article 289 does not contain any such definition by pointing out that being corollaries of each other, these terms would have been used to convey a similar meaning. If this definition were to be accepted, "Union Taxation" would mean "all taxes imposed by the Union" and, therefore, the State would be entitled for exemption from the taxes imposed by NDMC.

3. The scheme of the 1935 Act, it was quite clear that by virtue of Section 155, the Provinces (predecessors of "States") were entitled to exemption from taxes on 'lands and buildings' in the Chief Commissioner's Provinces (predecessors of "Union Territories"). The position continues in the present Article 289 and, in fact, the immunity is much wide in scope since 'property' is wider than 'lands and buildings'.

4. The relevant passages of the Sea Customs case and stressed that both the minority and the majority opinions in that case had taken the view that the properties of States situated in Union Territories were exempt from taxation.

5. Mr. A.K. Ganguli, learned Counsel for the State of Tripura, lent support to the submissions of Mr. Rao on the Issue of Parliamentary laws being applicable to Union Territories; he emphasized that even after the introduction of Articles 239-AA and 239AB in the Constitution, the Delhi Legislature could not be said to be a legislative body with plenary powers.

6. The legislative powers conferred on such a body are restricted and limited to certain spheres and are subject to the powers of the Parliament to make laws with respect to any matter for the Union Territories, which obviously refers to Article 246(4) of the Constitution. By way of an analogy, referred Article 244 and the Sixth Schedule to the Constitution which contain provisions for the administration of Tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram and provide for bodies with legislative powers.

7. The provisions contained in Part XII of the Constitution relating to distribution of revenue between the Union and the States are not determinative of the scope of the expression "Union Taxation" in Article 289(1) as they only indicate that though a large number of taxes are levied by the Parliament and collected by the Union Government, eventually, a substantial portion thereof is distributed amongst the States.

8. The Government of India, while preparing its Receipt Budget, has always treated taxes imposed by Parliament and collected from the Union Territories as part of the total tax revenue of the Union Government in which other taxes such as corporation tax, taxes on income, customs duties and union excise duties are also included. Even in respect of non-tax revenue, the receipts from the Union Territories are treated as receipts of the Union Government. Therefore, contended that even the Union Government was of the view that "Union Taxation" included taxes levied by Parliament in Union Territories.

Observations

B.P. Jeevan Reddy . J on behalf Dr. A.S. Anand, S.C. Sen, K.S. Paripoornan and B.N. Kirpal, JJ, while giving majority Decision made following Observations:

(a) the property taxes levied by and under the Punjab Municipal Act, 1911, the New Delhi Municipal Council Act, 1994 and the Delhi Municipal Corporation Act, 1957 constitute "Union taxation" within the meaning of Clause (1) of Article 289 of the Constitution of India;

(b) the levy of property taxes under the aforesaid enactments on lands and/or buildings belonging to the State governments is invalid and incompetent by virtue of the mandate contained in Clause (1) of Article 289. However, if any land or building is used or occupied for the purposes of any trade or business-trade or business as explained in the body of this judgment-carried on by or on behalf of the State Government, such land or building shall be subject to levy of property taxes levied by the said enactments. In other words, State property exempted under Clause (1) means such property as is used for the purpose of the government and not the purposes of trade or business;

(c) it is for the authorities under the said enactments to determine with notice to the affected State Government, which land or building is used or occupied for the purposes of any trade or business carried on by or on behalf of that State Government.[80]

[80] Para 55

Minority Observations

A.M. Ahmadi, C.J.I., on behalf of J.S. Verma, S.C. Agrawal, B.L. Hansaria, JJ., while giving minority Decision made following Observations:

(i) The central Issue in the present matter, namely, whether the properties owned by the States which are situated within Union Territories are exempt from paying property taxes, was specifically answered in the affirmative in the Sea Customs case; the Observations in this regard are part of the ratio decidendi of the case and having been re-affirmed by a Constitution Bench which was hearing a litigation inter parts in the APSRTC case, they constitute good law;

(ii) The definition of 'State' provided in Section 3(58) of the General Clauses Act, which declares that the word 'State' would include 'Union Territory', is inapplicable to inapplicable to Article 246(4);

(iii) The term "Union Taxation" used in Article 289(1) will ordinarily mean "all taxes leviable by the Union" and it includes within its ambit taxes on property levied within Union Territories; therefore, the States can avail of the exemption provided in Article 289(1) in respect of their properties situated within Union Territories;

(iv) Property taxes levied by municipalities within Union Territories are properly within the ambit of the exemption provided in Article 289(1) and the State can avail of the exemption.[81]

Article 246(4);

(iii) The term "Union Taxation" used in Article 289(1) will ordinarily mean "all taxes leviable by the Union" and it includes within its ambit taxes on property levied within Union Territories; therefore, the States can avail of the exemption provided in Article 289(1) in respect of their properties situated within Union Territories;

(iv) Property taxes levied by municipalities within Union Territories are properly within the ambit of the exemption provided in Article 289(1) and the State can avail of the exemption.[82]

[81] Para 181.
[82] Para 181.

Parekh Prints v. Union of India

45(1991)DLT456, 1992(37)ECC78, 1991ECR167(Delhi), 1992(62)ELT253(Del), ILR1992Delhi304, (1992)62ELT253Delhi

Date of Deision: 09.07.1991

(D.P. Wadhwa and Dalveer Bhandari, JJ.)

Composition of Judges: 2

Brief Facts:

In this a writ petition was filed in which petitioners challenge the levy of additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957(the Act). In fact they challenge the very validity of the Additional Duties Act.

The petitioners want the court to Issue an appropriate writ or direction restraining the respondents from levying and collecting the additional duties of excise which levy they say is ultra virus Article 366(29A) read with Articles 246 and 274 of the Constitution of India and the petitioners also seek quashing of the notifications Issued under the Central Excises and Salt Act, 1944 (for short the Central Excise Act) being ultra virus Article 274 of the Constitution.

The respondents refute the challenge to the validity of the Additional Duties Act and say that the enactment is relatable not to Entry 54 of the State List but to Entries 84 and 97 of the Union List (List I) of the Seventh Schedule to the Constitution. They say it has been so held even by the Supreme Court and earlier when the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980, was challenged in the Supreme Court in *M/s. Ujagar Prints etc.* v. *Union of India and Others.*

Issue Involved:

1. Whether the levy of additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 is by Union?
2. Whether the Additional Duties Act is constitutional?

Decision

The court said referring to the Act it cannot be disputed that what it levies is a Union duty of excise referable to Entry 84 of the Union List and in any case to Entry 97 of that List.

The Act leaves no room for doubt that it imposes duties of excise which are in addition to the duties of excise under the Act of 1944 and all provisions of 1944 Act insofar those are applicable apply to the provisions of the Act. Preamble of the Act shows that distribution of the additional duties of excise is to be as per the recommendations made by the Finance Commission appointed under Article 280 of the Constitution.

The principle that a State shall not be entitled to any share in the additional duties of excise if it levies sales tax is certainly in accordance with the principles formulated by the Parliament and is valid under Article 272 of the Constitution.

The Constitution gives to the Parliament in specific and unambiguous terms the power to impose the additional duties of excise and to lay the guidelines for its distribution among the States. Any limitation to these powers of the Parliament is contradictory and destructive of these very powers. The Act does not impinge upon the field of legislation of the States and is within the legislative powers of the Union. The Act certainly does not meddle with the rights of the States to impose sales tax. We find no merit in these writ petitions and would dismiss the same with costs.

Ratio Decidendi:

The Constitution gives to the Parliament in specific and unambiguous terms the power to impose the additional duties of excise and to lay the guidelines for its distribution among the States. Any limitation to these powers of the Parliament is contradictory and destructive of these very powers.

SUMMARY OF THE ARGUMENTS

Petitioner:

The petitioner says that Union of India could not interfere with a subject falling under the State List (List II) and since the Additional Duties Act was enacted by Parliament in lieu of sales tax, the said duty of excise was ultra virus the provisions of the Constitution. They then say that since under Article 265 no tax could be levied or collected except by authority of law and since that authority was lacking, the Additional Duties Act is invalid and further that the notifications Issued there under or under the Central Excise Act are again ultra virus the provisions of Article 274 of the Constitution which requires prior recommendation of the President to bills affecting taxation in which States are interested before it is introduced or moved in either House of Parliament.

Respondent:

The respondents refute the challenge to the validity of the Additional Duties Act and say that the enactment is relatable not to Entry 54 of the State List but to Entries 84 and 97 of the Union List (List I) of the Seventh Schedule to the Constitution. They say it has been so held even by the Supreme Court and earlier when the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980, was challenged in the Supreme Court in *M/s. Ujagar Prints etc.* v. *Union of India and Others.*

Observations

D.P. Wadhwa J. made the following Observations:

"Distribution of additional duties of excise among the States is as per the Second Schedule of the Act (Section 4). The Schedule provides that in case if during a financial year there is levied and collected in any State a tax on the sale or purchase of the commodities to which the Act applies, no sums shall be payable to that State out of the additional duties of excise in respect of that financial year, unless the Central Government by special order otherwise directs. Such a contingency has never arisen though. But then this provision is in accordance with Article 272 of the Constitution under which the sums are to be distributed among the States in accordance with such principles of distribution as may be formulated by law."[83]

The court said that, "they find themselves unable to agree with the submissions of the petitioners. Once having found that additional duties of excise under the Act fall within the four corners of Article 272 of the Constitution and the meaning of the enactment being plain and clear we find no room for applying the principles of interpretation or construction to conclude that in "pith and substance" the Act imposes a sales tax and is a colourable piece of legislation. Petitioners cannot be heard to say that though the additional duty is a duty of excise, though by different name, it is yet a sales tax. The argument is a contradiction in itself. Duty of excise is imposed on the manufacture and sales tax is imposed on the sales. It is as simple as that. When the language of the statute is clear and unambiguous and is a valid piece of legislation under the Constitution, we do not have to refer to the Objects and Reasons of the enactment or to the deliberations which preceded the introduction of the Bill and the debates in the Parliament at the time of the passing of the enactment."[84]

[83] Para16
[84] Para14

"They have collected additional duties of excise from the ultimate consumers but have not repaid the same to the credit of the Central Government and they thus utilised half of the duty so collected for their own purposes. Petitioners cannot be permitted to make profit at the cost of public revenue. The petitioners must restore the advantage they had over the respondents because of the stay they enjoyed and consequently deprived the respondents of their lawful revenues during the period stay operated against them."[85]
"Governments are run on public funds and if large amounts all over the country are held up during the pendency of litigations, it becomes difficult for the governments to run and it becomes oppressive to the people. Governments' expenditures cannot be made on bank guarantees or securities, as in this case."[86]

[85] Para 42
[86] Para 40

P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr.

JT1994(7)SC608, 1995(1)KLT172(SC), 1994(5)SCALE1, 1995Supp(2)SCC187, [1994]Supp5SCR526

Decided on: 17/11/1994

(K. Ramaswamy and N. Venkatachala, JJ.)

Composition of the Bench: 2 Judges

Relevant Provisions of the Constitution of India: Articles 14, 19, 20(3), 21, 245, 246, 246(3) and 254(2).

Brief Facts:

This case came before the Supreme Court by a special leave petition against the judgment delivered by the division bench of the Kerala High Court.

The appellants are licencees of arrack or Indian made foreign liquor retail shops or their employees. They have been charged for offences punishable under sub-sections (1) to (3) of Section 57A and 57B [Kerala] Abkari (Amendment) Act, 1984

for having mixed or permitted mixing or noxious substance with liquor or for having failed to take reasonable precautions to prevent such mixing or for being in possession of liquor in which such a noxious substance has been mixed with the knowledge that arrack or Indian made foreign liquors were mixed with methanol (methyl alcohol), a substance which, on consumption, is likely to endanger human life or causes grievous hurt to human beings or causes death. The appellants have challenged the constitutionality of the said two provisions of the Amendment Act.

Issue Involved:

1. Whether the State Legislature was competent to enact the [Kerala] Abkari (Amendment) Act, 1984?

Decision

The Court held that State legislature was competent to enact Amendment Act as Entry 8 of List II, i.e. State List of the Seventh Schedule to the Constitution read with Art. 246(3) of the Constitution, empowers the State Legislature to enact law relating to

intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase or sale of intoxicating liquor and entry 64 deal with offences against law with respect to any of the matters in list II.

Ratio Decidendi:

Blind adherence to strict interpretation which would lead to invalidation of statutes as being legislated in the forbidden sphere should be avoided, lest all beneficial legislations would be stifled at birth and many a subject entrusted to the State legislature rendered ineffectual divesting the State legislature of its power to deal with particular subject of entry or topic.

Observations

While delivering the judgment K. Ramaswamy, J. observed that, "in determining whether the impugned Act is a law with respect to a given power, the court has to consider whether the Act, in its pith and substance, is a law on the subject in question. If the statute relates in pith and substance to a topic assigned to a particular legislature, the Act will not be invalidated even if it incidentally trenches on topics coming within another legislative list. The fact of incidental encroachment does not affect the vires of the law even as regards the area of encroachment."[87]

He further observed that, "the court has to ascertain the true nature and character of the subject of the Act or its pith and substance to find whether impugned Act falls within the competence of the particular legislature."[88]

[87] Para 10.
[88] Id.

Pt. Rishikesh and Anr. v. Salma Begum (Smt)

JT1995(4)SC401; 1995(3)SCALE354; (1995)4SCC718; [1995]3SCR1062

Date of Decision 02.05.1995

(K. Ramaswamy, N. Venkatachala and S. Saghir Ahmad, JJ.)

Composition of the Bench: 3 Judges

Relevant provisions of the constitution of India: Articles 14, 107 to 109, 254, 254(1), 254(2).

Brief Facts:

This case came before the Supreme Court of India as special leave petition. The respondents laid the suits in the Courts of Small Causes for recovery of arrears of rent or for rent and possession from the appellants. On their committing default in payment of rent in pending suit, their defence was struck off under Order 15 Rule 5 of CPC as amended by U.P. Civil Laws (Reforms and Amendment) Act, 1976, U.P. Civil Laws (Amendment) Act 37/1972 and U.P. Civil Laws (Amendment) President's Act 19/73. Appellants challenged the vires of Order 15 Rule 5. On reference, the Full Bench of the High Court held that it is not inconsistent with the CPC Central (Amendment) Act 104/76 and is not void under Article 254(1) of the Constitution.

Order L Rule l(b) of CPC was amended by President's Act 19/1973 so that Rule 5 of Order 15 would consistently be applicable to the suits for recovery of possession and arrears of rent or recovery of rent simplicitor, as the case may be. After the Central Act was enacted on September 1976 and received the assent of the President on the same day, i.e. September 9, 1976, it was published in the Central Gazette on December 10, 1976. The U.P. State Legislature swung into action and enacted U.P. Civil Laws (Reforms and Amendment) Act 57/76 on December 13, 1976 reserved for consideration and received the assent of the President on December 30, 1976. It was published in the Gazette on December 31, 1976 brought into force with effect from January 1, 1977. The Central Act became operative with effect from February 1, 1977.

When these appeals came up for final disposal, on July 14, 1987 a Bench consisting of E.S. Venkataramaiah and K.N. Singh, JJ referred the appeals for consideration by a Bench of three Judges. Thus these appeals come up before this bench.

Issue Involved:

Whether Rule 5 of Order 15 is inconsistent with the Central Act and thereby became void under Article 254(1) of the Constitution?

Decision

The Court held that due to the special need arose in Uttar Pradesh to maintain equilibrium between the rights of the tenants ….enacted Rule 5 and received the assent of the President and became a statute. Three Explanations were made by U.P. Act 57/76 to remove ambiguities and doubts. The Central Act being an Amending Act and not a repealing Act and only Rule 2 of Order 15 was amended by the Central Act and the State Act made no amendment to Order 15 Rule 2. Rule 5 as was pre-existing was not dealt with in the Central Act.

Further it was held that the Code itself under Section 35-B, Order 6 Rule 16 and Order 11 Rule 21 empowers court to strike off the defence. If similar provisions are made by the State Legislature, it is consistent with the Central Act and hence no repugnancy.

Ratio Decidendi:

To bring repugnancy it is condition precedent that both central and state legislation occupy same field and are collide with each other.

SUMMARY OF THE ARGUMENTS

Appellants Submitted:

1. The object of the Central Act was that Parliament intended that CPC should be uniform throughout India. The U.P. Act came into force prior to the Central Act was brought into force on February 1, 1976. The State Act or a provision made by a High Court to the order previously made by are consistent with the provisions of the Code as amended by the Central Act which alone remain valid. All the pre-existing amendments made by the appropriate State legislature or a High Court stand repealed.
2. Order 15 Rule 5 is prior amendment made by the State Legislature which is consistent with the Central Act from the date of its commencement. By operation of Clause (1) of Article 254, the State Act became void. The striking of the defence, therefore, is contrary to law.

3. Shri P.P. Tripathi contented that the repugnancy arises not with the making the law as envisaged in Clause (1) of Article 254 but when Act was brought into operation. Since State Act came into force with effect from January 1, 1977 while the Central Act became operative from February 1, 1977, the U.P. Act is an earlier enactment to the Central Act. The Parliament evinced intention to bring about an exhaustive amendment to the CPC and is applicable to all States. The State amendments, being inconsistent with the Central Act, became void.

Observations

While delivering the judgment K. Ramaswamy, J. made following Observations:

"If the Parliament amends the law, after the amendment made by the State Legislature and which has received the assent of the President, the earlier amendment made by the State legislature, if found inconsistent with the Central amended law, both Central law and the State law cannot co-exist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State Law becomes void under Article 254(1) unless the State Legislature again makes law reserved for the consideration of the President and received the assent of the President."[89]

While dealing with contention third it was observed, "the verb 'made' in Article 254 brings out the constitutional emanation that it is the making of the law by the respective constituent legislatures, namely, the Parliament and the State Legislature as decisive factor. Commencement of the Act is distinct from making the law. As soon as assent is given by the President to the law passed by the Parliament it becomes law.[90]

"The condition precedent to bring about repugnancy should be that there must be an amendment made to the Principal Act under the Central Act and the previous amendment made by a State legislature or a provision made by a High Court must occupy the same field and operate in a collision course. Since the State Act as incorporated by Act 37/72 and the Explanations to Rule 5 by the Act 57/76, Rule 5 was not occupied by the Central Act in relation to the State of U.P., they remain to be a valid law." [91]

[89] Para 15.
[90] Para 17.
[91] Para 21.

Ramswaroop Meena and Ors. v. University of Rajasthan and Ors.

AIR 1997 Raj.35

Date of Decision 14/09/1995

(A.P. Ravani, C.J. and M.A.A. Khan, J.)

Composition of the Bench: 2 Judges

Relevant Provisions of the Constitution of India: Articles 14 and 254(1).

Brief Facts:

Petitioners are students of B.A.M.S. (Bachelor of Ayurvedic Medicine and Surgery) which is an integrated course spread over 41/2 years, in different colleges affiliated with the University of Rajasthan, Jaipur. They belonged to the batch of March, 1992. The course is divided into first, second and third professional examination which is to be undertaken at the interval of one year and a half. Petitioners appeared in the first professional examination which was held in October, 1993, and could not clear all the papers of the first professional examination. the petitioners were initially allowed to sit in the classes of second year professional course up to October 1994 but after that they were denied to attend the classes on the ground of their failure in the first year professional course as per the provisions of Ordinance 329.N.19(f), framed by the University.

Issue Involved:

1. Whether Ordinance No. 329.N.19 (e), (f) and (g) of University of Rajasthan is void as being in conflict with and repugnant to Regulation 8.1 of the Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986?
2. Whether the petitioners be allowed to pursue their studies for the Second Professional Course?

Decision

The Court held that the provision contained in Ordinance 329. N. 19(f) of the University of Rajasthan is void and inoperative as being in conflict with and repugnant to Regulation 8.1 of the Regulations. The Court directed the respondents to allow the petitioners to pursue their studies for the Second Professional Course. It was further directed to permit

the petitioners to appear in the Second Professional Examination to be held in or about the month of December 1995 provided they fulfill other conditions of the Ordinance.

Ratio Decidendi:

Regulation of State University can not over rule the Medical Council regulation as the latter ensures the quality of medical education.

SUMMARY OF THE ARGUMENTS

Argument on behalf of respondent:

Counsel for the respondent contended that the Ordinance in question is aimed at raising the standard of education and it does not lower down the standards.

Observations

While delivering the judgment A.P. Ravani, C.J. observed that, "the provision of Ordinance 329.N. 19(f) which provides that no candidate who has not passed the first Ayurvedacharya examination shall he allowed admission to the second Ayurvedacharya Class is directly in conflict with the provisions of the Regulation which provides that a student failed in one or more subjects of First Professional examination may be allowed to keep term in Second Professional course and also provide for giving three chances to a student who has failed in one or more subjects of first professional examination. The very purpose of giving three chances to the student would stand frustrated if admission to the second professional class is made conditional by prescribing the eligibility criteria that a candidate should have passed the first Ayurvedacharya Examination. The purpose of giving three chances to a candidate is to see that the student remains in the main stream of the study and there is no wastage of the national wealth. By prescribing the eligibility criteria of passing the First Ayurvedacharya examination or the first professional course, the very purpose of giving three chances is frustrated. There is no rationale behind this provision."[92]

He further observed that, "there was no need to prescribe the condition of passing the First Ayurvedacharya Examination for being eligible to be admitted to Second Ayurvedacharya course. As far as the standard of education is concerned, it may be noted that no student is permitted to appear in Third professional examination unless he clears all the subjects of the first professional examination. This is so provided in Regulation 8.1. A student is provided maximum three chances to clear all the papers of the First

[92] Para 19

Professional examination. As provided in Regulation 8. l (v), a candidate who fails to pass the first professional examination in three opportunities, shall not be allowed to continue his studies further. Therefore, there is no question of lowering down the standards of education when a candidate who has failed in one or more subjects of the First Professional Examination, is admitted to the 2nd Year professional course."[93]

[93] Para 21.

Ratan Lal Adukia and Anr. v. Union of India

AIR1990SC104, JT1989(3)SC148, 1989(2)SCALE28, (1989)3SCC537

Date of Decision 19.07.1989

(M.N. Venkatachaliah and Ranganath Misra, JJ.)

Composition of the Bench: 2 Judges

Constitution of India - Article 254.

Brief Facts:

The original proceedings appellant instituted Money Suit No. 35 of 1978 against the Respondent in the Court of the 6th Sub-Judge at Alipore, Dist.-24 Parganas, West Bengal, seeking recovery of Rs. 13,200/. Respondent contested the suit on grounds, inter alia, that having regard to the said Section 80, the Court at Alipore had no jurisdiction. The trial Court by its order 22-5-1981 having rejected this objection as to jurisdiction, Respondent preferred C.R. 2938 of 1981 Under Section 115 of the Civil P. C. before the High Court to have that order revised. The matter was referred to a Full Bench. Against Decision of Full Bench of High Court present appeal has been filed.

Issue Involved:

Whether the said Section 80(As substituted by Section 14 of the Indian Railways (Amendment) Act, 1961 is a complete, self-contained, exhaustive Code in regard to the place of suing respecting suits constituting a special law for such suits excluding, by necessary implication, the operation of provisions of Section 20 of the Civil P. C. 1908, and Section 18 of the Presidency Small Cause Courts Act, 1882?

Ratio Decicenti

On a question under Article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises, but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) where the further legislation by Parliament is in respect of the same matter as that of the State law. The doctrine of implied repeal is based on the postulate the legislature which is presumed

to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts in applying this doctrine are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously.

Decision

New Section 80 made a conscious departure on the law as to the place of suing in respect of suits of a particular subject-matter envisaged by that section….. the new Section 80 is a self-contained provision in regard to the choice of ford for such suits…. there was a need for the legislature to specify the places of suing which would otherwise be covered by Section 20, C.P.C. unless the special prescription as to places of suing was considered to be necessary — in derogation to the general law as the matter contained in Section 20, C.P.C. or the provisions in the Small Cause Courts Act.

Observations

Justice M.N. Venkatachaliah while pronouncing the judgment made following Observations:

"The changes brought about in the scheme of the provisions are quite marked. The old section did not deal with liability for claims in respect of goods carried by a single Railway. It concerned itself with goods etc., carried by more than one Railways or what, in the concerned jargon, is called "through booked traffic" and provided that a suit inter alia for loss, destruction, damage, deterioration or non-delivery could be brought against the Railway Administration with which the booking had taken place or against the Railway Administration of the delivery station. The old section spoke nothing of the places where such suits could be laid. The choice of the forum was regulated by Section 20 of the CPC or the relevant provisions of the Presidency Towns Small Cause Courts Act, as the case may be……. The new Section 80 (substituted by Act 39 of 1961), however, brought about far-reaching changes in its scheme."[94]

[94] Para 4

"The new Section 80, no doubt, did not expressly provide that the said provision of Section 80 of the Act would override all other laws. But Section 80 of the Indian Railways Act is in the nature of the special provision applicable only to suits for compensation against the Railways."[95]

"Section 80 of the Railways Act was a particular or special legislation. Section 80 of the Railways Act purports to deal with the subject of places for instituting particular class of suits which was previously covered by Section 20 of the Code which was a general enactment. Two statutes cover the same field, i.e. , territorial jurisdiction. Mentioning for the first time in Section 80 of the Railways Act of the places where suits for compensation may be instituted was itself 'introductive of a new law implying a negative'. When the same subject of territorial jurisdiction has been dealt with in the subsequent legislation (i.e. , Section 80 of the Railways Act) the prior laws (Section 20 of the Code and Section 18 of the Presidency Small Cause Courts Act) on the same subject were not intended to subsist…….In other words, Section 80 of the Indian Railways Act by requiring something special to be done repealed by necessary implication the former general statute relating to territorial jurisdiction of Courts in so far as the suits for compensation against the Railways were concerned."[96]

[95] Para 5
[96] Ibid.

Shrikant Bhalchandra Karulkar and Ors. v. State of Gujarat and Anr.

JT1994(5)SC91a, 1994(3)SCALE190a, (1994)5SCC459, [1994]Supp1SCR568

Date of Decision 13.07.1994

(Kuldip Singh and Yogeshwar Dayal, JJ.)

Composition of the Bench: 2 Judges

Relevant Provisions of the Constitution of India: Articles 245(1) and 246.

Brief Facts:

This case been brought before the court by special leave against the judgment of the Gujarat High Court wherein the validity of the Sections 6(3A), 4, 10 and 11 of the Gujarat Agricultural Lands Ceiling Act 1960 (the Act) by way of writ petitions under Article 226 of the Constitution of India on the ground that these provisions were extra-territorial in their operation and, as such, were beyond the legislative competence of the State Legislature under Article 245(1) of the Constitution of India. The High Court upheld the validity of the provisions and dismissed the writ petitions.

The appellants are the owners of agricultural lands in the State of Gujarat. They also hold agricultural land in another part of India outside the State of Gujarat. Section 6(3A) of the Act was inserted by the Gujarat Agricultural Lands Ceiling (Amendment) Act 1972 which provides for computing the ceiling area of a person who also owns land in another part of India outside the State of Gujarat. It lays down that for computing the ceiling area of such a person in the State of Gujarat, his holding in another part of India has also to be en taken into account. In respect of some of the appellants notices were Issued by the State of Gujarat for reopening the ceiling cases under the amended provisions. In respect of other petitioners either notice were Issued under the amended provisions to enable them to file their objections or final orders were passed pursuant to the said provisions.

Issue Involved:

1. Whether Sections 6(3A), 4, 10 and 11 of the Gujarat Agricultural Lands Ceiling Act 1960 are invalid for being extra-territorial in their operation and beyond the legislative competence of the State Legislature under Article 245(1)of the Constitution of India?

Decision

The Supreme Court held that the provisions of the Gujarat Agricultural Lands Ceiling Act 1960 are within the legislative competence of the State Legislature and have been validly enacted.

Ratio Decidendi:

Sufficiency of the territorial connection involves consideration of two elements, the connection must be real and not illusory and the liability sought to be imposed under the Act must be relevant to that connection.

SUMMARY OF THE ARGUMENTS

Arguments on behalf of Appellant:

1. Appellant contended that in pith and substance Section 6(3A) of the Act has extra-territorial operation in the sense that the land owned by a person outside the State of Gujarat is taken into consideration while determining the ceiling area of a land-owner in the State of Gujarat. He further contended that while examining the question of extra-territorial operation of a statute the effect of the provisions of the statute on the rights of a citizen has to be taken into consideration.

Observations

While delivering the judgment Kuldip Singh, J. observed that, "it is no doubt correct that under Articles 245 & 246 of the Constitution of India the legislature of a State can make law for the State or any part thereof. It would be overstepping the limits of its legislative field when it purports to affect men and property outside the State. In other words the State Legislature has no legislative competence to make laws which have extra-territorial operation. Meaning of the words "extra-territorial operation" have been authoritatively laid down by this Court in various judgments. A State Legislature has plenary jurisdiction to enact laws in respect of subjects in Lists-II and III Schedule 7th Constitution of India. Such laws may be in respect of persons within the territory, of property -immovable or movable - situation within the State, or of acts and events which occur within its borders. So long as the law made by the State Legislature is applicable to the persons residing within its territory and to all things and acts within its territory, it cannot be considered extra-territorial. This Court - over a period of three decades - has evolved a principle

called "doctrine of territorial nexus" to find out whether the provisions of a particular State law have extra-territorial operation. The doctrine is well-established and there is no dispute as to its principles. It there is a territorial nexus between the persons/property subject-matter of the Act and the State seeking to comply with the provisions of the Act then the Statute cannot be considered as having extra-territorial operation…..The Act has to satisfy the principles of territorial nexus which are essentially discernible from the factual application of the provisions of the Act."[97]

He further observed that, "the State Legislature has the legislative competence to enact the Act under Entry 18 List-II read with Entry 42 List-III 7th Schedule Constitution of India. The lands - governed by the provisions of the Act - are situated within the territory of the State of Gujarat. The provisions of the Act provide for fixation of ceiling in respect of the agricultural lands which are within the territory of the State of Gujarat. The declaration of the surplus land under the Act is also in respect of the lands held by various persons in the State of Gujarat. The territorial nexus is obvious. It is the land and the persons holding such land within the territory of Gujarat to which the provisions of the Act are applicable. If a person has no land within the State of Gujarat the provisions of the Act are not applicable to him or to the land which he owns outside the territory of the State of Gujarat. The sine qua non for the application of the provisions of the Act is the holding of the land within the State of Gujarat. The territorial connection is thus, real and sufficient and the liability sought to be imposed under Section 6(3A) of the Act is directly in relation to that connection. The factum of a person holding land outside the State of Gujarat is undoubtedly an aspect pertinent to the question of his entitlement under the Act to hold land in State of Gujarat. There is no dispute that within the State a ceiling can be fixed by law beyond which no person can hold agricultural land, and if for determining the extent of said ceiling, the land held by a person outside the State is taken into consideration, the law pertaining to fixation of ceiling would not become extra-territorial. In pith and substance the law remains to be a legislation imposing the ceiling on holding of land within the State under Entry 18 List II read with 42 List III 7th Schedule Constitution of India. Mere consideration of some factors which exist outside the State, for the purpose of legislating in respect of the subject for which the legislature is competent to make law, would not amount to extra territorial legislation. Such considerations are part of the plenary legislative function of the State Legislature. The legislative entries not only indicate the subjects for the exercise of legislative power but their scope are much wider in the sense that they specify a field for legislation on the

[97] Para 8.

subject concerned. Therefore, when a statute fixes a ceiling on agricultural land holding within the State, it would not become extra territorial simply because it provides that while determining the permissible area of a person under the said Statute the land owned by him outside the State is to be taken into consideration. We are, therefore, of the view that the impugned provisions are within the legislative competence of the State Legislature and have been validly enacted."[98]

[98] Para 9.

State of Andhra Pradesh and others, etc. v. McDowell and Co. and others, etc.

1996IIIAD (SC) 428, AIR1996SC1627, JT1996 (3) SC679, (1997)1MLJ82 (SC), 1995(4) SCALE762, (1996)3SCC709, [1996]3SCR721

Date of Judgment: 21.03.1996

(A.M. Ahmadi, C.J.I., B.P. Jeevan Reddy and Suhas C. Sen, JJ.)

Composition of the Bench: 3 Judges

Relevant Provisions of the Constitution of India: Articles 14, 19(1), 32, 47, 226, 245, 246, 248 to 252 and 254.

Brief Facts:

In February, 1995, the Legislature of Andhra Pradesh enacted the Andhra Pradesh Prohibition Act, 1995 [hereinafter referred to as "the Act"] replacing the Ordinance. It was reserved for and received the assent of the President of India. Several licensees approached the High Court of Andhra Pradesh by way of writ petitions challenging the provisions of the Act and seeking a declaration that the Act does not prohibit the manufacture of liquor, though it may well prohibit the sale and consumption thereof. The Full Bench, which heard the writ petitions, agreed with the writ petitioners. They declared that Section 7 of the Act did not prohibit the manufacture of liquor though it prohibited consumption, sale and possession thereof. Accordingly, a direction was Issued to the State of Andhra Pradesh to consider the applications filed by the manufacturers for renewal of their licenses without reference to the prohibition policy or to the provisions of the Act.

Against the judgment of the Full Bench of the Andhra Pradesh High Court, the Sate of Andhra Pradesh preferred Special Leave Petitions. On October 12, 1995, the Legislature of Andhra Pradesh enacted the Andhra Pradesh Prohibition (Amendment) Act, 1995 in terms of Ordinance. The manufacturers of intoxicating liquors in Andhra Pradesh have now come forward with these writ petitions under Article 32 of the Constitution of India challenging the constitutional validity of Act 35 of 1995 (hereinafter "amending Act").

Issue Involved:

Whether the State Legislature is competent to make a law prohibiting manufacturing and production of intoxicating liquors when Parliament has enacted the law on same subject?

Decision

The power to make a law with respect to manufacture and production and its prohibition (among other matters mentioned in Entry 8 in List-II) belongs exclusively to the State Legislatures. Item 26 in the First Schedule to the Industries (Development and Regulation) Act, 1951 (hereinafter " I.D.R. Act) must be read subject to Entry 8 and for that matter, Entry 6 - in List-II. So read the said item does not and cannot deal with manufacture, production or with prohibition of manufacture and production of intoxicating liquors. The State Legislature is, therefore, perfectly competent to make a law prohibiting their manufacture and production in addition to their sale, consumption, possession and transport with reference to Entries 8 and 6 in List-II of the Seventh Schedule to the Constitution read with Article 47 thereof.

Ratio Decidendi:

If a particular matter is within the exclusive competence of the State legislature, i.e., in List-II that represents the prohibited field for the Union. Any incidental trenching does not amount to encroaching upon the fields reserved.

SUMMARY OF THE ARGUMENTS

Petitioners Contended:

1. Amending Act insofar as it prohibits the manufacture of liquor within the State of Andhra Pradesh is beyond the legislative competence of the Andhra Pradesh Legislature.
2. The enactment of the I.D.R. Act and the inclusion of fermentation industries (manufacturing alcohol and other products of fermentation industries) in the Schedule to the Act, the State Legislature is denuded of its power to license and regulate the manufacture of liquor.
3. After the 1956 Amendment to I.D.R. Act including alcohol industries as Item 26 in the First Schedule to that Act, the control of the alcohol industries is vested exclusively in the Union and that there after, licenses to manufacture both potable and non-potable is vested in the Central Government
4. The power of the State Legislature to make a law with reference to matters enumerated in List-II in the Seventh Schedule to the Constitution (provided

by Clause (3) of Article 246) is subject to the Parliament's power specified in Clauses (1) and (2) of the said Article. Once the Parliament has enacted the I.D.R. Act and included the fermentation industries within the purview of that Act by 1956 Amendment, the Parliament must be deemed to have expressed its clear intention to occupy the entire field of fermentation industries including alcohol industries. If so, the State Legislatures have no power to make any law with respect to the said industries.

Respondents Contended:

1. The State has the exclusive power to make a law with respect to Entry 8, which entry is in no manner impinged upon by Entry 52 in List-I or by the I.D.R. Act.
2. Any incidental trenching upon the field reserved for the union cannot be characterized as traveling beyond the assigned field.

Observations

The Court while giving its Decision observed that, "Whenever a particular entry in List-II is sought to be made subject to another entry in List-I or List-III or where a demarcation is sought to be made between the Union and the States within a particular head of legislation, the founding fathers have taken care to say so expressly…. Entry 8 speaks of only intoxicating liquors and does not, therefore, apply to or take in liquors which do not fall within the expression "intoxicating liquors". The power to make a law with respect to production and manufacture of intoxicating liquors (mentioned in Entry 8) is that of the States alone. The prohibition of production and manufacture of intoxicating liquors too squarely falls within the four corners of Entry 8 read with Entry 6 in List-II."[99]

It was further observed that, "once the impugned enactment is within the four corners of Entry 8 read with Entry 6, no central law whether made with reference to an entry in List-I or with reference to an entry in List-III can affect the validity of such State enactment. If a particular matter is within the exclusive competence of the State legislature, i.e., in List-II that represents the prohibited field for the Union. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the States. The concept of occupied field is really relevant in the case of laws made with reference to entries in List-III. In other words, whenever a piece of legislation is said to be beyond the

[99] Para 29

legislative competence of a State Legislature, what one must do is to find out, by applying the rule of pith and substance, whether that legislation falls within any of the entries in List II. If it does, no further question arises; the attack upon the ground of legislative competence shall fail. It cannot be that even in such a case, Article 246(3) can be employed to invalidate the legislation on the ground of legislative incompetence of State Legislature. If, on the other hand, the state legislation in question is relatable to an entry in List-III applying the rule of pith and substance, then also the legislation would be valid, subject to a Parliamentary enactment inconsistent with it, a situation dealt with by Article 254."[100]

[100] Para 38

State of Orissa and others v. Mahanadi Coalfields Ltd. and others

AIR1995SC1868; JT1995 (3) SC662; 1995(2) SCALE900; 1995Supp (2) SCC686; [1995]3SCR639

Date of Judgment: 21.04.1995

(A.M. Ahmadi, C.J.I. S.P. Bharucha and K.S. Paripoornan, JJ.)

Composition of the Bench: 3 Judges

Relevant Provisions of the Constitution of India: Articles 14, 246 and 286.

Brief Facts:

The Mahanadi Coalfields Ltd., the consumers of coal who purchase coal from Mahanadi Coalfields Ltd., and some traders in coal assailed the validity of the Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992), as amended, before the High Court of Orissa in a series of writ petitions. The main controversy in the cases was regarding the levy of tax under the Act on "coal bearing lands". By a common Judgment dated 26.4.1994 the Division Bench of the High Court held that the State Legislature did not have the competence to levy the tax on coal bearing lands and struck down Section 3(2)(c) of the Act as well as the schedule attached to the act. The High Court also took the view that the levy would be hit by Section 9A of Mines and Minerals (Regulation and Development) Act, 1957, (Act 67 of 1957) hereinafter referred to as 'M.M.R.D. Act' and the levy is also discriminatory and hit by Article 14 of the Constitution of India'. Against this Decision present appeal was filed.

Issue Involved:

Whether the Orissa Rural Employment, Education and Production Act, 1992 is within the legislative competence of State Legislature?

Decision

Orissa Act of 1992 purports to impose a tax on coal bearing land and mineral bearing land as defined in Section 2(a-1) and 2(d) of the Act, which is fully covered by Parliamentary legislation - Mines and Mineral (Regulation & Development) Act, 1957. Section 3(2)(c) of the impugned Act as well as the Schedule attached to the impugned

Act, levying a tax of Rs. 32,000 per acre of coal bearing land, should be declared illegal and ultra vires.

Ratio Decidendi:

If the impugned Orissa Act 36 of 1992 falls either under List II Entry 50 or List II Entry 23, it is subject to the law made by Parliament relating to the regulation of mines and mineral development (List I Entry 54)…… the levy of tax, on mineral bearing lands and coal bearing lands, under Section 3 read with Section 2(a)(1) and 2(d) of the Act is beyond the competence of the State legislature and is ultra vires.

SUMMARY OF THE ARGUMENTS

Appellants contended:

1. The High Court was in error in holding that Orissa Rural Employment, Education and Production Act, 1992, is without legislative competence and is also discriminatory and hit by Article 14 of the Constitution of India.
2. The levy of tax in the instant case would squarely fall under Entry 49, List II of the Seventh Schedule (Taxes on land and buildings). It was alternatively contended that even if it is not so, the levy of tax in the instant case will fall under Entry 23 or 50, List II of the Seventh Schedule (Regulation of mines and mineral development; taxes on mineral and mineral rights).
3. The High Court erred in holding that the levy is discriminatory and so hit by Article 14 of the Constitution, since there is no material much less a finding to the effect that the levy is confiscatory.

Respondents Contended:

1. The levy is on minerals and mineral rights alone and not a tax on land covered by Entry 49, List II of the Seventh Schedule. Since substantially the levy is on minerals or on mineral rights, even if the levy falls under Entry 23 or 50, List II of the Seventh Schedule (Regulation of mines & mineral development or Tax on mineral rights), it is subject to limitation imposed by Parliament under the law relating to regulation of mines and mineral development.
2. In effect and substance the levy is only on coal bearing lands without any basis, and so arbitrary and hit by Article 14of the Constitution.

Observations

K.S. Paripoornan, J. said, "Entry 49 of List II is the general entry which enables the State legislature to impose taxes on lands and buildings. A particular category or specie is taken but of the general entry, and is provided by Entry 50 of List II. But the tax that can be levied under List II Entry 50 is subject to limitations imposed by Parliament by law relating to regulation of mines and mineral development. Similarly, under List II Entry 23, though the State Legislature can enact a law relating to regulation of mines and mineral development, it is subject to the provisions of List I (Legislation by Parliament) with respect to regulation and development under the control of the Union.[101]

[101] Para 12.

State of T.N. and Anr. v. Adhiyaman Educational & Research Institute and Ors.

JT1995(3)SC136, 1995(2)SCALE401, (1995)4SCC104, (1995)2UPLBEC93

Date of Decision 24.03.1995

(P.B. Sawant and S.C. Agrawal, JJ.)

Composition of the Bench: 2 Judges

Brief Facts:

The State Government dated 17th April, permitted private managements to start new Engineering Colleges under the self-financing scheme without any financial commitment to the Government, but subject to the fulfilment of certain conditions. The first respondent, viz. Adhiyaman Educational Research Institute (hereinafter "the Trust") applied to the Government of Tamil Nadu for permission to start a new self-financing private Engineering College. The Government granted the permission to the Trust to start a private Engineering College but also stipulated that if any of the conditions imposed by them was not fulfilled, the permission granted to start the College would be withdrawn and the Government will have the right to take over the College with all its movable and immovable properties including endowment and cash balance without paying compensation.

On 27th March, 1989, the State Government appointed a High Power Committee to visit the self-financing Engineering Colleges and make an assessment of their functioning. In its report, the High Power Committee stated that the Trust had not fulfilled the conditions imposed by the Government. On 26th July, 1989, the University sent a communication to the Trust informing that the Syndicate had accepted the report of the High Power Committee appointed by the Government and it resolved to reject the request of the Trust for provisional affiliation.

The Trust, therefore, filed a writ petition before the High Court for prohibiting the Director of Technical Education from taking further proceedings and also filed another writ petition for quashing the resolution passed by the Syndicate of the University and for directing the University to grant provisional affiliation to its College.

During the pendency of the writ petitions, the learned Single Judge appointed a Committee to inspect the College and make a report with regard to its deficiencies which are pointed out by the Government and the University. The Court Committee submitted a report that

the Trust had not even provided the requisite infrastructural facilities for conducting different courses. By a common judgment, the learned Single Judge allowed the Writ Petition which was against the State Government and dismissed the Writ Petition which was directed against the University. The learned Single Judge held that after the passing of the Central Act, the State Government had no power to cancel the permission granted to the Trust to start the College. According to him, under the Central Act, the duty was imposed on the Council for recognizing or derecognizing any technical institution in the country and it was not open to the State Government or the University to give approval or disapproval to any technical institution.

Aggrieved by this Decision the Trust, the State Government as well as the University preferred writ appeals. The Division Bench allowed the writ appeal of the Trust and dismissed the writ appeals of the State Government and the University. The Division Bench not only confirmed the Decision of the learned Single Judge that the State Government had no jurisdiction to derecognize the College, but it also held that even the University could not have acted on the report of the High Power Committee appointed by the State Government and could not have refused extension of affiliation without giving reasons for the same which were admittedly not discussed in its impugned communication.

Against this Decision the State Government and the University preferred the appeal.

Issue Involved:

Whether after the coming into force of the All India Council for Technical Education Act, 1987 i.e. Central Act, the State Government has power to grant and withdraw permission to start a technical institution as not defined in the Central Act?

Decision

The provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the derecognizing by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.

State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void.

Ratio Decidendi:

It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the law at one time. This is too narrow a test; there may well be cases of repugnancy where both laws say "don't" but in different ways.

SUMMARY OF THE ARGUMENTS

Appellants Submitted:

1. It may be open for the Council to lay down the minimum standards and requirements, to achieve the object as mentioned in Entry 66, it does not debar the State from prescribing higher standards and requirements while making a law under Entry 25 of List III.
2. The University has an exclusive power to affiliate or not to affiliate and to disaffiliate the colleges. That power cannot be taken away by the Central Act and in fact, it has not done so.

Observations

Justice P.B. Sawant while delivering the judgment made following Observations:

"The provisions of the State Act….show that if it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas….. the primary object of the Central Act is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughput the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule."[102]

As regards the Madras University Act, 1923 it was observed, "A comparison of the Central Act and the University Act show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the council and the University…. Thus, so far as these matters are concerned…. not the University

[102] Para 29

but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the Engineering Colleges."[103]

"…..the norms and standards and the requirements for their recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act."[104]

After discussing various judgments, following important points were laid down:

"[i] The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[ii] To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the center under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the center under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

[103] Para 32.
[104] Para 34.

[v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the center or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

[vi] However, when the situations/ seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognize or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally."

Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme v.State of Tamil Nadu and Others

AIR 1996 (SC) 2384, 1996 (3) SCC 15, 1996 AIR(SCW) 926, 1996 (2) Scale 103, 1996 (2) JT 692, 1996 (2) Supreme 567, 1996 (1) AD(SC) 1081, 1996 INDLAW SC 858

Date of Decision 12/02/1996

(S. C. Agrawal & G. T. Nanavati JJ.)

Composition of the Bench: 2 Judges

Relevant provisions of the Constitution of India: Article 254.

Brief Facts:

This case came before this court by a special leave petition granted against the order of the Madras High Court.

In 1987, the Tamil Nadu State Assembly enacted the Tamil Nadu Medical University Act, 1987 (Act No. 37 of 1987) which is now re-named as Dr. M.G.R. Medical University Act whereby Tamil Nadu Medical University, re-named as Dr. M.G.R. Medical University, was established. Sub-section (5) of Section 5 of the Medical University Act empowers the University to affiliate colleges to the University as affiliated colleges, within the University area under conditions prescribed and withdraw such affiliation. On December 2, 1987, the Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust submitted an application to the University seeking affiliation to the University a medical college which the Trust wanted to start. The University, however, refused to entertain the said application of the Trust on the ground that a no objection certificate should be obtained from the Government of Tamil Nadu for starting a medical college and with out such a no objection certificate the application could not be considered. After that the appellant filed writ petition in the Madras High Court, the High Court ordered the University not to insist on the prior permission of the state but after that the application for affiliation was rejected on various other grounds against which various writs were filed by the appellant in the High Court. Meanwhile, the Tamil Nadu State Legislature had enacted Dr. M.G.R, Medical University Tamil Nadu (Amendment and validation) Act, 1989 [XXXII of 1990] on July 6, 1990. By the said Act, which was brought into force with effect from September 24, 1987, a proviso was

inserted in sub-section (5) of Section 5 of the Medical University Act whereby it was prescribing that no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, of such permission have been complied with.

During the pendency of appeal in the High Court, the President of India promulgated the Indian Medical Council (Amendment) Ordinance (Ordinance No. 13 of 1992) on August 27, 1992. The said Ordinance was subsequently replaced by the Indian Medical Council (Amendment) Act, 1993 [Central Act No. 31 of 1993] which was brought into force with effect from August 27, 1992. By the Central Act, Sections 10A, 10B and 10C were inserted in the Indian Medical Council Act, 1956. Section 10A deals with the establishment of a new medical college or opening of a new or higher course of study or training and prescribes that this can be done only with the previous permission of the Central Government obtained in accordance with the provisions of the said section. In view of the said amendments, the Central Government was impleaded as a party in the Writ Appeals which were pending before the Division Bench of the High Court. The stand of the Central Government was that after the promulgation of Ordinance No. 13 of 1992, which was later on replaced by the Central Act, the Central legislation has occupied the entire field and the State legislation must be treated to have been rendered inoperative and, as a result, the approval of the State Government was no longer necessary for establishing a medical college as required under Proviso to sub-section (5) of Section 5 of the Medical University Act.

The High Court held that the amendment introduced in clause (5) of Section 5 of the Medical University Act by the State Act was not, in any way, affected by the Central legislation and that even after insertion of Section 10A in the Indian Medical Council Act, 1956 prior permission of the State Government was required for establishing a medical college.

Issue Involved:

1. Whether there is repugnancy between the proviso to Section 5(5) of the Medical University Act inserted by the State Act and Section 10A introduced in the Indian Medical Council Act, 1956 by the Central Act?

Decision

The Court held that under Section 10A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country.

No further scope is left for the operation of the State legislation in the said field which is fully covered by the law made by Parliament. Therefore the proviso to sub-section (5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college is repugnant to Section 10A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by Section 10-A, viz., establishment of a new medical college and would not extend to establishment of other colleges.

Ratio Decidendi:

SUMMARY OF THE ARGUMENTS

Arguments on Behalf of the Appellant:

1. Counsel for the Appellant argued that proviso to sub section (5) of the Medical University Act, enacted by the State Act, is repugnant to Section 10A of the Indian Medical Council Act, enacted by the Central Act, and has to be treated as void by virtue of Article 254 of the Constitution since the Central Act was enacted after the enactment of the State Act.

Argument on behalf of the respondent:

1. counsel appearing for the State of Tamil Nadu, contended that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10A of the Indian Medical Council Act because the requirement of both the provisions can be complied with for establishing a medical college.
2. it was also submitted that since the State Act has received the assent of the President, the State legislation will prevail over the Central Act in view of clause (2) of Article 254 inasmuch as it has not been amended, varied or repealed by any subsequent law made by Parliament.

Observations

While delivering the judgment S.C. Agrawal J. observed that, "It cannot, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnancy. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a

superior efficiency expressly or impliedly evinces by its legislation an intention to cover the whole field. What has to be seen is whether in enacting Section 10A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country.[105]

He further observed that, "according to the Statement of Objects and Reasons appended to the Bill, the object underlying the enactment of Section 10A is to curb the mushroom growth of medical colleges in the country. In order to curb such mushroom growth of medical colleges, the President promulgated an Ordinance on the 27th August, 1992 to amend the Indian Medical Council Act, 1956 by incorporating therein provisions for prior permission of the Central Government for establishing any new medical college and for starting any new or higher course of study in an existing medical college or increasing admissions capacity in any course of study of training including post-graduate course of study.[106] Section 10A seeks to achieve this object by prescribing in sub-Section (1) that no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of said section. Similar permission is required for obtaining a new or higher course of study or training or for increase in the admission capacity in any course of study or training in a medical college."[107]

It was further observed that, "the fact that the State Act has received the assent of the President would be of no avail because the repugnancy is with the Central Act which was enacted by Parliament after the enactment of the State Act. In view of the proviso to sub-Article (2) of Article 254 Parliament could add to, amend, vary or repeal the State Act. In exercise of this power Parliament could repeal the State Act either expressly or by implication. As a result of insertion of section 10-A in the Indian Medical Council Act, the proviso to section 5 (5) of the Medical University Act has ceased to apply in the matter of establishment of a medical college in the state of Tamil Nadu and its affiliation to the Medical University and for the purpose of establishing a medical college permission of the Central government has to be obtained in accordance with the provisions of section 10-A. if such permission is granted by the Central Government under the proviso to section 5(5) of the Medical University Act would not be required for the purpose of obtaining affiliation of such a college to the Medical University."[108]

[105] Para 26.
[106] Para 29.
[107] Para 30.
[108] Para 32.

Vijay Kumar Sharma and others v. State of Karnataka and others

AIR1990SC2072; JT1990(2)SC448; 1990(1)SCALE342; (1990)2SCC562; [1990]1SCR614

Date of Decision 27.02.1990

(Ranganath Misra, P.B. Sawant and K. Ramaswamy, JJ.)

Composition of the Bench: 3 Judges

Relevant Provisions of the Constitution of India: Articles 31, 38, 39, 248, 251, 252, 253 and 254.

Brief Facts:

In this case, petitioners claimed declaration that provisions of Sections 14 and 20 of the Karnataka Contract Carriages (Acquisition) Act, 1976 is invalid, as being repugnant to provisions of the Motor Vehicles Act, 1988.

Issue Involved:

1. Whether Article 254(1) of the Constitution applies to the situation in hand?
2. Whether Section 20 of the Karnataka Contract Carriages (Acquisition) Act, 1976 being inconsistent with the provisions of Sections 73, 74 and 80 of the 1988 Motor Vehicles Act became void?
3. Whether the Motor Vehicles Act, 1988 has impliedly repealed the Karnataka Contract Carriages (Acquisition) Act, 1976?
4. Whether the doctrines of dominant purpose and pith and substance would be applied to the matter covered under the Concurrent List?[109]

Decision

The Court held that the Act of 1976 and Act of 1988 deal with two different subject matters. Act of 1976 is enacted by State Legislature for acquisition of contract carriages under Entry 42 of Concurrent List of Constitution of India read with Article 31 to give effect to provisions of Article 39 (b) and (c) and Act of 1988 is on the other hand enacted by Parliament under Entry 35 of Concurrent List of Constitution of India to regulate operation of motor vehicles. The objects and subject matters of two enactments materially

[109] Framed by K. Ramaswamy, J. while giving his dissenting Judgment.

different and provisions of Article 254 not applicable hence there is no question of repugnancy between two legislations.

Ratio Decidendi:

If it is open to resolve the conflict between two entries in different Lists, viz. the Union and the State List by examining the dominant purpose and therefore the pith and substance of the two legislations, there is no reason why the repugnancy between the provisions of the two legislations under different entries in the same List, viz. the Concurrent List should not be resolved by scrutinizing the same by the same touchstone. What is to be ascertained in each case is whether the legislations are on the same subject matter or not. In both cases the cause of conflict is the apparent identity of the subject matter. The tests for resolving it therefore cannot be different.

SUMMARY OF THE ARGUMENTS

It was argued on behalf of respondents:

1. The State Act is a legislation under different entry and was not on the same subject. Therefore, the matter did not come within the ambit of Article 254 of the Constitution.

On the behalf of Petitioners it was argued:

1. The provisions of Section 14 and 20 of the Karnataka Act were in direct conflict with the provisions of Sections 74 and 80(2) of the Motor Vehicle Act 1988.
2. Since the MV Act 1988 is a later legislation, operating in the same area, it should be deemed to have impliedly repealed the provisions of Section 14 and 20 of the Karnataka Act, even if the latter Act had received the assent of the President. This is so because of the proviso to Sub-Clause (2) of Article 254 of the Constitution.
3. When there is a repugnancy between the legislations under Article 254 of the Constitution, the doctrine of pith and substance does not apply, and even if some of the provisions of the impugned State legislation are in conflict with some of the provisions of the Central legislation, the conflicting provisions of the State legislation will be invalid.

Observations

Ranganath Misra, J. while giving majority Decision observed

"The situation of the 1939 Motor Vehicles Act being existing law and the Karnataka Act containing provision repugnant to that Act with Presidential assent for the State Act squarely came within the ambit of Clause (2) of the Article. That is how the State Act had overriding effect."[110]

"Repugnancy may result from the following circumstances:[111]

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent (Emphasis added) and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
2. Where, however, a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with Clause (2) or Article 254.
3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.
4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in its applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the provision to Article 254.

[110] Para 11
[111] Ibid.

It was observed that the 1988 Act is applicable to the whole of India and, therefore, is also applicable to the State of Karnataka in the absence of exclusion of the State of Karnataka from its operation. But…there is no direct inconsistency between the two and on the facts placed in the case there is no necessary invitation to the application of Clause (1) of Article 254 of the Constitution.[112]

P.B. Sawant, J. while forming majority observed

"..the Karnataka Act and the Motor Vehicle Act, 1988 deal with two different subject matters….The objects and the subject matters of the two enactments are materially different. Hence the provisions of Article 254 do not come into play in the present case and hence there is no question of repugnancy between the two legislations."[113]

K. Ramaswamy, J while giving dissenting judgment observed:

On Issue of repugnancy following points were laid down:

"(a) The doctrine of repugnancy or inconsistency under Article 254 of the Constitution would arise only when the Act or provision / provisions in an Act made by the Parliament and by a State Legislature on the same matter must relate to the Concurrent List III of Seventh Schedule to the Constitution; must occupy the same field and must be repugnant to each other;

(b) In considering repugnance under Article 254 the question of legislative competence of a State Legislature does not arise since the Parliament and the Legislature of a State have undoubted power and jurisdiction to make law on a subject, i.e. in respect of that matter. In other words, same matter enumerated in the Concurrent List has occupied the field.

(c) If both the pieces of legislation deal with separate and distinct matters though of cognate and allied character repugnancy does not arise.

(d) It matters little whether the Act/Provision or Provision's in an Act falls under one or other entry or entries in the Concurrent List. The substance of the "same matter occupying the same field by both the pieces of the legislation is material" and not the form. The words "that matter" connotes identity of "the matter" and not their proximity. The circumstances or motive to make the Act/Provision or Provisions in both the pieces of legislation are irrelevant.

[112] Para 20.
[113] Para 7.

(e) The repugnancy to be found is the repugnancy of Act/provision/Provisions of the two laws and not the predominant object of the subject matter of the two laws.

(f) Repugnancy or inconsistency may arise in diverse ways, which are only illustrative and not exhaustive:

(i) There may be direct repugnancy between the two provisions;

(ii) Parliament may evince its intention to cover the whole same field by laying down an exhaustive code in respect thereof displacing the State Act, provision or provisions in that Act. The Act of the Parliament may be either earlier or subsequent to the State law;

(iii) Inconsistency may be demonstrated, not necessarily by a detailed comparison of the provisions of the two pieces of law but by their very existence in the statutes;

(iv) Occupying the same field; operational incompatibility; irreconcilability or actual collision in their operation in the same territory by the Act/ provision or provisions of the Act made by the Parliament and their counter parts in a State law are some of the true tests;

(v) Intention of the Parliament to occupy the same field held by the State Legislature may not be expressly stated but may be implied which may be gathered by examination of the relevant provisions of the two pieces of the legislation occupying the same field;

(vi) If one Act/Provision/s in an Act makes lawful that which the other declares unlawful the two to that extent are inconsistent or repugnant. The possibility of obeying both the laws by waiving the beneficial part in either set of the provisions is no sure test;

(vii) If the Parliament makes law conferring right/obligation/ privilege on a citizen/person and enjoins the authorities to obey the law but if the State law denies the self same rights or privileges negates the obligation or freezes them and injuncts the authorities to invite or entertain an application and to grant the right/privilege conferred by the Union law

subject to the condition imposed therein the two provisions run on a collision course and repugnancy between the two pieces of law arises thereby;

(viii) Parliament may also repeal the State law either expressly or by necessary implication but Courts would not always favour repeal by implication. Repeal by implication may be found when the State law is repugnant or inconsistent with the Union law in its scheme or operation etc. and conflicting results would ensue when both the laws are applied to a given same set of facts or cannot stand together or one law says do and other law says do not do. In other words, the Central law declares an act or omission lawful while the State law says them unlawful or prescribes irreconcilable penalties/punishments of different kind, degree or variation in procedure etc. The inconsistency must appear on the face of the impugned statutes/provision/provisions therein;

(ix) If both the pieces of provisions occupying the same field do not deal with the same matter but distinct, though cognate or allied character, there is no repeal by implication;

(x) The Court should endeavour to give effect to both the pieces of legislation as the Parliament and the legislature of a State are empowered by the Constitution to make laws on any subject or subjects enumerated in the Concurrent List III of Seventh Schedule to the Constitution. Only when it finds the incompatibility or irreconcilability of both Acts/provision or provisions, or the two laws cannot stand together, the Court is entitled to declare the State law to be void or repealed by implication; and

(xi) The assent of the President of India under Article 254(2) given to a State law/provision, provisions therein accord only operational validity though repugnant to the Central law but by subsequent law made by the Parliament or amendment/modification, variation or repeal by an act of Parliament renders the State law void. The previous assent given by the President does not blow life into a void law."[114]

On third Issue it was observed, "The pith and substance rule, thereby, solves the problem of overlapping of "any two entries of two different Lists vis-a-vis the Act" on the basis

[114] Para 12.

of an inquiry into the "true nature and character" of the legislation."[115] It was further held that, "the doctrine of pith and substance on the predominant purpose, or true nature and character of the law have no application when the matter in question is covered by an entry or entries in the Concurrent List and has occupied the same field both in the Union and the State Law. It matters little as to in which entry or entries in the Concurrent List the subject-matter falls or in exercise whereof the Act/provision or provisions therein was made. The Parliament and Legislature of the State have exclusive power to legislate upon any subject or subjects in a Concurrent List. The question of incidental or ancillary encroachment or to trench into forbidder field does not arise. The determination of its 'true nature and character' also is immaterial".[116]

"The Parliament and the legislature of a State derive their power to legislate on a subject/ subjects in Lists I and List II of Seventh Schedule to the Constitution from Article 246(1) and (3) respectively. Both derive their power from Article 246(2) to legislate upon a matter in the Concurrent List III subject to Article 254 of the Constitution. The respective lists merely demarcate the legislative field or legislative heads. "[117]

[115] Para 13.
[116] Para14.
[117] Para 16

Kaiser-I-Hind Pvt. Ltd. and Ors. v. National Textile Corporation (Maharashtra North) Ltd. and Ors.

AIR2002SC3404, 2002(6) ALT 8 (SC), JT2002(7)SC339, (2003)1MLJ129(SC), 2002(7)SCALE95, (2002)8SCC182, [2002]SUPP2SCR555

Date of Decision 25.09.2002

Composition of the Bench: G.B. Pattanaik, M.B. Shah, Doraiswamy Raju, S.N. Variava and D.M. Dharmadhikari, JJ.

Brief Facts:

Appeals were filed challenging the vires of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 insofar as it is made applicable to the premises belonging to Government companies and corporations. It was inter alia contended the having regard to Article 254(2) of the Constitution of India, provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 would prevail over those of the Public Premises Eviction Act. The contentions raised by the appellant were rejected by the High Court and the Court upheld the validity of the Public Premises Eviction Act. The Court after elaborate discussion negatived the contention that the provisions of the Bombay Rent Act prevail in the state of Maharashtra over the Public Premises Eviction Act. Thereafter, the Court granted Certificate that substantial question of law relating to the interpretation of the Constitution arises and hence, on the basis of that certificate, these appeals were filed before the present court.

Issue Involved:

Short but important question involved in these matters is— whether the "assent" given by the President under Article 254(2) of the Constitution of India with regard to the repugnancy of the State legislation and the earlier law made by the Parliament or the existing law could only be qua the "assent" sought by the State with regard to repugnancy of the laws mentioned in the submission made to the President for his consideration before grant of assent? Or would it prevail qua other laws for which no assent was sought?

Decision

It would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by the Parliament for which no assent was sought for nor which was reserved for the consideration of the President.

Ratio Decidendi

Granting of assent under Article 254(2) is not exercise of legislative power of President such as contemplated under Article 123 but is part of legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court.

SUMMARY OF THE ARGUMENTS

The contention is, once the President grants the 'assent' to the State legislation, the State law would prevail on the said subject and such 'assent' would be deemed to be an assent qua all earlier enactments made by the Parliament on the subject.

Mr. F.S. Nariman, learned senior counsel for the appellant submitted that following questions arise for determination by this Court:

I. Whether the provisions of the Bombay Rent Act, 1947 having been re-enacted after 1971 by the State Legislature with the assent of the President must prevail in the State of Maharashtra over the provisions of the P.P Eviction Act by virtue of Article 254(2) of the Constitution?

II. Whether it is permissible for a Court of Law to enquire into and ascertain the circumstances in which assent to a law under Article 254(2) was given and hold as a result of such consideration that the State law even with respect to a matter enumerated in the Concurrent List (after having been reserved for the consideration of the President and after having received his assent) does not prevail in that State?

It is contended that it was not permissible for the High Court to enquire into and ascertain the circumstances in which "assent" to law made by the State under Article 254(2) of the Constitution was given and to hold, as a result of such enquiry, that the said law even with respect to a matter enumerated in the Concurrent List does not prevail in the State. In substance, it has been contended by the learned senior counsel Mr. Nariman that since 1947, the Bombay Rent Act is extended from time to time and on each occasion assent of the President is received. Once assent of the President is obtained, the Bombay Rent Act prevails in the State of Maharashtra and not the Public Premises Eviction Act. He further submitted that once the assent is received it is not open to the Court to go behind the said assent' and arrive at the conclusion that President's assent is given qua repugnancy of a particular law or laws, made by the Parliament such as, Transfer of Property Act and

Indian Contract Act. He also submitted that giving of assent by the President is law making process and the steps taken in such process cannot be examined by the Court.

Against the above, it has been submitted that The High Court committed an error in holding that Bombay Rent Act was extended by Act 10 of 1981 and by Act 16 of 1986 and, therefore, the Bombay Rent Act must be considered to be a new law and the Public Premises Eviction Act is the earlier law, for the purpose of Article 254(2). The phrase "reserved for the consideration of the President" under Article 254(2) implies that the State has to draw the attention of the President to the particular repugnancy arising between specified Central Laws and the contemplated State legislation requiring consideration of the President for obtaining his assent.

Observations

In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by the Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the absent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the extent that whether the State has sought assent qua particular earlier law or laws made by the Parliament prevailing in the State or it has sought general assent. In such case, the Court is not required to decide the validity of the 'assent' granted by the President. In the present case, the assent was given after considering extent and nature of repugnancy between the Bombay Rent Act and Transfer of Property Act as well as the Presidency Small Cause Courts Act.[118]

It is true that President's assent as notified in the Act nowhere mentions that assent was obtained qua repugnancy between the State legislation and specified certain law or laws of the Parliament. But from this, it also cannot be inferred that as the President has given assent, all earlier law/ laws on the subject would not prevail in the State. As discussed above before grant of the assent, consideration of the reasons for having such law is necessary and the consideration would mean consideration of the proposal made by the State for the law enacted despite it being repugnant to the earlier law made by the Parliament on the same subject. If the proposal made by the State is limited qua the repugnancy of the State law or laws specified in the said proposal, then it cannot be said that the assent was granted qua the repugnancy between the State law and other laws for which no assent was sought for.[119]

[118] Para 25.
[119] Para 20.

M/s. Orissa Cement Ltd. and Ors. v. State of Orissa and others

AIR1991SC1676, JT1991 (2)SC439, 1991(1)SCALE617, 1991Supp(1)SCC430, [1991]2SCR105

Date of Decision 04.04.1991

(S. Ranganathan, N.M. Kasliwal and S.C. Agrawal, JJ.)

Composition of the Bench: Three Judges

Brief Facts:

As early as in 1960, this Court had to consider the constitutional validity of the Orissa Mining Areas Development Fund Act, 1952 (Orissa Act XXVII of 1952). Section 3 of the Act empowered the State Government to constitute mining areas whenever it appeared to the Government that it was necessary and expedient to provide amenities like communications, water supply and electricity for the better development of such areas or to provide for the welfare of the residents or workers in areas within which persons employed in a mine or a group of mines reside or work. Section 4 empowered the State Government to impose and collect a cess or fee on the minerals extracted the rate of which was not to exceed 5% of the valuation of the minerals at the pit'smouth. Section 5 provided for the Constitution of the Orissa Mining Areas Development Fund. The proceeds of the cess recovered in pursuance of Section 4 along with other subsidies from Government, local authorities and other public subscriptions were credited to the fund and the expenses for such collection debited thereto. The fund has to be utilised to meet expenditure incurred in connection with such development measures as the State Government might draw up for the purposes above mentioned as well as for the purposes specified in Clauses (a) to (e) of Section 5(5). The validity of this levy of cess was challenged by the petitioner coal company in the Hingir Rampur case as ultra vires the powers of the State Legislature because (a) the cess was not a fee but a duty of excise on coal which was a field covered by Entry 84 of List I in the Seventh Schedule and repugnant to the Local Mines Labour Welfare Fund Act, 1947 (Central Act XXXII of 1947); and (b) even if it was treated as a fee relatable to Entries 23 and 66 of List II in the Seventh Schedule, it was hit by Entry 54 of List I read with the Mines and Minerals (Development & Regulation) Act, (Central Act LIII of 1948) ('the MMRD Act' for short) or by Entry 52 of List I read with the Industries (Development and Regulation) Act ('the IDR Act' for short), 1951 (Central Act LXV of 1951). The first of the above arguments was based on

the fact that the cess was fixed at a percentage of the valuation of the mineral concerned at pit's mouth. This argument was based on two considerations. The first related to the form and the second to the extent of the levy. Repelling the argument, it was held that the extent of levy of a fee would always depend upon the nature of the services intended to be rendered and the financial obligations incurred thereby and cannot by itself alter the character of the levy from a fee into that of a duty of excise except where the correlation between the levy and services is not genuine or real or where the levy is disproportionately higher than the requirements of the services intended to be rendered. So far as the first consideration was concerned, it was observed that the method in which the fee is recovered is a matter of convenience and by itself it cannot fix upon the levy the character of a duty of excise. Though the method in which an impost is levied may be relevant in determining its character its significance and effect cannot be exaggerated. The court, therefore, came to the conclusion that the cess levied by the impugned act was neither a tax nor a duty of excise but a fee.

Issue Involved:

Whether the levy of a "cess", based on the royalty derived from mining lands, by the States of Bihar, Orissa and Madhya Pradesh was valid?

Decision (Majority and Minority)

The levy of cess under Section 5 to 7 of the Orissa Cess Act, 1962 is beyond the competence of the State Legislature. The competence of the State Legislature with respect to taxes on mineral rights under Entry 50 of the List II is circumscribed by "any limitations imposed by parliament by law relating to mineral development".

Ratio Decidendi

Entry 23 is "subject to the provisions of List I with respect to regulation and development" of mines and minerals under the control of the union. Under entry 54 of List I, regulation of mines and mineral development is in the field of parliamentary legislation "to the extent to which such regulation and development under the control of the union is declared by Parliament by law to the expedient in the public interest".

SUMMARY OF THE ARGUMENTS

ORISSA

In the historical and statutory context set out above, the attempt of Sri T.S. Krishnamurthy Iyer, leaned Counsel for the State of Orissa to save the impugned legislation of that State was twofold. First, he pointed out that in India Cement the statute, by Sections 115 and 116, imposed a cess and surcharge on 'land revenue' and the Explanation to Section 115 defined 'land revenue' to mean 'royalties'. In other words, that was a clear case of a direct cess or tax on royalties. Here, on the other hand, Section 5 makes it clear that what the legislature has provided for is a tax assessed on the annual value of all lands, on whatever tenure held, calculated at a percentage of the annual value of the land. Section 7, which defines 'annual value', provides for different measures for determining the annual value in respect of lands held under different kinds of tenures; and, in the case of lands held for mining operations, the measure of such annual value is the royalty or dead rent paid to the Government. On a proper construction of the statute, he submits, the cess levied is a cess or tax on land and the 'royalty' is only taken as a measure for determining the quantum of tax. He contends that India Cement only forbids a cess or tax on royalty as such and not a cess or tax on land, which may be measured by reference to the royalty derived from it. He presses in aid of his argument the well-marked distinction between the subject matter of a tax and its measure outlined, amongst others, in Ralla Ram's case [1948] F.C.R. 207 and *Bombay Tyre International* v. *Union [1984] 1 S.C.C. 487*. This argument, Sri Iyer contended, was based on the statutory language used in the Orissa Cess Act, 1962 and should prevail independently of the correctness or otherwise of Murthy. Secondly, he submitted that 'royalty' is not a tax and the cess on royalty is also not a tax but only a fee. This view is supported, he said, by the limitations imposed in the statute on the modes of its utilization. Being a fee, the State Legislature's competence to impose it has to be determined with reference to Entry 23 read with Entry 66 of the State List. So doing, the validity of the levy has to be upheld as, in counsel's submission, the declaration contained in, and the provisions of, the MMRD Act, 1957 do not, in any way, whittle down or impair this competence.

One of the related questions emerging from the contention was: Can the cess be considered as "land revenue" under Entry 45 or as a "tax on land" under Entry 49 or as a "tax on mineral rights" under Entry 50 of the State List? Court was however of the view that land revenue is the sovereign's share of the proceeds of the land belonging to the sovereign

and is represented, in the case of land containing minerals, by the payment of royalty to the Government. Besides, the cess, being an accretion to royalty, partakes of the same character. This argument, however, must fail in view of the categorical Observations of the Supreme Court in India Cement, as to the connotation of the expression 'land revenue'. At least, in India Cement, the statute sought to include royalty within the meaning of 'land revenue' but there is no such provision in the Orissa Act and, this being so, royalty or the tax thereon cannot be equated to land revenue. The cess here cannot be, therefore, brought under Entry 45.

Court took into account the question: whether the impost in the present case is a tax on land within the meaning of Entry 49 of List II of the Seventh Schedule to the Constitution, and observed that it is well-settled that the entries in the three legislative lists have to be interpreted in their widest amplitude and therefore if a tax can reasonably be held to be a tax on land it will come within Entry 49. Further it is equally well-settled that tax on land may be based on the annual value of the land and would still be a tax on land and would not be beyond the competence of the State legislature on the ground that it is a tax on income.[120]. It follows therefore that the use to which the land is put can be taken into account in imposing a tax on it within the meaning of entry 49 of List II, for the annual value of land which can certainly be taken into account in imposing a tax for the purpose of this entry would necessarily depend upon the use to which the land is put.

BIHAR

On behalf of the state of Bihar, Sri Chidambaram submited that no case was sought to be made out that it was a tax on land; the case was that it was a "tax on mineral rights". He urged that, this being out of question because of India Cement, a belated attempt is made to bring it under Entry 49. Sri Chidambaram also contended that the State cannot seek sustain the levy by relying on Article 277 of the Constitution, in view of the fact that the cess is being levied since 1880. Article 277 is in these terms:

"Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

[120] *Ralla Ram* v. *The Province of East Punjab* [1948] F.C.R. 207

MADHYA PRADESH

As regards the State of Madhya Pradesh, the point to be considered before the court was that Part IV which levies a cess not on land in general which could be referred to Entry 18 or Entry 49 but only on land held in connection with mineral rights which, in the State, are principally in regard to coal and limestone.

Observations

S. Ranganathan, J.

The court observed that though there is a difference in principle between tax on royalties derived from land and a tax on land measured by reference to the income derived there from but in the case of Orissa Cess Act, levy is not measured by the income derived by the assesse from the land, as is the case with the lands other than mineral lands. There from, the levy cannot be justified under entries 49 and 50 of List II of the Seventh Schedule of the Constitution. [121]

The MMRD Act, 1957 is a law of Parliament relating to mineral development. Section 9 thereof empowers the Central Government to fix, alter, enhance or reduce rates of royalty payable in respect of minerals removed from the land or consumed by the lessee. Section 9(3) in terms states that royalities payable under the second schedule to that Act shall not be enhanced more than once during the period three years. This is a clear bar on the State legislature taxing royality so as, in effect, to amend the second schedule to the Central Act. So, if the Cess is taken as tax faling under Entry 50, it will be ultra vires in view of the provisions of the Central Act.[122]

What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect of regulation and development under the control of the Union, the Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that this required is a declaration by Parliament that it is expedient in the public interest to take

[121] Paras 30, 34, and 33
[122] Para 39

the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act LIII of 1948.[123]

A reference may be made to a difference in wording between Entry 52 and Entry 54 of List I. The language of Entry 52 read with Entry 24 would suggest that, once it is declared by Parliament by law that the control of a particular industry by the Union is expedient in the public interest, the State legislatures completely lose all competence to legislate with respect to such an industry in any respect whatever.[124] Compared to that of Entry 52, the language of Entry 54 is very guarded. It deprives the States of legislative competence only to the extent to which the law of Parliament considers the control of Union to be expedient in the matter of regulation of mines and mineral development.[125]

The mere declaration of a law of Parliament that it is expedient for an industry or the regulation and development of mines and minerals to be under the control of the Union under Entry 52 or Entry 54 does not denude the State legislatures of their legislative powers with respect to the fields covered by the several entries in List II or List III. Particularly, in the case of a declaration under Entry 54, this legislative power is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. The measure of erosion turns upon the field of the enactment framed in pursuance of the declaration.[126]

There is no substance in the contention that the object and purposes of the Orissa Act and its provisions were quite distinct and different from the objects and purposes of the central Act and that the impugned Act was concerned with raising of funds to enable Panchayats and Samities to discharge their responsibilities of local administration and take steps for the proper development of the areas (including mining areas) under their jurisdiction referable under Entry 5 of List II.As to the reliance on Entry 5 of List II, it is plainly too tenuous. There is a difference between the 'object' of the Act and its 'subject'. The object of the levy of the fees may be to strengthen the finances of local bodies but the Act has nothing to do with municipal or local administration.[127]

[123] Para 41.
[124] Para 42
[125] Ibid.
[126] Para 49
[127] Para 53.

The purpose of the Union control envisaged by Entry 54 and the MMRD Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and, consequently prices. The Central Act bars an enhancement of the royalty directly or indirectly, except by the Union and in the manner specified by the 1957 Act, and this is exactly what the impugned Act does. We have, therefore, come to the conclusion that the validity of the impugned Act cannot be upheld by reference to Entry 23 or Entry 50 of List II.[128]

[128] Para 53.

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CENTRE – STATE LEGISLATIVE RELATIONS (FROM 1998 – 2009)

Analytical Summary of the Arguments

The Constitution of India broadly envisages a federal form of governance but with a tilt towards the Centre. It has constituted India into an indestructible Union of destructible units. As the crux of any federal Constitution is the division of powers and functions between the Centre and the States, the Constitution of India has provided for distribution of legislative and executive functions between the Centre and the States. Since under the scheme of our Constitution executive powers of the Union and States are coextensive with that of their respective legislative powers, the scheme of distribution of legislative powers is of fundamental importance in understanding the federal scheme envisaged in our Constitution. Part XI, Chapter I (Articles 245 to 255) read with Schedule seven of the Constitution provides for distribution of legislative powers. Whereas Articles 245 to 255 deal with powers of the Union and the States to legislate, entries in the three lists of the Seventh Schedule contain fields of legislation. However, provisions in Part XI, Chapter I (Articles 245 to 255) are not exhaustive of the power to legislate either of the Union or of States. There are other provisions like Articles 32 (3), 33, 34, 35, 262, etc., which also confers legislative powers notwithstanding other provisions in the Constitution.

Constitution of India provides for two-fold distribution of powers from the point of view of: (i) territory, and (ii) the subject-matter. Article 245 deals with territorial extent of laws made by Parliament and Legislatures of States, whereas Article 246 read with Seventh Schedule of the Constitution deal with fields of legislation. Articles 249, 250, 252 and 253 provide for exceptions to the scheme of distribution of powers envisaged therein. Article 247 confers power on Parliament to provide for the establishment of certain additional courts for the better administration of laws enacted by Parliament or of any existing law with respect to a matter enumerated in the Union List. Article 248 confers residuary power exclusively on Parliament. Articles 251 and 254 deal with inconsistency between laws made by Parliament and Legislature of a State in different situations.

As in any other federal countries, we have in India an independent judiciary to resolve the dispute between Union and the states. Laws enacted by the Union or by the States are subject to judicial review on the touchstone, inter alia, of federal scheme of distribution of legislative powers envisaged in the Constitution. Ever since the Constitution of India brought into force, various Issues relating to the scope and extent of provisions dealing with legislative distribution of powers have always been the subject matter of judicial review before the Supreme Court and High Courts in several cases emerging out of different fact situations. Judiciary, specially the apex court, in addressing these Issues has evolved various doctrines for the purpose of interpreting relevant provisions of the Constitution like doctrine of 'pith and substance', 'territorial nexus', 'colorable exercise of legislative powers', etc., Courts have always emphasized on the liberal interpretation of legislative entries in the three lists of the Seventh Schedule. In invoking Article 254 of the Constitution, where Union legislature has been given primacy, the apex court always observed circumspection and adopted harmonious construction so as to keep both Union and State legislations operative.

An overview of the cases decided by the apex court during 1998 to 2008 broadly confirms that the apex court has not deviated from its earlier approach in dealing with these Issues. Most of the cases decided during the period relate to the Issues of repugnancy. In resolving theses Issues, the approach of the court has always been to adopt harmonious construction to an extent possible to see that both the legislations can co-exist occupying operating in different fields.

An analysis of various cases concerning distribution of legislative powers shows that the court has mainly applied various doctrines enumerated above in locating the respective fields of legislation and demarcating them in order to successfully resolve the disputes. However, in certain cases involving complex Issues, the legislative competence has been determined by taking recourse to object and purpose of the legislations, background facts, and at times by reference to statutes in *pari materia* as well.

In examining the constitutional validity of the particular legislation, the court has always been guided by the principle that the legislations having predominantly national importance should be left to the Union legislature. This approach of the apex court is strictly in tune with the policy, which the framers of the Constitution have adopted in distributing various fields of legislations between the Union and States.

SUMMARY OF THE ARGUMENTS OF THE CASES

All India Federation of Tax Practitioners and Ors. v. Respondent: Union of India (UOI) and Ors.

(2007) 7 SCC 527

Date of Decision 1.08.2007

Composition of the Bench: S.H. Kapadia and B. Sudershan Reddy, JJ.

Brief Facts

In this appeal the All India Federation of Tax Practitioners challenged the Division Bench judgment of the Bombay High Court dated 22.2.2001 in Writ Petition No. 142/99 upholding the legislative competence of Parliament to levy service tax vide Finance Act, 1994 and Finance Act, 1998. According to the impugned judgment, service tax falls in Entry 97, List I of the Seventh Schedule to the Constitution.

Issue Involved:

Whether the Parliament is competent to levy service tax on practising chartered accountants and architects having regard to Entry 60 List II of the Seventh Schedule to the Constitution and Article 276 of the Constitution?

Decision

Entry 60 of List II of the Seventh Schedule to the Constitution, which refers to profession cannot be extended to include services, therefore, Parliament had absolute jurisdiction and legislative competence to levy tax on services. The appeal was dismissed.

Ratio Decidendi

Entry 60 List II of constitution is not a general entry and cannot be read to include every activity undertaken by a chartered accountant/cost accountant/architect for consideration. Service tax is a tax on each activity undertaken by a chartered accountant/cost accountant or an architect.

SUMMARY OF THE ARGUMENTS

The basic contention of the appellant was that the State Legislature alone has an absolute jurisdiction and legislative competence to levy service tax. It was submitted that service

tax was a tax on profession. It was submitted that service tax fell within the ambit of Entry 60 of List II.

Observations

S.H. Kapadia, J.

Entry 60 of List II of the Seventh Schedule to the Constitution, which refers to profession cannot be extended to include services, therefore, Parliament had absolute jurisdiction and legislative competence to levy tax on services.

The Parliament has legislative competence to levy service tax by way of impugned Finance Acts of 1994 and 1998 under Entry 97 of List I on chartered accountants, cost accountants and architects. We further hold that the above position now stands fortified by the Constitution (Eighty-eighth Amendment) Act, 2003 which has inserted Article 268A and Entry 92C which clearly indicates that Entry 60 of List II and Entry 92C of List I operate in different spheres. However, the court made it clear that there was no challenge to the Constitutional validity of the said Constitution (Eighty-eighth Amendment) Act, 2003.

Gujarat Ambuja Cements Ltd. and Anr. v. Respondent: Union of India (UOI) and Anr.

(2005) 4 SCC 214

Decided On: 17.03.2005

Hon'ble Judges:

Ruma Pal and Arun Kumar, JJ.

Brief Facts:

There are three main grounds on which the challenge is based. It is contended that the basis of the Decision rendered in Laghu Udyog Bharati had not been removed or displaced by the impugned sections and could not therefore overrule, replace or override this Court's Decision. The second ground of challenge is that Parliament was legislatively incompetent to enact the law. It is stated that the imposition of the impugned levy encroaches upon the State Government's power as defined in Entry 56 of List II of the Seventh Schedule to the Constitution which pertains to Taxes on goods and passengers covered by road or on inland waterways'. The submission is that Parliament could not by resorting to the residuary Entry 97 of List 1 of the Seventh Schedule circumvent Entry 56 of List II and in the guise of levying service tax in fact levy a tax on the transport of goods. The constitutional validity of the imposition has also been challenged on the ground that it operated in discriminatory manner by singling out only the customers of goods transport operators and clearing and forwarding agents to pay tax whereas the recipients of other kinds of similar services were not subjected to such imposition.

Issue Involved:

The primary Issue in the instant case concerns the constitutional validity of Sections 116 and 117 of the Finance Act, 2000, Section 158 of Finance Act, 2003, Rule 2 (1) of Service Rules, 1994.

It was stated in the case by the petitioners that the imposition of the impugned levy encroaches upon the State Government's power as defined in Entry 56 of List II of the Seventh Schedule to the Constitution which pertains to Taxes on goods and passengers covered by road or on inland waterways'.

Judgment delivered by Ruma Pal J.

Ratio Decidendi

The court observed that the discrimination is not by reason of subject matter of tax, therefore, Article 14 was held not to be violated.

SUMMARY OF THE ARGUMENTS

(see facts above)

Observations

The Observations of the Court in the case were as follows –

The court observed that the discrimination is not by reason of subject matter of tax. The discrimination lies in method of collection of tax followed. If there is equality and uniformity within each group, law would not be discriminatory. Therefore, Article 14 was held not to be violated. **(Paras 44, 45; Ruma Pal J.)**

In the case before us the discrimination is not, even according to the writ petitioners, by reason of the subject matter of tax. It is also not the writ petitioners' case that within the separate classes of services covered by the different clauses in Section 65(41), there is any discrimination or that the law operates unequally within the classes. According to them the discrimination lies in the method of collection of the tax followed. But as we have said this is not of the essence of the tax and the mere difference in the machinery provisions between the different classes of service cannot found a challenge of discrimination *Provinces of Madras* v. *Boddu Paidanna* AIR 1942 FC 33. If the legislature thinks that it will facilitate the collection of the tax due from such specified traders on a rationally discernible basis, there is nothing in the said legislative measure to offend Article 14 of the Constitution *Union of India* v. *A. Sanyasi Rao* MANU/SC/0326/1996. It is therefore outside the judicial ken to determine whether the Parliament should have specified a common mode for recovery of the tax as a convenient administrative measure in respect of a particular class. That is ultimately a question of policy which must be left to legislative wisdom. This challenge also accordingly fails.

45. Although the challenge to the constitutional validity and legality of the levy of service tax is rejected, the writ petitioners have some subsidiary complaints. They say that although the levy of service tax from the users of the services rendered by the goods transport

operators was introduced with effect from 16th November, 1997, the levy was exempted for the period subsequent to 2nd June, 1998 in view of the notification dated 2nd June, 1998 which is still operative. Yet the respondents had raised demands for service tax for periods subsequent to 2nd June, 1998. It has been conceded by the Union of India that the amendments made in the Act would have to be read along with the notifications so that the levy and collection of service tax would be only in respect of services rendered by goods transport operators between the period from 16th November, 1997 to 2nd June, 1998. Similarly there can be no tax liability on users of the services of the clearing and forwarding agents beyond 19.1999 when by notification No. 7/99 dated 23.8.99, the levy of service tax on the services provided by clearing and forwarding agents were exempted. Furthermore the liability to pay interest or penalty on outstanding amounts will arise only if the dues are not paid within the period of two weeks from the order passed by this Court on 17th November, 2003. In those cases in which the tax may have been paid but not refunded to the writ petitioners, for whatever reason, there is no question of levy of any interest or penalty at all.

Bar Council of India v. Board of Mang. Dayanand Coll. of law and Ors

AIR2007SC1342, JT 2006 (10) SC 603, 2007 (1) KLT 177 (SC), 2006 (13) SCALE 236, (2007) 2 SCC 202, 2007 (3) SLJ 54 (SC)

Name of the Judges: H.K. Sema and P.K. Balasubramanyan, JJ

Decided On: 28.11.2006

Composition of the Bench: 2 Judges

Brief Facts:

On an inspection, the Bar Council of India found that respondent No. 5 the Principal of the Dayanand College of Law did not possess a qualification in law and therefore withdrew its recognition to the College. Subsequently a Writ Petition was filed questioning the validity of the appointment of respondent No. 5 as the Principal of the College. The High Court viewed that going by the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as, "the University Act"), such an appointment could be made notwithstanding anything contained in the Advocates Act, 1961 or in the Rules framed by the Bar Council of India. The High Court held that there was a conflict between the two enactments, namely, the University Act and the Advocates Act and in terms of Article 254(2) of the Constitution of India, the University Act, the later State Act with the assent of the President, would prevail over the Advocates Act and since appointment to the post of a Principal of a College affiliated to a University was governed by the University Act. The Bar Council of India challenges the judgments of the High Court of Allahabad

Issue Involved:

Whether the provisions of the University Act override the Bar council Rules as framed under the Advocates Act, 1961?

Whether a person who, as per the Bar council of India rules as framed under the Advocates Act, 1961 did not possess a degree or a postgraduate degree in law and was not qualified to practice law, could be appointed as the Principal of a Law College and whether it was not essential to have a degree in law before one could be appointed as Principal of a Law College?

SUMMARY OF THE ARGUMENTS

The Advocates Act is a legislation under Entry 25 or 26 of List III of the Seventh Schedule to the Constitution of India and since the State law is under Entry 25 of List III of the Seventh Schedule to the Constitution, the State law would prevail in the context of Article 254(2) of the Constitution (Para 5). Learned Counsel for the Bar Council of India submitted that the High Court was first of all in error in holding that the legislative power for enacting the Advocates Act is traceable to Entry 26 of List III of the Seventh Schedule to the Constitution (Para 6). Pith and substance rule had to be applied and even if the law is traceable to more than one entry, it would still continue to be legislation under Entries 77 and 78 in List I. He further submitted that the High Court was in error in proceeding on the basis that both the legislations fell under List III of the Seventh Schedule and consequently the University Act would prevail. Learned Counsel for respondent No. 5 and for the State contended that the Advocates Act could only be traced to Entry 26 of List III of the Seventh Schedule and the High Court was right in finding that the University Act would prevail (Para 6).

Observations

The Bar Council of India is constituted under Section 4 of the Advocates Act. It is a body corporate. The functions assigned to it are enumerated in Section 7 of the Act. A person may be admitted as an advocate on a State roll only if he has obtained a degree in law from a University recognized by the Bar Council of India. It is necessary for the Recommending Authority and the State Government when concerned with the appointment of a Principal of a Law College, also to adhere to the requirements of the Advocates Act and the rules of the Bar Council of India. This would ensure a harmonious working of the Universities and the Bar Council of India in respect of legal education and the avoidance of any problems for the students coming out of the Institution wanting to pursue the legal profession. Therefore the State Government and the Recommending Authority were not justified in recommending and appointing respondent No. 5 as the Principal of the Dayanand Law College.(Para 13). There is no doubt that the University Act, 1973 had the assent of the President of India and it was an enactment later in point of time to the Advocates Act, 1961. A conflict between a State Law that had the assent of the President and a prior Central enactment based on Article 254(2) of the Constitution (para 4). A harmonious understanding could lead to the position that the Principal of a Law College has to be appointed after a process of selection by the body constituted in

that behalf, under the University Act, but while nominating from the list prepared, and while appointing him, it must be borne in mind that he should fulfill the requirements of the Rules of the Bar Council of India framed under the Advocates Act and it be ensured that he holds a Doctorate in any one of the branches of law taught in the law college. There is nothing in the University Act or the Statutes framed there under, which stands in the way of the adopting of such a course (Para 11).

State of Jharkhand and Ors. v. Voltas Ltd., East Singhbhum

[2007(3)JCR215(SC)], JT2007(6)SC574, 2007(7)SCALE32, (2007)9SCC266, 2007[7]S.T.R.106, (2007)7VST317(SC)]

Date of Decision 09.05.2007

Composition of the Bench: S.B. Sinha and Markandey Katju, JJ.

Brief Facts:

The respondent, a company registered under the Indian Companies Act, 1913 was engaged inter alia in the execution of works contracts of designing, supplying, installation, fabrication, testing and commissioning of air-conditioning plants. The assessing authority acknowledged that the contracts in question were works contracts and the material supplied in the execution of the works contracts only are liable to be taxed. However, the Sales Tax Authorities had sought to levy a uniform rate of tax @ 16% holding that in the instant case the incidence of tax is commensurate with actual transfer of property that takes place in the execution of works contract. Although the respondent had deposited with the appellant the entire amount of the sales tax charged and demanded @ 16%, it passed on to its customers sales tax restricted to the rate of 8% because in terms of the Circular letter No. 3971 dated 18.5.1984 Issued by the Government of Bihar, Finance (Commercial Tax) Department (Annexure P-4 of the affidavit on behalf of the respondent with additional documents), the appellant was entitled to charge sales tax only @ 8%. Parliament amended the Constitution of India by the Constitution (Forty Sixth) Amendment Act, 1982 introducing Clause 29A (b) in Article 366 therein. The aforesaid Clause 29-A states that the words "tax on the sale or purchase of goods" include *inter alia* "(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract".

Issue Involved:

Whether the State legislature under Entry 54 of List II of the Seventh Schedule can tax only on the sale or purchase of goods?

Decision

The State legislature under Entry 54 of List II of the Seventh Schedule can tax only on the sale or purchase of goods. If an item does not come within List II or List III of the

Seventh Schedule to the Constitution, then only Parliament can levy tax either under List I or under the residual provision contained in Article 248.

Ratio Decidendi

It is not merely the labour charges, which are deductible from the value of the works contract, but all other charges/amounts also, except the value of the goods sold in execution of the works contract, as only the value of the goods sold can be taxed as sales tax.

SUMMARY OF THE ARGUMENTS

Not discussed in the judgment.

Observations

Markandey Katju, J.:

The value of the goods involved in the execution of a works contract will have to be determined after taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover

(a) Labour charges for execution of the works;

(b) Amount paid to a sub-contractor for labour and services;

(c) Charges for planning, designing and architect's fees;

(d) Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

(e) Cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and

(f) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(g) Other similar expenses relatable to supply of labour and services;

(h) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

The value of these items, therefore, has to be deducted from the value of the entire works contract, because what can be taxed is only on the sale of goods and not anything

else. The State legislature under Entry 54 of List II of the Seventh Schedule can tax only on the sale or purchase of goods. If an item does not come within List II or List III of the Seventh Schedule to the Constitution, then it can only be the Central legislature i.e. the Parliament that can levy tax either under List I or under the residual provision contained in Article 248 thereof.[129]

It is not merely the labour charges which are deductible from the value of the works contract, but all other charges/amounts also, except the value of the goods sold in execution of the works contract. This is because only the value of the goods sold can be taxed as sales tax. It may be mentioned that the respondent had initially only claimed deduction of labour charges, but that was in view of the understanding of the law at that time.[130]

[129] Para 8.
[130] Para 12.

Dr Preeti Srivastava and Anr. v. State of M.P. and Ors.

AIR1999SC2894, JT1999(5)SC498, 1999(4)SCALE579, (1999)7SCC120

Date of Decision 10.08.1999

Composition of Bench: A.S. Anand, C.J., S.B. Majmudar, Sujata V. Manohar, K. Venkataswami and V.N. Khare, JJ.

Brief Facts:

By G.O. dated 11-10-1994, the State of Uttar Pradesh fixed a cut-off percentage of 45% marks in the Post-Graduate Medical Entrance Examination (PGMEE) for admission of the general category candidates to the Post- Graduate Courses in Medicine. The cut-off percentage of marks for the reserved category candidates viz. Scheduled Castes, Scheduled Tribes etc. was fixed at 35%. Thereafter, by another G.O. dated 31-8-1995 the State of Uttar Pradesh completely did away with a cut-off percentage of marks in respect of the reserved category candidates so that there were no minimum qualifying marks in the Post Graduate Medical Entrance Examination prescribed for the reserved category candidates who were seeking admission to the Post Graduate Courses. This G.O. of 31-8-1995 was challenged before this Court and the court held that while laying down minimum qualifying marks for admission to the Post Graduate Courses, it was not open to the Government to say that there will be no minimum qualifying marks for the reserved category of candidates. If this is done, merit will be sacrificed altogether. This Court struck down G.O. dated 31-8-1995. . After the said Decision, the State of U.P. Issued another G.O. dated 2-4-1997 under which the cut-off percentage of marks for the reserved category candidates was restored at 35%. However, the State of U.P. moved an application before this Court. prayed that it should be given the liberty to reduce the cut-off percentage from 35% to 20% for the reserved category candidates who appear in the PGMEE for 1997.

Issue Involved:

The Issue *inter alia* is:

Of the Union and the State, who should decide the qualifying marks as regards the admission in the present case and such other cases?

Decision

In every case the minimum standards as laid down by the Central Statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down

other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner, which does not dilute the criteria so laid down.

Ratio Decidendi

Admissions must be made on a basis, which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66, List I

SUMMARY OF THE ARGUMENTS

One of the arguments put forth was that it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254.

Observations

Sujata V. Mahohar, J.

Both the Union as well as the States have the power to legislate on education including medical education, subject, *inter alia*, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, *inter alia*, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.[131]

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of

[131] Para 35.

List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I.[132]

S.B. Majmudar, J. (Dissenting)

A conjoint reading of the entries makes it clear that as per Entry 11 of List II which then existed on the statute book, all aspects of education, including University education, were within the exclusive legislative competence of the State Legislatures subject to Entries 63 to 66 of List I and the then existing Entry 25 of List III. The then existing entry 25 of the Concurrent List conferred power on the Union Parliament and State Legislature to enact legislation with respect to vocational and technical training of labour. Thus, the said Entry 25 of List III had nothing to do with medical education. Any provision regarding medical education, therefore, was thus covered by Entry 11 of List II subject of course to the exercise of legislative powers by the Union Legislature as per Entries 63 to 66 of List I.[133]

The State can make adequate provisions on the topic by resorting to its legislative power under Entry 25 of List III as well as by exercising executive power under Article 162 of the Constitution of India read with Entry 25 of List III. Similarly, the Union Government, through Parliament, may make adequate provisions regarding the same in exercise of its legislative powers under Entry 25 of List III. But so long as the Union Parliament does not exercise its legislative powers under Entry 25 of List III covering the topic of short-listing of eligible candidates for admission to courses of post-graduate medical education, the field remains wide open for the State authorities to-pass suitable legislations or executive orders in this connection as seen above. As we have noted earlier, the Union Parliament has not invoked its power under Entry 25 of List III for legislating on this topic. Therefore, the field is wide open for the State Governments to make adequate provisions regarding controlling admissions to postgraduate colleges within their territories imparting medical education for ultimately getting postgraduate degrees.[134]

It is permissible to the State authorities, which are running and/or controlling the medical institutions in the States concerned to short-list the eligible and qualified MBBS doctors for being considered for admission to postgraduate medical courses in these institutions. For the purpose of such short-listing full play is available to the State authorities to

[132] Para 36.
[133] Para 80.
[134] Para 81.

exercise legislative or executive power as the field is not occupied till date by any legislation of the parliament on this aspect in exercise of its legislative powers under Entry 25 of List III of the Constitution of India and this topic is also not covered by any legislation under Entry 66 of List I of the Constitution.[135]

[135] Para 114.

Govt. of A.P. and Anr. v. J.B. Educational Society and Anr. Etc.

(2005) 3 SCC 212

Date of Decision 23.02.2005

Composition of the Bench: K.G. Balakrishnan and B.N. Srikrishna, JJ.

Brief Facts:

The appeals are filed by the State of Andhra Pradesh challenging the Decision of the Division Bench of the High Court of Andhra Pradesh. By the impugned Judgment, the Division Bench partly confirmed the judgment of the learned Single Judge and held that Section 20(3)(a)(i) of the Andhra Pradesh Education Act, 1982 (in short "the A.P. Act") is void and inoperative and the State Government had no legislative competence to pass such a legislation as the State provision was in the field already occupied by the enactment made by the Parliament, namely, All India Council of Technical Education Act, 1987 (hereinafter being referred to "AICTE Act"). It was held that in view of Section 10 of the AICTE Act with regard to establishment of technical institutions in general, the said special enactment legislated by the Parliament would prevail over the A.P. Act to the extent of its repugnancy.

Issue Involved:

Whether the State Government had no legislative competence to pass a legislation as the State provision was in the field already occupied by the enactment made by the Parliament, namely, "AICTE Act".

Decision

The Supreme Court allowing the appeal held that held that the State certainly has legislative competence to pass legislation in respect of education including technical education and Section 20 of the State Act is intended for general welfare of citizens of the State and also in discharge of constitutional duty enumerated under Article 41 of Constitution. Section 20 of the Act was held to be constitutionally valid.

Ratio Decidendi

If there are more colleges in a particular area, State would not be justified in granting permission to one more college in that locality. The state authorities alone can decide

about educational facilities and needs of locality. Section 20 of AP Act and Section 10 of Central Act operate in different fields and there is no repugnancy between two provisions.

SUMMARY OF THE ARGUMENTS

The petitioners in the Writ Petitions contended that in view of Section 10 of the AICTE Act, no permission of the State Government under Section 20 of the Act was required as the field is completely covered by the AICTE Act. It was argued that once the approval was granted by the Council, the State Government cannot refuse permission on the ground that the proposed educational institution may not subserve the educational needs of the locality. The learned Counsel for the State, on the other hand, contended that Section 20 of the AP Act and Section 10 of the AICTE Act operate in different fields, there is no conflict between these provisions and that they are not repugnant to each other and the Decision of the Division Bench is erroneous. It was also contended by the appellant's Counsel that the State Legislature has legislative competence to pass the enactment and that, in view of Entry 25 of the Concurrent List, the State alone would be competent to say whether an institution should be established in an area to serve the educational needs of that locality.

Observations

K.G. Balakrishnan, J.

With respect to matters enumerated in the List III (Concurrent List), both the Parliament and the State legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.[136]

[136] Para 11.

Hindustan Lever and Anr. v. State of Maharashtra and Anr.

(2004) 9 SCC 438

Decided On: 18.11.2003

Hon'ble Judges:

R.C. Lahoti and Ashok Bhan, JJ.

Brief Facts:

In the instant case a scheme of amalgamation was formulated between Tata Oil Mills Co. Ltd. (Transferor Company) and Hindustan Lever Ltd. (Transferee Company). It was approved by the Board of Directors of respective companies and scheme of amalgamation of the transferor company with the transferee company was sanctioned with certain modifications by a Single Judge of the High Court. An appeal was filed against the judgment and order of the Single Judge was rejected by the Division Bench.

The drawn up order of amalgamation of transferor-company with transferee-company was approved by the High Court. On presentation of the certified copy of the Court's order the Registrar of Companies, Maharashtra Issued a certificate amalgamating the two companies.

In view of the stamp duty, sought to be levied on the order of amalgamation passed under Section 394 of the Companies Act, 1956 the appellant filed a writ petition in the Bombay High Court challenging the constitutional validity of the provisions of Section 2 (g) (iv) of the Bombay Stamp Act 1958. By the impugned order the Division Bench of the High Court dismissed the writ petition.

Issue Involved:

In the instant case the primary Issue concerns the levy of stamp duty under the Bombay Stamp Act in a case of transfer effectuated by a Company in the process of amalgamation.

Judgment delivered by Ashok Bhan J.

Decision

Special leave petition against the above judgment of the Division Bench was dismissed by the SC.

Ratio Decidendi:

The duty charged by the state legislature is on the instrument and on the execution of the instrument. The basis for computation of stamp duty can be determined by the state legislature.

SUMMARY OF THE ARGUMENTS

It was contended by the appellants that the impugned duty is not a duty upon instrument but it is in reality a duty on transfer of property which the State Legislature is not competent to impose.

It was next contended that provisions of Section 2(g)(iv) read with Section 34 of the Bombay Stamp Act which provides that the instrument not duly stamped would be inadmissible in evidence are repugnant to Section 394 of the Companies Act and that the State Legislation cannot be prevail over the provisions of the Companies Act. It was also contended that in the guise of the stamp duty the State Legislature is in reality imposing a tax on the amalgamation of the companies and has therefore encroached on the field of the Parliament under Entry 43, List I of the Constitution.

Observations

The Observations of the Court in the case were as follows –

40. The duty charged by the State Legislature is on the instrument and is on the execution of the instrument. The measure of charging stamp duty may be fixed or ad-valor am which is to be determined by the Legislature. The basis for computation of stamp duty can be determined by the State Legislature and it may be on the basis of the market value of the property transferred or at a fixed amount.

43. …We do not find any substance in this submission as well. Stamp duty is levied on the instrument and the measure is the valuation of the property transferred. There is no question of encroachment on the field of Parliament under Entry 43. List I of the Constitution which empowers the Union to make laws re: incorporation, regulation winding up of trading corporation including banks insurances and finance corporations but not including corporative societies. The follow up legislation under Entry 43 List I is totally different from the levy of stamp duty and of prescribing rate of stamp duty on such documents. The Bombay Stamp Act does not provide for any Legislation with regard to

incorporation, regulation and winding up of corporations. It only levies the stamp duty and prescribes the rate of stamp duty in respect of documents by compromise or arrangement.

44. Section 2(g)(iv) of the Act does not in any way describe any alternate procedure as compared to the one appearing in Section 394 of the Companies Act, 1956. The question of repugnancy of Section 2(g)(iv) of the Act visa-a-visa Section 394 of the Companies Act, 1956 is therefore irrelevant. Section 2(g)(iv) does not impinge or negate the judicial power because it merely defines the word "conveyance" in regard to the order passed by the High Court under Section 394 of the Companies Act the basis of which is consent and voluntary act which ultimately result in transfer of property for consideration.

46. It was contended that since the transaction was not between the 'living beings', the same was not "inter vivos" as the transfer of property had not taken place between the Jiving beings. We do not agree. "Transfer of Property" has been defined in Section 5 of the Transfer of Property Act 1882 to mean an act by which a living person conveys property, in present or in future to one more other living persons. Company or association or body of individual, whether incorporated or not, have been included amongst the "living person" in this Section. It clearly brings out that a company can effect transfer of property. The word "inter vivos" in the context of Section 394 of the Companies Act would include within its meaning also a transfer between two "juristic persons" or a transfer to which a 'juristic person' is one of the parties. The transaction between a minor or a person of unsound mind with the other person would not be recognised in law, though the same is between two living beings, as they are not juristic persons in the eyes of law who can by mutual consent enter in a contract or transfer the property. The company would be juristic person created artificially in the eyes of law capable of owning and transferring the property. Method of transfer is provided in law. One of the methods prescribed is dissolution of the transferor company by merger in the transferee company along with ail its assets and liabilities. Where any property passes by conveyance, the transaction would be said to be inter vivos as distinguished from a case of succession or devise.

Munithimmaiah v. State of Karnataka and Ors.

AIR2002SC1574, JT 2002(3) SC254, 2002(3)SCALE194, (2002)4SCC326, [2002]2SCR825, (2002)2UPLBEC1558

Date of Decision 22.03.2002

Composition of the Bench: Doraiswamy Raju and Ashok Bhan, JJ.

Brief Facts:

The appellant claimed to be the owner in possession of the land in Agrahara Dasarahalli Village, Yeswanthapur Hobli, and Bangalore North Taluk. Permission was said to have been obtained by the appellant on 2.8.1969 from the Deputy Commissioner, Bangalore, sanctioning conversion of one acre 16 guntas in the said Survey number into non-agricultural use, leaving the remaining 20 guntas as 'Kharab' land. The permission was subject to certain conditions, which, among other things, included compliance with the formalities prescribed by and obligations to the City Improvement Trust Board and need to secure the approval for the layout and building plans from the said Board and obtaining of necessary licences, etc. from the competent authority before the commencement of any construction work on the said land. The appellant also claims to have substantially commenced construction. While the matter stood thus, a preliminary Notification was said to have been published in the Official Gazette proposing the acquisition of the land belonging to the appellant. The Special Land Acquisition Officer, Bangalore Development. Authority., was also appointed to perform the functions of the Deputy Commissioner under the Land Acquisition Act in exercise of the powers conferred under Section 36 of the Act read with sub-section (2) of Sections 6 and 7 of the Land Acquisition Act, 1894 as amended and extended from time to time by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961. By a Gazette Notification the Government of Karnataka published a Notification under Section 19(1) of the Bangalore Development Authority Act, 1976 making known about the sanction of an improvement scheme and the publication of preliminary notification and the declaration then made under Section 19 of the Act that the lands specified in the said Notification are needed for a public purpose for the formation of the layout in question

Issue Involved:

Whether there is any conflict between Bangalore Development Authority Act, 1976 and Land acquisition Act, 1894 — one being State Act and the other Central Act?

Decision

Bangalore Development Authority Act is not an Act for mere acquisition of land but an Act to provide for the establishment of a development authority to facilitate and ensure a planned growth and development of the city. Acquisition of lands is merely incidental thereto. State Act in substance and effect will constitute a special law providing for acquisition for special purposes of the Bangalore Development Authority Act and the same was not also considered to be part of the Land Acquisition Act, 1894. State Act and the Central Act cannot be said to be either supplemental to each other or *pari materia* legislations.

Ratio Decidendi:

Limitation in Central Act is not applicable to schemes and awards under the State Act.

SUMMARY OF THE ARGUMENTS

The main and substantial question raised by the appellant is that having regard to the provisions contained in Section 11A of the Land Acquisition Act, 1894, the Award passed beyond the stipulated period of limitation is illegal and that after the expiry of the stipulated period under Section 11A, the acquisition proceedings stood lapsed and, therefore, the claim of the appellant ought to have been sustained.

Observations

Raju, J.

The Decision by the high court as to the inapplicability of the provisions of Section 6 and 11A where the period of limitation is prescribed respectively for the Issue of final notification and for passing the Award, in relation to proceedings for acquisition under the Bangalore Development Authority Act came to be rendered on a mere construction of the relevant provisions in the light of the very principles laid down by this Court in the earlier Decisions even without reference to the general question as to whether the reference in the Bangalore Development Authority Act to the provisions of the Land Acquisition. Act amount to legislation by reference or incorporation.[137]

So far as the B.D.A. Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a Development Authority to facilitate and ensure a planned growth and development of the city of Bangalore and areas adjacent thereto

[137] Para 11.

and acquisition of lands, if any, therefore is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the VIIth Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the VIIth Schedule to the Constitution of India, the field in respect of which is already occupied by the Central Enactment of 1894, as amended from time to time. If at all, the B.D.A. Act, so far as acquisition of land for its developmental activities are concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of the B.D.A. and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the B.D.A. Act that the Karnataka legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it the Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the Bangalore Development Authority Act (hereafter B D A Act) vis-à-vis the Central Act has been analyzed elaborately by the Division Bench, as noticed supra, and, in our view, very rightly too, considered to constitute a special and self-contained code of its own and the B.D.A. Act and Central Act cannot be said to be either supplemental to each other, or *pari materia* legislations. That apart, the B.D.A. Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonably stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the B.D.A. Act.[138] When the B.D.A. Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under the Central Act, 1894, as amended by the Amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of B.D.A. Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a special law falling under a topic of legislation exclusively earmarked for the State Legislature. A scheme formulated, sanctioned and set for implementation under the B.D.A. Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Sections 6 and 11A, which cannot also on its own force have any application to actions taken under the B.D.A. Act.[139]

[138] Para 15.
[139] Ibid.

Crawford Bayley and Co. and Ors. v. Union of India (UOI) and Ors.

AIR 2006 SC 2544, JT 2006 (6) SC217, 2006 (6) SCALE541, (2006) 6 SCC 25

Decided On: 05.07.2006

Composition of the Bench: H.K. Sema and A.K. Mathur, JJ

Brief Facts:

The appellant No. 1 is a firm of Advocates and solicitors whereas appellant Nos. 2 & 3 is its partners. The respondent No. 3, the State Bank of India owns a building in Fort, Mumbai. According to the appellants the management of the Imperial Bank, which was the predecessor of respondent, No. 3 State Bank of India (hereinafter referred to as "the Bank ") leased out the premises to appellant No. 1 in 1943. The ground floor and the second floor of the said building are occupied by the respondent no. 3 - Bank. The lease granted in favour of the appellants was renewed from time to time and it was last renewed till 1973. But after that it was not renewed. But by notice dated 6th January, 2000 respondent No. 3 terminated the tenancy of the appellant No. 1 on the ground that it requires the premises to accommodate their Capital Market Branch, Personal Bank Branch and other branches. Notice dated 17th April, 2002 was given terminating the tenancy at the end of calendar month next to the calendar month in which the notice was received by the appellant no.1. This show cause notice Issued by respondent No. 2 was challenged by filing present writ petition. This present appeal is directed against an order passed by the Division Bench of the Bombay High Court in Writ Petition whereby the High Court of Bombay dismissed the Writ Petition.

Issue Involved:

Whether the provisions of the Maharashtra Rent Control Act, 1999 prevail over the provisions of the Public Premises (Eviction of unauthorized occupants) Act, 1971 in view of Article 254 (2) of the Constitution of India?

Decision

There is no merit in these appeals/writ petitions hence, they are dismissed.

SUMMARY OF THE ARGUMENTS

The appellant contended that the provisions of the Maharashtra Rent Control Act, 1999 (here in after referred to as the Maharashtra Rent Act) shall prevail over the provisions of

the said Act of 1971 in view of Article 254(2) of the Constitution of India as the Maharashtra Rent Act applies to all premises belonging to the respondent and therefore, the appellant No. 1 is a protected tenant under the provisions of the Page 2989 Maharashtra Rent Act and the order of eviction for the appellant No. 1 cannot be made. It was submitted that the Mahrashtra Rent Act is a law made by the Legislature of the State in respect of matters enumerated under the Concurrent List i.e. Entries 6 & 46. The public premises Act, 1971 is an earlier law made by the Parliament under the Concurrent List i.e. Entry 6. It was submitted since it was reserved for the assent of the President of India as it contained the repugnant provisions to the earlier law made by the Parliament. Therefore, the later Act, i.e., The Maharashtra Rent Act having been reserved and having received an assent of the President of India, would prevail over the Act, 1971.

Observations

The court relying on the Decision in *Accountant and Secretarial Services Pvt. Ltd. and Anr.* v. *Union of India and Ors* rejected the arguments of the appellant and held that Article 254(2) is not attracted because no provision of the State Acts (which were enacted in 1999) were repugnant to the provisions of an earlier law of Parliament or existing law. The fact that the 1999 Act was enacted, after being reserved for the President's assent is, therefore, immaterial. (Para12) Much of the discussion was on other Issues, which are not relevant in the context.

Prof. Yashpal and Anr. v. State of Chhattisgarh and Ors.

(2005) 5 SCC 420

Date of Decision 11.02.2005

Composition of the Bench: R.C. Lahoti, C.J., G.P. Mathur and P.K. Balasubramanyan, JJ.

Brief Facts

In the instant matter, Professor Yashpal, an eminent Scientist and former Chairman of University Grants Commission, filed a Writ Petition under Article 32 of the Constitution by way of public interest litigation for declaring certain provisions of The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 as *ultra vires* and for quashing of the notifications Issued by State of Chhattisgarh in the purported exercise of power conferred by Section 5 of the said Adhiniyam for establishing various universities.. The other petitioner who joined the petition, is a resident of Chhattisgarh and was concerned with the quality of education in his State. The respondent no.1 to the petition was the State of Chhattisgarh, respondent no.2 was the University Grants Commission and respondent nos.3 to 94 were private universities which have been established by the State of Chhattisgarh under the aforesaid Adhiniyam.

Issue Involved:

Whether the State Act enacted giving wide powers to the State to give permission for establishment of Universities in the state is *ultra vires* the Constitution?

Decision

It was held by the Court that certain provisions of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 were *ultra vires*. It also quashed certain notifications Issued by the State.

Ratio Decidendi:

In spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of

a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent.

SUMMARY OF THE ARGUMENTS

The petitioners contended that in view of Section 10 of the AICTE Act, no permission of the State Government under Section 20 of the Act was required as the field is completely covered by the AICTE Act. It was argued that once the approval was granted by the Council, the State Government cannot refuse permission on the ground that the proposed educational institution may not subserve the educational needs of the locality. The learned Counsel for the State, on the other hand, contended that Section 20 of the AP Act and Section 10 of the AICTE Act operate in different fields, there is no conflict between these provisions and that they are not repugnant to each other and the Decision of the Division Bench is erroneous. It was also contended by the appellant's Counsel that the State Legislature has legislative competence to pass the enactment and that, in view of Entry 25 of the Concurrent List, the State alone would be competent to say whether an institution should be established in an area to serve the educational needs of that locality.

Observations

G.P. Mathur, J.

State Government simply Issued notifications by virtue of power conferred under Section 5 establishing Universities in mechanical manner without slightest regard to any regulation or supervision over them. No verification of Universities was done after issuance of notification to see if they fulfilled any norms laid down by statutory bodies. A private University can be established either by a separate Act or by one compendious Act where Legislature specifically provides for such establishment. It was further held that the impugned Act neither achieved nor is capable of achieving object sought to be projected by the State.

The State Legislature can make an enactment providing for incorporation of Universities under Entry 32 of List II and also generally for Universities under Entry 25 of List III. The subject "University" as a legislative head must be interpreted in the same manner as it is generally or commonly understood, namely, with proper facilities for teaching of higher level and continuing research activity. An enactment which simply clothes a

proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a University so as to take advantage of Section 22 of UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or teaching facility for higher studies or facility for research is not contemplated by either of these Entries. Sections 5 and 6 of the impugned enactment are, therefore, wholly ultra vires being a fraud on the Constitution.

State of A.P. v. National Thermal Power Corporation Ltd. and Ors.

(2002) 5 SCC 203

Decided On: 22.04.2002

S.P. Bharucha, C.J., R.C. Lahoti, N. Santosh Hegde, Ruma Pal and Arijit Pasayat, JJ.

Brief Facts:

The High Court of Andhra Pradesh at Hyderabad has, by its impugned judgment dated April 11, 1990, allowed the writ petition filed by the respondent National Thermal Power Corporation ltd. (hereinafter 'NTPCL', for short) and declared that the levy of duty by the State of Andhra Pradesh on the sales of electrical energy generated by the Corporation-respondent No. 1 at its thermal power station set up at Ramagundam, within the State of Andhra Pradesh, and sold to the Electricity Boards of Karnataka, Kerala, Tamil Nadu and the State of Goa in pursuance of contracts of sales occasioning inter-State movement of electricity is incompetent and outside the power of State Legislature. Consequently, the tax levied and collected has also been held to be without authority of law, hence liable to the refunded in accordance with law. On a prayer made by the learned Advocate General on behalf of the State of Andhra Pradesh, the High Court certified that the case involves a substantial question of law as to the interpretation of Constitution under Article 132. The appeal has been filed pursuant to the certificate so granted by the High Court. On 4.10.1991, a bench of two learned Judges directed the appeal to be placed for hearing before a Constitution Bench, as required by Clause (3) of Article 145 of the Constitution.

Issue Involved:

Whether the state can levy duty on the sales of electrical energy to other states on the ground that the same is generated within its territorial limits?

Decision

The Apex Court upholding the judgment of the High Court ruled that the sales in question in the instant matter were in-fact inter-State sales and therefore it is beyond the legislative competence of the State legislature to levy tax on inter-State sales.

Ratio Decidendi:

Electricity is goods, and that sale of electricity has to be construed and read as sale for consumption within the meaning of Entry 53, the conflict, if any, between Entry 53 and Entry 54 ceases to exist and the two can be harmonized and read together. Because

electricity is goods it is covered in Entry 54 also. It is not disputed that duty on electricity is tax. Tax on the sale or purchase of goods including electricity but excluding newspapers shall fall within Entry 54 and shall be subject to provisions of Entry 92A of List I.

Observations

R.C. Lahoti, J.

The court further reasoned and observed that the contract of sale involved movement of goods from one state to another. The contracts are entered into between NTPC and other states prior to generation of electricity. NTPV generates electricity and supplies the same to the buyers. There is no hiatus between generation, sales, supply, transmission, delivery and consumption.

State of Rajasthan and Ors. v. Vatan Medical & General Store & Ors. etc. etc.

(2001)4SCC642

Decided On: 26.03.2001

Hon'ble Judges:

Chief Justice, Mr. R.C. Lahoti andMr. Shivaraj V. Patil, JJ.

Brief Facts:

The Rajasthan Excise Act, 1950 (Act No.2 of 1950) was passed by the State Legislature of Rajasthan to enact for Rajasthan a uniform law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs. It came into force w.e.f. 1.5.1950.

In exercise of the powers conferred by Section 41 of the Rajasthan Excise Act 1950, the State Government framed the Rajasthan Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sales Rules, 1989 (hereinafter referred to as 'Rajasthan ISP Rules', for short) and published the same vide notification dated November 6, 1989. In these rules, vide clauses (g) of Rule 3, 'intoxicating spirituous preparations' are defined to mean "spirituous preparations notified as liquor by the Government from time to time". Extensive provisions are made in the rules governing possession, import, export and transport, sale of intoxicating spirituous preparations ('ISPs', for short).

Several writ petitions were filed in the High Court of Rajasthan laying challenge to the constitutional validity of Rajasthan ISP Rules published vide notification dated November 6, 1989 and the notification dated 8.5.1990. The writ petitions were filed mostly by the manufacturers of such Ayurvedic medicines which contained, as one of their ingredients, more than 20% proof alcohol. Some of the druggists and chemists holding valid licence for dealing in drugs and medicinal preparations, some of the doctors practising in Ayurvedic system of medicines and some of the patients consuming such medicines on medical prescriptions were also joined as parties. Some of the medicines which were brought within the purview of Rajasthan Excise Act consequent upon the issuance of the impugned notifications were Mrit Sanjivni, Mrit Sanjivni Sura, Mrit Sanjivni Sudha, Pudin Hara manufactured by Dabur India Ltd. According to the petitioners, the said notifications were beyond the legislative competence of the State Government and also constituted unreasonable restriction on Fundamental Right to trade and hence were violative of Article

19(1)(g) of the Constitution. The plea has found favour with the High Court of Rajasthan striking down the impugned notifications dated 6.11.1989 and 8.5.1990 as unconstitutional.

Issue Involved:

According to the petitioners, the said notifications were beyond the legislative competence of the State Government and also constituted unreasonable restriction on Fundamental Right to trade and hence were violative of Article 19(1)(g) of the Constitution.

Judgment delivered by RC Lahoti CJ.

Ratio Decidendi:

By virtue of Entry 8 of List II of the Seventh Schedule of the Constitution of India, the field of legislation available to State Legislature is confined to 'intoxicating liquors' only. Drugs can be subject matter of legislation by State Legislature only if there is no Central Legislation covering the field.

SUMMARY OF THE ARGUMENTS

Shri S.K. Jain, the learned counsel for the State of Rajasthan has placed strong lines on the Decision of 3-Judges' Bench of this court in *State of A.P.and Ors. Vs. Mcdowell & Co. and Ors.*, MANU/SC/0427/1996 stating that the ambit and scope of a constitutional entry cannot be determined by reference to a Parliamentary enactment. Entry 8 in List II speaks of only intoxicating liquors and does not, therefore, apply to or take in liquors which do not fall within the expression "intoxicating liquors". The power to make a law with respect to manufacture, production, consumption and sale et al of intoxicating liquor is that of the State alone. The State Legislature is perfectly competent to make a law prohibiting the manufacture and production — in addition to sale, possession and transport — of intoxicating liquors, by reference to Entry 8, 6 and 1 in List II of the Seventh Schedule of the Constitution read with Article 47 thereof. Once the impugned enactment is within the four corners of these entries, no Central law whether made with reference to an entry in List I or with reference to an entry in List III can affect the validity of such State enactment. The argument of occupied field is totally out of place in such a context. If a particular matter is within the exclusive competence of the State Legislature, i.e., in List II that represents the prohibited field for the Union. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the States. The

concept of occupied field is really relevant in the case of laws made with reference to entries in List III. In other words, whenever a piece of legislation is said to be beyond the legislative competence of a State Legislature, what one must do is to find out, by applying the rule of pith and substance, whether that legislation falls within any of the entries in List II. If it does, no further question arises; the attack upon the ground of legislative competence shall fail. In other words, once an enactment, in pith and substance, is relatable to Entry 8 in List II or for the matter any other entry in List II, Article 246 cannot be brought in to yet hold that State Legislature is not competent to enact that law.

Observations

The Observations of the Court in the case were as follows –

10. Though, we heard the learned counsel for the parties at length but at the end of the hearing we have formed an opinion that although the Decision of Rajasthan High Court, which is impugned before us, cannot be sustained, yet we are not required to express any final opinion on the Issues arising for Decision in these appeals, because the Decision is only academic in view of subsequent events and in the light of facts admitted at the Bar as also for other reasons to be stated hereinafter.

13. In spite of forming an opinion that the judgment under appeal does not correctly decide the Issues raised therein and is therefore liable to be set aside, we are still not expressing any final opinion on the Issues under consideration for the reasons which we hasten to state. Firstly, the Decision has been rendered academic only in view of subsequent events and admitted facts. It was pointed out during the course of hearing that w.e.f. 26.6.1995, 'Part xix — Standards of Ayurvedic, Siddha and Unani Drugs' has been added in the text of the Drugs and Cosmetics Rules, 1945 by the Central Government by GSR 519(E) dated 26.6.1995, during the pendency of these appeals, whereby manufacture, sale or distribution of Ayurvedic, Siddha and Unani drugs containing more than 12% alcohol have been prohibited. The learned counsel for the respondents admitted that they are not now manufacturing any medicine or drugs which may violate the provisions of the Drugs and Cosmetics Act & Rules and therefore there is no product manufactured by the respondents before us which may attract the applicability of the impugned rules and notifications which deal with spirituous preparations containing more than 20% proof alcohol and hence any product of theirs may not run the risk of being termed 'liquor' attracting applicability of Rajasthan ISP Rules. Secondly, the correctness of Decision in Balsara's case was doubted not only in Synthetic's case but also in *M/s. Dabur India Ltd.*

& Anr. Vs. State of U.P. & Ors., MANU/SC/0123/1987, wherein this court has expressed an opinion that for the effectiveness of prohibition the State must be held to have the power to regulate the possession or consumption of such medicinal preparations containing comparatively high percentage of alcohol under the Excise Act and has, therefore, referred the case to Constitution Bench. The matter is awaiting hearing by the Constitution Bench. The Decision by the Constitution Bench shall be the law of the land. Even if we were to decide the question, our opinion shall always be subject to the law to be declared by the Constitution Bench. In any case we are finding it unnecessary to enter into that exercise in the facts and circumstances of the cases before us. Thirdly, all the learned counsel for the respondents submitted during the course of hearing that their principal anxiety was that the impugned rules and notification, if sustained, are liable to entail heavy financial burden on the respondents in as much as the State of Rajasthan may proceed to levy and recover excise duty or countervailing duty on their products manufactured or brought for sale in the State of Rajasthan under Section 28 of Rajasthan Excise Act. In our opinion, such an apprehension is premature and unfounded. This we say for two reasons. Firstly, Rule 25 of Rajasthan ISP Rules provides that in the matter of duty to be paid on intoxicating spirituous preparations and not leviable under the Medicinal and Toilet Preparation (Excise Duty) Act, 1955, the provisions of the Rajasthan Excise Act, 1950 shall apply; in all other matters, not specified in these rules, the provisions of Rajasthan Excise Rules, 1956 shall apply mutatis mutandis. The rule takes care of the respondents apprehension. Secondly, the writ petitions were filed soon after the issuance of the impugned notifications. It was conceded at the Bar that till the date of the filing of the writ petitions and even till the date of hearing before us, the State of Rajasthan had not taken any steps for levy, much less for recovery, of and had not raised any demand on account of excise duty or countervailing duty from any of the respondents. We need not adjudicate upon an Issue which has not even actually arisen. By way of abundant caution, we may state that we need not be taken to have expressed any opinion on the correctness or otherwise of the Decision of the Delhi High Court in *M/s. Dabur India Ltd. Vs. Delhi Administration & Ors.* (CW No. 1267 of 1987 decided on 26th March, 1992) as no appeal has been filed against that Decision before this court and for the purpose of present case we have formed an opinion that the controversy was rendered academic not calling for any expression of final opinion.

Tripura Goods Transport Association and Anr. v. Commissioner of Taxes and Ors.

(1999)2SCC253

Decided On: 18.12.1998

Hon'ble Judges:

K. Venkataswami and A.P. Misra, JJ.

Brief Facts:

The appellant-Association which is doing the business of transporting goods within and outside the State of Tripura, is aggrieved by the judgment of the Gauhati High Court dismissing writ Appeal challenging the constitutional validity of the Tripura Sales Tax [11th Amendment] Rules, 1994, (for short 'the Rules') and Sections 29, 32 and 36A of the Tripura Sales Tax Act, 1976, (for shot 'the Act') including notifications dated 23rd September, 1994 and 15th October, 1994. By means of the aforesaid 11th Amendment, Sub-rule (3) has been inserted after Sub-rule (2) of Rule 46-A of the Tripura Sales Tax Rules, 1976, (for short 'Principal Rules'), Sub-rule (IA) has been inserted after sub-rule 63-A (1), Sub-rule (2) in Rule 63A has been substitution in place of old Sub-rule (2) of the principal Rules and Rule 64A has been substituted for the old sub-rule 64A. The resultant effect of such amendment is that the appellant, who are working as Transporters in Tripura, are required to obtain a Certificate of Registration and to comply with various other formalities as prescribed under the Act and the Rules, viz., to maintain accounts according to the prescription made by the respondents under Section 36A of the Act for carrying on transport business while entering into or going outside the State of Tripura including making the declaration in Form XXIV, which is challenged to be beyond the legislative competence of the State Legislature and *ultra vires* the Constitution offending Articles 14, 19(1)(g), 246, 265, 286, 300A and 301 of the Constitution of India. The challenge is based on the ground that the appellants are Transporters and are not dealers within the meaning of Section 2(b) of the said Act, hence obligation cast on them under the Act and Rules are beyond the legislative competence of the State legislature.

By a reasoned order, the learned Single Judge was pleased to dismiss the writ petition of the appellants, except the challenge to the validity of Rule 63A(2) of the principal Rules. However, the challenge made by the appellants regarding constitutional validity of Section

36A, which requires a carrier to maintain proper accounts of goods transported to or outside Tripura in the manner prescribed, was not entertained by the learned Single Judge. In appeal before the Division Bench, though foundation was laid but specific prayer for declaration of Section 36A as *ultra vires* was not made due to inadvetence, hence the appellants sought amendment to the prayer at the appellate stage which was granted, accordingly it was incorporated at the appellate stage. The Division Bench also dismissed the appeal of the appellants. Aggrieved by the same, the present appeal is filed.

Issue Involved:

The challenge is based on the ground that the appellants are Transporters and are not dealers within the meaning of Section 2(b) of the Tripura Sales Tax Act, 1976, hence obligation cast on them under the Act and Rules are beyond the legislative competence of the State legislature.

Judgment delivered by AP Misra J.

Ratio Decidendi:

If any legislature makes any ancillary or subsidiary provision which incidentally transgresses over its jurisdiction, for achieving the object of such legislation then it would be a valid piece of legislation.

Section 38 itself indicates that it has been brought in for carrying out the purposes of Section 38, which basically is to check evasion of tax. Hence, the requirement of Section 38B for a transporter operating its transport business relating to taxable goods in Tripura to obtain 'Certificate of Registration' from the Commissioner of Taxes, is not violative of Article 301 of the Constitution.

SUMMARY OF THE ARGUMENTS

Learned Counsel for the appellants Mrs. M.L. Lahoty, made two-fold submissions in support of the challenge. First, the obligation cast under it on the Transporters could only be on a dealer and since the Transporters are neither trading in sale nor purchase of any goods hence not a dealer as defined under Section 2(b) of the Act, hence the impugned provisions lack legislative competence. Secondly, when it further casts an obligation on such transporters to obtain certificate of registration under the said Act, when any good is brought within or sent outside the State of Tripura and further to fill Form XXIV, impedes free flow of trade and business of the appellants, hence violative of Article 301 of the Constitution of India.

Learned senior counsel for the respondents, Mr. Rakesh Dwivedi, submits that none of the said provisions require the appellants (Transporter) to perform any of such obligations so as to construe it to be that which could only be on a dealer. The aforesaid provisions are only to streamline assessment and to check the evasion of sales tax. The said obligation casts on the Transporters to achieve such purpose, is a necessary concomitant of any taxing statute. He submits that the offence and penalties referred to in Section 29(4), which is strongly relied by learned Counsel for the appellants, when read with other sub-clauses of that Section and further read with Section 30, reveal that it is only a mechanism to make collection of tax more effective and purposeful. Sub-section (4) of Section 29 constitute offence only when one fails to produce such account or form as he is required under the law when required by the concerned authority. This is a necessary corollary for which an obligation is cast on the Transporters to do certain thing. This threat of offence is only to keep him on guard so that he may not fail to produce such documents as required, but for this the very objective to trace a real dealer for tax and penalty would be defeated. Thus this obligation cast on the Transporter is really in aid to the taxing authorities. Section 30 constitutes offence when a false statement is declared. This is followed by the composition of offences under Section 32. Section 36A requires the maintenance of accounts. Similar is the position with respect of the aforesaid Rules. They are all in aid of the mechanism evolved to check evasion of tax. Next requirement of obtaining a Certificate of Registration under Section 38B and making declaration on Form XXIV under sub-Rule 3 of Rule 46-A could not be construed as to constitute an inference that it impedes any free flow of trade or business while entering into and going out of the State of Tripura.

Observations

The Observations of the Court in the case were as follows –

The question for consideration with respect to the first submission is, whether such provisions could be held to be beyond the legislative competence of the State Legislature? The law in this regard is well-settled, if any legislature makes any ancillary or subsidiary provision which incidentally transgresses over its jurisdiction, for achieving the object of such legislation then it would be a valid piece of legislation.

The second submission is with reference to the requirement of obtaining Certificate of Registration under Section 38B which, according to the learned Counsel, impedes the free flow of trade and business of a Transporter hence violative of Article 301 of the Constitution. For ready reference Section 38B is quoted hereunder:

For carrying out the purposes of Section 38 every Transporter, or Transporting Agent operating its transport business relating to taxable goods in Tripura shall be required to obtain a Certificate of Registration in the prescribed manner from the Commissioner of Taxes on payment of such fees as may be prescribed.

This section, itself indicates, has been brought in for carrying out the purposes of Section 38, which basically is to check evasion of tax. Under, the barriers, check-post are set up, the officers are empowered to check any vehicle, seized goods being carried in contravention of any provision of the Act and the Rule. Thus, the requirement of 'Certificate of Registration' by a transporter is also for the same purpose. It only applies to such transporters doing transport business relating to taxable goods in Tripura only. This certainly cannot be construed to be violative of Article 301 of the Constitution of India. Article 301 provides freedom of trade, commerce and intercourse. This Article is subject to the other provisions of this part, namely, part XIII which covers Articles 301 to 307. Article 304(b) empowers the State Legislature to impose such reasonable restriction on the freedom of trade, commerce or intercourse with or within the State as may be required under the public interest. When a provision is made for a Certificate of Registration which in the present case is brought in by amendment as aforesaid it is really for checking the evasion of tax. By such registration of transporters or carriers it become feasible for the authorities to trace out such dealers escaping tax, through such transporters.

Hence, we hold that the requirement of Section 38B for a transporter operating its transport business relating to taxable goods in Tripura to obtain 'Certificate of Registration' from the Commissioner of taxes, is not violative of Article 301 of the Constitution.

In view of the aforesaid findings, we hold that the impugned provisions of the Tripura Sales Tax Act and the Rules of 1976 are valid pieces of legislation. The appeal is, accordingly, dismissed. Costs on the parties.

Welfare Assocn. A.R.P., Maharashtra and Anr. v. Ranjit P. Gohil and Ors.

(2003) 9 SCC 358

Decided On: 18.02.2003

Hon'ble Judges:

R.C. Lahoti and Brijesh Kumar, JJ.

The Bombay Rents, Hotel and Lodging House Rates Control, Bombay Lead Requisition and Bombay Government Premises (Eviction (Amendment) Act, 1996 (Act No. XVI of 1997) having been struck down as *ultra vires* of the Constitution and as being beyond legislative competence of the State Legislature, the State of Maharashtra, the Welfare Association of Allottees of Requisitioned Premises, Maharashtra and several others have come up in appeal. The Decision by the Division Bench of the High Court of Judicature at Bombay was delivered on 27th July 1998. The judgment posed, the threat of eviction against several allottees in occupation of premises requisitioned by the State Government Several Writ Petitions were filed which were all disposed of by the impugned judgment of the Division Bench.

Issue Involved:

The principal question which arises for Decision in the batch of appeals is the constitutional validity of Amendment Act No. XVI of 1997 abovesaid.

Judgment delivered by RC Lahoti CJ.

Ratio Decidendi:

If any grey area of impugned Amending Act is left out uncovered by entries 6, 7 & 13 of List-III is covered by entry 18 of List-II, i.e. 'economic and social planning' for which reasons, we are of the opinion that the impugned Amending Act is intra vires and within the legislative competence of the State Legislature.

It is permissible for the Legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement.

SUMMARY OF THE ARGUMENTS

The submission of the learned counsel for the writ petitioners - respondents has been that within the meaning of entries 6 & 7 of List-III what can be enacted is a law dealing with any existing transfer of property or an existing contract; the legislation cannot be itself create a transfer of property or bring a contractual relationship in existence which if done would fall outside the scope of entries 6 & 7 abovesaid. It was submitted that the owners have not transferred any property in the premises to the occupants nor does any contractual relationship exist between the owners and the occupants on the date of coming into force of the Amending Act and, therefore, the Amending Act cannot be said to be a law governing transfer of property or contract and hence does not fall within the purview of these entries 6 & 7. To test the validity of such submission forcefully advanced it will be useful to have a recap of certain well-established principles.

It was submitted on behalf of the writ petitioner-respondents that the impugned judgment has the effect of nullifying or overriding the mandate of this Court Issued in H.D. Vora and Grahak Sanstha Mancha and Ors. cases (supra). It was submitted that the Legislature could not have directly overruled the Decisions or mandate of this Court but the same thing is sought to be achieved indirectly by resorting to device of an amendment in the legislation which is nothing but colourable exercise of legislative power which ought not to be countenanced by this Court.

Observations

The Observations of the Court in the case were as follows –

35. The power of the State Legislature to legislate in respect of landlord and tenant of buildings is to be found in entries 6, 7 & 13 of List-III of the Seventh Schedule to the Constitution and not in entry 18 of List-II, and that power was circumscribed by the exclusive power of Parliament to legislate on the same subject under entry 3 of List-I.

37. The expression 'transfer or property' in entry 6 and the term 'contracts' in entry 7 of List-III are to be widely interpreted. Such wide meaning has to be assigned to the said expression and terms as would make the entries meaningful and effective. The entries must certainly take colour from the Directive Principles of State Policy specially those contained in Articles 38 and 39 of the Constitution. True that there was no voluntary transfer of property by the owners of property in favour of the occupant allottees of the premises. The State Government in exercise of its power of eminent domain, recognized

statutorily, had requisitioned the properties in public interest and allotted it to the occupants. The Government paid compensation for requisitioning to the owners. Out of the requisitioned premises some were occupied by State itself. As to the premises which were allotted, the allottees in occupation were liable to pay compensation in lieu of their occupation of the premises. There was no privity of contract between the owners and the occupants, yet a privity of estate was brought into being by acts of State supported by law. Possession is nine points in law and to that extent a transfer of property had resulted and brought into being. Such privity of estate was compulsorily converted into privity of contract by operation of law as a consequence of the impugned Amending Act. The Act also provided civil procedure by which the landlords were entitled to snap the relationship of landlord and tenant deemingly created by the statute and seek eviction subject to making out a ground therefore under the pre-existing Rent Control Legislation. Such legislation would clearly fall within the purview of entries 6, 7 & 13 of List-III.

40. A grim and emergent situation was created on account of threat posed before the likely evictees who were in occupation of requisitioned premises. The impugned Amending Act also seeks to bring into effect a scheme of equitable redistribution of wealth and shelter so as to protect the licensee — occupants by giving them the status of tenant and regulating the right to eviction exercisable by the landlords by making it conditional upon availability of grounds under a pre-existing rent control law already governing similar properties in the State of Bombay. The salutary goal of 'from each according to his capacity, to each according to his needs' was sought to be achieved. The essential need of shelter for other segments of society such as the State Administration, Semi-Government bodies, PSUs and the likes were also protected in public interest as otherwise their activities would have been jeopardized, which in turn would have had an adverse effect on the society. Thus, if any grey area of impugned Amending Act is left out uncovered by entries 6, 7 & 13 of List-III is covered by entry 18 of List-II, i.e. 'economic and social planning'.

41. For all the foregoing reasons, we are of the opinion that the impugned Amending Act is intra vires and within the legislative competence of the State Legislature.

47. Thus, it is permissible for the Legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement.

The impugned Amending Act does not either directly or indirectly overrule the judgments

of this Court. The law enunciated by this Court in the two Decisions was that the Executive was exercising power of requisitioning the premises in such a manner that the premises were in fact acquired under the guise or pretext of requisitioning. It was a colourable and hence a mala fide exercise of its executive power by the State. Such tainted requisition was struck down by this Court as ultra vires of the Constitution. The consequence of invalidating and striking down the requisitioning continuing for unreasonable length of time was that such invalid requisitioning came to an end. It followed as a natural corollary that the premises in occupation of the allottees became liable to be restored to the possession of the owners. By virtue of interim orders passed by the Court, the possession of the occupants was protected and that protection was continuously enjoyed by the occupants upto the date of Decision. To relieve the occupants from the hardship of sudden eviction caused by its judicial pronouncement, the Court allowed some more time to the occupants by directing the protection under the interim orders of the Court to remain in operation for some more period of time in spite of the cases having been disposed of. Allowing time to vacate the premises under the protection of the interim orders is not the same thing as issuing mandamus to vacate the premises by certain date. What the impugned Amending Act has done is to fundamentally alter the very basis of occupation of the premises by the occupants. Instead of their remaining in occupation by virtue of orders of allotment of requisitioned premises, the Amending Act declared that the requisitioning shall come to an end and the occupants shall become tenants under the owners who would become the landlords and the amount of compensation shall become rent.

55. We are definitely of the opinion that the impugned Amending Act is neither in conflict with the judgments of this Court nor can it be said to be a piece of colourable legislation.

56. The Amending Act has altered the basis of occupation of the occupants over the premises. So long as the legislation is within the legislative competence of the State Legislature, which it is, as we have already held, merely because the indirect effect of the amendment would be to place additional restrictions on the right of the owners to seek eviction of the premises consequent upon the judgment of the Supreme Court, it cannot be held that the Legislature has overruled the judgment of this Court or made an inroad on the doctrine of separation of powers. If the Amendment Act had been enacted on the dates of Decision in *H.D. Vora's* case or *Grahak Sanstha Mancha and Ors.* case , the Court would not have been called upon to adjudicate upon and invalidate the unreasonably stretched requisitioning providing cloak for acquisition without adequate compensation

and the occupants would have been held protected as tenants under the Rent Act. The situation is squarely covered by the law laid down by three Constitution Benches of this Court and other Decisions of this Court referred to hereinabove. We do not think that the impugned Amendment Act is "colourable legislation" or is in conflict with the Decisions of this Court.

62. The premises were liberally requisitioned to satisfy the needs of the needy. The requisitioning did not solve the problem which continued to persist resulting in endless renewals of requisitioning which was held by this Court to be vitiated on account of virtual acquisitioning without payment of compensation resulting from recurring and non- intermittent cycles of requisitioning. It was struck down. Consequent upon constitutional interpretation and adjudication by this Court thousands, if not lakhs of persons and substantial activity of government, semi-government bodies and PSU's ran the risk of being rendered roofless and out of gear. They all needed to be protected by State intervention and constituted a class by themselves. All such premises whose occupants were under the threat of eviction also constituted property capable of identification by a well defined classification. The Legislature chose to step in and enact a legislation, which would protect the threatened evictees from likely eviction. The persons and premises - both constitute a well defined class by themselves and the classification cannot be said to be arbitrary, it is capable of being distinguished from others not included in that class. Such classification has an apparent and clear nexus with the object sought to be achieved. The impugned legislation does not, therefore, suffer from either arbitrariness or invidious discrimination. The challenge that the impugned Amendment Act falls foul of Article 14 of the Constitution must therefore fail.

64. Thus the challenge to the constitutional validity of the impugned Amending Act fails on all the counts. The Decision of the High Court wherein view to the contrary has been taken is held unsustainable and liable to be reversed. However, this is subject to a clarification.

66. Accordingly, all the appeals are allowed and the impugned judgment of the High Court is set aside subject to the clarification made hereinabove.

Commissioner of Income Tax v. Respondent: Willamson Financial Services and Ors.

(2008) 2 SCC 202

Decided On: 12.12.2007

Hon'ble Judges:

S.H. Kapadia and B. Sudershan Reddy, JJ.

Brief Facts:

The facts in this case concerned deductions claimed at the time of filing returns by the assessee for export of tea in the accounting year. In the returns, the assessee claimed deduction under Section 80HHC against the entire Composite Income before application of Rule 8(1). The primary Issue for determination in the matter is at what stage Section 80HHC deduction is to be allowed i.e., before the 60: 40 apportionment under Rule 8(1) or from 40 per cent profits on sales taxable as Business Income.

In the instant case the assessees were in business of growing and manufacturing tea. They had claimed deduction under Section 80HHC against entire composite income, i.e., both agricultural income and business income, before application of rule 8(1). This working was rejected by AO who took the view that deduction under Section 80HHC can be allowed after 60: 40 apportionment as 40 per cent income was gross total income. CIT(A), however, reversed the Decision of AO by holding that AO should have first granted Section 80HHC deduction against the entire tea income before applying rule 8(1). Tribunal took the view that AO was right and set aside the order of CIT(A). High Court reversed the view of the Tribunal. It is against this order of HC that the appeal was filed before the SC.

Issue Involved:

Whether by virtue of Section 80HHC of the Income Tax Act deduction is required to be allowed after apportionment of income under Rule 8(1)?

Judgment delivered by SH Kapadia J.

Ratio Decidendi:

By virtue of Section 80HHC deduction is required to be allowed after apportionment of income under Rule 8(1)."

"Since deductions under Chapter VIA are deductions not from a particular head of income but from gross total income, Section 80HHC is not part of the computation of income under the head "Business"."

SUMMARY OF THE ARGUMENTS

On behalf of the assessees learned senior counsel submitted that Rule 8 of 1962 Rule which provides for computation of composite income is made under the power conferred by Section 295 of the 1961 Act and as such the said Rule has the effect as if enacted in that Act. Further, the definition of "agricultural income" is bound up with the Rules. Therefore, according to the learned Counsel, such composite income has to be computed in the first instance as if it is income derived from business. The income has to be computed in accordance with the provisions of the Act which deals with computation of business income and, therefore, any deduction permissible under the 1961 Act is to be allowed while computing the composite income which is treated as business income and, therefore, deduction admissible under Section 80HHC is to be computed on the basis of the proportion which the export turnover bears to the total turnover, which proportion is to be applied to the business profits to find out the export profits derived from export business. According to the learned Counsel, when income is derived from profit computed under the head "profits and gains of business", all deductions and allowances are to be allowed and, therefore, it is not possible to compute the profit of the business by allowing only deduction and allowances, which fall under Chapter IV but all other deductions although they do not appear in Chapter IV but in Chapter VIA, like deductions under Section 80HHC, have also to be allowed to compute business profits in accordance with the provisions of the Act under the head "profits of the business". According to the learned Counsel, if total profits from the sale of tea cultivated and manufactured by the seller are to be included in the computation of business profits, then, necessarily, any deduction allowed in respect of the profits from tea export has also to be allowed in computing the business income. In this connection, learned Counsel placed reliance on the definition of "total income" in Section 2(45) and Section 5 of the 1961 Act which defines the scope of total income. According to learned Counsel, "business income" is one of the Heads of Income under Section 14 and such income is included in the total income of an assessee.

According to assessees, Section 80A, which is in Chapter VI-A, provides that in computing the total income, there shall be allowed from gross total income, deductions specified in Sections 80C to 80U of the Act and, therefore, there is no difference between deductions under Chapter IV and the deductions under Chapter VI-A. Therefore, according to the learned Counsel, in computing the total income, it is not permissible to restrict the deduction under Chapter IV and not to allow deduction under Chapter VI-A. In this connection reliance was placed by the learned Counsel on the judgment of this Court in the case of *Cambay Electric Supply Industrial Company Ltd.* v. *Commissioner of Income Tax* MANU/SC/0201/1978 Page 0147 which had been approved by the Constitution Bench later on in the case of *Distributors (Baroda) Pvt. Ltd.* v. *Union of India and Ors.* MANU/SC/0146/1985 in which it has been held that though a deduction does not appear in Chapter IV, it has a direct impact upon the computation of income under the head "business profit" and, therefore, even if the deduction does not fall within the ambit of Sections 29 to 43A, still if the deduction directly affects the computation of income under the head business profits then such deduction has got to be taken into account. Placing reliance on the said judgments, learned Counsel submitted that the deduction admissible under Section 80HHC is one of the items of deduction appearing in Chapter VI-A which has to be taken into account in computing the business income and, therefore, Section 80HHC is a part of the provisions relating to the computation of business income under the 1961 Act.

It was further submitted that the legal fiction under Rule 8 became necessary because it was not possible for the ITO to assess an assessee, who not only carries on business in selling tea but also grows green tea leaves by agricultural process and manufactures black tea from the same. Because of the said legal fiction, the entire sale proceeds is treated as business income and is computed as such after giving all allowances and deductions admissible in computation of business income and, therefore, according to the learned Counsel, while computing business income, the legal fiction under Rule 8 must be given effect by computing the business income after taking into account the deduction under Section 80HHC. Learned Counsel for the assessee further submitted that Chapter VI-A has several headings. Under heading "C" we have "deductions in respect of certain incomes". That heading would cover "incomes" which are includible in the gross total income of the assessee and, therefore, Section 80AB which also falls in Chapter VI-A will apply only to incomes which fall under heading "C". In other words, according to the learned Counsel, Section 80AB will not have any application to incomes not falling under heading "C". Learned Counsel for the assessee has relied upon the above analyses of

various deductions allowed under heading "C" to show that under certain provisions, deductions are allowed where the gross total income includes profits or gains in respect of which such deductions are admissible. For example, Section 80HH provides that where gross total income includes any profits derived from an industrial undertaking, there shall be allowed, in computing the total income, a deduction equal to twenty per cent from such profits. Similar expression finds place in Section 80HHB and Section 80IA. These illustrations have been given by the learned Counsel in support of his contention that where the gross total income includes any business profits referred to under the specific section, Section 80AB would apply and the amount of income specified in the given section as computed in accordance with the provisions of the Act (before making any deduction under Chapter VI-A) shall alone be deemed to be the amount of income of the said nature which is derived or received by the assessee and which is included in his gross total income. However, the said scheme of Sections 80HHB, 80I and 80IA etc. is not Page 0148 applicable to the scheme of Section 80HHC. According to the learned Counsel, Section 80HHC is the separate code by itself. That the said section cannot be confused or put on par with Sections 80HHB, 80I or 80IA. According to the learned Counsel, Section 80HHC is different from other sections under Chapter VI- A because it provides that in computing the total income, the profits and gains from export would be allowed a deduction of the profits derived by the assessee from the export of such goods. According to the learned Counsel, in Section 80HHC, the following expression is not there, namely, "where gross total income of an assessee includes the profits derived from export business". According to the learned Counsel, the said expression is omitted from Section 80HHC because the deduction under Section 80HHC is strictly not computed in accordance with the provisions of the 1961 Act, relating to the computation of business income. According to the learned Counsel, the deduction under Section 80HHC is only in respect of profit derived by the assessee from export, which has been defined under Section 80HHC(3). That sub-section lays down that the profits derived from export shall be the amount which bears to the profits of the business, as computed under the head profits and gains of business, the same proportion as the export turnover bears to the total turnover of the business. Therefore, according to the learned Counsel, the profits of the export business which are allowed deduction under Section 80HHC are not computed in accordance with the provisions of the Act relating to the computation of business income but is statutorily fixed under Section 80HHC(3) of the Act and that is the reason why Section 80HHC does not use the expression "where gross total income includes any profits and gains derived from export business". Therefore, according to the learned Counsel, Section 80AB

is not applicable to profits derived from export business. Therefore, according to the learned Counsel, Section 80AB will not govern Section 80HHC. Consequently, according to the learned Counsel, the ITO should have first granted Section 80HHC Deduction against the entire tea income, i.e., before applying Rule 8(1) and, thereafter, the ITO should have applied the said Rule and apportioned the income in the ratio of 60:40.

Observations

The Observations of the Court in the case were as follows –

17. Rule 8(1) of the 1962 Rule reads as under:

Income from the manufacture of tea.

8. (1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax.

18. Entry 46, List II (State List) of the Seventh Schedule to the Constitution which reads as under:

46. Taxes on agricultural income.

19. Article 245 of the Constitution reads as under:

245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

20. Entry 82, List I (Union List) of the Seventh Schedule to the Constitution reads as under:

82. Taxes on income other than agricultural income.

21. Article 366(1) of the Constitution reads as under:

366. Definitions.- In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

(1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;

22. On analysis of the above provisions the position which emerges is as follows. Section 10(1) of 1961 Act exempts "agricultural income" not only from taxable income but also from the "total income" of the assessee. These incomes are different from tax-free incomes under Chapter VIA. The exemption of agricultural income from central taxation is based on the provisions in the Constitution according to which Parliament has exclusive power to make laws with respect to taxes on income other than agricultural income, whereas State Legislature has exclusive power to make laws with respect to taxes on agricultural income, under Article 246(1) of the Constitution read with Entry 82 of List I in the Seventh Schedule and Article 246(3) read with Entry 46 of List II in the Seventh Schedule.

23. The expression "agricultural income", for the purpose of above-mentioned entries, means agricultural income as defined for the purpose of the enactments relating to Indian Income-tax vide Article 366(1) of the Constitution. Therefore, the definition of "agricultural income" in Article 366(1) indicates that it is open to the income-tax enactments in force from time to time to define "agricultural income" in any particular manner and that would be the meaning not only for tax enactments but also for the Constitution. This mechanism has been devised to avoid a conflict with the legislative Page 0152 power of States in respect of agricultural income. From the said definition of "agricultural income" in Article 366(1) it becomes clear that Rule 8 of 1962 Rule (corresponding to Rule 24 framed under I.T. Act, 1922) pertains to and is integrated with the definition of the expression "agricultural income" for the purposes of laws pertaining to Indian Income-tax and, therefore, the said rule has to be taken into account in considering the meaning of the expression "agricultural income" in Article 366(1) of the Constitution. It is significant to note that the words used in Article 366(1) of the Constitution are not "as defined by the enactments relating to Indian Income-tax" but "as defined for the purposes of the enactments relating to Indian Income-tax". Therefore, it is clear from the definition in Article 366(1), that Rule 8 of 1962 Rule (Rule 24 of I.T. Rules, 1922), defines the term "agricultural income" for the purposes of laws pertaining to Indian Income-tax and, therefore, the said rule has to be taken into account in considering the meaning of the term "agricultural income" under Article 366(1) of the Constitution. [See: *Tata Tea Ltd. v. State of West Bengal* MANU/SC/0535/1988].

24. In short, whatever definition is given in the I.T. Act shall be deemed to be adopted under the Constitution by virtue of Article 366(1) of the Constitution of India.

25. It is in the above context that one has to examine the scope of Rule 8 of 1962 Rule.

37. The word "income" is defined in Section 2(24) of the 1961 Act. That word finds place in Rule 8(1). The word "income" in Section 2(24) includes "profits and gains". The term "total income" is defined in Section 2(45) to mean the total amount of income referred to in Section 5, computed in the manner laid down in the I.T. Act. The word "total income" is not there in Rule 8.

38. The word "income" is an expression of elastic ambit. It is not exhaustive. That is why Section 2(24) defines "income" as including a particular category of receipts. Mere gross receipt cannot be taxed as income.

39. Section 80HHC *inter alia* states that in computing the "total income" a deduction, to the extent of profits derived by the assessee from exports has to be taken into account. The important words are "profits derived from the export". The word "derived" would mean "derived from the source". That source has to be in Section 14. Income covered by Section 10(1) i.e. agricultural income, which is not chargeable to tax, does not fall in Section 14 and, therefore, it will not fall under various computation sections commencing from Section 15 to Section 59. Section 14 classifies "all income" into five enumerated heads for the purpose of charge of income-tax and computation of total income. As stated hereinabove, "exempted income" is different from "tax-free income". In the present case, we are concerned with both these types of income. "Agricultural income" falls in the category of exempted income. It is neither chargeable nor includible in the total income. On the other hand, deduction under Chapter VIA is for "income" which forms part of total income but which is tax-free. In the present case, we have to balance both these types of income, namely, exempted income vis-'-vis tax-free income. Thus, it is clear that "income", covered under Section 10 and Section 11 which is not chargeable to tax, does not fall under Section 14 and under various computation sections from Section 15 to Section 59. However, on account of legal fiction built into Rule 8(1), which applies to composite income, a part of the composite income/integrated income is agricultural income and the balance is the business income. The object of Rule 8(1) is to disintegrate the two. If the income from agriculture cannot be computed under 1961 Act then the income from agriculture has to be arrived at in a normal commercial manner. There is no scope for computing such income by complying with the computation section under the

I.T. Act. In other words, the real income has to be taken into account for the purpose of considering the exemption under Section 10(1). This position emerges in a case where we have to deal solely with agricultural income. However, as stated above, in this case we are concerned with the composite income. Therefore, we have to interpret Rule 8(1) of the1962 Rule.

40. At the outset, it may be noticed that Rule 8(1) uses the word "income". In the entire rule the word "total income" is not mentioned. Further, Rule 8(1) refers to income derived from the sale of tea cultivated and manufactured. In the case of an assessee deriving income, not from composite activity, one has to calculate agricultural income in the commercial sense. However, when we come to composite income under Rule 8(1) a part of the composite income is business profit, which is one of the source/head of income under Section 14, and therefore to that extent alone chargeability and computation would Page 0157 arise and that too only to the extent of computation of income under the head "profits and gains from business". Therefore, the charging provision and computation provision will apply only to that limited extent. That is why in Rule 8 a legal fiction is incorporated.

41. It is well-settled that chargeability and computation under 1961 Act, constitutes one integral Code. Rule 8(1), therefore, states that composite/integrated income shall be computed as if it was income derived from business. The words "as if" stand for legal fiction. Therefore, the composite income had an element of agricultural and business incomes which needed to be separated by applying the rule of apportionment under Rule 8. That is because, agricultural income has no linkage with any of the enumerated heads in Section 14 though the non-agricultural element has such linkage. Rule 8(1) says that when income is derived from composite activity such income shall be chargeable to income-tax as "business income". In other words, in the case of composite income, by legal fiction, chargeability is assigned only to non-agricultural part of the composite income which has linkage with one of the enumerated heads in Section 14, namely, "business income". Therefore only to that extent, the computation provisions, mentioned in Section 15 to Section 59 of the I.T. Act, stand attracted. Therefore, Rule 8(1) makes it clear that chargeability and computability shall be confined to 40% of such income which shall be deemed to be income liable to tax. We have to confine the legal fiction in Rule 8(1) to that rule alone. We cannot extend the legal fiction in Rule 8(1) to Section 80HHC(3)(a). As stated above, there is a vital difference between income not chargeable to tax and not includible in the total income (for example, agricultural income) and income which forms

part of total income but which is made tax-free. Deductions under Chapter VIA fall in the category of tax-free incomes. In fact, history shows that some of the incomes in Chapter VIA have been transferred from Chapter VII to Chapter VIA. Chapter VII has been deleted. However, at the relevant time Chapter VII referred to incomes forming part of total income on which no tax was payable. That is why, we have stated that there is a difference between "exempted incomes" and "tax-free incomes". This distinction is of some importance. As stated above, Section 5 provides what the "total income" shall include. Chapter III refers to "incomes which do not form part of total income". Chapter IV deals with "computation of total income". It classifies the "income" under different heads and the deductions to be made in respect of each of the different heads of income. In the Income-tax Act, the expression "income includible in the total income" has a definite connotation. Similarly, the expression "deduction and allowances" have particular connotation. Therefore, on one hand we have "agricultural income" which is neither chargeable nor includible in the total income and on the other hand we have "incomes" under Chapter VIA which are part of total income but which are tax-free.

42. In this case, however, we are concerned with composite income which is partly agricultural and partly business. Therefore, Rule 8(1) segregates agricultural income which is exempted income from business income which is chargeable to tax. For that purpose we need to apply the ratio of 60 : 40. Therefore, to the extent of 40% only we have chargeability and computability. If this distinction is kept in mind we are of the view that the Page 0158 assessee cannot claim 80HHC(3)(a) Deduction against the entire tea composite income. It can be claimed only against proportionate income. Therefore, in the above example, 80HHC Deduction can be claimed not against the entire composite income of Rs. 50 lacs but it can be claimed only against a part thereof which is Rs. 20 lacs. Similarly, in the other example, 80HHC Deduction can be claimed not against composite income of Rs. 16.05 crores, it can be claimed only against the composite income of Rs. 6.42 crores. For the above reasons, we are of the view that Section 80HHC Deduction cannot be allowed against the entire tea income.

Is Section 80HHC a part of the provisions of the 1961 Act which deals with computation under the head "Profits and Gains from Business?

43. The contention of the assessees cannot be accepted for one more reason. The tea income consists of two parts: (i) "agricultural income" upto the stage of growing the tea; and (ii) "business income" from the manufacture and sale of tea grown by the assessee.

Under the Constitution, "agricultural income" can be taxed only by the State Governments. Rule 8(1), therefore, provides that only 40% of the composite income can be taxed under the 1961 Act. Power of the State Governments to levy tax extends to the balance, namely, 60% of the composite income. This part of the composite income (60%) cannot be taxed under the 1961 Act (See: Section 10(1) of the 1961 Act). As stated above, Rule 8(1) provides for the method in which composite income is to be computed. Rule 8(1) says that income shall be computed as if it were income derived from business. Rule 8(1) uses the word "income" and not "total income". The 1961Act contains provisions for computation of income under the head "Business". The question is whether Section 80HHC is part of the provisions in the 1961 Act which deals with computation of income under the head "profits and gains from business"? If it is, then apportionment prescribed by Rule 8(1) can be applied only after deducting the allowance under Section 80HHC from the composite income as contended by the assessees. However, in our view computation in Rule 8(1) in respect of composite income, by reason of legal fiction in-built in Rule 8, cannot be read in entirety into computation of income under the head "Business". If the contention of the assessees is accepted, namely, that the entire computation of composite income under Rule 8(1) is part of computation provisions under the head "Business" then it would amount to granting deduction under Section 80HHC even with reference to income which is exempt under Section 10(1) of the 1961 Act, namely, agricultural income. Such a result would be opposed to the basic scheme of the 1961 Act. In this connection, it is also important to note that under Section 80A which falls in Chapter VIA, deductions are allowed only from "gross total income". The object for making such provision is to limit the amount of 80HHC Deduction. It is true that Section 80HHC provides for deduction of a percentage of the export profits. The percentage is calculated with reference to the export profits, but the deduction is only from "gross total income" as defined under Section 80B(5) of the 1961 Act. Therefore, the very scheme of 1961 Act is to treat the deductions under Chapter VIA as deductions only from "gross total income" in order to arrive at the "total income". In other cases falling under Section 28 where computation of income falls under the head "Business", allowances Page 0159 are deductible from the income but not from "gross total income". It is, therefore, not possible to accept the contention that Section 80HHC is part of the provisions for computation of business income. Section 80HHC does not have any direct impact on the computation of business income in the manner in which, for example, Section 72 affects the computation of business income. On behalf of the assessees heavy reliance was placed on the judgment of this Court in the case of Cambay Electric Supply

Industrial Company Ltd. (supra). That was a case where this Court held that Section 72 provides for the business loss, not set-off fully against the other heads of income under Section 71, to be carried forward and adjusted against the profits of the same business in the next year. Inter-head and intra-head adjustments and carry-forwards are part of the computation provisions. However, Section 72 cannot be compared with Section 80HHC because Section 80HHC provides for deduction only from "gross total income". Therefore, the judgment of this Court in Cambay Electric Supply Industrial Company Ltd. (supra) has no application.

45. In short, deductions under Chapter VIA are deductions not from a particular head of income but from gross total income. Therefore, Section 80HHC is not part of the computation of income under the head "Business".

46. For the aforestated reasons, we hold that 80HHC Deduction of the 1961 Act is required to be allowed after apportionment of income under Rule 8(1) of the 1962 Rule.

Bharat Hydro Power Corpn. Ltd. and Ors. v. State of Assam and Anr.

2004 2 SCC 553

Decided On: 07.01.2004

Hon'ble Judges:

Ashok Bhan and S.B. Sinha, JJ.

Brief Facts:

In the year 1979, the Planning Commission of India sanctioned a proposal of the Assam State Electricity Board (hereinafter referred to as 'the Board') for construction of a Hydro Electric Power Station in the District of Karbi Anglong on the river Barapani at an estimated cost of Rs. 36.36 crores. The project comprised construction of 51 meter high concrete dam on the river Barapani near Hatidubi for utilising flow of water from catchment area of 1178 Sq. km. The installed capacity of the project was 2 x 50 MW. The dam was to be completed in the year 1986, but due to the failure of the local contractor, the project could, not be completed and the Board terminated the contract and protracted litigation ensued.

In the year 1992, after termination of the contract as aforesaid, the project was entrusted to National Project Construction Corporation (in short 'NPCC'), but the similar fate followed and the Board had to terminate their contract as well in December, 1992. In the mean time, cost of the project initially sanctioned at Rs. 36.36 crores rose to Rs. 189.90 crores. Out of the aforesaid estimate, the work completed was of about Rs. 116 crores and the Board needed about Rs. 60 crores to complete the project excluding other liabilities. The Board could not generate the additional fund required for completing the project.

The Central Government in the year 1992-93 accepted the policy of privatisation even in the power sector. The State Government following the policy of privatisation of the Central Government decided to transfer the project to joint sector.

On 25th March, 1993, Memorandum of Undertaking (MOU) was signed between the Board, Government of Assam and M/s Subhash Project and Marketing Limited (SPML), appellant No. 2 herein. According to the said MOU, SPML was to promote a new company to complete the project. In terms of the said MOU a new company under the name and

style of M/s. Bharat Hydro Power Corporation Limited (hereinafter referred to as 'appellant No. 1') came into existence in which the equity participation was as follows:

ASEB (the Board) - 11%

SPML (appellant No. 2) - 40%

General Public - 49%

On 8th April, 1993 the Deed of Assignment was executed between the Board and the appellant No. l, in terms of which all the assets and liabilities of the project were transferred to appellant No. l w.e.f. 8.4.1993. In terms of the said Deed of Assignment appellant No. l was to complete the project and start generation by June, 1995 which was subsequently extended to June, 1996. Disputes arose between the parties. According to Board as well as the State of Assam, the appellant No. 1 after its incorporation failed to take charge of the project till 5th April, 1994, Even after taking over of the project, the appellant No. l could not achieve any progress towards completion of the project due to serious lapses and negligence on its part. On the other hand, appellants Nos. 1 & 2 put the entire blame on the Board and the State Government for the delay in the progress of the project.

On 20th December, 1995, appellant No. l filed a suit being TS No. 244/96 in the Court of the Assistant District Judge No. l, Guwahati for specific performance of the contract against the Board alleging that the Board was remiss in the performance of its obligation under the MOU and the Deed of Assignment. Board filed an application for stay of suit in view of arbitration clause. Appellant No. l filed an application in the High Court under Sections 8 and 11 of the Arbitration and Conciliation Act 1996 for appointment of Arbitrator to decide pending disputes between the parties. On 27th May, 1996, the Board wrote to appellant No. l that due to the failure of the appellant No. l to complete the work within the extended period, the MOU was liable to be terminated and repudiated.

On 30th November, 1996 the State of Assam, keeping in view, the inordinate delay in the completion of the project and to safeguard the public interest by completing the project as early as possible in the context of acute power shortage in the State, promulgated Bharat Hydro Power Corporation Limited (Acquisition and Transfer of Undertaking) Ordinance, 1996 acquiring the undertaking of Karbi Langpi Project of appellant No. l. The Ordinance was subsequently replaced by Bharat Hydro Power Corporation Limited (Acquisition and Transfer of Undertaking) Act, 1996. On 1st December, 1996, the State Government by Notification transferred to and vested the said project in the Board. After

the said notification the possession of the project was handed over to the Board in the presence of the representatives of the both sides on 2nd December, 1996. On 5th December, 1996 Memorandum of handing over and taking over was signed. Thereafter writ petitions being CR 6/97 and CR 283/97 were filed in the High Court of Assam challenging the legality and validity f the Ordinance and the Act.

In the writ petitions the appellants challenged the constitutional validity of the Act being ultra vires and violative of Articles 14 and 19(l)(g) of the Constitution of India and on the ground of being vague, unfair and arbitrary. It was prayed that the Act be struck down being unconstitutional and beyond the legislative powers of the State and/or is inoperative and void in law on the grounds mentioned in the writ petitions.

On completion of the pleadings, the writ petitions were placed or hearing before a learned Single Judge who after hearing the counsel for the parties, passed a detailed order striking down Sections 3, 4, 5, 6, 7, 7A, 15(2), 23 and 24 of the Act being repugnant to the Central Acts, i.e., the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. It was observed that because of the striking down of the various provisions, the impugned Act could not be given effect to. The entire Act was held to be unenforceable.

The Board and the State of Assam filed separate Writ Appeals Nos. 460 of 1997 and 464 of 1997 challenging the order of the learned Single Judge. The Division Bench by its impugned judgment has set aside the judgment of the learned Single Judge and held the Act and its provisions to be *intra vires* of the Constitution. Resultantly the writ appeals were accepted and writ petition filed by the appellants were ordered to be dismissed.

Issue Involved:

The primary contention in this case was whether the Bharat Hydro Power Corporation Limited (Acquisition and Transfer of Undertaking) Act, 1996 was *ultra vires* the Constitution being repugnant to the Central Acts i.e., the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

Judgment delivered by Ashok Bhan J.

Ratio Decidendi:

The Courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect: to matters in one list or the other.

Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of enactment falls within Union List then the incidental encroachment by the enactment on the State List would not make it invalid.

SUMMARY OF THE ARGUMENTS

Contention raised on behalf of the appellants is that Central Act makes specific provisions for compulsory purchase of undertaking and a detailed procedure has been prescribed and the State Act has created a parallel procedure for purchase of the undertaking thereby impinging on the Central Act and is therefore repugnant to the Central Act. The Court not find any substance in this submission.

Observations

The Observations of the Court in the case were as follows –

18. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of the another Legislature, This may result in large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged in the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the Courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect: to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of enactment falls within Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came come to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the Courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of "pith and substance" regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions. For this see: *Southern Pharmaceuticals and Chemicals* v. *State of Kerala*, MANU/

SC/0088/1981; *State of Rajasthan* v. *G. Chawla,* MANU/SC/0141/1958; *Thakur Amar Singh* v. *State of Rajasthan*, MANU/SC/0013/1955, *Delhi Cloth and General Mills Co. Ltd.* v. *Union of India* MANU/SC/0377/1983 and *Vijay Kumar Sharma and Ors.* v. *State of Karnataka and Ors.* , MANU/SC/0368/1990. In the last mentioned case it was held:

"Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four, corners of the State List and entrenchment, if any, is purely incidental or inconsequential."

28. Without entering into the controversy whether the State Act would fall under Entry 17 of List II or under Entry 38 of List III and assuming (but not holding that it falls under Entry 38 of List III) we examine as to whether there is any conflict between the provisions of the Central Act and the State Act. If there is no conflict at all the question of repugnancy would not arise.

29. The State Act has been enacted to take over the Bharat Hydro Power Corporation in public interest as it could not complete the project within time so that the State could efficiently supervise manage and execute the work expeditiously to subserve the common good, in the context of the acute power shortage in the State. The State after taking over the project had the power to hand it over to the Board for completing the project. Provision has been made to pay adequate compensation which is to be determined by a Commission constituted under the Act for payment of adequate compensation.

39. The impugned Act and the Central Acts in the instant case operate in two different fields without encroaching upon each other's field in as much as the true nature and character of the impugned State Act is to acquire the undertaking and pay compensation as provided in the Act whereas both the Central Acts (Acts of 1.910 and 1948) have made general provisions with regard to supply and use of electrical energy. The provisions regarding purchase of undertaking in the Act of 1910 would not be applicable as the appellants are not licensees within the meaning of the Act of 1910. There is not even a semblance of conflict what to talk of direct conflict between the impugned State Act and the Central Acts to bring about the situation where one cannot be obeyed without disobeying the others. Both the Acts can operate simultaneously as they do not occupy

the same field. As the enactments operate in two different fields without encroaching upon each other's field there is no repugnancy.

40. Since there is no repugnancy the question of the State Act being kept for the consideration of the President or receiving his assent did not arise.

41. For the reasons slated above, we do not find any merit in these appeals and the same are dismissed. Parties shall bear their own costs in these appeals.

Dharappa v. Bijapur Co-operative Milk Producers Societies Union Ltd

AIR 2007 SC 1848, (2007) IILLJ 844 SC, 2007 (6) SCALE 307, (2007) 9 SCC 109

Decided On: 26.04.2007

Composition of the Bench: G.P. Mathur and R.V. Raveendran, JJ

Brief Facts:

This appeal is filed against the judgment of the high Court of Karnataka in Writ Appeal. The appellant claims his service as a daily-wage labourer in the Rural Dairy center, Bijapur was illegally terminated. The appellant did not challenge his termination. Section 10 of the Industrial Disputes Act, 1947 ('ID Act' for short) was amended in Karnataka by the Industrial Disputes (Karnataka Amendment) Act, 1987 [Karnataka Act No. 5 of 1988] inserting Sub-section (4A) with effect from 7.4.1988. Taking advantage of the new provision, on 4.10.1988, the appellant made an application to the Labour Court, Hubli seeking a declaration that his termination from service on 1.3.1980 was null and void and a direction for reinstatement with full back- wages, continuity of service and other consequential reliefs. The Labour Court made an award dated 15.10.1996 directing reinstatement, holding that Appellant had worked for more than 240 days in the year preceding termination (13.5.1977 to 19.2.1978), and the termination of his service, without complying with Section 25F of ID Act, amounted to illegal retrenchment. the Labour Court awarded only 50% back- wages in addition to continuity of service and consequential benefits. The respondent challenged the said award of the High Court, allowed the Respondent-employer's writ petition, by order dated 1.2.2005, holding that ID Act was inapplicable to a dispute raised by an employee of a co-operative society. He therefore set aside the award of the Labour Court. The said order of the learned Single Judge was challenged by the appellant in a writ appeal. A Division Bench of the High Court, dismissed the writ appeal, holding that an employee of a co-operative society having a claim against the employer has to raise a dispute under Section 70 of the KCS Act.. The Decision of the Division Bench is challenged in this appeal by special leave.

Issue Involved:

Whether the jurisdiction of Labour Court under the ID Act, was barred by Section 70 of the KCS Act with reference to co- operative societies and if so, from when?

Decision

The award of the Labour Court was not without jurisdiction But, claim application of the petitioner filed on 4.10.1988 in regard to alleged termination on 1.3.1980 (or 19.2.1978 as found by the Labour Court) was barred by limitation hence not maintainable under Section 10(4A) of ID Act and could not have been entertained by the Labour Court.

Ratio Decidendi:

Jurisdiction – Labour Court and Industrial Tribunal had the jurisdiction to decide disputes between co-operative society and their employees till Section 70 (2)(d)(1) was amended and President gave assent to it in year 2000.

Validity of application – Workman can challenge their termination within six months of the Order of termination under Act of 1947. Application challenging termination filed beyond period of six months will be treated as invalid application

SUMMARY OF THE ARGUMENTS

The Appellant contends that amended Section 70 of the KCS Act took away the jurisdiction of Labour Courts and Industrial Tribunals functioning under the ID Act, only when the amendments to the said section as per Act 2 of 2000 came into effect on 20.6.2000, and it did not nullify an award made by the Labour Court prior to that date, that is on 15.10.1996. (Para8)

Observations

R.V. Raveendran, J.

"Co-operative societies" fall under Entry 32 of the State List. "Industrial and labour disputes" fall under Entry 22 of the Concurrent List. Industrial Disputes Act, 1947 is an "existing law" with respect to a matter enumerated in the Concurrent List, namely, industrial and labour disputes. A dispute between a co-operative society and its employees in regard to terms of employment, working conditions and disciplinary action, is an industrial and labour dispute squarely covered by an existing law (ID Act), if the employees are 'workmen' as defined in the ID Act. Clause (1) of Article 254 provides that if any provision of a law made by a State Legislature is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the existing law shall prevail, and the law made by the Legislature of the

State shall, to the extent of the repugnancy, be void. Clause (2) of Article 254, however, provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an Entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co- exist and operate without repugnancy with the provisions of the existing law. What is stated above with reference to an existing law is also the position with reference to a law made by the Parliament. Repugnancy is said to arise when: (i) there is clear and direct inconsistency between the Central and the State Act; (ii) such inconsistency is irreconcilable, or brings the State Act in direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. If the State Legislature, while making or amending a law relating to co-operative societies, makes a provision relating to labour disputes falling under the Concurrent List, then Article 254 will be attracted if there is any repugnancy between such provision of the State Act (MCS Act) with the existing law (ID Act).

Having analyzed the relevant provisions court further observed that The effect of the amendments to Section 70of KCS Act, by Act 2 of 2000 is that if any dispute (including any dispute relating to the terms of employment, working conditions and disciplinary action), arose between a co-operative society and its employees or past employees or heirs/legal representatives of a deceased employee, on and from 20.6.2000, such dispute had to be referred to the Registrar for Decision and no Civil Court or Labour Court or Industrial Tribunal would have jurisdiction to entertain any suit or proceeding in respect of such dispute (Para11). Therefore, the only way to read the 1976 Amendment is to read

it in a literal and normal manner, that is, as not excluding the jurisdiction of the Industrial Tribunals and Labour Courts but as merely conferring a concurrent jurisdiction on the Registrar under Section 70, of the KCS Act.(Para15).

Finally court summarized the discussion in following terms

(a) Even though Clause (d) was added in Section 70(2) with effect from 20.1.1976, Section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the I.D. Act to decide an industrial dispute between a Society and its employees. Consequently, even after insertion of Clause (d) in Section 70(2) with effect from 20.1.1976, the Labour Courts and Industrial Tribunals under the I.D. Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between co-operative societies and their employees was taken away only when Sub-section (1) and Sub-section (2)(d) of Section 70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18.3.2000 and was brought into effect on 20.6.2000.

(c) The jurisdiction to decide any dispute of the nature mentioned in Section 70(2)(d) of the KCS Act, if it answered the definition of industrial dispute, vested thus:

    (i) exclusively with Labour Courts and Industrial Tribunals till 20.1.1976;

    (ii) concurrently with Labour Courts/Industrial Tribunals under ID Act and with Registrar under Section 70 of the KCS Act between 20.1.1976 and 20.6.2000; and

    (iii) exclusively with the Registrar under Section 70 of the KCS Act with effect from 20.6.2000. (Para22)

M/s. Siel Ltd. & Ors. v. Union of India & Ors. (1998) 7 SCC 26.

Date of Decision 11.09.1998

Composition of the Bench: M.M. Punchhi, CJI. and Sujata V. Manohar, J.

Brief Facts:

The appellants in these appeals have challenged the constitutional validity of the Uttar Pradesh Sheera Niyantran Adhiniyam 1964 being U. P. Act 24 of 1964, which received the assent of the President on 17.10.1964. The occasion for this challenge appears to have arisen on account of orders passed by the Controller of Molasses/Excise Commissioner, U.P. Under Section 8 of the said Act read with Rule 22, and dated 13.08.1993, 22nd of October, 1993 and 1st of January, 1994. The appellants have challenged the constitutional validity of the U.P. Sheera Niyantran Adhiniyam 1964 on the ground that the State Legislature lacked competence to pass the Act. They have also challenged the restrictions imposed on the sale of molasses under the said Act and the said orders made thereunder as unreasonable restrictions violative of Article 19(l) (g) as also Article 301, being restrictions which affect in the State, freedom of trade. All these writ petitions which were filed in 1993 have been dismissed by the Allahabad High Court. Hence the present appeal has been preferred. On 10.6.1993 the Molasses Control Order, 1961 and the Ethyl Alcohol Price Control Order were rescinded by the Central Government by two separate notifications of the same date. In the State of U.P. however, the U.P. Sheera Niyantran Adhiniyam, 1964 continued to operate despite the repeal of the Central Molasses Control Order, 1961. The State Government thereafter Issued three notifications of 13.8.1993, 22.10.1993 and 01.01.1994 under the U.P. Sheera Niyantran Adhiniyam, 1964. This gave rise to the present litigation.

Issue Involved:

Whether State Legislature lacked competence to pass the Uttar Pradesh Sheera Niyantran Adhiniyam 1964?

Decision

Uttar Pradesh Sheera Niyantran Adhiniyam, 1964 is within legitimate exercise of power of legislation and it is within legislative competence of State.

Ratio Decidendi:

Article 254 expressly deals with a situation where any provision of a law made by the Legislature of a State is repugnant to any provision of law made by Parliament in respect of one of the matters in the Concurrent List.

SUMMARY OF THE ARGUMENTS

According to the appellants, by reason of the Industries (Development and Regulation) Act, 1951 and Entry 25 in the First Schedule to the said Act, all legislation pertaining to sugar industry is within the exclusive domain of the Union Government, being covered entirely by Entry 52 of List I. Therefore, the State of U.P. had no legislative competence to enact the U.P. Sheera Niyantran Adhiniyam, 1964 or the orders thereunder.

The respondents have pointed out that the U.P. Sheera Niyantran Adhiniyam, 1964 has also received President's assent under Article 254(2). In any event, looking to the fact that the Molasses Control Order of 1961 passed by the Central Government in exercise of powers conferred by Section 18G was not extended at any point of time to the State of U.P. or the State of Bihar, the question of repugnancy between the Molasses Control Order, 1961 and the U.P. Sheera Niyantran Adhiniyam, 1964 does not arise. Respondents have pointed out that industrial development of Uttar Pradesh is largely based on this control over allocation and pricing of molasses and sizeable revenue of the Government is dependent on the control. Even prior to 1964 the control over allocation and price fixation of molasses in the State of U.P. was with the State Government. Even when the Government of India Issued the Molasses Control Order of 1961 it left the control of molasses in Uttar Pradesh in the hands of the State Government Neither the sugar industry nor any body else objected to this control of the State over allocation and prices of molasses at any point of time till the announcement of decontrol over molasses by the Government of India.

Observations

Article 254 expressly deals with a situation where any provision of a law made by the Legislature of a State is repugnant to any provision of law made by Parliament in respect of one of the matters in the Concurrent List. Under Clause 2 of Article 254, where the law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament, or an existing law with respect to that matter, then, the law so made

by the Legislature of such State shall, if it has been reserved for the consideration of the President and has been given his assent, prevail in the State subject to the proviso contained therein.[140] The contention of the appellants, therefore, that by the enactment of Section 18G the power of the State Government to legislate under Entry 33 of List III is taken away, is untenable.[141] The respondents have also rightly contended that the enactment of Section 18G by the amending Act does not create by itself any repugnancy between the Parliamentary Legislation and the State Legislation, namely, the U.P. Sheera Niyantran Adhiniyam of 1964. Although Molasses Control Order of 1961 was Issued by the Central Government Under Section 18G of the Industries (Development and Regulations) Act of 1951, the Molasses Control Order was never brought into operation in the State of U.P. or the State of Bihar. Therefore, the power of the State of U.P. under Entry 33 List III to legislate in relation to the trade and commerce in or supply and distribution of molasses in that State was not taken away, in any event, irrespective of Article 254 of the Constitution of India.[142]

[140] Para 19
[141] Para 20.
[142] Para 21.

E.V. Chinnaiah v. State of Andhra Pradesh and Ors.

(2005) 1 SCC 394

Decided On: 05.11.2004

Hon'ble Judges:

N. Santosh Hegde, S.N. Variava, B.P. Singh, H.K. Sema and S.B. Sinha, JJ.

Brief Facts:

The validity of Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000 (A.P. Act 20 of 2000) was challenged before the High Court of Andhra Pradesh at Hyderabad which came to be dismissed by a five Judge Bench on a majority of 4: 1, the court having certified the case as being fit for appeal to the Supreme Court, the appeal was filed before the SC.

In the instant case the State of Andhra Pradesh (the State) appointed a Commission headed by Justice Ramachandra Raju (Retd.) to identify the groups amongst the Scheduled Castes found in the List prepared under Article 341 of the Constitution of India by the President, who had failed to secure the benefit of the reservations provided for Scheduled Castes in the State in admission to professional colleges and appointment to services in the State.

The Report submitted by the Commission led to certain litigations and a reference being made by the State to the National Scheduled Castes Commission. Accepting the Report of Justice Ramachandra Raju Commission, the State by an Ordinance divided the 57 castes enumerated in the Presidential List into 4 groups based on inter-se backwardness and fixed separate quota in reservation for each of these groups. Thus, the castes in the Presidential List came to be grouped as A, B, C, and D. The 15% reservation for the backward class in the State in the educational institutions and in the services of the State under Article 15(4) and 16(4) of the Constitution of India for the Scheduled Castes were apportioned amongst the 4 groups in the following manner :-

1. Group A - 1%

2. Group B - 7%

3. Group C - 6%

4. Group D - 1%

The said Ordinance came to be challenged before the High Court by way of various writ petitions as being violative of Articles 15(4), 16(4), 162, 246, 341(1), 338(7), 46, 335 and 213 of the Constitution of India as also the Constitutional (Scheduled Castes) Order 1950 notified by the President of India and Scheduled Castes and Scheduled Tribes Amendment Act, 1976. During the pendency of the said writ petitions, the State Government replaced the Ordinance with the Andhra Pradesh Scheduled Castes (Rationalisation of Reservation) Act, 2000. The impugned Act was on the same lines as the Ordinance No. 9 of 1999. Consequently the Act was also challenged and account of the petition being an appeal was filed before the SC.

Issue Involved:

The validity of Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000 (A.P. Act 20 of 2000) was challenged before the High Court of Andhra Pradesh at Hyderabad which came to be dismissed by a five Judge Bench on a majority of 4: 1, the court having certified the case as being fit for appeal to the Supreme Court, the appeal was filed before the SC. (Whether a State by means of a legislation can take away the said benefit on the premise that one or the other group amongst the members of the Scheduled Castes has advanced and, thus, is not entitled to the entire benefit of reservation?)

Judgment delivered by N. Santosh Hegde J. Separate concurring judgments by H.K. Sema and S.B. Sinha, JJ.

Ratio Decidendi:

Further classification and/or regrouping the homogeneous groups by State Legislature would tinker with the Presidential Notification Issued under Article 341, which is constitutionally impermissible. It is a trite law that justice must be equitable. Justice to one group at the costs of injustice to other group is another way of perpetuating injustice.

SUMMARY OF THE ARGUMENTS

Mr. P.P. Rao, learned senior counsel led the argument on behalf of the appellants, his arguments were supported and supplemented by Mr. P.S. Mishra, learned senior counsel, Mr. Shiv Pujan Singh and Mr. T. Raja, the other learned counsel appearing for the appellants.

The contentions advanced on behalf of the appellants are that the State Legislature has no competence to make any law in regard to bifurcation of the Presidential List of

Scheduled Castes prepared under Article 341(1) of the Constitution, therefore the impugned legislation being one solely meant for sub-dividing or sub-grouping the castes enumerated in the Presidential List, the same suffers from lack of legislative competence.

It is further submitted that once the castes are put in the Presidential List, the said castes become one homogeneous class for all purposes under the Constitution, therefore, there could be no further division of the said castes in the Scheduled List by any Act of the State Legislature. His further submission was that in the guise of exercising its legislative competence under Entry 41 in List II or Entry 25 of List III the State Legislature cannot exercise its legislative power so as to make a law tinkering with the Presidential List because the said Entries do not permit any law being made in regard to Scheduled Castes. In the guise of providing opportunity to some of the castes in the list of Scheduled Castes the State can not invoke Entry 41 of List II and Entry 25 of List III to divide the Scheduled Castes. According to the learned counsel the impugned enactment does not really deal with the field of Legislation contemplated under the said Entries but in reality is targeted to sub-divide the Scheduled Castes. Alternatively, he submitted the classification or sub-grouping made by the State Legislature amounting to sub-classification or micro classification of the Scheduled Caste is violative of Article 14 of the Constitution of India.

One of the arguments addressed on behalf of the appellant is that allotting a separate percentage of reservation from amongst the total reservation allotted to the Scheduled Castes to different groups amongst the Scheduled Castes amounted to depriving one class of the benefits of such reservation at least partly. It is also argued that the impugned legislation was bad because the Report of the National Commission was not placed before the Legislature as required under Article 338(9) of the Constitution of India.

On behalf of the respondents Shri K.K. Venugopal, learned senior counsel appearing for the State who led the argument on behalf of the respondents, contended Article 341 only empowers the President to specify the castes in the Presidential List and the Parliament to include or exclude from the specified list any caste or tribe and beyond that no further legislative or executive power is vested with the Union of India or the Parliament to decide to what extent the castes included in the Scheduled Castes List should be given the benefit of reservation which according to the learned counsel depended upon their degree of backwardness. His further argument is that the authority to decide to provide reservation or not, and if yes, then the quantum of reservation to be provided is the

exclusive privilege of the State. In that process the State will have to keep in mind the extent of backwardness of a group be it other backward class, Scheduled Caste or Scheduled Tribe. Therefore, having found a class of persons within the Scheduled Castes as having been deprived of such benefits the State has the exclusive legislative power to make such grouping for reservation under Articles 15(4) and 16(4) of the Constitution subject, of course, to Articles 245-246 of the Constitution. Since in the instant case there is no allegation that there has been any violation of Articles 245-246, the argument of lack of legislative competence advanced on behalf of the appellant should fail. He further submitted that there is an obligation on the State under Article 16(4) to identify the group of backward class of citizens which in the opinion of the State is not adequately represented in the service under the State and make reservation in their favour for such appointments and under Article 15(4) of the Constitution there is an obligation on the State to make special provisions for the advancement of Scheduled Castes and Scheduled Tribes and what the State has sought to do under the impugned Act was only to make such a provisions to fulfil the constitutional obligation after due enquiry, hence, the allegation of violation of Article 14 cannot be sustained. He strongly relied on the findings of fact recorded in Justice Raju Commission's report which according to him establishes that some particular groups within the Scheduled Castes have cornered all the benefits at the cost of others in the said List, therefore, with a view to see that the benefit of reservation percolates to the weaker of the weakest it had become necessary to enact the impugned law. The learned counsel submitted that by re- grouping the castes in the Scheduled Caste List there is no reclassification or micro classification as contended by the appellants.

Some other counsels also argued that neither Article 341 nor any other provisions of the Constitution prohibits the State from performing its obligations under Articles 15(4), 16(4) and 16(4A) of the Constitution and categorising the various castes found in the Presidential List of Scheduled Castes based on inter-se backwardness within them. Reference was also made to the Constituent Assembly Debates and Reports to point out that it was the intention of the Constitution makers to confer the power of classification of Scheduled Castes on the President or the Parliament as the case may be under Article 341 of the Constitution. A further classification of the caste within the List if became necessary, the same could be done by the State only under Articles 15(4) and 16(4) of the Constitution.

Observations

The Observations of the Court in the case were as follows:

The Constitution provides for declaration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in terms of Articles 341 and 342 of the Constitution of India. The object of the said provisions is to provide for grant of protection to the backward class of citizens who are specified in the Scheduled Castes Order and Scheduled Tribes Order having regard to the economic and educationally backwardness wherefrom they suffer. The President of India alone in terms of Article 341(1) of the Constitution of India is authorized to Issue an appropriate notification therefore. The Constitution (Scheduled Castes) Order, 1950 made in terms of Article 341(1) is exhaustive.. **(See paras 125, 126; HK Sema J.)**

The whole basis of reservation is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes as a class of persons who have been suffering since a considerable length of time due to social and educational backwardness. The protection and reservation is afforded to a homogeneous group. Further classification and/or regrouping the homogeneous groups by State Legislature would tinker with the Presidential Notification Issued under Article 341, which is constitutionally impermissible. By the impugned legislation, the State has sought to re-group the homogeneous group specified in Presidential Notification for the purposes of reservation and appointments. It would tantamount to discrimination in reverse and would attract the wrath of Article 14 of the Constitution. It is a trite law that justice must be equitable. Justice to one group at the costs of injustice to other group is another way of perpetuating injustice. The power of State Legislature to decide as regard grant of benefit of reservation in jobs or in educational institutions to the backward classes is not in dispute. It is furthermore not in dispute that if such a Decision is made the State can also lay down a legislative policy as regard extent of reservation to be made for different members of the backward classes including Scheduled Caste. But it cannot take away the said benefit on the premise that one or the other group amongst the members of the Scheduled Castes has advanced and, thus, is not entitled to the entire benefit of reservation. The impugned legislation, thus, must be held to be unconstitutional. **(See paras 117, 119; SB Sinha J.)**

The very fact that the members of the Scheduled Castes are most backward amongst the backward classes and the impugned legislation having already proceeded on the basis

that they are not adequately represented both in terms of Clause (4) of Article 15 and Clause (4) of Article 16 of the Constitution of India, a further classification by way of micro classification is not permissible. Such classification of the members of different classes of people based on their respective castes would also be violative of the doctrine of reasonableness. Article 341 provides that exclusion even of a part or a group of castes from the Presidential List can be done only by the Parliament. The logical corollary thereof would be that the State Legislatures are forbidden from doing that. A uniform yardstick must be adopted for giving benefits to the members of the Scheduled Castes for the purpose of Constitution. The impugned legislation being contrary to the above constitutional scheme cannot, therefore, be sustained.

(Paras 44, 46; N Santosh Hegde J.)

Greater Bombay Co-op. Bank Ltd. v. United Yarn Tex. Pvt. Ltd. and Ors.

(2007) 6 SCC 236

Date of Decision 04.04.2007

Composition of the Bench: B.N. Agarwal, P.P. Naolekar and Lokeshwar Singh Panta, JJ.

Brief Facts:

This batch of Appeals/SLPs involved an important Issue regarding right of recovery of debts by the co-operative banks constituted under the Co-operative Societies Acts of the States of Maharashtra and Andhra Pradesh. The Issue has arisen in the context of enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Under the Co- operative Societies Acts, there is a mechanism for recovery of debts by the Banks constituted under those Acts, which are also called Co-operative Banks. After the enactment of the 1993 Act, question arose as to whether such Co-operative Banks would have right of recovery under the respective Co-operatives Societies Acts or they will have to proceed under the 1993 Act. These aspects and some other Issues, including the Issue of legislative competence of the States to enact the provisions relating to Co-operative Banks, came up for consideration before the Bombay High Court and the High Court of Andhra Pradesh at Hyderabad. Both the High Courts have pronounced judgments on the Issues and these judgments are under appeal in these cases. Looking to the Issue and the far-reaching consequences which such a Decision will leave, we are of the view that these matters be decided by a larger Bench.

This has also been brought to our notice that as a consequence of the impugned judgments of the two High Courts, recoveries worth thousands of crores of rupees are held up and for that reason these matters need to be decided as early as possible.

Issue Involved:

Do the courts and authorities constituted under the Maharashtra Co-operative Societies Act, 1960 (the 1960 Act) and the Multi-State Co-operative Societies Act, 2002 (the 2002 Act) continue to have jurisdiction to entertain applications/ disputes submitted before them by the Co- operative Banks incorporated under the 1960 Act and the 2002 Act for an order for recovery of debts due to them, after establishment of a Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the 1993 Act)?

Decision

None of the contentions of the learned Counsel for the respondents supporting the judgments and orders of the High Courts impugned before this Court on the question of interpretation clause as well as the question of constitutional clause formulated hereinabove were sustained by the court.

Observations

Lokeshwar Singh Panta, J.

Giving meaningful interpretation of the provisions of the relevant Statutes and Entries 43, 44 and 45 of List I and Entry 32 of List II of the Seventh Schedule of the Constitution, the court observed:

Co-operative banks" established under the Maharashtra Co-operative Societies Act, 1960 [MCS Act, 1960]; the Andhra Pradesh Co-operative Societies Act, 1964 [APCS Act, 1964]; and the Multi-State Co-operative Societies Act, 2002 [MSCS Act, 2002] transacting the business of banking, do not fall within the meaning of "banking company" as defined in Section 5(c) of the Banking Regulation Act, 1949 [BR Act]. Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [RDB Act] by invoking the Doctrine of Incorporation are not applicable to the recovery of dues by the co-operatives from their members.The field of co-operative societies cannot be said to have been covered by the Central Legislation by reference to Entry 45, List I of the Seventh Schedule of the Constitution. Co-operative Banks constituted under the Co-operative Societies Acts enacted by the respective States would be covered by co-operative societies by Entry 32 of List II of Seventh Schedule of the Constitution of India.

I.T.C. Limited v. The Agricultural Produce Market Committee and Ors.

(2002) 9 SCC 232

Date of Decision 24.01.2002

Composition of the Bench: S.P. Bharucha, C.J., G.B. Pattanaik, Y.K. Sabharwal, Ruma Pal and Brijesh Kumar, JJ.

Brief Facts:

This case related to a constitutional matter wherein the levy of market fee under State Legislation by market committees for sale and purchase of tobacco within the market area was challenged. In the instant case the validity of the Agricultural Produce Market Act framed under Entry 28 of List II of the Constitution vis-à-vis competence of States to enact the said legislation was challenged in light of the Tobacco Board Act, 1975 enacted by the Union Government under Entry 52 of List I.

Issue Involved:

Whether the Tobacco Board Act, 1975 debars the States from levying market fee in respect of tobacco?

Decision

It was held that the State Legislatures are competent to enact legislation providing for the levy and collection of market fee on sale of tobacco in the market area. Consequently the Market Acts enacted by the States are valid. The State legislations and the Tobacco Board Act, 1975 to the extent they relate to the sale of tobacco in market areas, cannot co-exist and the former prevails over the latter. It was held that :

I. The State legislatures are competent to enact legislation providing for the levy and collection of a market fee on the sale of tobacco in a market area. Consequently, the Market Acts enacted by the States are valid.

II. The State legislations and the Tobacco Board Act, 1975, to the extent that they relate to the sale of tobacco in market areas, cannot co-exist and the former prevail over the latter.

Ratio Decidendi:

Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List. Conversely,

the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment.

SUMMARY OF THE ARGUMENTS

The Tobacco Board Act, 1975, on the other hand, is claimed by the appellants to be relatable solely to Entry 52 of List I which enables Parliament to legislate on "industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". According to the appellants, the Markets Act seeks to regulate, inter-alia, the sale of various kinds of agricultural produce including tobacco. They contend that the provisions of the Markets Act could not be applied to tobacco because the Tobacco Act was enacted by Parliament under Entry 52 of List I to control and regulate everything relating to the tobacco industry from the growth of tobacco to its processing, storing, sale, manufacture, export and import.

The respondents contended that the Tobacco Act did not and could not occupy the entire legislative field relating to tobacco. According to them, despite the declaration in Section 2 of the Tobacco Act under Entry 52 of List I, the word 'industry' in the context of the Tobacco Act could not include anything more than processing and manufacturing of tobacco. It had been initially argued by the appellants that once a declaration is made in terms of Entry 52 of the Union List, the industry in respect of which the declaration is made and the entire process relating thereto becomes part of the legislative head itself and within the exclusive domain of the Parliament, and the State legislature becomes incompetent to enact any provision with regard to that industry.

It was further submitted on behalf of the respondents that the question of repugnancy between the Markets Act and the Tobacco Act would not arise since Parliament was not competent to enact provisions in respect of a legislative field specifically provided for in List II. It was submitted that the legislative field under Entry 52 of List I was derived from Entry 24 of List II and Entry 24 did not cover the legislative fields otherwise specially provided for in List II. It was stated that Entry 28 could not be rendered redundant by the Central Government's legislation on commodities sold at markets and fairs by issuing a declaration under Entry 52 of List I. It was also submitted that there may be provisions in the Tobacco Act which may incidentally trench on the State's competence and as long as States have not legislated on that topic, the Tobacco Act may prevail.

Observations

YK Sabharwal, Ruma Pal and Brijesh Kumar, JJ. (Majority Opinion)

The court observed that it is true that while legislating on any subject covered under an entry of any list, there can always be a possibility of entrenching upon or touching the field of legislation of another entry of the same List or another List for matters which may be incidental or ancillary thereto. In such eventually, inter alia, broad and liberal interpretation of an entry in the list may certainly be required. An absolute or watertight compartmentalization of heads of subject for legislation may not be possible but at the same time entrenching into the field of another entry cannot mean its total sweeping off even though it may be in the exclusive List of heads of subjects for legislation by the other Legislature. As in the present case the relevant heads of subject in List II, other than entry 24, cannot be made to practically disappear from List II and assumed to have crossed over in totality to List I by virtue of declaration of Tobacco Industry under entry 52 of List I, in the guise of touching or entrenching upon the subjects of the list II.

Jamshed N. Guzdar v. Respondent: State of Maharashtra and Ors.

(2005) 2 SCC 591

Decided On: 11.01.2005

Hon'ble Judges:

R.C. Lahoti, C.J., Shivaraj V. Patil, K.G. Balakrishnan, B.N. Srikrishna and G.P. Mathur, JJ.

Brief Facts:

The Constitutional validity of the Bombay City Civil Court and Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction & Amendment) Act, 1986 (Maharashtra Act No. XV of 1987) (for short 'the 1987 Act), which received assent of the President on 4.5.1987, Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 (Maharashtra Act XVII of 1986) (for short 'the 1986 Act'), which received the assent of the President on 28.2.1986, and the correctness of the Full Bench Decision of the High Court of Madhya Pradesh striking down the provisions of the Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981 (for short 'the Adhiniyam) abolishing Letters Patent appeals as invalid were under challenge in this case.

Issue Involved:

The primary Issue of contention in the instant matter was whether the State Legislature is competent to confer general jurisdiction on all Courts under Entry 11A in the Concurrent List.

Judgment delivered by Shivraj V. Patil J

Ratio Decidendi:

In view of the precedent where a law passed by the State Legislature while being substantially within scope of entries in the State List entrenches upon any of entries in Central List constitutionality of law may be upheld by invoking doctrine of pith and substance.

SUMMARY OF THE ARGUMENTS

The contention of Mr. T.R. Andhyarujina, learned Senior Counsel for the appellant in Civil Appeal No. 2452/92 and Transferred Case (C) Nos. 8-11/1989 was that the 1987 Act affected the "constitution and organisation of the High Court" by abolishing original civil jurisdiction of the High Court and as such it was beyond the legislative competence of the State Legislature because such a legislation is within the exclusive legislative competence of Parliament under Entry 78 List I of Seventh Schedule of the Constitution. In his submissions on this point, he traced the history of working of High Court and City Civil Court and Letters Patent jurisdiction of High Court. In support of his submissions, he cited few Decisions. Alternatively, he urged that even if the 1987 Act was *intra-vires* having regard to lack of infrastructure including requisite judges in City Civil Court it was an arbitrary or unreasonable exercise of statutory power vested in the Government to bring into operation the 1987 Act and hence the Government Notification dated 20.8.1991 bringing into operation the 1987 Act was illegal. He also added that the said Notification was Issued by the Government under pressure for collateral and extraneous reasons only to appease a section of agitating lawyers who went on hunger strike etc. Elaborating his submission on point no. 1, he submitted that it is only the Parliament which has the exclusive legislative competence under Entry 78 of List I to make a law relating to "the constitution and organization of the High Courts". The State Legislature has, however, the concurrent legislative powers to legislate in respect of the constitution and organization of all courts excepting the Supreme Court and the High Courts as per Entry 11-A of List

III; prior to 3.1.1977, the State had exclusive legislative competence to constitute and organize courts other than the Supreme Court and the High Courts under Entry 3 of List II which was amended to transfer it to Entry 11-A in List III by the Constitution 42nd Amendment Act, 1976. According to the learned Senior Counsel, the general jurisdiction of a civil court as opposed to its special jurisdiction in respect of a particular subject matter relates to the constitution of a court and flows from the very Act constituting it. Thus, the general jurisdiction of the High Court is the subject covered by Entry 78 of List I falling within the exclusive legislative competence of Parliament. On the other hand, the general jurisdiction of a court other than the Supreme Court and the High Court is a subject that was under Entry 3 of List II prior to the Constitution 42nd Amendment Act, 1976. He also contended that the State Legislature has also the legislative competence to make laws conferring special jurisdiction on courts or taking away such special jurisdiction from courts in respect of subjects in the Lists II and III by virtue of Entry 65 or Entry 46 respectively; this, however, is not general jurisdiction of a court arising from its constitution. He cited the Decision of *State of Bombay* v. *Narothamdas Jethabhai and Anr.* MANU/SC/0011/1950 to show how the scheme relating to jurisdiction of court was explained.

The learned Senior Counsel also urged that "constitution" of a court of law necessarily includes its general jurisdiction. No court can be constituted without jurisdiction; jurisdiction and constitution of a court are inseparable; otherwise it would be an ineffective institution in name only; the ordinary dictionary meaning of the word "constitution" of a court is sufficiently wide to include the jurisdiction of a court. In common parlance also, if a court is to be constituted, it must necessarily be constituted with its heart and soul, namely, its jurisdiction. Consequently, a law in its true content and purport relating to the jurisdiction of the High Court can only be made by Parliament. The 1987 Act abolishes the general civil jurisdiction of the High Court affecting its constitution, therefore, it was beyond the competence of the State Legislature inasmuch as the constitution and organization of the High Courts is vested in the Union Parliament. The learned Senior Counsel drew our attention to the scheme of the constitution of courts under Govt. of India Act, 1935 and submitted that the scheme under that Act relating to the Constitution and organization of the High Courts was different. The Provincial Legislature had the exclusive legislative competence to make law relating to the constitution and organization of all courts except the Federal Court (under Entry 2 of List II of the Provincial List). Consequently, the Provincial Legislature had the legislative competence to constitute a court including a High Court and to legislate in respect of its jurisdiction. This being the

position, this Court in Narothamdas Jethabhai (supra) upheld the validity of the Act as validly made under Entry 1 List II of the Govt. of India Act, 1935. He also drew our attention to certain passages in the case of Narothamdas Jethabhai relating to word "constitution" of a court. He stated that the words "constitution of court" as explained in Narothamdas Jethabhai was followed in a subsequent judgment of this Court in Supreme Court Legal Aid Committee representing undertrial prisoners etc. v. Union of India and Ors. MANU/SC/0877/1994. Thus, according to him, Parliament alone could make law abolishing the general original civil jurisdiction of an existing High Court as it directly and substantially related to its constitution which is a subject falling in exclusive jurisdiction of Parliament under Entry 78 of List I of the Constitution. He took pains to explain as to the scope and ambit of different Entries in three Lists touching the subject in controversy and reason for the Constitution 42nd Amendment Act of 1976 in relation to Entry No. 3 of List II as amended and creating a new Entry 11-A in List III. According to him the change was brought about deliberately so that Parliament alone should be given the power under the scheme of the Constitution to make legislation which substantially affected the constitution and organization of the higher judiciary. According to him, several other provisions of the Constitution also support this view. For instance, Article 230 read with Entry 79 of List I gives Parliament the exclusive competence to deal with "extension of the jurisdiction of a High Court to and exclusion of jurisdiction of a High Court from, in Union Territory". He also referred to Articles 216, 217, 221, 222, 223 and 224 to show that the President of India and Govt. of India alone have powers in respect of the matters stated in those Articles to secure a unified higher judiciary in matters provided in these Articles.

Although the 1987 Act on its face purports to state that it is only enhancing the general jurisdiction of Bombay City Civil Court, in effect it abolishes the ordinary original civil jurisdiction of the High Court of Bombay in entirety. The Govt. of India has taken the same stand as the appellant. In *Geetika Panwar* v. *Government of NCT of Delhi and Ors.* MANU/DE/1240/2002 (FB), the Full Bench of Delhi High Court has taken the view which supports the case of the appellant. Subsequently, accepting the position, Parliament has made a law in regard to High Court of Delhi. The learned Senior Counsel also submitted that the 1987 Act cannot be held to be constitutionally valid even on the principle of pith and substance of the legislation.

On ground No. 2, the learned Senior Counsel reiterated that for want of necessary infrastructure including the requisite number of judges in the City Civil Court, it was an

arbitrary and unreasonable exercise of statutory power vested in the Government to bring into operation the 1987 Act by issuing the impugned Notification dated 20.8.1991. Facts and figures are also given in this regard relating to number of civil suits pending as on 31.12.2002 in the City Civil Court even at the existing limits of pecuniary jurisdiction i.e. Rs. 50,000/-. According to him the City Civil Court has been unable to cope with the load of its existing criminal jurisdiction. The High Court also specifically stated that 110 Judges were required for City Civil Court in addition to necessary infrastructure if the Act is to be brought into force. In the absence of infrastructure and the required number of Judges, Civil Court can not cope with the workload and it cannot be functional.

The learned Senior Counsel on ground No. 3 submitted that because of the agitation by a section of lawyers, the Notification dated 20.8.1991 was Issued out of pressure and other considerations which according to him cannot be sustained. If it is allowed to stand, it will lead to difficulty and anomalous situation resulting in greater hardship to the litigants and even administration of justice will suffer. Instead of a speedy disposal, the cases may be pending considerably for a long time in City Civil Court.

Mr. K.K. Singhvi, learned Senior Counsel appearing for Bombay City Civil & Sessions Court Bar Association, made submissions supporting the impugned judgment upholding the constitutional validity of 1987 Act. According to him, Entry 77 in List I deals with the constitution, organization, jurisdiction and powers of the Supreme Court. Entry 78 deals with only constitution and organization of the High Courts and not with jurisdiction and powers of the High Courts. Jurisdiction and powers of the High Courts are dealt with as a separate topic, namely, "administration of justice" under Entry 11-A of the Concurrent List which was originally in Entry 3 of the State List. According to him, the general jurisdiction of the High Courts thus falls under "administration of justice" covered by Entry 11-A in the Concurrent List. He further submitted that Entry 95 of the Union List, Entry 65 of the State List and Entry 46 of the Concurrent List refer to special jurisdiction of courts with respect to the matters contained in the respective Lists. Entry 95 of List I deals with the power of the Parliament to confer jurisdiction and power of all the courts except the Supreme Court with respect to any of the matters in List I. Entry 65 of the List II deals with the power of State Legislature to confer jurisdiction and powers of all the courts excepting the Supreme Court with respect to the matters contained in the State List. Similarly Entry 46 in the Concurrent List deals with the power and jurisdiction of all the courts excepting the Supreme Court with respect to all the matters contained in the Concurrent List. One of the items in the Concurrent List is Civil Procedure Code under Entry 13.

According to him the State Legislature has the power and legislative competence to confer general jurisdiction on all the courts except the Supreme Court under Entry 11-A in the Concurrent List under the caption "administration of justice". Thus, passing of the 1987 Act was within the competence of the State Legislature. The State Legislature was the sole repository of power to confer jurisdiction on all the courts excepting the Supreme Court under Entry 3 of the State List prior to Forty-second Amendment Act, 1976 and thereafter both Parliament as well as the State Legislature have power to confer general jurisdiction on all the courts including the High Courts under Entry 11-A of the Concurrent List. The learned Counsel submitted that the subject relating to constitution and organization of High Courts does not include jurisdiction and powers of the High Court; it is only with reference to establishment or constitution of the High Court having regard to Articles 2, 3 and 4 and other relevant Articles of the Constitution. He added that the expression "administration of justice' has a wide meaning and includes administration of civil as well as criminal justice and is complete and self-contained Entry. The words `administration of justice' are of widest amplitude and are sufficient to confer upon the State Legislature the right to regulate and provide for entire machinery connected with the administration of justice in the State. The State Legislature being an appropriate body to legislate in respect of the administration of justice and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters - civil and criminal - it must follow that it can invest the High Court with such general jurisdiction and powers including territorial and pecuniary jurisdiction and also to take away such jurisdiction and powers from the High Court. Conferring unlimited jurisdiction on civil court or taking away the same from the High Court does not amount to dealing with the constitution and organization of the High Court. Under Entry 11-A List III, State Legislature was empowered to confer jurisdiction and powers upon all courts within the State including the High Court.

Entry 46 of the Concurrent List deals with the special jurisdiction in respect of the matters in List III. One of the items in the said list at serial No. 13 is Civil Procedure Code on the commencement of the Constitution. The 1987 Act deals with the pecuniary jurisdiction of the courts as envisaged by Sections 6 and 9 of the Civil Procedure Code and as such the State Legislature was competent to legislate under Entry 13 of List III. In support of his submission, the learned Counsel relied on a few Decisions.

Mr. U.U. Lalit, learned senior counsel for the State of Maharashtra, while supporting the impugned judgment submitted that there is an anomaly created by, or deficiency found in

Section 3 of the 1986 Act inasmuch as Section 3 of the said Act read with Section 9 of 1987 Act fails to make any provision for appeal against a decree or order passed after the commencement of the Act in any suit or other proceedings pending in the High Court since before the commencement of the Act. He sought ten days time to have instructions from the State of Maharashtra in this regard. Thereafter, on the basis of the letter No. 37-PF 2131097 dated 17th December, 2004 of Principal Secretary & R.L.A., State of Maharashtra, I.A. No. 10 is filed seeking permission to place on record the said letter indicating the willingness of the State of Maharashtra to take necessary steps to make legislative amendment to Section 3 of the Maharashtra Act No. XVII of 1986, relevant portions of which read:

"With reference to the above subject, I have to state that you are hereby given instructions to make a statement before the Hon'ble Supreme Court that the State of Maharashtra will take necessary steps to make legislative amendment to Section 3.1 of the Maharashtra Act No. XVII of 1986 (The Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeal) Act, 1986) to make a provision for appeal against the judgment, order and decree passed on the appointed date by the High Court and thereafter as may be indicated in the judgment of the Supreme Court."

Mr. Mohan Parasaran, Additional Solicitor General, urged that being conscious of importance of the institutions of the Supreme Court and the High Courts the Constitution did not confer any power on the State Legislature to legislate or tinker with their jurisdiction; therefore, law passed by the State Legislature concerning the jurisdiction of the High Courts having wider ramifications affecting or taking away other jurisdictions already vested in the High Courts would be ultra vires of the State Legislature; the powers in this regard lie only with the Parliament; the expression 'administration of justice' has to be so construed so as to exclude the jurisdiction of the Supreme Court and the High Courts from its purview.

Dr. N.M. Ghatate, learned senior counsel for the State of Madhya Pradesh [Appellant in C.A. No. 1222-1224/85] made additional submissions supporting the constitutional validity of the Adhiniyam. He contended that the view taken by the Bombay High Court in upholding the constitutional validity of the 1987 Act is correct. Provisions of the 1986 Act being similar to the Adhiniyam, constitutional validity of the Adhiniyam may be upheld and the Full Bench judgment of the High Court may be reversed.

The contention of the learned counsel for the appellant is that the words "constitution and organisation of the High Courts" used in Entry 78 of List I are wide enough to take

within its ambit, not only the constitution and organization, but, also the "general jurisdiction" of the High Courts. In contrast, it is contended that Entry 95 in List I pertains to the legislative power of Parliament to invest special jurisdiction in all courts, except the Supreme Court, with respect to any of the matters enumerated in List I. Correspondingly, Entry 46 of the Concurrent List vests power in Parliament as well as the State legislature to confer special jurisdiction and powers on all courts, except the Supreme Court, with respect to any of the matters in List III. Similarly, Entry 65 of List II enables the State legislature to confer jurisdiction and powers on all courts, except the Supreme Court, with respect to any of the matters in List II.

Observations

The Observations of the Court in the case were as follows –

This Court yet in another judgment in *Bharat Hydro Power Corpn. Ltd. and Ors.* v. *State of Assam and Anr.* MANU/SC/0010/2004 touching the same question, in para 18 has observed thus:-

"18. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of another legislature. This may result in a large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged on the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of "pith and substance" regard is to

be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions. For this see *Southern Pharmaceuticals & Chemicals* v. *State of Kerala* MANU/SC/0088/1981, *State of Rajasthan* v. *G. Chawla* MANU/SC/0141/1958, *Thakur Amar Singhji* v. *State of Rajasthan* MANU/SC/0013/1955, *Delhi Cloth and General Mills Co. Ltd.* V. *Union of India* MANU/SC/0377/1983 and *Vijay Kumar Sharma* v. *State of Karnataka* MANU/SC/0368/1990. In the last-mentioned case it was held: (SCC p. 576, para 15)

"15. (3) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provision of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential."

92. A Constitution Bench of this Court in Association of *Natural Gas and Ors.* v. *Union of India and Ors.* MANU/SC/0267/2004 has observed that "Entries in the List are themselves not powers of legislation, but fields of legislation. An Entry in one List cannot be interpreted so as to annul or obliterate another Entry or make another Entry meaningless and that in case of apparent conflict or any Entry overlapping the other, every attempt shall be made to harmonise the same". Para 15 of the judgment reads:-

"15. Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially dealing with the subject coming within the purview of the entry in the Union List. Conversely, the State Legislature also while making legislation may incidentally trench upon the subject covered in the Union List. Such incidental encroachment in either event need not make the legislation ultra vires the Constitution. The doctrine of pith and substance is sometimes invoked to find out the nature and content of the legislation. However, when there is an irreconcilable conflict between the two legislations, the Central legislation shall prevail. However, every attempt would be made to reconcile the conflict."

93. In view of the discussion made and reasons recorded above, we uphold the constitutional validity of 1987 Act, 1986 Act and the Adhiniyam. The Notification dated 20.8.1991 Issued by the State of Mahrashtra shall not be implemented without further orders from this Court in the light of what is stated in para 85.

The State of West Bengal v. Kesoram Industries Ltd. and Ors.

2004 (1) SCALE 425: (2004)10 SCC 201: MANU/SC/0038/2004

V.N. Khare, C.J., R.C. Lahoti, B.N. Agarwal, S.B. Sinha and AR. Lakshmanan, JJ.

Decided On: 15.01.2004

Brief Facts:

In this batch of matters, some appeals by special leave under Article 136 of the Constitution and some writ petitions filed in this Court, raise a few questions of constitutional significance centring around Entries 52, 54 and 97 in List I and Entries 23, 49, 50 and 66 in List II of the Seventh Schedule to the Constitution of India as also the extent and purport of the residuary power of legislation vested in the Union of India. Cesses on coal-bearing land levied in exercise of the power conferred by State legislation have been struck down by a Division Bench of the Calcutta High Court. In exercise of the same power conferred by State legislation whereunder cesses were levied on coal-bearing land, cesses have also been levied on tea plantation land which are the subject-matter of writ petitions filed in this Court. The Bengal Brickfield Owners' Association has also come up to this Court by filing a writ petition under Article 32 of the Constitution, laying challenge to the same cesses levied on the removal of brick earth. These three sets of matters arise from West Bengal. The High Court of Allahabad has upheld the constitutional validity of cess levied in the State of U.P. on minor minerals, which Decisions are the subject matter of civil appeals filed under Article 136 of the Constitution. For the sake of convenience, these matters have respectively been called (A) Coal matters, (B) Tea matters, (C) Brick earth matters, and (D) Minor mineral matters.

Coal matters

A Division Bench of the Calcutta High Court had, it's vide judgment dated 25:11:1992, reported as Kesoram *Industries Ltd. (Textile Division) v. Coal India Ltd.*, [AIR 1993 Cal 78], struck down certain levies by way of cess on coal as unconstitutional for want of legislative competence in the State Legislature. Feeling aggrieved, the State of W.B. had come up in appeal by special leave.

Tea matters

Challenge in these matters was to the West Bengal Taxation Laws (Amendment) Act, 1992, which amended West Bengal Primary Education Act, 1973 and West Bengal Rural

Employment and Production Act, 1976 providing for levy of certain cess. Different rates in respect of lands, coal mines and other mines on annual basis were provided. Writ Petition under article 32 was filed challenging the validity of said amendment Act.

Brick earth matters

The Bengal Brickfield Owners' Association filed a writ petition before the Supreme Court challenging the constitutional validity of certain provisions contained in the Cess Act, 1880, The West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976 [both as amended by the West Bengal Taxation Laws (Amendment) Act, 1992.

D. Minor mineral matters

Batch of appeals were filed challenging the judgment dated 01:03:2000 delivered by a Division Bench of the Allahabad High Court, upholding the constitutional validity of a cess on mineral rights levied under section 35 of the U.P. Special Area Development Authorities act, 1986 read with rule 3 of the Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997.

In brief, the constitutionality of the Cess Act, 1880, West Bengal Primary Education Act, 1973, West Bengal Rural Employment and Production Act, 1976 as amended by the West Bengal Taxation Laws (Amendment) Act, 1992 whereby and whereunder cess was levied on 'coal', 'tea', 'brick-earth' and 'minor minerals' is in question in this batch of appeals and writ petitions.

Issue Involved:

Whether the legislative competence of the State to impose cess is traceable to Entries 49 and 50 of List II vis-a-vis Entries 52, 54 read with Entry 97 of List I of the Seventh Schedule of the Constitution of India?

Decision

Per Majority

Entries 52, 53 and 54 in List I are not heads of taxation. They are general entries. Fields of taxation covered by Entries 49 and 50 in List II continue to remain with State Legislatures in spite of Union having enacted laws by reference to Entries 52, 53, 54 in List I.

Accordingly appeals of the states were allowed and other appeals and writ petitions were dismissed.

Per Minority

Tea and coal being subjects of great importance, the Parliament have taken over the complete control of the entire field in respect thereof and other minerals in terms of the Tea Act, 1953 and Mines and Minerals (Regulations and Development) Act, 1957 respectively.

Having regard to the purport and object of the said Parliamentary Acts and the declarations contained in Section 2 of the 1957 Act and the 1953 Act, the State must be held to be denuded of its power to levy any tax on coal or tea, particularly, having regard to the provisions of Sections 9, 9A, 13, 18 and 25 of the 1957 Act and Sections 10, 13, 15, 25 and 30 of the Tea Act. Field of taxation on mineral is also covered by Section 25 of the 1957 Act. The field of taxation under the Tea Act is specifically covered by Section 25 thereof.

Accordingly allowed all the appeals and writ petitions except the appeals filed by State of West Bengal.

Ratio Decidendi:

In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation.

Power of 'regulation and control' is separate and distinct from the power of taxation and so are the two fields for purposes of legislation.

Observations

R.C. Lahoti J (for himself and on behalf of V.N. Khare, C.J., B.N. Agrawal and Dr. A.R. Lakshmanan, JJ.)[143]

1. In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.
2. Power of 'regulation and control' is separate and distinct from the power of taxation and so are the two fields for purposes of legislation. Taxation may be

[143] Para 129 (SCC)

capable of being comprised in the main subject of general legislative head by placing an extended construction, but that is not the rule for deciding the appropriate legislative field for taxation between List I and List II. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping. There may be overlapping in fact but there would be no overlapping in law. The subject matter of two taxes by reference to the two Lists is different. Simply because the methodology or mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. This is the distinction between the subject of a tax and the measure of a tax.

3. The nature of tax levied is different from the measure of tax. While the subject of tax is clear and well defined the amount of tax is capable of being measured in many ways for the purpose of quantification. Defining the subject of tax is a simple task; devising the measure of taxation is a far more complex exercise and therefore the legislature has to be given much more flexibility in the latter field. The mechanism and method chosen by Legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax.

4. Entries 52, 53 and 54 in List I are not heads of taxation. They are general entries. Fields of taxation covered by Entries 49 and 50 in List II continue to remain with State Legislatures in spite of Union having enacted laws by reference to Entries 52, 53, 54 in List I. It is for the Union to legislate and impose limitations on the States' otherwise plenary power to levy taxes on mineral rights or taxes on lands; (including mineral bearing lands) by reference to Entry 50 and 49 in List II and lay down the limitations on State's power, if it chooses to do so, and also to define the extent and sweep of such limitations.

5. The Entries in List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non-obstante clause "subject to" does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:

One - Is it still possible to effect reconciliation between two Entries so as to avoid conflict and overlapping?

Two - In which Entry the impugned legislation fails by finding out the pith and substance of the legislation? And

Three - Having determined the field of legislation wherein the impugned legislation fails by applying doctrine of pith and substance, can an incidental trenching upon another field of legislation be ignored?

6. 'Land', the term as occurring in Entry 49 of List II, has a wide connotation, Land remains land though it may be subjected to different user. The nature of user of the land would not enable a piece of land being taken out of the meaning of land itself. Different uses to which the land is subjected or is capable of being subjected provide basis for classifying land into different identifiable groups for the purpose of taxation. The nature of use of one piece of land would enable that piece of land being classified separately from another piece of land, which is being subjected to another kind of use, though the two pieces of land are identically situated except for the difference in nature of use. The tax would remain a tax on land and would not become a tax on the nature of its use.

7. To be a tax on land, the levy must have some direct and definite relationship with the land. So long as the tax is a tax on land by bearing such relationship with the land, it is open for the legislature for the purpose of levying tax to adopt any one of the well-known modes of determining the value of the land such as annual or capital value of the land or its productivity. The methodology adopted, having an indirect relationship with the land, would not alter the nature of the tax as being one on land.

8. The primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of State Legislature cannot be annulled as unconstitutional merely because it may have an affect on the price of the commodity. A State legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of 'regulation and control' belonging to the Central Government by reason of

the incidence of levy being permissible to be passed on to the buyer or consumer, and thereby affecting the price of the commodity or goods. Entry 23 in List II speaks of regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union, Entries 52 and 54 of List I are both qualified by the expression "declared by Parliament by law to be expedient in the public interest". A reading in juxtaposition shows that the declaration by Parliament must be for the 'control of industries' in Entry 52 and for regulation of mines or for mineral development' in Entry 54. Such control, regulation or development must be 'expedient in the public interest'. Legislation by the Union in the field covered by Entries 52 and 54 would not like a magic touch or a taboo denude the entire field forming subject matter of declaration to the State Legislatures. Denial to the State would extend only to the extent of the declaration so made by Parliament. In spite of declaration made by reference to Entry 52 or 54, the State would be free to act in the field left out from the declaration. The legislative power to tax by reference to Entries in List II is plenary unless the entry itself makes the field 'subject to' any other entry or abstracts the field by any limitations imposable and permissible. A tax or fee levied by State with the object of augmenting its finances and in reasonable limits does not ipso facto trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied, by State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental.

9. The heads of taxation are clearly enumerated in Entries 83 to 92B in List I and Entries 45 to 63 in List II. List III, the Concurrent List, does not provide for any head of taxation. Entry 96 in List I, Entry 66 in List II and Entry 47 in List III deal with fees. The residuary power of legislation in the field of taxation spelled out by Article 248 (2) and Entry 97 in List I can be applied only to such subjects as are not included in Entries 45 to 63 of List II. It follows that taxes on lands and buildings in Entry 49 of List II cannot be levied by the Union. Taxes on mineral rights, a subject in Entry 50 of List II can also not be levied by the union though as stated in Entry by itself the union may impose limitations on the power of the State and such limitations, if any, imposed by the Parliament by law relating to mineral development and to that extent shall

circumscribe the States power to legislate. Power to tax mineral rights is with the States; the power to lay down limitations on exercise of such power, in the interest of regulation, development or control, as the case may be, is with the union. This is the result achieved by homogeneous reading of Entry 50 in List II and Entries 52 and 54 in List I. So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional.

S.B. Sinha J[144]

1. The federalism under the Indian context points out to the supremacy of the Parliament and the legislative entries contained in different Lists of the Seventh Schedule must be construed accordingly.
2. The interpretation of the legislation will depend upon the legislative entries to which it relates and intent and purport of the makers of the Constitution and no principle of interpretation can be introduced to the effect that the Court should lean towards a State.
3. Tea and coal being subjects of great importance, the Parliament have taken over the complete control of the entire field in respect thereof and other minerals in terms of the Tea Act, 1953 and Mines and Minerals (Regulations and Development) Act, 1957 respectively.
4. Having regard to the purport and object of the said Parliamentary Acts and the declarations contained in Section 2 of the 1957 Act and the 1953 Act, the State must be held to be denuded of its power to levy any tax on coal or tea, particularly, having regard to the provisions of Sections 9, 9A, 13, 18 and 25 of the 1957 Act and Sections 10, 13, 15, 25 and 30 of the Tea Act. Field of taxation on mineral is also covered by Section 25 of the 1957 Act. The field of taxation under the Tea Act is specifically covered by Section 25 thereof.
5. The State being owner of the minerals and grant of mineral right being controlled by the Parliamentary statute, the State is denuded of its power to impose any tax on mineral right in terms of Entry 50 of List II of the Seventh Schedule of Constitution of India.

[144] Para 593 (SCC)

6. Having regard to the underlying object of the 1953 Act and the 1957 Act, even if the doctrine of pith and substance is applied, it may not be possible to hold that the State legislature has only incidentally encroached upon the legislative field occupied by the Parliament.

7. Levy of tax on coal bearing lands and mineral bearing lands where mining operations are being carried out through the process of incline or digging pits is illegal, inasmuch as the underground mining right would be larger in area than the surface right and, thus, it is not possible to uphold the validity of, such statute with reference to the extent of the surface right as mineral is being extracted from a larger underground area. Different rights may belong to different persons over the same surface land and similarly different rights may belong to different persons in respect of or over underground rights and the impugned statutes having not made any provision of different method of levy, the impugned statutes are ultra vires.

   The impugned provisions do not specify who would be liable to pay in relation to different rights and who would be considered to be the owner of the land and to what extent. If the extent of surface land is treated to be the unit, the same having regard to different mining rights granted to different persons over different minerals would all be liable to pay cess although they may not have any right over the surface at all or exercise such right there over only over a part thereof.

   As minerals bearing lands cannot be treated as an independent unit in respect of which tax can be invoked, the impugned Acts must be held to be unconstitutional.

8. Tax on lands and buildings in terms of Entry 49 of List II of the Seventh Schedule of the Constitution of India can be levied on land as a unit and not otherwise.

9. As green tea leaves is marketable, the Decision in Good ricke Group Ltd. v. State of W. B. [1995 Supp (1) SCC 707] having mainly been rendered on the premise that green tea leaves is not marketable must be held to have passed sub silentio and, thus, does not lay down correct legal position.

10. In view of the definitions of 'land' and 'immmovable property' contained in the Bengal Cess Act, 1880, as no road cess or public works cess can be imposed

on standing crops or any kind of structures, houses, shops or other buildings which would include factories and workshops for processing tea, no levy by way of cess can be imposed by reason of the impugned Acts either on the mining leasehold or the tea estate containing standing crops as also houses and buildings.

11. Measure of a tax although may not be determinative of the nature thereof, the same will play an important role in determining the character thereof particularly keeping in view the purpose and object the Parliamentary Acts seek to achieve. In determining the legislative competence the taxing event also plays an important role.

12. The Tea Act having been exacted in terms of Entries 10 and 14 of List I as also Article 253 of the Constitution, the State is completely denuded of its legislative power in relation thereto. The expression 'Tea' should be given a broad meaning and Entry 52 of List I of the Seventh Schedule of the Constitution should be interpreted in relation to tea having regard to the purport and object it seeks to achieve.

M.P.A.I.T. Permit Owners Assn. and Anr. v. State of Madhya Pradesh

I(2004)ACC301, (1)CHN175, JT2003(9)SC540, 2004(3)MPHT175, 2003(10)SCALE38, (2004) 1 SCC 320

Date of Decision 28.11.2003

Composition of the Bench: S. Rajendra Babu and G.P. Mathur, JJ.

Brief Facts:

A batch of writ petitions were filed before the High Court of Madhya Pradesh challenging the constitutional validity of Sections 16(6), (7) & (8), 20-A and 20-B of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991, inserted by the Madhya Pradesh Motoryan Karadhan [Sanshodhan] Adhiniyam, 1999, published in the official gazette on 8.12.1999 received the assent of the Governor on 30.11.1999. The petitioners before the High Court contended that Sections 16(6), (7) & (8), 20A, 20-B and 20-C of the Act are repugnant to the Motor Vehicles Act, 1988 enacted by Parliament in exercise of its powers under Entry 35, List III of the Seventh Schedule to the Constitution, which has been in force since 1st July 1989; that the amendments introduced by Act 27 of 1999, by which the impugned provisions are introduced in the Act, deal with the subject-matter covered by Section 66 read with Section 192A of the MV Act; that the impugned provisions provide for confiscation of the vehicle thereby enhancing the penalty provided by the MV Act which sets out only certain amounts of fine and thus repugnancy arises; that there are provisions in the Act for recovery of tax and, therefore, the provision for confiscation of the vehicle is uncalled for.

Issue Involved:

Whether there is any conflict or repugnancy between the State Law and the Union Law?

Decision

Sections 16(6), (7), (8), and 20(A) are held to be invalid.

Ratio Decidendi:

Repugnancy arises when offence under Central Law and State Law substantially are the same but the state law provides for an additional punishment apart from that prescribed under the Central law for the same offence, and the state law would be repugnant to the Central law.

SUMMARY OF THE ARGUMENTS

On behalf of the State, it is contended that the Act and the amendments made thereto are within its competence as they fall under Entries 56 and 57, List II of the Seventh Schedule to the Constitution and is within the legislative competence and the MV Act does not set out any principle of taxation subject to which the enactments made Entry 56, List II of the Seventh Schedule to the Constitution can operate. A contention had been raised on behalf of the State that the Act had obtained the assent of the President and the subsequent amendment is only supplemental in nature and, therefore, does not require any further assent of the President.

Sri K.K.Venugopal, learned senior advocate appearing on behalf of the appellants, contended that the Act is a law relating to levy of tax on motor vehicles relatable to Entry 57, List II of the Seventh Schedule to the Constitution. He submitted that Parliament has enacted MV Act in exercise of powers under Entry 35, List III of the Seventh Schedule to the Constitution, which specifically covers motor vehicles and in terms of Article 254 of the Constitution prevails over any State law covering the same field; that levy of tax on motor vehicles is within the exclusive domain of the State Legislature and similarly regulatory provisions under the MV Act fall under Entry 35, List III of the Seventh Schedule to the Constitution and the Union has already enacted a law in that regard. He submitted that a careful reading of Section 16(6) of the Act would indicate that the cause or the incident which attracts confiscation is violation of the provisions of Sections 66 and 192A of the MV Act and not for the purpose of the taxation. Alternatively, he submitted that if for any reason it is to be held that it is also for the purpose of recovery of taxes, he contended that an examination of the scheme of the provisions of the Act and Rules framed thereunder are vague leading to such arbitrariness as to vitiate the provisions in terms of Article 14 of the Constitution. He submitted that while a provision has been made for the purpose of seizure of a motor vehicle for non-payment of tax and such vehicle, as provided under the Act and the Rules framed thereunder, has to be released the moment the tax is paid and even if in respect of such vehicle a mere report is filed in terms of Section 16(6) of the Act, the vehicle is liable to be confiscated thereby the object of the Act to recover the tax is not fulfilled but on the other hand, it results only in imposing further penalty upon the owner or the driver of the vehicle and in turn results in enhancing the penalty provided under the MV Act, which clearly would result in repugnancy in the provisions thereof.

Observations

It is clear that confiscation would arise only in the event if an offence is committed under Section 66 read with Section 192A of the MV Act and, therefore, such provision could not have been enacted without the assent of the President as the same directly impinges upon Article 254 of the Constitution. Under Article 254 of the Constitution, the law made by Parliament will prevail in respect of subjects covered under List III of the Seventh Schedule to the Constitution. An exception is carved out in Clause (2) of Article 254 of the Constitution whereby the law made by the State Legislature will prevail if the Presidential assent is received. But before this clause can be invoked there must be a repugnancy between the State Act and an earlier Act made by Parliament. In effect, the scheme is that Article 254(2) gives power to the State Legislature to enact a law with the assent of the President, on any subject covered under List III of the Seventh Schedule to the Constitution, even though the Central Act may be inconsistent operating in that State relating to that subject.[145]

When the offences arising upon the Union Law and the State Law respectively are substantially identical, but additional penalties are imposed for the contravention by the provision of the State Law it would be inconsistent with the Law of the Union and, therefore, invalid. In the instant case, apart from what is available under Section 192A of the MV Act, there are additional penalties arising under Section 16(6) of the Act.[146]

[145] Para 11.
[146] Para 15.

Sharma Transport Rep. by D.P. Sharma v. Government of Andhra Pradesh and Ors.

Decided On: 03.12.2001

(2002) 2 SCC 188

Hon'ble Judges:

B.N. Kirpal, K.G. Balakrishnan and Arijit Pasayat, JJ.

Brief Facts:

In the instant case the vehicles of the appellants are covered by the tourist vehicles permits Issued by the State Transport Authority, Karnataka under Rule 64(1) of the Karnataka Motor Vehicles Rules and the authorization certificates Issued by the same authority under the Motor Vehicles (All India Permit for Tourist and Transport Operators) Rules, 1993 (in short 'permit rules) and also the recognition certificates Issued by the Director of Tourism, Bangalore under the said Rules. By virtue of these permits and certificates, tourist vehicles of the appellants are authorized to ply in certain contiguous States including the State of Andhra Pradesh. Central Government after discussions with the State Governments and with their consent formulated policies in the matter of concessions to be extended to tourist vehicles. A Notification was Issued pursuant to a directive of the Central Government and its withdrawal is clearly unconstitutional. Rule 1(4) of the Permit Rules makes it clear that the conditions prescribed in Rules 82 to 85A of the Central Motor Vehicles Rules, 1989 (in short 'the Central Rules') do not apply to permits granted under the scheme governed by the Permit Rules. Therefore, in the garb of levying taxes on fares and freights, the directives of the Central Government are being violated and the same is impermissible. With reference to Articles 73, 256 and 257 of the Constitution of India 1950 (for short 'the Constitution'), it was submitted that the directives of the Central Government are binding and the withdrawal Notification is clearly illegal. With reference to Entry 35 of List III of the Seventh Schedule, it was submitted that the earlier Notification was in accord with the said entry. Section 88(9) of the Motor Vehicles Act, 1988 (in short 'the Act') throws considerable light on the controversy and similar is the position in respect of Section 88(14) of the Act. State legislature has no competence to rescind or reverse the Notification conferring the benefits of concessional rate of tax to tourist operators. State law cannot go counter to the directives of Central Government on this subject. Therefore, the impugned Notification is beyond

the legislative power which the State derives under Entry 57 of List II of the Seventh Schedule to the Constitution, in view of the express language used in Entry 35 of List III and also by virtue of the mandate contained in Article 254 of the Constitution. A plea of promissory estoppel was also pressed into service. It was submitted that the withdrawal of the concessional tax is an instance of arbitrary exercise of power which is not backed by any relevant consideration. Article 256 of the Constitution obligates the State to exercise its executive power to ensure compliance with the laws made by Parliament. Therefore, the impugned Notification could not have been withdrawn. In any event, after the withdrawal of the Notification there was a repeal of the relevant provision and without an operative Notification, taxes cannot be charged. Lastly, it was submitted that the action is clearly violative of guarantees and protections provided by Article 301 of the Constitution. It is to be noted that except the last stand indicated above, all other stands were examined by the High Court and negatived.

Issue Involved:

These appeals relate to a common judgment of the Andhra Pradesh High Court by which challenge to Notification Issued by the State Government was rejected. By the said Notification Issued under Clause (b) of Section 9(1) of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 an earlier order dated Issued by the Transport, Roads and Buildings Department, was cancelled. The appellants who are operators of tourist buses originating from Karnataka State (their home State) and plying in adjacent States including the State of Andhra Pradesh filed the writ petitions assailing the legality and constitutional validity of the said Notification.

Judgment delivered by Arijit Pasayat J.

Ratio Decidendi:

If the Court is satisfied that if in larger public interest it would be inequitable to hold Government or public authority to promise or representation made by it, then promisiory estoppel cannot be pressed into action.

SUMMARY OF THE ARGUMENTS

Learned Solicitor General appearing for the Union of India stated that the letter dated 30th August 1933 Issued by the Joint Secretary to the Government of India to which reference was made in the Notification dated 1.7.1995 cannot be construed to be a directive

by the Central Government to the States. Apparently, Articles 73, 256 and 257 deal with different situations in which directives can be Issued. But the present case is one to which none of these Articles (SIC) He however, submitted that there are certain Observations in *Jayaram's* case (supra) which are prima facie at variance with the views expressed by the larger Bench in the *Automobile Transport's* case.

Learned counsel appearing for the State of Andhra Pradesh submitted that there was no challenge before the High Court on the question of Article 301 of the Constitution, except a vague and general plea taken in the writ petitions. In any event, this was a case to which Article 301 of the Constitution had no application. In fact, President's assent had been taken and, therefore, without any plea being taken as to how the levy is not reasonable or is not in public interest. For the first time in these appeals, such a plea cannot be pressed into service. It was also submitted that this was not a case of repeal and was cancellation of a Notification in terms of Section 9(1)(b) of the Taxation Act.

Observations

The Observations of the Court in the case were as follows –

The Order Issued by the joint secretary is directive in nature. It cannot also be treated as subordinate legislation deriving its force or power from the Act or any other law made by the Union. If the Court is satisfied that if in larger public interest it would be inequitable to hold Government or public authority to promise or representation made by it, then promisiory estoppel cannot be pressed into action. As the President's sanction has been obtained, the case would be relatable to Article 304 rather than Article 301. For applicability of clause (b) thereof, mere assent is not sufficient, but, tax has to be levied in public interest. **(Paras 12, 13, 28, 35, 36, 37; Pasayat Arijit J.)**

12. Power to levy taxes on vehicles, whether mechanically propelled or not vests solely on the State Legislature, though it may be open to the Parliament to lay down the principles on which the taxes may be levied on mechanically propelled vehicles in the background of Entry 35 of List III. To put it differently, Parliament may lay down the guidelines for the levy of taxes on such vehicles, but the right to levy such taxes vests solely in the State Legislature. No principles admittedly have been formulated by the Parliament. In that sense, the Government of India's communication dated 30th August, 1993 does not in any sense violate the power of the State Legislature or its delegate to levy or exempt taxes from time to time.

13. It is the stand of the appellants that what is ruled out by application of Rule 1(4) of the Permit Rules has been indirectly brought into force. Reference has been made to Rule 84 of the Central Rules to submit that the levy which is permitted in terms of that rule is clearly excluded of its application. This plea is equally without any substance as Rule 84 states that the liability to pay taxes under the law does not cease merely on account of obtaining a tourist permit. Said rule is not a substantive charging provision as far as levy is concerned. The power to levy tax, to reduce or exempt the tax and to withdraw concession granted did not have its source in Rule 84, but are clearly founded on the taxing statutes i.e. Taxation Act. It is nobody's case that State is authorized to levy or collect taxes only by operation of Rule 84.

28. It has been pleaded as noted above that withdrawal is without any rational or relevant consideration. In this context, it has to be noted that the operators in the State of Andhra Pradesh are required to pay the same tax as those registered in other states. Therefore, there cannot be any question of irrationality. The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. In the present cases all persons who are similarly situated are similarly affected by the change. That being so, there is no question of any discrimination. That plea also fails.

35. A mere claim that tax is compensatory would not suffice. To that extent the Observations in *Jayaram's* case (supra) do not reflect the correct position in law. Whether a tax is compensatory or not cannot be made to depend on the preamble of the statute imposing it. A tax cannot also be said not to be compensatory because the precise or specific amount collected is not actually use dot providing any facilities.

36. We may not here that though arguments were advanced in the background of Article 301 of the Constitution, as has been rightly submitted by the learned counsel for the State of Andhra Pradesh, there were no pleadings in this regard in the writ petitions, excepting some general statements about violation of Article 301. It has been fairly considered that President's assent as required has been obtained. Thus the case is not

relatable to Article 301, but Article 304. With reference to Clause(b) of the said Article, it is submitted that mere obtaining assent is not sufficient, and it has to be shown that the levy was in public interest. There was no averment in the petitions before the High Court in this regard. There was also no view expressed by the High Court on this Issue, in the absence of any argument or plea before it. The question whether public interest was involved or not required a factual adjudication. Since there were no pleadings, the State did not have an opportunity to indicate its stand. Under the circumstances, we do not think it appropriate to consider that question for the first time in these appeals, particularly when factual adjudication would be necessary.

37. Coming to the plea relating to repeal of the Notification, it is to be noted that the Notification dated 1.7.1995 was Issued in exercise of powers conferred under Section 9(1)(a) of the Taxation Act, while the impugned Notification was Issued in exercise of powers conferred under Section 9(1)(6) of the said Act. It is to be noted that originally Notification was Issued under Section 3 of the said Act and its operation has not been questioned. That being the position, there was no requirement to Issue a fresh Notification to make the levy. Notification dated 1.7.1995, did not supersede the original Notification Issued under Section 3 of the Taxation Act.

State of Bihar and Ors. v. Shree Baidyanath Ayurved Bhawan Private Ltd. and Ors.

(2005) 2 SCC 762

Decided On: 11.01.2005

Hon'ble Judges:

S.N. Variava, AR. Lakshmanan and S.H. Kapadia, JJ.

Brief Facts:

The State herein had amended Section 2(12a) of Bihar Excise Act, 1915 by redefining the word 'intoxicant' by including therein "medicinal and toilet preparations" containing alcohol. The same was challenged by manufacturers of ayurvedic and medicinal preparations containing alcohol like Mritsanjivani Sura and Mrit Sanjivani Sudha on ground that State Legislature was not competent to levy duty on manufacture of medicinal and toilet preparations containing alcohol after enactment of Medicinal Act, 1955.

The High Court held that State legislature was wrong in including "medicinal preparation" within meaning of word intoxicant under Section 2(12a) as that item had been set apart by constitution for parliamentary legislature.

Issue Involved:

The primary Issue in the instant case concerns the competency of the State Legislature on Levy of Duty on manufacture of medicinal and toilet preparations containing alcohol.

Judgment delivered by SH Kapadia J.

Ratio Decidendi:

Although duty on manufacture of medicinal preparations containing alcohol fall under the 1955 Act, the use and possession would fall under State Law, 1915 Act. Hence, the State Legislature is competent to enact the 1915 Act as amended.

SUMMARY OF THE ARGUMENTS

Shri Dinesh Dwivedi, learned senior counsel appearing on behalf of the State *inter alia* submitted that the State Legislature possessed the exclusive power to enact a law with

respect to Entry 8 read with Entry 6 of List-II to the Seventh Schedule of the Constitution, which entries in no manner impinged upon Entry 84 or any other entry in List-I. Learned senior counsel submitted that whenever the question of legislative competence is raised, the matter has to be examined applying the doctrine of pith and substance, as repeatedly stated by this Court. Learned senior counsel submitted that incidental trenching upon the field reserved for the Union cannot be characterized as travelling beyond the assigned field. He submitted that the Amending Act No. 6 of 1985 by which medicinal and toilet preparation containing alcohol is brought within Section 2(12a) of the Bihar Act, 1915, did not impinge upon the Medicinal Act, 1955 nor upon the Drugs Act, 1940, because by the said Amending Act No. 6 of 1985, the State Legislature has sought to license and regulate the use, possession and consumption of medicinal preparation within the State as alcoholic beverage. Learned senior counsel further submitted that under the impugned notifications, the State as well as the Board of Revenue is seeking to regulate and control the use of Ayurvedic preparations containing alcohol for which license is required to be obtained by the manufacturers on payment of fees and consequently, such a fee is regulatory in nature and cannot violate Article 301 of the Constitution. Learned senior counsel further submitted that the State is entitled to proceed step by step; that in the inception, the State has attempted to regulate and control the use of medicinal preparation as alcoholic beverage and as a first step, the State has attempted to cover Ayurvedic medicines. Hence, it is a case of "under classification" and, therefore, there is no violation of Article 14 of the Constitution, as alleged. Learned senior counsel submitted that the regulatory fees do not attract the principle of quid pro quo and consequently, such fee is not hit by Article 301 of the Constitution.

Shri V.A. Mohta, learned counsel for respondent No. 2 herein submitted that the amending Act No. 6 of 1985 insofar as it includes medicinal and toilet preparations containing alcohol into Section 2(12a) of the Bihar Act, 1915 is beyond the legislative competence of the Bihar Legislature. Learned senior counsel submitted that by virtue of the enactment of the Medicinal Act, 1955 and the Drugs Act, 1940, both being Central laws, the State Legislature is denuded of its powers to license and regulate the manufacture of Ayurvedic medicinal preparations and drugs. Learned counsel submitted that fees charged under the impugned notifications, in substance, amounted to tax. He submitted that duty or tax could not be imposed by the State as the field was covered by the Medicinal Act, 1955 relatable to Entry 84 of List-I of the Seventh Schedule to the Constitution. Learned counsel laid stress on Clauses (1) (2) & (3) of Article 246 and submitted that the power of the State Legislature to make a law with reference to matters in List-II vide Article

246(3) is subject to Parliament's power under Article 246(1) and Article 246(2). Learned counsel contended that once the Parliament enacted the Medicinal Act, 1955 and included therein the power in the Central Government to license and regulate manufacture of medicinal and toilet preparations, the Parliament must be deemed to have expressed its intention to occupy the entire field of Entry 84 List-I. If so, the State Legislature has no power to make any law with respect to manufacture of medicinal and toilet preparations after coming into force of the said 1955 Act. Learned counsel further submitted that the entire exercise of bringing in medicinal and toilet preparations within the ambit of Section 2(12a) of the said 1915 Act was to change the source of power. He submitted that after enactment of the 1955 Act, referable to Entry 84 List-I, the State Legislature was denuded of its legislative power to enact of law regulating preparation and manufacture of medicinal preparation and by bringing medicinal and toilet preparation within Section 2(12a), the State Legislature is trying to usurp the power of the Parliament to tax the manufacture of medicinal and toilet preparations, referable to Entry 84 List-I. Hence, it is a case of colourable exercise of power by the State Legislature, which is against the scheme of the Constitution. The next submission of Shri Mohta was that State law and impugned notifications are violative of Article 14 insofar as they do not regulate and control Unani drugs; that no reasons have been given for regulating only Ayurvedic medicinal preparation and not Unani drugs and that even after amending the said 1915 Act, several classes of other medicines remain outside the regulatory provisions of the 1915 Act Learned senior counsel submitted that by not regulating Unani medicines, the Act and the notifications have brought about an invidious distinction which is a negation of the equality clause in Article 14. Learned senior counsel next submitted that in the absence of quid pro quo the fees imposed on medicinal preparations under the impugned notifications constituted duty or tax and consequently, violated Article 301 of the Constitution. For the aforestated reasons, no interference is called for in these civil appeals.

Observations

The Observations of the Court in the case were as follows –

The Supreme Court held that Ayurvedic medicinal preparation containing alcohol is capable of being used as an alcoholic beverage just as an industrial alcohol is capable of being diverted to human consumption. Although manufacture of industrial alcohol is covered by Central Laws, it could however be regulated by State Laws. Similarly, although duty on manufacture of medicinal preparations containing alcohol fall under the 1955

Act, the use and possession would fall under State Law, 1915 Act. Hence, it was held that the State Legislature is competent to enact the 1915 Act as amended. The impugned Judgment of the High Court being unsustainable laws set aside (Paras 26, 27, 29, 37; SH Kapadia J.)

26. As stated above, use/misuse of Ayurvedic preparations as alcoholic beverage can become the subject matter of regulation and control by the State. It is the subject of the Bihar Act, 1915. Hence, the State Act is relatable to Entry 8 read with Entry 6 of List-II. The State law operates in a different field vis-a-vis Medicinal Act, 1955 which is relatable to Entry 84 List-I. We have examined the scheme of the two Acts, Medicinal Act, 1955 levies excise duty on the manufacture of medicinal and toilet preparations. The said 1955 Act is a taxing statute. Entry 84 List-I is an entry which deals with taxing power. On the other hand, Entry 8 read with Entry 6 of List-II refers to general subject of legislation. It refers to regulation and control of substances in public interest. The Act is enacted in public interest to secure good health for the citizens. Therefore, the two Acts are in different spheres. There is no trenching even incidentally by the Bihar Rules and the impugned notifications into the provisions of the Medicinal Act, 1955 read with the Rules. It is well settled that even if at all there is any trenching or incidental encroachment such encroachment will not affect the competence of the Legislature to enact the law nor will it affect its validity. [See: *State of Bombay* v. *Narothamdas Jethabai and Anr.* MANU/SC/0011/1950. In the case of *Gallagher* v. *Lynn* reported in 1937 A.C. 863, the Privy Council held that although the impugned Act was in pith and substance an Act to protect the health of the inhabitants of Northern Ireland and though incidentally it affected trade, which came in the Union List, the State law was not passed in respect of the trade and was therefore not subjected to attack on that ground.

27. As stated above, an Ayurvedic medicinal preparation containing alcohol is capable of being used as an alcoholic beverage, just as an industrial alcohol is capable of being diverted to human consumption. It is now well settled by a catena of Decisions that the manufacture of industrial alcohol is covered by the Central laws, however, its diversion can be regulated by State laws enacted with reference to Entries 6 & 8 of List-II. Similarly, duty on manufacture of medicinal preparations containing alcohol would fall under the said 1955 Act, however, use and possession thereof will fall under the State law, like the said 1915 Act. Similarly, manufacture for sale of a substance containing alcohol as a drug would stand covered by the said 1940 Act however, its use and possession as an alcoholic beverage would fall under the State law. Licensing and regulation of an activity like use/

misuse of medicine is an enormous activity involving heavy expenditure. Hence, it is open to the State Government to delegate some of its powers to the Board of Revenue to prescribe forms of license, license fees, regulation of retail sales etc. In the circumstances, the State as well as the Board was competent to Issue the impugned notifications/ communications under Sections 5, 19(4), 38, 39 and 90 of the said 1915 Act (as amended) to license and regulate the use of such preparations as alcoholic beverages. In the circumstances, we hold, that, the High Court had erred in holding that the impugned notifications/communications had encroached upon the filed occupied by the said 1940 Act and the said 1955 Act and the Rules framed thereunder.29. As stated above, one of the grounds of attack before the High Court was that the Board of Revenue as well as the State was not competent to enact a law as well as the impugned notifications as Ayurvedic preparation containing alcohol was a drug as defined under Section 3(a) of the Drugs Act, 1940, which was relatable to Entry 19 of List-Ill of the Seventh Schedule to the Constitution. In this connection it was urged that the impugned notifications were in conflict with the Drugs Act, 1940. We do not find any merit in this argument. The Drugs Act, 1940 is to regulate import manufacture, distribution and sale of drugs. Under Section 3(a), Ayurvedic or Unani drug is defined to include all medicines intended for use in diagnosis/treatment/mitigation or prevention of diseases. Chapter IVA of the Drugs Act, 1940, exclusively deals with provisions relating to Ayurvedic and Unani Drugs. It refers to making of regulations in respect of manufacture for sale of Ayurvedic and Unani drugs. On reading the provisions of the Drugs Act, 1940, as analyzed hereinabove, it is clear that as long as Ayurvedic or Unani drug is used as a drug for diagnosis/treatment/ mitigation or prevention of diseases the activity falls within the ambit of the said Act. However, the Drugs Act, 1940 like Medicinal Act, 1955 does not deal with diversion of drugs to human consumption as alcoholic beverages which subject is dealt with by the Bihar Act, 1915, which regulates such use, possession and consumption by issuance of license on payment of fees. Hence, the State and the Board were competent to Issue the impugned notifications:

37. Subject to above, the appeals are allowed and the impugned judgment and order of the High Court dated 23.10.1989 passed in CWJC Nos. 7865, 7191, 7219, 8294 and 7864 of 1988, is set aside. We uphold the validity of the Bihar Excise Act, 1915 as well as the validity of the impugned notifications/communications, all dated 3.8.1988. However, in the facts and circumstances of the case, there will be no order as to costs.

The State of Karnataka and Ors. v. M/s. Drive-in-Enterprises

(2001) 4 SCC 60

Decided On: 13.03.2001

Hon'ble Judges:

Mr. V.N. Khare and Mrs. Ruma Pal. JJ.

Brief Facts:

This appeal is directed against the judgment of the Karnataka High Court passed in the writ petition filed by the respondent herein whereby sub-clause (v) of Clause (i) of Section 2 of the Karnataka Entertainment Tax Act (hereinafter referred to as 'the Act') was struck down as being beyond the legislative competence of the State Legislature.

The respondent herein, is the owner and proprietor of a Drive-in-Theatre in the outskirts of Bangalore city wherein cinema films are exhibited. It is alleged that the Drive-in-Theatre is distinct and separate in its character from other cinema houses or theatres. The Drive-in-Cinema is defined under Rule 111-A of Karnataka Cinemas (Regulation) Rules 1971 (hereinafter referred to as 'the Rules') framed in exercise of the powers conferred on the State Government under Regulation 22 of the Karnataka Cinemas (Regulation) Act, 1964. The definition of Drive-in-Cinema runs as under:

"'Drive-in-Cinema' means a cinema with an open-air theatre premises into which admission may be given normally to persons desiring to view the cinema while sitting in motor cars. However, where an auditorium is also provided in a 'drive-in-cinema' premises, persons other than those desiring to view the cinema while sitting in motor cars can also be admitted. Such drive-in-cinemas may have a capacity to accommodate not more than one thousand cars."

The Drive-in-Theatre of the respondent with which we are concerned here is a cinema with an open-air-theatre into which admissions are given to persons desiring to see cinema while sitting in their motor cars taken inside the theatre. The Drive-in-Theatre has also an auditorium wherein other persons who are without cars, view the film exhibited therein either standing or sitting. The persons who are admitted to view the film exhibited in the auditorium are required to pay Rs.3/- for admission therein. It is not disputed that the State Government has levied entertainment tax on such admission and the same is being

realised. However, if any person desires to take his car inside the theatre with a view to see the exhibition of the films while sitting in his car in the auditorium, he is further required to pay a sum of Rs.2/- o the proprietor of the Drive-in-Theatre. The appellant-State in addition to charging entertainment tax on the persons being entertained, levied entertainment tax on admission of cars inside the theatre. This levy was challenged by the proprietors of the Drive-in-Theatres by means of writ petitions before the Karnataka High Court which were allowed and levy was struck down by a single Judge of the High Court. The said judgment was affirmed by a Division Bench of that Court. It was held, that the levy being not on a person entertained (i.e. Car/Motor vehicle), the same was ultra vires. After the aforesaid Decision, the Karnataka Legislature amended the Act by Act No.3 of 1985. By the said amendment, sub clause (v) was added to Clause (i) of Section 2 of the said Act. Simultaneously, Sections 4A and 6 of the Act were also amended. After the aforesaid amendments, the appellant herein, again levied entertainment tax on admission of cars into Drive-in-Theatre. This levy was again challenged by means of a petition under Article 226 of the Constitution and the said writ petition was allowed, and as stated above, the High Court struck down sub-clause (v) to Clause (i) of Section 2 of the Act.

Issue Involved:

The primary Issue in the instant matter was whether the levy of tax on a motor vehicle entering a drive-in theatre being a levy not on a person entertained (i.e. Car/Motor vehicle), the same was ultra vires i.e. whether the State Legislature is competent to enact law to levy tax under Entry 62 of List II of Seventh Schedule on admission of cars/motor vehicles inside the Drive-in-Theatre?

Judgment delivered by VN Khare J.

Ratio Decidendi:

Once it is found there is a nexus between the legislative competence and subject of taxation, the levy is justified and valid.

SUMMARY OF THE ARGUMENTS

Learned counsel appearing for the appellant urged that insertion of sub-clause (v) of Clause (i) of Section 2 of the Act is a valid piece of legislation and after its insertion and amendment of Section 6 and Section 4A of the Act, the appellant-State was competent

to levy and realise the entertainment tax on the admission of cars/motor vehicles inside the Drive-in-Theatre. Learned counsel urged that in pith and substance, the levy is on the person entertained and not on the admission of cars/motor vehicles inside the Drive-in-Theatre. It was also urged that the State Legislature is fully competent to impose such a levy.

Learned counsel for the respondent, inter alia, urged that the Drive-in-Theatre is a different category of cinema unlike cinema houses or theatres, that, the special feature of the Drive-in-Theatre is that, a person can view the film exhibited therein while sitting in his car, that, the admission of cars/motor vehicles into Drive-in theatre is incidental and part of concept of Drive-in-Theatre, that, the film that is shown in Drive-in-Theatre is like any other film shown in cinema houses, and that, the State Legislature is not competent to levy entertainment tax on admission of motor vehicles inside the Drive-in theatre. Learned counsel further argued that the incidence of tax being on the entertainment, the State Legislature is competent to enact law imposing tax only on person entertained. In nut-shell, the argument is that the State Legislature can levy entertainment tax on human beings and not on any inanimate object. According to learned counsel, since the vehicle is not a person entertained, the State Legislature is not competent to enact law to levy entertainment tax on the admission of cars/motor vehicles inside the Drive-in-Theatre.

Observations

The Observations of the Court in the case were as follows –

12. Entry 62 of List II of Seventh Schedule empowers the State Legislature to levy tax on luxuries, entertainment, amusements, betting and gambling. Under Entry 62, the State Legislature is competent to enact law to levy tax on luxuries and entertainment. The incidence of tax is on entertainment. Since entertainment necessarily implies the persons entertained, therefore, the incidence of tax is on the person entertained. Coming to the question whether the State Legislature is competent to levy tax on admission of cars/ motor vehicles inside the Drive-in-Theatre especially when it is argued that cars/motor vehicles are not the persons entertained. Section 3 which is charging provision, provides for levy of tax on each payment of admission. Thus, under the Act, the State is competent to levy tax on each admission inside the Drive-in-Theatre. The challenge to the levy is on the ground that the vehicle is not a person entertained and, therefore, the levy is *ultra vires*. It cannot be disputed that the car or motor vehicle does not go inside the Drive-in-Theatre of its own. It is driven inside the Theatre by the person entertained. In other

words the person entertained is admitted inside the Drive-in Theatre along with the car/ motor vehicle. Thereafter the person entertained while sitting in his car inside the auditorium views the film exhibited therein. This shows that the person entertained is admitted inside the Drive-in Theatre along with the car/motor vehicle. This further shows that the person entertained carries his car inside the Drive-in-Theatre in order to have better quality of entertainment. The quality of entertainment also depends on with what comfort the person entertained has viewed the cinema films. Thus, the quality of entertainment obtained by a person sitting in his car would be different from a squatter viewing the film show. The levy on entertainment varies with the quality of comfort with which a person enjoys the entertainment inside the Drive-in-Theatre. In the present case, a person sitting in his car or motor vehicle has luxury of viewing cinema films in the auditorium. It is the variation in the comfort offered to the person entertained for which the State Government has levied entertainment tax on the person entertained. The real nature and character of impugned levy is not on the admission of cars or motor vehicles, but the levy is on the person entertained who takes the car inside the theatre and watches the film while sitting in his car. We are, therefore, of the view that in pith and substance the levy is on the person who is entertained. Whatever be the nomenclature of levy, in substance, the levy under heading "admission of vehicle" is a levy on entertainment and not on admission of vehicle inside the Drive-in-Theatre. As long as in pith and substance the levy satisfies the character of levy, i.e. "entertainment", it is wholly immaterial in what name and form it is imposed. The word "entertainment" is wide enough to comprehend in it, the luxury or comfort with which a person entertains himself. Once it is found there is a nexus between the legislative competence and subject of taxation, the levy is justified and valid. We, therefore, find that the State Legislature was competent to enact sub-clause (v) of clause (i) of Section 2 of the Act. We accordingly hold that the impugned levy is valid.

13. For the aforesaid reasons, we are of the view that the High Court fell in serious error in holding that sub-clause (v) of clause (i) of Section 2 of the Act is ultra vires Entry 62 of List II of Seventh Schedule.

The State of West Bengal and Ors. v. Purvi Communication Pvt. Ltd. and Ors.

(2005) 3 SCC 711

Decided On: 16.03.2005

Hon'ble Judges:

S.N. Variava, AR. Lakshmanan and S.H. Kapadia, JJ.

Brief Facts:

The appeal is directed against the final judgment and order dated 04.08.2000 passed by the High Court at Calcutta in W.P.T.T. No. 338 of 2000 whereby the High Court allowed the writ petition filed by respondent Nos. 1 and 2 and declared clause (ii) of Sub-section (4a) of Section 4A of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 (as amended by the West Bengal Finance Act, 1998) is ultra vires to the Constitution.

Respondent No.1 carries on business as a Multi System Operator (hereinafter referred to as 'MSO') and is engaged in receiving and providing TV signals to individual cable operators of various localities. The respondents are receiving communication signals known as TV signals broadcast by various satellite channels and are distributing the same to the sub-cable operators. The process involved in the business consists of establishment of state of the art control rooms and spreading the cable network. The said network signals are being given to various sub-cable operators with whom the respondents have franchise agreement. According to the respondents, there is a significant and qualitative difference between the functions performed by them and the activities of sub-cable operators who are franchisee of the respondent-company. According to the respondents, the object of the MSO is to capture signals from various satellites and to put all of them in proper format/frequencies so that all those signals can travel together in cables without encroaching upon and interfering with other signals for the reception and distribution by the so- called sub-cable operators. The signals are transmitted through the satellites by the various broadcasters from their earth unlinking stations at various parts of the world.

Respondent No.1 entered into Franchise Agreement with the individual cable operators of various localities and on the basis of the said agreement, respondent No.1 transmits the said TV signals to the said individual sub-cable operators against a price. The individual sub-cable operators on the basis of the monthly subscription provide the said TV signals to the individual subscribers of the locality.

The Parliament of India enacted the Cable Television Networks (Regulation) Act, 1995 which was given effect from 29.09.1994. The said Act seeks to regulate the operation of cable television network in the country and matters connected therewith and incidental thereto. The West Bengal Legislature sought to impose a tax on the MSOs and the cable operators by amending the West Bengal Entertainment-cum-Amusement Tax Act, 1982

According to the respondents that the so-called sub-cable operators who are in reality the cable operators are willing to get themselves registered and to pay the tax. According to them, it is the said local operators who have direct contractual nexus with the consumers/ viewers/households are taxed for the purpose of entertainment tax and it is only in West Bengal that such a situation has been created.

Aggrieved by the imposition of entertainment tax and the demand notices Issued, the respondents challenged the vires of 1998 amendment in the 1992 Act as well as these demand notices before the West Bengal Taxation Tribunal. The case was heard by a three-Member Bench. The Chairman of the Tribunal was of the opinion that the State Legislature was not competent to levy the tax on the "entertainer" i.e., the "sub-cable operator" and/or the "entertainee", namely, the viewer or the customer having regard to the administrative convenience and other relevant factors. The Chairman declared that clause (ii) of Sub-section (4a) of Section 4A is ultra vires to the Constitution because the Legislature of the State of West Bengal is not competent to enact the provisions under Entry 62 of List II of the Seventh Schedule to the Constitution.

Another Technical Member and Judicial Member took the opposite view. According to them, the cable operator is the exhibitor and that he is the provider of the entertainment to the customer and hence he can be asked to pay tax on the entertainment that has resulted from the exhibition. Accordingly, they refused to quash the impugned demand.

Being aggrieved by and dis-satisfied with the judgment of the Tribunal, the respondents preferred a writ petition under Article 226 of the Constitution of India before the High Court. The writ petition was contested by the appellant-State by filing a detailed reply to the writ petition. The writ petition filed by the respondents was allowed by the High Court by their judgment-dated 04.08.2000 for the reasons recorded in their judgment. The Bench was of the opinion that clause (ii) of Sub-section (4a) of Section 4A of the Act is ultra vires to the Constitution. Accordingly, the Division Bench allowed the writ petition filed by the respondents herein. Aggrieved by the same, the State of West Bengal has preferred the civil appeal.

Issue(s)

Whether clause (ii) of Sub-section (4a) of Section 4A of the West Bengal Entertainment-cum-Amusement Tax, 1982 (as amended by the West Bengal Finance Act, 1998) is beyond the legislative competence of the State Legislature?

Judgment delivered by VN Khare J.

Ratio Decidendi:

The respondents as a cable operator, for the purpose of levy and collection of tax under Sub-section (4a) of Section 4A of the Act have direct and close nexus with the entertainments made available to the viewer through their cable television network. The performance, film or programmes shown to the viewers through the cable television network come within the meaning of entertainments and therefore within the legislative competence of the State Legislature under Entry 62 of List II of Seventh Schedule to the Constitution of India to make law for the levy and collection of tax on such entertainments.

SUMMARY OF THE ARGUMENTS

Mr. V.R. Reddy, learned senior counsel for the appellant, after inviting our attention to the relevant sections and of the definitions, judgments and annexures, submitted that the High Court has erred in declaring clause (ii) of Sub-section (4a) of Section 4A of the Act is ultra vires. According to him, clause (i) of Sub-section (4a) of the Act falls within the legislative competence of the State Legislature and is not *ultra vires* to the Constitution. Respondent No. 1 who is engaged in receiving and providing TV signals to individual sub-cable operators is liable to pay tax under clause (ii) of Sub-section (4a) of Section 4A of the Act which has come into force on 01.04.1998. The said Sub-section (4a) has been substituted by an amendment made by the West Bengal Finance Act, 1998. According to the provisions of the said clause (ii) of Sub-section (4a), any owner or person having in possession, of any electrical, electronic or mechanical device who receive through such device the signal of any performance, film or any other programme telecast and thereafter transmits such signals to a sub-cable operator against payment received and receivable by him is liable to pay tax on his monthly gross receipt for transmitting such signals of any performance, film or any other programme telecast to a sub- cable operator. It was submitted that respondent No.1 is a multi-system operator who receives TV signals and transmits such signals to his sub-cable operators through his cable television network, is

a cable operator within the meaning assigned by the explanation of Sub-section (4a) of Section 4A of the Act. After transmission of such signal by respondent No.1 to their sub-cable operator they, in turn, provide cable service for exhibition of such performance, film or programme to individual customers and entertain them.

It was further submitted that respondent No.1 admittedly controls and is responsible for the management and operation of the cable television network.

Our attention was also invited to certain terms and conditions of the franchise agreement entered into between the cable operator and sub-cable operator. According to Mr. V.R.Reddy, learned senior counsel, the services rendered by respondent No.1 is not restricted only to receiving signals but also extends to sending certain visual images and audio and other information by means of telecommunication network for presentation to members of public and in the present case respondent No.1 sends visual images and audio signals for presentation to the individual subscribers through their feeder line i.e. coaxial cable or any other device used for transmitting audio and visual signals in terms of clause 2 of the agreement. The franchisee has access to the signals provided by respondent No.1. Therefore, it cannot be disputed that the price or prices received or receivable by respondent No.1 is the amount received or receivable by him for transmitting the signal for exhibition of any performance, film or any other programme telecast and the aggregate of such prices or amounts is the gross receipt of respondent No. 1 in relation to any month or part thereof. It was further submitted that sub-cable operators, as franchise, cannot render any service to any subscriber or various independent of or contrary to, any terms and conditions laid down in the agreement. A franchisee is merely an executor within the meaning given by respondent No. 1 in the agreement. The films, programmes performance can be telecast to the viewers only when the respondents receive signals and sends image and audio signals to their sub-cable operator for immediate presentation to such viewers. Therefore, whatever entertainments are derived by the members of public or viewers in houses, flats, being the subscribers, against payment is possible only because of their receiving signals and transmission of image and audio signals by the respondent and, as such, the source of entertainments is respondent No. 1 and the entire network is controlled and regulated by him.

Mr. V.R.Reddy submitted that the High Court has failed to appreciate that the taxable event need not necessarily be the actual utilisation or the actual consumption of the luxury or entertainment and that a luxury or entertainment which can reasonably be said

to be amenable to a potential consumption does provide the nexus. It was further urged that the High Court ought to have seen that the very signal transmitted through cable operator's cable instantly reaches the sub-cable operator and also the viewer's television threshold. Thus the ready entertainment in the form of audio visual signal, which is transmitted by the cable operator, reaches instantly in fact from them to the threshold of the television of the viewer. Therefore, the signal of the sub-cable operator, which reaches television as the entertainment itself, is the very signal i.e. the ready entertainment, which has been transmitted by the cable operator. Thus providing the cable link up to the viewer's end is the only role sub-cable operator has to play. It is, therefore, inconceivable that despite putting forth the ready entertainment in the form of signal on the cable line the cable operator cannot be said to be providing the entertainment within the meaning of Entry 62 of List II of the Seventh Schedule of the Constitution of India.

It was submitted that sub-cable operators are not independent of, or can act contrary to, any terms and conditions laid down in the agreement. A franchisee is merely an executor within the meaning given by respondent Nos. 1 and 2 themselves in the agreement. It was further submitted that no viewers could be entertained by the sub-cable operators alone.

Elaborating further, Mr. V.R. Reddy submitted that it is the cable operator not the sub-cable operator, who decides the programme that should be included to the bunch of programmes. Out of the large number of programmes available from satellite, the cable operator chooses those programmes that he will put on his cable network. Cable Operator decides the bunch of programmes that viewers, the householder, connected to him will be able to see. The sub-cable operator cannot change the composition of these bunches; he can neither take out any channels nor add a new one. Secondly, it is the cable-operator, and not the sub-cable operator, who makes signals received from satellite ready whenever necessary, for reception by the TV set of the consumer. Many of the more popular channels transform the signals in such a way that the signal cannot be transformed into legible image and sound unless the signals are just made to pass through a decoder. For getting for a suitable decoder, the cable operator has to approach the agency controlling the channel for negotiating the charge to be paid for the decoder, for getting it after payment and completing other formalities. In other words, the bunch of programmes has not only to be assembled, it has to be made ready for reception by the ultimate consumer. Thirdly, the cable operator puts the bunch of channels on his "Cable TV Network" which has been defined in clause (d) of the Explanation under Sub-section (4a) of Section 4A of the Act to mean any system "designed to provide cable services for reception by multiple

consumer". Once this movement is done, the show is on. It is not at all like a roll of cinematic film lying in a can in the go-down of a distributor waiting for an exhibitor to take to his cinema hall and put it in show when the exhibitor feels like it. What has gone on the TV network is in the process of being exhibited and cannot be postponed in time.

Per contra, Mr. Dushyant Dave, learned senior counsel for the respondent submitted that the respondent is engaged in receiving and providing TV signals to individual sub-cable operators of various localities and such cable-operators on their part transmit the signals to their respective subscribers, who are the actual consumers who get the benefit of the amusement or entertainment from those signals. According to him, in technological terms, it may be stated that respondent No.1 actually acts as the nodal, technical and scientific receptionist and supplier of signals and that the signals provided to the sub-cable operators are utilised by the said sub-cable operators for providing information and entertainment to their customers. According to Mr. Dushyant Dave there is a significant and qualitative difference between the functions performed by respondent No.1 cable-operator and the activities of the local sub-cable operators who are the franchisee of the respondent company. He would further submit that it is particularly important to note that due to recent technological developments, the MSOs like the respondent-company are not only providing the input to the localised cable operators in their business of providing cable TV connections and transmission of programme through cables, but the MSOs are also concerned with the value added services like internet, telephony, and transmission of data. The respondent-company by the use of the state of art bi-directional network of 550 MHZ bandwidth is able to receive and transmit signals telecast on about 40 to 50 channels as at present.

According to Mr. Dushyant Dave, under Sub-section (4a) of Section 4A of the said Act of 1982, the tax is payable by a person provided the following conditions are fulfilled:

a) He is an owner or a person for the time being in possession of any electrical, electronic or mechanical device;

b) He is a cable operator as defined in Explanation (a) of the sub- section;

c) He receives through such device the signal telecast and thereafter exhibits the same through cable television network directly to customers or transmits the same to a sub-cable operator who in turn provides cable service for exhibition to the customers;

d) The said owners or the person does the same against payment received or receivable.

It was further argued that the activities carried on by the respondents do not in any view of the matter constitute amusement or entertainment. At best the respondents may be providing one of the inputs for the ultimate creation of an output, which may be said to be entertainment. The State Legislature by an artificial definition has treated the respondents as "Cable Operators". While in fact and also in law, as per the Cable Television Networks (Regulation) Act, 1995, the respondents are not "Cable Operators". Those who are actually "Cable Operators" within the meaning of the said Act of 1995 have been artificially excluded from the said category and termed as "Sub-cable Operators" only for the purpose of enlarging the scope of the said impost. It is those sub-cable operators as they are called by the said definition that may be providing the entertainment to the ultimate consumers but surely the respondents are not doing so. That the impugned legislation insofar as the same seeks to impose a tax on MSOs like the respondents by treating them as "Cable Operators" is *ultra vires* the Constitution being in excess of the legislative competence of the State Legislature under Entry 62 of List II of the Seventh Schedule. That the power to enact a law in respect of entertainment or amusement must, in order to be intra vires, be one relating to entertainment as understood in common parlance. A law made under Entry 62 of List II of the Seventh Schedule should have a direct and sufficient nexus with the factum of entertainment. In other words, there must exist a close and direct connection between the person who provides the entertainment to the person who is thus entertained and pays for such entertainment. An activity, which is remotely connected with such entertainment, cannot come within the ambit of the said legislative entry. It was submitted that until and unless such a direct and proximate nexus between the transaction sought to be taxed and the person who is required to pay the tax is clearly established, the levy cannot be held to be constitutionally valid.

It was submitted that for the purpose of levy of entertainment tax it is the person who directly and ultimately provides the entertainment by exhibition to the viewers, is liable to pay the entertainment tax. In the case of exhibition of a movie in the cinema hall, it is the proprietor of the hall, who is taxed, as he obviously is the person who provides the entertainment by charging the necessary monetary compensation. All other persons who had participated in the production and distribution of the movie are not liable to pay entertainment tax. Similarly, the Cable operator in a locality who is actually providing the entertainment to this subscribers may be liable to pay tax but those who function at an intermediary stage, cannot be held liable to pay the said tax.

Explaining further, Mr. Dave submitted that the impugned legislation is broad sweep seeks to convert everyone into a cable operator so much so that the respondents as well

as persons with whom the respondent Company has franchise agreements would be cable operators. Again, those who are cable operators within the meaning of the said Central Act of 1995 and are in franchise agreement with the respondent Company would be sub-cable operator as also cable operators, at one and the same time.

It was further submitted that the impugned legislation has made an irrational classification by putting the respondent Company and its franchisees holders who are called cable operators under the said Central Act of 1995 in one class even though they are differently circumstanced. This amounts to treating unequals as equals which is a fact of hostile discrimination.

Dr. A.M. Singhvi, learned senior counsel appearing on behalf of the intervenor made the following submissions:

A) Assuming without conceding that Multi System Operators (MSOs) are also Cable Operators (COs), the impugned levy is unconstitutional because it travels beyond the very concept and scope of the word "Entertainment" under Entry 62 List II.

B) Any State levy on entertainment and/or amusement, to be valid, must necessarily fall within Entry 62 List II, which gives exclusive state competence, in so far as taxation on these subjects is concerned.

C) The taxable event is thus the act or activity of entertainment. This taxable event must have a direct and proximate connection with the assessee on which it falls and must itself constitute entertainment. The activity in question must be examined and unless it qualifies as entertainment itself, the taxable event of entertainment cannot arise. In the present case, so far as the MSO (assuming without conceding that MSOs are also COs) are concerned, they do not do the activity of entertainment in any manner themselves. They are engaged merely in the receipt and transmission of telecommunication signals and do not themselves conduct shows, exhibitions or entertainment of any kind.

D) If the activity in question by itself is not the taxable event (here entertainment), the impugned levy cannot constitute it to be so and deem it to be so.

E) Unless the assessee is itself doing the entertainment, to tax the assessee would amount to unconstitutional enlargement of the concept of entertainment.

(i) It would be beyond legislative competence under Entry 62 List II.

(ii) There would be no logical and legal line of demarcation if the activity in question (here entertainment) could be enlarged by a process of backward integration. There would be no logical basis then to not treat distributors, producers, broadcasters and even the writer, author and creator of the film, show or serial in question as being an entertainer and hence exigible to entertainment tax. Such enlargement would be clearly *ultra vires* and beyond the legislative competence.

F) A close, direct and proximate connection must necessarily exist between the transaction in question and the person made liable for the tax in question. Such nexus must be fair and reasonable. The impugned tax cannot involve those not connected directly or intimately with the taxable transaction.

G) It must be remembered that the MSO has no privity or direct dealing with the subscriber. There is no contractual, statutory or other common law relationship between the MSO and the subscriber. The MSO cannot sue and is not suable by the subscriber. The MSO has no connection with the subject of entertainment i.e. (subscriber) but is yet made subject to tax. The MSO does not know the identity and whereabouts of the subscriber.

H) The dominant position and intention of the MSO is to act as a conduit for receipt and transmission of telecommunication and broadcasting signals. The dominant object is that of a conduit and the MSO performs the role of a telecommunicator and not an entertainer. He receives signals on the one hand from the broadcaster and transmits and passes them, on the other hand, to the cable operator and/or the sub cable operator who then gives it to the subscriber. There is neither intent to entertain nor the taxable fact of entertainment. Both animus and factum are thus missing.

I) Indeed, in view of the MSOs role as a conduit, the impugned levy would de facto amount to a tax upon expenditure in the hands of the assessee. Admittedly, the aggregate of all collection by MSOs from cable operator or sub cable operators is passed back to the broadcaster and what is retained in the hands of MSO is only a service charge. The impugned levy is a tax on the gross receipt of the assessee/MSO. It is not a tax on the aforesaid service charge only. Since the overwhelming proportion is given back by the MSO to the broadcaster, such a tax constitutes a tax on expenditure of the MSO and is therefore perverse, unreasonable and unconstitutional.

J) In view of the foregoing, a tax on mere receiving and/or transmitting of signals will not fall under Entry 62 List II at all and would be the subject of exclusive parliamentary competence under Entry 31 read with Entry 97 of List I.

K) Without prejudice, in the alternative, in any event the respondent assesses are MSOs and not cable operators and do not fall under the impugned Act of 1982. To fall within Sub-Section (4a) of Section 4A of the 1982 Act, the assessee must separately and independently be "a cable operator". A MSO is not a cable operator and in particular, do not "exhibit" programmes "direct to customers" as per Section 4A(4a)(i) and does not "transmit such signals to a sub cable operator" under Section 4A(4a)(ii). The impugned Act of 1982 will cover only a cable operator who is also an MSO and not an MSO simplicitor. To that extent, the impugned provision is severable and should be declared and held to apply only to an entity(any entity (MSO or others) who is also a cable operator).

L) Given the nature of activity of MSOs summarized above, it is clear that MSOs have not recovered any of the impugned tax amounts either from subscribers or from cable operators/sub cable operators. Levy and recovery upon MSO would be unreasonable since they have no means of recovery from subscriber/ cable operator/sub cable operator.

M) Without prejudice, in the alternative, the impugned levy and/or recovery should be prospective, if at all from after the judgment of the apex Court in the event that the judgment allows the appeal of the State of West Bengal. After the levy in 1998, tax was paid for sometime after which payment was stopped by the assessee and legal challenges were mounted. In different cases from mid 2000 onwards up to date from different dates, there has been no payment of the tax in question and no recovery from cable operator/sub cable operator/ subscribers. It would be impossible to recover or pass the burden of the tax at least for the past period on to any subscriber or operator.

Observations

The Observations of the Court in the case were as follows –

40. In our view, the respondents as a cable operator, for the purpose of levy and collection of tax under Sub-section (4a) of Section 4A of the Act have direct and close nexus with

the entertainments made available to the viewer through their cable television network. The performance, film or programmes shown to the viewers through the cable television network come within the meaning of entertainments and therefore within the legislative competence of the State Legislature under Entry 62 of List II of Seventh Schedule to the Constitution of India to make law for the levy and collection of tax on such entertainments.

41. A tax under Entry 62 of List II of Seventh Schedule to the Constitution of India may be imposed not only on the person spending on entertainment but also on the act of a person entertaining, or the subject of entertainment. It is well settled by this Court that such tax may be levied on the person offering or providing entertainment or the person enjoying it. The respondents admittedly engaged in the business of receiving broadcast signals and the instantaneously sending or transmitting such visual or audio visual signals by coaxial cable, to subscribers homes through their various franchise. It has been made possible for the individual subscribers to choose the desired channels on their individual T.V. sets because of cable television technology of the respondents and of sending the visual or audio visual signals to sub-cable operators, and instantly re-transmitting such signals to individual subscribers for entertaining them through their franchise. The respondents' act is, no doubt, an act of offering entertainment to the subscribers and/or viewers. The respondent is very much directly and closely involved in the act of offering or providing entertainment to subscribers who are on his record. For the fact of offering or providing entertainment to the subscribers and/or viewers, the respondents receive charges, which are realised or collected by their franchise from the ultimate subscribers. Their franchise, called as sub-cable operator under the said 1982 Act having no independent role to offer or provide entertainments to the subscribers inasmuch as franchise have to depend entirely on the respondents communication network and this communication network of the respondents consists of receiving and sending visual images and audio and other information for preparation of the subscribers and/or viewers, without the communication network service of the respondents, no entertainments can be offered or provided to the subscribers and/or viewers.

42. In the tax matters, the State Legislature is free to, if it has legislative competence, to choose the persons from whom the tax levied on entertainments is to be collected. In other words, what are taxed are the entertainments, which is very much within the ambit of Entry 62 of List II of Seventy Schedule. It is the respondents who as cable operator for the purpose of the said 1982 Act is engaged in the business of providing or offering entertainments which include showing of films, various serials, cricket matches and

dramatic performances to the subscribers, and the tax is imposed on the act of offering such entertainments in this way to such subscribers and/or viewers. The entire communication network service is built up and controlled by the respondents. Whatever amount is received or receivable by the respondent in respect of providing such entertainments is taxable under Sub-Section 4(a) of Section 4A of the said 1982 Act which has a direct and sufficient nexus with the entertainments.

43. The charging section is very clear and unambiguous in as much as there is no vagueness about the incidence of tax and the person who is liable to pay tax. So far as the declaration of liability to pay tax is concerned, the charging section does not suffer from any vagueness. The provision does not lead to any discrimination amongst persons. There is no scope of any discrimination in as much as either an owner, or person who having in possession of electrical, electronic or mechanical device receive signals and instantly transmits such signals of visual image and audio to a sub-cable operator for presentation of any performance, film or any other programme to the subscriber and/or viewers against payment, and as such owner or person exhibits such performance, film or any other programme through his cable television network directly to customers he is liable to pay tax. Except that owner or person of the class referred to in Sub-section (4a) of Section 4A of the said 1982 Act, no other person can be held liable to pay such tax. There is clear indication of the character of tax from the incidence of such tax or taxable event which takes place on the happening of the event of offering entertainments to the subscribers. The person on whom the legal liability to pay tax falls he has also been clearly and unambiguously mentioned in the charging section. The rates of tax has been sought to be specified by the notification. The measure of tax is the "gross receipt" on the basis of which the person is saddled with the liability to pay tax. There is no uncertainty or vagueness of the legislative scheme. The tax levied by Sub-section (4a) of Section 4A of the said 1982 Act does not interfere with the fundamental rights guaranteed under Article 19(1)(g) of the Constitution or is violative of Article 19(1)(g).

44. We also see no substance in the submission that the impugned legislation impinges on the field occupied by the central legislation. The aforesaid central legislation has been enacted to regulate the operation of cable television network in the country and matters connected therewith or incidental thereto whereas the State Legislation is for levy of entertainment tax on entertainment within the legislative field exclusively assigned to the State Legislature under Entry 62 of List II of Seventh Schedule of the Constitution. Thus the objects sought to be achieved by two different Acts enacted under two different

legislative fields exclusively assigned to the respective Legislatures are entirely distinct and separate. The Cable Television Networks (Regulation) Act, 1995 of the Union Legislature does not denude the State Legislature for levying entertainment tax on entertainment.

45. It is thus clear that the cable operator- respondent No. 1 is the exhibitor in this case and also the provider of the entertainment to the customer. Hence, he alone can be asked to pay the tax on the entertainment that has resulted from this exhibition. This provision, therefore, does not cross the bounds of the entry No. 62 of List II of the Seventh Schedule to the Constitution and is intra vires. Providing a cable link up to the viewers end is the only role of sub-cable operator. It is, therefore, unconceivable that despite put forth the ready entertainment in the form of signal on the cable line, the cable operator cannot be said to be providing the entertainment within the meaning of Entry 62 of List II of the Seventh Schedule of the Constitution. So long as the State Act remains within the ambit of Entry 62 of List II and is not offending the provisions of Article 286 of the Constitution or the laws made thereunder, the State Act validity is beyond question. Thus, respondent No.1 who is engaged in receiving and providing TV signals to individual cable operators is liable to pay tax under clause (ii) of Sub-section (4a) of Section 4A of the Act. From the definition of "Communication network" given in the agreement between the cable operator and sub-cable operator (termed as Franchise in the agreement), will be clear that the service rendered by respondent No.1 is not restricted only to receiving signals but also extends to sending visual images and audio and other information by means of telecommunication network for presentation to members of public. In the present case, respondent No.1 sends visual images and audio signals for presentation to the individual subscribers at various homes through their Feeder Line i.e. coaxial cable or any other device used for transmitting audio and visual signals in terms of clause 2 of the said agreement. The franchisee has access to the signals provided by respondent No.1. Therefore, it cannot be disputed that the price or prices received or receivable by the respondent No. 1 is the amount received or receivable by him for transmitting the signal for exhibition of any performance, film or any other programme telecast and the aggregate of such prices or amounts is the gross receipt of the respondent No.1 in relation to any month or part thereof. Who will be considered the giver of the entertainment - the Cable operator or the sub-cable operator?

46. We do not find any reason to consider the sub-cable operator as the only giver. Even though the sub-cable operator may be the giver of the entertainment in as much as he has

a direct connection with the viewer, still in cases like the present where he does not select the show, or make the show ready, or does not put the show on and the exhibition is done by the cable operator through mere franchisees it cannot be said that the cable operator is not the giver. It is true that the cable used to get in touch with the TV set of the consumer has been provided by the sub-cable operator, but that fact alone by itself cannot make the sub-cable operator, the only exhibitor or the giver, of the entertainment. In a world of indirect links between individuals made possible by the electronic age, the indirect meeting between the cable operator and the consumer through a technical link has been made possible.

47. Sub-section (4a) of Section 4A of the Act recognizes the reality that entertainment is possible through such contact. Clause (i) of sub-section (4a) speaks of a situation where the cable operator "Exhibits directly". Clause (ii) speaks of the situation where the cable operator does not exhibit directly, but transmits the signals to the sub-cable operator. Significantly, the clause does not say that the sub-cable operator exhibits, it rather says that the sub-cable operator "provides cable service for exhibition". It is reasonable to conclude that these provisions imply that the exhibition is being held here also by the cable operator, only the technical link of the cable service has been provided by the sub-cable operator. The cable operator is also the exhibitor in this case; he is the provider of the entertainment to the customer. Hence he can be asked to pay tax on the entertainment that has resulted from this exhibition. The provision, therefore, does not cross the bounds of the Entry NO. 62 of List II of the Seventh Schedule of the Constitution and is intra vires

Union of India (UOI) and Ors. v. Shah Goverdhan L. Kabra Teachers College

(2002) 8 SCC 228

Date of Decision 23.10.2002

Composition of the Bench: G.B. Pattanaik and Ruma Pal, JJ.

Brief Facts:

This appeal arose against the Judgment of the Rajasthan High Court allowing the Writ Petition filed before it. A private educational institution conducting courses leading to the degree of Bachelor of Education filed a Writ petition challenging the order passed by the Northern Regional Committee of National Council for teachers education rejecting the application of the institution for recognition of the B.Ed. (Vacation Course). The institution was directed not to admit students in the vacation course from 1999-2000 onwards. In the Writ Petition, the constitutional validity of the National Council for Teachers Education Act, 1993 (Act 73 of 1993, hereinafter referred to as 'the Act') was also challenged. The High Court by the impugned judgment came to hold that the order de-recognizing the vacation course is bad in law. The High Court also stuck down Section 17(4) of the Act.

The parliament enacted the Act and provided for the establishment of a council for teacher education with a view to achieving planned and coordinated development of the teacher education system throughout the country and for regulation of proper maintenance of norms and standards in the teacher education system.

On and from the date of enforcement of the Act, every institution, offering or intending to offer the course or training in teacher education, was required to make application to the Regional Committee in such form and manner as may be determined by the regulations as provided in Section 14 of the Act. In accordance with the said provision the respondent's institution made an application for grant of recognition to the Bachelor of Education (Vacation course). This application, having been rejected by the Northern Regional Committee of the Council, the respondent had approached the High Court. Having regard to the Entry 66 of the List I of the Seventh Schedule of the Constitution, the High Court did record a conclusion that the Parliament has the legislative competence for enacting the Act with a view for achieving planned and coordinated development of the teacher education system. But so far as Section 17(4) of the Act is concerned, the High Court

held that the Parliament cannot make law prescribing qualification for entry into the service under the State Government and such law can be made only under the Proviso to Article 309 of the Constitution.

Issue Involved:

Whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of the List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government?

Decision

The SC further held that the High Court committed error in holding that there was no reasonable justification for not recognising the B.Ed (Vacation course) which was being imparted by the institution of Shah Goverdhan Lal Kabra Teachers College.

Ratio Decidendi:

Entries in the different lists should be read together without giving a narrow meaning to any of them. Powers of the Parliament as well as of the State legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to over-ride another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them.

SUMMARY OF THE ARGUMENTS

It is contended, on behalf of the council, that Sub-section (4) of Section 17 is in fact a law dealing with coordinated development of the teacher education system to provide consequences if an institution, without obtaining recognition or after recognition being withdrawn, offers any course or training in teacher education. According to the learned counsel, the legislation in pith and substance is a legislation dealing with the topic of coordination and determination of standards in institutions for higher education coming within the legislative Entry 66 of the List I of the Seventh Schedule and even if it is construed to be an encroachment relating to service under a State Government the same is merely consequential and, therefore, the legislation cannot be declared to be ultra-vires.

Mr. Sanghi, appearing for the respondent, on the other hand contended that though it would be within the competence of the Parliament to make law for coordinated development of education but if the law deals with the question of minimum qualification for the service under the State Government the same would be a law referable to Article 309 of the Constitution and not referable to a law dealing with coordinated development of the teacher education system and therefore, Sub-section (4) of Section 17 must be held to be ultra-vires of the Constitution

Observations

Pattanaik, J.

The High Court committed gross error in construing the provisions of Sub-section (4) of Section 17 of the Act to mean that it is a legislation dealing with recruitment and conditions of services of persons in the State service within the meaning of Proviso to Article 309 of the Constitution. The High Court committed the aforesaid error by examining the provisions of Sub-section (4) on its plain terms without trying to examine the true character of the enactment which has to be done by examining the enactment as a whole, its object and scope and effect of the provisions. Even, the High Court does not appear to have applied the doctrine of "pith and substance" and, thus, committed the error in interpreting the provisions of Sub-section (4) of Section 17 to mean to be a provision dealing with conditions of service of an employee under the State Government.

The conclusion of the High Court that Section 17(4) is ultra-vires being beyond the competence of the Union legislature was not sustained and the said conclusion was accordingly set aside. On examining the statute as a whole and on scrutiny of the object and scope of the statute, the court held that Sub-section (4) of Section 17 is very much a law dealing with the coordination and determination of standards in institution for higher education coming within Entry 66 of the List III of the Seventh Schedule and, thus, the Union legislature did have the competence for enacting the said provision.

Union of India and Anr. v. Delhi High Court Bar Association and Ors.

(2002) 4 SCC 275

Decided On: 14.03.2002

Hon'ble Judges:

B.N. Kirpal, Y.K. Sabharwal and K.G. Balakrishnan, JJ.

Brief Facts:

The banks and financial institutions had been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them. The procedure for recovery of debts due to the banks and financial institutions which was being followed had resulted in a significant portion of the funds being blocked. In order to remedy the locking up of huge funds, the Parliament enacted the said Act, which was preceded by an ordinance. The Act, inter alia, provides for the establishment of Tribunals and Appellate Tribunals. The Tribunals have been given the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions, while the Appellate Tribunals have the jurisdiction, powers and authority to entertain appeals. The procedure which is required to be followed is provided and the Act also has provisions relating to the modes of recovery of debts for which Recovery Officers are to be appointed.

The jurisdiction of the Tribunals is in respect of debts which are in excess of Rs. 10 lacs. In other words, for disputes between the banks and the other parties it was the Civil Courts which have the jurisdiction to entertain the same if the claim was less than Rs. 10 lacs. According to Section 18 of the Act, no Court or other authority is entitled to exercise any jurisdiction, powers or authority in relation to matters in respect of which such jurisdiction, powers and authority are vested with the Tribunal. Section 18, however, provides that the bar of other Courts and authorities to entertain such disputes shall not in any way oust the jurisdiction of this Court or of the High Courts in exercise of their jurisdiction under Articles 226 and 227 of the Constitution.

The validity of the said Act was successfully challenged before the Delhi High Court. By it's Decision reported in Delhi High Court Bar Association and Another vs. Union of India and Others, MANU/DE/0066/1995, against which appeal No. 4679 of 1995 is

filed, the High Court held that though Tribunal could be constituted by Parliament even though it was not within the purview of Articles 323A and 323B of the Constitution, and that the expression "administration of justice" as appearing in Entry 11A of List III of the Seventh Schedule to the Constitution would include Tribunals as well administering justice; the impugned Act was unconstitutional as it erodes the independence of the judiciary and was irrational, discriminatory, unreasonable, arbitrary and was hit by Article 14 of the Constitution. In this judgment, it also quashed the appointment of a Presiding Officer of the Tribunal but that question no longer arises for consideration in these appeals.

Issue Involved:

The primary Issue in this matter was whether the Parliament has the legislative competence to enact laws regarding a Banking Tribunal and whether the same is within permissible ambits of Entry 45 of List I. The Issue under consideration is with regard to the competence of the parliament to enact laws for matters not covered by Articles 323A and 323B.

Judgment delivered by Kirpal J.

Ratio Decidendi:

The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323A or Article 323B of the Constitution.

Observations

The Observations of the Court in the case were as follows –

The Court held that the power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323A or Article 323B of the Constitution. Therefore, the legislative competence of the parliament to enact laws in respect of matters which are not covered by Article 323A or Article 323B is not taken away. The enactment of laws regarding banking tribunals is within the legislative competence of parliament under Entry 45 of List I. **(Paras 12-14; Kirpal J.)**

12. It has thus been clearly enunciated that the power of the Parliament to enact a law, which is not covered by an Entry List II and List III, is absolute. While Articles 323A or 323B specifically enable the legislatures to enact laws for the establishment of tribunals, in relation to the matters specified therein, the power of the Parliament to enact a law constituting a Tribunal, like the Banking Tribunal, which is not covered by any of the

matters specified in Article 323A or 323B, is not taken away. With regard to any of the entries specified in List I, the exclusive jurisdiction to make laws with respect to any of the matters enumerated in List I is with the Parliament. The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323A or 323B of the Constitution.

13. Articles 323A or 323B are enabling provisions which specifically enable the setting up of tribunals contemplated by the said Articles. These Articles, however, cannot be interpreted to mean that it prohibits the legislature from establishing tribunals not covered by these Articles, as long as there is legislative competence under an appropriate entry in the Seventh Schedule. Articles 323A or 323B do not take away that legislative competence. The contrary view expressed by the Karnataka High Court in D.K. Abdul Khader's case does not lay down the correct law and we expressly disapprove of the same.

14. The Delhi High Court and the Guwahati High Court have held that the source of the power of the Parliament to enact a law relating to the establishment of the Debt Recovery Tribunal is entry 11A of List III which pertains to "administration of justice; Constitution and organisation of all Courts, except the Supreme Court and the High Courts" In our opinion, entry 45 of List I would cover the types of legislation now enacted. Entry 45 of List I relates to "Banking". Banking operations would, inter alia, include accepting of loans and deposits, granting of loans and recovery of the debts due to the bank. There can be little doubt that under Entry 45 of List I, it is the Parliament alone which can enact a law with regard to the conduct of business by the banks. Recovery of dues is an essential function of any banking institution. In exercise of its legislative power relating to banking, the Parliament can provide the mechanism by which monies due to the Banks and Financial Institutions can be recovered. The Tribunals have been set up in regard to the debts due to the banks. The special machinery of a Tribunal which has been constituted as per the Preamble of the Act, "for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto" would squarely fall within the ambit of Entry 45 of List I. As none of the items in the lists are to be read in a narrow or restricted sense, the term "Banking" in Entry 45 would mean legislation regarding all aspects of Banking including ancillary or subsidiary matters relating to Banking. Setting up of an adjudicatory body like the Banking Tribunal relating to transactions in which banks and financial institutions are concerned would clearly fall under entry 45 of List I giving the Parliament specific power to legislate in relation thereto.

VOLUME-II

FINANCIAL RELATIONS
&
TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

ANALYTICAL SUMMARY ALONG WITH SUMMARY OF THE CASES

LIST OF CASES

1. Associated Cement v. C.S.T, (1991) Supp (1) SCC 251.
2. Builders Association of India v. Union of India (UoI) and Ors, AIR1989SC1371.
3. Cantonment Board, Mathura v. Krishna Bricks and Lime Factory, 1996VIIAD(SC)80
4. Daimler Chrysler India Private Limited v. Deputy Commissioner of Income Tax, (2009) 120TTJ(Pune) 803.
5. Gautam Lal Agarwal v.State, AIR 1995 M.P 257.
6. Goodyear India Ltd. v.State of Haryana, AIR 1990 SC 781.
7. Hotel Corporation of India v. State of Jammu & Kashmir, AIR 2000 J&K 36.
8. I.A.A.I v. Municipal Court, AIR 1991 Del 302.
9. K.V.M.S v. Orient Paper & Industries Limited, 1994 AIR SCW 5156.
10. Karnataka Bank Ltd. V. State of A.P, (2008) 2SCC 254.
11. Municipal Commissioner of Dum Dum Municipality v. Indian Tourism Development Corporation, 1995(4) SCALE611.
12. New Delhi Municipal Committee v. State of Punjab, AIR1997SC2847.
13. Union of India v. State of Punjab, AIR 1990 P&H 183.

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Analytical Summary of the Arguments

Centre-State financial relations

UNDER THE CENTRE-STATE RELATIONS the core arena of dispute is regarding the allocation of financial recourses between the two. The dependency of the States on the financial assistance from the federal government affects the autonomy of the states, which indirectly results in constant friction between the federal government and the states. The Constitution of India has laid down elaborate and detailed provisions[1] for the division of financial recourses between the Union and the States.

The Indian Constitution has adopted a novel method[2] of distributing the financial powers between the Union and the States. Article 280 of the Constitution of India requires the constitution of a finance commission[3] in not more five-year -intervals which would make recommendations to the President on (a) the distribution of the net proceeds of shareable taxes, the states respective shares being required to be determined by the Commission (b) the principles governing the grants-in-aid of the revenues of the states out of the consolidated funds of India (c) the measures needed to augment the consolidated fund of the State to supplement the recourses of the Panchayats & Muncipalities as recommended by the Finance Commission of then State (d) any other matter referred to the Commission by the President in the interest of sound finance.

The Sarkaria Commission[4] was set up in in the year 1983 by the Central Government of India to examine the relationship and balance of power between state and Central governments in the country and to suggest changes within the framework of the Constitutin.The Commission has taken a favourable view on the demand of the States to have more financial resourses with the condition that strict financial discipline on the

[1] Article 268 to 272 of the Constitution deals with the fiscal relationship between the Union and the States.
[2] Under Article 285 of the Constitution, the property of the Union has been specifically exempted from State taxation in order to avoid financial conflicts between the Union and the states.
[3] The Finance Commission, constituted under Article 280 of the Constitution is strictly an advisory body with recommendatory functions.
[4] The Sarkaria Commission made thirty landmark recommendations in connection with Centre-State Financial Relations and submitted its final report in the year 1988.

part of the Union and the States has to be maintained.In spite of all these regulatory measures there exist some conflicts between the Centre and the States in the field of financial relations. The Supreme Court being the final interepreter of judicial conflicts through various case laws resolved these conflicts to some extent. Here, few cases have been taken into consideration to explain the judicial interpretation in the area of Centre-State financial relations.An anlysis of the caselaws is given below:

Fiscal Relations between the Centre and the State

Article 268 of the Constitution deals with the distribution of revenues between the Union and the States and Article 269 deals with the taxes levied and collected by the Union but asssigned to the State. In *Goodyear India Ltd.* v. *State of Haryana*[5] the question arises as to the competence of a legislature to impose a tax , in a conflict between two competing jurisdictions, the nomenculture used by the taxing State is not conclusive. In such a situation the Court has to apply the doctrine of 'pith and substance' in order to find out the real nature of the tax, with reference to its taxing evevnt. In this case, the Issue was regarding the legislative competence of a law, which imposes tax on the price at which raw materials are purchased actually becomes effective with reference to manufactured goods on their despatch to a place outside the State is a 'Consignment Tax' falling within the competence of the Parliament under Article 269(1) (g) and Union List Entry 92(b).

Taxing Powers of Union and States

The basic principle underlying the scheme of allocation of resourses reveals that, the taxing power of the Union and of the States are mutually exclusive[6]. Union can levy tax on income other than agricultural income the States can levy tax on agricultural income from agricultural land. This mutual exclusiveness further states that the concurrent list contains no Entry relating to tax but only contains an Entry for fees. In ***Municipal Council, Kota*** v. ***Delhi Cloth & General Mills Co. Ltd,***[7] it was held that, once a tax falls within the legislative competence the motive for imposing the tax do not affect its validity.

Distinction between Tax and Fee

Time and again the Supreme Court had in many occassions clarified the distinction between tax and fees. In *Gautam Lal Agarwal* v.*State*[8] *Court* clarified that, a tax is imposed by legislative authority for public purposes without reference to any specific object of expenditure or any special benefit to the tax payer and a fee on the other hand is a payment made for some special service rendered to the payer.

[5] AIR 1990 SC 781.

[6] See, Entries 82,87 and 88 of List I with Entries 46,47 and 48 of List II.

[7] (2001) 3 SCC 654.

Again the Supreme Court in *KVMS* v.*Orient Paper & Industries Ltd*[9] considered the number of Decisions relating to the difference between tax and fee and stated that, compulsion lies in the fact that, payment is enforceble by law against a person inspite of his unwillingness or want of consent and this element is present in taxes as well as fees.In this regard Court observed:

The distinction between a tax and fees lies primarily in the fact that tax is levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest.

Exemption of property of the Union from State Taxation

Under Article 285 of the Constitution property of a Union is exempted from state taxation except for taxes which were imposed on the Central Government before the Constitution. In *Union of India* v. *State of Punjab*[10] the Punjab vehicles of railways were not being subjected to road tax before 1950 and they cannot be subjected to tax after the Constitution. In this case, the tax was not actually being levied against the Union of India's vehicles. In *I.A.A.I* v. *Municipal Court*[11] a statutory corporation that, has a corporate personality of its own owned the property of the company claimed exemption from State taxation. The court rejected this contention and held that, property owned by a government company cannot be said to be 'property of the Union' and therefore be liable for State Taxation.

The same view was reiterated in *Hotel Corporation of India* v. *State of Jammu & Kashmir*[12] in which the Hotel Corporation of India a subsidiary of Air India claimed exemption from taxation under Article 285 of the Constitution. The court held that, as the lands and buildings in respect of which tax has been levied under the J&K Urban Immovable Property Act, 1962 are owned by the corporation and not by the government they cannot claim exemption from taxation under Article 285.

Restrictions as to Imposition of tax on the sale or purchase of goods

Under Article 286 of the Constitution imposes certain restrictions on the power of the State to impose sales tax on goods, was amended in the year 1956 by the Constitution Sixth Amendment Act.

In *Builders Association of India* v. *Union of India*[13] the question before the Court was whether the power of the State Legislature to levy tax on the transfer of property in

[8] AIR 1995 M.P 257.
[9] 1994 AIR SCW 5156.
[10] AIR 1990 P&H 183.
[11] AIR 1991 Del 302.
[12] AIR 2001 J&K 36.

goods involved in the execution of works contracts referred to in sub-clause (b) of clause (29A) of Art. 366 of the Constitution is subject to the restrictions and conditions in Art. 286 of the Constitution. For this Issue the Court observed that, Sales tax laws passed by the legislatures of States levying taxes on the transfer of property in goods-whether as goods or in some other form-involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause of sub-clauses of Art. 286 of the Constitution. One of the restrictions mentioned under Article 286 is the there should be a territorial nexus with the taxing State and the court has applied this restrictions in determining the validity of Sales Tax Legislation.

In *Associated Cement* v. *C.S.T*[14] the question for consideration was whether the sale took place between the manufacturer and the marketing company can be taken to be covered by explanation to Article 286(1)(a) of the Constitution. The court held that in order to attract clause "(a) of 286, a sale or purchase shall be deemed to have taken place in the states in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that state, notwithstanding the fact that, under the general law relating to sale of goods the property in the goods has by reason such sale or purchase passed in another state.

In *State of A. P* v. *National Thermal Power Ltd*[15] it was held that in case of electricity its sale could not be separated from its consumption. Therefore if sale and consumption of electricity were to take place in different states, territorial nexus for the state in which the sale took place is lost. Therefore, the state in which the sale takes place cannot tax such a sale.

Power of State Legislature to make Taxation Acts

Article 276 makes it clear that, the power to tax incomes other than agricultural income and power to levy taxes on professions, traders, callings and employments are not the same. An Act of the State Legislature imposing tax in respect of a profession, trade, calling or employment shall not be invalid on the ground that it relates to a tax on income. Conversely, the power of a State Legislature to make taxation Acts in respect pf professions, trades, callings or employments does not limit the power of Parliament to tax the same recourses. In *Karnataka Bank Ltd.* v. *State of A.P*[16] the Court ruled that, Article 265 of the Constitution prohibits levy of collection of a tax except by an authority

[13] AIR1989SC1371.

[14] (1991) Supp (1) SCC 251

[15] (2002) 5 SCC 203.

of law, which means only a valid law. The implied limitation is that the law providing for levy of tax should be one, which is a valid law. State Legislature is competent to make law relating to taxes for the benefit of the states and the local authorities in respect of professions, trades, callings or employments.

Exemption of Property of the Union from State Taxation

Article 285 of the Constitution declares that the property of the Union shall be exempt from all taxes imposed by the State and the Parliament can remove this ban and permit a State to tax the property of the Union either wholly or partly. In Municipal Commissioner of Dum Dum Municipality v. Indian Tourism Development Corporation[17] it was observed that, property vested in an independent statutory authority like the International Airport Authority is not the property of the Union for purposes of exemption from municipal taxes.

Conclusion

One of the major Issues in the fiscal federalism in India is the limited financial Decision making powers of the states and the inadequate allocation of resources between the Centre and the State. Under the Indian Constitution (in regard to Centre-State relations) the most important powers of revenue raising have been given to the Centre. These were the major Issues in most of the cases cited above. A judicial analysis reveals that, the judiciary has adopted a neutral stand in tackling such conflicts. In fact, more initiatives are required from judiciary in order to resolve the conflict between the Centre and the State with regard to financial matters.

[16] (2008) 2 SCC 254.
[17] (1995) 5 SCC 251.

SUMMARY OF THE ARGUMENTS OF THE CASES

The Associated Cement Companies Ltd., Kymore Ors. v. Commissioner of Sales Tax, Indore etc. etc.

CROSS CITATIONS: AIR1991SC1122, JT1991(2)SC144, 1991(1)SCALE661, 1991Supp(1)SCC251, [1991]2SCR250, [1991]82STC1(SC)

ACTS/RULES/ORDERS: Constitution of India - Article 286(1); Madhya Pradesh Sales Tax Act; Defence of India Rules, 1946; Central Sales Tax Act, 1944

DATE OF DECISION 09.04.1991

COMPOSITION OF THE BENCH: 3 Judges

JUDGES: Ranganath Misra, CJ, M. H. Kania and Kuldip Singh, JJ.

BRIEF FACTS:

The appellant is a manufacturer of cement in the factory located at Kymore in Madhya Pradesh. Several cement manufacturing companies as also the appellant had entered into arrangement with the Cement Manufacturing Company of India Limited where under the Marketing Company was appointed as the sole and exclusive sales manager for the sale of cement manufactured by the manufacturing companies and the manufacturing companies had agreed not to sell directly or indirectly any of their cement to any person save and except through the Marketing Company. The manufacturing companies were entitled to be paid a certain sum for every ton of cement supplied by them or at such other rate as might be decided upon by the Directors of the Marketing Company. The Marketing Company had the authority to sell cement at such price or prices and upon such terms, as it might in its sole discretion consider appropriate.

ISSUE INVOLVED:

- Whether the sales in question are inter-State in nature or should be regarded as intra-State?
- Whether the said sales attracted the Explanation to Article 286(1)(a) as it then stood?

DECISION

What has been found, as a fact in the statement of the case is that there was preceding local sales complete in every respect within Madhya Pradesh by which title to the cement had passed from the appellant to the Marketing Company. The concept of inter-State sale as brought in by the Sixth Amendment or in the subsequent statute known as the Central Sales Tax Act was not in existence for the relevant period now under consideration. The finding recorded by the authorities is that the delivery of the cement was not the direct result of such sale or purchase of the cement outside the State. In the absence of such privity the Explanation is not attracted to the transactions.

RATIO DECENDENDI:

The finding recorded by the authorities is that the delivery of the cement was not the direct result of such sale or purchase of the cement outside the State. In the absence of such privity the Explanation is not attracted to the transactions.

Summary of The Arguments:

The appellant maintained that it supplied cement manufactured by it to Marketing Company and these transactions were covered by Explanation to Article 286 (1) (a) and these transactions not liable to sales tax in Madhya Pradesh.

OBSERVATIONS:

Ranganath Misra, J. observed

Wile deciding this case reliance was placed on the Decision of the Apex Court in the case of *Rohtas Industries Limited* v. *State of Bihar* 12 STC 621 where, after analyzing the terms of the contract between the manufacturer (appellant before the Supreme Court) and the Marketing Company, held:

On a review of these terms of the agreement, it is manifest that the manufacturing companies had no control over the terms of the contract of sales by the Marketing Company and that the price at which cement was sold by the Marketing Company could not be controlled by the manufacturing companies; that the manufacturing companies were entitled, for ordinary cement, to be paid at the rate of Rs. 24 per ton at works, or at such other rate as might be decided upon by the Directors of the Marketing Company, and in respect of special cement, at such additional rates as the Directors of the Marketing

Company might determine; that sale by the Marketing Company was not for and on behalf of the manufacturing companies but for itself and the manufacturing companies had no control over the sales nor had they any concern with the persons to whom cement was sold. In fine, the goods were supplied to the orders of the Marketing Company, which had the right, under the terms of the agreement, to sell on such terms as it thought fit and that the manufacturing companies had the right to receive only the price fixed by the Marketing Company. The relationship in such cases can be regarded only as that of a seller and buyer and not of principal and agent.[18]

This Court in Rohtas Industries case on a detailed analysis of the terms of the contract came to hold that there was a sale between the manufacturer and the Marketing Company. It is not in dispute that the agreement between the appellant and the Marketing Company in this case has the same terms as this Court considered in Rohtas Industries case. It follows, therefore, that it must be held that there was a sale between the appellant and the Marketing Company.

PARTIES INVOLVED IN THE CASE

- The appeals brought by the appellant who was a manufacturer of cement in the factory located at Kymore in Madhya Pradesh through a special leave against the separate Decisions of the Madhya Pradesh High Court.

RELIEF CLAIMED AND GRANTED BY THE COURT

- In this case the question for consideration was whether the sale took place between the manufacturer and the marketing company can be taken to be covered by explanation to Article 286(1)(a) of the Constitution. The court held that in order to attract clause "(a) of 286, a sale or purchase shall be deemed to have taken place in the states in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that state, notwithstanding the fact that, under the general law relating to sale of goods the property in the goods has by reason such sale or purchase passed in another state.

[18] Para 3.

REFERANCES ABOUT CENTRE-STATE RELATIONS

The Court did not mention about Centre-State Relations in this case.

Builders Association of India v. Union of India AIR1989SC1371

CROSSCITATIONS: AIR1989SC1371, 1989(2) ARBLR356(SC), 1989)2CompLJ1(SC), JT1989(2)SC47, 1989(1)SCALE770, (1989)2SCC645, [1989]2SCR320,) 1989]73STC370(SC

DATE OF DECISION 31.03.1989

JUDGES: R.S. Pathak, C.J., E.S. Venkataramiah, M.N. Venkatachaliah, N.D. Ojha and Ranganath Mishra, JJ.

COMPOSITION OF THE BENCH: 5 Judges

ACTS/RULES/ORDERS:

Constitution of India - Articles 14, 269, 286, 286(1), 286(2), 286(3), 301, 304, 366, 366(29A) and 368(2); Constitution of India (Forty-sixth Amendment) Act, 1982; Central Sales Tax Act, 1982.

BRIEF FACTS:

The petitioners in the writ petition are building contractors engaged in the business of constructing buildings, factories, bridges etc. In exercise of the power conferred on the State Legislature by entry 54, the State List the Legislature of Bombay passed an Act called the Bombay Sales Tax Act, 1952 which imposed a general tax on every dealer whose turnover in respect of sales within the State of Bombay during the prescribed period-exceeded Rs. 30,000 and a special tax on every dealer whose turnover in respect of sales of special goods made within the State of Bombay exceeded Rs. 5,000 during the prescribed period. The Petitioners have challenged the levy of sales tax, by the concerned State governments under the sales tax laws passed by them, on the turnover of the works contracts entered into by them.

The petitions raised two questions for the consideration of the Court; the first question relates to the constitutional validity of the 46th Amendment Act by which the

State Legislatures have been empowered to levy sales tax on certain transactions described in sub-clauses (a) to (f) of clause (29-A) of Article 366 of the Constitution, and the second question is whether the power of the State Legislature to levy tax on the transfer of property in goods involved in the execution of works contracts referred to in sub-clause (b) of clause (29A) of Art. 366 of the Constitution is subject to the restrictions and conditions in Art. 286 of the Constitution.

On the passing of the 46th Amendment, the State governments after making necessary amendments in their laws commenced to levy sales tax on the turnover of the works entered into by the building contractors for constructing houses, factories, bridges etc. In some States, taxable turnover was determined by deducting the money spent on labour engaged in connection with the execution of the works contracts. In some other States, a certain fixed percentage of the total turnover was deducted from the total turnover as labour charges before arriving at the taxable turnover. Each State adopted its own method of determining taxable turnover either by framing rules under its sales tax law or by issuing administrative directions.

Affected and aggrieved by the levy of sales tax so imposed, the petitioners filed the writ petitions under Art. 32 of the Constitution challenging inter alia the Constitutional validity of the 46th Amendment Act. Civil appeals were also filed by some other building contractors against the orders of the High Court for similar relief. The petitioners and the appellants have raised two contentions; viz (1) that the 46th Amendment Act is unconstitutional because it had not been ratified by the legislatures of not less than one-half of the states by Resolutions passed to that effect by these legislatures before the Bill which led to the amendment in question was presented to the President for assent; and (2) that it was not open to the States to ignore the provisions contained in Art. 286 of the Constitution and the provisions of the Central Sales Tax Act, 1966 while making assessment under the Sales Tax laws passed by the legislatures of the States. The main contention of the States on the second point was that sub-clause (b) of Article 326(29 A) bestowed on them a power to levy tax on works contract independent of Entry 54 of List II.

ISSUE INVOLVED:

- Whether the Legislatures of the States were empowered to levy sales tax on certain transactions described in Sub-clauses (a) to (f) of Clause (29-A) of Article 366 of the Constitution?

- Whether the power of the State Legislature to levy tax on the transfer of property in goods involved in the execution of works contracts referred to in Sub-clause (b) of Clause (29-A) of Article 366 of the Constitution is subject to the restrictions and conditions contained in Article 286 of the Constitution?

DECISION

On the first Issue, the Court held that, regarding the scope and effect of Article 366 unless the content otherwise requires, the expression defined in that Article have the meanings respectively assigned to them in that Article. If the object of introducing a new definition is to enlarge the scope of that concept, then wherever those words occur in the Constitution they would be construed in the wider sense. There has been in the instant case due compliance of the provisions contained in the proviso to Art. 368(2) of the Constitution.

On the second Issue, the court held that, Sales Tax Laws passed by the Legislature of States levying taxes on the transfer of property in goods involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution. Therefore, all transfers, deliveries and supplies of goods referred to in clauses (a) to (f) of clause (29-A) of Art. 366 of the Constitution are subject to the restrictions and conditions mentioned in clause (1), clause (2) and sub-clause (a) of clause (3) of Art. 286 of the Constitution and the transfers and deliveries that take place under sub-clauses (h), (c) and (d) of clause (29-A) of Art. 366 of the Constitution are subject to an additional restriction mentioned in sub-clause (b) of Art. 286 (3) of the **Constitution. [349C]** The power to levy sales tax was conferred on the legislatures of States by the Constitution by Entry 54 of List II of the Seventh Schedule to the Constitution of India.

RATIO DECIDENDI:

Sales Tax Laws passed by the legislatures of States levying taxes on the transfer of property in goods-whether as goods or in some other form-involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause of sub-clauses of Art. 286 of the Constitution. One of the restrictions mentioned under Article 286 is the there should be a territorial nexus with the taxing State and the court has applied this restrictions in determining the validity of Sales Tax Legislation.

OBSERVATIONS:

Venkataramiah J. on behalf of R.S. Pathak, C. J., E.S., M.N. Venkatachaliah, N.D. Ojha and Ranganath Mishra, JJ. while giving majority Decision made following Observations:

> The petitioners concerned are at liberty to approach the authorities under the Sales Tax Act or the High Court concerned for necessary relief. It also observed that, it is open for the petitioners to question the validity of the statutory provisions and the rules made there under before the High Courts concerned and when such petitions are filed the High Courts will proceed to dispose of the cases in the light of this judgment. As a passing reference the court observed that, after the Forty- Sixth Amendment State Sales Tax Laws have been subjected to Parliamentary Legislation in respect of the Sales Tax mentioned in sub-clauses (b) (c) (d) of clause 29(A) of Article 366.
>
> The constitutional Amendment in Article 366(29A) read with the relevant taxation-entries has enabled the State to exert its taxing-power in an important area of social and economic life of the community. In exerting, this power particularly in relation to transfer of property in goods involved in the execution of 'works-contracts' in building activity, in sofar as it affects the housing-projects of the under-privileged and weaker sections of society, the State might perhaps, be pushing its taxation-power to the peripheries of the social limits of that power and, perhaps, even of the constitutional limits of that power in dealing with unequals. In such class of cases 'Building-Activity' really relates to a basic subsistent necessity. It would be wise and appropriate for the State to consider whether the requisite and appropriate classifications should not be made of such building-activity attendant with such social purposes for appropriate separate treatment[19].

Summary of The Arguments:

The petitioners and the appellants have pressed before the court only two points, namely, (i) that the 46th Amendment is unconstitutional because it has not been ratified by the Legislatures of not less than one-half of the States by resolutions passed to that effect by those Legislatures before the Bill which led to the amendment in question was presented to the President for assent; and (ii) that it was not open to the States to ignore the provisions contained in Article 280 of the Constitution and the provisions of the

[19] Para 41.

Central Sales-tax Act, 1956 while making assessments under the sales tax laws passed by the Legislatures of the States.

The first contention raised before the court was regarding the constitutionality of the 46th Amendment need not detain us long. This contention was based on the assumption that the Legislatures of not less than one-half of the States which were in existence during the relevant period had not ratified the Bill which ultimately became the 46th Amendment before the President gave his assent. It was argued that such ratification was necessary since the provisions contained in the 46th Amendment had the effect of enlarging the scope of Entry 54 of List II of the Seventh Schedule to the Constitution by empowering the Legislatures of States to levy Sales-Tax on the turnover relating to the transactions referred to in Sub-clauses (a) to (f) of Clause (29A) of Article 366 of the Constitution which they could not have done before the 46th Amendment. It was contended that irrespective of the fact whether the amendment of an entry in any of the lists of the Seventh Schedule to the Constitution had the effect of either curtailing or enlarging the powers of Parliament or the Legislatures of States, a Bill making provision for such amendment had to be ratified by Legislatures of not less than one-half of the States by resolutions passed to that effect before such a Bill was presented to the President for assent in view of the express provisions contained in Clause (c) of the proviso to Article 368(2) of the Constitution.

The court satisfied that there has been due compliance of the provisions contained in the proviso to Article 368(2) of the Constitution and rejected the first contention. It further observed that, there would have been no occasion for an argument of this type being urged in Court if at the commencement of the Act it had been stated that the Bill in question had been presented to the President for his assent after it had been duly ratified by the required number of Legislatures of States. This suggestion will be followed by the Central Secretariat hereafter since we found that even the Attorney-General was not quite sure till the case was taken up for hearing that the Bill which had become the 46th Amendment had been duly ratified by the required number of States.

As per the contention of the petitioners and the appellants, namely, that the States were bound to comply with the provisions of Article 286 of the Constitution and the provisions of the Central Sales Tax Act, 1956, even while levying sales tax on the turnover relating to the transactions described in Sub-clause (b) of Clause (29-A) of Article 366 of the Constitution. The grounds urged on behalf of the petitioners and the appellants may

be summarised thus. The object of the 46th Amendment is to convert what is not a sale into a sale. A transfer of property in goods involved in the execution of a works contract which was held by this Court in the *State of Madras* v. *Gannon Dunkerley & Co., (Madras) Ltd.* MANU/SC/0152/1958(supra) to be not a sale is deemed by a fiction of law to be a sale and is made taxable as such. In no other respect does the 46th Amendment enlarge the power of the States to levy Sales-Tax. Articles 269, 286. 366(29-a), Entry 92A in List I of the Seventh Schedule and Entry 54 in List II of the Seventh Schedule to the Constitution should be read together. Reading the above provisions together the position which merges may be summed up as follows: The 46th Amendment has no bearing on the location of the sale. It does not deem an outside sale to be an inside sale. It does not confer on the States the power to tax sales outside the State. Therefore, if in the process of executing a works contract, a transfer of property in the goods takes place outside the State, the State would have no power to levy sales-tax on such a transfer. The 46th Amendment does not deem an inter-State sale to him an intra-State sale. It does not confer on the State the power to tax inter-State sales. Therefore, if in the process of executing a works contract a transfer of property in goods takes place in the course of inter-State sale, the State would have no power to levy sales-tax on such a transfer.

The 46th Amendment does not confer on the State the power to levy sales-tax on a sale in the course of import. Therefore, if in the process of executing a works contract, a transfer of property in goods takes place in the course of import; the State would have no power to levy sales tax on such transfer. The price of goods supplied by a person who has assigned the contract for the purpose of executing a works contract cannot be treated as a part of the taxable turnover. The restrictions and conditions contained in Section 15 of the Central Sales-Tax Act, 1956, on the power of the States to levy tax on the sale of declared goods apply equally and fully to transfer of properly in goods under works contracts, even as they apply to ordinary sales. Therefore, if there is a transfer of property in declared goods - for example steel products - in the process of execution of works contract, the State can levy tax only at 4 per cent and only at one stage. It is clear that the entire works contract is not deemed by the 46th Amendment to be a sale. Therefore, only the price reasonably allocable to goods transferred under works contracts can be taxed, and not the totality of the consideration paid for the works contract. If goods - for example fuel and power - are used in the process of executing a works contract but are consumed in the process, the property in such goods cannot conceivably be transferred, because the goods themselves cease to exist. Such goods cannot be the subject-matter for the levy of sales tax at all. These in brief are the contentions of the petitioners and the appellants.

The above-mentioned contentions of the petitioners and the appellants are met by the States thus. When a works contract is executed property does not pass as a movable property unless there is an express agreement stating that the properties in such movables will pass to the person who has assigned the contract as and when the goods are used in the construction of the building. In the absence of any such agreement transfer of property in goods passes not as movables as such but by accretion and in an unidentifiable and indivisible mariner. In all such cases, it is not possible to disintegrate the contract into a contract for sale of goods and a contract for work and labour only. When a house or a factory or a bridge constructed by a building contractor is handed over to the person who had assigned the contract, what is handed over is a conglomerate of all the goods used in the construction of the building which was different from the specific goods used in the construction. Sub-clause (b) of Clause (29-A) of Article 366 of the Constitution has conferred on the Legislatures of States, the power to levy tax on works contract which is independent of the power conferred on the Legislatures of States under Entry 54 of the State List. It is thus argued that it was not possible to break up the house, factory or bridge etc. which is constructed by a building contractor into individual items of goods and to tax the transfer of property in each of them in accordance with the provisions contained in Article 286 of the Constitution and the Central Sales Tax Act, 1956. It was further urged that in the case of a works contract there could not be a sale of goods which had taken place outside the State in which the work was executed, there could not be any sale of the goods in the course of import into India, there could not be any sale or purchase of goods which had taken place in the course of inter-State trade or commerce and there could not be a sale of any declared goods attracting Section 15 of the Central Sales Act, 1956 since a house, a factory or a bridge was not one of those items specified as declared goods under Section 14 of the said Act. It was next contended that since in no sales tax law in force in any part of India it was stated that the turnover relating to a works contract was subject to payment of sales tax at one point only the question of considering whether the levy of sales fax relating to a works contract could be held to be bad on account of the fact that certain goods which had been used in the construction had suffered tax earlier did not arise. In other words it was urged that the goods involved in a works contract were different from the works contract. It was, however, argued that if any goods had been supplied by the person for whose benefit a building, factory or bridge was being constructed for the purpose of such construction the value of those goods would not be included in the taxable turnover.

The Court do not find much substance in the contention urged on behalf of the States that since Sub-clause (b) of CL (3) of Article 286 of the Constitution refers only to the transactions referred to in sub-clauses (b),(c) and (d) of Clause (29A) of Article 366,

the transactions referred to under those three sub-clauses would not be subject to any other restrictions set out in Clause (1) or Clause (2) or Sub-clause (a) of Clause (3) of Article 286 of the Constitution. It may be that by virtue of Sub-clause (b) of Clause (3) of Article 286 it is open to Parliament to impose some other restrictions or conditions which are not generally applicable to all kinds of sales. That however cannot make the other parts of Article 286 inapplicable to the transactions which are deemed to be sales under Article 366(29-A) of the Constitution. We are of the view that all transfers, deliveries and supplies of goods referred to in Clauses (a) to (f) of Clause (29-A) of Article 366 of the Constitution are subject to the restrictions and conditions mentioned in Clause (1), Clause (2) and Sub-clause (a) of Clause (3) of Article 286 of the Constitution and the transfers and deliveries that take place under Sub-clauses (b), (c) and (d) of Clause (29-A) of Article 366 of the Constitution are subject to an additional restriction mentioned in Sub-clause (b) of Article 286(3) of the Constitution.

The court observed that, the commissioner is right in his contention that this provision applies to the present case. The appellant company, in the performance of a contract for building a bridge under which contract it was entitled to receive and doubtless has received valuable consideration, has supplied goods, namely, reinforced concrete piles. Such piles are plainly manufactured articles. They are chattels. They were intended to be incorporated in a structure and were so incorporated. They lost their identity as goods in that structure. But this fact does not prevent the piles from being goods any more than it prevents bricks or stones or nuts and bolts from being goods. The fact that the goods were specially manufactured and designed for a particular purpose cannot be held to deprive them of the character of goods.

PARTIES INVOLVED IN THE CASE

· The appeals brought by the appellants some building contractors who are aggrieved by the levy of sales tax on the turnover relating to works contracts filed the petitions.

RELIEF CLAIMED AND GRANTED BY THE COURT

Having interpreted the relevant provisions of the Constitution, the Court ruled that, the petitioners concerned are at liberty to approach the authorities under the Sales Tax Act or the High Court concerned for necessary relief. It is open to them to question the validity of the statutory provisions and the rules made thereunder before the High Courts concerned. When such petitions are filed the High Courts will proceed to dispose of the cases in the light of this judgment. With these Observations all the writ petitions are disposed of.

REFERANCES ABOUT CENTRE-STATE RELATIONS

The Court did not mention about Centre-State Relations in this case.

Cantonment Board, Mathura v. Krishna Bricks and Lime Factory, 1996 VIIAO(SC)80

CROSS CITATIONS: 1996VIIAD(SC)80, JT1996(8)SC180, 1996(6)SCALE510, (1996)6SCC72, [1996]Supp6SCR135, (1997)1UPLBEC53 (1996) 6 SCC 72

DATE OF DECISION - 12.09.1996

JUDGES: N.P. Singh and S.B. Majmudar, JJ.

COMPOSITION OF THE BENCH: 2 Judges

ACTS/ENTRIE/ARTICLES: Cantonments Act, 1924 - Section 60; Uttar Pradesh Municipalities Act, 1916 - Section 128(1); Constitution of India- Article 276 and 276(2)

BRIEF FACTS:

The respondent was carrying on the business of manufacturing and selling of bricks. A suit was filed on behalf of the said respondent for restraining the appellant-Board from realizing tax form the said respondent at the rate of 0.75 per thousand of bricks. It was alleged that previously the Board was realizing the tax from the manufacturers of bricks at the rate of 0.19 per thousand. But by impugned notification, it raised the rate of the tax at 0.75 per thousand of bricks. It was alleged and asserted that the respondent as the manufacturer of bricks was neither deriving any advantage from the Board nor any service was being provided by the Board. As such, the realization of the tax at the aforesaid rate was in contravention and in violation of Section 60 of the Cantonments Act, 1924 read with Section 128(1)(ii) of the U.P. Municipalities Act, 1916. The suit filed on behalf of the respondent was dismissed by the Trial Court. That judgment was affirmed by the Court of Appeal. However, on second appeal being filed on behalf of the said respondent, the High Court came to the conclusion that the ceiling and restriction imposed by Article 276 (2) of the Constitution, as applicable to the State, any municipal, district board, local board or other local authority within such state in respect of imposition of taxes on professions, trades and callings, was applicable even on the Board which had been

established under the aforesaid Cantonments Act. On that finding the notification was declared to be invalid being hit by Article 276(2) of the Constitution.

ISSUE INVOLVED:

- Whether the ceiling prescribed by Article 276(2) of the Constitution shall also be applicable to Board, which has been established under the Cantonments Act?

DECISION

It was held by the Hon'ble Court that no law of legislature of a State relating to imposition of taxes for the benefit of the State or of a municipality, district board, local board, or other local authority therein in respect of professions, trades, callings shall be valid, if it provides the total amount payable in respect of any one person to the State or to any one municipality, district board, local board, or other local authority in the State, exceeding the limit fixed by Article 276(2) of the Constitution. Further, the ceiling prescribed by Article 276(2) of the Constitution shall also be applicable to Board, which has been established under the Cantonments Act. The Appeal was dismissed.

RATIO DECIDENDI:

No law of legislature of a State relating to imposition of taxes for the benefit of the State or of a municipality, district board, local board, or other local authority therein in respect of professions, trades, callings shall be valid, if it provides the total amount payable in respect of any one person to the State or to any one municipality, district board, local board, or other local authority in the State, exceeding the limit fixed by Article 276(2) of the Constitution.

OBSERVATIONS:

While deciding the case, the Court referred to the Decision of Division Bench of Rajasthan High Court in the case of *Narain and Anr.* v. *Cantonment Board, Nasirabad* in which it was held thus:

"Under Section 60 of the Cantonments Act, while imposing a profession tax, Article 276(2) of the Constitution cannot be violated[20]."

[20] Para 12

The Court also pointed that to the same effect is the Decision of the Himachal Pradesh HC in the case of *Hira Lal and Anr.* v. *Union of India and Anr.*[(1972) Tux L.R. 2051].

Summary of The Arguments:

On behalf of the appellant-Board it was pointed out that the Board couldn't exercise arbitrary power under Section 60 because any such tax including the rate thereof, has to be first sanctioned by the Central Government. According to us, because of Article 276 if the State Legislature cannot tax on professions trades or callings for the benefit of the State, municipality, district board, local board or other local authority, beyond the limit prescribed by Article 276(2) as it amounts to tux on income, then how it can be held that the Board has unlimited power without any ceiling to tax on professions, trades or callings being carried on within the cantonment area? When Section 60 provides that Board may with Previous sanction of the Central Government impose in any cantonment any tax which under any enactment for the time being in force may be imposed in any municipality in the State, wherein such cantonment is situated, such restriction shall not be only in respect of the nature of the tax, but also in respect of the ceiling on rates prescribed under the enactment, relating to the municipality.

PARTIES INVOLVED IN THE CASE

- These appeals have been filed on behalf of the cantonment Board, Mathura for setting aside the judgment of the Allahabad High Court, declaring notification by which tax at the rate of 0.75 per thousand bricks had been fixed by the Board within the cantonment area as invalid.

RELIEF CLAIMED AND GRANTED BY THE COURT

In this case, the petitioners sought relief under Article 276 of Constitution of India. As the restriction imposed by Article 276 (2) applicable even on Board established under Cantonment Act of 1924. The court ruled that taxes to be imposed by Board should not contravene provisions of Article 276 (2) and the notification in question as being hit by Article 276 (2) cannot be held to be valid. The court appeal dismissed the appeal

REFERANCES ABOUT CENTRE-STATE RELATIONS

The Court did not mention about Centre-State Relations in this case.

Daimler Chrysler India Private Limited v. Deputy Commissioner of Income Tax

Decided On: 21.01.2009

Equivalent Citation: (2009)120TTJ(Pune)803

JUDGES: Mukul Shrawat, Judicial Member and Pramod Kumar, Accountant Member

BRIEF FACTS:

Under the Indian Income Tax Act, 1961, Section 79 states that where there is any change in shareholding resulting in a change in more than 51 per cent of the voting rights in the company, not being a company in which the public is substantially interested, no losses incurred in a year before the relevant previous year may be carried forward or set off against the income earned in the previous year.

Under Section 2(18) of the Act, a subsidiary of a public company whose shares are listed in a recognized stock exchange in India is treated as a company in which the public is substantially interested. On the other hand, a subsidiary of a public company which is not listed in a recognized stock exchange in India will not be entitled to be treated as a company in which public are substantially interested. Thus, a subsidiary of a company listed on the BSE will be a company in which the public is substantially interested; while that will not be the case with a subsidiary of a company listed on the NYSE.

In the facts of the case before the Tribunal, the assessee was a company incorporated in India. At the beginning of the relevant financial period, 81 per cent of assessee's share capital was held by a German company, Daimler Benz; and the balance 19 per cent by an Indian company, TELCO. In the relevant financial period, Daimler Benz and the Chrysler Corporation, USA, decided to merge. A new company called Daimler Chrysler was formed in Germany for this purpose. In the process of the merger, all the assets and liabilities of Daimler Benz were transferred to Daimler Chrysler. One of these assets was the shareholding in the assessee company.

In view of these facts, there was a change in shareholding pattern of the assessee company as the shares held by Daimler Benz were transferred to Daimler Chrysler. Daimler Chrysler was not listed on any recognized stock exchange in India; and the assessee was prima facie not a "company in which public are substantially interested". Therefore, the Revenue sought to apply the provisions of Section 79 to prevent the assessee from carrying forward and setting off its previous losses.

The assessee claimed that the provisions of Section 79 could not be validly invoked in view of the Indo-German DTAA. In particular, the contention of the assessee was that the invocation of Section 79 violated the "non-discrimination" clause in the DTAA. The contention was, effectively, that the assessee was being discriminated against, as other Indian companies were allowed to set off their losses. Notably, it was admitted that there was no double taxation as such.

ISSUE INVOLVED:

- The Tribunal had to deal with several Issues, including the following ones:
- In the absence of any double taxation, can the provisions of a DTAA be invoked?
- If the provisions of the DTAA do apply, has there been any discrimination against the assessee, resulting in violation of the non-discrimination clause? Should the assessee be compared with any other Indian company (in which case, there would be discrimination as the other company would be treated as a company in which the public were substantially interested, thereby precluding the application of Section 79) or with another Indian company controlled by a foreign company (in which case there would be no discrimination, as Section 79 would continue to apply)?

DECISION

Applicability of a DTAA in the absence of double taxation:

It is quite well settled that when a DTAA applies in a particular fact situation, it overrides the corresponding provisions of domestic law. As to when a DTAA applies, the relevant Section is Section 90 of the Indian Income Tax Act, 1961. In the facts of the case, it was the pre-amendment Section which applied. As the Tribunal noted, a literal interpretation

of the specific provision would suggest that double taxation was essential for claiming the application of a DTAA. However, it was noted that although the specific clause in Section 90(2) was inserted only with effect from 1972, even under the original unamended Act in 1961 it was possible to claim relief by treaty override. Thus, in Azadi Bachao Andolan, the Supreme Court of India commented;

> "…it (is) clear that the judicial consensus in the India has been that Section 90 is specifically intended to enable and empower the Central Government to Issue a notification for implementation of the terms of the Double Taxation Avoidance Agreements. When that happens (i.e. notification is Issued) the provisions of such an Agreement, with respect to the cases to which they apply, would operate even if inconsistent with the provisions of the Income Tax Act..."

Hence, the Tribunal held that once a particular DTAA is made applicable by way of notification as specified, the entire DTAA came into force and override the corresponding domestic law provisions. In this connection, it is noteworthy that the wording of Section 90(1) says that the DTAA must be for the purposes specified in the Section. However, the fact that a treaty is entered into to further a particular object does not mean that every provision in that treaty must necessarily promote the same object. Nowhere, is it stipulated that the treaty will override only in cases where the specific provisions also conform to the required objectives. The treaty must be for one of the listed purposes – once it is clear that the treaty as a whole does meet those objectives, it is not open to apply principles of severability and cut out those individual provisions which do not appear to be meeting the specific objectives. As the Tribunal noted, there can be no discrimination between the natures of treaty provisions. Once a treaty applies, it applies in its entirety.

> "To suggest that the purpose of a tax treaty is only to avoid double taxation and prevent fiscal evasion, and, therefore, a rule against discrimination is not necessary to achieve these goals, is too primitive a way of looking at the role of the tax treaties in today's complex economic realities."

Therefore, there is no requirement that a DTAA applies only in cases of double taxation.

Now, although in principle a DTAA might apply, in the fact situation of the case, the question still remained as to whether the assessee had suffered from any discrimination.

That question will be discussed shortly in the concluding Part III of this note, along with some more comments on the Decision.

The assessee claimed that the provisions of Section 79 could not be validly invoked in view of the Indo-German DTAA. In particular, the contention of the assessee was that the invocation of Section 79 violated the "non-discrimination" clause in the DTAA. The contention was, effectively, that the subsidiaries of a foreign company were being discriminated against vis-à-vis the subsidiaries of an Indian company; and this resulted in the non-discrimination provisions of the DTAA being violated.

The Issue turned on what "other similar enterprise" in Article 24(4) would mean. In determining whether Article 24(4) was violated or not, the Revenue contended that the Tribunal should compare the treatment accorded to the subsidiary of a foreign company with the subsidiaries of another foreign company. They cannot be compared with subsidiaries of a domestic company. In assessing whether any discrimination had occurred, against what class of companies was the assessee to be compared? Vis-à-vis any subsidiary of any foreign company, the assessee had suffered no discrimination. The claim of discrimination was sustainable only if a subsidiary of a foreign company was compared with a subsidiary of a domestic company (which would not be affected by Section 79).

OBSERVATIONS:

The Tribunal surveyed the case-law on the point from different jurisdictions. American, German and French Courts had taken the position that to determine whether or not there has been any discrimination, what needs to be examined is the

> "differentiation in treatment of a company which was a subsidiary of a foreign company vis-à-vis a company which is a subsidiary of a domestic company…"

On the other hand, a House of Lords judgment in Boake Alleen Ltd. v. HM Revenue supported the case of the Revenue.

The Tribunal analysed the House of Lords judgment in great depth, and came to the conclusion that the judgment was inaccurate. The House of Lords had assumed incorrectly that an ownership-based non-discrimination clause [Article 24(4)] was conceptually similar to a nationality-based non-discrimination clause [Article 24(1)]. A nationality-based non-discrimination clause seeks to ensure that no discrimination takes

place on account of the nationality of a tax payer in a host country. On the other hand, an ownership-based non-discrimination clause seeks to ensure that the investment of foreign capital is not made disadvantageous to the entity in which the capital is so invested. This rationale of the ownership-based non-discrimination clause would be defeated unless a comparison was made between a subsidiary of a foreign company vis-à-vis a subsidiary of a domestic company. The Tribunal therefore disagreed with the House of Lords, and cited with approval the following passage by an eminent expert, Kees van Raad, with approval:

> "The qualification "other similar" is not remarkably precise. In view of the fact that the subject of discrimination is a foreign controlled enterprise, it would be obvious to interpret the term "other" in description of the enterprise to which is must be compared, as referring to control by local residents…"

In view of this, the Tribunal rejected the contention of the Revenue. Therefore, according to the Indo-German DTAA, the rigour of Section 79 could not be applied to the assessee in the case. The carefully reasoned Decision indicates that within the DTAA regime, foreign-owned subsidiaries must be treated on par with Indian-owned subsidiaries.

Municipal Commissioner of Dum Dum Municipality and Ors. v. Indian Tourism Development Corporation and Ors.,

JT1995(5)SC610, 1995(4)SCALE611, (1995)5SCC251, [1995]Supp2SCR433

DATE OF DECISION: 01.08.1995

ACTS/RULES/ORDERS:

Constitution of India - Articles 285, 285(1) and 298; International Airports Authority Act, 1971 - Sections 3(2), 12, 12(3), 16(1), 31, 33, 34 and 34(2); Bengal Municipal Act, 1932 - Sections 123 and 128; Companies Act; Income Tax Act; Airports Authority of India Act, 1994 - Section 13(2); Delhi Municipal Corporation Act, 1957 - Sections 113 and 119

JUDGES: S.C. Agrawal and B.P. Jeevan Reddy, JJ.

COMPOSITION OF THE BENCH: 2 Judges

BRIEF FACTS:

The Authority has granted a licence in respect of a portion of the land vesting in it in favour of Air India, which is a corporation constituted under the provisions of the Air Corporations Act, 1953. Air India has constructed certain buildings upon such land The Delhi Municipal Corporation levied property taxes upon the said buildings and made a demand upon Air India, questioning which it filed Writ Petition (C) No. 3889 of 1975 in the Delhi High Court. The contention in this writ petition is practically the same as in the writ petition by the Authority. Air India's additional submission was that since the land upon which it has constructed its buildings is vested in the Authority, no taxes could have been levied upon Air India. Against the dismissal of the writ petition, Air India has preferred Civil Appeal.

ISSUE INVOLVED:

The question arising in this batch of appeals is whether the properties vested in the International Airport Authority of India under the provisions of International Airports Authority Act, 1971 can yet be called the properties of the Union within the meaning of Article 285 of the Constitution of India and, therefore, exempt from all taxes imposed by a State or by any authority within a State - to be more precise by the municipality. The

Delhi High Court has answered the said question in the negative, i.e., in favour of the Delhi Municipal Corporation whereas the Calcutta High Court has taken a contrary view. A learned Single Judge of the Bombay High Court has also taken the same view as the Calcutta High Court but the said judgment is now the subject matter of a letters patent appeal before the Division Bench of the same court.

DECISION

The court held that, the International Airports Authority of India is a statutory corporation distinct from the Central Government and that the properties vested in it by Section 12 of the Act cannot be said to have been vested in it only for proper management. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. The vesting of the said properties in the Authority is with the object of ensuring better management and more efficient operation of the airports covered by the Act. Indeed that is the object behind the very creation of the Authority. But that does not mean that it is a case of limited vesting for the purpose of better management. The Authority cannot, therefore, invoke the immunity created by Article 285(1) of the Constitution. The levy of property taxes by the relevant Municipal bodies is unexceptionable.

RATIO DECIDENDI:

The reason behind the Decision was that, the property vested in an independent statutory authority like the International Airport Authority is not the property of the Union for purposes of exemption from municipal taxes.

Summary of The Arguments:

The contention of the learned Counsel for the appellants is to the following effect: the expression "vesting" has several shades of meaning. It does not necessarily mean the vesting of ownership. The character of vesting has to be determined with reference to the relevant provisions of the enactment. In the case of the International Airports Authority Act, 1971, the vesting is only for the purpose of management of the airports. In other words, what is vested is only the management and operation of the airports with a view to ensure better and efficient operation of services at such airports. The properties which were vesting in the Union of India and which are vested in the Authority by and under Section 12 of the Act continue to be the properties of the Union of India. They never became the properties of the Authority. May be, the properties acquired by the authority

subsequent to its Constitution become its own properties but so far as the lands and buildings which were in existence on the date of the Constitution of the Authority and which were vested in it, they continue to be the properties of the Union of India. So far as the land which has been given on licence to Air India is concerned, Sri Nariman says, it is the land which belonged to the Union of India and was vested in the Authority under Section 12 of the Act on its Constitution in the year 1972. No taxes can, therefore, be levied upon such land by the Delhi Municipal Corporation. If the land cannot be taxed, the buildings thereon cannot also be taxed. So far as 'Hotel Airport Ashok' is concerned, the land upon which it is located was given on licence to I.T.D.C. by the Authority. It is equally the property of the Union of India which vested in the Authority by virtue of Section 12. Moreover, the Bengal Municipal Act, 1932 provides for levy of an integrated and composite tax upon a holding - which expression is defined to mean "land held under one title or agreement and surrounded by one set of boundaries" by Clause (21) of Section 3. The land and the building thereon cannot be dissociated from one another and hence, no tax can be levied upon the building alone if no tax can be levied upon the land. It is further submitted that the Government of India has repeatedly decided, as contemplated by Section 12(3) of the Act, that the properties concerned herein are the properties of the Union of India and thus exempt from tax. This Decision was communicated to the Municipal Corporation of Delhi as well. The said Decision, being a statutory Decision, is binding upon the Municipal Corporation of Delhi. The Court find it difficult to agree with this contention of learned Counsel for the appellants.

It was then argued by the learned Counsel for the appellants that Section 34(2)(c) is really consistent with and bears out their theory rather than the case of the respondents. It is pointed out that Section 34(2)(c) uses both the expressions "owned" and "controlled", which means respectively the properties owned by it (i.e., acquired/constructed by it after its constitution) and those under its control (i.e., the properties which are owned by the Union of India and placed under the management of the Authority under the provisions of the Act). It is submitted that the Parliament used both the expressions to denote both kinds of properties. We cannot agree. Probably, the learned Counsel are reading too much into these two words. In any event, Section 34(2)(c) does not use the expression "managed", as it ought to, if the intention attributed to Parliament by the learned Counsel is correct. It uses a different expression "controlled by". It seems to refer to those properties which may not be owned by the Authority but are under its control on the date of supersession. From the said two words in Section 34(2)(c), no inference can be drawn which militates against the entire scheme of the Act.

The court held that, there is yet another difficulty in the way of accepting the appellant's submission. The submission logically means that only those properties which are vested by the Central Government in the Authority on the date of its Constitution alone will continue to be the properties of the Union. But so far as the properties which have been acquired or constructed after that date by the Authority would be its own properties. It may happen that the properties which have been vested in the authority at its inception have been re-built, improved, expanded and developed beyond recognition. How is one to draw the line and where? Such a distinction would not only be artificial but difficult to operate in practice. The annual report published by the Authority from year to year discloses how the Authority has understood the vesting. A copy of the annual report 1988-89 is placed before us which shows that the Authority claims to be the owner of all the properties without making any distinction between those that were vested in it at its inception and those which have been acquired and/or constructed later. It has also claimed depreciation on all the properties under Section 32 of the Income Tax Act which can be claimed only by the owner of the properties. We are not suggesting that the understanding of the Authority is conclusive on the question. Far from it. The Issue has really to be decided on the basis of the provisions of the Act. We referred to the said aspect only to show how the Authority and Union of India have understood the legal position and acted upon it over a period of more than two decades.

For all these contentions the Court ruled that, the International Airports Authority of India is a statutory corporation distinct from the Central Government and that the properties vested in it by Section 12 of the Act cannot be said to have been vested in it only for proper management. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. The vesting of the said properties in the Authority is with the object of ensuring better management and more efficient operation of the airports covered by the Act. Indeed that is the object behind the very creation of the Authority. But that does not mean that it is a case of limited vesting for the purpose of better management. The Authority cannot, therefore, invoke the immunity created by Article 285(1) of the Constitution. The levy of property taxes by the relevant Municipal bodies is unexceptionable.

OBSERVATIONS:

While deciding the case The Court made reference may be made in this connection to the Decision in *Western Coalfields Limited* v. *Special Area Development Authority* MANU/SC/0244/1982. Certain government companies incorporated under the Companies Act, the entire share capital whereof was held/owned by the Government of India claimed exemption from State taxation under Article 285(1) of the Constitution. The said plea was rejected by this Court holding that merely because the entire share capital is owned by the Government of India it cannot be held that companies themselves are owned by the Government of India. It was observed that the companies which are incorporated under the Companies Act have a corporate personality on their own distinct from that of the Government of India and that the lands and buildings are vested in and owned by the companies whereas the Government of India only owns the share capital. Reliance was placed upon certain Decisions of this Court including the Decision in Andhra Pradesh State Road Transport Corporation. We are of the opinion that the said principle applies equally in the case of a statutory corporation. The statutory corporation is constituted by or under a statute as against the companies (including government companies) which are registered under and governed by Indian Companies Act, 1956.

PARTIES INVOLVED IN THE CASE

The Union of India has preferred an independent appeal (arising from Special Leave Petition (C) No.5926 of 1991) against the judgment of the Delhi High Court in Writ Petition (C) No. 578 of 1987. The Delhi High Court has answered the said question in the negative, i.e., in favour of the Delhi Municipal Corporation whereas the Calcutta High Court has taken a contrary view. A learned Single Judge of the Bombay High Court has also taken the same view as the Calcutta High Court but the said judgment is now the subject matter of a letters patent appeal before the Division Bench of the same court.

RELIEF CLAIMED AND GRANTED BY THE COURT

The court held that, the International Airports Authority of India is a statutory corporation distinct from the Central Government and that the properties vested in it by Section 12 of the Act cannot be said to have been vested in it only for proper management. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. The vesting of the said properties in the Authority is with the object of ensuring better management and

more efficient operation of the airports covered by the Act. Indeed that is the object behind the very creation of the Authority. But that does not mean that it is a case of limited vesting for the purpose of better management. The Authority cannot, therefore, invoke the immunity created by Article 285(1) of the Constitution. The levy of property taxes by the relevant Municipal bodies is unexceptionable.

REFERANCES ABOUT CENTRE-STATE RELATIONS

The Court did not mention about Centre-State Relations in this case.

Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Anr.v. State of Haryana

CROSS CITATIONS: AIR1990SC781, [1991]188ITR402(SC), JT1989(4)SC229, 1989(2)SCALE982, (1990)2SCC71, [1989]Supp1SCR510, [1990]76STC71(SC)

DATE OF DECISION: 19.10.1989

JUDGES: Sabyasachi Mukharji and S. Ranganathan, JJ.

COMPOSITION OF THE BENCH: 2 Judges

ACTS/ENTRIES/ARTICLES:

- Haryana General Sales Tax Act, 1974
- Section 13AA of the Bombay Sales Tax Act, 1959 as introduced by the Maharashtra Act No. XXVIII of 1982.

BRIEF FACTS:

The appellant/petitioner - Goodyear India Ltd., was engaged at all relevant times, inter alia, in the manufacture and sale of automobile tyres and tubes. It manufactured the said tyres and tubes at its factory at Ballabhgarh in the district of Faridabad in the State of Haryana. For the said manufacturing activity the appellant had, from time to time to purchase various kinds of raw materials both within the State and outside the State. It is stated that about 7 to 10 per cent of the total needs of raw materials on an all India basis were locally procured by the appellant from Haryana itself. The raw materials purchased in Haryana were: (i) pigments (partly), (ii) chemicals (partly), (iii) wires (partly), (iv) carbon black (partly), (v) rubber (partly); and (vi) fabric (partly). The rest of the requirements were imported from other States. The appellant had its depots at different places in the State of Haryana as well as in other States. After manufacturing the said tyres and tubes, about 10 to 12 per cent of the total manufactured products used to be sold in the State of Haryana either locally or in the course of inter-State trade and commerce or in the course of export outside the country and also sold locally against Declaration Form No. ST-15. It was stated that at the relevant time the local sales including sales in the course of inter-State trade and commerce and in the course of export from the State of Haryana was about 30 to 35 per cent. The appellant was a registered dealer both under the Haryana Act and the Central Sales Tax Act, and had been submitting its quarterly returns and

paying the sales-tax in accordance with law, according to the appellant. In 1979, the assessing authority, Faridabad, imposed upon the appellant the purchase tax under Section 9 of the Act for the assessment year 1973-74 and subsequently for the years 1974-75 and 1975-76 as well on the despatches made by the appellant on the manufactured goods to its various depots outside the State. Subsequently, the relevant revenue authorities sought to impose purchase tax under Section 9(1) of the Act and imposed purchase tax on despatches of manufactured goods, namely, tyres and tubes, to its various depots in other States. This led to the filing of various writ petitions in the Punjab and Haryana High Court by the appellant/ petitioner.

ISSUE INVOLVED:

- The Issue was regarding the legislative competence of a law, which imposes tax on the price at which raw materials are purchased actually becomes effective with reference to manufactured goods on their despatch to a place outside the State is a 'Consignment Tax' falling within the competence of the Parliament under Article 269(1) (g) and Union List Entry 92(b).

DECISION

Article 268 of the Constitution deals with the distribution of revenues between the Union and the States and Article 269 deals with the taxes levied and collected by the Union but asssigned to the State. Regarding the question to the competence of a legislature to impose a tax , in a conflict between two competing jurisdictions, the nomenculture used by the taxing State is not conclusive. In such a situation the Court has to apply the doctrine of 'pith and substance' in order to find out the real nature of the tax , with reference to its taxing event.

RATIO DECIDENDI:

On the competence of a legislature to impose a tax , in a conflict between two competing jurisdictions, the nomenculture used by the taxing State is not conclusive and in such situations the Court has to apply the doctrine of 'pith and substance' in order to find out the real nature of the tax , with reference to its taxing evevnt.

Summary of The Arguments:

The learned Counsel for the appellant/assesses, contended before us that it is necessary to find out or identify the taxable event. If on a true and proper construction of the amended provisions of Section 9(l)(b) it is the despatch or consignment of the goods that

is the taxable event as contended by the petitioners and appellants, then the power is beyond the State's competence. If, on the other hand, it is the purchase of the goods that is the taxable event as held by the Full Bench of the High Court, then it will be within its competence. The Full Bench in Des Raj Pushap Kumar's case 1985 Tax LR 2882 (Punj. & Har.) (supra.) has relied on the background of the facts and the circumstances which necessitated the introduction of the amendment.

The Counsel appearing for the State canvassed before us the historical perspective and stated that Haryana State came into being as a result of the Punjab State Reorganisation Act, 1966, therefore, part of the legislative history of the taxing statute like any other Statute is shared by the Haryana State with the Punjab State, and as such it is proper to notice the concept of purchase tax as it evolved in the State of Punjab. Purchase-tax was introduced in the State of Punjab for the first time by the East Punjab General Sales Tax (Amendment) Act, 1958. Section 2(ff) was introduced for the first time to define the expression 'purchase'. The definition of the term 'dealer' was changed to include therein a purchaser of goods also. The definition of the term 'taxable turnover' was also altered. Some dealers who crushed oilseeds, were called upon to pay purchase tax on the raw material purchased by them on the ground that the raw material had not been subjected to a manufacturing process as the process of crushing oil-seeds did not involve a process of manufacturing. He referred to the fact that Punjab had originally exempted purchase tax on the purchase of raw material by the dealers, if such raw material was to be used for the manufacture of goods for sale in Punjab and thus generate more revenue to the State as a result of the sales tax on such manufactured goods. But when the dealers started avoiding this condition for sale in Punjab by .various ingenious devices after having escaped the payment of purchase tax on the raw material purchased by them, the Legislature amended the Act and Punjab Act No. 18 of 1960 was brought on the statute book w.e.f. April 1, 1960. Section 2(ff) of the Act was amended and it provided that all the goods mentioned in Schedule 'C' when purchased shall be exigible to purchase tax and thus the concession given to the manufacturers was withdrawn. Explaining this background, Mr. Tewatia contended that Section 9, Sub-section (i) of the Act envisages payment of tax at such rate as may be notified under Section 15 on the purchase of goods from any source within the State by a dealer liable to pay tax under the Act when such goods, not being Schedule 'B' goods, were consumed either in producing Schedule 'B' goods or when the manufactured goods were other than Schedule 'B' goods, the same not being sold within the State or in the course of inter-State trade or commerce, or in the course of export outside the territory of India, or the purchased goods were exported outside the State.

On behalf of the assessee, Mr. Raja ram Agarwala, however, further contended that the ratio of Kandaswami's case Mr. Tewatia referred, must be understood in the light of the question involved in that case. The said Decision of this Court was concerned with the limited point as to whether the Madras High Court was right in observing "whether one could say that the sale which is exempted is liable to tax and then assume that because of exemption, the tax is not payable". This Court held that the language of Section 7A of the said Act was far from clear as to its intention and did not concern with the identification of the taxing event. Furthermore, it has to be borne in mind, as emphasised by Mr. Agarwala, that if at all the taxing event was spelt out, it was on the assumption that the goods in question were generally taxable and these were to be put to tax under Section 7A of the Tamil Nadu Act, if these came to be purchased without payment of tax and then sought to be dealt with in any manner as to escape payment of State sales/purchase tax within the State.

It was contended by Mr. Rajaram Agarwala that Clause (b) of Section 9(1) dealt with non-exempted goods purchased in the State, used in the manufacture of any goods whether exempted or not, but when despatched outside the State of Haryana i.e., by way of stock transfer consignment will attract the tax liability under this section, hence, the event of despatch or consignment is the immediate cause which attracts the tax liability under Section 9. The quality or the character of goods which should be liable to tax under Section 9 in Clause (l)(a) is the non-exempted goods purchased in the State; while under the first part of Clause (b) the quality of goods liable to tax is the non-exempted goods purchased in the State and under the second part of Clause (b), the quality of goods must be non-exempted goods purchased and manufactured in the State, whether exempted or not in the State which is liable to tax on despatch outside Haryana; and under Clause (c) the goods purchased in Haryana without undergoing any further change or use is the quality of goods liable to tax when exported.

The submission of the State is that the taxable event is the purchase of goods in Haryana while the obligation to pay is postponed on the fulfilment of certain conditions. The further argument is that there is a general liability to purchase tax which the dealer avoids on furnishing a Declaration in S.T. Form 15 as provided by Section 24 at the time of purchase, wherein certain conditions are mentioned and when those conditions are not fulfilled, those revive. It was further argued that the conditions are incorporated in

Section 9 of the Act. For testing which of the contentions are nearer to find out the exact taxable event, certain indicias and illustrations may be seen. Their analysis will indicate that there is no liability to pay sales tax under the Haryana Act on the purchaser. It is admitted that on such sales the selling dealer is liable to pay sales tax. On such purchases, the sale and purchase being the two sides of the same coin, no purchase tax is imposed under the Act. This has been the accepted position by the State also for, while replying to the question of double taxation, counsel for the State admitted that sales as well as purchase tax is to be imposable under the scheme of the Act which are of two sides. Hence, it was rightly urged by Mr. Rajaram Agarwala that the first contention for attracting the applicability of Section 9(i), "whether a dealer is liable to pay tax under this Act purchases goods", is missing when the section (1) talks of a dealer liable to pay tax under the Act, obviously it is with reference to his purchasing activity and if on that activity no purchase tax is payable, Section 9(1) would not be applicable.

OBSERVATIONS:

While deciding the case the Court made reference to the Observations of Justice Vivian Bose in the Tata Iron & Steel Co. Ltd. v. The State of Bihar[21] where he observed as follows:

- I would therefore reject the nexus theory in so far as it means that any one sale can have existence and entity simultaneously in many different places. The States may tax the sale but may not disintegrate it, and, under the guise of taxing the sale in truth and in fact, tax its various elements, one its head and one its tail, one its entrails and one its limbs by a legislative fiction that deems that the whole is within its claws simply because, after tearing it apart, it finds a hand or a foot or a heart or a liver still quivering in its grasp. Nexus, of course, there must be but nexus of the entire entity that is called a sale, wherever it is deemed to be situate. Fiction again. Of course, it is fiction, but it is a fiction as to situs imposed by the Constitution Act and by the Supreme Court that speaks for it in these matters and only one fiction, not a dozen little ones.

The Court further observed that it is, therefore, necessary in all cases to find out what is the essence of the duty which is attracted. A taxable event is that which is closely related to imposition. In the instant section, there is such close relationship only with despatch. Therefore, the goods purchased are used in manufacture of new independent

[21] 1958 SCR 1355 at p. 1381 : AIR 1958 SC 452 at p. 464.

commodity and thereafter the said manufactured goods are despatched outside the State of Haryana. In this series of transactions the original transaction is completely eclipsed or ceases to exist when the levy is imposed at the third stage of despatch of manufacture. In the instant case the levy has no direct connection with the transaction of purchase of raw materials, it has only a remote connection of lineage. It may be indirectly and very remotely connected with the transaction of the purchase of raw material wherein the present levy would lose its character of purchase tax on the said transaction.

Hotel Corporation of India v.State of Jammu & Kashmir and Ors.

Equivalent Citation: AIR2001J&K36

Decided On: 13.09.2000

JUDGES: B.P. Saraf, C.J. and Syed Bashir-ud-din, J.

COMPOSITION OF THE BENCH: 2 Judges

BRIEF FACTS:

By these three writ petitions, the petitioners, Hotel Corporation of India Limited, seek to challenge the assessments made under the Jammu and Kashmir Urban Immovable Property Act,1962 (Act XXII of 1962) (hereinafter referred to as "the Act"), in respect of Hotel Centaur by the Respondent-3, Assessing Authority, Urban Immovable Property Tax, Srinagar.

ISSUE INVOLVED:

Whether the assessments made under the Jammu and Kashmir Urban Immovable Property Act, 1962 is violative of Article 285 of the Constitution of India?

DECISION

The court carefully considered the rival submissions in regard to the applicability of Article 285 of the Constitution of India and section 4(1) of the Act to the property of the Hotel Corporation of India. As stated above, there is no dispute about the fact that Article 285 of the Constitution of India imposes a ban on levy of tax by a State or any authority within a State on the property of the Union. The real question that arises for consideration is whether the property of the Hotel Corporation of India can be said to be the property of the Union of India. This controversy is no more res integra in view of a catena of Decisions of the Supreme Court on the point.

RATIO DECIDENDI:

The Hotel Corporation of India, which is a subsidiary of Air India, a statutory Corporation, is a legal entity distinct and separate from Government of India. It has a corporate personality of its own, distinct from the Government of India. The lands and buildings in respect of which tax has been levied under the Jammu and Kashmir Urban

Immovable Property Tax Act, 1962 are owned by the Corporation and not by the Government of India. The Hotel Corporation of India, therefore, cannot claim exemption from taxation under Article 285 of the Constitution and section 4(1) of the Act. The first ground of challenge therefore fails. The Hotel Corporation of India, which is a subsidiary of Air India, a statutory Corporation, is a legal entity distinct and separate from Government of India.

Summary of The Arguments:

The assessments have been challenged on various grounds. One of the main grounds of challenge is that Hotel Corporation of India being a Government of India undertaking, no tax can be levied on its properties in view of the prohibition contained in Article 285 of the Constitution of India and section 4(1) of the Act. The annual value ascertained by the Assessing Authority and the method of ascertaining the same are also subject-matter of challenge. All the three writ petitions were admitted and recovery of the tax levied by the Assessing Authority stayed by this court by different orders passed from time-to-time. These three writ petitions are, therefore, taken up together for hearing and disposal.

InternationalAirportAuthorityofIndia Vs. Municipal Corporation of Delhi and Ors.

Decided On: 08.01.1991

AIR1991Delhi302, 43(1991)DLT601a

JUDGES: B.N. Kirpal and Santhosh Duggal, JJ.

COMPOSITION OF THE BENCH: 2 judges

BRIEF FACTS:

The petitioner is an authority constituted under the provisions of the International Airport Authority Act, 1971 (hereinafter referred to as the IAA Act). The reason for filing the present writ petition was that a notice of demand dated 16th February, 1987 which was Issued by the respondent Corporation levying the property tax of a sum of Rupees 1,71,71,786.65 P. This was levied in relation to the Indira Gandhi International Airport Terminal II. This demand was raised by bill of 16th February, 1987, and the aforesaid sun included arrears from 1st April 1982 to 31st March, 1986. Tax for the year 1986-87 was also included therein. We may mention here that bills in respect of the subsequent period have also been raised during the pendency of the writ petition.

ISSUE INVOLVED:

Indira Gandhi Inter national Airport is not the property of the Central Government and is the property of the Authority, and the respondent Corporation is entitled to levy and realise taxes from the petitioner Under Section 113 of the Delhi Municipal Corporation Act.

DECISION

There is no doubt that the Authority is controlled by the Central Government in the sense that its members are appointed by the Central Government and the Central Government plays a very vital role in the functioning of the Authority. It may be that the Authority has to be regarded as a state within the meaning of Article 12 of the Constitution. But merely because it has to seek approvals of the Central Government does not mean that the Authority itself is the Central Government. If there can be any doubt with regard thereto, that has been completed dispelled by virtue of Section 3(2) of the Act which gives the Authority a right to acquire, hold and dispose of the property. Merely because

the property cannot be disposed of without the consent of the Central Government does not mean that the property is not owned by the Authority. It is pertinent to note that without superseding the Authority, Central Government cannot dispose of the property which is vested in the Authority. A transaction of sale or transfer has to be executed only by the Authority in the manner prescribed under the Act.

It is undoubtedly true that the Central Government has the power to temporarily divest the Authority from the management of the airport. But merely because this statutory power is conferred on the Central Government under Section 33 of the Act, does not mean that the property in question does not belong to the Authority. Similarly, merely because Section 3 gives the Central Government power to supersede the Authority cannot lead one to the conclusion that no property can be owned by the Authority. On the Contrary, Section 34(2)(c) provides that on publication of the notification superseding the Authority, "all property owned or controlled by the Authority shall, until the Authority is reconstituted under Sub-section (3), vest in the Central Government." This provision clearly postulates that there may be a property which is owned by the Authority. It is irrelevant what is the meaning of the word 'vest' in this sub-section because we are concerned with the meaning of the word 'vest' in Section 12(1)(a) which, as we have already held, clearly means that all rights, title and interest which in the Central Government, they stand transferred to Authority.

The property in question, namely, terminal II of Indira Gandhi International Airport is not the property of the Central Government and is the property of the Authority, and the Respondent Corporation is entitled to levy and realise taxes from the petitioner Under Section 113 of the Delhi Municipal Corporation Act.

RATIO DECIDENDI:

On Vesting Authority becomes owner thereof. Merely because statutory power is conferred on Central Government under Section 33 of the Act does not mean property does not belong to authority. Respondent Corporation is entitled to levy and realise taxes from petitioner under Section 113 of Delhi Municipal Corporation Act.

Summary of The Arguments:

The main contention of the petitioner in this writ petition is that the property which is being subjected to tax by the Municipal Corporation belongs to the Central Government and, therefore, by virtue of the provisions of Art. 285 of the Constitution,

the same is exempt from tax. In an effort to substantiate this contention, the learned counsel for the petitioner has referred to the various provisions of the Iaa Act. It is contended by the learned counsel for the petitioner that before the aforesaid Act was promulgated; the airports in the country including the Palam Airport at Delhi admittedly belonged to the Union of India. It is submitted that the Iaa Act was promulgated only with a view that the Airport specified in S. 3 shall be administered by the petitioner Authority. In other words, the submission of the learned counsel is that the properly of the Central Government was never transferred to the petitioner and the accretion of the said properties, including the construction to the Indira Gandhi International Airport Terminal. It was out of the funds provided by the Union of India and thereforee at no time can the said property, namely, terminal Ii at Palam Airport, be regarded as belonging to the petitioner Authority.

The Respondents submitted that by virtue of the provisions of S. 12, the property in question vested with the petitioner Authority and that the said property belongs to the petitioner and that the provisions of Art. 285 of the Constitution were not attracted.

Karnataka Bank Ltd. v: State of A.P. and Ors

CROSS CITATION: 2008BusLR244(SC), (2008)3MLJ517(SC), 2008(1)SCALE660, (2008)2SCC254, 2008(1)UJ162(SC), (2008)12VST459(SC)

DATE OF DECISION: 21.01.2008

Judges: S.H. Kapadia and B. Sudershan Reddy, JJ.

COMPOSITION OF THE BENCH: 2 Judges

Acts/Rules/Orders:

Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 - Sections 2, 2(21), 4, 5, 6 and 6(2); Companies Act, 1956 - Section 3; Andhra Pradesh General Sales Tax Act; Constitution of India (Sixtieth Amendment) Act, 1988; Andhra Pradesh Municipalities Act, 1965; Andhra Pradesh Gram Panchayats Act, 1964; Hyderabad Municipal Corporation Act, 1956; General Clauses Act, 1897 - Section 3 and 3(42); Government of India Act, 1935 - Sections 100 and 142A; Provincial Insolvency Act - Section 53; Limitation Act; Gujarat Agricultural Land Ceiling Act, 1961; Income Tax Act, 1961 - Section 2(31); Constitution of India - Articles 14, 20, 21, 22, 31A, 31B, 226, 246, 246(3), 265, 267(2), 276, 286, 301 and 367

BRIEF FACTS:

The appellant in M/s. Shaw Wallace and Company Limited, a Company registered under the Companies Act, 1956. It has its principal place of business at Secunderabad in A.P. State. In addition to its principal place of business at Secunderabad the appellant has branches and stock points where it transacts its business and stores its goods. At the material time, the appellant had about 74 stock points, every stock point has been duly recorded with the registering authority under the A.P. General Sales Tax Act. It is aggrieved by the notice Issued by the first respondent requiring the appellant to pay profession tax at Rs. 2500/- for each of its Page 0412 branches in A.P. for the years 1996-97 and 1997-98. The respondent altogether demanded a sum of Rs. 3,42,000/- at the rate of Rs. 2500/- per annum for each of the branches of the appellant Company. The first respondent obviously relied on the Explanation to the First Schedule to the Act defining the expression "person" which we shall notice little later. It is under those circumstances the appellant invoked the jurisdiction of the High Court under Article 226 of the Constitution of India and prayed for grant of appropriate relief's.

The appellant in is a banking Company engaged in banking activities having the network of over 300 branches spread throughout India. The appellant altogether at the relevant time had branches in 17 places within the State of Andhra Pradesh. It had obtained the certificate of enrolment from the first respondent at Hyderabad, where it has its principal place of business. The appellant was paying Profession Tax in respect of principal branch at Hyderabad alone. The first respondent herein issued similar notices requiring the appellant to pay Profession Tax of Rs. 2500/- to be paid by each of its branches in the State of Andhra Pradesh.

The appellant in is a partnership firm engaged in the business of sale of petroleum products. It has its principal place of business at Secunderabad in the State of Andhra Pradesh. In addition to its principal business premises, it has other petroleum outlets outside Hyderabad and Secunderabad. The first respondent Issued similar notices demanding Profession Tax by treating the various branches of the appellant firm as a different person at the rate of Rs. 2500/- per annum. Each of the appellant's branch has been treated as a separate person for the purposes of levy and realization of tax under the provisions of the Act. The Writ Petitions filed by each of the appellant challenging the constitutional validity of the provisions of the said Act referred to hereinabove came up before a Division Bench of the A.P. High Court, which has upheld the validity of the provisions.

ISSUE INVOLVED:

- Whether the Explanation to the definition of the term "person" defined under Section 2(j) of the Act and Explanation to the First Schedule of the Act is violative of the Article 276(2) of the Constitution?
- Whether in the exercise of its power to make a law relating to taxes on professions, trades, callings and employments within the State, the Legislature of that State has the legislative competence to define "person" engaged in any profession, trade etc?

DECISION

The Court do not find any merit in the contention that the Legislature lacks legislative competence to define "person" who is liable to pay profession tax etc. which includes every branch of a firm, Company, Corporation or other corporate body, any Society, Club or Association. The term "person" is not defined in the Constitution. But Article 367of

our Constitution provides that the definitions contained in the General Clauses Act apply for the interpretation of the Constitution. Therefore, we are required to consider whether the definition of "person" in Section 3(42) of the General Clauses Act restrict the power of State Legislature to define the term "person" and adopt a meaning different from the definition in the General Clauses Act. In our considered opinion, the definition of "person" in General Clauses Act, would not restrict the power of the State Legislature to define a "person" and adopt a meaning different from or in excess of the ordinary acceptation of the word as is defined in the General Clauses Act.

For the aforesaid reasons, the Court hold the definition of the word "person" in the impugned Explanation and also Explanation to the First Schedule of the Act is not intended to tax a person at a rate higher than Rs. 2500/- per annum, per person, but to treat even a branch of a firm, company, corporation or other corporate body, any society, club or association as a separate person, and therefore, a separate assesses within the meaning of Section 2 (b) of the Act and the Andhra Pradesh State Legislature has undoubtedly the competency to adopt such a devise of taxation. The Andhra Pradesh State Legislature did not violate the mandate of Article 276(2) of the Constitution. In the result, the appeals are dismissed with no order as to costs.

RATIO DECIDENDI:

Power to make a law with respect to a tax comprehends within its power to levy that tax and to determine the persons who are liable to pay such tax, the rate at which such tax is to be paid.

Summary of The Arguments:

Shri D.A. Dave, learned senior counsel submitted that the competency of the State Legislature to make a law relating to taxes for the benefit of the State or other local authorities therein in respect of professions, trades, callings or employments is structured by Article 276 of the Constitution and any such law made by the State Legislature is to be within the four corners of that Article. The submission was that the total amount payable in respect of any one person to the State by way of taxes on professions etc. shall not exceed Rs. 2500/- per annum. The State Legislature is not competent to treat every branch of a Company or firm or club etc. as a separate person for the purposes of levy and collection of Profession Tax. The branches of a Company have no independent and

separate existence. It was submitted that though there is no definition of "person" in the Constitution, the meaning of the expression "person" is to be ascertained from the provisions of the General Clauses Act inasmuch as Article 367 of the Constitution provides the General Clauses Act, 1897 to be made applicable for the interpretation of the Constitution. Section 3(42) of the General Clauses Act defines "person" as a Company or Association or body of individuals whether incorporated or not. Relying on the said definition it was contended that branches of Company, Association or body of individuals cannot be treated as a separate person. Shri A.V. Rangam adopted the submissions made by the learned senior counsel.

Shri Anoop G. Chaudhary, learned senior counsel appearing on behalf of the State of A.P. contended that the impugned provisions of the Act do not suffer from any constitutional infirmity. The Legislature is competent to define person and such artificial definitions are not unknown to law. It was submitted that no doubt Article 367 provides that the General Clauses Act, 1897 applies for the interpretation of the provisions of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. But the General Clauses Act itself is a statute for interpretation of other enactments, unless there is anything repugnant in the subject or context. The very definition of "person" provided in Section 3(42) is an inclusive one and it no way impairs the competence of the State Legislature to make law relating to taxes for the benefit of the State in respect of professions etc. and define "person" for the purposes of such law.

Shri Sanjay Hegde, learned Counsel for the Intervener broadly adopted the submissions made by the learned senior counsel for the State of Andhra Pradesh.

OBSERVATIONS:

B. Sudershan Reddy, J. made the following Observations

In *Hasmukhalal Dahyabhai and Ors.* v. *State of Gujarat and Ors.* interpretation of Articles 31A and 31B of the Constitution of India in relation to The Gujarat Agricultural Land Ceiling Act, 1961 came up for consideration. The Gujarat Agricultural Land Ceiling Act, 1961 conceives of each "person" holding land in the single unit whose holding must not exceed the ceiling limit. Section 2, Sub-section (21) says: "person" "includes a joint family". This has been done apparently to make it clear that, in addition to individuals, as natural persons, families, as conceived of by other provisions, can also be and are persons. It was argued that the concept of the term "person" having been fixed by the General Clauses Act, this concept and no other must be used for interpreting the second proviso to Article 31A of the Constitution of India. This Court held:

It is true that, but for the provisions of Section 6, Sub-section (2) of the Act, the term "person", which includes individuals, as natural persons, as well as groups or bodies of individuals, as artificial Page 0421 persons, such as a family is, the entitlement to the ceiling area would be possessed by every person, whether artificial or natural. In other words, if Section 6(2) of the Act was not there, each individual member of a family would have been entitled to hold land upto the ceiling limit if it was his or her legally separate property. This follows from the obvious meaning of the term "person" as well as the inclusive definitions given both in the Act under consideration and in the General Clauses Act[22].

[22] *Ibid* Para 10.

New Delhi Municipal Committee v. State of Punjab

CROSS CITATIONS:AIR1997SC2847, JT1997(1)SC40, 1996(9)SCALE613, (1997)7SCC339, [1996]Supp10SCR472

DATE OF DECISION: 19.12.1996

JUDGES: A.M. Ahmadi, C.J.I., J.S. Verma, S.C. Agrawal, B.P. Jeevan Reddy, Dr. A.S. Anand, B.L. Hansaria, S.C. Sen, K.S. Paripoornan and B.N. Kirpal, JJ.

COMPOSITION OF THE BENCH: 9 Judges

ACTS/RULES/ORDERS:

Constitution of India - Articles 54, 133, 142, 239, 240, 241, 242, 243, 244, 245 to 255, 256 to 263, 285, 289(1), 357, 367 and 372; Punjab Municipal Act, 1911 - Section 61; Delhi Municipal Corporation Act, 1957; New Delhi Municipal Council Act, 1994 - Sections 60, 62 and 119; Government of India Act, 1935 - Sections 5, 6, 94, 99, 100, 104, 154, 155(1) and 311(1); General Clauses Act, 1897 - Section 3(58); Sea Customs Act, 1878 - Section 20; Central Excises Act, 1944 - Section 3; Government of India Act, 1919; Government of Part 'C' States Act, 1951 - Sections 21, 22 and 38(22); Reorganisation Act, 1956; Union Territory by the Punjab (Reorganisation) Act, 1966; Government of Union Territories Act, 1963; State of Himachal Pradesh Act, 1970; North-Eastern Areas (Reorganisation) Act, 1971; State of Mizoram Act, 1986; Goa, Daman & Diu (Reorganisation) Act, 1987; Laccadive, Minicoy and Amindivi Islands (Alteration of Names) Act, 1973; Delhi Laws Act, 1912; Delhi Laws Act, 1915; Cantonments Act, 1924; Code of Civil Procedure, 1908 - Section 79; Income-tax Act, 1912 - Sections 3 and 9.

BRIEF FACTS:

In this case, the actual Issue was regarding the exemptions provided under Article 289, which exempts income of a State from Union Taxation. As per the facts of the case, the states claimed exemption from tax on their property situated within the National Capital Territory of Delhi, particularly within the New Delhi Municipal Council area, imposed under the Punjab Municipal Act, 1911 (as extended and applied by Part 'C' State Laws Act, 1950), the Delhi Municipal Corporation Act, 1957 and the New Delhi Municipal Council Act, 1994. The states claimed exemption under clause 2 of Article 289 on the

ground that, all these laws are made by Parliament and any taxes imposed or authorized to be imposed under these laws by the Municipal bodies constitute Union Taxation. Therefore, all property or income of the states which does not fall within the exemption of clause 2 of Article 289 which is not related to trade or business carried out by the states is exempt from tax.

ISSUE INVOLVED:

- Whether by virtue of Article 289(1), the States are entitled to exemption from the levy of taxes imposed by laws made by Parliament under Article 246(4) upon their properties situated within Union Territories?

DECISION

It was found that, the property in respect of which the states were seeking exemption from tax was not connected with any trade or business carried out by the respective states. Hence, it was exempt from tax under the laws made by the Parliament. It was a nine–bench Decision in which two opinions were expressed by five judges. Any way the Court was unanimous in delivering the Decision.

RATIO DECIDENDI:

The court held that, for the purpose of Article 289 of the Constitution property, which is exempt from Union Taxation, has been interpreted liberally to include property of every description.

Summary of The Arguments:

The crucial question arising in this batch of appeals pertains to the meaning of the expression "Union Taxation" occurring in Article 289(1). According to the appellant municipal corporations, the property taxes levied either by Punjab Municipal Act, 1911, as extended to and applicable in the New Delhi Municipal Council area or by the Delhi Municipal Corporation Act, 1957 applicable to the Delhi Municipal Corporation area do not fall within the ambit of the expression "Union taxation". According to them, "Union Taxation" means levy of any of the taxes mentioned in the Union List (List-I in the Seventh Schedule to the constitution). May be, it may also take in levy of Stamp duties (which is the only taxation entry in the Concurrent List) by Parliament, but by no stretch of imagination, they contend, can levy of any tax provided in the State List (List-II in the

Seventh Schedule) can be characterised as Union taxation. Merely because the Parliament levies the tax provided in List-II, such taxation does not amount to Union taxation. These are many situations where the Parliament is empowered by Constitution to make laws with respect to matters enumerated in List-II.

The levy of taxation by Parliament within the Union territories is of a similar nature. Either because the Union territory has no legislature or because the Union territory has a legislature but the Parliament chooses to act in exercise of its over-riding power, the taxes levied by a Parliament enactment within such Union territories would not be Union taxation. It is relevant to notice, the learned Counsel contend, that the legislatures of the Union territories referred to in Article 239-A as well as the legislature of Delhi created by Article 239-A are empowered to make laws with respect to any of the matters enumerated in List-II and List-III of the Seventh Schedule, just like any other State legislature; any taxes levied by these legislatures cannot certainly be characterized as "Union Taxation". Merely because the Parliament has been given an over-riding power to make a law with respect to matter enumerated even in List-II, in supersession of the law made by the legislature of the Union Territory, it does not follow that the law so made is any the less a law belonging to the sphere of the State. The test in such matters-it is contended-is not who makes the law but to which matter in which List does the law in question pertain. Clause (4) of Article 246 specifically empowers the Parliament to make laws with respect to any matter enumerated in List-II in the case of Union territories. This shows that even the said clause recognises the distinction between List-I and List-II in the Seventh Schedule, it is submitted.

The learned Attorney General appearing for the Union of India supported the contentions of the appellants-municipal corporations.

The contentions of the learned Counsel for the respondents are to the following effect: a Union territory is not a "State" within the meaning of Article 246. Even prior to the Seventh (Amendment) Act, Part 'C' States, or for that matter Part-D States, were not within the purview of the said Article. The division of the legislative powers provided by Clauses (1), (2) and (3) of Article 246 has no relevance in the case of a Union Territory. Union territory, as the name itself indicates, is a territory belonging to Union. A Union territory has no legislature as contemplated by Part-VI of the Constitution. A Union territory may have a legislature or may not. Even if it is bestowed with one, it is not by virtue of the Constitution but by virtue of a Parliamentary enactments, e.g., Government

of Part 'C' States Act, 1951 (prior to November 1, 1956) and Government of Union Territories Act, 1963. Even the legislature provided for Delhi by Article 239-AA of the Constitution with effect from February 1, 1992, is not a legislature like that of the States governed by Part-VI of the Constitution. Not only the powers of the legislature are circumscribed by providing that such legislature cannot make laws with reference to certain specified entries in List-II but any law made by it even with reference to a matter enumerated in the State List is subject to the law made by Parliament. In any event, the position obtaining in Delhi after February 1, 1992 is not relevant in these appeals since these appeals pertain to a period anterior to the said date. The Punjab Municipal Act, 1911 (as extended and applied to the Union Territory of Delhi by Part 'C' States (Laws Act) and the Delhi Municipal Corporation Act, 1957 are Parliamentary laws enacted under and by virtue of the legislative power vested in Parliament by Clause (4) of Article 146. The taxes levied by the said enactments constitute "Union taxation" within the meaning of Article 289(1) and hence, the properties of the States in the Union Territory of Delhi are exempt therefrom. Reliance is placed upon the majority opinion in Re.: Sea Customs Act in support of the above propositions. It is submitted that there are no reasons to take a different view now.

On these rival contentions, the court inclined to agree with the respondents-States. The States put together do not exhaust the territory of India. There are certain territories which do not from part of any State and yet are the territories of the Union. That the States and Union Territories are different entities, is evident from Clause (2) of Article 1 indeed from the entire scheme of the Constitution. Article 245(1) says that while Parliament may make laws for the whole or any part of the territory of India, the legislature of a State may make laws for the whole or any part of the State. Article 1(2) read with Article 245(1) shows that so far as the Union Territories are concerned, the only law-making body is the Parliament. The legislature of a State cannot make any law for a Union territory; it can make laws only for that State. Clauses (1), (2) and (3) of Article 246 speak of division of legislative powers between the Parliament and State Legislatures. This division is only between the Parliament and the State legislatures, i.e., between the Union and the States. There is no division of legislative powers between the Union and Union Territories. Similarly, there is no division of powers between States and Union Territories. So far as Union territories are concerned, it is Clause (4) of Article 246 that is relevant. It says that the Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Now, the Union Territory is not included in the territory of any State. If so, Parliament is the only law-making body available for such Union Territories. It is equally relevant to mention that the Constitution, as originally enacted, did not provide for a legislature for any of the Part 'C' States (or, for that matter, Part 'D' States). It is only by virtue of the Government of Part 'C' States Act, 1951, that some Part 'C' States including Delhi got a legislature. This was put an end to by the States Reorganisation Act, 1956. In 1962, the Constitution Fourteenth (Amendment) Act did provide for creation/constitution of legislatures for Union Territories (excluding, of course, Delhi) but even here the Constitution did not itself provide for legislatures for those Part 'C' States; it merely empowered the Parliament to provide for the same by making a law. In the year 1991, the Constitution did provide for a legislature for the Union Territory of Delhi (National Capital Territory of Delhi) by Sixty Ninth (Amendment) Act (Article 239-AA) but even here the legislature so created was not a full fledged legislature nor did have the effect of-assuming that it could-lift the National Capital Territory of Delhi from Union Territory category to the category of States within the meaning of Chapter-I of Part XI of the Constitution. All this necessarily means that so far as the Union Territories are concerned, there is no such thing as List-I, List-II or List-III. The only legislative body is Parliament or a legislative body created by it. The Parliament can make any law in respect of the said territories-subject, of course, to constitutional limitations other than those specified in Chapter-I of a Part-XI of the Constitution. Above all, Union Territories are not "States" as contemplated by Chapter-I of Part-XI; they are the territories of the Union falling outside the territories of the States. Once the Union Territory is a part of the Union and not part of any State, it follows that any tax levied by its legislative body is Union taxation. Admittedly, it cannot be called "State taxation" and under the constitutional scheme, there is no third kind of taxation. Either it is Union taxation or State taxation. This is also the opinion of the majority in Re.: Sea Customs Act. B.P. Sinha, CJ., speaking on behalf of himself, P.B. Gajendragadkar, Wanchoo and Shah, JJ.while dealing with the argument that in the absence of a power in the Parliament to levy taxes on lands and buildings (which power exclusively belongs to State legislatures, i.e., Item 49 in List-II), the immunity provided by Article 289(1) does not make any sense-observed thus:

OBSERVATIONS:

Rajagopala Ayyangar, J., in his separate majority judgment, makes a specific reference to this contention of the learned Solicitor General (at pp. 918-19) but, aside from stating that "the submission of the learned Solicitor General are not without force"

(at p. 919), he did not make any further reference to the matter. Hidayatullah, J., in his separate minority opinion, did not advert to this Issue.

The preceding analysis reveals that the Issue at hand was specifically answered by this Court in the Sea Customs's case. We find it difficult to accept Mr. Sen's contention that the Observations of Sinha, C.J. were made by way of obiter dicta. Though the Issue of legislations applicable in Union Territories was not specifically before the Court, it did arise for consideration during its analysis of the power of Parliament to levy taxes directly upon property. The latter question was squarely before the Court and the Issue relating to Union Territories, though incidental to the main question, necessarily required consideration. The Observations of Sinha, C.J. arc unequivocally in favour of the position adopted by the States before us, who find themselves in the enviably advantageous position of being able to draw sustenance form even the Observations in the dissenting judgment of Das. J.

The Decision in the Sea Customs's case was reaffirmed by a Constitution Bench of this Court in the APSRTC case which was a matter relating to assessment of income-tax. The facts of that case are not directly relevant for our purpose but, what is of considerable interest to us is the manner in which the scheme of Article 289 and its three clauses were construed. Speaking for the Court, Gajendragadkar, C.J. outlined the scheme of Article 289 (at p. 25) which can be stated as follows: The general proposition that flows from Clause (1) is that ordinarily, the income derived by a State both from governmental and nongovernmental or commercial activities shall be immune from income-tax levied by the Union. Clause (2) then provides an exception and empowers Parliament to make a law imposing a tax on the income derived by the Government of a State from trade or business carried on by it, or on its behalf. If Clause (1) had stood by itself, it would not been possible to include within its purview income derived by a State from commercial activities but since Clause (2) empowers Parliament to enact a law levying taxes on such activities of a State, the inescapable conclusion is that activities must be deemed to have been included in Clause (1) and that alone can be the justification for the words in which Clause (2) has been couched in the Constitution. Thereafter, Clause (3) empowers Parliament to declare by law that any trade or business would be taken out of the purview of Clause (2) and restore it to the area covered by Clause (1) by declaring that the said trade or business is incidental to the ordinary functions of Government. In other words, Clause (3) is an exception to the exception prescribed by Clause (2). Whatever trade or business is declared to be incidental to the ordinary functions of Government would cease to be governed by Clause (2) and would then be exempt from Union taxation.

These Observations of Gajendragadkar, C.J. having been made in the context of income tax levied in the facts of that case, mention only taxes relating to income. They are equally applicable to the taxes relating to property referred to in Article 289. The essence of this analysis is that Clause (3) of Article 289 is an exception to Clause (2), which in turn is an exception to the first clause of the Article.

Union of India v. State of Punjab and others

CROSS CITATIONS: AIR 1990P & H183,1990 P & H183

DATE OF DECISION: 13.09.1989

JUDGE: Jai Singh Sekhon, J.

COMPOSITION OF THE JUDGE: 1 Judge

ACTS/RULES/ORDERS:

Punjab Motor Vehicles Taxation Act, 1924 - Section 13 and 13(1); Constitution of India - Articles 226, 285(1) and (2) and 372(2); General Clauses Act, 1897 - Section 4; Punjab Motor Vehicles Taxation Rules, 1925 - Rule 8; Adaptation of Laws Order, 1950 Sections 11 and 18; Government of India Act, 1935 - Section 154; East Punjab General Sales Tax Act, 1948 - Section 2.

BRIEF FACTS:

The District Transport Officer, Amritsar, vide impugned orderimposed tax on the motor vehicles of the Railway Department under R. 8(i) of the Rules framed under S. 13 of the Act, by holding that the Adaptation; of Laws Order, 1950, protects the lax already imposed at the time of the commencement of the Constitution of India. Being aggrieved against that order, the Union of India went in appeal, which was dismissed by the Collector, Amritsar. The Union of India then filed an appeal before the Commissioner, Jullundur Division, Jullundur, on the wrong assumption that such an appeal was maintainable under S. 12 of the Act, but the learned Commissioner dismissed the appeal by holding that it will not be legal for him to interfere in the impugned order in second appeal.

ISSUE INVOLVED:

· Whether the imposition of Road-tax under S. 13(1) of the Punjab Motor Vehicles Taxation Act, 1924 and R. 8(i) of the Punjab Motor Vehicles Taxation Rules, 1925, on the motor vehicles owned by the Northern Railway Workshop, Amritsar, are not liable to any tax under Article 285(1) of the Constitution of India mainly on the ground that these vehicles being the property of the Central Government?

DECISION

The impugned orders, of the District Transport Officer, and Collector Arnritsar levying tax on the motor vehicles of the Railway Department under R. 8(i) of the Rules framed under S. 13 of the Act, are quashed by accepting the writ petition.

RATIO DECIDENDI:

There is absolutely no doubt that the property of the Union would continue to be taxable under the existing State Laws at the time of the commencement of the Constitution if actually such taxes were being imposed in the pre-Constitution period. In the case in hand, there is no dispute that this tax was not being levied on the motor vehicles of the Railways in the pre-Constitution period or in the post Constitution period and it was for the first time that the State Authorities had thought of at Amritsar. So the provisions of Art. 285(1) of the Constitution clearly bar the imposition of this tax.

Summary of The Arguments:

The Union of India then invoked the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution of India, mainly on the ground that the Central Government is not liable to pay any tax on the vehicles under Art. 285(1) of the Constitution. It was further maintained that the provisions of the Adaptation of Laws Order, 1950, could not override the provisions of the Constitution, especially when no such tax at any time earlier has been claimed or paid by the petitioner on its motor vehicles. In the alternative, it was averred that R. 8(i) of the Rules only makes the motor vehicles exigible which are used for commercial purposes and the vehicles in question being simply used for giving facility to its employees without charging any fair, cannot be said to be used for commercial purposes.

The State of Punjab resisted this petition contending that the orders, passed by the concerned authorities, are perfectly legal and that the provisions of the Adaptation of Laws Order, 1950, along with the provisions of S.4 of the General Clauses Act, 1897, clearly protect the operation of the laws and the rules already in force, unless the Parliament by law directs otherwise as envisaged by Cl. (2) of Art. 285 of the Constitution.

OBSERVATIONS:

While deciding the case the Court made a reference on the Decision laid down by the Apex Court in *Union of India* v. *City Municipal Council, Bellary,* AIR 1978 SC 1803,

while interpreting the provisions of Art. 285(2) of the Constitution has held in Para 7 of the judgment as under:-

"The property of the Union is exempt from all taxes imposed by a State or by any authority within a State. But the Parliament may by law provide otherwise and then any tax on the property of the Union can be imposed and livied in accordance with the said law. But then an exception has been carved out in Cl. (2). The exception is not meant for levying any tax on such property by any State, but it is merely for the benefit of any authority including the local authority like the Municipal Council in question. Cl. (1) cannot prevent such authority from levying any tax on any property of the Union if such property was exigible to such tax immediately before the commencement of the Consitution. The local authority, however, can reap advantage of this exception only under two conditions namely (1) that it is 'that tax' which is being continued to be levied and no other; (2) that the local authority in 'that State' is claiming to continue the levy of the tax. In other words, the nature, type and the property on which the tax was being levied prior to the commencement of the Constitution must be the same as also the local authority must be the local authority of the same State to which it belonged before the commencement of the Constitution. On fulfilment of these two conditions it is authorised to levy the tax on the Union property under Cl. (2). As in the case of Cl. (1), it lies within the power of the Parliament to make a law withdrawing the exemption of the imposition of the tax on the property of the Union, so in the case of Cl. (2), it is open to the Parliament to enact a law and finish the right of the local authority within a State to claim any tax on any property of the Union, a right it derived under Cl. (2). That is to say, in both the cases the ultimate power lies with the Parliament."

PARTIES INVOLVED IN THE CASE

- The Union of India being aggrieved against the order of the District Transport Officer, Amritsar that order went in appeal, which was dismissed by the Collector, Amritsar. The Union of India then filed an appeal before the Commissioner who dismissed the appeal by holding that it will not be legal for him to interfere in the impugned order in second appeal. The Union of India then invoked the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution of India through this writ petition, mainly on the ground that the Central Government is not liable to pay any tax on the vehicles under Art. 285(1) of the Constitution. 4.
- The State of Punjab resisted this petition contending that the orders, passed

by the concerned authorities, are perfectly legal and that the provisions of the Adaptation of Laws Order, 1950, along with the provisions of S.4 of the General Clauses Act, 1897, clearly protect the operation of the laws and the rules already in force, unless the Parliament by law directs otherwise as envisaged by Cl. (2) of Art. 285 of the Constitution.

- Through this writ petition, the Union of India through Railway Department, had challenged the imposition of Road-tax under S. 13(1) of the Punjab Motor Vehicles Taxation Act, 1924 and R. 8(i) of the Punjab Motor Vehicles Taxation Rules, 1925 (hereinafter referred to as the Rules), on the motor vehicles owned by the Northern Railway Workshop, Amritsar, mainly on the ground that these vehicles being the property of the Central Government are not liable to any tax under Art. 285(1) of the Constitution of India.

RELIEF CLAIMED AND GRANTED BY THE COURT:

- In this writ petition the Union of India through Railway Department, had challenged the imposition of Road-tax under S. 13(1) of the Punjab Motor Vehicles Taxation Act, 1924 and R. 8(i) of the Punjab Motor Vehicles Taxation Rules, 1925, on the motor vehicles owned by the Northern Railway Workshop, Amritsar, mainly on the ground that these vehicles being the property of the Central Government are not liable to any tax under Art. 285(1) of the Constitution of India.

- The court ruled that, there is no dispute that this tax was not being levied on the motor vehicles of the Railways in the pre-Constitution period or in the post Constitution period and it was for the first time that the State Authorities had thought of at Amritsar. So the provisions of Art. 285(1) of the Constitution clearly bar the imposition of this tax.

List of the Cases on Trade, Commerce and intercourse within the territory of India:

Cases from the High Courts

1. *All India Motor Transport Congress and Anr. v. State of Madhya Pradesh,* AIR 1994 MP117, 1994 (0) MPLJ 884
2. *Amrit Banaspati Company Ltd. v. The State of Punjab*, MANU/PH/0447/2001
3. *Baby v. Addl. Sales Tax Officer,* [2002] 126 STC 368 (Ker), MANU/KE/0021/2002
4. *Bharat Earth Movers Ltd., rep. by its Dy. Gen. Manager Finance, Sri. D. Bhattacharya and etc. etc. v. The State of Karnataka, rep. by Principal Secretary to Government, Finance Department, Govt. of Karnataka. The Commissioner of Commercial Taxes and Deputy Commissioner of Commercial Taxes and etc. etc.,* 2007 (3) MPHT 69, MANU/KA/7216/2007
5. *Dinesh Pouches Ltd. v. State of Rajasthan and Ors.,* (2008) 16 VST 387(Raj), MANU/RH/0811/2007
6. *Eagle Corporation Pvt. Ltd. v. State of Gujarat and 3 Ors.,* (2007) 1 GLR 213, MANU/GJ/8497/2006
7. *Eastern Safety and Anr. v. State of Bihar through The Director General-cum-Inspector General of Police and Ors.,* 2004 (2)BLJR 976, [2005] 142 STC 341 (Pat), MANU/BH/0099/2004
8. *Ghodawat Pan Masala Products (I) Ltd. v. State of Karnataka and Ors.,* ILR 2002 KAR 4170, [2003] 130 STC 276 (Kar), MANU/KA/0777/2002
9. *Good Year India Limited and Anr. v. The State of Haryana and Anr.,* (1997) 116 PLR 252, MANU/PH/0777/1996
10. *Grand Azad Hind Transport Co .v. State of West Bengal,* 2002 (4) CHN 681, MANU/WB/0506/2002
11. *Harinagar Sugar Mills Ltd. and Anr. v. The State of Bihar and Ors.,* 2003 (2) BLJR 1091, MANU/BH/0120/2003

12. *Harivansh S/o Vallabhdasji Battad and Ors. v. State of Maharashtra and Ors.,* 1988(4)BomCR553, MANU/MH/0578/1988

13. *In Re: Reliance Industries Limited and Ors. etc., etc.,* 2008(I) OLR 620, (2008) 16 VST 85(Orissa), MANU/OR/0068/2008

14. *Indian Oil Corporation Limited v. State of Haryana and Anr.,* (2009)21VST10(P&H), MANU/PH/1077/2008

15. *Inertia Industries v. State of Rajasthan and Ors.,* MANU/RH/0262/2002

16. *ITC Limited rep. by its Constituted Attorney, Subhatosh Banerjee v. The State of Tamil Nadu rep. by the Chief Secretary to Government of Tamil Nadu, Secretariat and The Commercial Tax Officer,* 2007(2)CTC577, (2007)5MLJ897, (2007)7VST367(Mad), MANU/TN/1006/2007

17. *Jaika Automobiles Pvt. Ltd. Nagpur and another v. State of Maharashtra and another,* AIR1993Bom87, MANU/MH/0013/1993

18. *Jindal Strips Limited and Anr. v. State of Haryana and Ors.,* (2008) 12 VST 149 (P&H), MANU/PH/0980/2007

19. *K.A. Jose v. R.T.O. and Anr.,* 2008 (1) KLJ 128, MANU/KE/0720/2006

20. *Kalindi Woollen Mills (P) Ltd. v. Union of India (UOI),* 1994(74)ELT827(Cal), MANU/WB/0255/1994

21. Karnataka State Cable T.V. and Dish Operators Welfare Association v. State of Karnataka, ILR 1994 KAR 741, MANU/KA/0181/1994

22. *Maruthi Constructions v. Government of A.P. and Anr.,* (2007)10VST362(AP), MANU/AP/1277/2006

23. *Mysore Cement Ltd. and Anr. and M.P. Cement Manufacturer's Association and Anr. v. State of Madhya Pradesh and Ors.,* [2006]143STC432(MP), MANU/MP/0763/2003

24. *Nand Kishore and Company v. State of Punjab and Anr.,* (2008)17VST108(P&H), MANU/PH/0614/2008

25. *Osaw Agro Industries Pvt. Ltd. v. State of Punjab and Ors.,* (2007) 148 PLR5 35, (2007) 9 VST 393 (P&H), MANU/PH/0209/2007

26. Paras Mal v. State of Rajasthan, *1995 (1) WLC 216, 1994 (2) WLN 494, MANU/RH/0476/1994*

27. *Prabhudayal Ramanand v. State of Andhra Pradesh,* [1990] 77 STC 122 (AP), MANU/AP/0165/1990

28. *Precious Carrying Corporation and Anr. v. State of Gujarat and Ors.,* (2002) 3 GLR 74, MANU/GJ/0182/2002

29. Ramesh Babu v. State of Kerala, *2005 (4) KLT 372, MANU/KE/0365/2005*

30. *Ranjana Granites (P) Ltd., rep. by its Managing Director, Sri A. Venkat Reddy and Ors. v. The State of A.P., rep. by its Principal Secretary, Industries and Commerce Department and Ors.,* 1996 (3) ALT 121, MANU/AP/0891/1996

31. *S.P. Road Link and Ors. v. State of Tripura and Anr.,* [2006] 144 STC 380 (Gauhati), MANU/GH/0140/2005

32. *Sardar Dayal Singh Bagga and Ors. v. State of Madhya Pradesh and Ors.,* AIR (1988) MP 305, MANU/MP/0067/1988

33. *Seagull Laboratories (I) Pvt. Ltd. v. Delhi Administration and Ors.,* 44(1991)DLT3, ILR1991Delhi290, [1991]81STC90(Delhi), MANU/DE/0511/1990

34. *Shakti Traders v. State of Jammu & Kashmir and Ors. AND R.P. Traders v. State of Jammu & Kashmir and Ors. AND Shree Mahavir Oil Mills v. State of Jammu & Kashmir and Ors. AND Daya Chand Jain v. State of Jammu & Kashmir and Ors. AND Devi Dass Gopal Krishan Ltd.v. State of Jammu & Kashmir and Ors. AND S.K. Enterprises v. State of Jammu & Kashmir and Ors. AND Amrit Banaspati Company Ltd. v. State of Jammu & Kashmir and Ors. AND National Dairy Development Board v. State of Jammu & Kashmir and Ors. AND Pawan Traders v. State of Jammu & Kashmir and Ors.,* MANU/JK/0088/2001

35. *Smt. Ramakanya Devi and Anr. v. State of Karnataka and Ors.,* I(2003)ACC644, II(2003)ACC267, 2003(1)KarLJ227, MANU/KA/0547/2002

36. *Solidaire India Ltd. v. State of Karnataka and another,* [1994]92STC278(Kar), MANU/KA/0249/1990

37. *Som Distilleries of Breweries Pvt. Ltd. v. State of Madhya Pradesh and Anr.,* 1997 (2) MPLJ 376, MANU/MP/0480/1996

38. *Sony India Ltd. v. Commercial Tax Officer and Ors.,* (2008) 18 VST 49 (Mad), MANU/TN/7688/2007

39. *Sony India Ltd. v. The Commercial Tax Officer, The State of Tamil Nadu represented by the Secretary to Government, Department of Commercial Taxes and Religious Endowments and The Tamil Nadu Taxation Special Tribunal represented by its Registrar.,* (2007) 5 MLJ 881, MANU/TN/9256/2007

40. *South Kamrup (Meghalaya) Timber Merchant Association, Mirza and Anr., v. State of Assam and Ors..,* AIR1995Gau86, MANU/GH/0024/1995

41. *Sree Rayalaseema Alkalies and Allied Chemicals Limited v. State of Andhra Pradesh and Ors.,* (2008)13VST15(AP), MANU/AP/0950/2007

42. *Tata Steel Limited and Ors. v. State of Jharkhand and Ors.,* 2008 (3) JCR 365 (Jhr), MANU/JH/0527/2008

43. *The Pondicherry Generators Manufacturers' Association rep. by its President, J.C. Kohli v. The Union of India (UOI) rep. by its Secretary to Government (Local Administration Department),The Director, Local Administration Department, The Pondicherry Municipality rep. by its Special Officer and The Commissioner, Pondicherry Municipality.,* (2007)6MLJ927, MANU/TN/8898/2007

44. Thressiamma L. Chirayil v. State of Kerala., *2007(1) KLT 303, (2007) 7 VST 293 (Ker), MANU/KE/0542/2006*

SUPREME COURT OF INDIA

45. *Chief General Manager, Jagannath Area and Ors. v. State of Orissa and Anr.,* II(1996)ACC390, 1996VIIAD(SC)458, JT1996(8)SC530, 1996(7)SCALE123, (1996)10SCC676, [1996]Supp6SCR570, 1997(1)UJ131(SC), MANU/SC/1670/1996

46. *Geo Miller and Co. Pvt. Ltd. and Ors. v. State of M.P. and Ors.,* AIR 2004 SC 3552, 2004(5) SCALE 747, (2004) 5 SCC 209, [2004] 136 STC 241(SC), MANU/SC/0491/2004

47. *Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.,* AIR2006SC2550, [2006]283ITR1(SC), JT2006(4)SC611, 2006(4)SCALE300, (2006)7SCC241, [2006]145STC544(SC), MANU/SC/2085/2006

48. *Jindal Strips Ltd. and Ors. v. State of Haryana and Ors.,* JT 2003(8)SC 62, (2004) 136 PLR 601, 2003(8) SCALE 122, (2003) 8 SCC 60, [2004] 134 STC 303 (SC), MANU/SC/0775/2003

49. Loarn Steel Industries Ltd. and another etc. v. State of Andhar Pradesh and another., *AIR1997SC1694, JT 1997(1)SC326, 1997(1)SCALE27, (1997)2SCC37, [1996]Supp10SCR898, MANU/SC/0391/1997*

50. *Shree Digvijay Cement Co. Ltd. and Ors. v. State of Rajasthan and Ors.,* AIR2000SC680, JT1999(10)SC201, 1999(7)SCALE580, (2000)1SCC688, [1999]Supp5SCR428, [2000]117STC395(SC), 2000(1)UJ558(SC), MANU/SC/0795/1999

51. *Shree Mahavir Oil Mills and Anr. v. State of J&K and Ors.,* 1996IXAD(SC)165, JT1996(10)SC837, 1996(8)SCALE595, (1996)11SCC39, [1996]Supp9SCR356, [1997]104STC148(SC), MANU/SC/1740/1996

52. Shree Mahavir Oil Mills and Anr.v. State of J&K and Ors., *1996IXAD(SC)165, JT1996(10)SC837, 1996(8)SCALE595, (1996)11SCC39, [1996]Supp9SCR356, [1997]104STC148(SC), MANU/SC/1740/1996*

53. State of Bihar & Others v. Harihar Prasad Debuka and Ors., *AIR1989SC1119, 1989(2)BLJR85, 1989(1)SCALE464, (1989)2SCC192, [1989]1SCR796, [1989]73STC353(SC), 1989(1)UJ684(SC), MANU/SC/0533/1989*

54. *State of Bihar etc. v. Bihar Chamber of Commerce etc.,* JT 1996(2) 53, 1996 SCALE (1) 760

55. State of Tamil Nadu and others v. M/s. Sanjeetha Trading Co. and others, *AIR1993SC237, 1992(2)SCALE635, (1993)1SCC236, [1992]Supp1SCR840, MANU/SC/0046/1993*

56. State of Tamil Nadu and others v. M/s. Sanjeetha Trading Co. and others., *AIR1993SC237, 1992(2)SCALE635, (1993)1SCC236, [1992]Supp1SCR840, MANU/SC/0046/1993*

57. State of Tripura and others v. Sudhir Ranjan Nath., *AIR1997SC1168, JT1997(2)SC530, 1997(2)SCALE154, (1997)3SCC665, [1997]2SCR29, 1997(1)UJ563(SC), MANU/SC/0265/1997*

58. State of Uttar Pradesh and another v. M/s. Laxmi Paper Mart and others., AIR1997SC950, JT1997(2)SC238, 1997(1)SCALE679, (1997)2SCC697, [1997]105STC1(SC), MANU/SC/0210/1997

59. The State of Himachal Pradesh and Ors. etc. v. Yash Pal Garg (dead) by LRs and Ors. etc., H.H. Exporters etc. and Jai Mata Rolled Glass Ltd. and Anr. etc., JT2003(4)SC413, 2003(4)SCALE448, (2003)9SCC92, [2003]3SCR1056, MANU/SC/0363/2003

60. Tripura Goods Transport Association and Anr. v. Commissioner of Taxes and Ors., AIR1999SC719, JT1998(9)SC62, 1998(6)SCALE620, (1999)2SCC253, [1998]Supp3SCR622, [1999]112STC609(SC), MANU/SC/0878/1999

61. Video Electronics Pvt. Ltd. and Anr. & Weston Electronics Ltd. and Anr. v. State of Punjab and Anr., *AIR1990SC820, 1989(2)SCALE1483, (1990)3SCC87, [1989]Supp2SCR731, [1990]77STC82(SC), 1990(1)UJ482(SC)*

62. West Bengal Hosiery Association and Ors.v. State of Bihar and Anr., *1988(36)BLJR783, (1989)1CALLT9(SC), JT1988(3)SC347, 1988(2)SCALE280, (1988)4SCC134a, [1988]Supp2SCR378, [1988]71STC298(SC), 1988(2)UJ614(SC), MANU/SC/0575/1988*

Analytical Summary of the Arguments

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

"Of the many virtues for which federalism has emerged as the best founding principle for polities around the world, the one that has come to the fore in recent years is the facility it offers to the constituents to operate in a large market." – Amaresh Bagchi

Introduction

The constitution makers desired to promote free flow of Trade and Commerce in India as they fully realized that economic unity and integration of the country provided the main sustaining force for the stability and progress of the political and cultural unity of the federal polity, and that the country should function as one single economic unit without barriers on internal trade. Wide amplitude of the freedom granted by Article 301 is limited by restrictions imposed on it under Articles 302-305.

The journey of these provisions has been long and eventful as it was subject to rigorous interpretations. Balanced by restrictions, it reflected the fluid and distrustful mindset of framers of the constitution and policymakers to forgo their inhibitions and completely liberate the nation by de-fencing the flow of trade within the country.

The judiciary has often stepped in to contain the damage to internal trade caused by the attempt by some states to discriminate against goods produced in other states, it is only blatant discrimination that has been negatived. State taxes have been held violative of Article 301 only when they impinge "directly or immediately on trade". To reconcile the freedom of trade and commerce and the power of taxation, the Supreme Court has evolved the concept of regulatory and compensatory tax. This means that Article 301 cannot stand in a way of a regulatory or compensatory tax. The sentiment is reflected in plethora of cases.

Thus, the main object of Article 301 of the Constitution was to breakdown the border barriers between the States and to create one unit with a view to encouraging free-flow of stream of trade and commerce throughout the territory of India.[23]

[23] Indian Cement v. State of A.P. (1988) 1 SCC 744

It is also important to take note of the fact that the State legislatures are given the power to regulate trade and commerce under Article 304 subject to Article 303. In Video Electronics Pvt. Ltd. v. State of Punjab[24], the Supreme Court held that Article 304(a) enjoins the state not to discriminate with respect to imposition of tax on imported goods and locally made goods. Further, in Shri Mahavir Oil Mills Ltd. v. State of J&K[25], the Supreme Court laid down that this clause bars states from creating tax barriers/fiscal barriers and/or insulating themselves by creating tariff walls.

Compensatory Taxes

In the landmark case of Atiabari Tea Co. Ltd v. State of Assam and Ors.[26], (hereafter Atiabari case) , where the Assam Taxation (on goods carried by Roads and Inland Waterways) Act, 1954 had come under challenge. The Act was declared void then by a Constitution Bench of five judges, saying that there was a direct restriction on the freedom of trade. "An exception to Article 301 and its operation was judicially crafted" in the Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.[27] (hereafter Automobile case), where the Rajasthan Motor Vehicles Taxation Act, 1951 was challenged under Article 301. The challenge was rejected by the Constitution Bench comprising seven Judges of the Supreme Court; on the reason that "the taxes are compensatory taxes which instead of hindering trade, commerce and intercourse, facilitate them by providing roads and maintaining the roads". It was observed: "If a statute fixes a charge for a convenience or service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired." Thus came into being the concept of 'compensatory taxes', whereby taxes that otherwise interfere with the unfettered freedom under Article 301 will be protected from the vice of unconstitutionality, if they are compensatory. The verdict had laid down `a working test for deciding whether a tax is a compensatory or not'.

'Some connection' Rule

Right from 1962 up to 1995, this working test was applied in relation to motor vehicles taxes for deciding whether the levy was compensatory or not. However, after 1995, some of the principles set out stood deviated from when the principle of

[24] (1990) 3 SCC 87
[25] (1996) 11 SCC 39
[26] AIR (1961) SC 232
[27] AIR (1962) SC 1406

compensatory tax was applied to the entry tax in the Bhagatram Rajeevkumar v. Commissioner of Sales Tax, M.P. and Ors.[28] (hereafter Bhagatram case). A Bench of three judges that decided the case went on to say: "The concept of compensatory nature of tax has been widened and if there is substantial or even some link between the tax and the facilities extended to dealers directly or indirectly the levy cannot be impugned as invalid".

The dictum in the Bhagatram case was relied upon when a Bench of two judges decided the State of Bihar and Ors. v. Bihar Chamber of Commerce and Ors.[29] (hereafter Bihar Chamber of Commerce case); it was reiterated that 'some connection' between the tax and the trading facilities extended to dealers directly or indirectly was sufficient to characterise it as compensatory tax.

The Law as crystallized

In sum, the pre-1995 Decisions took the view that the imposition of tax must be with the definite purpose of meeting the expenses on account of providing or adding to the trading facilities either immediately or in future. Also, that the quantum of tax be based on a reasonable relation to the actual or projected expenditure on the cost of the service or facility. In contrast, the post-1995 Decisions, such as in the Bhagatram case and the Bihar Chamber of Commerce case, said that even if the purpose of imposition of the tax was not merely to confer a special advantage on the traders but to benefit the public in general, including the traders, that levy could still be considered to be compensatory.

The Jindal Strips Ltd. and Ors. v. State of Haryana and Ors.[30] (hereafter Jindal case) had come up before a two-judge Bench comprising Justices Ruma Pal and P. Venkatarama Reddy. In September 2003, they expressed doubts about the correctness of the view taken in the Bhagatram case and relied on in the Bihar Chamber of Commerce case. Therefore, the matter was placed before the Chief Justice for appropriate directions and accordingly, the Jindal case came before the Constitution Bench "to decide with certitude the parameters of the judicially evolved concept of `compensatory tax' vis-à-vis Article 301".

[28] 1995 Supp. (1) SCC 673
[29] MANU/SC/0593/1996
[30] (2003)8SCC60

In conclusion, the five-judge Bench observed that the doubt expressed by the referring Bench about the correctness of the Decision in the Bhagatram case was well founded. Which means: one, the doctrine of 'direct and immediate effect' of the impugned law on trade and commerce under Article 301 as propounded in the Atiabari case, and the working test enunciated in the Automobile Transport case for deciding whether a tax is compensatory, will continue to apply. And two, the test of 'some connection' indicated in the Bhagatram case and followed in the Bihar Chamber of Commerce case is not good law.

The Trend:

Entry Tax Laws of various States were struck down by various Courts as indicated in the Decision of Supreme Court in Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.[31], which ruled that entry tax collected should prove to be compensatory in nature and the respective Entry Tax laws of various States were found not compensatory.

Illustrative Cases where the Entry Tax laws have been struck down following the aforementioned Decision as a precedent-

- Jindal Strips Ltd. v. State of Haryana.[32]
- Therassamma L. Chirayil v. State of Kerala.[33]

Conclusion

Thus, the judiciary as ever burdened assumes its role of resolving the power-wielding play exhibited by the Centre and the State against each other. Anticipating the need to insulate the implementation of the common market mandate from politics, the Constitution makers provided for the creation of an authority to oversee the operation of Part XIII (Article 307). Despite endorsement by the Sarkaria Commission, neither the Centre nor the states have shown any liking for such an authority, presumably, fearing loss of power.

[31] (2006)145 STC 544 SC, (2006) 7 SCC 241
[32] (2008) 12 VST 149 (P&H)
[33] 2007(1) KLT 303

Summary of the Arguments of the Cases:

All India Motor Transport Congress and Anr. v. State of Madhya Pradesh

AIR 1994 MP117, 1994 (0) MPLJ 884

High Court of Madhya Pradesh

Decided on: 18.02.1994

Judges: U.L. Bhat, C.J. and P.P. Naolekar, J.

Articles and Schedules of Constitution of India - Articles 14, 246, 265, 301 and 304;

Brief Facts:

The petitioner's challenge is to the Act passed by the State legislatures of Madhya Pradesh called the "Madhya Pradesh Motor Parivahan Yano Par Pathkar Ka Udgrahan Adhiniyam, 1985 Madhya Pradesh Act No. 17 of 1985 (for short the 'Act'). The petitioner No. 1 is 'All India Motor Transport Congress'; the Apex organization of Motor Transport Operators affiliated to State/Regional Associations and is a company registered under the Companies Act, 1956. The members of the petitioner No. 1 are goods transport operators holding composite/national permits on inter-State routes as provided in Section 63(11) of the Motor Vehicles Act, 1939, and the petitioner No. 2 is a National Permit holder providing goods transport facilities. The act received assent of the Governor on 28-8-1985, and was published in Madhya Pradesh-Gazette (Extraordinary) dated 29-8-1985. The act was enacted by the Madhya Pradesh legislature to provide for levy of toll on certain motor vehicles entering in the State of Madhya Pradesh and for matters connected therewith or incidental thereto.

Issue Involved:

Whether Madhya Pradesh Motor Parivahan Yano Par Pathkar Ka Udgrahan Adhiniyam, 1985, is unconstitutional?

Decision:

The Madhya Pradesh Motor Parivahan Yano Par Pathkar Ka Udgrahan Adhiniyam, 1985, was held to be intra vires of the Constitution of India and a valid piece of legislation.

Ratio Decidendi:

The toll is imposed by the State for providing better transport facilities and as such does not infringe guarantee of free trade and commerce throughout the State. As the Act does not fall within the ambit of Article 301 of the Constitution of India it was not required to be tested on the touchstone of reasonable restriction in public interest nor it was necessary for the State legislatures to introduce or move the Bill with previous sanction of the President. The free permit zone created by reciprocal agreement is open for trade or business on the condition incorporated under permits Issued and toll charged under the Act, does not impair that right of the petitioners. The Act does not violate either provisions of Article 301 or 304 of the Constitution of India.

Summary of The Arguments:

Constitutional validity of the Act is challenged on the grounds (i) that under the reciprocal agreement entered between the States of Gujarat, Haryana, Madhya Pradesh, Maharashtra, Punjab, Rajashthan, Uttar Pradesh and Delhi as notified in Madhya Pradesh Rajpatra, dated 29-12-1972, limited number of composit permits have been Issued by each State under Section 63 (11) of the Motor Vehicles Act, 1939, by virtue of the imposition of toll in the State of Madhya Pradesh, artificial barrier has been created whereby the trade, commerce and intercourse throughout the territory of reciprocal agreement State is impaired, which violates freedom guaranteed under Article 301 of the Constitution of India. Further, that imposition of the toll in a free zone under the reciprocal agreement is not a reasonable restriction on the freedom of the trade, commerce or intercourse with or within the State in the public interest and in any case the Act having not introduced or moved in the legislature of the State with the previous sanction of the President, it is ultra vires; (ii) the tax on the Motor Vehicle for the purpose of the maintenance of roads in the State of Madhya Pradesh is already levied under the Motor Vehicles Taxation Act, 1947, and therefore, toll for the same purpose amounts to double taxation.

Observations of the Court:

"There is a presumption always in favour of the constitutionality of an enactment, since it must be presumed that the legislature understood and correctly appreciated the

need of its own people and, therefore, the burden of showing that the classification is arbitrary and not based on rational basis is upon the persons who impeach the law, as being the violation of constitutional guarantee, of the denial of equal protection in the exercise of its discretion."[34]

[34] Paragraph 11, Judgement Text

Amrit Banaspati Company Ltd. v. The State of Punjab

MANU/PH/0447/2001

High Court of Punjab and Haryana

Decided on: 22.12.2000

Judges: **G.S. Singhvi and Nirmal Singh, JJ.**

Articles and Schedules of the Constitution of India - Articles 14, 19(1), 246(3), 301, 303 and 304.

Brief Facts:

The transactions entered into by the petitioners involve inter-State transfer of goods and such transactions are exempt from tax in view of Section 5(3) of the Central Sales Tax Act, 1956 (for short, the 1956 Act), but the officers of the Excise & Taxation Department, Punjab are harassing them by detaining the goods and vehicles and not releasing the same despite the production of documents showing that transportation of the goods is a part of the transaction involving inter-State sale of goods or export out of India and no sales tax is payable in respect of such transaction.

Issue Involved:

Whether sub-sections (6)(ii) and (7)(iii) of Section 14-B of the Punjab General Sales Tax Act, 1948 (for short, the 1948 Act) are beyond the legislative competence of the State or the same are violative of the petitioner's fundamental right to trade and business guaranteed under Article 19(1)(g) of their freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution?

Summary of the Arguments:

Learned counsel for the petitioners, argued that sub-sections (6)(ii) and 7(iii) of Section 14-B should be declared ultra vires to the legislative power of the State because the subject-matter of these provisions falls under Entry 92-A of List-I of the Seventh Schedule and not under Entry 54 of List-II. They further argued that the impugned provisions should be declared violative of Article 19(l)(g) of the Constitution of India because the same are confiscatory in nature and impinge upon the fundamental right of the petitioners to carry on their trade and business without any restriction. Learned counsel

then argued that Section 14-B(7)(iii) may be declared violative of Articles 14 and 19(1)(g) of the Constitution because it provides levy of penalty equivalent to 50 per cent of the value of the goods without laying down guidelines for exercise of the power by the concerned authority. Learned counsel submitted that most of the transactions entered into by the petitioners involve inter-State transfer of goods and such transactions are exempt from tax in view of Section 5(3) of the Central Sales Tax Act, 1956 (for short, the 1956 Act), but the officers of the Excise & Taxation Department, Punjab are harassing them by detaining the goods and vehicles and not releasing the same despite the production of documents showing that transportation of the goods is a part of the transaction involving inter-State sale of goods or export out of India and no sales tax is payable in respect of such transaction. Another submission of the learned counsel is that the impugned amendment should be declared unconstitutional because it has been enforced without seeking Presidential sanction in terms of Art. 304(b) of the Constitution.

Learned Deputy Advocate General, argued that the power vested in the State under Entry 54 of List-II of the Seventh Schedule of the Constitution to enact law for levy and collection of tax includes the power to enact law, which are ancillary to the purpose of the impugned statute and, therefore, sub-sections (6)(ii) and (7)(iii) of Section 14-B, which have been enacted for checking evasion of tax and for plugging the loopholes in the system devised for checking the evasion of tax, cannot be declared beyond the legislative competence of the State. He referred to the objects and reasons contained in the Bill presented in the State Legislature for enactment of sub-sections (6)(ii) and (7)(iii) of Section 14-B and submitted that the right of the State to take appropriate measures to curb the tendency among the dealers to evade tax cannot be questioned by the dealers and transporters.

Decision:

Section 14-B(6)(ii) is declared intra vires to the provisions of the 1948 Act.
Section 14-B(7)(iii) is partly declared unconstitutional inasmuch as it makes imposition of penalty equivalent to 50 per cent of the value of the goods as mandatory. However, the State shall be free to introduce provision for imposition of appropriate penalty for non-compliance of sub-sections (2) and (4) of the Section 14-B.

Ratio Decidendi:

Sub-section (6)(ii) of Section 14-B also provides for detention of the goods if the owner or the person-in-charge of the goods fails to submit the documents, as mentioned in sub-sections (2) and (4), at the nearest Check Post or I.C.C. on his entry into or exit from the State. The detention of the goods till the final adjudication of the matter may appear to be a bit harsh, but on that ground alone the provision cannot be declared unconstitutional because the object underlying it is to prevent the evasion of tax and a person, who fails to produce the required documents prima facie showing the genuineness of the transaction, cannot complain of hardship or seek invalidation of a provision which is Otherwise constitutionally valid.

Section 14-B(7)(iii) is founded on the assumption that the person carrying the goods without the relevant documents is guilty of evading the tax. Ordinarily, no exception could have been taken to such a provision, but the mandatory imposition of penalty equivalent to 50 per cent of the value of the goods irrespective of the fact that the goods may not be liable to tax makes the provision unconscionable.

Observations of the Court

"The State cannot enact a law or make an amendment for imposing even a reasonable restriction on the freedom of trade, commerce or intercourse in public interest without seeking prior Presidential sanction."[35]

[35] Paragraph 24, Judgement Text

Baby v. Addl. Sales Tax Officer

[2002] 126 STC 368 (Ker), MANU/KE/0021/2002

High Court of Kerala

Decided on: 10.01.2002

Judges: K.S. Radhakrishnan and K. Balakrishnan Nair, JJ.

Articles and Schedules of the Constitution of India - Articles 14, 19(1), 38, 39, 301, 302, 303(2) and 304

Brief Facts:

Government of Kerala in exercise of its power under Section 10 of the Kerala Sales Tax Act granted exemption and reduction in the rates of sales tax for several dealers and on different goods. By S.R.O. No. 1090/99. Government of Kerala granted exemption to poultry farmers within the State of Kerala on their turnover of sale of poultry reared by them in their own farm within the State and sale of meat obtained therefrom. By S.R.O. No. 291/2000, and said exemption has been extended to all farmers within the State of Kerala on the turnover of sale of poultry reared by them in their own farm in the State. According to the petitioner, by the said notification exemption is restricted and limited to only poultry farmers within the State of Kerala while the poultry farmers having poultry farms in other States like State of Tamil Nadu are denied exemption in respect of sale of poultry reared by them in their own farm at Tamil Nadu. According to the petitioner, he is a duly registered dealer under the Central Sales Tax Act on the file of the first respondent in respect of live chicken, chicken meat, rice and poultry feeds. Petitioner submitted return for the month of October 2000, before the first respondent declaring total turnover of Rs. 21,60,000. He claimed exemption for the said turnover on the ground that sale was on the chicken reared by him in his own poultry farm in the State of Tamil Nadu.

Issue Involved:

Whether the court could declare as unconstitutional and void and quash or set aside the words and part of notification "within the state" after the words "poultry framers" in column 2 and the words "within the State" after the words "turnover of sale of poultry reared by them in their own farm" in column 3 of the notification, by the Issue of an appropriate writ, direction or order?

Summary of The Arguments:

The counsel for the petitioner contended that non-granting of exemption to petitioner is violative of Article 14 or 304(a) of the Constitution of India.

Decision:

The court dismissed the appeal for the lack of infirmity in the notification as alleged by the appellants.

Ratio Decidendi:

Not being a fundamental right, the infringement of Article 301 cannot be challenged under Article 226 of the Constitution on the ground that it violates Article 19(1)(g) of the Constitution of India. Article 304 of the Constitution enables the State Legislature to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

Observations of the Court:

"… the general rule of freedom of trade and intercourse is enunciated in Article 301, it may be subject to restrictions imposed by law under Articles 302 and 303(2) and by State Legislature under Article 304, subject to the limitations prescribed by Articles 302 and 304 respectively. Power of the Union or State to exercise legitimate regulatory control is independent of the restrictions imposed by Articles 302 and 305."[36]

[36] Paragraph 2, Judgement Text

Bharat Earth Movers Ltd., rep. by its Dy. Gen. Manager Finance, Sri. D. Bhattacharya and etc. etc. v .The State of Karnataka, rep. by Principal Secretary to Government, Finance Department, Govt. of Karnataka, The Commissioner of Commercial Taxes and Deputy Commissioner of Commercial Taxes and etc. etc.

2007 (3) MPHT 69, MANU/KA/7216/2007

High Court of Karnataka

Decided on: 29.03.2007

Judges: D.V. Shylendra Kumar, J.

Articles and Schedules of the Constitution of India: 14, 301, 302, 303 and 304

Brief Facts:

Writ petitioners are all persons who come within the definition of 'assessee' as defined under Section 2(1)(a) of the Karnataka Special Tax on Entry of Certain Goods Act, 2004 [Karnataka Act No. 29 of 2004] [for short, the Act], who are complaining of the liability for payment of tax created in terms of the charging Section - Section 3[37] - of the Act. The petitioners vehemently contended that the levy of such a tax directly on goods brought from outside the state and when it enters any local area is in the nature of a restriction or curb placed on the inter-State movement of goods in violation of the mandate of Article 301 of the Constitution of India and therefore is unconstitutional.

Issue Involved:

Whether Section 3 of the Act is unconstitutional?

Summary of The Arguments:

The learned Senior Counsel contended on behalf of the petitioners:

a) That Section 3 of the Act brings about discrimination in the matter of levy of entry tax on the value of goods notified by the State Government, which are

[37] "Levy and collection of tax- (1) Subject to other provisions of this Act, there shall be levied and collected a tax on the entry of any notified goods into any local area for consumption, use or sale therein, on the value of the notified goods at the rate specified in respect of such goods under the Karnataka Sales Tax Act. (2) The tax shall be payable by an importer in accordance with the provisions of this Act or the rules made thereunder."

brought into a local area from outside the state vis-a-vis similar goods entering the local area from within the state.

b) Levy of this nature per se is discriminatory and is therefore violative of Article 304(a) of the Constitution of India and unless it is demonstrated by the State that such a levy is not discriminatory and unless it is so demonstrated under the provisions of the very enactment, levy remains discriminatory and even if it is demonstrated that such levy may bring about parity in the matter of taxation by pointing out to the levies imposed under the other enactments on goods of similar nature, the requirement of Article 304(a) is not met and therefore the stand of the state that in the present case, the levy of entry tax under the Act on the goods imported from outside the State into the local area is only for bringing about a parity in the matter of levy of tax on similar goods brought into the local area from within the state, as prior to the goods being brought into the local area from any other place within the state, such goods would have suffered levy of sales tax under the Karnataka Sales Tax Act [for short, KST Act] and therefore, brings about parity and is not discriminatory, is not tenable, as the discriminatory effect is not avoided by the working of the provisions of the same enactment.

c) Even if it is shown that the levy is not discriminatory, it has to always necessarily comply with the requirements of Article 304(b) of the Constitution, inclusive of the proviso to this Article and in the present case, the state having not demonstrated that the levy is a regulatory levy and further the requirement of proviso to Sub-article (b) of Article 304 of the Constitution also being not satisfied, the provision is unconstitutional.

d) That the charging Section having not authorized the State Government to Issue notification notifying the goods in respect of which the levies can be imposed and collected, the Act is unworkable and the charging section fails.

Essential defence put forth on behalf of the State is that the levy is in the nature of a compensatory levy and therefore it is out of the purview of Part-XIII of the Constitution of India itself. It is contended in this regard that the revenue raised from the levy of tax of this nature on the importers is broadly equivalent to the value of the facilities such as roads, lighting facility, drainage etc., provided to the importers; that providing such facilities costs considerable amount to the State; that it is estimated that

30% of such facilities are availed of by persons like the petitioners who are assessees under the provisions of this Act and as the estimated revenue from the Act being broadly equivalent to 30% of the total expenditure incurred by the State for providing such basic essential facilities, the levy is more in the nature of a compensatory levy and therefore, it cannot be said to be either a discriminatory levy or an impeding levy.

Decision:

The provisions of the Act, particularly Section 3 of the Act are declared to be in contravention of Sub-articles (a) and (b) of Article 304 of the Constitution of India and therefore violative of Article 301 and accordingly declared to be unconstitutional.

Ratio Decidendi:

Where levy of tax under taxing statute reasonable is a reasonable restriction and in public interest and has obtained the previous sanction of the President in terms of the proviso is not considered as unconstitutional.

Observations of the Court

"… a levy which is exclusively for meeting a special service or benefit to the tax payer is not even in the nature of a tax or a general levy and is more akin to the tax payer receiving the service from the state paying for it."[38]

[38] Paragraph 72, Judgement Text

Dinesh Pouches Ltd. v. State of Rajasthan and Ors.

(2008) 16 VST 387(Raj), MANU/RH/0811/2007

High Court of Rajasthan

Decided on: 21.08.2007

Judges: Rajesh Balia and Manak Mohta, JJ.

Articles and Schedules of the Constitution of India: 301 and 304(b).

Brief Facts:

The petitioner is a manufacturer of "sada pan masala", mixed with tobacco in the brand name of Geetanjali, Zafri 2100 Gutkha, etc. The petitioner as a manufacturer is subject to excise duty and is also liable to sales tax under the State sales tax or Central sales tax, as the case may be, in respect of the transactions of sale entered by it. Vide impugned notification dated January 3, 2001, "zarda mixed pan masala including gutkha and churi" was added to the list of commodities on which the levy of tax under the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 was extended. The petitioner is aggrieved with the levy of tax under the Act of 1999 on its product when its brand is carried into local area of State of Rajasthan for use, consumption or sale within such local area. He has challenged the constitutional validity of the Act of 1999, and the aforesaid notification Issued thereunder. Amongst other grounds, the petitioner has challenged the levy being ultra vires Article 301 under Chapter XIII of the Constitution of India.

Issue Involved:

Whether the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 is violative of Article 301 of the Constitution?

Decision:

The impugned tax under the Act of 1999 is not compensatory in nature. It being a tax on activity of movement of goods, it results in directly impeding the free movement of trade, commerce and intercourse in terms of Article 301 of the Constitution. The Act of 1999 having been enacted by the State Legislature and admittedly not enacted after following the procedure laid down under Article 304(b), does not satisfy the test of

legislative competence in terms of restrictions imposed in Chapter XIII and must be held to be hit by Article 301 and ultra vires.

Ratio Decidendi:

The cumulative effect of the aforesaid provisions leave no room of doubt that the tax in question is directly on the activity of movement of goods from outside any local area to within its local limit for use, consumption or sale therein and has an effect of directly and immediately impeding the free movement of goods. There being no element of collection of tax with any purpose of providing specific identifiable benefit to trade and commerce within the local area as distinct from general benefit, which anyone else otherwise may also derive as a citizen of that area from various governmental activities, the tax cannot fall within the category of compensatory tax.

Such tax being not compensatory can only be saved if the law is made in accordance with the provisions of Article 304(b) and if the Act has been properly enacted, it satisfies the test of its reasonableness. The tax being not on the import of the goods out of the State, Clause (a) of Article 304 has no operation in the present case.

Summary of The Arguments:

The learned Counsel for the respondents have urged that the provisions of the impugned Act are not violative of Article 301 and do not apply for holding it to be regulatory and compensatory tax.

Observations of the Court

"… tax on entry of goods within the local area for use, consumption or sale therein is primarily a revenue of general nature collected for the general purpose of the institution of self-governance administering the local area under it, in the absence of any indication that it has been levied with specific object of providing identifiable facilities to the trade and commerce."[39]

[39] Paragraph 70, Judgement Text

Eagle Corporation Pvt. Ltd. V. State of Gujarat and 3 Ors.

(2007) 1 GLR 213, MANU/GJ/8497/2006

High Court of Gujarat

Decided on: 10.10.2006

Judges: R.S. Garg and M.R. Shah, JJ.

Articles and Schedules of Constitution of India - Articles 14, 19, 226, 301, 303 and 304.

Brief Facts:

By this writ petition under Article 226 of the Constitution of India, petitioner seeks to challenge the provisions of Gujarat Tax on Entry of Specified Goods for the Local Areas Act, 2001 (Entry Tax Act) [hereinafter referred to as 'the Act'] as ultra vires the Constitution of India being violative of Articles 301 and 304 of the Constitution of India. The petitioner also seeks to challenge the notices Issued by the respondents No. 3 and 4 dated 24th March 2004, 1st April 2004 and 27th May 2004 to the petition by which the petitioner is called upon to produce the certificate with regard to payment of entry tax.

Issue Involved:

Whether the provisions of Gujarat Tax on Entry of Specified Goods for the Local Areas Act, 2001 (Entry Tax Act) [hereinafter referred to as 'the Act'] are ultra vires the Constitution of India, being violative of Articles 301 and 304 of the Constitution of India?

Decision:

It was held that, levy of Entry Tax is neither discriminatory between the goods so imported and goods so manufactured or produced in a local area, the challenge to the constitutional validity of the Gujarat Tax on Entry of Specified Goods for the Local Areas Act, 2001 (Entry Tax Act) and the levy of Entry Tax therefore fails.

Ratio Decidendi:

It appears from the Statement of Objects that, due to the difference in the rate of sales-tax applicable to the State of Gujarat and the neighbouring States, diversion of trade has

taken place and in some cases sales-tax payments are affected or evaded by various methods and the same results in the loss of revenue legitimately due to the State of Gujarat, and with a view to compensate such loss of sales-tax revenue, it is considered necessary to levy a tax on entry of certain specified goods produced/manufactured outside the State and brought into the local areas of the State of Gujarat. Section 4 provides for reduction of tax liability and the Entry Tax is reduced to the extent of the amount of tax paid, if any, under the law relating to sales-tax as may be in force in any other State or Union Territory and/or by an importer who had purchased the specified goods in another State and/or reduced to the extent of amount of tax paid if any under the Central Sales Tax, 1956. Considering the Schedule appended thereto that the rate of Entry Tax provided for each specified goods is maximum upto 12%. Thus, considering the provisions of the Act, if the rate of sales-tax on specified goods in the State of Gujarat is 12 per cent and rate of sales-tax payable by the importer in a particular State is 4%, and if an importer in fact pays sales-tax and/or central sales-tax at the rate of 4%, then, in that case, while importing the specified goods into the State of Gujarat/local area, such an importer is required to pay the entry tax at the rate of 8%. It is required to be noted that, so far as the liability of sales tax on local person is concerned, it is 12 per cent. Thus, when an importer who has paid 4% of sales-tax in a particular State while importing the goods in the State of Gujarat is required to pay Entry Tax at 8 per cent which puts such importer at par with the local persons.

Summary of The Arguments:

The Counsel on behalf of the petitioners submitted that the Entry Tax is violative of Article 301 of the Constitution because tax is imposed on importer of specified goods from other States into local area in the State of Gujarat, which hampers free flow of trade from one State to another State. It was further submitted that to compensate the loss of sales tax revenue to the State, an entry tax couldn't be justified on the ground that it is compensatory tax. Therefore the levy was only on imported goods and not on local goods entering into local area, the same was a clear discrimination between importers and local dealers and therefore, it is violative of Article 304(a) of the Constitution.

The learned Advocate General, while opposing the present Special Civil Application, has submitted that imposition of Entry Tax is neither discriminatory as alleged nor is in violation of Article 301 and/or Article 304 of the Constitution.

Observations of the Court:

"… if the levy of tax is found to be non-discriminatory, in that case, previous sanction of the President is not required."[40]

[40] Paragraph 10, Judgement Text

Eastern Safety and Anr. v. State of Bihar through The Director General-cum-Inspector General of Police and Ors.

2004 (2)BLJR 976, [2005] 142 STC 341 (Pat), MANU/BH/0099/2004

High Court of Patna

Decided on: 06.04.2004

Judges: Nagendra Rai and S. Nayar Husain, JJ.

Brief Facts:

Petitioner No. 1 is a partnership firm and petitioner No. 2 is one of its partners and they have filed the present writ application for quashing Condition No. 1 in Tender Notice No. 10/2003-2004, Issued by respondent No. 3 Deputy Inspector General of Police (Provision). Old Secretariat, Patna, published on 31.7.2003, in the English daily Newspaper, namely, 'Hindustan Times', prescribing obtaining of Sales Tax Registration in Bihar as a condition precedent for submitting tender. On 31.7.2003, an advertisement was Issued by respondent No. 3 for supply of various articles, including Hunter Shoe, P. T. Shoe and Gum Boot being item Nos. 1, 2 and 3 respectively, of the said advertisement. In pursuance of the said tender, the petitioners submitted their tender papers on 22.8.2003. They have appointed one Agent M/s. Amit Traders, A/32. Ganga Apartment, Mainpura, Patna, having its business in the State of Bihar for effectuating supplies in terms of the tender notice. Said M/s. Amit Traders is registered under the provisions of the Bihar Finance Act, 1981, bearing registration No. PTW-4387 (R). On 10.1.2004, the Deputy Inspector General of Police (Provision), Bihar (respondent No. 3) informed petitioner No. 1 and other tenderers to be present on 16.1.2004 before the Central Purchase Committee. However, on that day the meeting of the said Committee could not be held and the tenderers were asked to come on 17.1.2004. On 17.1.2004, price bids of other tenders, whose technical bids were approved by the Central Purchase Committee, were opened. However, as the petitioner's tender did not confirm to Condition No. 1 of the Tender Notice, which was incorporated in terms of the Stores Purchase Preference Policy, 2002, their tender was rejected by the Central Purchase Committee on 17.1.2004. According to Condition No. 1 of the Tender Notice, the manufacturers or their authorised agents, registered with the Commercial Taxes Department, can only submit tenders with regard to the articles mentioned in the advertisement. The authorised seller/Agent has to submit the authorisation slip/letter from the manufacturer.

Issue Involved:

Whether Condition No.1 of the Tender Notice is arbitrary and violative of Article 19(1)(g) as well as Articles 301 and 304 of the Constitution of India?

Decision::

Condition No. 1 in the Tender Notice has been made in public interest and there is no total prohibition so far as the manufacturers from outside the State are concerned in submitting tenders. If they are already having registration in the State of Bihar, then they are eligible to participate in the tenders and in case of having no registration, they can apply through authorised agents or dealers who are registered under the provisions of the Bihar Finance Act with the Commercial Taxes Department, Bihar. Thus, the condition is not hit by Article 301 nor is in breach of Article 304(1)(a) of the Constitution.

Ratio Decidendi:

The condition has been put to protect the manufacturing units within the State of Bihar inorder to accelerate the industrial growth and to have a uniform rate of sales tax.[41]

Summary of the Arguments:

Learned counsel for the petitioner raised two points; firstly that the mandatory condition of registration of the manufacturing units located outside the State of Bihar under the provisions of the Bihar Finance Act puts unreasonable restrictions/prohibition on their right to carry trade and commerce and, thus, is violative of Article 19(1)(g) of the Constitution of India and; secondly that the said condition is violative of Article 301 and is not saved by Article304(a) of the Constitution, which authorises the Legislature of the State to impose on goods imported from other States and tax to which similar goods manufactured or produced in that State are subject, without making any discrimination between the goods imported and goods manufactured and produced in the State.

Learned counsel appearing for the State combated both the submissions and submitted that the said condition is not violative of any of the Articles of the Constitution. Tax on sale of goods is not an impediment in the free flow of trade and business and is not violative of Article 301 of the Constitution.

[41] This is derived from the Preference Policy which reads- "In order to obviate any loss to local industries arising out of tax differegnces prevailing in other States as well as to ensure uniform tax compliance, in all the tenders called by each Government, Department, there will be a mandatory provision that units located in Bihar or Corporate offices' local agent/authorised dealer of the manufacturing units located outside the State and registered with the Commercial Taxes Department Bihar only can participate."

Observations of the Court

"The Constitution of India is not a static document, but it is an organic document and the meaning of the expressions used therein cannot be read in insolation and it is to be read with a view to achieving the object as provided in the Constitution. The meaning of the expressions has to be given in the context of the requirement of the changing situation. The Constitution provides for growth of society economically politically and socially and in the context interpretation not only meets the present situation but also takes into account the future contingencies, that might arise in a developing organism"[42]

[42] Paragraph 14, Judgement Text

Indian Oil Corporation Limited v. State of Haryana and Anr.

(2009)21VST10(P&H), MANU/PH/1077/2008

High Court of Punjab and Haryana

Decided on: 01.10.2008

Judges: Adarsh Kumar Goel and Ajay Tewari, JJ.

Brief Facts:

This petition seeks declaration to the effect that the Haryana Tax on Entry of Goods into Local Areas Act, 2008 (hereinafter referred to as, "the 2008 Act") is unconstitutional and void. On May 5, 2000, the State of Haryana Issued the Haryana Local Area Development Tax Ordinance, 2000 (Ordinance No. 10 of 2000). The Haryana Local Area Development Tax Act, 2000, replaced the Ordinance. On April 16, 2008, the State of Haryana repealed the 2000 Act and enacted the Haryana Tax on Entry of Goods into Local Areas Act, 2008, impugned in the present petition. According to the petitioner, the said Act was unconstitutional, being violative of articles 301 and 304 of the Constitution as the tax levied therein was not compensatory.

Issue Involved:

Whether the provisions of the Haryana Tax on Entry of Goods into Local Areas Act, 2008 are constitutional?

Decision:

In absence of any estimate of services to be provided or projected to be provided, in accordance with the purposes which may make the levy to be compensatory in character under Article 301 of the Constitution, the 2008 Act has to be held to be unconstitutional. Section 25[43], is thus, the key provision for determining the question whether the entry tax

[43] Section 25 provides for utilisation of proceeds of levy which are to be appropriated to a fund to be notified by the Government for development or facilitating trade, commerce and industry. Trade, commerce and industry have been given inclusive meaning in Section 25 to include construction, development and maintenance of roads and bridges for linking the market and industrial areas; construction, development and maintenance of roads linking the markets and industrial areas to railway stations; construction, development and maintenance of railway over-bridges; providing finance, aids, grants and subsidies to financial, industrial and commercial units; creating infrastructure for supply of electricity and water to industries and other commercial establishments; creating development and maintenance of other infrastructure for the furtherance of trade, commerce and industry in general; providing finance, aids, grants and subsidies for creating, developing and maintaining pollution-free

sought to be levied is compensatory in nature and is, thus, saved under article 304 of the Constitution. In our view, levy cannot be held to be compensatory in character if the object is to create a fund for purposes specified in Section 25 of the Act. The provision of Section 25 of the present Act, though worded slightly different from Section 22 of the 2000 Act, in substance, does not change the character of levy.

Ratio Decidendi:

Taxes, which would otherwise interfere with the unfettered freedom under article 301, will be protected from the vice of unconstitutionality if they are compensatory. Compensatory tax- the levy has to be for reimbursement of actual or projected expenditure. Section 25 fails to meet the facial test, as there is no quantifiable data on the basis of which the nature of tax can be held to be compensatory. There is no quantifiable or measurable benefit. Provisions are clearly ambiguous and are of the nature of general development.

Summary of The Arguments:

Contention raised on behalf of the petitioner is that the 2008 Act is in substance re-enactment of the 2000 Act and suffers from the same vice as its predecessor. Provision (Section 25 in case of the 2008 Act; Section 22[44] in the 2000 Act- old Act) for validation of the tax collected also suffers from the same vice as the old Act held to be violative of articles 301/304 of the Constitution. The learned Counsel appearing on behalf of the State opposed the submission on behalf of the petitioners and submitted that the 2008 Act had remedied the defects pointed out in the judgment of this Court and the levy under the new Act was compensatory in nature. As against the rate of 10 per cent, the rate now notified was two per cent. State has defended the validity of the Act by submitting that the State Legislature had necessary competence under entry 52, List II of the Seventh

environment in the concerned areas; any other purpose connected with the development of trade, commerce and industry or for facilities relating thereto which the State Government may specify by notification ; and providing finance, aids, grants and subsidies to local bodies and Government agencies for the purposes specified in the said section.

44 S.22 lays down "Utilisation of proceeds of tax.-The tax collected under this Act shall be utilised by the State Government through the local bodies in such manner that a substantial portion of the tax collected, not less than sixty per cent is utilised for development facilitating free-flow of trade and commerce of the payers of the tax individually or as a class.

Explanation- In this section development facilitating free-flow of trade and commerce' means developing and maintaining infrastructure facilities facilitating the free-flow of trade and commerce such as roads, bridges, culverts, sewerage, drainage, sanitation, waste management, electricity, drinking water and other infrastructure facilities."

Schedule to the Constitution. The levy provided under the Act was to facilitate trade and commerce in the State and the said levy was facially and patently compensatory in character and no violation of article 301 or 304 was involved.

Observations of the Court:

"Mere mention of words "exclusively for development or facilitating trade, commerce and industry" is not enough to satisfy the test laid down for holding the levy to be compensatory in character."[45]

[45] Paragraph 18, Judgement Text

Ghodawat Pan Masala Products (I) Ltd. v. State of Karnataka and Ors.

ILR 2002 KAR 4170, [2003] 130 STC 276 (Kar), MANU/KA/0777/2002

High Court of Karnataka

Decided on: 12.08.2002

Judges: P. Vishwanatha Shetty, J.

Brief Facts:

On 23rd January 2001, Government of Karnataka promulgated Karnataka Ordinance No. 3 of 2001 introducing amendment to the Karnataka Tax on Luxuries Act, 1979 (hereinafter referred to as "the KTL Act"). However, the said Ordinance was replaced by Karnataka Act No. 2 of 2001. Section 2(6-B) of the KTL Act provides for the definition of "stock of luxuries". By means of the said amendment made, to the definition of stock of luxuries, the stock held as on 1st April, 2000, on which tax under the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the KST Act") has been paid or has become payable was excluded. Further, Section 4-B of the said Act, which is also the charging section, was amended prescribing levy of luxury tax on gutka even if the entry tax on gutka has been levied or has become leviable under the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as. "the KTEG Act"); and the Schedule to the said Act was also amended by taking gutka out of Sl. No. 2 of the Schedule which prescribed only 4 per cent of tax and specifying it separately at Sl. No. 3 of the Schedule with the prescription of rate of luxury tax at 20 per cent. Subsequent to the said amendment, amendments were also introduced to the KTL Act by means of Karnataka Act No. 5 of 2001 which came into force with effect from 1st April, 2001. The said amendment provides that the entries relating to Sl. No. 2, as it existed prior to 23rd January, 2001, the word "gutka", is deemed to have been omitted with effect from 1st April, 2000 and after the entries relating to Sl. No. 2 as it existed prior to 23rd January, 2001 column 3 providing for a word "gutka" deemed to have been in force up to 22nd January, 2001 with tax leviable at 20 per cent. The effect of the said amendment is to provide for levy of 20 per cent of luxury tax retrospectively on gutka from 1st April, 2000 to 22nd January, 2001.

Issue Involved:

Whether the levy of luxury tax at the high rate of 20 per cent on the stocks of gutka which are brought from outside the State of Karnataka is violative of the right to freedom of trade, commerce and intercourse throughout the territory of India guaranteed under Article 301 of the Constitution of India?

Decision:

It was held that levy of luxury tax on "turnover of stock of luxuries" held by a "stockist" will not in any manner interfere with the freedom of trade, commerce and intercourse guaranteed to the petitioner under Article 301 of the Constitution of India.

Ratio Decidendi:

Levy of luxury tax at a maximum rate on the turnover of stock of good irrespective of the source of acquisition, in my view cannot be treated as impinging the right to free trade, commerce and intercourse guaranteed throughout the country. The combined reading and the language employed in Sections 4-B, 2(6-B), 2(6-C), 2(8) and 2(9) make it clear that the levy of luxury tax on the "turnover of stock of luxuries" held by a "stockist" will not amount to imposing any restrictions for free movement of trade, commerce and intercourse throughout the territory of the country as guaranteed under Article 301 of the Constitution of India.

Summary of The Arguments:

The learned Senior Counsel submitted that the levy of luxury tax at the high rate of 20 per cent on the stocks of gutka, which are brought from outside the State of Karnataka, is clearly violative of the right to freedom of trade, commerce and intercourse throughout the territory of India guaranteed under Article 301 of the Constitution of India. Elaborating this submission they pointed out that even if the levy of luxury tax as has been levied is considered as a reasonable restrictions imposed on the freedom of trade, commerce or intercourse in public interest, since neither the previous nor subsequent sanction of the President of India has been obtained as required under proviso given to Article 304(b) of the Constitution, the said provision is not saved and therefore it is liable to be struck down on the ground that it does not have the protection under Article 304(b) of the Constitution.

The learned Advocate-General along with the learned Government Pleader, strongly countered each one of the submissions advanced by learned counsel appearing for the petitioners. He submitted that since the luxury tax imposed does not interfere with the freedom of trade, commerce and intercourse throughout the territory of India, it was wholly unnecessary to satisfy the requirements of Article 304(b) of the Constitution of India. He submitted that reading of Section 4-B along with Sub-section (6-B), Sub-section (6-C) and Sub-section (9) of Section 2 of KTL Act makes it clear that the tax is imposed on the stock held by a stockist and not on supply or sale or purchase of goods. Elaborating this submission, he pointed out that Sub-clauses (i) to (iii) of Section 4-B of the KTL Act make it clear that no luxury tax is leviable on the value of stock of luxuries: (i) dispatched to places outside the State; (ii) on which sales tax has been paid or become payable; (iii) on which the luxury tax has already been paid or become payable. Therefore, it is his submission that the combined reading of Sub-section (3) of Section 4-B and Section 2(6-B) and 2(6-C) and 2(9) will confirm the position that the luxury tax is levied not on the sale or purchase of luxury goods in any year, but only on the basis of value of stock held by a stockist. It is his submission that stock connotes a state of rest as opposed to movement and the effect on the movement of goods on account of levy of luxury tax is not affected. He also pointed out that as a matter of fact the increase in the rate of tax has not restricted or adversely affected the trade and free movement of goods. According to him, the available statistics show that the volume of trade is on increase even after higher levy of luxury tax. He also submitted that the levy of luxury tax at 20 per cent is uniform irrespective of the fact that whether gutka held in stock is of local origin or sources from outside Karnataka; and there is no discrimination between locally purchased/ produced gutka and gutka brought from outside the State.

Observations of the Court:

"Any expenditure incurred on something, which is not of necessity and which is in excess of what is required for economic and personal well being, would be an expenditure of luxury. The number of people who consume an item, need hot always necessarily be a factor to decide whether an item consumed by the people is an item of necessity or luxury. The test, is, whether the article in question is an article of need or necessity for day-to-day living."[46]

[46] Paragraph 7, Judgement Text

Good Year India Limited and Anr. v. The State of Haryana and Anr.

(1997) 116 PLR 252, MANU/PH/0777/1996

High Court of Punjab and Haryana

Decided on: 11.12.1996

Judges: G.S. Singhvi and B. Rai, JJ.

Brief Facts:

These petitions, in which orders passed by the Assessing Authority for assessment years 1973-74 to 1977-78 and the demand notices Issued for recovery of purchase tax, constitute a part of the series of litigation between the parties. The petitioner No. 1 purchases raw-material such as rubber and chemical headwares etc. either within the State of Haryana or from outside the State of Haryana for its manufacturing activities. Manufactured goods are despatched to the various depots of the petitioner situated within and outside the State of Haryana. It is registered under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as 'the State Act') and the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act'). The levy of purchase tax on raw materials purchased by the petitioner has been challenged to be ultra vires to Section 9 of the State Act.

Issue Involved:

Whether Section 9 of the State Act is violative of Article 301 of the Constitution?

Decision:

The court held that there was no merit in the challenge to the provisions of Section 9 of the State Act on the ground of violation of Article 301 of the Constitution.

Ratio Decidendi:

The object of the impugned provisions is to tax the purchase of raw-material by the manufacturer which is used in the manufacture of goods. The law does not tax the sale of the manufactured goods or the despatch of the goods. Therefore, the impugned levy does not impede, hamper or obstruct the free flow of trade or commerce. The stage

at which actual collection of tax is made may be postponed till the goods manufactured by the petitioner No. 1 are disposed of but that does not alter the nature of the tax.

Summary of The Arguments:

The learned counsel for the petitioner Shri R.R. Aggarwal confined his submission qua the challenge to the impugned notices and orders passed by the Assessing Authority. One of the contentions urged by Shri Aggarwal relates to the constitutional validity of purchase tax. Learned counsel argued that the levy of purchase tax interferes with the free trade and commerce and it is, therefore, ultra vires to the provisions of Article 301 of the Constitution. Shri Aggarwal submitted that the State of Haryana did not seek the sanction of the President as required by Article 304 (b) of the Constitution and, therefore, the levy of purchase tax is not saved by that Article.

Observations of the Court:

"The principle of law which emerges from the aforementioned Decision is that the tax imposed by the State would become ultra vires to Article 301 only if it directly impedes the free movement of goods within or outside the State. If the tax is on the sale of goods and the movement is only incidental or in consequence of sale the imposition of tax cannot be treated as ultra vires to Article 301 of the Constitution."[47]

[47] Paragraph 20, Judgement Text

Grand Azad Hind Transport Co .v. State of West Bengal

2002 (4) CHN 681, MANU/WB/0506/2002

High Court of Calcutta

Decided on: 11.03.2002

Judges: Pranab Kumar Chattopadhyay, J.

Brief Facts:

The petitioner herein has challenged the validity of the West Bengal Additional Tax and One-Time Tax on Motor Vehicles (Amendment) Act, 1992 on the ground that no previous sanction of the President was obtained before introducing the Amendment Bill in the Legislative Assembly.

Issue Involved:

Whether the West Bengal Additional Tax and One-Time Tax on Motor Vehicles (Amendment) Act, 1992 is unconstitutional?

Decision:

In the present case the provisions of the Amendment Act do not infringe the guarantees under Article 301 of the Constitution of India. Therefore the question of offending the provisions of Article 304(b) in the instant case does not arise.

Ratio Decidendi:

The provisions of the Amendment Act only imposed compensatory taxes for facilitating trade, commerce and intercourse. Furthermore, none of the provisions of the Amendment Act directly impede the movement of goods or the free-flow of trade.

Summary of The Arguments:

The learned Advocate of the petitioner submits that the said Amendment Act is invalid as the same offends the provisions of Article 301 read with Article 304(b) of the Constitution of India.

The learned Advocate appearing on behalf of the respondents, however, submits that the sanction of the President was not necessary for the amending Act as the principal Act had the sanction of the President (relying on Piasmac Machine Manufacturing Co. Pvt. Ltd. v. Collector of Central Excise[48]). Learned Advocate of the respondents also submitted that the imposition of additional tax on the vehicles of the petitioners is compensatory in character. The learned Advocate of the respondent State specifically submitted that the trailors which carry heavy loads more than carried by local trucks, mini-trucks, 3 wheelers etc. cause considerable stress on the roads and considerable increase in the cost of repair and maintenance of roads. The learned Advocate of the State further submitted that the State Legislature for the aforesaid reasons has felt it necessary to bring the trailors under the ambit of the said Tax Act and accordingly the West Bengal Additional Tax and One-Time Tax on Motor Vehicles (Amendment) Bill, 1994 has been passed by the West Bengal Legislative Assembly.

Observations:

"… enhancement of the existing tax normally cannot offend the provisions of Article 301 of the Constitution of India."[49]

[48] MANU/SC/0231/1991

[49] Paragraph 10, Judgement Text

Harinagar Sugar Mills Ltd. and Anr. v. The State of Bihar and Ors.

2003 (2) BLJR 1091, MANU/BH/0120/2003

High Court of Patna

Decided on: 25.04.2003

Judges: Nagendra Rai and R.S. Garg, JJ.

Brief Facts:

The factual matrix lies in a narrow compass. The petitioner-companies are engaged in the business of manufacturing sugar by vacuum pan process. It is registered under the provisions of the Central Sales Tax Act and also under the provisions of the Bihar Finance Act. The raw material used in the sugar factory is sugarcane besides other raw materials like lime, sulphar, etc. The Companies purchase certain manufactured goods namely goods made out from iron and steel, pipes, electrical fittings, coal, paints etc. from outside the State of Bihar in course of interstate sale after payment of Central Sales, Tax for the purposes of fitting or fixing or installation in the factory or factory premise and which ultimately become fixed capital assets of the companies. The aforesaid purchased goods are neither consumed nor used as raw material for the manufacture of new commodity nor for sale to any other person. The said goods were not included in the schedule of the Act leviable to pay entry tax. Later on, twelve items including the goods purchased by the petitioners have been included in the schedule by the Amending Act and a notification under Section 3 (1) of the Act has also been Issued prescribing rates of entry tax, restrictions and conditions regarding the same.

Issue Involved:

Whether the Act is void and inoperative on the ground that nothing was produced on behalf of the State to show that the tax under the Act is either compensatory or regulatory in nature and, thus, the levy was held to be impeding the freedom of trade, commerce or intercourse guaranteed by Article 301 of the Constitution.

Decision:

The Act is not hit by Article 302 of the Constitution. Article 304(a) has no application at all in this case.

Ratio Decidendi:

There is no discrimination regarding entry of the goods from local areas inside the State and outside the State.

Tax imposed under the Act is compensatory in nature and as such it is outside the purview of Article 301 of the Constitution. There was no requirement in law in terms of proviso to Article 304(b) of the Constitution to take previous assent of the President at the time of amendment.

The tax has been held to be compensatory in nature and as such the same do not contravene Article 301 of the Constitution, thus, question of meeting the requirement of Article 304(a) of the Constitution for saving it does not arise.

Summary of The Arguments:

The Principal Act has received the assent of the President in terms of proviso to Article 304(b) of the Constitution of India, whereas, the Amending Act has been enacted without the previous assent and as such it is violative of said Article 304(b). There is discrimination in the mater of goods purchased or manufactured at a place inside the State or from any place outside the State and as such the same is violative of Article 304(a) of the Constitution. Lastly, he submitted that under the Scheme of the Act, the liability to pay entry tax will arise only when the entry of the scheduled goods is either for the purposes of use or consumption, which would involve conversion of the commodity into a different commercial commodity by subjective it to some processing or for sale for use and consumption. The petitioners purchased the articles for the purposes of fitting or fixing or installation in the factory or factory premises and they neither sold the aforesaid goods nor did they convert the aforesaid goods into different commercial commodities and since there is no use or consumption of the aforesaid commodities, the provisions of the Act are not attracted in their cases.

Learned Counsel for the State submitted that the tax levied under the Act is not a sales tax, on the other hand, it is compensatory in nature and, as such Article 301 of the

Constitution is not attracted. Amending Act is not to meet the requirement of proviso to Article 304(b) of the Constitution. This apart, in view of nature of the tax under the Act, Article 304(a) of the Constitution of India is not attracted.

Observations of the Court:

"If the scheduled goods brought in the local area are not for the purpose of use or consumption or the sale for the purposes of use or consumption, scheduled goods are not liable to entry tax."[50]

[50] Paragraph 27, Judgement Text

Harivansh s/o Vallabhdasji Battad and Ors. v. State of Maharashtra and Ors.

1988(4)BomCR553, MANU/MH/0578/1988

High Court of Bombay (Nagpur Bench)

Decided on: 02.08.1988

Judges: V.A. Mohta and H.D. Patel, JJ.

Brief Facts:

In these six petitions, the validity of the Maharashtra Tribals Economic Condition (Improvement) Act, 1976 (the Act) is challenged.

Issue Involved:

Whether the Act is unconstitutional?

Decision:

The Act was held to be valid.

Ratio Decidendi:

The Act, as will be clear from the Preamble as well as the Scheme give effect to the policy of the State towards securing one of the directive principles of State policy laid down in Part IV of the Constitution (Art. 46) and hence is immune under Article 31-C from challenge under Articles 14 and 19. The restrictions imposed by the Act are reasonable in the public Interest.

There is a condition attached, that a Bill for the purpose of Article 304(b) must be introduced or moved in the State Legislature with the previous sanction of the President. The condition precedent exists.

Summary of The Arguments:

The petitioners' contention is that the Act in general and sections 5 to 8, 11 and 14 in particular are violative of Articles 14, 19(1)(g) and 304(b) of the Constitution

Observations of the Court:

"Historical truth is that for generations, Tribals have been and still continue to be weakest section of our Society and have been exploited at all fronts. Their economic interest needs promotion with social care."[51]

[51] Paragraph 5, Judgement Text

In Re: Reliance Industries Limited and Ors. etc., etc.

2008(I) OLR 620, (2008) 16 VST 85(Orissa), MANU/OR/0068/2008

High Court of Orissa

Decided on: 18.02.2008

Judges: I.M. Quddusi and A.K. Samantaray, JJ.

Brief Facts:

In these writ petitions, the petitioners have interalia challenged the validity of Orissa Entry Tax Act, 1999 (Orissa Act 11 of 1999). The Act was enacted by the State Legislative under Entry 52 of List-II of 7th Schedule to the Constitution of India, which came into force with effect from 1.12.1999.

Issue Involved:

Whether the Orissa Entry Tax Act, 1999 is constitutional?

Decision:

The Court upheld the validity of Orissa Entry Tax Act.

Ratio Decidendi:

The levy of the Entry Tax is saved by Article 304(a) of the Constitution, which empowers the State Legislature to impose tax on goods imported from outside the States provided that like goods are manufactured within the State are subjected to the similar tax.

Without the same the law enacted under Article 304(b) would not be enforceable but no such sanction of the president is required if the Legislatures of the State legislate a law imposing a tax on goods imported from other States or Union Territories to which similar goods manufactured or goods produced in that State are subjected and are not discriminated with the goods imported or manufactured or produced outside the State. Therefore, the provisions of Article 304(a) and Article 304(b) are two independent provisions and have no relationship to each other.

For imposing a levy or tax under Clause (b) of Article 304, previous sanction of

the President is required but if the levy or tax is found to be non-discriminatory between goods so imported or goods manufactured or produced within that State, it cannot be said that the State has not fulfilled the conditions imposed under Clause (a) of Article 304.

The difference between Clause (a) and Clause (b) of Article 304 is that under Clause

(a) there would be no need of previous sanction of the President whereas for Clause

(b) previous sanction of the President is necessary before imposing a tax.

Summary of The Arguments:

Dr. Debi Prosad Pal, learned Senior Advocate appearing for the petitioner, submitted that the Orissa Entry Tax Act, 1999 and the rules framed thereunder are violative of Article 301 of the Constitution. Shri Jagannath Patnaik, learned Senior Counsel appearing for the State, submitted that the impugned Act does not violate Article 301 of the Constitution and is not required to be compensatory. To sum up his arguments, he contended that-

a. the operation of the law does not affect on the movement of trade and commerce;

b. the doctrine of direct and immediate effect in Atiabari does not apply to the impugned levy;

c. the levy is not prohibitive. It does not scare away the consumers. It does not have deleterious effect on trade and commerce. The impact of the levy is negligible. No trade barrier is caused. Effect on intra-State trade and commerce and inter State trade and commerce is the same

Observations of the Court:

"If the language is rather not clear and precise, as it ought to be, attempt of the Court is to ascertain the intention of the legislature and put that construction which would lean in favour of the constitutionality unless such construction is wholly unreasonable."[52]

[52] Paragraph 23, Judgement Text

Inertia Industries v. State of Rajasthan and Ors.

MANU/RH/0262/2002

High Court of Rajasthan

Decided on: 03.07.2001

Judges: Rajesh Balia and Sunil Kumar Garg, JJ.

Brief Facts:

This writ petition has been filed to challenge the amendments brought in Rule 69-B of the Rajasthan Excise Rules vide Notification dated 2.11.99 and consequential raising of demand by the respondent vide another notification dated 19.11.99 as permit fees for bringing Indian Made beer in Rajasthan from State of Haryana.

Issue Involved:

Whether the amendment made vide impugned notification dated 2.11.99 is within the framework of law and within the authority of the State?

Decision:

The amendment made vide impugned notification dated 2.11.99 and consequential communication dated 11.11.99 requiring the petitioner to pay permit fees at the rate specified Under Rule 69-B for importing Indian made beer within the State of Rajasthan is within the framework of law and within the authority of the State.

Ratio Decidendi:

The use of alternative expression vide amendment for import and export does not signify any change in the scheme of Rule 69-B by substituting the two expressions and requiring permit fee to be paid before permit is to be Issued for importing any excisable article within the State of Rajasthan or for sending out any article from the territory of Rajasthan to another place. It only conveys State's policy to charge consideration for parting with its exclusive privilege of import of potable liquor for a consideration by issuing permit to indulge into activity of trading in IMFL or Indian Made beer, by importing these articles from outside on payment of permit fee for such import also. Charging of consideration cannot be considered an act of imposition of tax or charge of fees

There being no fundamental right to carry on business in liquor to potable drinks, it does not invite application of Article 14 or 19(1)(g) of 301 of the Constitution insofar as levy of permit fee is concerned.

Summary of The Arguments:

It was contended by the petitioner that by amending Rule 69-B, the word "import" has been substituted by word "bringing" and word "export" has been substituted by word "sending" in the Rule 69B and for issuing a permit for bringing Indian made beer within the State of Rajasthan from outside, a fee at the rate of Rs. 5 per bulk liter has been imposed, and a fee of Rs. 2 per bulk liter as permit fee for sending Indian Made Bear from the Rajasthan to any other, place in India was imposed. Prior to this, under the existing provisions of Rule 69—B alongwith its table, no permit fee for import of IMFL or Indian made beer into Rajasthan or for export of. IMFL and Indian made beer outside Rajasthan was imposed but a permit fee only for transporting Indian made beer within Rajasthan Rs. 4 per bulk liter was prescribed. The petitioner further contended that the Rajasthan Excise Act does not provide for imposition of bringing in and sending out permit fees, secondly the imposition is ultra vires the provision of Constitution of India because a fee can be imposed only in consideration of some service rendered by the State to the person from whom fee is charged.

Learned Advocate General, on the other hand, urged that right to trade in intoxicants is a monopoly and exclusive privilege of the State and the petitioners have no right at all to carry on business or trade in potable liquor, which the excisable articles in question are, it is open for the State to part with its privilege for a consideration.

Observations of the Court:

"Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration."[53]

[53] Paragraph 23, Judgement Text

ITC Limited rep. by its Constituted Attorney, Subhatosh Banerjee

v.

The State of Tamil Nadu rep. by the Chief Secretary to Government of Tamil Nadu, Secretariat and The Commercial Tax Officer

2007(2)CTC577, (2007)5MLJ897, (2007)7VST367(Mad), MANU/TN/1006/2007

High Court of Madras

Decided on: 22.03.2007

Judges: A.P. Shah, C.J. and K. Chandru, J.

Brief Facts:

Constitutional validity of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 ("Act" for short), and various notifications Issued by the State Government in exercise of the powers conferred by Section 15 of the Act is questioned in these writ petitions and connected writ appeals. Tamil Nadu State enacted the Act to provide for the levy of tax on entry of goods into local areas for consumption, use or sale therein, being Tamil Nadu Act 20 of 2001. Section 3 empowers the State Government to levy and collect tax on entry of scheduled goods into any local area for consumption, use or sale therein at such rate not exceeding 30% ad valerom, as may be specified by the State Government. Goods liable for levy of tax under the Act on entry in the specified local areas at the specified rates are those set out in the schedule annexed to the Act. Section 15 of the Act contains power of the State Government to amend the schedule and armed with that power the State Government Issued various notifications inserting several goods/ classes of goods into the schedule annexed to the Act. The Act was brought into force on 01.12.2001. The main ground of attack is that the tax sought to be levied under the Act is neither regulatory in nature nor does it satisfy the tests laid down for a compensatory tax. The tax being discriminatory in nature and being levied on the entry of goods into a local area is a direct and immediate impediment to the freedom of trade guaranteed under Article 301 of the Constitution. No Presidential assent has been obtained under Article 304(b) of the Constitution for the levy of the entry tax under the Act. The demand and collection of entry tax under the impugned Act is therefore illegal/unauthorised and violative of Articles 301 and 304 of the Constitution.

Issue Involved:

(a) Whether the levy of entry tax under Tamil Nadu Act 20 of 2001 can be justified as a compensatory tax?

(b) Whether the impugned levy of entry tax is violative of Article 304(a) of the Constitution?

Summary of The Arguments:

It was submitted that the tax imposed for augmenting general revenue of the State is not compensatory. According to learned Counsel, mere declaration in law that the levy is compensatory in nature is not enough. Whether the tax is compensatory or not cannot depend upon the preamble of the statute imposing it, and the burden would lie heavily on the State administration to prove that the tax proposed to be levied and collected under the impugned enactment is for the use of trade facilities and only then that such levy would come within the purview of compensatory tax as laid down in the judgment of the Supreme Court in Jindal's case. It was submitted that the Act has not received the assent of the President as required under Article 255 of the Constitution nor the Bill was moved on the floor of the Assembly with the previous sanction of the President as required under the proviso to Section 304(b) of the Constitution, and thus, the Act is not saved by Article 304(b) of the Constitution. Learned Counsel further submitted that there is an element of discrimination between the goods entering the local areas from outside the State and goods entering the local areas from within the State i.e., from one local area to another local area. The latter class of goods is not subjected to levy though all the facilities, if at all provided, are there in course of inter-State movement and entry of goods in local areas. Learned Counsel, therefore, submitted that this discrimination per se militates against the impugned levy being termed as compensatory. The levy thus violates the non-discrimination clause in Article 304(a) of the Constitution.

It was submitted by the learned Advocate General that Tamil Nadu Act 20 of 2001, does not suffer from want of legislative competence. He submitted that the State Legislature has the competence under Entry 52 List II to enact the impugned law and the State Legislature is competent to levy such tax because the incidence of tax is on the entry of goods into the local area for consumption, use or sale therein. He submitted that the entry tax is compensatory in character, and therefore, the impugned levy, which is compensatory in nature, as can be seen from the preamble of the Act, does not attract

Articles 301 and 304 of the Constitution. He urged that the preamble of the Act shows that the tax levied and collected shall be utilized for facilitating free flow of trade and commerce and it is sufficiently demonstrated from the statistical data furnished by the State in relation to the expenditure involved for the maintenance of roads, construction of bridges, etc. and thus, the test laid down by the Constitution Bench in Jindal's case stands fully satisfied.

Decision:

It was held that the Act does not satisfy the test laid down for compensatory tax and as no Presidential assent has been obtained under Article 304(b) of the Constitution the provisions of the impugned Act are ultra vires Article 301 of the Constitution.

It was held that the levy of entry tax on goods imported from other States to the State of Tamil Nadu and from abroad is not compensatory in nature, since the State Government could not discharge its burden by placing materials before the Court that payment of levy of entry tax is reimbursement/recompense for the quantifiable/measurable benefit provided or to be provided to the tax payers. The impugned levy imposing entry tax being discriminatory is also violative of Article 304(a) of the Constitution.

Ratio Decidendi:

Essence of compensatory tax is that the services rendered or facilities provided should be more or less commensurate with the tax levied. Services provided should have a direct co-relation with the trade.

If entry tax was levied on goods which are imported into State of Tamil Nadu from any place outside the State, for consumption, use or sale within the State, and if same goods which were produced or obtained within State of Tamil Nadu do not attract any entry tax at all on their entry into a local area within the State, then such levy was violative of Article 304 (a) of the Constitution of India.

Observations of the Court:

"The mere declaration in the preamble or statement of objects and reasons of an enactment that it is compensatory is of no consequence at all."[54]

[54] Paragraph 22, Judgement Text

Jaika Automobiles Pvt. Ltd. Nagpur and another

v.

State of Maharashtra and another

AIR1993Bom87, MANU/MH/0013/1993

High Court of Bombay

Decided on: 07.08.1992

Judges: Mohta and Sambre, JJ.

Brief Facts:

Constitutional validity of the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987 ('The Act') is impugned.

Issue Involved:

Whether there was violation of freedom of inter-State trade and commerce declared by Article 301 of the Constitution?

Summary of The Arguments:

The petitioner contended that the Act impeded free flow of trade.

Decision:

The tax does not violate Article 301, it satisfies the requirement of Article 304(a) and (b) both. It is a common ground that proviso to Article 304(b) is, in terms, satisfied and, in any case, is deemed to be satisfied by virtue of Article 255 due to receipt of assent of the President to the Act.

Ratio Decidendi:

There is violation of freedom guaranteed by Article 301 only, where a legislative or executive act operates to restrict trade, commerce or intercourse, directly and immediately. Tax laws are not outside the purview of Part-XIII. But only such taxes as directly and immediately restrict trade that fall within the purview of Article 301. By Article 304(a) and (b), the freedom of inter-State trade and commerce declared in Article

301 is subordinated to the State power of taxing goods imported from sister States provided, (i) no discrimination is made in favour of similar goods of local origin, and (ii) restrictions are reasonable and in public interest.

Observations of the Court:

"The tax is not discriminatory. Restrictions imposed thereby are reasonable and in public interest."[55]

[55] Paragraph 27, Judgement Text

Jindal Strips Limited and Anr. v. State of Haryana and Ors.

(2008) 12 VST 149 (P&H), MANU/PH/0980/2007

High Court of Punjab and Haryana

Decided on: 14.03.2007

Judges: Adarsh Kumar Goel and H.S. Bhalla, JJ.

Brief Facts

This matter has been placed for hearing before this Court in pursuance of order of the honourable Supreme Court dated July 14, 2006, in C. A. No. 3453 of 2002, and connected matters reported in Jindal Stainless Limited v. State of Haryana MANU/SC/8232/2006 [hereinafter referred to as "Jindal Stainless Limited (3)"]. Appeals before the honourable Supreme Court arose from the judgment of this Court dated December 21, 2001, Jindal Strips Limited v. State of Haryana[56]. When the appeal against judgment of this Court was placed for hearing before a Bench of the Supreme Court, correctness of the view taken by the Supreme Court in earlier judgment in Bhagatram Rajeev Kumar v. Commissioner of Sales Tax[57], which was followed in State of Bihar v. Bihar Chamber of Commerce[58], was doubted and the matter was referred to a Constitution Bench to decide with certitude, the parameters of the judicially evolved concept of compensatory tax vis-a-vis Article 301 of the Constitution. The said order dated September 26, 2003, is Jindal Stripe Ltd. v. State of Haryana[59], [hereafter referred to as" Jindal Stainless Limited (1)"]. The Constitution Bench decided the Issue referred to it vide its judgment dated April 13, 2006, Jindal Stainless Limited v. State of Haryana[60] [hereafter referred to as "Jindal Stainless Limited (2)"]. The Issue arose in the context of challenge to the constitutional validity of the Haryana Local Area Development Tax Act, 2000 (hereinafter referred to as, "the Act").

[56] (2003) 129 STC 534 (P&H)
[57] (1995) 96 STC 654; (1995) Supp 1 SCC 673
[58] MANU/SC/0593/1996
[59] MANU/SC/0775/2003
[60] MANU/SC/2085/2006

Issue Involved:

Whether the impugned Act meets the facial test laid down by the honourable Supreme Court in Jindal[61] and whether the data placed on record by the State shows that the impugned levy functionally is compensatory and provides quantifiable or measurable benefit to the payers of the tax?

Decision:

The impugned levy is not compensatory in character. The same amounts to restriction on free-flow of trade and commerce and is hit by Article 301 of the Constitution of India.

Ratio Decidendi:

The impugned levy initially was meant to be for assistance to local areas for their development generally and the amendment brings about only a superficial change in the language while retaining the basic character of the levy as a source for raising general development. In this view of the matter, the Court was unable to hold that the facial test is met. Mere specification of the 60 per cent of the amount being in line with judgments dealing with the levy of fee is of no consequence when the very subject-matter of utilisation cannot be treated as any special direct or exclusive service or benefit to the payer of the tax.

Summary of The Arguments:

The petitioners contended that the impugned levy was hit by Article 301 as the same was not compensatory or regulatory but imposed for augmenting general revenue. The counsel on behalf of the petitioners submitted that the impugned Act does not meet the facial test laid down in Jindal Stainless Ltd.[62], as no quantifiable data, on the basis of which the tax was sought to be levied, was indicated in the Act. The Act did not indicate quantifiable or measurable benefit to the payers of the tax. Section 22 of the Act provides for distribution of the tax collected amongst the local bodies for the development of local areas, which did not in any manner amount to giving of any measurable advantage to the payers of the tax in terms of the parameters of compensatory tax laid down in Jindal Stainless Ltd.[63] Explanation added to Section 22, as published in notification dated

[61] *Id.*
[62] MANU/SC/2085/2006
[63] MANU/SC/2085/2006

September 30, 2003, to the effect that "the development of local areas" meant developing and maintaining infrastructure facilities useful for free flow of trade and commerce with a view to meet the Observations of the referring Bench in the order dated September 26, 2003, in Jindal Stripe Ltd. v. State of Haryana[64], did not make any qualitative difference. The Ordinance dated March 1, 2007 has been Issued by utilising the time taken by the State to file a further affidavit which itself was unfair. In the said Ordinance also, only change effected was that Section 22A has been added providing for setting up a Board headed by the Chief Minister for balanced development of local areas. Other change effected is of substituting Section 22 by a new section providing that the tax collected shall be utilised in such a manner that a substantial portion of the tax collected, not less than 60 per cent, is utilised for development facilities facilitating free-flow of trade and commerce of the payers of the tax individually or as a class. The explanation is to the effect that "development facilitating free-flow of trade and commerce" means developing and maintaining infrastructure facilities facilitating the free-flow of trade and commerce such as roads, bridges, culverts, sewerage, drainage, sanitation, waste management, electricity, drinking water and other infrastructural facilities.

On the other hand, the stand taken by the State was that the impugned tax was compensatory in character. It was also submitted that the tax did not directly or immediately affect the movement of trade. Facilities provided in the local area ultimately led to better trade and commerce and benefited the traders.

Observations of the Court:

"… compensatory tax… is based on the principle of equivalence. It must have a broad proportion to the benefit derived to defray the cost of regulation or to meet the outlay incurred for some special advantage to trade and commerce and intercourse."[65]

[64] MANU/SC/0775/2003

[65] Paragraph 30, Judgement Tex

K.A. Jose v. R.T.O. and Anr.

2008 (1) KLJ 128, MANU/KE/0720/2006

High Court of Kerala

Decided on: 18.12.2006

Judges: K.S. Radhakrishnan and M.N. Krishnan, JJ.

Brief Facts:

Constitutional validity of certain provisions of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (Act 15 of 1974) is under challenge in all these Original Petitions. A few of the writ petitioners have sought for a declaration that Sections 2(1)(d), 2(1)(g), 2(1)(i) and Section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (in short "Entry Tax Act") are discriminatory and ultra vires of Articles 14, 19(1)(a), 19(1)(g), 246, 265, 286, 301, 304(a) and 304(b). Section 3(1) read with Section 2(1)(d), 2(1)(h) and 2(1)(i) of the Act makes it clear that taxable event of any of the goods is on the entry of scheduled goods being brought into the local area from outside the State for consumption, use or sale. The Kerala Entry Tax Act was originally enacted to provide for the collection of sales tax on motor vehicles purchased from outside the State and brought into State and to avoid loss of sales tax on account of purchase of motor vehicles by parties other than dealers from outside the State and brought into State thus curbing the evasion of sales tax on goods purchased from outside the State. Facts would indicate that on the introduction of entry tax, manufacturers have opted to purchase raw materials from within the State because they are less costly.

Issue Involved:

Whether Sections 2(1)(d), 2(1)(g), 2(1)(i) and Section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (in short "Entry Tax Act") are discriminatory and ultra vires of Articles 14, 19(1)(a), 19(1)(g), 246, 265, 286, 301, 304(a) and 304(b)?

Decision:

The demand and collection of entry tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 was held to be discriminatory and thus illegal, unauthorised and violative of Articles 14, 301 and 304 of Chapter XIII of the Constitution of India.

Ratio Decidendi:

The Act did not indicate any benefit which is either quantifiable or measurable, if the provision of the Act does not indicate facially the quantifiable benefit, burden to establish the same rests on the State. It was also found that the compensatory character of tax is not self-evident from the Kerala Entry Tax Act. The object of the Act was for augmenting the general revenue by curbing the evasion of sales tax on goods purchased from outside the State, which cannot be characterised as a compensatory levy.

The tax, which discriminates between goods imported from other States and outside the country and locally manufactured, hampers the trade between the States and therefore cannot be construed to be compensatory. Thus it is liable to be declared as unconstitutional- Fr. William Fernandez's case[66].

Summary of The Arguments:

State maintained the stand that the Entry Tax Act is within the legislative competence of the State since it was promulgated in exercise of its powers under Articles 245 and 246 read with Entry 52 List II of the VII Schedule to the Constitution of India.

Counsel appearing for the petitioners submitted that the right of the State to impose entry tax under the Entry Tax Act has to be tested in the light of the Decision of the Constitution Bench of the apex court in Jindal Stainless Ltd. v. State of Haryana and Ors.[67] Counsel submitted, in the light of the above Decision of the apex court the Decision rendered by a Division Bench of this Court in Rajan v. State of Kerala[68] (the Division Bench held that regulatory measures or measures imposing compensatory tax do not come within the purview of restrictions contemplated in Article 301 and that such measures need not comply with the requirement of the provisions of Article 304(b) of the Constitution) is no longer good law and that the Decision in Fr. William Fernandez v. State of Kerala and Ors.[69] has to be affirmed. Counsel further submitted that levy of Entry tax sought to be imposed under the Act cannot be said to be either compensatory or regulatory but prevents free flow of trade, commerce and intercourse and does not satisfy the requirements of Article 304(b) of the Constitution. It was also stated that the amendment Act has not received the assent of the President.

[66] Id
[67] MANU/SC/2085/2006
[68] 1995 (2) KLT 369
[69] 115 STC 591

Observations of the Court:

"…unless and until State discharges its burden by placing materials before court that payment of compensatory tax is reimbursement/recompense, quantifiable/measurable benefit provided or to be provided to the payers or there is any broad correlation between the entry tax being realised and the services rendered, it cannot sustain levy of entry tax."[70]

[70] Paragraph 19 Judgement Text.

Kalindi Woollen Mills (P) Ltd. v. Union of India (UOI)

1994(74)ELT827(Cal), MANU/WB/0255/1994

High Court of Calcutta

Decided on: 01.02.1994

Judges: Ajit K. Sengupta and Nure Alam Chowdhury, JJ.

Brief Facts:

This appeal is directed against the judgment and order passed by a learned Single Judge of this Court on 28th July, 1990, dismissing the writ application filed by the appellants herein challenging the validity and/or legality of a public notice bearing No. 122-ITC(PN)/88-91 dated 26th April, 1989, Issued by the Ministry of Commerce, Government of India, New Delhi, and an Import Trade Control Order No. 52/88-91 dated 28th April, 1989, Issued by the Ministry of Commerce, Government of India.

Issue Involved:

Whether the impugned public notice and the Control Order are ultra vires the provisions of the Imports and Exports (Control) Act, 1947 (hereinafter referred to as 'the said Act') and the Imports (Control) Order, 1955?

Decision:

The court allowed the appeal.

Ratio Decidendi:

Though limitation imposed impugned public notice and control order to the entry points for the import of woollen rags was considered necessary as a preventive measure against camouflaged import of serviceable wool garments under false description, it would be clear that the respondent is making a ground of its own failure to check the alleged malpractice by the importers. This fraud is alleged to have become rampant. The plugging of the entry except through the two specified points became necessary as there was no sufficient machinery at other ports to administer check against this fraud. The acceptance of this as a reasonable cause would amount to making virtue of inefficiency of the machinery of the respondent. The Customs Department has no dearth of men and

machinery for exercising the necessary vigilance and check against the malpractice said to have been rampantly indulged in by the importers. Thus, the entire excuse which is advanced as reasonable cause for the restriction is unconscionable specially when it upsets the constitutional guarantees.

Summary of The Arguments:

The learned Counsel appearing for the appellants has submitted that the impugned public notice and the Control Order are ultra vires the provisions of the Imports and Exports (Control) Act, 1947 (hereinafter referred to as 'the said Act') and the Imports (Control) Order, 1955.

Observations of the Court:

"The freedom is, however, not to be absolute freedom. They are subject to restrictions provided for in other Articles of Part XIII but such restriction cannot be valid if it does not come under Articles 302 to 305 and the restrictions can be imposed only by law…"[71]

[71] Paragraph 55 Judgement Text.

Karnataka State Cable T.V. and Dish Operators Welfare Association

v.

State of Karnataka

ILR 1994 KAR 741, MANU/KA/0181/1994

High Court of Karnataka

Decided on: 17.02.1994

Judges: S.B. Majmudar, C.J; and N.D.V. Bhat, J.

Brief Facts:

This Writ Appeal is taken out by the appellant original Writ petitioner, who is running a Cable T.V. and Dish Antenna operator's business. He is receiving signals from the satellite by way of dish antenna and then is transmitting the same through cables to various television sets, the subscribers of which get the benefit of reproduction of the signals on their T.V. sets and in which the programmes are transmitted to them by way of Dish Antenna and Cable T.V. He also transmits signals of pre-recorded cassettes replayed through his V.C.R./V.C.P, so that the viewers can see the pictures on their T.V. sets as pre-recorded in those cassettes. The appellant charges Rs. 50/- each from his subscribers per month for enabling them to enjoy this benefit. The State of Karnataka introduced Section 4(c) to the Karnataka Entertainment Tax Act, 1958 (for short, the 'Act'), which provided for levy of Entertainment Tax on the Cable T.V. and Dish operating establishments.

Issue Involved:

Whether Section 4(c) of the Act is violative of Articles 301, 304 and 304(b) of the Constitution of India?

Decision:

The appeal fails.

Ratio Decidendi:

1. There is no inter-State trade or commerce involved in this transaction.
2. This Article has also nothing to do with the nature of the activity carried on by the appellant and the impugned Section 4(c), when it seeks to impose tax on entertainment, which is generated in Karnataka State itself when the subscribers enjoy the entertainment in their drawing rooms situated admittedly within Karnataka State. Therefore Article 304 is out of picture.
3. When Article 304 itself does not apply there is no occasion for the State Legislature to follow the Proviso to Section 304(b) and to get previous sanction of the President.

Summary of The Arguments:

The learned Counsel for the appellant raised the contention that Section 4(c) of the Act is violative of Articles 301, 304 and 304(b) of the Constitution of India.

Observations of the Court:

"… the word 'entertainment' as found in Entry 62, List-11 of the State List in the Seventh Schedule cannot be narrowly construed… to exclude …programmes which are of informative or educative nature…" [72]

[72] Paragraph 6 Judgement Text.

Maruthi Constructions v. Government of A.P. and Anr.

(2007)10VST362(AP), MANU/AP/1277/2006

High Court of Andhra Pradesh

Decided on: 13.09.2006

Judges: J. Chelameswar and D. Appa Rao, JJ.

Brief Facts:

These two writ petitions are filed challenging the constitutionality of Sub-section (4) of Section 5G of the Andhra Pradesh General Sales Tax Act, 1957 (hereafter referred as "the Act"). Section 5G of the Act was inserted by Act No. 22 of 1995 with effect from April 1, 1995 and later was substituted by Act No. 27 of 1996 with effect from August 1,1996. Sub-section (4) came to be added to Section 5G by Act No. 25 of 2002 with effect from February 15, 2003.

Issue Involved:

Whether Section 5G(4) is violative of Article 301 of the Constitution of India as a restriction of the freedom of trade, commerce and intercourse?

Decision:

Though the provision of Section 5G(4)[73] facially seeks to impose a higher burden of tax on the goods which are otherwise also liable to tax under the Act, but does not impose any tax on the goods procured from out of the State of Andhra Pradesh, such a device by the Legislature, in a given case, may, itself be a disincentive for utilisation of goods procured from out of the State of Andhra Pradesh. In the absence of any specific demonstration before this Court that the operation of the impugned Sub-section (4) of Section 5G of the Act is, in fact, likely to impose a higher tax burden on the dealer, the court concluded that Section 5G(4) does not create a direct or immediate restriction on the freedom of trade guaranteed under Article 301 of the Constitution.

[73] Section 5G says that any dealer, who is liable to pay sales tax under Section 5F, can opt for a different mode of assessment, i.e., instead of paying eight paise on every rupee of his turnover, which is to be determined in accordance with the provisions of Section 5F read with Rule 6(2), he may opt to pay tax at the rate of four paise on every rupee of the total amount paid or payable towards execution of the works contract, to the dealer, during the year relevant for the assessment.

Ratio Decidendi:

Section 5G(4) seeks to bar an option otherwise available to a dealer falling under Section 5F. The utilisation of goods procured from outside the State of Andhra Pradesh in the execution of the works contract only makes the dealer ineligible for being assessed at a lower rate of tax, though such lower rate of tax is levied on the total turnover of the dealer, which is a higher amount than the amount contemplated under Section 5F, i.e., the amount received or payable for the year, for the work done, which amount includes not only the actual value of the goods utilised, but also certain other items of expenditure incurred during the course of execution of the contract, like labour charges, etc.

Summary of The Arguments:

The learned Counsel for the petitioner argued that Section 5G(4) is violative of Article 301 of the Constitution of India as a restriction of the freedom of trade, commerce and intercourse . It was also argued that excluding the dealers, who use the goods procured from outside the State of Andhra Pradesh for the purpose of executing the works contracts, from the scheme of Section 5G(1) of the Act, is also violative of Articles 14, 19(1)(g) of the Constitution of India

Observations of the Court:

"… freedom of trade, commerce and intercourse throughout the territory of India, shall be unfettered as the economic prosperity of the country depends on such free trade and commerce."[74]

[74] Paragraph 16 Judgement Text.

Mysore Cement Ltd. and Anr. and M.P. Cement Manufacturer's Association and Anr.

v.

State of Madhya Pradesh and Ors.

[2006]143STC432(MP), MANU/MP/0763/2003

High Court of Madhya Pradesh

Decided on: 08.09.2003

Judges: Dipak Misra and S.K. Pande, JJ.

Brief Facts:

The petitioner No. 1 is a public limited company having its cement manufacturing unit at Narasinghgarh, District Damoh. It has a captive power plant for generation of power for use in the cement manufacturing plants. The diesel is one of the raw materials for generation of power and also for use in machineries in quarrying limestone. Diesel is specified as raw material in the registration certificate granted to the petitioner under the Madhya Pradesh Commercial Tax Act, 1994 (in short, "the 1994 Act") and under the Central Sales Tax Act, 1956 (in short, "the 1956 Act"). Under Section 3 of the Entry Tax Act the entry tax on diesel is payable at the rate of one per cent under entry No. 24 of Schedule II appended to the Act, if such goods are brought into the local area for consumption, use or sale therein. The petitioner has been made liable to pay entry tax on diesel oil at the rate of one per cent whether it was brought from outside the State or from oil companies such as Indian Oil Corporation or Bharat Petroleum Products, etc. As the oil companies are registered dealers they paid the entry tax at the rate of one per cent on the diesel oil brought by them from outside the State and this tax burden of one per cent is being passed on to the purchasing dealers like the petitioner on the purchases made by them within the State. The entry tax of one per cent was being charged whether the diesel oil purchased within the State or brought from outside the State in the local area of Narsinghgarh either directly or indirectly. When the matter stood thus, the State Government brought out a Notification No. A-3-99-2001-ST-V (107) dated December 26, 2001 enhancing the rate of entry tax on diesel furnace oil and hexane from a place

outside the State of Madhya Pradesh for use in generation of electrical energy or in the manufacture of other goods.

Section 4 provides for the rate at which the entry tax is to be charged. Section 4-A enables the State Government to Issue a notification directing charging of entry tax at a rate not exceeding ten per cent as may be specified in respect of any local area or goods in the notification Issued by it.

Issue Involved:

Whether the notification Issued on December 26, 2001 is violative of Articles 301, 303, 304 and 19(1)(g) of the Constitution?

Summary of The Arguments:

It was submitted by the learned Counsel for the petitioners, that the imposition of entry tax violates the free-flow of trade and commerce and thereby offends the essential facet of Articles 301, 303 and 304 of the Constitution. It is put forth by them that Section 4-A is absolutely unconstitutional as there is no guidance and no economic principle is inherent therein. The same being wholly irrational and unreasonable is violative of Article 14 of the Constitution. It is also urged by them that the notification which has been brought into existence is a piece of delegated legislation and by delegated legislation the rate could not have been fixed and, therefore, the notification suffers from constitutional vice. It is propounded by that no public purpose is subserved and, therefore, the notification is bad in law.

The learned Government Advocate, in support of the notification has submitted that the same has been Issued in consonance with Section 4-A of the Entry Tax Act and, therefore, it cannot be said that it suffers from excessive delegation. It is contended by him that notification does not violate either Article 301 or 304(a) of the Constitution. It is highlighted by him that the entry tax is a compensatory tax.

Decision:

The write petitions were dismissed.

Ratio Decidendi:

The notification pertains to entry tax and has nothing to do with the sales tax and in any case fixing of different rates are permissible. It is worth noting here as the entry tax has a different colour and does not create a free-flow in trade and the notification has been Issued under the statute, the conception enshrined under Articles 301 to 304 of the Constitution of India is not attracted. Public interest is inherent in the notification.

Observations of the Court:

"… entry tax is a compensatory tax and, therefore, it cannot come with the purview of sales tax or tax which affects or creates a remora in the inter-State field of commerce."[75]

[75] Paragraph 11 Judgement Text.

Nand Kishore and Company v. State of Punjab and Anr.

(2008)17VST108(P&H), MANU/PH/0614/2008

High Court of Punjab and Haryana

Decided on: 13.08.2008

Judges: Hemant Gupta and Rajesh Bindal, JJ.

Brief Facts:

The petitioner was a proprietary concern carrying on business of purchase and sale of sugar and allied goods and registered under the provisions of the VAT Act. The controversy gave rise to the cause of action to the petitioner, to file the present petition arose with the issuance of the Notification No. S.O. 53/P.A. 8/2005/S.8/2007 (hereafter 'the notification' for brevity) by the respondents dated November 5, 2007, whereby entry 49, in Schedule "A", was substituted and new entry 152, in Schedule "B", was added. In sum and substance, the effect of the entries was that the sugar imported from outside the State of Punjab except levy sugar was liable to tax under the Act, whereas the sugar manufactured in the State of Punjab was exempted from taxation.

Issue Involved:

Whether the action on the part of the respondents in levying sales tax on sale of sugar imported from outside the State of Punjab except levy sugar, with the issuance of the Notification No. S.O. 53/P.A. 8/2005/S.8/2007 (hereafter 'the notification' for brevity) by the respondents dated November 5, 2007, is clearly violative of Articles 301 and 304(a) of the Constitution of India.

Decision:

The High Court struck down Notification No. S.O. 53/P.A. 8/2005/S.8/2007 dated November 5, 2007 (annexure P-2) adding entry 152 in Schedule "B", to the VAT Act, whereby tax was levied on sale of sugar imported from outside the State of Punjab.

Ratio Decidendi:

Article 304 of the Constitution of India authorizes the State Legislature to levy tax on goods imported from other State or Union Territories, but levy of such tax should not discriminate between the goods so imported and similar goods manufactured or

produced within the State. Article 304 (a) of the Constitution of India though worded in a positive language has a negative aspect. It is, in truth, a provision prohibiting discrimination against the imported goods vis-a-vis the goods manufactured or produced within the State. The basic object of the provision is to check the State from creating what may be called "tax barriers" or "fiscal barriers" with the object to ensure enjoyment of right guaranteed under Article 301 of the Constitution of India to the freedom of trade, commerce and intercourse throughout the territory of India. The object is to emphasize upon oneness of the territory of India.

Thus discriminatory tax was imposed on the imported sugar as against the sugar manufactured in the State of Punjab, which cannot stand scrutiny in the light of the provisions contained in Articles 301 and 304 (a) of the Constitution.

Summary of The Arguments:

The effect of the notification dated November 5, 2007, is that tax at the rate of 4% has been levied only on the sugar imported from outside the State of Punjab, whereas the sugar which is manufactured in the State of Punjab is not subjected to any tax as the same has been put in Schedule "A", containing tax-free goods. Thus, the impugned notifications are clearly violative of the Constitutional mandate contained in Part-XIII of the Constitution and are liable to be set aside.

The discrimination in taxation on the imported sugar, as is sought to be pointed out by the petitioner, is not there as in the case of sugar manufactured in the State of Punjab, the sugarcane used in the manufacture thereof is already taxed. As the State of Punjab gets tax on the sugarcane, the sugar was made tax-free, whereas in the case of imported sugar, the State would get tax on the sale of sugar in the State. The action on the part of the State will not hamper free-flow of trade and commerce at the boundaries of the State or at any other points inside the State and is not hit by Article 301 of the Constitution of India.

Observations of the Court:

"The object is to emphasise upon oneness of the territory of India."[76]

[76] Paragraph 25 Judgement Text.

Osaw Agro Industries Pvt. Ltd. v. State of Punjab and Ors.

(2007) 148 PLR5 35, (2007) 9 VST 393 (P&H), MANU/PH/0209/2007

High Court of Punjab and Haryana at Chandigarh

Decided on: 06.08.2007

Judges: M.M. Kumar and Ajay Kumar Mittal, JJ.

Brief Facts:

The petitioner is a registered dealer under the Haryana Value Added Tax Act, 2003 (for brevity 'the Haryana VAT Act') and under the Central Sales Tax Act, 1956 (for brevity 'the CST Act'). The petitioner has its factory at Agrosaw Complex, Jagadhri Road, Ambala Cantt. and is engaged in the business of manufacture and trading of Seed Cleaning and Grading Machines. The petitioner sent a quotation on 20.3.2007, to the Punjab Agriculture University, Ludhiana with regard to supply of Agrosaw Specific Gravity Separator, Model G I. Apart from other things, the price of the product was mentioned to be FOR Destination. The University vide its letter dated 29.3.2007 accepted the price quoted by the petitioner and asked for supply of the machine. Accordingly, the petitioner sold the machine to the University vide invoice/bill dated 1.5.2007, and in pursuance to Section 3 of the CST Act, the petitioner paid Central Sales Tax @ 4% as the sale was inter-State transaction. This fact is evident from the invoice-dated 1.5.2007. Accordingly, the goods were loaded in truck No. HR 07GA 0118 for delivery from Ambala to Ludhiana. When the truck loaded with goods reached ICC Shambhu (Import) barrier the agent of the petitioner produced documents for giving information and for obtaining form ST XXIV-A by generating the same from ICC. However, the goods and the truck were detained by the Excise and Taxation Officer cum Detaining Officer and notice-dated 2.5.2007, was Issue Involved. It was alleged by respondent No. 2, that the petitioner since is not registered under the Punjab Value Added Tax Act, 2005 (for brevity 'the Punjab VAT Act') and, therefore, has violated Section 21(1) thereof. It was also claimed that the petitioner was required to place on record proof of payment by the Punjab Agriculture University in advance. The transaction was explained to the Excise and Taxation Officer that it was inter-State sale and Central Sales Tax has been charged as per law. It was further pointed out that the petitioner is a registered dealer in Haryana and the Punjab Agriculture University, Ludhiana has not purchased the goods for trading.

Issue Involved:

Whether Section 21 of the Punjab VAT Act needed to complied with and if the same was violative of Article 301 of the Constitution?

Decision:

The Sale was in the nature of an inter-State sale. The multiple taxation as claimed by the respondents i.e., to be taxed by State of Punjab in addition to the tax paid under the CST Act, would result in hampering the free movement of goods between the States as provided by Article 301 of the Constitution and, therefore, would be prejudicial to freedom of trade, commerce and intercourse throughout the territory of India, and for the unity and integrity of the country. Therefore, the petitioner has not violated Section 21 of the Punjab VAT Act as has been claimed by the respondents.

Ratio Decidendi:

It is well settled that an inter-State sale must fulfill three essential ingredients as has been observed by a Constitution Bench of the Supreme Court in the case of State of Andhra Pradesh v. National Thermal Power Corporation Ltd.[77]. They are:

i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods;

ii) the goods must actually move from one State to another, pursuant to such contract of sale, the sale being the proximate cause of movement; and

iii) such movement of goods must be from one State to another State, where the sale concludes. It follows as a necessary corollary of these principles that a movement of goods that may take place independently of a contract of sale would not fall within the meaning of inter-State sale.

In the given case all of the above conditions were satisfied.

Summary of The Arguments:

Respondents claimed that the sale is not inter-State sale but local sale. At the time of detention, the petitioner was still to complete the delivery of goods as it was on FOR basis. The payment of the goods was not received from the consumer. Hence, the

[77] MANU/SC/0356/2002

Punjab Agriculture University did not own the goods. The petitioner was yet to sell the goods in Punjab and to receive the payment in Punjab itself. On the basis of the afore-mentioned features, it has been claimed that the petitioner has to be regarded as a dealer in Punjab and therefore registrable in Punjab. He is liable to pay CST in Ambala as well as in Punjab.

Learned Counsel for the petitioner has argued that the sale made by the petitioner has to be necessarily regarded as inter-State sale for the purposes of Section 3 of the CST Act.

Observations of the Court:

"… multiple taxation would result in hampering free movement of electricity between the States and, therefore, would be prejudicial to freedom of trade, commerce and intercourse throughout the territory of India, and for the unity and integrity of the country."[78]

[78] Paragraph 11 Judgement Text.

Prabhudayal Ramanand v. State of Andhra Pradesh

[1990] 77 STC 122 (AP), MANU/AP/0165/1990

High Court of Calcutta

Decided on: 02.02.1990

Judges: B.P. Jeevan Reddy and Upendralal Waghray, JJ.

Brief Facts:

This batch of writ petitions is filed by several roller flour mills in the State seeking declaration that the collection of sales tax on sale or purchase of wheat or its products like maida, atta, ravva is unconstitutional and illegal. Wheat is one of the declared goods under section 14 of the Central Sales Tax Act and, therefore, the maximum rate at which a State can levy sales tax on its sale is four per cent. Till about 1987, wheat, which is an essential commodity was being distributed and sold to roller flour mills through the Food Corporation of India throughout the country at fixed rates because of orders under the Essential Commodities Act. However, from the middle of 1987, the Government of India discontinued the policy of distribution of wheat by Food Corporation of India to the roller flour mills at fixed rates and introduced a system of sale by tenders by the Food Corporation of India. At the same time, the roller flour mills were given freedom to purchase wheat from the open market anywhere in the country. Thus, the raw material needed by the roller flour mills has to be procured, either in the open market or by submitting tenders offering appropriate rates to the Food Corporation of India. This introduced an element of play of market forces on the price of this raw material of the petitioners. According to the petitioners, because of the high rate of sales tax under the Andhra Pradesh General Sales Tax Act, 1987, on wheat and its products in comparison with the other States the bakeries in the State are finding it cheaper to buy the wheat products from the roller flour mills outside the State.

Important statutory changes have been made by the State, which have an effect on the sales tax liability on wheat and wheat products:

(a) By the Andhra Pradesh General Sales Tax (Third Amendment) Act, 1988 (Act No. 29 of 1988) which came into force from 13th September 1988, section 5-A has been amended increasing the levy of additional tax on turnover.

(b) (b) By G.O. Ms. No. 130, Revenue, dated 14th February 1989, the Government have amended the rate of sales tax on wheat, that is, item 16 in the

Third Schedule, and also the rate of sales tax on wheat products, that is, item 60 of the First Schedule, with effect from 15th February 1989.

The effect of these is that there has been a reduction of sales tax on wheat and its products. Also, there has been an increase on the additional tax on turnover of all goods as indicated above. The effective rate of sales tax on maida or ravva which are the main products of the petitioners used in the bakeries will be 2 per cent in case where wheat has not suffered State sales tax; and 1 per cent where wheat has suffered sales tax. The tax on wheat itself is 1 per cent. The surcharge under section 6-B and additional turnover tax under section 5-A is applicable to all goods. The surcharge is 10 per cent of the sales tax and the additional turnover tax is 1.5 paise per rupee, where the turnover is over 1 crore and 1 paisa per rupee, where turnover is between fifty lakhs and one crore. Further, while calculating the levy of tax on wheat products, a set-off is given for any tax paid on wheat.

Issue Involved:

Whether the levy of sales tax in the manner and at the rates by the State, is in violation of article 301 of the Constitution of India?

Decision:

The court dismissed the write petition in light of the fact that the levy of sales tax was not hit by Article 301 of the Indian Constitution.

Ratio Decidendi:

By the constitutional scheme, each State is to have its own sales tax laws, which, inherently implies a difference in structure and rate of taxation in the various States. The mere difference in rate of tax in different States without anything more to indicate hindrance to freedom of trade cannot make the sales tax law violative of article 301. The figures of rate of tax on wheat and wheat products mentioned above also negative the contention of the petitioners that there is any violation of article 301.

Summary of The Arguments:

The grievance of the petitioners is against a handicap suffered by them due to the exemption on wheat products granted by the Maharashtra State. According to the petitioners, this levy is unconstitutional and illegal.

The learned Government Pleader for Commercial Taxes has, however, contended

that, after February, 1989, the rate of sales tax on wheat or wheat products in our State cannot be said to be higher that the rate in the neighboring States and only because of exemption granted by the Maharashtra State Government there is no liability to sales tax in that State. He also contended that there is no question of any violation of article 14 or 19(1)(g) or article 301 of the Constitution of India in this case.

Observations of the Court:

"… article 301 puts a fetter on the various legislatures to make any law which will prevent such a free-flow of trade and commerce."[79]

[79] Paragraph 16 Judgement Text.

Paras Mal v. State of Rajasthan

1995 (1) WLC 216, 1994 (2) WLN 494, MANU/RH/0476/1994

High Court of Rajasthan

Decided on: 11.08.1994

Judges: Gokal Chand Mital, C.J. and N.K. Jain, J.

Brief Facts:

Paras Mal, Principal Secretary M/s. Barmer Marudhar Vikas Samiti, filed the writ petition, under Article 226 of the Constitution of India to declare the words "In the State" in Clause 5 of Notification Ex. 3 dated 16.8.83, as unconstitutional. The petitioners also seek to quash the respective assessment orders and demand notices dated 7.3.88.

Issue Involved:

Whether the words appearing in Clause 5 "in the State" are hit by Article 301 of the Constitution of India?

Decision:

The words appearing in Clause 5 "in the State" are hit by Article 301 of the Constitution of India and that part of the notification dated 16.8.83, is declared unconstitutional.

Ratio Decidendi:

The imposition of sales tax under consideration hampers free flow of trade. Since by the said conditions match boxes though made in the village cottage industry outside the state fulfilling the other conditions specified in the Notification dated 16.8.83 have been taxed whereas, similar match boxes made by the village cottage industry in the State of Rajasthan fulfilling same conditions have been exempted from imposition of tax which is discriminatory.

The respondents have not been able to show that the words introduced in Clause 5 "in the State" comes within reasonable restrictions, except that it is provided for upliftment of village industry of Rajasthan, which is no explanation in the eye of law.

Summary of The Arguments:

The learned Counsel for the petitioner contended that the impugned notification dated 16.8.83, is unconstitutional since it levies sales tax on the products of the village industries situated outside Rajasthan and imported to Rajasthan, which can only be levied if a similar tax is imposed on the products of the similar industries in Rajasthan. According to him the imposition of tax in this manner offends Article 304(a) and also hit by Article 14 of the Constitution of India as being discriminatory.

The above submissions were opposed by stating that the state of Rajasthan for upliftment of its people working in village cottage industiy can levy sales tax on the products of village industries situated outside Rajasthan as grant of exemption from payment of sales tax is the prerogative of State Government and no one has a right to claim exemption from payment of tax. He has contended that the words inserted vide notification dated are not void and discriminatory.

Observations of the Court:

"It is no doubt true that Article 304(a) enables the legislature of a State to make laws imposing taxes on goods imported from other states and impose reasonable restriction on the freedom of trade, commerce or intercourse but such imposition can be made, if similar goods in the state are also subjected to similar tax, so that there may not be any discrimination between the goods manufactured or produced in that State and the goods which are imported from other States, otherwise it may offen offend Article 301."[80]

[80] Paragraph 11 Judgement Text.

Precious Carrying Corporation and Anr. v. State of Gujarat and Ors.

(2002) 3 GLR 74, MANU/GJ/0182/2002

High Court of Gujarat

Decided on: 26.02.2002

Judges: K.M. Mehta, J.

Brief Facts:

Precious Carrying Corporation Pvt. Ltd., & others, petitioners have filed this petition with a prayer that respondent No. 1-Chief Secretary, General Administration Department, Gandhinagar, respondent No. 2-Director of Prohibition, Ahmedabad, and respondent No. 3-Collector of Central Excise and Customs, Ahmedabad be restrained from interfering with the trucks owned by the first petitioner and or hired by them from passing through the territory of Gujarat with liquor-loaded, therein, for the purpose of delivery thereof in the State of Maharashtra. The petitioners also challenged the validity of Rule 10 of the Gujarat Through Transport Rules, 1966 (hereinafter referred to as 'the Rules') on the ground that said rule do not impose reasonable restrictions nor restrictions are in public interest and even on this ground the said Rules violate the guarantee of free trade, commerce throughout the territory of India as guaranteed by Article 301 of the Constitution of India.

Issue Involved:

Whether the said Rules violate the guarantee of free trade, commerce throughout the territory of India as guaranteed by Article 301 of the Constitution of India?

Decision:

There is no substance in the contention of the learned Counsel for the petitioner, and therefore, the petition is required to be dismissed. In view of the same the petition is dismissed. Rule is discharged.

Ratio Decidendi:

The said action is a reasonable restriction because there is no fundamental right to carry on business of liquor as far as State of Gujarat is concerned.

Summary of The Arguments:

It was submitted that in any event the restrictions which are imposed by the said Rules of 1966, and in particular 10 thereof, do not impose reasonable restrictions nor restrictions are in public interest and even on this ground the said Rules violate the guarantee of free trade, commerce and intercourse throughout the territory of India as guaranteed by Article 301 of the Constitution.

It was submitted by the learned counsel for the respondent that Section 29 of the Bombay Prohibition Act, 1949, that relates to through transport was substituted by Bombay Prohibition (Amendment) Act, 1959 (Bombay XXII of 1960). The said Act was assented by the President of India on 28th April 1960. Thus, the compliance of Article 304 of the Constitution has already been complied with. The said Rules have been framed in exercise of the powers conferred by Section 143 of the Act. Sub-section (4) of Section 143 provides that all Rules made under the Act shall be laid before the State Legislature may make during the Section in which they are so laid or the Section immediately. The Rules under question are laid before the State Legislature. Therefore, the said Rules are legal and intra vires under Article 301 of the Constitution of India.

Observations of the Court:

"Article 304 is an overriding Article over Articles 301 and 303 and empowers the legislature of a State to impose restrictions on trade, commerce and intercourse amongst States provided such restrictions are reasonable and in public interest." [81]

[81] Paragraph 11 Judgement Text.

Ramesh Babu v. State of Kerala

2005 (4) KLT 372, MANU/KE/0365/2005

High Court of Kerala

Decided on: 05.09.2005

Judges: Rajeev Gupta, C.J. and K.S. Radhakrishnan, J.

Brief Facts:

Constitutional validity of the Kerala Liquor Transit (Amendment) Rules 2005, imposing enhanced fee of Rs 25,000 from Rs 2,500 for transit of liquor through the State of Kerala to Mahe alone, a part of the Union Territory of Pondicherry is under challenge in these appeals as discriminatory and offending free trade and commerce through out the territory of India.

Issue Involved:

Whether the State Government is justified in imposing fee of Rs. 25,000/- for each permit for transit of liquor through the State of Kerala to Mahe?

Decision:

Excise duty and sales tax in Pondicherry is low when compared to that of State of Kerala. By the imposition of transit fee of Rs. 25,000/- to Mahe alone, the Kerala State would be indirectly controlling selling price of liquor in Mahe. State of Kerala also can achieve the same objective by lowering price of liquor in the State of Kerala. The imposition of discriminatory transit fee to Mahe alone is an intentional discrimination and is clearly hit by Article 301 of the Constitution of India.

Ratio Decidendi:

States should take effective measures to control smuggling. Failure or incapacity of the State to prevent smuggling from Mahe to Kerala is not a reason to burden the persons who are conducting liquor business legally in Mahe.

Summary of The Arguments:

Petitioners contended that the imposition of Rs. 25,000/- towards transit fee on

the petitioners for transit permit to Mahe alone is illegal, discriminatory and violative of Article 14 and 19(1)(g) of the Constitution of India. Contention was also raised that the amended rule would make serious inroad on free trade, commerce and intercourse and would also violate Article 301 of the Constitution of India. Petitioners also contended Article 303 did not authorise the State Legislature to give any preference to one State over another in the matter of fixation of different transit fee for different State.

Learned Addl. Advocate General appearing for the State submitted that Indian made foreign liquor imported to Mahe in excess quantities were being smuggled from Mahe to Kerala and thereby the Government was losing crores of rupees every month by way of sales tax and excise duty. Government therefore decided to take preventive measures to curb this tendency against duty evasion by persons applying for permit by imposing fee of transit on liquor to Mahe through the State of Kerala. The explanatory note attached to the amended rule supports it as a preventive measure to see that liquor landing up in Mahe shall not be smuggled out. Statistics would revealed that liquor meant for Mahe is directly unloaded in Kerala misusing the transport permit and considerable portion of liquor landing up in Mahe flows back to Kerala through illegal sources. Counsel submitted that the Government intended to impose a restriction to prevent illegal inflow of liquor from Mahe to Kerala and consequently the permit fee enhancement is confined only to Mahe.

Observations of the Court:

"The transit fee is always regulatory. The question of quid pro quo is necessary only when the fee is compensatory."[82]

[82] Paragraph 18 Judgement Text.

Ranjana Granites (P) Ltd., rep. by its Managing Director, Sri A. Venkat Reddy and Ors.

v.

The State of A.P., rep. by its Principal Secretary, Industries and Commerce Department and Ors.

1996 (3) ALT 121, MANU/AP/0891/1996

High Court of Andhra Pradesh

Decided on: 26.04.1996

Judges: Y. Bhaskar Rao and Mohammed Habeeb Shams Ansari, JJ.

Brief Facts:

This batch of writ petitions is filed seeking issuance of a Mandamus declaring the Note to Rule 12(5)(e) and Rules 12(5)(f)(i) and (f)(ii) of the Andhra Pradesh Minor Mineral Concession Rules, 1966, as ultra vires the Mines and Minerals (Regulation and Development) Act, 1957, and the provisions in Part-XIII of the Constitution of India. The petitioners are quarry lease-holders of black granite and coloured granite in the State of Andhra Pradesh. The order granting the lease stated that the grantee should abide by the Andhra Pradesh Minor Mineral Concession Rules, 1966 (hereinafter referred to as 'the Rules'). The petitioners aggrieved of the conditions envisaged in the impugned Rules, namely, establishment of a granite cutting and polishing unit within the State itself, interfering with the free trade in granite even after its extraction, and imposing penal rate (double the rate) of seigniorage in regard to granite exported through harbours, other than in the State of Andhra Pradesh, resorted to these proceedings.

Issue Involved:

Whether the Note under Rule 12(5)(e), Rule 12(5X00) 12(5)(f)(ii) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 are ultra vires the provisions in part-XIII of the Constitution of India?

Summary of The Arguments:

The learned counsel for the petitioners, contended that the impugned rules are neither compensatory nor regulatory in nature, outside the legislative competence of the State as

they impose undue burden and restriction on inter-State trade and commerce and so ultra vires the Mines and Mineral (Regulation and Development) Act, 1957.

Decision:

The restrictions imposed by the impugned rules are undue burden and are violative of Articles 301, 303 and 304 of the Constitution.

Ratio Decidendi:

The lease-holder or lessee has to pay Rs. 750/- towards seigniorage fee, if he exports the mineral from the harbours within the State and Rs. 750/- more, if he exports otherwise to outside the State. Further, it is mandatory on the part of the lease-holder after setting up the factory to maintain the ratio of 1:1 between processed blocks and raw blocks in case of black granite and 3:7 between processed and the raw-form block in case of coloured granite and, accordingly, he will be allowed to export the rough blocks. These restrictions relate to post-extraction of minerals. For extracting the mineral from the mine, the lease-holder has to pay royalty and seigniorage fee as fixed by the State Government from time to time.

Observations of the Court:

"Every fiscal legislation is enacted in the public interest and, therefore, the taxing laws made, as provided in Chapter-XII of the Constitution, cannot be held to be violative of Chapter-XIII of the Constitution, unless the impediment or restriction is immediate and direct."[83]

[83] Paragraph 56 Judgement Text.

S.P. Road Link and Ors. v. State of Tripura and Anr.

[2006] 144 STC 380 (Gauhati), MANU/GH/0140/2005

High Court of Gauhati (Agartala Bench)

Decided on: 02.02.2005

Judges: R.B. Misra, J.

Brief Facts:

The petitioners have prayed for directing the respondents for granting registration, as transporter, carrier and transporting agent as required under Section 38-B of the Tripura Sales Tax Act, 1976 (for short called, "the Act") read with Rule 64-A of the Tripura Sales Tax Rules, 1976 (for short called, "the Rules") without any security deposit.

According to the petitioners, the Decision of the respondent requiring the petitioner-firm to deposit an amount of Rs. 10 lakhs as security money by challan at a time for getting registration for doing transport business is illegal, and ignoring the proposal of petitioners for depositing the bank security or minimum security deposit in 10 monthly installments is also bad as for depositing such a heavy amount of Rs. 10 lakhs as security money the petitioners have to take loan from the bank and have also to pay interest thereon. More so, not taking any Decision on the part of the respondents in respect of payment of interest on the deposit of such security money is also not fair.

Issue Involved:

Whether, there can be any restriction upon the business of transport without following the procedure provided under article 304(b) of the Constitution?

Decision:

The demand of security under Rule 64-A by the Commissioner of Taxes for granting registration certificate under Section 38-B is legal and well within the scope and is a reasonable exercise of power provided in the Act.

Ratio Decidendi:

The language of Section 38-B itself indicates that it has been brought in for

carrying out the purposes of Section 38, which basically is to check evasion of tax. It only applies to such transporters doing transport business relating to taxable goods in Tripura only. This certainly cannot be construed to be violative of article 301 of the Constitution. Article 301 provides freedom of trade, commerce and intercourse. Article 304(b) empowers the State Legislature to impose such reasonable restriction on the freedom of trade, commerce or intercourse with or within the State as may be required under the public interest. When conditions are imposed in a provision made for a certificate of registration, which in the present case are, brought in by demand of security as aforesaid is really for checking the evasion of tax. By such demand of security for registration of transporters or carriers, it becomes feasible for the tax authorities to trace out such dealer escaping tax, through such transporters. The payment or deposit of fees prescribed under Section 38B is a statutory requirement which does not put an embargo or does not curb the power of imposition of any condition including the demand of security in the interest of revenue or to check evasion or escapement of tax, as such, demand of security money is not barred under Rule 64-A.

Summary of The Arguments:

According to the learned counsel for the respondents the demand of Rs. 10 lakhs as security money is in consonance to the requirement of Section 38 of the Act and such is legal and reasonable as the words "in such manner as he may direct" mentioned in "Rule 64A" provide sufficient power and wide scope to the Commissioner of Taxes for making the demand of security in question which is well within his power being derived under the Act.

Observations of the Court:

"Whenever any goods is sold or purchased inside or outside the State, the incidence of tax and the quantum of tax have to be ascertained under the provisions of the relevant taxing statute."[84]

[84] Paragraph 19 Judgement Text.

Seagull Laboratories (I) Pvt. Ltd. v. Delhi Administration and Ors.

44(1991)DLT3, ILR1991Delhi290, [1991]81STC90(Delhi), MANU/DE/0511/1990

High Court of Delhi

Decided on: 17.12.1990

Judges: B.N. Kirpal and Santosh Duggal, JJ.

Brief Facts:

The challenge in this writ petition is, inter alia, to the provisions of section 4(2)(a)(v) 3rd proviso of the Delhi Sales Tax Act 1975 (hereinafter referred to as the 'Act') in so far as the said provision includes in the turnover of the petitioner the value of the goods which had been purchased by it on the basis of its registration certificate, and which goods were not utilised as per the said registration certificate.

The petitioner is a company registered at Delhi, both under the State Act as welt as under the Central Sales Tax Act, which has branches outside Delhi, and it carries on business of manufacture of medicines in a factory situated at Delhi. On the strength of its registration certificate, the petitioner has been purchasing the raw material locally against the statutory forms St 1/ST 35 and also from outside Delhi against declaration form 'C,' under the Central Sales-tax Act. According to the petitioner, it manufactured medicines in Delhi by using the said raw materials which it had purchased without paying the tax and, thereafter, the medicines which were so manufactured were transferred to its branches outside Delhi. According to the petitioner, these transfers took place against form 'F' which had been Issued under the relevant provisions of the Central Sales-tax Act and that no chargeable event, according to the petitioner, had accounted because no sale was involved in such transfer of goods. The Sales-tax Officer vide his assessment order dated 15th February 1990 observed that the petitioner had purchased the raw material on the basis of its registration certificate. Undoubtedly, the petitioner had transferred its manufactured medicines to its branches outside Delhi, but according to the said officer the provisions of the aforesaid 3rd proviso to section 4(2)(a)(v) were clearly attracted. Invoking, the said provisions, the Sales-tax Officer added to the petitioner's turnover the value of the raw material, which the petitioner had originally purchased.

Issue Involved:

Whether there has been a violation of Article 301 of the Constitution?

Decision:

No merit in the contention of the petitioner that there has been a violation of Article 301 of the Constitution.

Ratio Decidendi:

The taxable event is not the transfer of the manufactured goods. The taxable event is in fact the miss-utilization of St 1 and St 35 forms. It may so happen that this miss-utilization may be by transferring manufactured goods from Delhi. It can also be that miss-utilization takes place when raw-materials which are purchased are, without being used in manufacture, re-sold to another party either in Delhi or outside Delhi. That would also be a case of miss-utilization of St 1 and St 35 forms, which would immediately attract the provisions of the third proviso to section 4(2)(a)(v). This did not result in any direct, immediate or substantial hindrance to a free flow of trade.

Summary of The Arguments:

The learned counsel for the petitioner contended that the said provision is ultra vires because it is in conflict with a charging section. The Act does not contemplate levy of purchase tax by virtue of the said proviso on the purchases made by the petitioner. It is further submitted that no sale has, in fact, taken place of the goods manufactured by the petitioner and, therefore, no sales tax could be levied. He submits that by seeking to tax consignments sent out of Delhi on transfer, there is restriction on the free movement of goods.

Observations of the Court:

"the law now permits the sales tax to be assessed and recovered not from the selling dealer but from the purchasing dealer."[85]

[85] Paragraph 25 Judgement Text.

Shakti Traders v. State of Jammu & Kashmir and Ors.
AND
R.P. Traders v.State of Jammu & Kashmir and Ors.
AND
Shree Mahavir Oil Mills v. State of Jammu & Kashmir and Ors.
AND
Daya Chand Jain v. State of Jammu & Kashmir and Ors.
AND
Devi Dass Gopal Krishan Ltd. State of Jammu & Kashmir and Ors.
AND
S.K. Enterprises v. State of Jammu & Kashmir and Ors.
AND
Amrit Banaspati Company Ltd. v. State of Jammu & Kashmir and Ors.
AND
National Dairy Development Board v. State of Jammu & Kashmir and Ors.
AND

Pawan Traders v. State of Jammu & Kashmir and Ors.

MANU/JK/0088/2001

High Court of Jammu and Kashmir

Decided on: 14.03.2001

Judges: B.P. Saraf, C.J. and G.D. Sharma, J.

Brief Facts:

All these eight appeals under clause 12 of the Letters Patent are directed against the common judgment and order dated 30.9.1999 of the learned Single Judge by which he dismissed the writ petitions of the appellants challenging the constitutional validity of the levy of additional toll at the rate of 4 per cent by the State of Jammu and Kashmir ("State") on the edible oil imported into the State for re-sale with effect from 30th May,

1997, vide SRO 184 dated 30.9.1999. The case of the appellants was that the levy of additional toll on the edible oils imported into the State for resale in the State was violative of articles 301 and 304(a) of the Constitution of India. It was contended that the impugned levy was discriminatory in nature because by the said levy edible oils imported from outside the State for the purpose of re-sale in the State were discriminated. It was also contended that the said levy was not saved by article 304(b) of the Constitution of India.

Issue Involved:

Whether the levy of additional toll at the rate of 4 per cent on the edible oil imported into the State for resale in the State amounts to discrimination against the goods manufactured or produced outside the State of Jammu and Kashmir which is prohibited by articles 301 and 304 of the Constitution of India?

Decision:

The impugned SRO No.184 dated 30th May 1997, was held to be illegal and inoperative, the same being violative of articles 301 and 304 of the Constitution of India.

Ratio Decidendi:

The additional toll on the edible oil imported by the appellants is tax on imported edible oil and not a fee. Hence, it is not a regulatory or compensatory measure. It directly and immediately impedes the free-flow or movement of trade. It therefore, violates the freedom of trade under article 301 of the Constitution.

States are free to encourage and promote the establishment and growth of industries within their States by all such means as they think proper but they cannot, in that process, subject the goods imported from other States to a discriminatory rate of taxation, i.e., a higher rate of tax vis-à-vis similar goods manufactured/produced within that State. The prohibition is against discriminatory taxation by the States. Article 304, in effect, prohibits discrimination against imported goods.

Summary of The Arguments:

The learned counsel for the appellants/writ petitioners who submitted that the levy of additional toll vide SRO 184 of 1997 is illegal and unconstitutional, the same being violative of articles 301 and 304(a) of the Constitution of India.

The learned Advocate General tried to justify the levy of additional toll on imported oil without similar levy on locally produced edible oil on the ground that the oil manufacturers in the State were not in a position to compete with the outside manufacturers in view of the difficult situation in the State and as such a different treatment to them was not discriminatory.

Observations of the Court:

"The States cannot, however, use taxation as a tool to discriminate against the imported goods even with a view to protecting the local manufacturers from competition from outside manufacturers."[86]

[86] Paragraph 14 Judgement Text.

Sree Rayalaseema Alkalies and Allied Chemicals Limited v. State of Andhra Pradesh and Ors.

(2008)13VST15(AP), MANU/AP/0950/2007

High Court of Andhra Pradesh

Decided on: 31.12.2007

Judges: Bilal Nazki, Actg. C.J. and Nooty Ramamohana Rao, J.

Brief Facts:

The State of Andhra Pradesh enacted the Andhra Pradesh Tax on Entry of Goods into Local Areas Act of 2001; Act No. 39 of 2001 (henceforth referred to as "the Entry Tax Act" for brevity). Section 3 of the Entry Tax Act is the charging provision, which enabled the levy and collection of tax on the entry of notified goods into any local area for sale, consumption or use therein. Entry of the notified goods from one local area to another local area within the State is not subject to the levy i.e., intra-State movement of notified goods is not subjected to the tax. This levy of entry tax is characterised as unconstitutional for the reason that it is discriminatory and also impedes and restricts free movement of trade and commerce, guaranteed under Article 301 of our Constitution. Further, the Entry Tax Act should be declared invalid for the lack of Presidential consent, which is to be obtained prior to the introduction of the Bill, needed in terms of Clause (b) of Article 304 of our Constitution.

Issue Involved:

Whether the present levy is compensatory in nature or not?

Decision:

The Entry Tax Act is declared unconstitutional.

Ratio Decidendi:

For the justification of a particular tax levied to be compensatory in nature, it is essential that there should be direct and intricate nexus between the collection of tax and its intended expenditure. It is pointed out that if for the trade people are provided the use of certain facilities for enabling them to conduct their business better and if they are not

paying much more than what is required to be paid for securing such facilities, the tax then could broadly meet the standard of compensatory tax. The State Government was only fulfilling its fundamental obligations owed to their citizens and they were not providing features specific to cater to the needs of the people indulging in trade or commerce. The essential link between the infrastructure or facility or service, which is directly or even indirectly held to promote the cause of trade or commerce, is missing in them. Hence, the Entry Tax Act amounts to impeding the freedom of movement of trade or commerce across the territory of the nation. The principles enunciated by the Supreme Court in Atiabari Tea Co. Case[87], Shree Mahavir Oil Mills v. State of Jammu and Kashmir[88], Automobile Transport (Rajasthan) Limited[89] and Jindal Stainless case[90], have all been followed.

Summary of The Arguments:

The Counsel for the petitioners, urged that the importers who secure movement of the notified goods into a local area situate within the State of Andhra Pradesh from a place outside the limits of Andhra Pradesh are discriminated against while leaving out from the tax net of the notified goods brought into the limits of a local area from yet another local area within the State. Since the impost is an unreasonable restriction on the freedom of trade and commerce, the same is not liable to be brought on to the statute book without obtaining the previous sanction of the President as required under Clause (b) of Article 304. Since, no such sanction was obtained, the Act is liable to be declared unconstitutional. In opposition, the Special Government Pleader for Commercial Taxes pointed out that the present Entry Tax Act was enacted by the State Legislature under entry 52, List-II, of the Seventh Schedule of the Constitution, and hence, the State Legislature had the competence for enacting the present piece of legislation. It was contended that the entry tax sought to be levied, is compensatory and not regulatory, and hence, stands outside the purview of Article 301. When once it stands outside the purview of Article 301, the operation of Article 304 of the Constitution is not attracted at all, and hence, there is no need to obtain the previous sanction of the President.

Observations of the Court:

"Mere nomenclature employed either for describing the title of the enactment or the language employed in the objects and reasons set out in the Bill are not the proof of

[87] MANU/SC/0030/1960
[88] [1997] 104 STC 148
[89] MANU/SC/0065/1962
[90] MANU/SC/2085/2006

the compensatory nature of the levy. The burden lies heavily on the State to demonstrate as to how the levy is intended to compensate the trade and commerce and for which purposes it is intended to subject the said levy."[91] "Taxes imposed for augmenting the general revenues of the State, which are in the form of sales tax are not considered as compensatory taxes."[92]

[91] Paragraph 12 in the judgement Text
[92] Paragraph 13 in the judgement Text

Smt. Ramakanya Devi and Anr. v. State of Karnataka and Ors.

I(2003)ACC644, II(2003)ACC267, 2003(1)KarLJ227, MANU/KA/0547/2002

High Court of Karnataka

Decided on: 22.11.2002

Judges: P. Vishwanatha Shetty, J.

Brief Facts:

The petitioners in these petitions and connected petitions have prayed for a declaration that the enhancement of the motor vehicles tax (hereinafter referred to as 'the tax') at Items 6 and 7 in column (3) of Part 'A' in the Schedule given to the Karnataka Motor Vehicles Taxation Act, 1957 by means of amending Act No. 4 of 2002, as unconstitutional, oppressive, illegal and unenforceable in law. They have also prayed for a direction to the respondents from raising a demand for the recovery of difference of tax on the basis of the enhancement of the tax made.

Issue Involved:

Whether the impugned enhancement of tax made by amending Items 6 and 7 of column (3) of Part 'A' of the Schedule by means of Act No. 4 of 2002 is liable to be declared as unconstitutional on the ground it interferes with the right to free trade, commerce and intercourse guaranteed to the petitioners under Article 301 of the Constitution of India?

Decision:

The enhancement of tax in respect of camper vans cannot be held to be as one impeding the right guaranteed to the petitioners under Article 301 of the Constitution of India.

Ratio Decidendi:

In the present case, it has to be noticed that the imposition of the tax in question has only an indirect effect on trade and commerce. Therefore, for the purpose of extending better transport facilities in the State, if the State has passed the impugned Act enhancing the tax, the same cannot be held as impeding the free trade, commerce and intercourse

throughout the territory of India. The enhancement of the tax, does not in any manner directly and immediately impose any restriction on the movement of trade or commerce. The impugned enhanced tax has to be held as compensatory in nature.

Summary of The Arguments:

The learned Counsel appearing for the petitioners challenging the constitutional validity of the impugned provision strongly urged that the impugned provision is liable to be declared as unconstitutional on the ground that the respondent-State has failed to show that the impugned tax is compensatory in nature and as such the impugned provision is liable to be declared as unconstitutional on the ground that it interferes with the free trade, commerce and intercourse guaranteed to the petitioners under Article 301 of the Constitution of India. He submitted that the preamble also does not indicate as to what prompted the State to enhance the tax by almost 80 per cent in respect of tourist vehicles and 100 per cent in respect of camper vans.

The learned Government Pleader strongly supported the constitutional validity of the impugned provision and submitted that the impugned provision does not interfere with free trade, commerce and intercourse guaranteed to the petitioners under Article 301 of the Constitution of India as pointed out by the petitioners as the levy of the tax is in the nature of a compensatory tax. He also submitted that the additional tax that the State intends to collect by virtue of the impugned provision is not even sufficient for construction of new roads and bridges and other developmental activities required to improve roads and transport facilities in the State and more particularly in the rural areas

Observations of the Court:

"… taxes which do not directly or immediately restrict or interfere with the trade, commerce and intercourse throughout the territory of India would therefore be excluded from the ambit of Article 301 of the Constitution of India."[93]

[93] Paragraph 12 judgement Text

Solidaire India Ltd. v. State of Karnataka and another

[1994]92STC278(Kar), MANU/KA/0249/1990

High Court of Karnataka

Decided on: 08.10.1990

Judges: S.R. Rajasekhara Murthy, J.

Brief Facts:

The petitioner is a manufacturer of television sets, components, parts and accessories thereof having its factory at Madras. The television sets are sold under the brand-name "Solidaire". The petitioner is a dealer registered in the State of Karnataka under the Karnataka Sales Tax Act, 1957 ("the Act"). The notification dated June 20, 1986, Issued by the Government in exercise of the powers conferred under section 8-A of the Act is challenged in this writ petition. The manufacturers of television sets outside the State had to pay tax under entry 53-A of the Second Schedule at 10 per cent up to March 31, 1986, which was enhanced to 13 per cent from April 1, 1986. By notification dated March 26, 1986, the tax on all television sets was reduced from 13 per cent to 4 per cent. By notification dated June 20, 1986 the tax payable by the dealer under section 5 of the Act on television sets, and components manufactured in Karnataka was reduced to 2 per cent. The 4 per cent tax payable by all dealers reduced under notification dated March 26, 1986, was enhanced to 6 per cent by notification dated March 28, 1987. By another notification Issued on the same day the tax payable by a dealer on television sets manufactured in the State of Karnataka was enhanced from 2 per cent to 3 per cent.

Issue Involved:

Whether there was discrimination brought about by the notifications Issued by the Government of Karnataka levying higher rate of tax on television sets manufactured outside the State of Karnataka, resulting in a violation of articles 301, 303(1) and 304(4) of the Constitution?

Decision:

The court quashed the notifications dated June 20, 1986, and the notification dated March 28, 1987, impugned in this writ petition.

Ratio Decidendi:

By prescribing a lower rate of tax in respect of goods manufactured within the State, the State Government had created invidious discrimination, which adversely affected the free-flow of inter-State trade and commerce resulting in contravention of article 301 of the Constitution. While a State Legislature may enact a law imposing a tax on goods imported from other States as is levied on similar goods manufactured in that State, the imposition must not be such as to discriminate between goods so imported and goods so manufactured.

Summary of The Arguments:

The discrimination brought about by the notifications Issued by the Government of Karnataka levying higher rate of tax on television sets manufactured outside the State of Karnataka is challenged by the petitioner as violative of articles 301, 303(1) and 304(4) of the Constitution

Observations of the Court:

"It is therefore now well-settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulatory measures."[94]

[94] Paragraph 9, Judgement Text; as held in A. T. B. Mehtab Majid & Co. v. State of Madras- (1963) 14 STC 355

Som Distilleries of Breweries Pvt. Ltd. v. State of Madhya Pradesh and Anr.

1997 (2) MPLJ 376, MANU/MP/0480/1996

High Court of Madhya Pradesh (Jabalpur Bench)

Decided on: 12.07.1996

Judges: A.K. Mathur, C.J. and S.K. Kulshrestha, J.

Brief Facts:

Petitioner has by this writ petition challenged Notification No. 7-B-1-38-91-CTD-V dated 27th March, 1995, Issued by the respondent No. 1 State (Annexure-B) as being ultra vires Articles 14, 301, 302 and 304(a) of the Constitution of India. The petitioner is a Company having its distillery and bottling unit at village Rojrachakra, District Raisen. The petitioner is manufacturing beer at its Indian Made Foreign Liquor Unit and has entered into an agreement with Jagajit Industries taking franchise of their products for being manufactured at the bottling unit of the petitioner. It is alleged that some more groups are having manufacturing facilities in the State of M.P., namely, U. B. Group, Shaw Wallace, B. D. A Limited; Jagajit Industries and Tilak Nagar Industries. It is alleged that the State of M.P. in exercise of its powers conferred under clauses (g) and (h) of Sub-section (2) of Section 62 of the Madhya Pradesh Excise Act, 1915 (for short the Act of 1915), has published the notification dated 27th March, 1995, by which a new licence in form FL-8A has been, introduced. This licence is granted on a prepayment of an annual licence fee of Rs. 20,000/- and also contains a schedule by which bottling fee has been introduced to be payable at different rates. This charge of bottling fee is over and above all the excise duty payable by the licensee. This is known as bottling fee. The bottling fee comes to Rs. 5/- per bottle of Rs. 15/- per proof litre, raising the cost of IMFL by Rs. 135/- per case. This notification is applicable only to the units, which have been franchised for bottling certain specified brands of IMFL by the holder of a similar licence in any part of the country outside Madhya Pradesh.

In substance, the contention of the petitioner is that the distillers who are locally situated and are engaged in the process of manufacturing, have been exempted and for them, the bottling fee per bottle is of Rs. 0.05 p. but the persons who are having franchise

and who are bottling the specified brands of IMFL have to pay bottling fee at the rate of Rs. 5/- per bottle or Rs. 15/- per proof litre by virtue of the notification under challenge.

Issue Involved:

Whether the notification is violative of Article 301 of the Constitution?

Decision:

This kind of classification introduced by the notification neither prohibits nor violates the provisions of Article 301 of the Constitution of India.

Ratio Decidendi:

The object of the State Government was to check the device adopted by the liquor contractors by taking advantage or franchise arrangement between the distillers and obtaining certain blending material and then after bottling the same, the liquor is sold out in the State or is exported outside the State. If distillers bring the manufactured liquor, then they will have to pay import duty, but by this device, they stand to gain and save import duty under the garb of bottling. This put the State put to a great loss of excise revenue. In order to check evasion of this excise revenue, a class, which has obtained franchise and blending material for bottling, has been separately classified as against the other class, which is locally bottling the liquor. Since, the classification is based on a rationale principle and the object sought to be achieved is the check of loss of revenue, this class of manufacturers which bottle the liquor under the franchise arrangement after obtaining the blending material is a class apart and they cannot be treated to be similarly situated as local class of persons which manufacture and bottle liquor here.

Observations of the Court:

"… two classes of persons who are similarly situated should not be discriminated in matter of imposing duty."[95]

[95] Paragraph 10 judgement Text

Sony India Ltd.

v.

The Commercial Tax Officer, The State of Tamil Nadu represented by the Secretary to Government, Department of Commercial Taxes and Religious Endowments and The Tamil Nadu Taxation Special Tribunal represented by its Registrar

(2007) 5 MLJ 881, MANU/TN/9256/2007

High Court of Madras

Decided on: 07.09.2007

Judges: D. Murugesan and P.P.S. Janarthana Raja, JJ.

Brief Facts:

According to M/s. Sony India Limited and M/s. Nokia India Private Limited, the goods classified under entry 14(vi) and (viii) of Part D of the First Schedule to the TNGST Act are liable for sales tax at the rate of 12 per cent on first sales made inside the State of Tamil Nadu and only in case the imported goods classifiable under entry 9 of the Eleventh Schedule are liable to tax at the rate of 20 per cent on first sales inside the State of Tamil Nadu. On the basis of the clarification dated July 20, 2002, Issued under Section 28A of the TNGST Act by the Special Commissioner and Commissioner of Commercial Taxes, Chennai, if car audio systems, cordless phones, handy cameras, computer monitors and cellular phones are imported goods having foreign markings, then, when sold in Tamil Nadu, they will be liable for 20 per cent sales tax under entry 9 of the Eleventh Schedule to the Act. As the petitioners are liable to pay sales tax only at the rate of 12 per cent in terms of entry 14(vi) and (viii) of Part D of the First Schedule, they had collected and paid sales tax at the rate of 12 pet cent on the goods imported from outside India at Delhi and Mumbai and stock transferred to Chennai and sold in Chennai and the demand for payment of differential tax had resulted in burden on consumers. Aggrieved by the clarification dated July 20, 2002, they approached the Tamil Nadu Taxation Special Tribunal praying to declare the provisions contained in entry 14(vi) of Part D of the First Schedule to the TNGST Act as classifiable under entry 8 of Part G of the First Schedule to the said Act during the period from March 27, 2002 to June 30, 2002, and as classifiable under entry 9 of the Eleventh Schedule to the said Act with effect from July 1, 2002, prescribing

20 per cent rate of sales tax on the sale of respective imported goods from Delhi/Mumbai and stock transferred and sold in Chennai as violative of Articles 14, 301 and 304 of the Constitution of India and void and unenforceable. By orders dated April 30, 2003, Reported as MPL Cars Limited v. Commercial Tax Officer[96] and May 27, 2003, the Taxation Tribunal upheld the provisions of levy of higher rates of sales tax at 20 per cent. Challenging the said orders, they have filed the above writ petitions seeking to set aside the orders of the Taxation Tribunal and for a consequential declaration to declare the impugned provisions TNGST Act ultra vires of the Constitution.

Issue Involved:

(i) Whether the imported goods, on sufferance of customs duty and subsequently cleared from the customs frontiers, would lose its character as foreign goods for the purpose of levy of sales tax under the provisions of the TNGST Act?

(ii) Whether the levy of 20 per cent sales tax on imported goods by the amended provision as against the levy of 12 per cent sales tax for the goods manufactured in India would be discriminatory in the wake of Articles 301 to 304 of the Constitution?

(iii) Whether by virtue of the agreement (GATT), the State would be competent to bring the goods imported and levy higher rates of sales tax and in such circumstances, whether such enactment would require the assent of the President under Article 304(b) of the Constitution of India?

Summary of The Arguments:

Mr. Arvind P. Datar, learned senior Counsel appearing for the petitioner in W.P. Nos. 17424 and 17425 of 2003 has submitted that once the goods reached the customs frontiers, they are assessed for customs duty and thereafter bill of entry is filed. After payment of customs duty, the goods are cleared and are removed from the port and stored in warehouses. Once the goods are cleared from port on payment of customs duty, they lose the character of imported goods for the purpose of levy of sales tax, the goods should suffer tax as classified under entry 14(vi) and (viii) of Part D of the First Schedule to the TNGST Act at the rate of 12 per cent only. Only such of those imported goods falling under Part D of the First Schedule classified under entry 9 of the Eleventh Schedule are liable to tax at the rate of 20 per cent on the first sales inside the State of Tamil Nadu. He would further submit that inasmuch as the goods are stock transferred from Delhi to

[96] (2004) 134 STC 418

Tamil Nadu, they are goods lying in India and are not goods in the course of import into India.

Refuting the above submissions the learned Additional Advocate-General appearing for the State has submitted that the right of the State to levy sales tax on the sale or purchase of goods within the State of Tamil Nadu is covered by entry 54 of List II of the Seventh Schedule read with Articles 245 and 246 of the Constitution of India and such power includes a power to levy tax on the goods based on "intelligible differentia and reasonable classification". He also submitted that so far as the contentions as to the infringement of Articles 301 to 304 of Part XIII of the Constitution of India are concerned, those articles are intended to ensure that no State Government would discriminate so as to impede goods of other States a free movement to any other State and they are not intended as protection for free movement of foreign goods. So far as the submission as to the India's Trade obligation under GATT is concerned, he submitted that those obligations are India's obligation under the treaty and if it conflicts with any municipal law, the latter shall prevail.

Decision:

Part XIII of the Constitution would not be applicable to imported goods. That apart, the impugned amendment Act fixing higher rate of tax for imported goods is on intelligible differentia and on the basis of reasonable classification and, therefore we do not find any reason to hold that either the impugned Act is violative of Article 14 or the imposition of higher rate of sales tax for imported goods would in any way amount to restriction of trade under Part XIII of the Constitution of India. Equally, the submission as to the impugned Act requires the assent of the President under Article 304(b) also cannot be accepted. Further, as the classification is reasonable, the submission as to the restriction for levy of tax on sale or purchase of goods based on Article 286(3) is also not available to the petitioners. Merely because the GATT agreement recognizes the relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, etc., that will not in any way curtail the State Government to identify the imported goods as separate class and to levy higher rate of sales tax so long as the power of the State Government to levy sales tax even on imported goods is not questioned.

Ratio Decidendi:

Even though the imported goods once cleared from customs they get mingled

with other goods, it is common knowledge that such goods cleared from customs do not lose their identity as foreign goods. Imported goods shall form a distinct and separate class by themselves on the basis of intelligible differentia and reasonable classification. The principles of doctrine of classification are well accepted by the courts in our country. Article 14 of the Constitution of India though forbids class legislation, but it does not forbid reasonable classification for the purpose of legislation.

Part XIII of the Constitution relates to the restriction on inter-State and intra-State trade on goods. In the given case, there is no restriction on goods from one State to another. By virtue of the power the State had classified the goods for the purpose of levy of sales tax.

Observations of the Court:

"… when the discrimination on the ground of hostile unequal treatment is pleaded, the burden of proving such discrimination is always heavy and heavier still when a taxing statute is under attack on the person complaining of discrimination."[97]

[97] Paragraph 27 judgement Text

South Kamrup (Meghalaya) Timber Merchant Association, Mirza and Anr.

v.

State of Assam and Ors.

AIR1995Gau86, MANU/GH/0024/1995

High Court of Gauhati

Decided on: 07.11.1994

Judges: J.N. Sarma, J.

Brief Facts:

Civil Rule No. 455 of 1987 has been filed by South Kamrup (Meghalaya) Timber Merchant Association, Mirza. It is a registered body under the Societies Registration Act. This writ application challenging the legality and validity of the orders dated 24-3-1987 and 7-4-1987 on the ground that these orders have the effect of prohibiting movement of timbers from Meghalaya to Assam and the conditions insisted upon by the respondent No. 2 for movement of timber through Assam. The order prohibited the movement of timber from Meghalaya through the State of Assam without transit passes Issued by the Forest Department of the Government of Meghalaya. Under the provisions of "Meghalaya Forest (Removal of Timber) (Regulation) Act, 1981 and the Rules framed thereunder, an export transit pass has to be obtained from the Forest Department, Government of Meghalaya for removal of timber outside the State of Meghalaya.

Issue Involved:

Whether the orders are restrictive so as to attract Article 301 or 304 or 19(l)(g) of the Constitution?

Summary of The Arguments:

The petitioner association contended that the orders dated 24-3-1987 and 7-4-1987 restrictive in nature and hindered the movement of timber from Meghalaya to Assam.

Decision:

Respondents Nos. 1 and 2 shall allow transportation of timber from Meghalaya, if there is necessary transit passes Issued by the District Council and necessary export transit passes are Issued by the State of Meghalaya in accordance with the Meghalaya Forests (Removal of Timber) (Regulation) Rules, 1982.

Ratio Decidendi:

In the instant case, the prohibition was regulatory in nature. The Act and the Rules of 1981 and 1982 provides for export transit passes in accordance with the law and in the abence of those export transit passes, the petitioners are not entitled to removal of timbers from Meghalaya. If export transit passes are there, in conformity to Rule 3(1) Issued by the authority, the respondent No. 2 shall be bound to allow transportation of timber.

Observations of the Court:

"… the prohibition imposed must be held to be regulatory in nature and not restrictive so as to attract Article 301 or 304 or 19(l)(g) of the Constitution."[98]

[98] Paragraph 11, Judgement Text: State of Tamil Nadu v. Sanjeetha Trading Co.- AIR 1993 SC 237

Sony India Ltd. v. Commercial Tax Officer and Ors.

(2008) 18 VST 49 (Mad), MANU/TN/7688/2007

High Court of Madras

Decided on: 07.09.2007

Judges: D. Murugesan and P.P.S. Janarthana Raja, JJ.

Brief Facts:

According to M/s. Sony India Limited and M/s. Nokia India Private Limited, the goods classified under entry 14(vi) and (viii) of Part D of the First Schedule to the TNGST Act are liable for sales tax at the rate of 12 per cent on first sales made inside the State of Tamil Nadu and only in case the imported goods classifiable under entry 9 of the Eleventh Schedule are liable to tax at the rate of 20 per cent on first sales inside the State of Tamil Nadu. On the basis of the clarification dated July 20, 2002 Issued under Section 28A of the TNGST Act by the Special Commissioner and Commissioner of Commercial Taxes, Chennai, if car audio systems, cordless phones, handy cameras, computer monitors and cellular phones are imported goods having foreign markings, then, when sold in Tamil Nadu, they will be liable for 20 per cent sales tax under entry 9 of the Eleventh Schedule to the Act. As the petitioners are liable to pay sales tax only at the rate of 12 per cent in terms of entry 14(vi) and (viii) of Part D of the First Schedule, they had collected and paid sales tax at the rate of 12 pet cent on the goods imported from outside India at Delhi and Mumbai and stock transferred to Chennai and sold in Chennai and the demand for payment of differential tax had resulted in burden on consumers. Aggrieved by the clarification dated July 20, 2002, they approached the Tamil Nadu Taxation Special Tribunal praying to declare the provisions contained in entry 14(vi) of Part D of the First Schedule to the TNGST Act as classifiable under entry 8 of Part G of the First Schedule to the said Act during the period from March 27, 2002 to June 30, 2002 and as classifiable under entry 9 of the Eleventh Schedule to the said Act with effect from July 1, 2002 prescribing 20 per cent rate of sales tax on the sale of respective imported goods from Delhi/Mumbai and stock transferred and sold in Chennai as violative of Articles 14, 301 and 304 of the Constitution of India and void and unenforceable. By orders dated April 30, 2003 Reported as MPL Cars Limited v. Commercial Tax Officer[99] and May 27, 2003, the Taxation Tribunal upheld the provisions of levy of higher rates of sales tax at 20 per cent. Challenging the

[99] (2004) 134 STC 418

said orders, they have filed the above writ petitions seeking to set aside the orders of the Taxation Tribunal and for a consequential declaration to declare the impugned provisions TNGST Act ultra vires of the Constitution.

Issue Involved:

(i) Whether the imported goods, on sufferance of customs duty and subsequently cleared from the customs frontiers, would lose its character as foreign goods for the purpose of levy of sales tax under the provisions of the TNGST Act?

(ii) Whether the levy of 20 per cent sales tax on imported goods by the amended provision as against the levy of 12 per cent sales tax for the goods manufactured in India would be discriminatory in the wake of Articles 301 to 304 of the Constitution?

(iii) Whether by virtue of the agreement (GATT), the State would be competent to bring the goods imported and levy higher rates of sales tax and in such circumstances, whether such enactment would require the assent of the President under Article 304(b) of the Constitution of India?

Decision:

Part XIII of the Constitution would not be applicable to imported goods. That apart, the impugned amendment Act fixing higher rate of tax for imported goods is on intelligible differentia and on the basis of reasonable classification and, therefore, we do not find any reason to hold that either the impugned Act is violative of Article 14 or the imposition of higher rate of sales tax for imported goods would in any way amount to restriction of trade under Part XIII of the Constitution of India. Equally the submission as to the impugned Act requires the assent of the President under Article 304(b) also cannot be accepted. Further, as the classification is reasonable, the submission as to the restriction for levy of tax on sale or purchase of goods based on Article 286(3) is also not available to the petitioners. Merely because the GATT agreement recognizes the relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, etc., that will not in any way curtail the State Government to identify the imported goods as separate class and to levy higher rate of sales tax so long as the power of the State Government to levy sales tax even on imported goods is not questioned.

Ratio Decidendi:

Even though the imported goods once cleared from customs they get mingled with other goods, it is common knowledge that such goods cleared from customs do not lose their identity as foreign goods. Imported goods shall form a distinct and separate class by themselves on the basis of intelligible differentia and reasonable classification. The principles of doctrine of classification are well accepted by the courts in our country. Article 14 of the Constitution of India though forbids class legislation, but it does not forbid reasonable classification for the purpose of legislation.

Part XIII of the Constitution relates to the restriction on inter-State and intra-State trade on goods. In the given case, there is no restriction on goods from one State to another. By virtue of the power the State had classified the goods for the purpose of levy of sales tax.

Summary of The Arguments:

Mr. Arvind P. Datar, learned senior Counsel appearing for the petitioner in W.P. Nos. 17424 and 17425 of 2003 has submitted that once the goods reached the customs frontiers, they are assessed for customs duty and thereafter bill of entry is filed. After payment of customs duty, the goods are cleared and are removed from the port and stored in warehouses. Once the goods are cleared from port on payment of customs duty, they lose the character of imported goods for the purpose of levy of sales tax, the goods should suffer tax as classified under entry 14(vi) and (viii) of Part D of the First Schedule to the TNGST Act at the rate of 12 per cent only. Only such of those imported goods falling under Part D of the First Schedule classified under entry 9 of the Eleventh Schedule are liable to tax at the rate of 20 per cent on the first sales inside the State of Tamil Nadu. He would further submit that inasmuch as the goods are stock transferred from Delhi to Tamil Nadu, they are goods lying in India and are not goods in the course of import into India.

Refuting the above submissions the learned Additional Advocate-General appearing for the State has submitted that the right of the State to levy sales tax on the sale or purchase of goods within the State of Tamil Nadu is covered by entry 54 of List II of the Seventh Schedule read with Articles 245 and 246 of the Constitution of India and such power includes a power to levy tax on the goods based on "intelligible differentia and reasonable classification". He also submitted that so far as the contentions as to the

infringement of Articles 301 to 304 of Part XIII of the Constitution of India are concerned, those articles are intended to ensure that no State Government would discriminate so as to impede goods of other States a free movement to any other State and they are not intended as protection for free movement of foreign goods. So far as the submission as to the India's Trade obligation under GATT is concerned, he submitted that those obligations are India's obligation under the treaty and if it conflicts with any municipal law, the latter shall prevail.

Observations of the Court:

"… when the discrimination on the ground of hostile unequal treatment is pleaded, the burden of proving such discrimination is always heavy and heavier still when a taxing statute is under attack on the person complaining of discrimination."[100]

[100] Paragraph 27 judgement Text

Tata Steel Limited and Ors. v. State of Jharkhand and Ors.

2008 (3) JCR 365 (Jhr), MANU/JH/0527/2008

High Court of Jharkhand

Decided on: 13.06.2008

Judges: M.Y. Eqbal, A.C.J. and D.K. Sinha, J.

Brief Facts:

The petitioners have challenged Section 11 of the Jharkhand Value Added Tax Act, 2005 as ultra vires and violative of Article 301 read with Article 304(a) of the Constitution of India since the provision is not saved by Article 304(b) of the Constitution of India and further for a direction restraining the respondents from enforcement of the provisions of Section 11 of the Jharkhand Value Added Tax Act 2005 whereby Entry Tax is liable to be collected on entry of goods mentioned in Schedule III of the said Act. The petitioners further sought a declaration that the entry tax is not compensatory in nature falling under Article 304 of the Constitution of India. As such, the said provision is violative of Article 301 of the Constitution of India. In course of hearing of the writ petitions, the State came with an amendment, namely, Jharkhand Value Added Tax Act (Amendment Act. 2007).

Issue Involved:

Whether Section 11 of the Jharkhand Value Added Tax Act 2005 and the amendment made therein by Jharkhand VAT (Amendment) Act, 2007 is ultra vires and unconstitutional as being opposed to Article 301 of the Constitution and is not saved by Article 304 of the Constitution of India?

Summary of The Arguments:

The learned senior counsel appearing for the petitioners assailed the provision of Section 11 of the VAT Act and the amendment made therein levying tax on entry of goods mentioned in Schedule III of the said Act as ultra vires of the Constitution of India, which does not comply the requirement of Articles 301 and 304 of the Constitution. The learned Counsel submitted that the amendment to Section 11 have been made effective from 1st April 2006. It was further contended that the Trade Development Fund had been

constituted only in March 2008. Learned Counsel submitted that in view of the establishment of Trade Development Fund in March 2008, the Legislature could not have made the amendment to Section 11 with retrospective effect. The retrospective amendment was irrational and arbitrary.

The learned Advocate General on the other hand submitted that the relevant provisions of the VAT Tax Act relating to imposition of entry tax under facially and patently show that the levy of entry tax is compensatory in nature.

Decision:

Section 11 of the Jharkhand Value Added Tax Act 2005 and the amendment made therein by Jharkhand VAT (Amendment) Act, 2007 is ultra vires and unconstitutional as being opposed to Article 301 of the Constitution and is not saved by Article 304 of the Constitution of India.

Ratio Decidendi:

Section 11 of the Act has been introduced without obtaining prior sanction of the President as required under the proviso to Article 304(b) of the Constitution of India. The State Financial Corporation was constituted under the State Financial Corporation Act for providing incentive and financial aids to the industries. The purposes for which the Trade Development Fund was created, did not directly facilitate trade and commerce and according no special benefits to the trade people in the local areas for which such entry tax is collected. In the amended provision or in the notification Issued pursuant to the said provision, no separate earmarked facility has been planned for the traders. Moreover, there is absolutely no correlation to the revenue generated under the Act and the expenditure incurred by the local authorities for providing the services. Whatever facilities sought to be provided by the Act and the notification, are either the constitutional obligation of the State or statutory duty of the Corporation and the local bodies constituted under the Act.

Observations of the Court

"… the basic difference between a tax, on one hand, and a fee/compensatory tax, on the other hand, is that the former is based on the concept of burden, whereas compensatory tax is based on the concept of recompense/reimbursement. For a tax to be compensatory, there must be some link between the quantum of tax and the facilities/ services."[101]

[101] Paragraph 36 judgement Text

The Pondicherry Generators Manufacturers' Association rep. by its

President, J.C.Kohli

v.

The Union of India rep. by its Secretary to Government (Local Administration Department), The Director, Local Administration Department, The Pondicherry Municipality rep. by its Special Officer and The Commissioner, Pondicherry Municipality

(2007)6MLJ927, MANU/TN/8898/2007

High Court of Madras

Decided on: 31.07.2007

Judges: P.K. Misra and R. Banumathi, JJ.

Brief Facts:

Challenge in this batch of writ petitions is against the Notification dated 29.12.1997 Issued by the Government of Pondicherry. Under such Notification, the Government of Pondicherry has purported to frame rules, viz., the Pondicherry Municipalities (Tax on Procurement of Goods) Rules, 1997 (hereinafter referred to as "the Rules"). Such rules have been framed in exercise of powers conferred by Clause (d) of Sub-Section (2) of Section 118 read with Section 440 of the Pondicherry Municipalities Act, 1973, (hereinafter referred to as "the Act").

Issue Involved:

Whether the Rules violate Article 301 of the Constitution?

Summary of The Arguments:

The Government sought to justify imposition of such tax by seeking inspiration from Article 304(a). In this context, it is submitted by the Government Pleader, Pondicherry Union Territory that since the goods indicated in the schedule viz., Cigarettes, Air Conditioners and their spare parts/components and Generators and their spare parts/components are not produced or manufactured within the Union Territory of Pondicherry,

it cannot be said that there is any discrimination regarding the rate of tax imposed on the importers, the purchasers or the manufacturers of such goods within the territory. It is submitted that only when the purchasers and manufacturers of goods within the territory of Pondicherry are subjected to tax at a lower rate and the importers of such goods are subjected to tax at a higher rate, it can be said that there is any discrimination. However, since no tax is being imposed because there are no producers or manufacturers of such goods, there is no embargo on the State Legislature to impose any tax on the specified goods imported from outside.

Decision:

In the absence of protective umbrella available in Article 304(a) or 304(b) the imposition of the tax in the present case contravenes Article 301. The Rules therefore are liable to be quashed on the ground of violation of Article 301.

Ratio Decidendi:

A bare reading of the aforesaid rules makes it clear that tax was to be levied on import of certain specified goods from outside the union territory of Pondicherry to any Municipal area. On the face of it imposition of tax is in contravention of the provisions contained in Article 301. The Government of Union Territory of Pondicherry has not sought to justify the imposition of such tax on the footing that such tax is compensatory in nature in the sense that such tax is collected to upset any service to be provided to the persons importing such goods.

A careful reading of Article 304(a) makes it clear that notwithstanding the provisions contained in Article 301, the State Legislature by law, may impose any tax on goods brought from outside on par with tax imposed on such goods which are produced or manufactured inside the State. Where there is no tax on the goods of a particular type either because such goods are not produced or manufactured within the State or because the State in its wisdom does not intend to levy any tax, it has no power to tax goods imported from outside. The absence of any production or manufacture of a particular good within the State does not empower the State to impose tax on goods imported from outside as such tax would be in violation of Article 301, unless such tax is found to be compensatory in nature. Only if there is existence of any tax on particular goods produced or manufactured within the State, the State would be authorised to impose similar tax on such goods brought from outside

Observations of the Court:

"The absence of any production or manufacture of a particular good within the State does not empower the State to impose tax on goods imported from outside as such tax would be in violation of Article 301, unless such tax is found to be compensatory in nature."[102]

[102] Paragraph 14 judgement Text

Thressiamma L. Chirayil v. State of Kerala

2007(1) KLT 303, (2007) 7 VST 293 (Ker), MANU/KE/0542/2006

High Court of Kerala

Decided on: 18.12.2006

Judges: K.S. Radhakrishnan and M.N. Krishnan, JJ.

Brief Facts:

Constitutional validity of certain provisions of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (Act 15 of 1974) is under challenge in all these Original Petitions. A few of the writ petitioners have sought for a declaration that Sections 2(1)(d), 2(1)(g), 2(1)(i) and Section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (in short "Entry Tax Act") are discriminatory and ultra vires of Articles 14, 19(1)(a), 19(1)(g), 246, 265, 286, 301, 304(a) and 304(b). Section 3(1) read with Section 2(1)(d), 2(1)(h) and 2(1)(i) of the Act makes it clear that taxable event of any of the goods is on the entry of scheduled goods being brought into the local area from outside the State for consumption, use or sale. The Kerala Entry Tax Act was originally enacted to provide for the collection of sales tax on motor vehicles purchased from outside the State and brought into State and to avoid loss of sales tax on account of purchase of motor vehicles by parties other than dealers from outside the State and brought into State thus curbing the evasion of sales tax on goods purchased from outside the State. Facts would indicate that on the introduction of entry tax, manufacturers have opted to purchase raw materials from within the State because they are less costly.

Issue Involved:

Whether Sections 2(1)(d), 2(1)(g), 2(1)(i) and Section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (in short "Entry Tax Act") are discriminatory and ultra vires of Articles 14, 19(1)(a), 19(1)(g), 246, 265, 286, 301, 304(a) and 304(b)?

Decision:

The levy of entry tax is not compensatory in nature, therefore discriminatory and the impugned levy is violative of Articles 14, 301 and 304 of Chapter XIII of the Constitution of India. Amendments were effected by Act 23 of 1996, which had no previous sanction of the President of India as required under the proviso to Article 304(b) of the Constitution of India, nor was it subsequently assented to by the President of

India. The levy of entry tax on goods imported from other State to the State of Kerala and from abroad is not compensatory in nature since the State Government could not discharge its burden by placing materials before court that payment of levy of entry tax is reimbursement/recompense for the quantifiable/measurable benefit provided or to be provided to the petitioners.

Ratio Decidendi:

The Act did not indicate any benefit which is either quantifiable or measurable, if the provision of the Act does not indicate facially the quantifiable benefit, burden to establish the same rests on the State. It was also found that the compensatory character of tax is not self-evident from the Kerala Entry Tax Act. The object of the Act was for augmenting the general revenue by curbing the evasion of sales tax on goods purchased from outside the State, which cannot be characterised as a compensatory levy.

The tax which discriminates between goods imported from other States and outside the country and locally manufactured, hampers the trade between the States and therefore cannot be construed to be compensatory. Thus it is liable to be declared as unconstitutional Fr. William Fernandez's case[103].

Summary of The Arguments:

State maintained the stand that the Entry Tax Act is within its legislative competence of since it was promulgated in exercise of its powers under Articles 245 and 246 read with Entry 52 List II of the VII Schedule to the Constitution of India.

Counsel appearing for the petitioners submitted that the right of the State to impose entry tax under the Entry Tax Act has to be tested in the light of the Decision of the Constitution Bench of the apex court in Jindal Stainless Ltd. v. State of Haryana and Ors.[104] Counsel submitted, in the light of the above Decision of the apex court the Decision rendered by a Division Bench of this Court in Rajan v. State of Kerala[105] (the Division Bench held that regulatory measures or measures imposing compensatory tax do not come within the purview of restrictions contemplated in Article 301 and that such measures need not comply with the requirement of the provisions of Article 304(b) of the Constitution) is no longer good law and that the Decision in Fr. William Fernandez v. State of Kerala and Ors.[106] has to be affirmed. Counsel further submitted that levy of Entry tax sought to be imposed under the Act cannot be said to be either compensatory or regulatory but prevents free flow of trade, commerce and intercourse and does not

[103] Id
[104] MANU/SC/2085/2006
[105] 1995 (2) KLT 369
[106] 115 STC 591

satisfy the requirements of Article 304(b) of the Constitution. It was also stated that the amendment Act has not received the assent of the President.

Observations of the Court:

"…unless and until State discharges its burden by placing materials before court that payment of compensatory tax is reimbursement/recompense, quantifiable/measurable benefit provided or to be provided to the payers or there is any broad correlation between the entry tax being realised and the services rendered, it cannot sustain levy of entry tax."[107]

[107] Paragraph 19 judgement Text

Chief General Manager, Jagannath Area and Ors. v. State of Orissa and Anr.

II(1996)ACC390, 1996VIIAD(SC)458, JT1996(8)SC530, 1996(7)SCALE123, (1996)10SCC676, [1996]Supp6SCR570, 1997(1)UJ131(SC), MANU/SC/1670/1996

Supreme Court of India

Decided on: 20.09.1996

Judges: K. Ramaswamy and G.B. Pattanaik, JJ.

Articles and schedules referred: Constitution of India - Article 301

Brief Facts:

This Special Leave Petition is directed against the judgment of the Division Bench of the Orissa High Court dated 10.4.1996 passed in Original Jurisdiction case No. 811 of 1996. The question for consideration before the Orissa High Court was whether the Dumpers belonging to the petitioner which are used within the mining areas are taxable as Motor Vehicle under the provisions of Orissa Motor Vehicles Taxation Act (referred to as "The Taxation Act"). The Orissa High Court relying upon the Decision of this Court in the case of Central Coal Fields Ltd. v. State of Orissa & Batch[108] dismissed the Writ Petition.

Issue Involved:

Whether the Dumpers belonging to the petitioner which are used within the mining areas are taxable as Motor Vehicle under the provisions of Orissa Motor Vehicles Taxation Act or not?

Decision:

The dumpers belonging to the petitioners are taxable as held by the Orissa High Court.

Ratio Decidendi:

Tracing the legislative history and the Decisions of this Court commencing from Bolani Ores Ltd, State of Orissa[109] and Central Coal Fields Ltd. v. State of Orissa & Batch[110] it must be held that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, were liable to taxation on the footing of their use or kept for use on public roads. The taxability of dumpers again came up before

[108] (1992) Suppl. 3 SCC 133
[109] MANU/SC/0313/1974
[110] Supra Note 1

this Court in the case of Union of India and Ors. v. Chowgule & Co. Pvt. Ltd. and Ors.[111]. In this case an argument had been advanced that the dumpers are used only in miming operation within the mining area and are not actually used on roads not are suitable for use on roads and, therefore, arc not taxable. The Judicial Commissioner of Goa, Daman and Diu accepted the contention and allowed the appeal. Union of India had come up in appeal to this Court. This Court reversed the Decision of the Judicial Commissioner of Goa, Daman and Diu and relying upon the earlier Decision of this Court in Central Coal Fields Ltd. v. State of Orissa[112] held the mere fact that dumpers were used solely on the premises of the owner, or that they were in closed premises, or permission of the authorities was needed to move them from one place to another, or that they are not intended to be used or are incapable of being used for general purposes, or that they have an unlade and laden capacity depending on their weight and size, is of no consequence for, dumpers are vehicles used for transport of goods and thus liable to pay a compensatory lax for the availability of roads for them to run upon commission.

Summary of The Arguments:

The Dumpers which have been taxed under the Taxation Act are used only within the mining areas and are not capable of being used in the public roads and, therefore, cannot be held to be Motor Vehicles and consequently are not taxable under the Taxation Act. Secondly, it was argued that the tax on vehicles being compensatory in nature, levy of such tax can be sustained only on the ground that the vehicles are used the roads for which tax is levied. If the vehicle in question did not use the roads and yet tax is levied on the same, the said levy is liable to be struck down.

Observations of the Court:

"The tax imposed on the motor vehicles is basically a tax for the use of the roads within the State… The mere fact that any particular individual though can take advantage of the convenience of the services provided by the State but for some reason, chooses not to enjoy the services provided cannot escape the taxing liability on that score nor can the provision imposing the tax become invalid on that score."[113]

[111] (1992) Suppl. 3 SCC 141
[112] Supra Note 1
[113] Paragraph 10, Judgement Text

Geo Miller and Co. Pvt. Ltd. and Ors. v. State of M.P. and Ors.

AIR 2004 SC 3552, 2004(5) SCALE 747, (2004) 5 SCC 209, [2004] 136 STC 241(SC), MANU/SC/0491/2004

Supreme Court of India

Decided on: 05.05.2004

Judges: S. Rajendra Babu, C.J. and G.P. Mathur, J.

Articles and schedules referred: Constitution of India - Articles 301, 304, 366 and 366 (29A)

Brief Facts:

The appellants are dealers registered under the M.P. General Sales Tax Act, 1958 and were also assessed to the Entry Tax during the period from 1.1.1986 to 11.12.1986 under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as the 'M.P. Entry Tax Act'). The appellants are carrying on the business of execution of works contract. Before the authorities below, it was the appellants' contention that since the goods were brought for purpose of works contract and they have been subjected to sales tax under the Sales Tax Act, the appellants were not liable to pay the entry tax on goods.

Issue Involved:

Whether the M.P. Entry Tax Act, 1976, is unconstitutional as it is hit by Article 301 of the Constitution for not satisfying the conditions laid down in Article 304(b)?

Decision:

The Act being compensatory in nature it is not open to challenge under Article. Accordingly, the constitutionality of the Act is upheld.

Ratio Decidendi:

The Court held that it is well settled by the Decision in Atiabari Tea Co. [supra] at p.860, that only such restrictions or impediments which directly or immediately impede the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301. This Court did not accept the argument that all taxes whether or not their impact on trade is immediate or mediate, direct or remote should be governed by Article

301. This view was further upheld in the Automobile Transport Case and in State of Kerala v. A.B. Abdul Kadir and Ors[114]. Hence, the mere fact that a tax is imposed does not automatically bring Article 301 into play. The concept of "compensatory taxes" was propounded in the Rajasthan Automobile Case[115]. By virtue of this, taxes, which would otherwise interfere with the unfettered freedoms under Article 301, will be protected from becoming unconstitutional if they are compensatory. Hence the reliance placed by the appellants on the Observations made in the Atiabari Case[116] and the Rajasthan Automobile Case[117] that taxation may impede the movement of goods from one barrier to the other and accordingly submitting that the M.P. Entry Tax Act, 1976 is hit by Article 301 is not properly founded.

Summary of The Arguments:

The submission of the appellants that the M.P. Entry Tax Act, 1976 is unconstitutional as it offends Article 301 owing to non-compliance of the conditions laid down in Article 304(b). The appellants relied on the cases of Atiabari Tea Co. Ltd. v. The State of Assam and Ors.[118]And Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.[119], to state that taxation may impede the movement of goods from one barrier to the other and would accordingly bring Article 301 into play. They then contend that the conditions of Article 304(b) have not been complied thereby rendering the M.P. Entry Tax Act, 1976 unconstitutional, The respondents have reiterated that the tax being imposed is compensatory in nature as the revenue earned therefrom passes over to the local bodies to compensate them for the loss incurred due to abolition of octroi. Augmentation of their finance would enable them to promote Municipal Services more efficiently helping in the free flow of trade and commerce.

Observations of the Court:

"It is a well-settled position of law that in interpreting taxing statutes, one must have regard to the strict letter of the law. If the person/entity sought to be taxed comes within the letter or the law he must be taxed."[120]

Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.

AIR2006SC2550, [2006]283ITR1(SC), JT2006(4)SC611, 2006(4)SCALE300, (2006)7SCC241, [2006]145STC544(SC), MANU/SC/2085/2006

[114] MANU/SC/0072/1969
[115] supra note 2
[116] supra note 1
[117] supra note 2
[118] MANU/SC/0030/1960
[119] MANU/SC/0065/1962
[120] Paragraph 30, Judgement Text

Supreme Court of India

Decided on: 13.04.2006

Judges: K. Ramaswamy and G.B. Pattanaik, JJ.

Articles and schedules referred: Constitution of India - Artcles 145(3), 246, 286 and 301 to 304.

Brief Facts:

By order dated 26.9.2003, the referring Bench of Hon'ble Ruma Pal, J. and P. Venkatarama Reddy, J. doubted the correctness of the view taken in Bhagatram Rajeevkumar v. Commissioner of Sales Tax, M.P. and Ors.[121] relied on in the subsequent Decision of this Court in the case of State of Bihar and Ors. v. Bihar Chamber of Commerce and Ors.[122]. Accordingly, all the matters were ordered to be placed before the Hon'ble the Chief Justice for appropriate directions and accordingly, the matter has come to the Constitution Bench to decide with certitude the parameters of the judicially evolved concept of "compensatory tax" vis-a-vis Article 301. The referral order is in the case of Jindal Strips Ltd. and Anr. (now known as Jindal Stainless Ltd.) v. **State of Haryana and Ors.**[123]; under Article 145(3).

Issue Involved:

The pre-1995 Decisions held that an exaction to reimburse/recompense the State the cost of an existing facility made available to the traders or the cost of a specific facility planned to be provided to the traders is compensatory tax and that it is implicit in such a levy that it must, more or less, be commensurate with the cost of the service or facility. Those Decisions emphasized that the imposition of tax must be with the definite purpose of meeting the expenses on account of providing or adding to the trading facilities either immediately or in future provided the quantum of tax is based on a reasonable relation to the actual or projected expenditure on the cost of the service or facility. However, the post-1995 Decisions in **Bhagatram's case** and in the case of **Bihar Chamber of Commerce**, now say that even if the purpose of imposition of the tax is not merely to confer a special advantage on the traders but to benefit the public in general including the traders, that levy can still be considered to be compensatory. According to this view, an indirect or incidental benefit to traders by reason of stepping up the

[121] 1995 Supp. (1) SCC 673
[122] MANU/SC/0593/1996
[123] MANU/SC/0775/2003

developmental activities in various local areas of the State can be brought within the concept of compensatory tax, the nexus between the tax known as compensatory tax and the trading facilities not being necessarily either direct or specific.

According to the referral order, since the concept of compensatory tax has been judicially evolved as an exception to the provisions of Article 301 and as the parameters of this judicially evolved concept are blurred, particularly, by reason of the Decisions in **Bhagatram's case** and **Bihar Chamber of Commerce**, the Court felt that the interpretation of Article 301 vis-a-vis compensatory tax should be authoritatively laid down with certitude by the Constitution Bench under Article 145(3).

Decision:

The concept of compensatory taxes was propounded in the case of **Automobile Transport**[124] in which compensatory taxes were equated with regulatory taxes. In that case, a working test for deciding whether a tax is compensatory or not was laid down. In that judgment, it was observed that one has to enquire whether the trade as a class is having the use of certain facilities for the better conduct of the trade/business. This working test remains unaltered even today.

In the post 1995 era, the said working test propounded in the Automobile Transport stood disrupted when in Bhagatram's case, a Bench of three Judges enunciated the test of "some connection" saying that even if there is some link between the tax and the facilities extended to the trade directly or indirectly, the levy cannot be impugned as invalid. In our view, this test of "some connection" enunciated in Bhagatram's case is not only contrary to the working test propounded in Automobile Transport's case but it obliterates the very basis of compensatory tax. We may reiterate that when a tax is imposed in the regulation or as a part of regulatory measure the controlling factor of the levy shifts from burden to reimbursement/recompense. The working test propounded by a Bench of seven Judges in the case of Automobile Transport and the test of "some connection" enunciated by a Bench of three Judges in Bhagatram's cannot stand together. Therefore, in our view, the test of "some connection" as propounded in Bhagatram's is not applicable to the concept of compensatory tax and accordingly to that extent, the judgments of this Court in Bhagatram Rajeevkumar v. Commissioner of Sales Tax, M.P. and State of Bihar v. Bihar Chamber of Commerce stand overruled.

[124] MANU/SC/0065/1962

Ratio Decidendi:

The basis of every levy is the controlling factor. In the case of "a tax", the levy is a part of common burden based on the principle of ability or capacity to pay. In the case of "a fee", the basis is the special benefit to the payer (individual as such) based on the principle of equivalence. When the tax is imposed as a part of regulation or as a part of regulatory measure, its basis shifts from the concept of "burden" to the concept of measurable/quantifiable benefit and then it becomes "a compensatory tax" and its payment is then not for revenue but as reimbursement/ recompense to the service/facility provider.

[125] Paragraph 39, Judgement Text

It is then a tax on recompense. Compensatory tax is by nature hybrid but it is closer to fees than to tax as both fees and compensatory taxes are based on the principle of equivalence and on the basis of reimbursement/recompense.

Summary of The Arguments:

It was vehemently contended that if the test, laid down in the case of Bhagatram and in the case of Bihar Chamber of Commerce, was held to be applicable then as a consequence there would be no difference between a tax and a compensatory tax

Observations of the Court:

"If the provisions of the an Act are ambiguous or even if the Act does not indicate facially the quantifiable benefit, the burden will be on the State as a service/facility provider to show by placing the material before the Court, that the payment of compensatory tax is a reimbursement/recompense for the quantifiable/ measurable benefit provided or to be provided to its payer(s)."[125]

Loarn Steel Industries Ltd. and another etc. v. State of Andhar Pradesh and another

AIR1997SC1694, JT 1997(1)SC326, 1997(1)SCALE27, (1997)2SCC37, [1996]Supp10SCR898, MANU/SC/0391/1997

Supreme Court of India

Decided on: 20.12.1996

Judges: A.M. Ahmadi C.J.I. and Mrs. Sujata V. Manohar, J.

Articles and schedules referred: Constitution of India - Articles 301, 303 and 304.

Brief Facts:

The iron and steel scrap and ingots which are purchased by the appellants are subject to tax in the State of Andhra Pradesh under the Andhra Pradesh General Sales Tax Act, 1957. Under an exemption notification Issued under the Andhra Pradesh General Sales Tax Act, 1957 bearing G.O.Ms. No. 88 Revenue, dated 28.1.1977 which came into effect from 1st of April, 1976 re-rolled finished products of steel sold in Andhra Pradesh were made exempt from tax payable under the Andhra Pradesh General Sales Tax Act provided tax had already been levied under the said Act on the sale or purchase of any of

the materials specified in Item 2 of Schedule III to the said Act which included the raw material purchased by the assessee. G.O.Ms. No.1373 Revenue, dated 28.8.1981, the above G.O.Ms. No.88 was amended. The result was that exemption under G.O.Ms. No. 88 became available only to those re-rolled finished products of steel re-rollers that were situated in the State of Andhra Pradesh. Since the appellants' re-roller mills were situated outside Andhra Pradesh the re-rolled products of the appellants became ineligible for the exemption made available to local products.The amended G.O.Ms. No. 88 was cancelled with effect from 4.2.1982. Thereafter, another notification bearing G.O.Ms. No. 498 Revenue, dated 20.3.1984 has been Issued under which once again exemption from tax leviable under Section 6 of the Andhra Pradesh General Sales Tax Act, 1957, on ingots or billets or re-rolled finished products manufactured from iron and steel scrap on which tax has been paid under the said Act is granted only to those re-rolled finished products which are manufactured from steel plants-cum-re-rollers situated within the State of Andhra Pradesh and sold inside the State. The appellants challenged both these notification as being violative of Article 304 (a) of the Constitution.

Issue Involved:

Whether the aforementioned notifications were violative of Article 304 (a) of the Constitution of India?

Summary of The Arguments:

The appellants contend that in the impugned notifications there is a clear discrimination between the goods which have been manufactured in the State and goods which have been manufactured outside the State in levying tax under the Andhra Pradesh General Sales Tax Act of 1957.

Decision:

The Court held that the words denying the exemption to goods manufactured outside the State were expressly and specifically added to the original exemption notification by the amending G.O.Ms. No. 1373 of 28.3.1981 and it is this amendment alone, which is clearly severable, that offends Article 304 (a). There is no need, therefore, to strike down the entire tax exemption granted to all re-rolled steel products sold in the State of Andhra Pradesh and manufactured out of tax paid raw material purchased in the State of Andhra Pradesh. The discriminatory provision is clearly severable and thus should be struck down.

[126] [1963] Supp. 2 SCR 435

[127] [1990] Supp. SCC 617

Ratio Decidendi:

Article 304 enables the Legislature of a State to impose tax on goods manufactured within the State as also goods imported from other States into the State. But in doing so the State cannot discriminate between goods so imported and goods manufactured or produced locally. This Article came up for consideration before the Supreme Court in the case of Firm A.T.B. Mehtab Majid and Co. v. State of Madras and Anr.[126] The Court said that sales tax which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Article 301 and will be valid only if it comes within the terms of Article 304 (a). This Court upheld the contention of the appellant that such an imposition would violate Article 304 (a) of the Constitution. This Decision was re-affirmed by this Court in the case of Andhra Steel Corporation v. Commissioner of Commercial Taxes in Karnataka[127]. Thus the Supreme Court held that there was clear violation of Article 304 (a) in the present case.

Observations of the Court:

"If the taxing statute imposes tax on subjects which are divisible in their nature and if the covered subjects which are exempted by the Constitution are wrongly taxed, the entire taxing statute need not be declared as ultra vires because it is feasible to separate taxes levied on authorised subjects from those levied on exempt subjects and to exclude the latter in the assessment to tax. In such cases this Court has said the statute itself should be allowed to stand. The taxing authority can be prevented by injunction from imposing the tax on subjects exempted by the Constitution."[128]

[128] Paragraph 11, Judgement Text

VOLUME III

ADMINISTRATIVE RELATIONS

Inclusive of

All India Services, Panchayati Raj Institutions, Sharing of Resources, Emergency Provisions & Role of the Governer

List of Cases-All India Services

1. All India Judges' Association vs. Union of India and others (1992) 1 Supreme Court Cases 119
2. All India Judges' Association v. Union of India and others AIR1992SC165
3. Indian Administrative Service (S.C.S.) Association, U.P. and Ors.

Vs. Union of India (UOI) and Ors. 1992(3)SCALE126

4. Union of India (UOI)v. Prem Kumar Jain and Ors. AIR1976SC1856
5. Satya Narain Shukla vs. Union of India (UOI) and Ors. AIR2006SC2511
6. Syed Khalid Rizvi and Ors. and Ramesh Prasad Singh and Ors. v. Union of India (UOI) and Ors. (1993) 3 SCC 575

1

ANALYTICAL SUMMARY OF THE ARGUMENTS

In All India Judges' Association vs Union of India and others (1992) 1 Supreme Court Cases 119 court gave the strong recommendation regarding the establishment of All India Judicial Service, judges observed that an All India Judicial Service is essential for manning the higher services in the subordinate judiciary, this stand has again been reiterated in *All India Judges' Association and Others vs.Union of India and Others (1993)4SCC288*

In *Syed Khalid Rizvi and Ors. and Ramesh Prasad Singh and Ors.. vs.*

*Union of India (UOI) and Ors*1992(3)SCALE287, it has been observed by the court that seniority would be counted only from the date on which he/she was brought into the select list by the selection committee in accordance with Recruitment Rules, Promotions, Regulations and seniority Rules and was approved by the UPSC, appointed under Rule 9 of Recruitment Rules and Regulation 9 of Promotion Regulations and Rules has continuously officiated without break. Seniority would be entitled from the date of select list or continuous officiation whichever is later. He/she is entitled to appointment by the Central Govt. to substantive vacancy under Regulation 9 of Promotion Regulations from that date.

In *Satya Narain Shukla vs Union of India (UOI) and Ors. 2006(5)SCALE627 Central Staffing Scheme is unconstitutional* has no merit. Section 3 is an enabling power of the Central Government to make Rules for the regulation of recruitment and the conditions of service for persons appointed to the all-India Services. This enabling power is hedged in with the requirement that before doing so there has to be consultation with the State governments concerned and every rule made in such fashion is to be placed before both the Houses of the Parliament as required by Sub-section (2) thereof.

In Indian Administrative Service (S.C.S.) Association, U.P. and Ors..vs Union of India (UOI) and Ors. 1992(3)SCALE126,court held that giving retrospective effect or directing to apply the rule to all the seniors irrespective of the date of promotion to I.A.S. cadre

would land in or lead to iniquitous or unjust results which itself is unfair, arbitrary and unjust, offending Article 14 of the Constitution. To avoid such unconstitutional consequences the proviso to Rule 3(3)(ii) of the First Amendment Rule was made.

Apart from the services under the respective State Government, the Constitution of India provides special provision for the constitution of All- India services as a service common to the Union and the State. Article 312 of the Constitution makes special provisions for the creation of All- India services by Parliament if the council of State has declared by not less than two- thirds of the members present and voting that it is necessary in the national interest that in respect of a particular service an all India cadre of office should be constituted, Parliament can do so.

Under Article 312 power has been conferred on the Parliament to make law regulating recruitment and conditions of service of person appointed to the All-India services. This is a special provision regulating recruitment and conditions of service relating to All-India service. While there is reference to All-India service in Articles 310 and 311, there is no reference to it in Article 309. Therefore, matter relating to recruitment and conditions of service in relation to All-India services has to be regulated by legislation by Parliament.

Summary of the Arguments of cases

Title : Appellants: **Indian Administrative Service (S.C.S.) Association, U.P. and Ors.**

Vs.

Respondent: **Union of India (UOI) and Ors.**

1992(3)SCALE126, 1993Supp(1)SCC730, [1992]Supp2SCR389

Decided On: 11.11.1992

Hon'ble Judges:

A.M. Ahmadi, M.M. Punchhi and K. Ramaswamy, JJ.

Brief Facts:

On January 19, 1984, the association represented to the Govt. of India requesting to remove wide disparity prevailing in different States of promotional avenues from the State Civil Services to All India Administrative Service. The officers from Andhra Pradesh and Kerala, on completion of 8 to 9 years of service are becoming qualified for promotion to All India Administrative Service, while the officers from States like Uttar Pradesh and Bihar would get chance only after putting 24 to 27 years of service. The Estimate Committee of Seventh Lok Sabha in its 77th Report highlighted the injustice. A committee of senior Secretaries constituted by the Union Govt. recommended, after due consideration, to evolve equitable principles of comparable seniority from different States for promotion to Indian Administrative Service. Pursuant thereto the Central Govts. proposed to amend the Indian Administrative Service (Regulation of Seniority) Rules, 1954, for short 'the Seniority Rules'. In the meantime the Rules were repealed and replaced by I.A.S. (Regulation of Seniority) Rules, 1987 which came with effect from Nov.6, 1987 for short 'New Seniority Rules'. The first respondent Issued Circular letter dated September 9, 1986 to the State Govt. indicating amendments for fixation of seniority of officers promoted from State Civil Services' to I.A.S. to give weightage over and above 4 years in the assignment of year of allotment as per the existing relevant rules, namely, four years for the first 12 years State service with additional weightage of one year for every two to three years' completed service subject to a maximum of five years. After receiving suggestions or comments from State governments, the Central India exercising the power

under Sub-section (1) of Section 3 of All India Service Act, 1951 for short, 'the Act' amended the New Seniority Rules, 1987 which amendment was published in the Gazette of India on February 3,1989 for short the 'First Amendment Rules'. The proviso there to was made limiting its operation prospectively from February 3, 1989. Putting the proviso and its prospective operation in Issue, the appellants from U.P. in Civil Appeal No. of 1992 [S.L.P.(C) No. 13823 of 1991] filed Original Application No. 18 of 1989 in the Central Administrative Tribunal, Allahabad at Lucknow Circuit Bench, contending that they were promoted in 1980 onwards but by limiting its application to November 6,1987, they were discriminated. Bihar Officers questioned the Rule in O.A. No. 136 of 1989 before the C.A.T. at Patna. Therein the appellants though found to be entitled to the total weightage of 9 years since their juniors were given 1983 as the year of allotment, by operation of proviso to Rule 3(3)(ii) of the First Amendment Rules were given 1983 as the year of allotment. Thereby they were denied 3 years weightage.

Issue

Whether the proviso is violative of Article 14 and Article 16(1) of the Constitution of India?

Decision

Proviso to Rule 3(3)(ii) of the First Amendment Rule is not violative of Article 14 and Article 16(1) of the Constitution of India?

Ratio Decidendi:

The proviso intended to protect the seniority of the officers promoted/appointed earlier than the appellants and its effect would be that till rule ; 3(3)(ii) fully becomes operational graded weight age was given to the promotees. In other words it prevented to get seniority earlier to the date of his/her appointment to the Indian Administrative Service. Equally it intended not to let endless chain reaction occur to unsettle the settled interests in seniority. These compulsive circumstances denied the benefits of full 9 years weight age to officers promoted during 1987 to 1992.

SUMMARY OF THE ARGUMENTS:

It is settled law that ability, merit and suitability are the criteria to select an officer of the State Civil Service for inclusion in the select list for promotion under regulation 9 of the IAS Promotion Regulations -1955 read with Rule 9 of the IAS Recruitment Rules 1954.

In that behalf no change was brought about. A junior officer who thus superseded a senior State Civil Officer became entitled to carry his year of allotment and became senior to him in the cadre of IAS. But for the proviso, the operation of Rule 3(3)(ii), the senior office would have been saddled with the disability to be pushed down in seniority which would have nullified and frustrated the hard earned earlier promotion and consequential effect on seniority earned by dint of merit and ability. Moreover, the entry into the service is from different streams and predominantly by direct recruitment and promotion. The direct recruit gets his year of allotment from the succeeding year of his recruitment. The direct recruit officer appointed earlier to 1988 also would be adversely effected in their seniority

Observations:

The discrimination though is discernible, but inevitable to ensure just results. In other words the proviso prevented unequals to become equals. Giving retrospective effect or directing to apply the rule to all the seniors irrespective of the date of promotion to I.A.S. cadre would land in or lead to iniquitous or unjust results which itself is unfair, arbitrary and unjust, offending Article 14 of the Constitution. To avoid such unconstitutional consequences the proviso to Rule 3(3)(ii) of the First Amendment Rule was made.[282]

[282] K. Ramaswamy, J.,Para10

Satya Narain Shukla vs. **Union of India (UOI) and Ors.**

AIR2006SC2511, 2006(5)SCALE627, (2006)9SCC69, 2006(3)SLJ301(SC) Decided On: 11.05.2006

Hon'ble Judges:

B.N. Srikrishna and Lokeshwar Singh Panta, JJ.

Brief Facts:

The appellant was selected as an officer of the Indian Administrative Service (IAS) and was allotted UP cadre in the year 1967. He held different postings and was promoted to the Super Time Scale in the year 1982. In September 1996. the appellant was considered for empanellment as Additional Secretary to the Government of India, but was not empanelled. Several representations were made by him to the authorities against his exclusion from the panel of Additional Secretaries to the Government of India on the ground that his case had been considered on the basis of wrong appreciation of the character rolls and ACRs, which had not been recorded in accordance with the All India Service (Confidential Rolls) Rules, 1970. In December 1977 the appellant's case was reviewed along with those of several other officers of the 1967 batch of IAS officers. His representations were not placed before the Special Committee of Secretaries (SCOS) and the Appointments Committee of the Cabinet (ACC). He was not, however, empanelled.

The appellant filed Original Application (OA) No. 38/1998 before the Central Administrative Tribunal, Lucknow, on 28.1.1998. On 15.09.1998, the appellant sought an amendment for amending the relief clause in his OA and prayed for a direction to reconsider his case for empanelment as Additional Secretary to the Government of India and also to consider him for empanelment as Secretary to the Government of India. These amendments were allowed on 23.3.1999. On 1.5.1999, he sent another representation to the Cabinet Secretary to decide his earlier memorial addressed to the President and to give him justice by empanelment as Secretary to the Government of India. On 12.5.1999, the Tribunal made a further interim order directing the authorities to complete the appellant's character roll (CR) and to take a Decision on his representations dated 31.8.1998 and 6.3.1999 before considering him for empanelment to the post of Secretary to the Government of India. On 29.7.1999, the Tribunal made a further direction that the appellant's representation dated 1.5.1999 should be decided before finalising the empanelment for the post of Secretary to the Government of India. On 31.8.1999, the

Government of India informed the appellant that his CR had been completed and the ACR for 1993-94, about which he had some grievance, had been cancelled. The Government of India, however, declined to deal with and take action on his representations on the ground that the matter was sub judice before the Tribunal. In September 1999, the SCOS met for empanelment for the post of Secretary to the Government of India and after considering his record the appellant was not included in the panel. On 11.1.2000, the appellant made a statutory memorial to the President alleging that he had been wrongly excluded from the panel for the post of Secretary to the Government of India. However, he got no relief there from. Sometime in February 2000, the ACC met and accorded approval to the recommendations made by the SCOS for the panel of 1967 batch for the post of Secretary to the Government of India. Again on 7.3.2000, the appellant sent another memorial to the President against his exclusion from the panel of the post of Secretary to the Government of India while two other officers junior to him, and allegedly of lesser merit, had been empanelled.

Issue

The Issue interalia is whether Para 14 of the Central Staffing Scheme is *ultra virus* of Articles 309 and 312 of the Constitution of India; whether the post of Additional Secretary to the Government of India and above are promotional posts for IAS officers?

Decision

In the view of the court, the contention raised by the appellant that the Central Staffing Scheme is unconstitutional and has no merit. Also, the post of Additional Secretary/ Secretary to the Government of India is not a promotional post for an IAS officer.

Ratio Decidendi:

Court observed that Section 3 is an enabling power of the Central Government to make Rules for the regulation of recruitment and the conditions of service for persons appointed to the all-India Services. This enabling power is hedged in with the requirement that before doing so there has to be consultation with the State governments concerned and every rule made in such fashion is to be placed before both the Houses of the Parliament as required by Sub-section (2) thereof. Further court observed that it is not right that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.

SUMMARY OF THE ARGUMENTS:

According to the appellant, the service conditions of IAS officers are governed by the provisions of the All India Services Act, 1951 (AIS Act) and the Rules framed there under. The appellant contended that it was not permissible for the Government of India to prescribe any procedure therefore other than by way of rules framed strictly in accordance with the AIS Act and no executive order made in respect of a matter under Article 309 or could be inconsistent with the statutory rules framed under the AIS Act. The Central Stalling Scheme was neither the provision of any legislative enactment nor a supporting legislation framed under the AIS Act. and. therefore, to the extent of inconsistency with the said Act or the Rules framed there under, it was illegal. The contention of the appellant is that when the Central Staffing Scheme was formulated on 17.10.1957 it was clearly mentioned therein that it had been done "in consultation with the State Government and other authorities concerned". The appellant contended that Section 3 of the AIS Act also requires consultation with the States for making of rules. The impugned Central Staffing Scheme contained in the OM dated 5.1.1996 does not in terms, say that it has been Issued after consultation with the State governments. Hence, the contention is that it is *ultra virus* Section 3 of the AIS Act.

Observations:

It is not possible to accept that empanelment of a, State cadre officer for the post of Additional Secretary/Secretary to the Government of India is a promotion as contended. If the argument of the appellant is accepted, then an officer of the State cadre who is appointed to the Government of India can never be sent back to his State cadre, for the benefit of promotion once given cannot be withdrawn unless for extraordinary reasons. For all these reasons, we are unable to agree with the appellant's contention.[283]

[283] B.N. Srikrishna, J. ,Para14

Union of India (UOI) v. Prem Kumar Jain and Ors.

AIR1976SC1856, (1976)3SCC743, [1976]SuppSCR166, 1976(1)SLJ547(SC), 1976(8)UJ593(SC)

Judges:

A.N. Ray, C.J., Jaswant Singh, P.N. Shinghal and R.S. Sarkaria, JJ.

Brief Facts:

A new cadre of the Service was constituted for the Union Territories of Delhi and Himachal Pradesh, and recruitment to that cadre was made directly without complying with the requirement of Rule 4(1) of the Indian Administrative Service (Recruitment) Rules, 1954, hereinafter referred to as the Recruitment Rules, which prescribed the normal method of recruitment to the Service. The Rules were amended on December 21, 1967, by providing for a Joint Cadre in relation to the Union Territories and the North East Frontier Agency, and the Central Government formulated the aforesaid scheme to extend the Delhi-Himachal Pradesh Cadre to all Union Territories by absorbing the officers of that cadre and by appointing to it officers of the Indian Frontier Administrative Service and all other Union Territories at its initial constitution. The Joint Cadre for all the Union Territories was brought into existence from January 1, 1968, by GSR 42 under rule 3(1) of the Indian Administrative Service (Cadre) Rules, 1954, hereinafter referred to as the Cadre Rules, published (along with certain consequential changes in the other rules of the Service) in Gazette of India, Extraordinary, dated January 13, 1968. The petitioners in the High Court challenged the creation of the new Joint Cadre for all the Union Territories, and the appointment of some of the respondents thereto. It was urged in the High Court that the Constitution of the new Joint Cadre was illegal as it was contrary to the provisions of Article 312 of the Constitution and the All India Services Act, 1951 as it was not common to the Union and the State inasmuch as a Union Territory was not a State, and the recruitment of the respondents concerned to the Joint Cadre was contrary to the provisions of Section 3 of the All India Services Act, 1951, and the Cadre Rules.

Decision

The Service did not therefore have to be created under the provisions of Clause (1) of Article 312 of the Constitution, or Section 2A of the All India Services Act. Section 3(1) of that Act however made provision for the making of rules for the regulation of

recruitment and conditions of service of persons appointed to an All-India Service "after consultation with the Governments of the States concerned." It was under that provision that the Cadre Rules were made by the Central Government, and the question which engaged the attention of the High Court was whether the Union Territories could be said to be States for purposes of such consultation. In that connection the High Court examined the question whether the Union Territories could be said to be States merely because Rule 2(c) of the Cadre Rules defined a "State" to mean a State specified in the First Schedule to the Constitution and including a Union Territory, and answered it in the negative.

It follows therefore that, as and from November 1, 1956, when the Constitution (Seventh Amendment) Act, 1956, came into force, the President had the power to adapt the laws for the purpose of bringing the provisions of any law in force in India into accord with the provisions of the Constitution. It was under that power that the President Issued the Adaptation of Laws (No. 1) Order, 1956, which, as has been shown, substituted a new Clause (58) in Section 3 of the General Clauses Act providing, *inter alia*, that the expression "State" shall, as respects any period after the commencement of the Constitution (Seventh Amendment) Act, 1956, mean "a State specified in the First Schedule to the Constitution and shall include a Union Territory." It cannot be said with any justification that there was anything repugnant in the subject or context to make that definition inapplicable. By virtue of Article 372A(1) of the Constitution, it was that definition of the expression "State" which had effect from the 1st day of November, 1956, and the Constitution expressly provided that it could "not be questioned in any court of law." The High Court therefore went wrong in taking a contrary view and in holding that "Union Territories are not 'States' for purposes of Article 312(1) of the Constitution and the preamble to the Act of 1951." That was why the High Court erred in holding that the definition of "State" in the Cadre Rules was ultra vires the All India Services Act, 1951 and the Constitution, and that the Union Territories Cadre of the Service was "not common to the Union and the States" within the meaning of Article 312(1) of the Constitution, and that the Central Government could not make the Indian Administrative Service (Cadre) Rules, 1954 in consultation with the State governments as there were no such governments in the Union Territories.

The High Court has held further that Section 3 of the All India Services Act, 1951 and Rule 5 of the Cadre Rules have been contravened by the "direct appointment of respondents 2 to 37 to the Union Territories Cadre and by their being not recruited first to

the IAS." But no such ground appears to have been taken in the writ petition. Moreover, the validity or Rule 4(5) of the Recruitment Rules, which contained a non-obstante clause providing for recruitment to the Joint Cadre of the Union Territories on its initial Constitution by such method as the Central Government may, after consultation with the Union public Service Commission prescribe was not examined by the High Court.

Syed Khalid Rizvi and Ors. and Ramesh Prasad Singh and Ors.

Vs. Union of India (UOI) and Ors.

(1993)ILLJ887SC, 1992(3)SCALE287, (1993)3SCC575, [1992]Supp3SCR180

Decided On: 20.11.1992

Hon'ble Judges:

A.M. Ahmadi, M.M. Punchhi and K. Ramaswamy, JJ.

Brief Facts:

The appellants were direct recruits of the years 1970 and 1973 into Indian Police Service and were allotted to U.P. cadre. The respondents Nos. 3 to 9, Trivedi Kumar Joshi & Others were appointed as Deputy Superintendents of Police between July 12, 1961 to July 7, 1963 in substantive capacity in State Service and were promoted between October 4, 1973 to June 2, 1975 to perform the duties of the cadre posts of Superintendents of Police, continued to occupy the said posts till they were included in the select list (Respondent No. 3 in 1977, Respondents Nos. 4 to 9 in 1978) and were latter appointed and confirmed in the Indian Police *Service w.e.f.* various dates between July 29, 1978 to December 6, 1980.When the *inter-se* seniority list was prepared and published on April 24, 1977 showing the respondents as juniors to the appellants, they represented to the Govt. of India that since they had continuously officiated on the cadre posts without break from the respective dates of promotion, their entire continuous officiating period should be counted towards seniority in Indian Police Service.

Issue

Issue raised interalia was whether the continuous officiation of promotees in cadre posts would ensure to their seniority entitling to the year of allotment from the dates of their initial promotions?

Decision

Court held that the period in which a promotee officer is appointed temporarily cannot be counted in the continuous officiation period.

Ratio Decidendi:

A promotee Officer appointed temporarily under Regulation 8 of Promotion Regulation and Rule 9 of cadre Rules to a cadre post does not gets his/her continuous officiation

towards seniority. Seniority would be counted only from the date on which he/she was brought into the select list by the selection committee in accordance with Recruitment Rules, Promotions, Regulations and seniority Rules and was approved by the UPSC, appointed under Rule 9 of Recruitment Rules and Regulation 9 of Promotion Regulations and Rules has continuously officiated without break. Seniority would be entitled from the date of select list or continuous officiation whichever is later. He/she is entitled to appointment by the Central Govt. to substantive vacancy under Regulation 9 of Promotion Regulations from that date. The Central Govt. and the U.P.S.C. should approve temporary appointment by an order in writing and also of such officiation. In that event seniority would be counted only from the date, either of his/her inclusion in the select list or from the date of officiating appointment to the cadre post whichever is latter. By operation of Explanation 1 to Rule 3(3)(b) of the Seniority Rules his seniority will be counted only from either of the latter dates and the necessary effect is that the entire previous period of officiation should be rendered fortuitous and the appointment as ad-hoc appointment or by local arrangement.

SUMMARY OF THE ARGUMENTS:

Direct recruits contended that the posting of the promotees to the cadre posts was the result of the manipulation at the behest of the State level officers, assuming, without deciding for the purpose of this case, that the promotees were posted to discharge the duties of the cadre posts when the direct recruits went on deputation in excess of the quota and that there existed dearth of the direct recruits or the suitable officers from the select list to hold the cadre posts. Their promotion to officiate in the cadre posts was by local or ad-hoc arrangement. The record does not bear out that the State Govt. had sent any reports to the Central Govt. from time to time with reasons therefor, nor obtained prior concurrence from Central Govt. to promote the non-select list officers to officiate on the cadre posts. Admittedly the Union Public Service Commission was not consulted when the promotees continued to officiate in the cadre posts for one year and more. There is no express order passed by the Central Govt. under Rule 3 of the Residuary Rules relaxing Rule 3(3)(b) of Seniority Rules and Regulation 5 of Promotion Regulations.

Observations:

The State Govt. should post cadre officers to cadre posts and only in case of non-availability of cadre officers the select list officers be posted in the order in the select list. This is the rule. Where neither category officers are available, resort can be had to appoint

non-select list officers to man the cadre posts. Regulation 8 does not empower the State Govt. either to tamper with Regulation 9 or to cut down its operation to favor undue weight age either to the nonselect list promotee officers.[284]

[284] K.Ramaswamy ,Para12

All India Judges' Association v. **Union of India and others**

AIR1992SC165, JT1991(4)SC285, 1992(1)KLT103(SC), (1993)ILLJ723SC, 1991(2)SCALE969, (1992)1SCC119, [1991]Supp2SCR206, 1992(1)SLJ53(SC), 1992(1)UJ155(SC)

Decided On: 13.11.1991

Judge:

Ranganath Misra, C.J., A.M. Ahmadi and P.B. Sawant, JJ.

Brief Facts:

This application under Article 32 of the Constitution is by the All India Judges, Association and its working President for reliefs through directions for setting up of an AH India Judicial Service and for bringing about uniform conditions of service for members of the subordinate judiciary throughout the country.

Rule having been granted, notice was Issued to the Union of India and all the States and Union territories. Most of them have responded by making returns to the Rule. A few of the States have taken the stand that they would accept whatever this Court ultimately decides while others have placed their view points and yet some others have objected to the reliefs claimed.

RELIEF CLAIMED:

The plea for setting up of an All India Judicial Service was not seriously pressed and reliefs on the following heads were claimed:

1. Uniformity in the judicial cadres in the different States and Union Territories;
2. An appropriate enhanced uniform age of retirement for the Judicial Officers throughout the country;
3. Uniform pay scales as far as possible to be fixed;
4. Residential accommodation to be provided to every Judicial Officer.
5. Transport facility to be made available and conveyance allowance provided.
6. Adequate perks by way of Library Allowance, Residential Office Allowance and Sumptuary Allowance to be provided.

7. Provision for in service training to be made.

8. Administration of justice and organisation of courts was a provincial subject under the Government of India Act, 1935. The Constitution adopted the same scheme by providing in Entry 3 of List II of the Seventh Schedule the subject of administration of justice, Constitution and organisation of all courts excepting the Supreme Court and the High Courts as a State subject. It was only under the 42nd Amendment in 1977 that Entry 3 from List II was deleted and the subject as such was taken as Entry 11-A in the Concurrent List. This had become necessary on account of the recommendation of the Law Commission that an All India Judicial Service should be set up.

Decision

Prior to independence, the District Judge used to be invariably a Member of the Indian Civil Service and his position in the district was superior to that of the District Magistrate. This position continued until the Indian Civil Service came to be abolished around 1946-47. This long association of the Civil Service with the judicial manning had led to service conditions of both to be tied up. Criminal justice at that time was handled by Magistrates who belonged to the Executive.

Under the Constitution, the concept of Rule of Law came to be accepted and developed. Article 50 prescribed the guideline of separating the judiciary from the executive in the public services of the State. This position is the outcome of recognition of the fact that the judiciary is a class separate from the executive.

The control over the subordinate judiciary has been vested in the High Court and the administrative control has been construed to be complete and exclusive. Yet, in certain aspects, and particularly in regard to service conditions, the distinction has not been maintained. That is why very often when any specific aspect relating to conditions of service is taken up or benefits for judicial service is considered, comparative basis between the two is adopted for review. It is high time that this aspect is appreciated and the administrative authorities remain alive to it.

DIRECTIONS

These are the directions given in the judgment:

(i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.

(ii) Steps should be taken to bring about uniformity in designation of officers both in civil and the criminal side by 31.3.1993.

(iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by 31.12.1992.

(iv) As and when the Pay Commissions/Committees are set up in the States and Union Territories; the question of appropriate pay scales of judicial officers be specifically referred and considered.

(v) A working library at the residence of every judicial officer has to be provided by 30.6.1992. Provision for sumptuary allowance as stated has to be made.

(vi) Residential accommodation to every judicial officer has to be provided and until State accommodation is available, Government should provide requisitioned accommodation for them in the manner indicated by 31.12.1992. In providing residential accommodation, availability of an office room should be kept in view.

(vii) Every District Judge and Chief Judicial Magistrate should have a State Vehicle, Judicial officers in sets of 5 should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.

(viii) In service Institute should be set up within one year at the Central and State or Union Territory level.

All India Judges' Association vs. **Union of India and others (1992) 1 Supreme Court Cases 119**

Decided On: 13.11.1991

AIR1993SC2493,1993(1)SCALE26, (1993)4SCC288, [1993]Supp1SCR749

All India Judges' Association and Others

vs.

Union of India and Others

Decided On: 24.08.1993

Hon'ble Judges:

Ranganath Misra, C.J., A.M. Ahmadi and P.B. Sawant, JJ.

Brief Facts:

This application under Article 32 of the Constitution is by the All India Judges, Association and its working President for reliefs through directions for setting up of an AH India Judicial Service and for bringing about uniform conditions of service for members of the subordinate judiciary throughout the country. Rule having been granted, notice was issued to the Union of India and all the States and Union territories. Most of them have responded by making returns to the Rule. A few of the States have taken the stand that they would accept whatever this Court ultimately decides while others have placed their view points and yet some others have objected to the reliefs claimed. Administration of justice and organisation of courts was a provincial subject under the Government of India Act, 1935. The Constitution adopted the same scheme by providing in Entry 3 of List II of the Seventh Schedule the subject of administration of justice, Constitution and organisation of all courts excepting the Supreme Court and the High Courts as a State subject. It was only under the 42nd Amendment in 1977 that Entry 3 from List II was deleted and the subject as such was taken as Entry 11-A in the Concurrent List. This had become necessary on account of the recommendation of the Law Commission that an All India Judicial Service should be set up.

Issue Involved:

Issue raised interalia was whether the idea of All India Judicial Service is viable and helps in the development of an all India outlook?

Decision

Hon'ble court has decided that in the welfare of country All India Judicial Service should be established.

Ratio Decidendi:

The reasons advanced by the Law Commission for recommending the setting up of an All India Judicial Service appeal to the court. Since the setting up of such a service might require amendment of the relevant Articles of the Constitution and might even require alteration of the Service Rules operating in the different States and Union Territories, court do not intend to give any particular direction. Although the point was not seriously pressed but the court would commend to the Union of India to undertake appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done.

SUMMARY OF THE ARGUMENTS

Arguments put forward include the Law Commission of India's 14th Report in the year 1953 according to which:

> If we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable person. A radical measure suggested to us was to recruit the judicial service entirely by a competitive test or examination. It was suggested that the higher judiciary could be drawn from such competitive tests at the all-India level and the lower judiciary can be recruited by similar tests held at State level. Those eligible for these tests would be graduates who have taken a law degree and the requirement of practice at the Bar should be done away with.Such a scheme, it was urged, would result in bringing into the subordinate judiciary capable young men who now prefer to obtain immediate remunerative employment in the executive branch of Government and in private commercial firms. The scheme, it was pointed out, would bring to the higher subordinate judiciary the best talent available in the country as a whole, whereas the lower subordinate judiciary would be drawn from the best talent available in the State.

The Commission proceeded to further state:

> Recruitment to the higher judiciary at the all-India level in the manner suggested would be a powerful unifying influence and serve to counteract the existing growing regional tendencies. In this connection, attention may be drawn to the Observations made by the States Reorganisation Commission in regard to the creation of the All India Services as a major compelling necessity for the nation. The Commission observed, The raison d'etre of creating All India Services, individually or in groups, is that officers on whom the brunt of responsibility of administration will inevitably fall, may develop a wide and all-India outlook.... The present emphasis on regional languages in the Universities will inevitably lead to the growth of parochial attitude, which will only be corrected by a system of training which emphasises the all-India point of view.... It has not been very easy for us to balance these considerations, but we are definitely of the view that proportion of the higher judiciary should be recruited by competitive examination at the all-India level so as to attract the best of our young graduates to the judicial service. This measure will enlarge the field of selection and bring into the higher judicial service a leaven of brilliant young men who will set a higher tone and level to the subordinate judiciary as a whole. The personnel so recruited will be subjected to an intensive training. The rest of the higher judiciary should, in our view, be recruited in part directly from senior members of the Bar, and partly by promotion from the lower subordinate judiciary. The great advantage that the Indian civilian had, was the intensive and varied course of training which he had to undergo. At the time of his first entry into service, his training was confined to matters pertaining to the revenue and criminal administration alone, but when he was taken over to the judicial side, generally an equally intensive training in civil law was given to him for a period of not less than eighteen months. There can be no doubt that a similar intensive judicial training given to a judicial officer who possesses a law degree can be of the greatest value.... Indeed, it can be claimed that a planned and systematic training such as is contemplated by us for the judicial officer selected for the Indian Judicial Service may be more effective than the uncertain and spasmodic training which may be received during the course of a few years practice at the Bar. These and the other considerations referred to earlier have led us to the conclusion that in the interests of the efficiency of the subordinate judiciary, it is necessary that an All India Service called the Indian Judicial Service should be

established. This will need action being taken in the manner provided by Article 312 of the Constitution.

This proposal of the Law Commission and the follow up governmental action led to consultation and dialogue in the Conference of Chief Justices of the High Courts but many of the High Courts were of the view that setting up of an All India Judicial Service would affect the constitutional scheme of control of the High Courts over the subordinate judiciary and in particular Article 235 of the Constitution. Article 233 makes provision for appointment of District Judges and requires that appointment to such posts has to be made by the Governor of the State in consultation with the appropriate High Court. Article 234 provides for recruitment of persons other than District Judges to judicial service by prescribing that appointments shall be made by the Governor of the State in accordance with the Rules made by him in that behalf after consulting the State Public Service Commission and the High Court exercising the jurisdiction in relation to such State. The post of District Judge has ordinarily been equated with the senior scale status in the All India Services. It was perhaps not contemplated by the Law Commission that on appointment, members of the proposed All India Judicial Service were to hold the post of District Judge. Like all other All India Services the initial recruitment could be to a lower rank equal to civil judge and after serving in such post for a reasonable time appointment to the post of District Judge could be made. Since the Law Commission itself was of the view that a percentage should be filled up by direct recruitment from the Bar, the scheme envisaged by the Law Commission would not require amendment of Article 233. It is to be examined whether any alterations in Article 234 would be necessary or recruitment to All India Service could be made by appropriate amendment of the State Rules contemplated under that Article. Control over the subordinate courts under the constitutional mechanism is vested in the High Court. Under Article 235, the provision is that the control over District Courts and courts subordinate thereto vests in the High Court. The main objection against implementation of the recommendation of the Law Commission relating to the setting up of the All India Judicial Service was founded upon the basis that control contemplated under Article 235 of the Constitution would be affected if an All India Judicial Service on the pattern of All India Services Act, 1951, is created.

Observations:

There is considerable force and merit in the view expressed by the Law Commission. An All India Judicial Service essentially for manning the higher services in the subordinate judiciary is very much necessary.[285]

[285] Ranganath, Mishra Para 11

Review Petition No. 249 of 1992 in *All India Judges' Association and Others*

Vs. Union of India and Others

The objection of the review petitioners to the direction to set up the All India Judicial Service is that it would eliminate chances and scope for prescribing service conditions of the judicial officers in conformity with the local need, which is the intention of the Constitution. The second objection is that the service conditions of the judicial officers should be identical to those of the members of the other services in the same State and not to those of the judicial officers of the other States. The last objection is that the matter has to be considered by the Union of India in consultation with the other states and it pertains to the executive policy which cannot be dictated by the Court.

> Court observed that it has only reiterated the view expressed by the Law Commission in its 14th report and in paragraph 12 of the judgment has specifically observed that court do not intend to give any particular direction on this score particularly when the point was not seriously pressed. But, court would commend to the Union of India to undertake appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done. This being the case, it is for the Union of India if it is so advised to take the initiative in the matter in the light of the discussion and recommendations of the Law Commission where all the objections which are now taken in the review petition have been fully dealt with by the Commission. If and when the Union of India takes such an initiative, the procedure for the formation of the All India Service as provided in Article 312 of the Constitution will have to be followed. The objections now taken would be of no relevance if the Council of States by resolution supported by no less than two-thirds of its members present and voting declares that such a service should be created, it being necessary and expedient in the national interest to do so. In that case, the Parliament will have to provide for the creation of such service. The law creating the service will also regulate the recruitment and the service conditions of the persons appointed to the service. The service however, will provide for the post not inferior to that of the District Judge as defined under Article 236. Hence, the judges holding posts below that of the District Judge would not be members of such All India Service

and the service conditions of (he said judges will continue to be determined as before, by the States executive and the legislature. For the reasons pointed out earlier, even the service conditions of such judges will have to be different from those of the members of the other services, and to achieve the uniformity in the service conditions, there will have to be a parity in the service conditions of such judges in all the States. Much of the misconceptions underlying the demand for review on this point, would, however, stand dispelled if the essentially recommendatory nature of the directions is realised and appreciated.

ROLE OF GOVERNOR

List of the Cases

1. Indian Union Muslim League and Ors. v. Union of India,
   AIR 1998 part 156
2. Oil and Natural Gas Commission v. Collector of Central Excise,
   (1992) 104 CTR (SC) 31
3. Canara Bank and Ors. National Thermal Power Corpn. and Anr.
   2000 (8) SCALE 139
4. Andhra Pradesh Power Genration Corporation Ltd. v. Assistant Commissioner of Income-tax and Anr. Commissioner of Income-Tax v. Nizam Sugars Ltd.
   [2006] 280 ITR 388 (AP)
5. Chief Conservator of Forests, Govt. of A.P.v. The Collector and Ors.,
   AIR 2003 SC 1805
6. Samantha v. State of A.P. and Ors.,
   AIR 1997 SC 3297

Role of the Governor

Indian Union Muslim League And Ors. v Union Of India

AIR 1998 part 156

Judge

B.M. Lal, C.J.

Relevant Constitutional provisions;

Articles 155, 156 and 159

Composition of the Bench:

One Judge

Brief Facts:

In this case, a public interest litigation, filed under Article 226 of the Constitution by a political wing of the Indian Union Muslim League through its Bihar State, President, Md. Kamran and other four members, against the Union of India, State of Bihar, State of West Bengal and others, also arraying the Governor of Bihar seeking quashing of the Presidential notification of transfer and appointment of the Governor of Bihar H.E. Dr. A. R. Kidwai to the State of West Bengal and appointment of H.R., Sri Sunder Singh Bhandari as Governor of Bihar in place of H.E., Dr. A. R. Kidwai, contending that both the notifications are unconstitutional.

The main grievance of the petitioners is that H.E. Dr. A. R. Kidwai, was appointed by the President of India as the Governor of Bihar, who took oath of office on the 14th August, 1993, and as yet, has not completed five years term in the State of Bihar, but before he could complete the total tenure of five years in this State he has been transferred to West Bengal. According to the petitioners, this transfer is against the provisions of Clause (3) of Article 156 of the Constitution and, therefore, the order of transfer be quashed by issuing a writ in the nature of certiorari against the Union of India.

Issue Involved:

· According to the petitioners, this transfer is against the provisions of Clause (3) of Article 156 of the Constitution and, therefore, the order of transfer be quashed by issuing a writ in the nature of certiorari against the Union of India.

Decision

The court holds that the Governor holds office during the pleasure of the President. This means that five years term is subject to the exercise of the pleasure by the President and the President of India is the best judge to decide as to when and in what circumstances the term of a sitting Governor of a State may be reduced, or he may be asked to vacate or may be transferred from one State to another, and so rightly in exercise of the constitutional powers by the President of India, H.E. the Governor Dr. A. R. Kidwai is transferred from State of Bihar to the State of West Bengal and similarly, in his place, in exercise of the constitutional powers by the President of India, the appointment of H.E. the Governor Sri Sunder Singh Bhandari has been made as Governor of State of Bihar.

According to the court, under Clause (3) of Article 156 of the Constitution, it is apparent that five years term is subject to the exercise of pleasure by the President and the President of India is the best Judge for exercise of his pleasure to decide as to when and in what circumstances the term of a sitting Governor of a State should be reduced, or, instead of reducing the term, he may be transferred from one State to another or he may be asked to vacate the office. The court further clarified that the argument of the learned counsel for the petitioners that no reason is required to be assigned by the President as to how he reached to his discretion to withdraw the pleasure from one State and reposing the same for another State or reducing the term from five years, inasmuch as 'pleasure' envisaged under Clause (1) of Article 156 of the Constitution is not qualified with the words "except as expressly provided by this Constitution" as 'pleasure' has been qualified under Article 310 of the Constitution in respect of Government employees.

SUMMARY OF THE ARGUMENTS

The main gricvance of the petitioners is that H.E. Dr. A. R. Kidwai, was appointed by the President of India as the Governor of Bihar, who took oath of office on the 14th August, 1993, and as yet, has not completed five years term in the State of Bihar, but before he could complete the total tenure of five years in this State he has been transferred to West Bengal. According to the petitioners, this transfer is against the provisions of

Clause (3) of Article 156 of the Constitution and, therefore, the order of transfer be quashed by issuing a writ in the nature of certiorari against the Union of India.

The court responded that, for the better appreciation of the point in Issue, it is necessary to delve into the constitutional scheme, of the relevant provisions of the Constitution of India, which specifically and pertinently deal with it. Chapter II of the Constitution of India deals about the executive head of the State, i.e., H.E. the Governor of a State, who is chief executive constitutional authority and all executive powers of the State vests in him, which he exercises directly with the help of the officers of the State in accordance with the constitution, meaning thereby, the Governor acts according to the advice of the council of Ministers tendered to him in accordance with Article 163 of the Constitution of India, except so far as he is under the Constitution, required to exercise his functions or any of them in his discretion. As such by conferment of discretionary functions, he may exercise, besides the advice of the Cabinet, only those discretionary functions, which are conferred under the Constitution. However, there are certain exceptions to this provision of Article 163 of the Constitution, which we find in our Constitution under An. 239(2) appearing in Part VIII of the Constitution, which deals about the Union territories. Thus where a Governor is appointed for the Union territory to administer the hill region, he can act in his discretion and in purchase of such responsibility he exercises his functions as an administrator independently even contrary to the advice of the council of Ministers. Relevantly the provisions of Article 371-A to 371-H as appearing in Part XXI throw light in this regard. However, as these provisions have no application for the State of Bihar, therefore, we need not detain ourselves for discussing the same in detail any further but to proceed to decide the point in Issue based on Chapter II of the Constitution.

Another contention raised by the the learned counsel is that once the Governor is appointed under Article 155 of the Constitution and he enters into his office, he holds office for a term of five years from the date on which he enters upon his office and, in the instant case, H.E., Dr. A. R. Kidwai entered into the office of Governor on 14-8-1993 and, therefore, he as per Clause (3) of Article 56 of the Constitution, till completes five years' term in the State of Bihar, cannot be transferred.

The dismissal of civil servants must comply with the procedure laid down under Article 311 (2) read with Article 310(1) of the Constitution and without affording opportunity and assigned any reason they cannot be reduced in rank, dismissed or removed from service. However, for want of these qualifying or alike words under Article 156(1) of the

Constitution of India, the President of India remains the best Judge of the situation in respect of withdrawing pleasure from the office of H.K. the Governor. Hence, since Article 156 of the Constitution is not couched with the similar qualifying words of immunity granted to Government servants under Article 310 of the Constitution, therefore, " withdrawal of the pleasure" comes into operation no sooner it is withdrawn resulting in dismissal, removal or transfer of the office of Governor without observing the principle of "Audi alteram partem" as his maxim has no application. On the other hand, the maxim"salus-populi-supreme-lex" applies, which means welfare of the people is supreme.

Observations

While deciding the case the court made a passing reference of the Decision made by the Apex Court in *Supreme Court Advocates-on-record Association v. Union of India* (1993) 4 SCC 441 : (AIR 1994 SC 268) has held that,

"We are of the view that there is no distinction between the constitutional law and an established constitutional convention and both are binding in the fields of their operation. Once it is established to the satisfaction of the Court that a particular convention exists

[286] Id at para. 441.

and is operating then the convention becomes a part of the constitutional law of the land and can be enforced in the like manner.[286]"

Oil and Natural Gas Commission v. Collector of Central Excise

(1992) 104 CTR (SC) 31

Ranganath Misra, C.J., P.B. Sawant and S. Mohan, JJ.

The Court had earlier issued orders for setting up of High Power Committee (HPC) for resolving disputes between Union of India and its Public Sector Undertakings.[287]

Through the order in this case, the Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline. Every Court and every Tribunal are obliged to demand a clearance from the Committee in the event a dispute is raised.

[287] See also, Oil and Natural Gas Commission cases, 1992(61)ELT3(SC) and 1994(70)ELT45(SC).

Canara Bank and Ors. v. National Thermal Power Corpn. and Anr.

[2001] 104 CompCas 97 (SC), 2000 (8) SCALE 139

Decided On**:** 05.12.2000

K.T. Thomas and R.P. Sethi, JJ.

Brief Facts:

The appellants challenged the impugned judgment passed by the High Court in Company Appeals by which the orders passed by the Company Law Board have been set aside and disputes allegedly existing between the parties referred to the High Powered Committee in terms of the judgment of Oil & Natural Gas Commission. It is contended that the dictum in ONGC's case was not applicable to the facts of the cases under appeals, as there did not exist a genuine dispute between the parties which could be referred to the High Powered Committee.

The appellants filed Company Petition under Section 111 (4), (5) & (7) of the Companies Act before the Company Law Board, stating therein that they were Trustees of Canara Bank Mutual Fund, a Trust, constituted under the Indian Trusts, Acts, 1882. The main object of the Trust is to conduct business of mutual fund by permitting savings of small and individual investors through various schemes, inviting subscriptions from the prospective investors and channelizing the funds into the capital market for attractive returns. The National Thermal Power Corporation (respondent no. 1), is a Government of India Enterprise and respondent No. 2 a Banking Company which went into liquidation. On 25th September, 1992, CBMF lodged with the corporation for registration of the bonds of FV Rs. 50.05 lacs in the name of Canara Bank, Trustee CBMF. The Corporation wanted the CBMF to produce no objection certificate from the Official Liquidator of the Bank of Karad for the purpose of registering the transfer of the bonds. On 18-10-1993 the CBMF was informed that as 'no objection certificate' had not been furnished, the original bond certificates were being returned for further necessary action by the CBMF

Issue Involved:

- Whether the official liquidator was not justified in not issuing the no-objection certificate.

- Whether the corporation was bound and liable in law to transfer the aforesaid bonds in the name of Canara Bank, Trustee of CBMF and pay the redemption proceeds in respect thereof since the transaction was not transgression of Section 531 of the Companies Act.

Decision

There does not exist a genuine dispute between the Government of India undertakings. In this case one of the public sector undertakings is shown to be acting not as an undertaking but as Trustee of a Trust. The Board was, therefore, justified in holding "that the real litigation in this case, therefore, is between Mutual Fund and NTPC" and not between the two undertakings. ONGC's judgment is not applicable in the facts and circumstances of the present case.

Ratio Decidendi:

The Trustees of the Trust constituted by the Canara Bank as Settler for the benefit of numerous units holders cannot be termed and styled as Government Company or Public Sector Undertaking.

SUMMARY OF THE ARGUMENTS

Arguments of the appellants:

The National Thermal Power Corporation be ordered and directed to transfer the bonds, in the name of Canara Bank: Trustee. NTPC be directed to rectify the Register of Bond Holders and delete the name of Bank of Karad or any other holder appearing in such Register and instead insert the name of Canara Bank: Trustee Can Bank Mutual Fund. To directed the NTPC to pay to Canara Bank: Trustee Can Bank Mutual Fund the redemption amount in respect of the said bonds along with other interest at 24% from the date of maturity till the payment.

That the Company ought not to have returned to the bond certificates which were lodged for registration. The company was indulging in dilatory tactics and was unnecessarily delaying in entering the name of Canara Bank: Trustee Can Bank Mutual Fund in the register of bond holders and paying the redemption amount, without any justifiable cause or reason.

Observations

What the Court has directed in ONGC's case is that frivolous litigation between Government Departments and Public Sector Undertakings of the Union of India should not be dragged in the courts and be amicably resolved by the Committee. The judgment is intended to prevent avoidable litigation between the Government Departments and the Undertakings of the Union of India. In the present litigation there does not appear to be a genuine dispute between the Government of India undertakings.

In this case one of the public sector undertaking is shown to be acting not as an undertaking but as Trustee of a Trust. The Board was, therefore, justified in holding "that the real litigation in this case, therefore, is between Mutual Fund and NTPC" and not between the two undertakings. The meaning of word "dispute" is, 'a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other'.

(page 103, para 10-11, R.P. Sethi, J.)

Andhra Pradesh Power Generation Corporation Ltd. v. Assistant Commissioner of Income-tax and Anr. Commissioner of Income-Tax v. Nizam Sugars Ltd.

2006) 202 CTR(AP) 62, [2006] 280 ITR 388(AP)

Decided On**:** 03.11.2005

B. Sudershan Reddy and S. Ananda Reddy, JJ.

Brief Facts:

The dispute between the petitioner, a State Government undertaking and the Income-tax Department relates to the applicability of the provisions of section 195 of the Income-tax Act, 1961. The first respondent has determined the tax payable by the petitioner by grossing up all the amounts under Section 195A of the Income-tax Act as against which the petitioner preferred appeals before the Commissioner of Income-tax (Appeals)

The Commissioner of Income-tax (Appeals)—passed a common order partly allowing the appeals holding that the petitioner was under obligation to deduct tax with respect to payments made to Sumitomo Corporation.

The Income-tax Appellate Tribunal— held that the matter has to be referred to the Committee of Disputes and accordingly dismissed the stay petitions in limine with the further Observations that the appeals preferred by the petitioner cannot be admitted.

Issue Involved:

Whether the Appellate tribunal is justified in holding that prior clearance from the Committee of Disputes as mandatory requirement for entertaining the appeal at the instance of the Income-tax Department against the undertaking owned by the Government of Andhra Pradesh.

Decision

The principle of clearance from the Committee of Disputes enunciated by the Supreme Court in Oil and Natural Gas Commission cases is not applicable to the disputes arising between the Income-tax Department (Union of India) and undertakings owned by the State governments. The Appellate Tribunal is not justified in holding that prior clearance from the Committee of Disputes as mandatory requirement for entertaining the appeal at the instance of the Income-tax Department against the undertaking owned by the

Government of Andhra Pradesh. The impugned orders are accordingly set aside and the appeals are accordingly allowed.

Ratio Decidendi:

The Tribunal misdirected itself in applying the Decisions of the Supreme Court in Oil and Natural Gas Commission cases.

The orders of the Supreme Court referred to Oil and Natural Gas Commission cases were in the matter of setting up and functioning of the "High-Powered Committee" for resolving disputes between the Union of India on the one hand and its public sector undertakings on the other, by recourse to the "High-Powered Committee".

SUMMARY OF THE ARGUMENTS: N.A

Observations

Disputes between the Centre and the State are required to be resolved in accordance with the provisions of the Constitution, which provides the mechanism as well as the forum for resolution of all such disputes. There is no forum, as such, created or constituted by the Central Government to resolve disputes between State Government public sector undertakings on the one hand and Departments of the Central Government on the other. Nor is there any mechanism or forum created and constituted for resolution of disputes between State Government public sector undertakings and Central Government public sector undertakings. (B. Sudershan Reddy, J. para.12)

The court also observed thus by referring to S.R. Bommai:[288]

> It is not possible—nor is it necessary—for our present purposes to make any detailed analysis as regards the nature of the Indian Federation with reference to its historical background, the distribution of legislative powers, financial and administrative relations, etc. It is enough to note that notwithstanding the fact that there are many provisions in the Constitution whereunder the Centre has been given powers to override the States, "our Constitution is a federal Constitution. It means that the States are sovereign in the field which is left to them.... They are neither satellites nor agents of the Centre."

[288] S.R. Bommai and others etc. etc v. Union of India and others etc. etc., AIR 1994 SC 1918

Chief Conservator of Forests, Govt. of A. P. v. The Collector and Ors.

AIR 2003 SC 1805, 2003 (4) ALD 27 (SC), 2003 (2) JCR 175 (SC), JT 2003 (5) SC 210, (2003) 2 MLJ 57 (SC), 2003 (2) SCALE 429, (2003) 3 SCC 472, [2003] SCR 180

Decided On: 18.02.2003

S.S.M. Quadri and Ashok Bhan, JJ.

Brief Facts:

In view of the dispute between the two departments of the Government with regard to the title to the lands in question, the Government of Andhra Pradesh Issued orders on 17th August, 1979 directing the Commissioner of Survey, Settlement and Land Record to make an enquiry under Section 166-B of the Land Revenue Act and to pass a speaking order after hearing the parties concerned. Pursuant to the said order of the Government, the Commissioner conducted an enquiry, heard both the parties and opined that the order of the Collector, passed under Section 87 of the Land Revenue Act, was correct and did not call for any interference therewith. That order was passed by the Commissioner on December 5, 1981. The Government apparently accepted that order of the Commissioner as no further steps were taken by it to correct or set aside that order.

The trial court**,** after conducting trial and on consideration of the evidence on record, decreed the suit with costs, insofar as the reliefs of declaration of title and rendition of accounts but declined the relief of award of compensation/damages.

The Appeal was dismissed by a Division Bench of the High Court.

Issue Involved:

How the Central Govt. or Govt. of a State may sue or be sued in its own name.

Decision

The Supreme Court, in the context of litigation between the Forest Department and the Revenue Department of the Government of Andhra Pradesh, observed that it was not contemplated by the framers of the Constitution that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law.

Ratio Decidendi:

A plain reading of the statutory order passed by the Commissioner of Survey, Settlement and Land Record under Section 166-B of the Land Revenue Act on December 5, 1981 places the matter beyond doubt that the suit lands were patta lands of the Pattedars.

SUMMARY OF THE ARGUMENTS

The **respondent** raised a preliminary objection as to the maintainability of the writ petition filed by the Chief Conservator of Forest as well as the appeal arising therefrom. It was also contended that no individual officer of the Government under the scheme of the Constitution or the Code of Civil Procedure can file a suit or initiate any proceeding in the name of the post he is holding, which is not a juristic person.

On the other hand **the appellants**, has argued that before filing the appeal, the Chief Conservator of Forest had obtained orders and, therefore, the writ petition and the appeal should be deemed to be filed by the Government of Andhra Pradesh; not naming the Government of Andhra Pradesh in the writ petition as the petitioner or in the appeal as the appellant is only a procedural matter and, therefore, it is not fatal to the maintainability of the writ petition and the appeal.

Observations

"Such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various Departments of the Government are its limbs; therefore, they must act in co-ordination and not in confrontation." The Supreme Court having noticed that in cases of dispute between public sector undertakings and the Union of India, the court in Oil and Natural Gas Commission cases (supra 1 to 3) directed the Central Government to set up a Committee consisting of representatives to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation and further having found that no such similar committee or mechanism was available to resolve the controversy arising between various departments of the State or the State and any of its undertakings observed (page 482) : "... it would be appropriate for the State governments to set up a Committee consisting of the Chief Secretary of the State, the Secretaries of the concerned Departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance."

Syed Shah Mohammed Quardi, J.

Samatha v. State of A.P. and Ors.

AIR 1997 SC 3297, JT 1997 (6) SC 449, 1997 (4) SCALE 746, (1997) 8 SCC 191, [1997] Supp 2 SCR 305

Decided On: 11.07.1997

K. Ramaswamy, S.Saghir Ahmed and G.B. Pattanaik, JJ.

Brief Facts:

In this case the High Court of Hyderabad has held that the Andhra Pradesh Scheduled Area Land Transfer Regulation as amended by Regulation 2 of 1970 and the Mining Act do not prohibit grant of mining leases of Government land in the scheduled area to the non-tribals. The Forest Conservation Act, 1980 does not apply to the renewals. The Andhra Pradesh Forest Act, 1967 also does not apply to the renewal of the leases. It, accordingly, dismissed the writ petitions filed by the appellant challenging the power of the Government to transfer the Government land situated in the tribal area to the non-tribals for mining purpose. The Division Bench, earlier had taken the view and held that mining leases are illegal. The word' 'person' used in Section 3 of the Regulation includes Government. Any lease to the non-tribals even of a Government land situated in scheduled area is in violation of Section 3 and so is void. Equally, it held that a mining lease in a forest area for non-forest purpose or renewal thereof, without prior approval of the Central Government, is in violation of Section 2 of the FC Act. Accordingly, the Division Bench directed the Government to prohibit mining operations in scheduled area except that the mines stacked on the surface be permitted to be removed after obtaining proper permits.

Issue Involved:

- Whether lease constituted transfer - Section 105 defines 'lease' as transfer of right to enjoy immovable property for certain period for consideration of price paid or promised to transferor on such terms and conditions - lease creates right or interest in enjoyment to remain in possession for duration of lease unless it is determined in accordance with contract or statute.
- Whether grant of mining lease in Scheduled Areas is outside purview of Regulation - word 'person' would include State Government and transfer of land in Scheduled Area for mining purposes in favour of non-tribals stands prohibited - non-tribals have transferred their lease hold interest in favour of respondent companies.

- Whether leases are in violation of Forest Conservation Act or Environment Protection Act - object of Forest Conservation Act is to prevent any further deforestation which causes ecological imbalance and leads to environment degradation - it is necessary for State Government to obtain prior permission of Central Government - before granting leases State Government obliged to obtain concurrence of Central Government.

Decision

Section 11(5) of the MMRD Act being prospective in nature will have no application to the existing mining leases and, therefore, the leases of the respondents' can't be annulled on that score. Thus the appeals are disposed of with the aforesaid Observations and directions.

Ratio Decidendi:

The word 'person' used in Section 3(1)(a) of the Andhra Pradesh Scheduled Area Land Transfer Regulation as amended in 1970 has to be construed to convey the same meaning throughout the Section and the said expression does not include the State Government.

Neither the legislative history nor the object with which special power has been conferred on the Governor under Fifth Schedule to the Constitution make it necessary to construe the word 'person' in the first part of Section 3(1)(a) differently from the rest part of the Section so as to include State Government within the said expression

Arguments of the Appellants

The Conservation Act has been enacted for conservation of forest and for matters connected therewith or ancillary or incidental thereto. Deforestation having caused ecological imbalance and having lead to environmental deterioration, with a view to checking further deforestation, the President promulgated the Forest (Conservation) Ordinance, 1980 on 25th October, 1980. The said Ordinance had made the prior approval of the Central Government necessary for deforestation of reserved forests or for use of forest land for non-forest purposes.

Respondents

The respondent contended that the proposition that the expression 'forest land' in the Conservation Act should be given wider meaning and that mining activities over the

forest land cannot continue unless prior approval of the Central Government has been obtained in accordance with Section 2 of the Conservation Act. They contended that the mining activities of the respondents are not over any forest land and the appellants have not produced any material from which this Court can come to the conclusion that it forms a part of the forest even going by the extended meaning of the term 'forest'. As has been stated earlier while narrating the pleadings of the parties, the private respondents have all along asserted that the mining activities in question and then-leasehold area over which mining activities are continuing do not form a part of the forest.

Observations

"Though under Section 2 of the Forest conservation Act use of any forest land for any non-forest purpose is prohibited without the prior consent of the Central Government and as such mining activities being a non-forest purpose would attract the mischief of said Section 2 of the Conservation Act, but in the absence of any materials to conclusively come to the conclusion that the land over which the respondents are carrying on the mining activities form a part of the forest land, it would not be proper for this Court to Issue any direction prohibiting the mining activities. At the same time it would be proper to direct the State of Andhra Pradesh through its Forest Department to examine whether the mining activities are being carried on over the forest land and if it comes to the conclusion that the lands do form a part of the forest land then immediate steps should be taken prohibiting continuance of the mining activities until the Central Government in exercise of power under Section 2 agrees to the same, and we accordingly so direct."

EMERGENCY PROVISIONS

List of the Cases

1. Rameshwar Prasad (III) v. Union of India, (2005) 7 SCC 151
2. A.K. Kaul and another v. Union of India and another, AIR 1995 SC 1403
3. Attorney General for India and Ors. v. Amratlal Prajivandas and Ors., (1994) 5 SCC 54
4. Baburao alias P.B. Samant v. Union of India (UOI) and Ors., AIR 1998 SC 440
5. Krishna Kumar Singh & Anr. etc. v. State of Bihar, AIR 1998 SC 2288
6. Naga Peeople's Movement of Human Rights v. Union of India (UOI), AIR 1998 SC 465
7. Rameshwar Prasad & Ors. v. Union of India & Anr., (2005) 7 SCC 625,
8. Rameshwar Prasad and Ors. (VI) v. Union of India (UOI) and Anr., AIR 2006 SC 980
9. S.R. Bommai and others etc. v. Union of India and others etc., AIR 1994 SC 1918
10. Summary of the Arguments of the Gujarat Dissolution of Assembly Case (2002) 8 SCC 237

ANALYTICAL SUMMARY OF THE ARGUMENTS

Article 352, the first article in Part XVIII, empowers the President of India to proclaim emergency in the country or any part thereof if he is satisfied that a grave emergency exists whereby the security of India or any part thereof is threatened whether by war, external aggression or armed rebellion. (By the 44th Amendment, the words "armed rebellion" were substituted in the place of the words "internal disturbance"). Articles 353 and 354 set out the effects of such a proclamation and provide for certain incidental matters. Article 355, set out hereinbefore, imposes a duty upon the Union to protect the States against external aggression and armed rebellion and also to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. Articles 355, 356 and 357 go together. Article 356 provides for the action to be taken by the President where he is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution by making a proclamation in that behalf, while Article 357 sets out the powers that can be exercised by the Parliament when a proclamation under Article 356 is in operation. Articles 358 and 359 deal with suspending of certain fundamental rights during the period the proclamation under Article 352 is in operation, while Article 360 empowers the President to declare financial emergency in certain situations.

The common thread running through all Articles in Part XVIII relating to emergency provisions is that the said provisions can be invoked only when there is an emergency and the emergency is of the nature described therein and not of any other kind. The Proclamation of emergency under Articles 352, 356 and 360 is further dependent on the satisfaction of the President with regard to the existence of the relevant conditions precedent. The duty cast on the Union under Article 355 also arises in the twin conditions stated therein.

In the case of exercise of legislative powers during the President's Rule under Article 356, however, Article 357(2) provides that any law made in the exercise of the power of the Legislature of the State by Parliament or the President during the subsistence of the proclamation shall, after the proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority. This is an express Constitutional provision which extends the life of laws enacted during the proclamation of President's Rule beyond the period during which the proclamation was in force.

Proclamation of Emergency

A Proclamation of Emergency being a very important event affecting public life has also to be published in any manner known to the modern world and the publication in the Official Gazette is one such mode. If the Constitution requires that a particular mode of publication is necessary then such mode must be followed but if there is no mode of publication prescribed by the Constitution then it must be considered that the Constitution has left the method of publication to the authority issuing the proclamation in order to make it known to the members of the public. In the instant case the Proclamations of Emergency have been published in the Official Gazette.

Article 352

By the Forty-fourth Amendment the words 'internal disturbance' in Article 352 have been substituted by the words 'armed rebellion'. The expression 'internal disturbance' has a wider connotation than 'armed rebellion' in the sense that 'armed rebellion' is likely to pose a threat to the security of the country or a part thereof, while 'internal disturbance', though serious in nature, would not pose a threat to the security of the country or a part thereof. The intention underlying the substitution of the word 'internal disturbance' by the word 'armed rebellion' in Article 352 is to limit the invocation of the emergency powers under Article 352 only to more serious situations where there is a threat to the security of the country or a part thereof on account of war or external aggression or armed rebellion and to exclude the invocation of aggression emergency powers in situations of internal disturbance which are of lesser gravity. This has been done because a proclamation of emergency under Article 352 has serious implications having effect on the executive as well as the legislative powers of the States as well as the Union. The consequences of a proclamation of emergency under Article 352 are thus much more drastic and far reaching and, therefore, the Constitution takes care to provide for certain safeguards in Article 352 for invoking the said provision. Even if the disturbance is as a result of armed rebellion by a section of the people in those States the disturbance may not be of such a magnitude as to pose a threat to the security of the country or a part thereof so as to call for invocation of the emergency powers under Article 352. If the disturbance caused by armed rebellion does not pose a threat to the security of the country and the situation can be handled by deployment of armed forces of the Union in the disturbed area, there appears to be no reason why the drastic power under Article 352 should be invoked.

There can be a situation arising out of internal disturbance which may justify the issuance of a proclamation under Article 356 of the Constitution enabling the President to assume to himself all or any of the functions of the Government of the State. That would depend on the gravity of the situation arising on account of such internal disturbance and on the President being satisfied that a situation has arisen where the Government of the State cannot be carried on in accordance with provisions of the constitution. A proclamation under Article 356 has serious consequences affecting the executive as well as the legislative powers of the State concerned. By issuing such a proclamation the President assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State and declares that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. Having regard to the drastic nature of the consequences flowing from a proclamation under Article 356 it is required to be approved by both Houses of Parliament within a prescribed period and it can be continued only with the approval of both Houses of Parliament and it cannot remain in force for more than three years.

Article 356 and Judicial Review

It would thus appear that in S.R. Bommai, though all the learned Judges have held that the exercise of power under Article 356(1) is subject to judicial review but in the matter of justiciability of the satisfaction of the President, the view of the majority (Pandian, Ahmadi, Verma, Agrawal, Yogeshwar Dayal and Jeevan Reddy, JJ.) is that the principles evolved in Barium Chemicals, 1966, for adjudging the validity of an action based on the subjective satisfaction of the authority created by statute do not, in their entirety, apply to the exercise of a constitutional power under Article 356. On the basis of the judgment of Jeevan Reddy, J., which takes a narrower view than that taken by Sawant, J., it can be said that the view of the majority (Pandian, Kuldip Singh, Sawant, Agrawal and Jeevan Reddy JJ.) is that:

(i) the satisfaction of the President while making a Proclamation under Article 356(1) is justiciable;

(ii) it would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds;

(iii) even if some of the materials on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action;

(iv) the truth or correctness of the material cannot be questioned by the Court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President;

(v) the ground of mala fides takes in *inter alia* situations where the Proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power;

(vi) the Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Union Council of Ministers are the best judge of the situation and that they are also in possession of information and material and that the Constitution has trusted their judgment in the matter; and

(vii) this does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive.

If political party with support of other political party stakes claim to form Government and satisfies the Governor about its majority to form stable Government, Governor cannot refuse formation of Government and override the majority claim because of his subjective assessment that majority was cobbled by illegal and unethical means. Grounds of mal-administration by State Government enjoying majority is not available for invoking power under Article 356.

Governor is not answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. Immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of mala fides.

SUMMARY OF THE ARGUMENTS OF THE CASES

Rameshwar Prasad (III) v. Union of India

(2005) 7 SCC 151

RC Lahoti, CJ. And GP Mathur and PK Balasubramanyan , JJ.

Brief Facts

The general election to the legislative Assembly of Bihar were held in three phases in the month of February, 2005. the results of the election were notified by the Election commission of India on 4.3.2005. the governor of Biharon made a report whereupon presidents rule was promulgated over the state of Biharon 7.3.2005 and the assembly was kept in suspended animation. By another notification Issued on the same day it was notified that all powers, which have been assumed by the president of India would be exercised by the Governor of the Satte. Based on the Reports of the Governor a notification was issued ordering the dissolution of the Bihar Legislative Assembly.

Issue Involved:

Whether the Governor of the State of Bihar could be impleaded as a party to the proceedings.

Decision

The court noting the constitutional significance of the ISSUE framed *inter alia* following questions and refereed the matter to a Constitution Bench.

"1. What is the extent and ambit of constitutional immunity enjoyed by the Governor under Article 361 of the Constitution?

2. Whether the protection afforded by Art. 361 of the Constitution to the Governor of a State prevents the Governor being impleaded even when there are allegation in the writ petition which constitute mala fides?

3. Whether inaction or omission to exercise a power conferred or the failure to perform a duty imposed by the Constitution would come under the protection of Art. 361 of the Constitution and could it be claimed that the Governor shall not be answerable to the Court for non exercise of the duties conferred or imposed on him by the Constitution?"

The matter was accordingly placed before the Chief Justice.

A.K. Kaul and another v. **Union of India and another**

AIR1995SC1403, JT1995(4)SC1, 1995(2)SCALE755, (1995)4SCC73, [1995]3SCR469, 1995(3)SLJ1(SC)

Supreme Court

Decided On: 19.04.1995

Hon'ble J. S.C. Agrawal and Faizan Uddin, JJ.

Brief Facts:

The appellants were employed as Deputy Central Intelligence Officers in the Intelligence Bureau in the Ministry of Home Affairs of the Government of India. On July 23, 1979, the employees of the Intelligence Bureau formed an Association called "The Intelligence Bureau Employees Association" (IBEA) for the purpose of ventilating their grievances. On May 3, 1980, the Joint Director of the Intelligence Bureau issued a Circular Memorandum declaring that the formation of the IBEA was in violation of the Civil Services (Conduct) Rules and that those who take part in the activities of the IBEA will attract disciplinary action. Writ Petitions (Civil) were filed in the Hon'ble SC challenging the said circular. SC on July 21, 1980, issued an order for issue of rule nisi on the said writ petitions and also passed an interim order directing that during the pendency of the writ petitions in this Court no disciplinary action shall be taken against any member of the IBEA for reasons mentioned in the circular. On December 26, 1980, orders were passed dismissing the appellants from service. The appellants filed separate writ petitions under Article 32 of the Constitution to challenge the said orders of dismissal.

Issue Involved:

Whether the 'satisfaction' of the President with respect to Clause (c) of the Second proviso to Article 311(2) and the orders of dismissal made pursuant to the same subject to judicial review and the scope of justiciability of the same.

Decision

In a case where the validity of an order passed under Clause (c) of the second proviso to Article 311(2) is assailed before a Court or a Tribunal it is open to the Court or the Tribunal to examine whether the satisfaction of the President or the Governor is vitiated by mala fides or is based on wholly extraneous or irrelevant grounds and for that purpose

the Government is obliged to place before the Court or tribunal the relevant material on the basis of which the satisfaction was arrived at subject to a claim of privilege under Sections 123 and 124 of the Evidence Act to withhold production of a particular document or record. Even in cases where such a privilege is claimed the Government concerned must disclose before the Court or tribunal the nature of the activities in which the Government employee is said to have indulged in.

Having regard to the facts and circumstances of the case the Court was unable to hold that the impugned orders for the dismissal of the appellants were vitiated by mala fides or were based on wholly extraneous or irrelevant grounds and therefore dismissed the appeals.

Ratio Decidendi:

It would thus appear that in S.R. Bommai, though all the learned Judges have held that the exercise of power under Article 356(1) is subject to judicial review but in the matter of justiciability of the satisfaction of the President, the view of the majority (Pandian, Ahmadi, Verma, Agrawal, Yogeshwar Dayal and Jeevan Reddy, JJ.) is that the principles evolved in Barium Chemicals, 1966, for adjudging the validity of an action based on the subjective satisfaction of the authority created by statute do not, in their entirety, apply to the exercise of a constitutional power under Article 356. On the basis of the judgment of Jeevan Reddy, J., which takes a narrower view than that taken by Sawant, J., it can be said that the view of the majority (Pandian, Kuldip Singh, Sawant, Agrawal and Jeevan Reddy JJ.) is that:

(i) the satisfaction of the President while making a Proclamation under Article 356(1) is justiciable;

(ii) it would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds;

(iii) even if some of the materials on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action;

(iv) the truth or correctness of the material cannot be questioned by the Court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President;

(v) the ground of mala fides takes in *inter alia* situations where the Proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power;

(vi) the Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Union Council of Ministers are the best judge of the situation and that they are also in possession of information and material and that the Constitution has trusted their judgment in the matter; and

(vii) this does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive.

It only means that the provisions contained in Clause (c) of the second proviso to Article 311 (2) are more akin to those contained in Article 356(1) which also does not contain any requirement to record the reasons for the satisfaction of the President. Since the satisfaction of the President in the matter of making a proclamation under Article 356(1) is justiciable within the limits indicated in S.R. Bommai, 1994 AIR SCW 2946 (supra), the satisfaction of the President or the Governor, which forms the basis for passing an order under Clause (c) of the second proviso to Article 311(2), can also be justiciable within the same limits.

SUMMARY OF THE ARGUMENTS

Submissions of the Appellants: The exercise of power under Clause (c) of the Second proviso to Article 311(2) of the Constitution is subject to judicial review and that an order passed under the said provisions is open to challenge before the Courts on the ground that the satisfaction of the President or the Governor is vitiated by mala fides or is based on considerations which have no relevance to the interest of the security of the State. Where the employee assails the action taken against him under Article 311(2)(c) it is obligatory on the part of the concerned Government to place before the Court the relevant material on the basis of which the action was taken and such material can only be withheld from the Court in cases where the claim of privilege is found to be justified under the provisions of Sections 123 and 124 of the Evidence Act. And that the said claim of privilege does not extend to the disclosure of the nature of the activities on the basis of which the alleged satisfaction has been arrived at and the privilege can only relate to the material which has been relied upon in support of the said activities.

Submissions of the Respondents: An order under Clause (c) of second proviso to Article 311(2) of the Constitution is to be passed by the President or the Governor on the basis of his subjective satisfaction. The material which forms the basis for arriving at the said satisfaction is not required to be disclosed both in view of Article 74(2) as well as under

Sections 123 and 124 of the Evidence Act. While under Clause (b) of the second proviso to Article 311(2) the competent authority is required to record in writing the reason for its satisfaction that it is not reasonably practicable to hold an inquiry, there is no such requirement for recording the reason in Clause (c), and, therefore, there is no requirement to disclose the reasons for arriving at the satisfaction for taking action under Clause (c) of second proviso to Article 311(2).

Observations

"Having regard to the fact that the appellants were working in a highly sensitive organisation entrusted with the delicate job of gathering, collecting and analysing intelligence necessary to maintain the unity, integrity and sovereignty of the country and that secrecy is the essence of the organisation and exposure may tend to demolish the organisation and aggravate the hazards in gathering information and dry up the sources that provide essential and sensitive information needed to protect public interest, the Tribunal had held that it will not be in public interest to permit disclosure of such documents. The Tribunal has, therefore, upheld the claim of privilege."

Attorney General for India and Ors. v. **Amratlal Prajivandas and Ors.**

AIR1994SC2179, [1995]83CompCas804(SC), 1995CriLJ426, JT1994(3)SC583, 1994(2)SCALE925, (1994)5SCC54, [1994]Supp1SCR1

Supreme Court of India

Decided On: 12.05.1994

Hon'ble J. A.M. Ahmadi, P.B. Sawant, K. Ramaswamy, K. Jayachandra Reddy, S.C. Agrawal, S. Mohan, B.P. Jeevan Reddy, G.N. Ray and N. Venkatachala, JJ.

Brief Facts:

On June 25, 1975, the President of India proclaimed an emergency under Article 352(1) of the Constitution of India on the ground that "the security of India is threatened by internal disturbance." A proclamation of emergency dated December 3, 1971 issued under Article 352(1) on the ground that "the security of India is threatened by external aggression" was already in force. These declarations had the effect of 'suspending' Article 19 as provided by Article 358 of the Constitution. On 27th June, 1975 the President of India made an order under Article 359(1) of the Constitution declaring "that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the Constitution and all proceedings pending in any Court for the enforcement of the above-mentioned rights shall remain suspending for the period during which the proclamation of emergency made under Clause (1) of Article 352 of the Constitution on 3rd December, 1971 and on the 25th June, 1975 are both in force.

During the period the Emergency proclaimed on 25th June, 1975 was in force, several orders of detention were made under Section 3 of COFEPOSA. In view of the provisions of Section 12A, the said detenues were neither supplied with the grounds of detention nor were their cases referred to the Advisory Board. The detenues, however, had no remedy. Because of the order under Article 359(1) and the operation of Article 358 - as interpreted by the Hon'ble SC in *A.D.M. Jabalpur v. Shivkant Shukla* - they could not approach the High Court or the Hon'ble Supreme Court for relief. The emergency was revoked on March 21, 1977 and the detenues released. Subsequently notices were issued under Section 6 of the SAFEMA to the said detenues, their relatives and associates calling upon, them to show cause why the properties mentioned in the notices be not

declared as illegally acquired properties and forfeited. SAFEMA was being invoked against them because of the orders of detention made against the detenues under COFEPOSA during the period of emergency.

Issue Involved:

(1) Whether an order of detention under Section 3 read with Section 12A of COFEPOSA made during the period of emergency proclaimed under Article 352(1) of the Constitution of India - with the consequent 'suspension' of Article 19 and during which period the right to move the Court to enforce the rights conferred by Articles 14, 21 and 22 was suspended can form the foundation for taking action under Section 6 of SAFEMA against the detenue, his relatives and associates? And if it does, can the validity of such order of detention be challenged by the detenue and/or his relatives and associates, when proceedings are taken against him/them under SAFEMA even though the said order of detention has ceased to be operative and was not either challenged - or not successfully challenged - during its operation?

(2) Should the validity of the order of detention be tested 'with reference to the position of law' obtaining at the time of making the said order and during its period of operation or with reference to the position of law obtaining on the date of issuance of the show cause notice under Section 6 of SAFEMA?

Decision

Since the President had issued an order under Article 359(1) suspending Articles 14, 21 and 22, it became competent for the Parliament, by virtue of Clause (1A) of Article 359 to enact Section 12A of COFEPOSA for the duration of and limited to the period for which the Presidential Order was in force. It was meant to achieve the purposes of emergency. Once Section 12A is held to be a competent piece of legislation, orders of detention made thereunder (i.e., orders of detention to which the said provision applied) cannot be held to be not amounting to orders of detention for the purpose of and within the meaning of Section 2(2)(b) of SAFEMA, particularly in view of the express language of Section 2(2)(b) (including proviso (iii) thereto)-and the protection enjoyed by both the enactments by virtue of their inclusion in the IXth Schedule to the Constitution. The court and authorities before whom proceedings are pending under SAFEMA shall proceed to dispose them of in accordance with law and in the light of this judgment.

Ratio Decidendi:

Under Clauses (1) and (1A) of Article 359 the position is this: while Clause (1) empowers the President to suspend the enforcement of the fundamental rights named in such notification (and any and all proceedings in that behalf in any court), it does not empower the President to suspend the fundamental rights. During the period the Presidential Order under Article 359(1) suspending enforcement of certain rights conferred by Part-III is in operation, the State is empowered to make any law or to take any executive action inconsistent with such rights. All this is so because the emergency proclaimed to meet the threat to the security of India has to be effectively implemented. The requirements of emergency constitute both the foundation as well as an implied limitation upon the power.

In our opinion, the position under Article 358 is this: Article 358 enables the State-it empowers the State-to make any law or to take any executive action inconsistent with Article 19. This exceptional power is, however, confined to the period of emergency and is intended to facilitate the effective implementation of the objectives of emergency. The justification of this extraordinary provision is that individual liberties may have to be kept in abeyance temporarily if found necessary to meet the threat to the security of India or any part thereof within the meaning of Article 352(1). Validity of the law made or the things done or omitted to be done by virtue of the said Article during the period of emergency cannot be questioned either during or after the emergency on the ground of inconsistency with Article 19. It should be remembered that Article 358 sanctions such a course because the Founding Fathers thought-and not without justification-that when the security of India or any part thereof is threatened as contemplated by Article 352, the State should be left free to make such law or to take such executive action as is necessary to safeguard security of the country unfettered by the provisions in Article 19. This subordination of Article 19, however, is only for the period the proclamation of emergency under Article 352 is in operation.

SUMMARY OF THE ARGUMENTS

Submissions of the Petitioners: Since the order of detention under COFEPOSA is made the basis for action under SAFEMA against Petitioners, they are entitled to challenge the validity of the order of detention. They may not have been able to question the validity of detention during their detention by virtue of Section 12A of COFEPOSA (non-supply of grounds and non-reference to advisory board) and also because their right

to move the court for enforcement of the rights guaranteed to them by Articles 14, 21 and 22 was suspended during the period of emergency by an order made by the President of India under Article 359(1) of the Constitution even Article 19 did not avail them by virtue of Article 358-but when the said orders of detention are sought to be made the basis of action under SAFEMA, after the lifting of emergency, they are now entitled to question them. Also by virtue of the order made under Article 359(1), the fundamental rights guaranteed to them by Articles 14, 21 and 22 were not suspended, but only the right to move for their enforcement was suspended. If so, they say, the detention orders made against them are invalid and illegal for violation of Clauses (4) and (5) of Article 22. They may have been barred from enforcing their rights under Articles 22, 21 and 19 because of the said order of the President, but that did not render the orders of detention valid. Such invalid, indeed void orders, cannot serve as the basis or as the foundation of action under SAFEMA.

Submissions of the Respondents: Placing reliance on provisions of Clause (1A) of Article 359 the Respondents submitted that the validity of the said detention orders had to be judged with reference to the law then obtaining and not with reference to the law obtaining on the date of issuance of notice under Section 6 of SAFEMA. They submitted that at any rate, Clause (1A) of Article 359 saved all such orders. Suspension of remedy, they contended was tantamount to suspension of the right itself since one cannot conceive of a right without a remedy. There is no distinction, between Article 358 and an order under Article 359(1) in this regard.

Observations of the court

"Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic Issue Involved."

Baburao alias P.B. Samant v. **Union of India (UOI) and Ors.**

AIR1988SC440, JT1987(4)SC672, 1987(2)SCALE1322, 1988Supp(1)SCC401, [1988]2SCR431

Supreme Court

Decided On: 17.12.1987

Hon'ble J. E.S. Venkataramiah and K.N. Singh, JJ.

Brief Facts:

The petitioner was an assessee under the Income-tax Act and Wealth Tax Act during the assessment year 1976-77 and was liable to pay income-tax and Wealth tax in accordance with the rates prescribed by the Finance Act, 1976 which was passed by the Lok Sabha during its extended period which was extended under the provisions of the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976), after the expiry of five years from the date appointed for its first meeting.

Issue Involved:

(1) The Proclamation of Emergency Issued on 3.12.1971 by the President of India was either ultra vires the Constitution or had ceased to be in operation on 4.2.1972.

(2) The Proclamation of Emergency dated 25.6.1975 Issued by the President of India on 26.6.1975 was either ultra vires the Constitution or had ceased to be in operation on 26.8.1975;

(3) The House of the People (Extension of Duration) Act, 1976 (No. 30 of 1976) is ultra vires the Constitution; and

(4) The Finance Act, 1976 (66 of 1976) is ultra vires the Constitution.

Although the petitioner had also challenged Section 13 of the Constitution (42nd Amendment) Act, 1976 and Clause (c) of Section 3 of the Constitution (24th Amendment) Act, 1971 in the petition he did not press these two contentions at the hearing of the petition.

Decision

"We are satisfied that the resolutions of the Lok Sabha and Rajya Sabha approving the two resolutions have been duly published in the official reports of the two Houses of Parliament. This ought to meet the contention of the petitioner that any public Act or resolution which affects public life should be given due publicity. We also hold that the production of the Lok Sabha Debates and of the Rajya Sabha Debates containing the proceedings of the two Houses of Parliament relating to the period between the time when the resolutions were moved in each of the two Houses of Parliament and the time when the resolutions were duly adopted amounts to proof of the said resolutions. The Court is required to take judicial notice of the said proceedings under Section 57 of the Indian Evidence Act, 1872. We are, therefore, of the view that the two Proclamations of Emergency were kept in force by virtue of the resolutions passed by the Houses of Parliament until they were duly revoked by the two Proclamations which were Issued by the Vice-President acting as President of India in the year 1977. Since the two Proclamations of Emergency were in force when the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976) was passed its validity cannot be questioned. The Lok Sabha passed the Finance Act, 1976 during the extended period of its duration and therefore the validity of Finance Act, 1976 also cannot be questioned. In view of the foregoing this petition should fail and it is accordingly dismissed. There will be no order as to costs."

Ratio Decidendi:

A Proclamation of Emergency being a very important event affecting public life has also to be published in any manner known to the modern world and the publication in the Official Gazette is one such mode. We are of the view that if the Constitution requires that a particular mode of publication is necessary then such mode must be followed but if there is no mode of publication prescribed by the Constitution then it must be considered that the Constitution has left the method of publication to the authority issuing the proclamation in order to make it known to the members of the public. In the instant case the Proclamations of Emergency have been published in the Official Gazette.

SUMMARY OF THE ARGUMENTS

Submissions of the Petitioner: The contention of the petitioner is that the duration of the House of the People could have been validly extended only when a Proclamation of Emergency was in force under the proviso to Clause (2) of Article 83 of the Constitution

and since the two Proclamations of Emergency dated 3rd December, 1971 and 25th June, 1975 were either ultra vires the Constitution or had ceased to be in operation by the time the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976) was passed by Parliament, the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976) had no effect and consequently all Acts passed by the House of the People during the extended period including the Finance Act, 1976 were ultra vires the Constitution. He further submitted that even though the said Proclamations had been validly Issued, the Proclamation of Emergency dated 3rd December, 1971 had ceased to be in operation on 3rd February, 1972 and the Proclamation of emergency dated 25th June, 1975 which was Issued on 26th June, 1975 had ceased to be in operation by 26th August, 1975 because the resolutions passed by the two Houses of Parliament approving the said Proclamations of Emergency as required by Clause (2) of Article 352 of the Constitution as it stood during the relevant time had not been published in the Official Gazette of the Government of India.

Submissions of the Respondent: The Union of India has contended that the two Proclamations of Emergency had been duly Issued by the President and approved by the resolutions of two Houses of Parliament as required by law and that actually the proclamation of Emergency of 3rd December, 1971 had been revoked by the Vice-President acting as the President by the Proclamation dated 27th March, 1977 and the Proclamation of Emergency dated June 25th, 1975 had been revoked by him by the Proclamation dated 21st March, 1977. In the month of February, 1976 when the House of the People (Extension of Duration)Act, 1976 (Act 30 of 1976) was passed by Parliament both the Proclamations of Emergency were in force and therefore Parliament was entitled to extend the period of the House of the People for a period not exceeding one year at a time. The Finance Act, 1976 passed during the period so extended had been, therefore, validly passed. It was further pleaded by the Union of India that the publication of the resolutions was not necessary and that in any event since they had been published in the Lok Sabha Debates and the Rajya Sabha Debates which were published under the authority of the Speaker of the House of the People and the Chairman of the Rajya Sabha respectively the Proclamations of Emergency remained in force until they were duly revoked.

Observations

The reports of the proceedings of Parliament and the State Legislatures are widely circulated. The newspapers, radio and television are also the other modern means which give publicity to all Acts and resolutions of Parliament and the Legislatures of the States. In ancient days the King's soldiers and announcers had to go round the realm to give publicity to the royal proclamations. The present day world is different from the ancient world. The publication in the Parliamentary Debates though after some short delay is adequate publication of the resolutions of Parliament as there is no rule which requires that the resolutions should be published in the Official Gazette. Hence mere non-publication of the resolutions approving the Proclamations of Emergency in the Official Gazette did not make them ineffective.

Krishna Kumar Singh & Anr. etc. v. State of Bihar

AIR1998SC2288, JT1998(4)SC58, (1998)IIIMLJ100(SC), 1998(3)SCALE482, (1998)5SCC643, [1998]3SCR206

Supreme Court

Decided On: 08.05.1998

Hon'ble J. Sujata V. Manohar and D.P. Wadhwa, JJ.

Brief Facts:

Before the Hon'ble SC were cross appeals arising out of the judgment dated March 3, 1994 of the Division Bench of Patna High Court. In one set of these appeals, the appellants, who belong to teaching and non-teaching staff of Sanskrit schools in the State of Bihar, filed writ petitions in the High Court claiming their status as Government servants under Ordinance No. 32 of 1989, which was promulgated by the Governor of Bihar exercising powers conferred on him by Article 213 of the Constitution of India. There were successive Ordinances promulgated after Ordinance No. 32 of 1989 lapsed, the last Ordinance lapsing on April 30, 1992. The Ordinance did not take the shape of Act of the Legislature. The High Court in its judgment did not grant relief to the petitioners that in the writ petitions that Sanskrit Schools had been taken over by the State Government or that the petitioners had become Government servants and entitled to salaries and other benefits as the Government teachers. The High Court, however, granted limited relief to the petitioners they be paid salaries as Government servants from the date of the first Ordinance 32/1989 till April 30, 1992 when the last Ordinance lapsed and also directed payment of salaries for the earlier period at the rate to which the petitioners were entitled to. The State also filed appeal against this judgment. It was aggrieved by the direction of the High Court for payment of salaries to the petitioners as Government servants for the limited period. The State also felt aggrieved by the findings of the High Court that Ordinances re-promulgated again and again were illegal and that there was "Ordinance Raj" in the State of Bihar.

Issue Involved:

Whether 1st Ordinance is valid, or whether all are valid or whether all are unconstitutional.

Decision

Both Hon'ble Justice Sujata Manohar and D.C. Wadhwa, J. agreed that the ordinances from the 2nd Ordinance onwards were invalid. However Hon'ble Justice Sujata Manohar was further of the view that the 1st ordinance was also invalid and could not be delinked from the chain. Further, even if the 1st ordinance was valid, its effect could not last beyond its life-time. Wadhwa, J. was of the view that the 1st Ordinance was valid and its effect was enduring till it was reversed by express legislation. In view of the difference of opinion between themselves on the constitutional validity of the first ordinance, and on the effect of it on the status of the concerned teachers, the matters were placed before the Hon'ble Chief justice of India for constituting a larger bench.

Ratio Decidendi:

Hon'ble Justice Sujata Manohar:

When on the cessation of a temporary "situation", if the measure taken is to be continued, an express provision is made to this effect in the Article, e.g., Article 352 deals with a proclamation of emergency. Clause (4) of Articles 352 provides that "every proclamation Issued under this article shall be laid before each House of Parliament and shall...cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolution of both Houses of Parliament". Article 356 deals with President's Rule in a State if there is failure of constitutional machinery in the State. Clauses (3) and (4) of Article 356 provide for the Proclamation ceasing to operate as stated therein. Article 358 which deals with suspension of provisions of Article 19 during emergency, Article 359(1A), Article 360 and Article 369 also contain somewhat similar provisions. In the case of exercise of legislative powers during the President's Rule under Article 356, however, Article 357(2) provides that any law made in the exercise of the power of the Legislature of the State by Parliament or the President during the subsistence of the proclamation shall, after the proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority. This is an express Constitutional provision which extends the life of laws enacted during the proclamation of President's Rule beyond the period during which the proclamation was in force. There is no such provision relating to the Ordinance promulgated under Article 213. The effect of an Ordinance cannot, therefore, last beyond its life-time. The only possible situation when this can happen is when any action already completed during the life of the ordinance has a permanent effect and is broadly speaking, irreversible in the sense set out earlier.

J. Wadhwa:

If the right created by the temporary statute or Ordinance is of enduring character and is vested in the person, that right cannot be taken away because the statute by which it was created has expired.

SUMMARY OF THE ARGUMENTS

Submissions of the Petitioners: Only the first Ordinance No. 32 of 1989 should be looked at in order to decide the status of the appellant teachers. Since no inquiry is contemplated under the first Ordinance, they have automatically become Government servants. They further contend that all the subsequent Ordinances are illegal/invalid and must be ignored. That the employees of Sanskrit Schools mentioned in Schedule to the ordinance 32/89 became government servants on December 16, 1989 when it was promulgated and they were never divested of that position by any express legislation. Services of the teachers and other employees of these schools were taken over by the State and under sub-clause 2 of Clause 4 of the Ordinance they were to be paid salaries on the same pay-scales as admissible to the government employees. Fourth ordinance 24/90 which sought to change the status of the teachers and non-teachers who had become government servants by the first Ordinance could not do so and if the fourth Ordinance was to be acted upon, the results would be startling.

Submissions of the Respondents: Despite the wording of 1st three ordinances, by virtue of the 4th Ordinance there was no automatic take-over of the 429 Sanskrit Schools listed in these Ordinances. By virtue of the 4th Ordinance and subsequent Ordinances an investigation was required to the made by the Collector to decide first, whether the school was in existence or not. The service of the teaching and non-teaching staff of the 429 Sanskrit Schools was not automatically transformed into Government service. A committee constituted by the State Government was required to examine whether the concerned teacher was occupying a post which was validly sanctioned, whether the procedure for his appointment was regular, whether he possessed the qualifications and experience prescribed for the post and other similar factors. Each of the persons so approved had to be absorbed on an individual basis in Government service. His pay and allowances and other service benefits would be determined by the State at the time of his absorption. These enquiries and reports were not complete at time when the last Ordinance expired on 30th of April, 1992. No Decision and/or steps had been taken by the State Government to absorb any person employed in these Sanskrit Schools in Government service. Therefore,

the teachers of Sanskrit Schools as well as the non-teaching staff did not have, at any time, the status of a Government servant.

Observations

"It is also for the Legislature to guard itself against the mechanisation of the Executive in bringing an Ordinance which would be of enduring nature and yet it is not brought before the Legislature. In the present case, it is quite paradoxical that the Executive, while issuing successive Ordinances and thus making it to believe that first ordinance would be of enduring nature, is now claiming that it was of no effect."

Naga People's Movement of Human Rights v. Union of India (UOI)

AIR1998SC465, 1998(1) ALD (Cri) 220, JT1997 (9) SC431, 1997(7) SCALE741, (1998)2SCC109, [1997] Supp5SCR469

Supreme Court of India

Decided On: 27.11.1997

Judges: Hon'ble J.S. Verma, C.J., M.M. Punchhi, S.C. Agrawal, A.S. Anand and S.P. Bharucha, JJ.

Brief Facts:

The writ petitions and appeals in the instant case raised common questions relating to the validity of the Armed Forces (Special Powers) Act, 1958 (as amended) enacted by Parliament (the Central Act) and the Assam Disturbed Areas Act, 1955 enacted by the State Legislature of Assam (the State Act). The State Act was enacted with a view to make better provision for the suppression of disorder and for restoration and maintenance of public order in the disturbed areas in Assam. The Central Act was enacted in 1958 to enable certain special powers to be conferred upon the members of the armed forces in the disturbed areas in the State of Assam and the Union Territory of Manipur. By Act 7 of 1972 and Act 69 of 1985 the Central Act was amended and it got extended to the whole of the State of Arunachal Pradesh, Assam, Manipur, Meghalya, Mizoram, Nagaland and Tripura. In Section 3 of the Central Act, as originally enacted, the power to Issue the notification was only conferred on the Governor of the State or the Administrator of the Union Territory. By the Amendment Act of 1972 power to Issue a notification under the said provision can also be exercised by the Central Government.

In the Writ Petitions filed under Article 32 of the Constitution the validity of the Central Act and the State Act as well as the notifications issued the said enactments declaring disturbed areas in the State of Assam, Manipur and Tripura were challenged. In these writ petitions allegations have been made regarding infringement of human rights by personnel of armed forces in exercise of the powers conferred by the Central Act.

Issue Involved:

When the matter came before the Hon'ble Supreme Court, the notifications regarding declaration of disturbed areas had ceased to operate. The allegations involving infringement of rights by personnel of armed forces had been inquired into and action had been taken

against the persons found to be responsible for such infringements. Therefore the only questions that survived for consideration in these writ petitions were about the validity of the provisions of the Central Act and the State Act.

Decision

Act of 1958 does not displace civil power of State by armed forces of Union and it only provides for deployment of armed forces of Union in aid of civil power - Act of 1958 cannot be regarded as colourable legislation or fraud on Constitution of India - Act of 1955 in pith and substance is law in respect of maintenance of public order enacted in exercise of legislative power and not open to challenge.

Ratio Decidendi:

By the Forty-fourth Amendment the words 'internal disturbance' in Article 352 have been substituted by the words 'armed rebellion'. The expression 'internal disturbance' has a wider connotation than 'armed rebellion' in the sense that 'armed rebellion' is likely to pose a threat to the security of the country or a part thereof, while 'internal disturbance', though serious in nature, would not pose a threat to the security of the country or a part thereof. The intention underlying the substitution of the word 'internal disturbance' by the word 'armed rebellion' in Article 352 is to limit the invocation of the emergency powers under Article 352 only to more serious situations where there is a threat to the security of the country or a part thereof on account of war or external aggression or armed rebellion and to exclude the invocation of aggression emergency powers in situations of internal disturbance which are of lesser gravity. This has been done because a proclamation of emergency under Article 352 has serious implications having effect on the executive as well as the legislative powers of the States as well as the Union. The consequences of a proclamation of emergency under Article 352 are thus much more drastic and far reaching and, therefore, the Constitution takes care to provide for certain safeguards in Article 352 for invoking the said provision. Even if the disturbance is as a result of armed rebellion by a section of the people in those States the disturbance may not be of such a magnitude as to pose a threat to the security of the country or a part thereof so as to call for invocation of the emergency powers under Article 352. If the disturbance caused by armed rebellion does not pose a threat to the security of the country and the situation can be handled by deployment of armed forces of the Union in the disturbed area, there appears to be no reason why the drastic power under Article 352 should be invoked.

There can be a situation arising out of internal disturbance which may justify the issuance of a proclamation under Article 356 of the Constitution enabling the President to assume to himself all or any of the functions of the Government of the State. That would depend on the gravity of the situation arising on account of such internal disturbance and on the President being satisfied that a situation has arisen where the Government of the State cannot be carried on in accordance with provisions of the constitution. A proclamation under Article 356 has serious consequences affecting the executive as well as the legislative powers of the State concerned. By issuing such a proclamation the President assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State and declares that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. Having regard to the drastic nature of the consequences flowing from a proclamation under Article 356 it is required to be approved by both Houses of Parliament within a prescribed period and it can be continued only with the approval of both Houses of Parliament and it cannot remain in force for more than three years.

SUMMARY OF THE ARGUMENTS

Submissions of the Petitioners: To challenge the legislative competence of the Central Act, it was contended that the Central Act was, in pith and substance, a law relating to 'armed rebellion' and that the subject of armed rebellion fell within the ambit of the emergency powers contained in Part XVIII (Articles 352 to 360) of the Constitution and that in exercise of its legislative power under Entry 2A of the Union List Parliament had no power to legislate on the subject of armed rebellion. It was also urged that Article 352 incorporated certain safeguards which were sought to be bypassed by the Central Act. It was submitted that since, the circumstances covered by the Central Act and Article 352 were similar, the Central Act was a colourable legislation and a fraud on the Constitution since it did not incorporate within it constraints similar to those contained in Article 352 which had the effect of limiting its application within stringent limits and enabling a responsible and effective monitoring of its use and abuse.

Submissions of the Respondents: It was urged that the proclamation of Emergency under Article 352 had a far reaching consequence and could effect very seriously the legislative and executive powers of the State and that the power that had been conferred under the Central Act was of a very limited nature. Also after the insertion of "armed

rebellion" in Article 352 by the Constitution (Forty-fourth Amendment) Act, 1978, a clear distinction had been drawn between 'internal disturbance' and 'armed rebellion' and the power under Article 352 could be invoked only when there was a threat to the security of India by armed rebellion or war or external aggression and the situation of internal disturbance would not justify invocation of Article 352. Nor would it justify the invocation of the drastic provisions of Article 356 by the President. But, at the same time, the situation would entitle the Union Government to invoke its power and indeed perform its duties under Article 355.

Observations

"It is, therefore, desirable that the State Government should be consulted and its co-operation sought while making a declaration. It would be useful to refer to the report of the Sarkaria Commission on Center-States Relations which has also dealt with this aspect."

Emergency Provisions in the Constitution of India

Article 352, the first article in Part XVIII, empowers the President of India to proclaim emergency in the country or any part thereof if he is satisfied that a grave emergency exists whereby the security of India or any part thereof is threatened whether by war, external aggression or armed rebellion. (By the 44th Amendment, the words "armed rebellion" were substituted in the place of the words "internal disturbance"). Articles 353 and 354 set out the effects of such a proclamation and provide for certain incidental matters. Article 355, set out hereinbefore, imposes a duty upon the Union to protect the States against external aggression and armed rebellion and also to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. Articles 355, 356 and 357 go together. Article 356 provides for the action to be taken by the President where he is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution by making a proclamation in that behalf, while Article 357 sets out the powers that can be exercised by the Parliament when a proclamation under Article 356 is in operation. Articles 358 and 359 deal with suspending of certain fundamental rights during the period the proclamation under Article 352 is in operation, while Article 360 empowers the President to declare financial emergency in certain situations.

The common thread running through all Articles in Part XVIII relating to emergency provisions is that the said provisions can be invoked only when there is an emergency and the emergency is of the nature described therein and not of any other kind. The Proclamation of emergency under Articles 352, 356 and 360 is further dependent on the satisfaction of the President with regard to the existence of the relevant conditions precedent. The duty cast on the Union under Article 355 also arises in the twin conditions stated therein.

In the case of exercise of legislative powers during the President's Rule under Article 356, however, Article 357(2) provides that any law made in the exercise of the power of the Legislature of the State by Parliament or the President during the subsistence of the proclamation shall, after the proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority. This is an express Constitutional provision which extends the life of laws enacted during the proclamation of President's Rule beyond the period during which the proclamation was in force.

Proclamation of Emergency

A Proclamation of Emergency being a very important event affecting public life has also to be published in any manner known to the modern world and the publication in the Official Gazette is one such mode. If the Constitution requires that a particular mode of publication is necessary then such mode must be followed but if there is no mode of publication prescribed by the Constitution then it must be considered that the Constitution has left the method of publication to the authority issuing the proclamation in order to make it known to the members of the public. In the instant case the Proclamations of Emergency have been published in the Official Gazette.

Article 352

By the Forty-fourth Amendment the words 'internal disturbance' in Article 352 have been substituted by the words 'armed rebellion'. The expression 'internal disturbance' has a wider connotation than 'armed rebellion' in the sense that 'armed rebellion' is likely to pose a threat to the security of the country or a part thereof, while 'internal disturbance', though serious in nature, would not pose a threat to the security of the country or a part thereof. The intention underlying the substitution of the word 'internal disturbance' by the word 'armed rebellion' in Article 352 is to limit the invocation of the emergency powers under Article 352 only to more serious situations where there is a threat to the security of the country or a part thereof on account of war or external aggression or armed rebellion and to exclude the invocation of aggression emergency powers in situations of internal disturbance which are of lesser gravity. This has been done because a proclamation of emergency under Article 352 has serious implications having effect on the executive as well as the legislative powers of the States as well as the Union. The consequences of a proclamation of emergency under Article 352 are thus much more drastic and far reaching and, therefore, the Constitution takes care to provide for certain safeguards in Article 352 for invoking the said provision. Even if the disturbance is as a result of armed rebellion by a section of the people in those States the disturbance may not be of such a magnitude as to pose a threat to the security of the country or a part thereof so as to call for invocation of the emergency powers under Article 352. If the disturbance caused by armed rebellion does not pose a threat to the security of the country and the situation can be handled by deployment of armed forces of the Union in the disturbed area, there appears to be no reason why the drastic power under Article 352 should be invoked.

There can be a situation arising out of internal disturbance which may justify the issuance of a proclamation under Article 356 of the Constitution enabling the President to assume to himself all or any of the functions of the Government of the State. That would depend on the gravity of the situation arising on account of such internal disturbance and on the President being satisfied that a situation has arisen where the Government of the State cannot be carried on in accordance with provisions of the constitution. A proclamation under Article 356 has serious consequences affecting the executive as well as the legislative powers of the State concerned. By issuing such a proclamation the President assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State and declares that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. Having regard to the drastic nature of the consequences flowing from a proclamation under Article 356 it is required to be approved by both Houses of Parliament within a prescribed period and it can be continued only with the approval of both Houses of Parliament and it cannot remain in force for more than three years.

Article 356 and Judicial Review

It would thus appear that in S.R. Bommai, though all the learned Judges have held that the exercise of power under Article 356(1) is subject to judicial review but in the matter of justiciability of the satisfaction of the President, the view of the majority (Pandian, Ahmadi, Verma, Agrawal, Yogeshwar Dayal and Jeevan Reddy, JJ.) is that the principles evolved in Barium Chemicals, 1966, for adjudging the validity of an action based on the subjective satisfaction of the authority created by statute do not, in their entirety, apply to the exercise of a constitutional power under Article 356. On the basis of the judgment of Jeevan Reddy, J., which takes a narrower view than that taken by Sawant, J., it can be said that the view of the majority (Pandian, Kuldip Singh, Sawant, Agrawal and Jeevan Reddy JJ.) is that:

(i) the satisfaction of the President while making a Proclamation under Article 356(1) is justiciable;

(ii) it would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds;

(iii) even if some of the materials on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action;

(iv) the truth or correctness of the material cannot be questioned by the Court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President;

(v) the ground of mala fides takes in *inter alia* situations where the Proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power;

(vi) the Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Union Council of Ministers are the best judge of the situation and that they are also in possession of information and material and that the Constitution has trusted their judgment in the matter; and

(vii) this does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive.

If political party with support of other political party stakes claim to form government and satisfies the Governor about its majority to form stable government, Governor cannot refuse formation of Government and override the majority claim because of his subjective assessment that majority was cobbled by illegal and unethical means. Grounds of mal-administration by State Government enjoying majority is not available for invoking power under Article 356.

Governor is not answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. Immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of mala fides.

Rameshwar Prasad & Ors. v. Union of India & Anr., (2005) 7 SCC 625

07/10/2005

Y.K. Sabharwal,K.G. Balakrishnan,B.N. Agrawal,Ashok Bhan Arijit Pasayat

Brief Facts:

The General Elections to the Legislative Assembly of Bihar were held in the month of February 2005. The Election Commission of India, in pursuance of Section 73 of the Representation of the People Act, 1951 in terms of Notification dated 4th March, 2005 notified the names of the elected members.

However as no party or coalition of the parties was in a position to secure 122 seats so as to have majority in the Assembly, the Governor of Bihar made a report dated 6th March, 2005 to the President of India, whereupon in terms of Notification G.S.R.162(E) dated 7th March, 2005, Issued in exercise of powers under Article 356 of the Constitution of India, the State was brought under President's Rule and the Assembly was kept in suspended animation. By another Notification G.S.R.163(E) of the same date, 7th March, 2005, it was notified that all powers which have been assumed by the President of India, shall, subject to the superintendence direction and control of the President, be exercisable also by the Governor of the State. The Presidential Proclamation dated 7th March, 2005 was approved by the Lok Sabha at its sitting held on 19th March, 2005 and Rajya Sabha at its sitting held on 21st March, 2005.

Decision

Keeping in view the questions involved, the pronouncement of judgment with detailed reasons is likely to take some time and, therefore, at this stage, we are pronouncing this brief order as the order of the court to be followed by detailed reasons later.

The Proclamation dated 23rd May, 2005 dissolving the Legislative Assembly of the State of Bihar is unconstitutional-Despite unconstitutionality of the impugned Proclamation, but having regard to the facts and circumstances of the case, the present is not a case where in exercise of discretionary jurisdiction the status quo ante deserves to be ordered to restore the Legislative Assembly as it stood on the date of Proclamation dated 7th March, 2005 whereunder it was kept under suspended animation-Detailed reasons would follow.

SUMMARY OF THE ARGUMENTS

These writ petitions have been filed challenging constitutional validity of the aforesaid Proclamation dated 23rd May, 2005. Elaborate submissions in support of the challenge to the impugned action of dismissing the assembly were made. The State of Bihar also made elaborate submissions supporting the impugned Proclamation dated 23rd May, 2005.

Rameshwar Prasad and Ors. (VI) v. Union of India (UOI) and Anr.

Supreme Court of India

Decided On: 24.01.2006

Equivalent Citation: AIR2006SC980, 2006(3)CTC209, JT2006(1)SC457, (2006)2MLJ67(SC), 2006(1)SCALE385, (2006)2SCC1

Hon'ble J. Y.K. Sabharwal, C.J., B.N. Agarwal, Ashok Bhan, Arijit Pasayat and K.G. Balakrishnan, JJ.

Brief Facts:

The challenge in these petitions was to the constitutional validity of Notification dated 23rd May, 2005 ordering dissolution of the Legislative Assembly of the State of Bihar. It was a unique case. The case is of its own kind where before even the first meeting of the Legislative Assembly, its dissolution had been ordered on the ground that attempts are being made to cobble a majority by illegal means and lay claim to form the Government in the State and if these attempts continue, it would amount to tampering with constitutional provisions. One of the questions of far reaching consequence that arises is whether the dissolution of Assembly under Article 356(1) of the Constitution of India can be ordered to prevent the staking of claim by a political party on the ground that the majority has been obtained by illegal means. Election to the State of Bihar was notified by the Election Commission on 17th December, 2004. On 4th March, 2005, Notification was Issued by the Election Commission in pursuance of Section 73 of Representation of People Act, 1951 (for short 'the RP Act, 1951') duly notifying the names of the members elected for all the constituencies along with party affiliation.

Since no political party was in a position to form a Government, a notification was issued on 7th March, 2005 under Article 356 of the Constitution imposing President's rule over the State of Bihar and the Assembly was kept in suspended animation. Another notification of the same date was also I ssued, *inter alia*, stating that the powers exercisable by the President shall, subject to the superintendence, direction and control of the President be exercisable also by the Governor of Bihar. Governor of Bihar sent a report on 27th April, 2005 to the President of India, *inter alia*, stating that the newspaper reports and other reports gathered through meeting with various party functionaries/leaders and also intelligence reports received, indicated a trend to gain over elected representatives of the

people and various elements within the party and also outside the party being approached through various allurements like money, caste, posts etc., which was a disturbing feature. According to the said report, the situation was fast approaching a scenario wherein if the trend is not arrested immediately the consequent political instability will further give rise to horse trading being practiced by various political parties/groups trying to allure elected MLAs. That it would not be possible to contain the situation without giving the people another opportunity to give their mandate through a fresh poll. The report is reproduced below in its entirety. After due process the Presidential notification was Issued formally at 1430 hrs. (IST) on 23rd May, 2005 dissolving the Bihar Assembly which has been impugned in these writ petitions.

Challenging proclamation dated 23rd May, 2005 issued under Article 356 of the Constitution ordering dissolution of Bihar Legislative Assembly, petitioners have also prayed for restoration of Election Commission notification dated 4th May, 2005 issued under Section 73 of the RP Act of 1951.

Issue Involved:

(1) Is it permissible to dissolve the Legislative Assembly under Article 174(2)(b) of the Constitution without its first meeting taking place?

(2) Whether the proclamation dated 23rd May, 2005 dissolving the Assembly of Bihar is illegal and unconstitutional?

(3) If the answer to the aforesaid question is in affirmative, is it necessary to direct status quo ante as on 7th March, 2005 or 4th March, 2005?

(4) What is the scope of Article 361 granting immunity to the Governor?

Decisison

When the notification dated 23rd May 2005 is declared as invalid, status quo ante cannot be directed to be maintained as on 7th March, 2005 or 4th March, 2005 for the larger public interest, keeping in view the ground realities and taking a pragmatic view. As a result of the impugned Proclamation, the Election Commission of India had announced election which had reached on an advanced stage. The court permitted the completion of the ongoing election process with the fond hope that the electorate may again not give fractured verdict and may give a clear majority to one or other political party.

We find no escape from the conclusion that the grounds stated and material supplied in the reports of the Governor are neither irrelevant nor vague, that the reasons disclosed

bear a reasonable nexus with the exercise of the particular power and hence the satisfaction of the President must be treated as conclusive, and that there is no scope at all for a finding that the action of the President is in flagrant violation of the very words of Article 356(1)(Para 101).

Ratio Decidendi:

If political party with support of other political party stakes claim to form government and satisfies the Governor about its majority to form stable Government, Governor cannot refuse formation of Government and override the majority claim because of his subjective assessment that majority was cobbled by illegal and unethical means. Grounds of mal-administration by State Government enjoying majority is not available for invoking power under Article 356. Hence, impugned proclamation was unconstitutional.

Governor is not answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. Immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of mala fides.

SUMMARY OF THE ARGUMENTS

Submissions of the Petitioners: The notification dissolving the Assembly is illegal as it is based on the reports of the Governor which suffered from serious legal and factual infirmities and are tainted with pervasive mala fides which is evident from the record. It is contended that the object of the reports of the Governor was to prevent political party led by Mr. Nitish Kumar to form the Government. The submission is that such being the object, the consequent notification of dissolution accepting the recommendation deserves to be annulled.

Submissions of the Respondents: the report of the Governor itself is the material and that it is not permissible within the scope of judicial review to go into the material on which the report of the Governor may be based and the question whether the same was duly verified by the Governor or not. In the present case, we have nothing except the reports of the Governor. In absence of the relevant material much less due verification, the report of the Governor has to be treated as the personal ipse dixit of the Governor. The drastic and extreme action under Article 356 cannot be justified on mere ipse dixit, suspicion, whims and fancies of the Governor. This Court cannot remain a silent spectator

watching the subversion of the Constitution. It is to be remembered that this Court is the sentinel on the qui vive. In the facts and circumstances of this case, the Governor may be main player, but Council of Ministers should have verified facts stated in the report of the Governor before hurriedly accepting it as a gospel truth as to what Governor stated. Clearly, the Governor has mislead the Council of Ministers which lead to aid and advice being given by the Council of Ministers to the President leading to the Issue of the impugned Proclamation.

Observations

Per J. **Y.K. Sabharwal, C.J.**

We are afraid that resort to action under Article 356(1) under the aforesaid or similar eventualities would be clearly impermissible. These are not the matters of perception or of the inference being drawn and assumptions being made on the basis whereof it could be argued that there are no judicial manageable standards and, therefore, the Court must keep its hands off from examining these matters in its power of judicial review. In fact, these matters, particularly without very cogent material, are outside the purview of the constitutional functionary for coming to the conclusion that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

S.R. Bommai and others etc. v. **Union of India and others etc.**

AIR1994SC1918, JT1994(2)SC215, 1994(2)SCALE37, (1994)3SCC1, [1994]2SCR644

Supreme Court of India

Decided On: 11.03.1994

Hon'ble S. Ratnavel Pandian, A.M. Ahmadi, Kuldip Singh, J.S. Verma, P.B. Sawant, K. Ramaswamy, S.C. Agrawal, Yogeshwar Dayal and B.P. Jeevan Reddy, JJ.

Brief Facts:

On March 5, 1985 elections held to the Karnataka State Legislative Assembly and the Janta Dal won 139 seats out of 225 seats and the Congress Party was the next largest party securing 66 seats. Sri R.K. Hedge was elected as the leader of Janta Dal and became the Chief Minister. Due to his resignation on August 12, 1988, Sri S.R. Bhommai's was elected as leader of the party and became the Chief Minister. As on February 1, 1989 the strength of Janta Dal was 111 and the Congress was 65 and Janta Party was 27, apart from others. On April 15, 1989 his expanding the Ministry caused dissatisfaction to some of the aspirants. One Kalyan Molakery and others defected form Janta Dal and he wrote letters on April 17 and 18, 1989 to the Governor enclosing the letters of 19 others expressing want of confidence in Sri Bhommai. On April 19, 1989 the Governor of Karnataka sent a report to the President. On April 20, 1989, 7 out of 19 M.L.A's that supported Kalyan Molakery, wrote to the Governor that their signatures were obtained by misrepresentation and reaffirmed their support to Sri Bommai. On the same day the cabinet also decided to convene the Assembly session on April 27, 1989 at 3.30 P.M. to obtain vote of confidence and Sri Bommai met the Governor and requested him, to allow floor test to prove his majority and he was prepared even to advance the date of the session. In this scenario the Governor sent his second report to the President and exercising the power under Article 356 the President Issued proclamation, dismissed Bhommai Government and dissolved the Assembly on April 21, 1989 and assumed the administration of the State of Karnataka. When a writ petition was filed on April 26, 1989, a special bench of three Judges of the High Court of Karnataka dismissed the writ petition. Thus this appeal by special leave. Similar Presidential proclamations were also issued during December 6, 1992 to Dec 15, 1992 in Uttar Pradesh, Himachal Pradesh, Madhya Pradesh and Rajasthan.

Issue Involved:

The crucial question that falls for consideration in all these matters is whether the President has unfettered powers to Issue Proclamation under Article 356(1) of the Constitution. (a) Is the Proclamation amenable to judicial review? (b) If yes, what is the scope of the judicial review in this respect? and (c) What is the meaning of the expression "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution" used in Article 356(1)?

Decision

It would thus appear that in S.R. Bommai, though all the learned Judges have held that the exercise of power under Article 356(1) is subject to judicial review but in the matter of justiciability of the satisfaction of the President, the view of the majority (Pandian, Ahmadi, Verma, Agrawal, Yogeshwar Dayal and Jeevan Reddy, JJ.) is that the principles evolved in Barium Chemicals, (Supra) for adjudging the validity of an action based on the subjective satisfaction of the authority created by statute do not, in their entirety, apply to the exercise of a constitutional power under Article 356. On the basis of the judgment of Jeevan Reddy, J., which takes a narrower view than that taken by Sawant, J., it can be said that the view of the majority (Pandian, Kuldip Singh, Sawant, Agrawal and Jeevan Reddy JJ.) is that:

1) the satisfaction of the President while making a Proclamation under Article 356(1) is justiciable;

2) it would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds;

3) even if some of the materials on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action;

4) the truth or correctness of the material cannot be questioned by the Court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President;

5) the ground of mala fides takes in *inter alia* situations where the Proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power;

6) the Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Union Council of Ministers are the best judge of the situation and that they are also in possession of information and material and that the Constitution has trusted their judgment in the matter: and

7) this does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive.

8) As to the bar to an inquiry by the Court imposed under Article 74(2) of the Constitution, the said bar under Article 74(2) is confined to the advice tendered by the Council of Ministers to the President and it does not extend to the material on the basis of which the advice was tendered and, therefore Article 74(2) does not bar the production of the material on which the advice of the Council of Ministers is based. This is, however, subject to the right to claim privilege against the production of the said material under Section 123 of the Evidence Act.

Ratio Decidendi:

In S.R. Bommai differing views were expressed by the learned Judges on the scope and extent of the judicial review and justiciability of the action taken by the President in exercise of power conferred under Article 356(1) can be discussed as follows:

Sawant J., speaking for himself and Kuldip Singh J.,

Referring to the expression "if the President...is satisfied" in Article 356(1) the learned Judge said: "Hence, it is not the personal whim, wish, view or opinion or the ipse dixit of the President de hors the materials but a legitimate inference drawn from the material placed before him which is relevant for the purpose. In other words, the President has to be convinced of or has to have sufficient proof of information with regard to or has to be free from doubt or uncertainty about the state of things indicating that the situation in question has arisen. Although, therefore, the sufficiency or otherwise of the material cannot be questioned, the legitimacy of inference drawn from such material is certainly open to judicial review." (p. 103) (of SCC) (at p. 3018 of AIR). "Many of the parameters of judicial review developed in the field of administrative law are not antithetical to the field of constitutional law and they can equally apply to the domain covered by the constitutional law." (p. 94 of SCC): (at p. 3009 of AIR). The learned Judge has applied the tests laid down by this Court in *Barium Chemicals Ltd. v. Company Law Board*, (AIR 1967 SC 295).

"The material on the basis of which the advice is given by the Council of Ministers and the President forms his satisfaction has to be scrutinised by Court within the acknowledged parameters of judicial review, viz.., illegality, irrationality and mala fides." (p. 112) (of SCC): (at p. 3027 of AIR).

Jeevan Reddy J., speaking for himself and Agrawal J.,

After pointing out that Barium Chemicals, (AIR 1967 SC 295) is a Decision concerning subjective satisfaction of an authority created by a statute, the learned Judge has held that the principles enshrined in the Barium Chemicals, (AIR 1967 SC 295) case "cannot ipso facto be extended to the exercise of constitutional power under Article 356 of the Constitution" and that "having regard to the fact that this is a high constitutional power exercised by the highest constitutional functionary in the Nation, it may not be appropriate to adopt the tests applicable in the case of action taken by statutory or administrative authorities nor, at any rate, in the entirety."(p. 267) (of SCC): (at pp. 3186-87 of AIR). He preferred to adopt the formulation that "if a proclamation is found to be mala fide or is found to be based wholly on extraneous or irrelevant grounds, it is liable to be struck down." (p. 268) (of SCC): (at p. 3187 of AIR).

The learned Judge has observed: "The truth or correctness of the material cannot be questioned by the Court nor will it go into the adequacy of the material. It will also not substitute its opinion for that of the President. Even if some of the material on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action. The ground of mala fides takes in *inter alia* situations where the Proclamation is found to be a clear case of abuse of power, or what is sometimes called fraud on power - cases where this power is invoked for achieving oblique ends." (p. 268) (of SCC): (at p. 3187 of AIR). "The Court will not lightly presume abuse or misuse. The Court would, as it should, tread wearily, making allowance for the fact that the President and the Union Council of Ministers are the best judges of the situations, that they alone are in possession of information and material - sensitive in nature sometimes - and that the Constitution has trusted their judgment in the matter. But all this does not mean that the President and Union Council of Ministers are the final arbiters in the matter or that that their opinion is conclusive." (pp. 268-269) (of SCC): (at p. 3188 of AIR). Pandian J. expressed his agreement with the judgment of Jeevan ReddyJ.

Ahmadi, J. (the learned Chief Justice as he then was),

While expressing his agreement with the view expressed in the State of Rajasthan, 1977, held that a Proclamation Issued under Article 356(1) of the Constitution can be challenged on the limited ground that the action is mala fide or ultra vires Article 356 itself and has held that the test laid down in Barium Chemicals, (supra) and subsequent Decisions for adjudging the validity of administrative action can have no application for testing the satisfaction of the President under Article 356. (p. 82) (of SCC): (at p. 2997 of AIR).

Verma, J., speaking for himself and Yogeshwar Dayal, J.

Proclamation under Article 356 is subject to judicial review the area of justiciability is narrow. The test for adjudging the validity of an administrative action and the grounds of its invalidity indicated in Barium Chemicals, 1966 and other cases of that category have no application for testing and invalidating a Proclamation Issued under Article 356, the learned Judge has said that the grounds of invalidity are those mentioned in State of Rajasthan, 1977 (supra), (p. 85) (of SCC): (at pp. 3000-01 of AIR).

K. Ramaswamy, J.(Dissenting)

"The Decision can be tested on the ground of legal mala fides, or high irrationality in the exercise of the discretion to Issue Presidential Proclamation and the traditional parameters of judicial review, therefore, cannot be extended to the area of exceptional and extraordinary power exercised under Article 356." The learned Judge has also held that the "doctrine of proportionality cannot be extended to the power exercised under Article 356." (p. 209 of SCC): (at p. 3127 of AIR).

SUMMARY OF THE ARGUMENTS

Submission of the Petitioners: Power of the President under Article 356 is not unfettered nor unlimited; its exercise is dependent upon the existence of the objective fact, namely a situation has arisen in which the Govt. of the State cannot be carried on in accordance with the provisions of the Constitution. This condition precedent is sine quo non to exercise the power and issuance of the proclamation under Article 356. The proclamation must set forth the grounds and reasons for reaching the satisfaction supported with the materials or the gist of the events in support thereof. The grounds and reasons should be cogent and credible and must bear proximate nexus to the exercise of the power under Article 356. The break down of the constitutional machinery is generally capable of

objective determination. The power under Article 356 cannot be exercised on the basis of the report of the Governor or otherwise of an inefficient or malfunctioning of the Government or mere violation of some provisions of the constitutions. It could be exercised only when the Govt. misuses its power contrary to the basic scheme and purpose of the Constitution or for its inability to discharge its basic constitutional duties and functions due to political or economic crises which have led to completely paralysing the State administration.

Submission of the Respondents: Having regard to the nature of the function, the high constitutional status of the authority in whom the power is vested and the exigencies in which the said action is taken, the Court ought not to go into the question of the advisability of the action or into the adequacy of the material on which it is based. There is difference in the nature and scope of the power of judicial review in the administrative law and the constitutional law. While in the field of administrative law, the Court's power extends to legal control of public authorities in exercise of their statutory power and therefore not only to preventing excess and abuse of power but also to irregular exercise of power, the scope of judicial review in the constitutional law extends only to preventing actions which are unconstitutional or ultra vires the Constitution. The areas where the judicial power, therefore can operate are limited and pertain to the domain where the actions of the Executive or the legislation enacted infringe the scheme of the division of power between the Executive, the Legislature and the judiciary or the distribution of powers between the States and the center. The judicial power has no scope in constitutional law beyond examining the said infringements. Likewise, the doctrine of proportionality or unreasonableness has no play in constitutional law and the executive action and legislation cannot be examined and interfered with on the anvil of the said doctrine.

SUMMARY OF THE ARGUMENTS of the Gujarat Dissolution of Assembly Case

(2002) 8 SCC 237

AIR2003SC87

Decided On: 28.10.2002

Supreme Court

Hon'ble J. B.N.Kirpal, C.J., V.N. Khare, Arijit Pasayat, Ashok Bhan, K.G. Balakrishnan, JJ.

Brief Facts:

Article 174 of the Constitution of India provides that a State Legislature has to mandatorily meet once every six months in other words the difference between two meetings cannot be more than six months. A peculiar situation arose in Gujarat. The term of the assembly was to expire on 18-3-2003. However, on 19-7-2002 on the advice of the Chief Minister, the Governor of Gujarat dissolved the Legislative Assembly. The last sitting of the dissolved Legislative Assembly was held on 3-4-2002 and as per Article 174 the gap between two meetings of legislative assembly could not be more than six months and hence it was necessary that the next meeting of legislative assembly be held on or before 03-10-2002. This could only be possible if the elections were held within 6 months and a new legislative assembly was constituted on or before 3-10-2002. But the Election Commission by an order declared that it was not possible for it to conduct elections before 3-10-2002. The Election Commission in the said order also took a stand that violation of Article 174 could be avoided by invoking Article 356 and imposing president's rule. Thus due to the inability of the Election Commission to conduct elections and constitute a new legislative assembly the provision of Article 174 would be violated.

Issue Involved:

It is in the above context that the president referred three questions to Supreme Court under Article 143 of the Constitution:

(i) Is Article 174 subject to the Decision of the Election Commission of India under Article 324 as to the schedule of elections of the Assembly?
(Article 324 being the power of Election Commission to superintend, direct and control elections and thus to prepare the schedule for elections)

(ii) Can the Election Commission of India frame a schedule for the elections to an Assembly on the premise that any infraction of the mandate of Article 174 would be remedied by a resort to Article 356 by the President?(Article 356 being the provision in case of failure of constitutional machinery in states i.e. imposition of president's rule)

(iii) Is the Election Commission of India under a duty to carry out the mandate of Article 174 of the Constitution, by drawing upon all the requisite resources of the Union and the State to ensure free and fair elections?

Decision

After a detailed analysis the court held that Article 174 (1) did not apply to a dissolved assembly and it is only for the purpose of providing the frequencies of sessions of existing State Legislature. Article 174, it was further held, was mandatory only for live and existing legislative assembly and was not intended to provide any period of limitation for holding elections for constituting a new House of the People or Legislative Assembly in the event of their premature dissolution.

The Court pointed out that there was no provision expressly providing for any period of limitation for constituting a fresh Legislative Assembly on the premature dissolution of the previous Legislative Assembly. However, in view of the scheme of the Constitution and the Representation of the People Act, the elections should be held within six months for constituting Legislative Assembly from the date of dissolution of the Legislative Assembly.

It was held that so far as the framing of the schedule or calendar for election of the Legislative Assembly is concerned, the same is in the exclusive domain of the Election Commission, which is not subject to any law framed by Parliament. Parliament is empowered to frame law as regards conduct of elections but conducting elections is the sole responsibility of the Election Commission as per Article 324.

Ratio Decidendi:

In view of the above discussion the court answered the questions in the following manner

(i) Is Article 174 subject to the Decision of the Election Commission of India under Article 324 as to the schedule of elections of the Assembly?

Article 174 is mandatory only for live and existing assembly but does not apply to dissolved assembly hence it does not prescribe any outer limit of 6 months for holding elections. Article 174 thus does not relate to elections. On the other hand Article 324 gives exclusive power to election commission to direct and conduct elections after dissolution of assembly. Hence both Articles operate on different fields and the question of one yielding to the other does not arise.

In other words because of Article 174 the Election Commission's power under Article 324 is not restricted in the sense that the Election Commission has to mandatorily conduct elections within 6 months, nor does the requirement of Article 174 that the legislative assembly has to meet once every 6 months hampered down owing to Article 324. The two Articles operate in separate fields Article 174 does not apply to elections or dissolved assemblies. While Article 324 does not apply to existing assemblies and comes into play only after assembly is dissolved.

(ii) Can the Election Commission of India frame a schedule for the elections to an Assembly on the premise that any infraction of the mandate of Article 174 would be remedied by a resort to Article 356 by the President?

Since Article 174 does not relate to dissolved assembly the question of invoking Article 356 to meet the requirement of the Article 174 does not arise. Moreover, the court observed that merely because the requirements of Article 174 are not met will not be a ground to invoke Article 356 as Article 356 comes into play only in case of failure of constitutional machinery but when the assembly is dissolved there is no failure of constitutional machinery.

(**Note:** the court did not find the question to be relevant on account of an affidavit submitted by the election commission stating that invoking of Article 356 in order to meet the requirements of Article 174 was only a suggestion and the Election Commission had only provided an alternative to the problem posed. EC was not serious about actually invoking the same)

SUMMARY OF THE ARGUMENTS

Submissions of the Petitioners: The counsels contending that Article 174 is not subject to the Decision of Election commission contended that the Article 174 was mandatory. Article 174 (1) was applicable to dissolved assembly and whenever an assembly is dissolved prematurely the Election Commission has to fix a calendar for elections within the time

mandated by Article 174 (1). It was also argued that merely because the Article cannot be complied with does not mean that it is not mandatory.

Submission of the Respondents: The counsel for the opposite side argued that Article 174(1) is neither applicable to the dissolved Assembly nor does it provide any period of limitation of six months for holding fresh election in the event of a premature dissolution of the Legislative Assembly.

FORESTS

List of the Cases

1. SAMATHA v. STATE OF A.P. AND ORS. AIR 1997 SC 3297,

Analytical Summary of the Arguments

The State Government may at times buckle under the pressure of dominant groups and may take Decisions, which may prove detrimental to the environment of the region. And forests being the very lungs of the country, there importance cannot be undermined. As such the Forest Conservation Act was enacted, the object being to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation. It is, therefore, felt necessary for the State Government to obtain prior permission of the Central Government for (1) de-reservation of forest; and (2) the use of forest land for non-forest purpose. The prior approval of the Central Government, therefore, is a condition precedent for such permission.

Summary Of The Arguments of the Cases

SAMATHA v. STATE OF A.P. AND ORS.

AIR1997SC3297, JT1997(6)SC449, 1997(4)SCALE746, (1997)8SCC191, [1997]Supp2SCR305

DATE OF DECISION 11.07.1997

HON'BLE JUDGES

K. Ramaswamy, S.Saghir Ahmed and G.B. Pattanaik, JJ.

Brief Facts:

Borra reserved forest area along with its environs consisting of 14 villages, was a Notified scheduled area in Ananthagiri Mandal of Visakhapatnam District of Andhra Pradesh. The State Government granted mining leases in this area to several non-tribal persons. Ananthagiri Mandal in which the mining areas are situated, is within the scheduled area. The tribal people from tribal groups are inhabiting therein. The appellant-Society claiming to protect the interests and life of the Scheduled Tribes in the area, filed the writ petitions questioning the power of the Government to grant mining leases in favour of non tribals in the scheduled area, in violation of the Regulation which prohibits transfer of any land in scheduled area to a non-tribal.

These appeals were directed to resolve mutually inconsistent law adumbrated by two Division Benches of Andhra Pradesh High Court. The appeals arising from S.L.P. (C) No. 17080-81/95 were filed against the judgment passed on April 28, 1995 in Writ Petition Nos. 9513/93 and 7725/94 (reported in 1996 AIHC 316 (Andh Pra)) in which the Division Bench had held that the Andhra Pradesh Scheduled Area Land Transfer Regulation (1 of 1959), as amended by Regulation 2 of 1970(for short, the 'Regulation') and the Mining Act (67 of 1957) did not prohibit grant of mining leases of Government land in the scheduled area to the non-tribals. The Forest Conservation Act, 1980 (for short, the 'FC Act') did not apply to the renewals. The Andhra Pradesh Forest Act, 1967 also did not apply to the renewal of the leases. It, accordingly, dismissed the writ petitions filed by the appellant challenging the power of the Government to transfer the Government land situated in the tribal area to the non-tribals for mining purpose. In the appeal arising from S.L.P. (C) No. 21457 of 1993 filed by Hyderabad Abrasives and Minerals, another

Division Bench, earlier had taken dramatically the opposite view and held that mining leases are illegal. Any lease to the non-tribals even of a Government land situated in scheduled area is in violation of Section 3 and so is void. Equally, it held that a mining lease in a forest area for non-forest purpose or renewal thereof, without prior approval of the Central Government, is in violation of Section 2 of the FC Act. Accordingly, the Division Bench directed the Government to prohibit mining operations in scheduled area except that the mines stacked on the surface be permitted to be removed after obtaining proper permits. This Decision, though earlier in point of time, was not brought to the notice of later Bench mentioned above.

Issue Involved:

Whether the Regulation would apply to transfer of Government land to a non-tribal?; whether the Government can grant mining lease of the lands situated in scheduled area to a non-tribal?; whether the leases are in violation of Section 2 of the FC Act?; and whether the leases are in violation of Environment Protection Act, 1986 (for short, the 'EP Act')?

Decision

It is seen from the evidence that the mining leases were granted by the State Government or were transferred and retransferred with the sanction of the State Government from private individuals to juristic persons, the partnership firms or companies. The lands with mining area are situated either in the reserved forest or forest land or within the scheduled area. Therefore, all the mining leases or renewals thereof are in violation of the Fifth Schedule. Equally, mining leases/renewals of mining leases by the, State Government are in violation of Regulation 3(1)(a) read with Section 3(2) of the Regulation and F.C. Act. Therefore, they are all void.

Ratio Decidendi:

Before granting leases, it would be obligatory for the State Government to obtain concurrence of the Central Government which would, for this purpose constitute a Sub-Committee consisting of the Prime Minister of India, Union Minister for Welfare, Union Minister for Environment so that the State's policy would be consistent with the policy of the nation as a whole.

SUMMARY OF THE ARGUMENTS

Submissions on behalf of the appellants: In view of the embargo contained in Section 2 of the Conservation Act prior permission of Central Government not having been obtained the mining activities within the forest area cannot be permitted to be continued. In relation to the provisions of the Environment Protection Act, the Central Government is under a statutory duty to protect the environment and co-ordinate the activities of the State Government under the Environment Protection Act of 1986 and such statutory obligation not having been discharged by the Central Government and the mining activities within the schedule are a being hazardous to human health this Court should compel the Union Government to perform its statutory obligation.

Submissions on behalf of the Respondents: Respondents did not dispute the proposition that the expression 'forest land' in the Conservation Act should be given wider meaning and that mining activities over the forest land cannot continue unless prior approval of the Central Government has been obtained in accordance with Section 2 of the Conservation Act.

Observations

K. Ramaswamy, J. (S. Saghir Ahmad, J. (Concurred with K. Ramaswamy, J.))

The FC Act; as amended by 1988 Act was enacted to check deforestation and conservation of forest. Sub-section (2) with a non obstante clause on deforestation of forest or use of forest land for non-forest purposes; regulates the forest and provides that notwithstanding any other law for the time being in force in the State, no State Government or other authority shall make, except with prior approval of the Central Government, (i) any order directing that any reserved forest or any portion thereof shall cease to be a reserved forest, (ii) that any forest land or portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned, by way of lease or otherwise, to any private person or to any authority or corporation, agency or any other organisation, not owned, managed or controlled by the Government, (iv) that any forest land or any portion thereof may be cleared or trees which have grown natural in the land or portion for the purpose of using it for reforestation. Clauses (iii) and (iv) were added by Amendment Act 69 of 1988 w.e.f. December 19, 1988. The object of the F.C. Act is to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation, it is, therefore, necessary for the State Government to obtain

prior permission of the Central Government for (1) de-reservation of forest; and (2) the use of forest land for non-forest purpose. The prior approval of the Central Government, therefore, is a condition precedent for such permission. The State governments are enjoined by FC Act, with power coupled with duty, to obtain prior approval of the Central Government. The leases/renewal of leases otherwise are good.

G.B. Pattanaik, J. (Minority view)

It is difficult to sustain the conclusion of the High Court in the impugned judgment that the Conservation Act applies only to a reserved forest. The said conclusion of the High Court therefore, is set aside. Consequently, it must be held that no mining activities can continue on any forest land unless prior approval of the Central Government is obtained as required under Section 2 of the Conservation Act. (Para 234, MANU Citation).

Though under Section 2 of the Forest Conservation Act use of any forest land for any non-forest purpose is prohibited without the prior consent of the Central Government and as such mining activities being a non-forest purpose would attract the mischief of said Section 2 of the Conservation Act, but in the absence of any materials to conclusively come to the conclusion that the land over which the respondents are carrying on the mining activities form a part of the forest land, it would not be proper for this Court to Issue any direction prohibiting the mining activities. At the same time it would be proper to direct the State of Andhra Pradesh through its Forest Department to examine whether the mining activities are being carried on over the forest land and if it comes to the conclusion that the lands do form a part of the forest land then immediate steps should be taken prohibiting continuance of the mining activities until the Central Government in exercise of power under Section 2 agrees to the same, and we accordingly so direct.

MINES AND MINERALS

List of the Cases

1. District Mining Officers and Ors. v. Tata Iron and Steel Co. and Ors., (2001) 7SCC 358
2. India Cement Ltd. & Ors v. State of Tamil Nadu and Ors., AIR 1990 SC 85
3. State of Bihar and Others v. Indian Aluminum Company and Others, AIR 1997 SC 3592
4. State of Orissa and Ors v. Mahanadi Coalfields Ltd. And Ors., AIR 1995 SC 1868
5. M/s Orissa Cements and Ors v. State of Orissa and Ors., AIR 1991 SC 1676
6. State of Orissa v. Union of India and Anr., 1995 Supp (2) SCC 154
7. The Quarry Owners Association v. State of Bihar and Ors., AIR 2000 SC 2870

2

Analytical Summary of the Arguments of Mines and Minerals

Under the Centre-State relations the core area of dispute is regarding taxation. As taxation is not now a mere source of raising money to defray expenses of government. It is a recognized fiscal tool to achieve fiscal and social objectives including reduction in inequalities and the goals laid down in Article 38.The court in *Orissa Cement & Ors. v. State of Orissa & Ors.* though held that entry 45 of list II gave the State Government power to legislate on land revenue but "cess" cannot be brought under the definition of land revenue and entry 50 of list II dealing with taxing on mineral rights dealt with levies like taxes on leases of mineral rights and on premiums and royalties etc and the same did not encompass a tax on the minerals actually extracted, which amount to being an excise duty, but on the Issue of refund felt that the states would be put through a lot of difficulty if they were to repay the amounts collected since most of the funds would have been directed towards various activities of the state.

Furthermore royalty is not merely payable on land but also on the labour and capital involved in mining. Hence it cannot fall under land revenue. As per section 9 of the MMRD Act additional royalty could only be charged by the Central Government and not the State Government

SUMMARY OF THE ARGUMENTS OF THE CASES

DISTRICT MINING OFFICERS AND ORS v. TATA IRON AND STEEL CO. AND ORS

MANU/SC/0412/2001

Equivalent Citation: JT2001(6)SC183, 2001(4)SCALE680, (2001)7SCC358

HON'BLE JUDGES

G.B. Pattanaik, S.N. Phukan and B.N. Agrawal, JJ (Per Pattnaik J)

Brief Facts:

After the Decisions of the Apex Court in the India Cements and the Orissa Cements case, whereby several legislations by which states imposed cess on royalties paid on minerals excavated from mines were struck down as being ultra vires the MMRD Act and the Constitution, the Parliament, by way of abundant caution, enacted a Act called the Cess and other Taxes on Minerals (Validation) Act, 1992 whereby it validated 11 such statutes till 4.4.1991, the date on which the Orissa Cements Decision was delivered. The Supreme Court, in Kannadasan's Case had upheld the validity of the Act and held that the States could collect all the cess that became leviable before 4.4.1991 even after that date. This Decision was largely overlooked by some High Courts who ruled in favour of the assesse, holding that they did not have to pay any cess after 4.4.91. The States have appealed against these orders and they were heard collectively.

ISSUE

1. Does the Validation Act, 1992 give power to the State governments to collect cess which became leviable before 4.4.91?

SUMMARY OF THE ARGUMENTS:

The appellants contention mainly relied on the Kannadasan's Case. They held that the intention of the Parliament was to enact a law that ensured that a) the states did not have to refund any of the cess collected and b) they could collect all the cess that became leviable owing to excavation of minerals before 4.4.91. The latter argument they substantiated on grounds that if those who have already paid are discriminated against in favour of those who haven't paid despite them having become liable to pay it at the same time with those who have paid, it would be violative of Article 14 of the Constitution.

The respondents/assesses on the other hand argued that this Act was only passed by way of abundant caution in order to ensure that the States did not have to refund any of the cess collected by way of the various challenged and struck down statutes. This view was challenged by the appellants who contended that since the Orissa Cements and India Cements case specifically barred refund of cess already collected it would have been superfluous for the Parliament to have passed a law to that effect and therefore it should have had a purpose greater than what is being imputed to it by the respondents.

Decision

The Court specifically agreed with the argument of Mr. Shanti Bhushan who said that the Act was passed as a matter of abundant caution to allay the fears of the states regarding refunding of cess already collected and did not intend to validate the collection of the cess even after 4.4.91. The Court looked at this Issue from various angles presented by the appellants and still arrived at the same conclusion. Another argument put forth by the respondents was such a collection was violative of Article 265 of the Constitution. It was held that since the Validating Act as well as the 11 Scheduled Acts had become infructuous, a levy or collection under such invalid laws would be violative of Article 265. It was also held that, in view of the ruling of the Supreme Court in the Mafatlal Case, wherein the Supreme Court held that the principle of unjust enrichment does not apply to a person who does not pay a tax and successfully challenges the tax in Court. It was also held that if the legislature wanted the Validating Act to survive beyond 4.4.91 even for a limited purpose, it would have incorporated a Saving Clause in the Act, which it did not do in its wisdom.

Ratio Decidendi:

The Validating Act, 1992 was only intended to validate cess already collected under the various State laws which were struck down by the Supreme Court and did not purport to give authority to the States to levy or collect any levy after 4.4.91.

Observations: (Pattanaik J.)

"A temporary Statute even in the absence of a saving provision like Section 6 of the General Clauses Act may not be construed dead for all purposes and the effect of expiry is essentially one of the construction of the Act."

INDIA CEMENT LTD AND ORS v. STATE OF TAMIL NADU AND ORS

MANU/SC/0226/1989

Equivalent Citation: AIR1990SC85, (1990)2GLR764, [1991]188ITR690(SC), JT1989(4)SC190, 1989(2)SCALE953, (1990)1SCC12, [1989]Supp1SCR692

Date of Decision 25.10.89

Hon'ble Judges:

E.S. Venkataramiah, C.J., B.C. Ray, G.L. Oza, K.N. Singh, Ranganath Misra, S. Natarajan and Sabyasachi Mukharji, JJ.

Brief Facts:

The main appellant in this case is a Company engaged in mining of limestone and Kankar in Salem District in Tamil Nadu under a lease granted by the State Government. Soon after the lease was granted the appellant started mining and was consistently paying royalty, dead rent and other payables under lease deed to the government. As per Section 115 of the Madras Panchayats Act, 1957 as amended in 1964 a cess was to be paid on land revenue and as per Section 116 of the same Act a surcharge was payable on the said land revenue. By amending Section 115 of the Act, the royalty paid on the mineral mined was included within the meaning of the term 'land revenue'. Thus the appellant had to pay a cess on the royalty that he paid for mining. This was challenged on the ground that the State Government was not competent to charge the same.

Issue Involved:

1. Is cess on royalty a demand for land revenue or an additional royalty?
2. If it is an additional royalty, is the State Government entitled to collect the same?

Decision

Per Mukherjee J: Cess is not on land, but on royalty which is included in the definition of' 'land revenue'. None of the three lists of the 7th Schedule of the Constitution permits or authorises a State to impose tax on royalty. This levy has been sought to be justified under entry 45 of list II of the 7th Schedule. Entry 45 deals with land revenue (Para 20).He added that royalty being that which is payable on the extraction from the land and cess

being an additional charge on that royalty cannot, be considered to be a tax on land but as a tax on income arising from the land. Oza.J concurred with Mukherjee J, but on slightly different grounds. He held that royalty is not merely payable on land but also on the labour and capital involved in mining. Hence he did not deem royalty to be a 'land revenue'. Additional royalty could only be charged by the Central Government owing to Section 9 of the Mines and Minerals (Regulation and Development) Act. Thus, the cess and surcharge on cess charged under the Madras Panchayat Act was held to be ultra vires Entry 54 List I of the Constitution as well as Section 9 of the above said Act.

Ratio Decidendi:

Royalty on minerals is not land revenue and hence any tax levied on it is additional royalty which can only be fixed or enhanced by the Central Government. The State Government cannot impose any tax on such royalty.

SUMMARY OF THE ARGUMENTS:

The main argument of the appellants was that cess on royalty was actually an additional royalty which could only be fixed by the Central Government and the State Government was acting ultra vires the Mines and Mineral (Regulation and Development) Act as well as the Constitution. The appellants main contention was that what was connected indirectly connected with land could not be called tax on land directly as a unit.

The State of Tamil Nadu, on the other hand, tried to justify the levy by arguing that a cess is not actually being levied on the royalty, but it was being levied on the land and Section 115 merely quantified the same on the basis of the quantum of the land revenue. In other words they first tried to argue that royalty was actually 'land revenue' that could be collected by the State Government under the mandate of Entry 49 List II of the Constitution that being tax on lands and buildings.

Another argument that was advanced by the appellants was that the cess could be justified under Entry 50 of List II which talked about tax on mineral rights subject to Parliaments regulations. This argument was countered on two grounds. Firstly it was pointed out that the Central Act clearly put a regulation and restriction on the States' power. Secondly, it was held that Entry 50 of list II of the 7th Schedule deals with taxes on mineral rights subject to limitation imposed by Parliament relating to mineral development. Entry 23 of list II deals with regulation of mines and mineral development subject to the provisions of list I with respect to regulation and development under the control of the Union and

entry 54 in list I deals with regulation of mines and minerals under the control of Union declared by the parliament by law to be expedient in public interest.

Observations

Per Mukherjee J

The minerals which are under the earth can in certain circumstances fall under the expression 'land' but as tax on mineral rights is expressly covered by entry 50 of list II, if it is brought under the head taxes under entry 49 of list II, it would render entry 50 of list II redundant. Learned Attorney General is right in contending that entries should not be so construed as to make any one entry redundant. It was further argued that even in pith and substance the tax fell to entry 50 of list II, it would be controlled by a legislation under entry 54 of List I.(Para 25)

Section 9(3) of the Act in terms states that royalties payable under the 2nd Schedule of the Act shall not be enhanced more than once during a period of 4 years. It is, therefore, a clear bar on the State Legislature taxing royalty so as to in effect amend 2nd Schedule of the Central Act. In the premises, it cannot be right to say that tax on royalty can be a tax on land, and even if it is a tax, if it falls within entry 50 will be ultra vires the State legislative power in view of Section 9(3) of the Central Act.(Para 30)

In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land.(Para 34)

Per Oza.J

It is therefore clear that unit of charge of royalty is not only land but land + Labour + Capital. It is therefore clear that if royalty is a tax or an imposition of a levy, it is not on land alone but it is a levy or a tax on mineral (land), labour and capital employed in extraction of the mineral. It therefore is clear that royalty if imposed by the Parliament it could only be a tax not only on land but on these three things stated above. (Para 40)

STATE OF BIHAR AND OTHERS v. INDIAN ALUMINUM COMPANY AND OTHERS

AIR1997SC3592, JT1997(8)SC201, 1997(6)SCALE210, (1997)8SCC360, [1997]Supp4SCR222

DATE OF DECISION : 24.09.1997

HON'BLE JUDGES

Hon'ble J.S. Verma, C.J.I., B.N. Kirpal and S.P. Kurdukar, JJ.

Brief Facts:

On 29th February, 1992 the Governor of Bihar promulgated the Bihar Forest Restoration and Improvement of Degraded Forest Land Taxation Ordinance under Article 213 of the Constitution so as to take immediate action for the purpose of providing resources and restoration of degraded land and improvement of forest area. This Ordinance was subsequently replaced by the Act. Pursuant to the promulgation of the said Ordinance, rules were notified on 5th June, 1992. Consequent upon the promulgation of the ordinance and the rules thereunder several writ petitions were filed, including those by the respondents herein, before the Patna High Court challenging the ordinance and the rules, *inter alia*, on the ground that it was beyond the legislative competence of the State Legislature of Bihar. It was also contended that the said Act which replaced the Ordinance was repugnant to the Indian Forest Act 1927 and the rules framed thereunder and that it was ultra vires Articles 14, 19, 240, 265 and 300A of the Constitution. With regard to the legislative competence it was contended by the respondents that in view of Entry 54 List 1 providing for regulation of mines and mineral development, the State Government had or authority or jurisdiction to promulgate the Act, the field being occupied by the Parliament alone. The Respondent Company, like all the respondents, had been granted by the State of Bihar leases for different areas under the provisions of Mines and Minerals Regulation Act, 1957. These leases pertained to various tracts of land situated in different villages but all the said leases related to lands in the forest areas. These leases had been granted long prior to the promulgation of the ordinance which led to the passing of the aforesaid Act. The respondents, on the basis of the leases which had been granted to them, worked on the said lands and extracted the minerals for which the leases had been granted.

Issue Involved:

The common question that arose for consideration in these appeals on special leave being granted was about the validity of the Bihar Forest Restoration and Improvement of Degraded Forest Land Taxation Act, 1992.

Decision

Taxing of the undertaking of non-forest activity in a forest land cannot be regarded as being covered by Entry 49 of the State List because what is sought to be taxed is not land but the tax is on absence of land or forest by reason of the activity of excavation and/or mining or use of forest land for a non-forest purpose. The High Court was, therefore, right in allowing the writ petitions filed by the respondents. Appeals were therefore dismissed with costs.

Ratio Decidendi:

Entry 49 of List II has been interpreted to mean the levy of tax directly on land as a unit. The land has been regarded as meaning the land on surface and also below the surface. Therefore, in order that a tax can be levied under Entry 49 of List II it is essential that 'land' as a unit must exist on which the tax is imposed. In the instant case the tax is, in effect, being levied not on land but on the absence of land. The levy is on the void which has been created. The forest land which is being used is not subjected to tax. The schedule to the Act itself shows that the assessment of tax is on excavation and use of forest land for non-forest purpose. The schedule further says that the rate of tax to be levied, in the case of mining or excavation varies with the extent of the land voided. In case the land has been rehabilitated no tax is to be levied. The tax is levied in effect on the activity of the removal or excavation of land. In other words the tax is squarely on the activity of mining because it is under the mining lease that mechanized and non-mechanized excavation as well as underground excavation takes place and this is what is referred to in column 1 of the schedule to the Act while determining the amount of tax leviable. Levy in other words is on the activity of removal of earth and not on the land itself and is, therefore, outside the ambit of Entry 49 of List II.

SUMMARY OF THE ARGUMENTS

Submissions on behalf of appellants: On behalf of the State Government reliance was placed on the provisions of Entry 49 List II in support of its contention that the

State Legislature had the legislative competence to enact this law. Shortly put the case of the appellants herein was that what was now sought to be levied by the impugned act was tax on land which was covered by Entry 49 List II and the tax was not on or in relation to any mining activity.

Submissions on behalf of the Respondents: In pith and substance the tax in question cannot be regarded as a tax on land falling under Entry 49 List II. It was submitted that the impugned Act represents the third attempt to transgress to the occupied field and to tax minerals and mining activities by the State. Though the law had been cast in such a fashion so as to give an environmental flavour, in effect, the only purpose of this Act was to tax the mining or the non forest activities and the Act in question has transgressed the field occupied by the Central Act and the same could not be regarded as falling under Entry 49 of List II.

STATE OF ORISSA AND ORS v. MAHANADI COALFIELDS LTD AND ORS

MANU/SC/0361/1995

Equivalent Citation: AIR1995SC1868, JT1995(3)SC662, 1995(2)SCALE900, 1995Supp(2)SCC686, [1995]3SCR639

Date of Decision :21.04.95

HON'BLE JUDGES

A.M. Ahmadi, C.J.I. S.P. Bharucha and K.S. Paripoornan, JJ

Brief Facts:

The instant SLP had clubbed various appeals. In one of the appeals the respondent was a coal mining company and in the other appeals respondents were consumers of coal and coal traders who had bought coal from the said company. Under the Orissa Rural Employment, Education and Production Act, 1992 coal bearing lands and mineral bearing lands were charged with additional tax and the same was challenged before the High Court in Writ Petitions as being violative of the MMRD Act, The Constitution and the Decisions of the Supreme Court in India Cements case and the Orissa Cements case.

The primary purpose of the 1992 Act was to overcome the loss of income brought about after the Orissa Cess Act was declared unconstitutional by the Supreme Court. Though the High Court had dwelt upon various Issues including the conflict of the said Act with Article 14 of the Constitution, the Supreme Court decided to restrict its analysis as to whether the Act could be protected under any of the legislative heads of Schedule II.

Issue Involved:

Whether the Orissa Rural Employment Education and Production Act would fall under Entries 23, 45,49 or 50 and if so could they be protected in the presence of Entry 54 List I of the Constitution and Section 9 of MMRD Act?

Decision

On analysis of the Act, the court came to the conclusion that the Orissa Act was specifically targeting mineral bearing lands and coal bearing lands. Even if, in certain cases it could be agued that minerals are a part of land and it could be taxed as part of land, Entry 50 (tax

on mineral rights) was more specific when compared to Entry 49 (tax on land and buildings) and one entry should not be construed in such a manner to make another redundant. In the light of the said argument the Court held that the Orissa Act was ultra vires the MMRD Act and the Constitution.

RATIO DECIDENTS:

On the reading of the impugned statute, the tax in question was actually a tax on mineral bearing lands and coal bearing lands. Though minerals could be called as a part of land in certain cases, what was in effect being taxed was the mineral rights of the lessees/coal companies. This was covered Entry 50 of List II which is specifically made subject to Central Legislation, in this case the MMRD.

SUMMARY OF THE ARGUMENTS:

The arguments in this case were broadly on the lines taken in India Cements and Orissa Cements cases.

Observations

(K.S. Paripoornan, JJ)

"The minerals which are under the earth, can in certain circumstances fall under the expression 'land' but as tax on mineral rights is expressly covered by entry 50 of List II, if it is brought under the head taxes under entry 49 of List II, it would render entry 50 of List II, redundant. Learned Attorney General is right in contending that entries should not be so construed as to make any one entry redundant." (Para 14)

M/S ORISSA CEMENTS AND ORS v. STATE OF ORISSA AND ORS

MANU/SC/0381/1991

Equivalent Citation: AIR1991SC1676, JT1991(2)SC439, 1991(1)SCALE617, 1991Supp(1)SCC430, [1991]2SCR105

Date of Decision : 04.04.91

HON'BLE JUDGES

S. Ranganathan, N.M. Kasliwal and S.C. Agrawal, JJ

Brief Facts:

The case is constituted by appeals from various High Court Decisions wherein State statutes levying cess on royalties were struck down by the High Courts. This Decision came soon after the Decision of the Supreme Court in the India Cements case (discussed earlier) wherein a similar provision in the Madras Panchayat Act was struck down by the Supreme Court as being ultra vires the Mines and Minerals (Regulation and Development) Act and Entry 54 List I of the Constitution.

Issue Involved:

The major Issues were framed keeping in mind the Orissa Act. They were:

(1) Can the cess be considered as "land revenue" under Entry 45 or as a "tax on land" under Entry 49 or as a "tax on mineral rights" under Entry 50 of the State List?

(2) If the answer to question (1) is in the negative, can the cess be considered to be a fee pertaining to the field covered by Entry 23 of the State List or has the State been denuded of the legislative competence under this Entry because of Parliament having enacted the MMRD Act, 1957?

To this was added a third general Issue:

(3) If the Statutory provisions were struck down are the petitioners/assesses entitled to refund?

Decision

Entry 45 of List II gave the State Government power to legislate on 'land revenue'. But since the India Cements case was on the very same Issue and in that case it was categorically

held that cess cannot be brought under the definition of 'land revenue' the argument did not hold much water.

Entry 50 of List II deals with taxing of mineral rights. Relying on the Decision in Hingir Rampur case it was held that tax on mineral rights dealt with levies like taxes on leases of mineral rights and on premiums and royalties etc., and the same did not encompass a tax on the minerals actually extracted, which amount to being an excise duty. Since the India Cements Decision held that tax on royalties would not amount to tax on minerals, the Court was bound by the latter decision and this argument was also negatived.

Moving on to Entry 49 of List II which dealt with tax on land and building, which was the strongest argument for the respondents in the Orissa case. Distinguishing with the India Cements Decision, it was contended that the cess was not a tax on royalty but the royalty was merely a figure to quantify the levy. The court held that though the argument was appealing, the view had already been dealt with in the India Cements Decision. The arguments were equated to those put forth in the Murthy case which was reversed in India Cements. The respondents tried to take refuge in the concluding remarks of Oza.J in India Cements where he had said if the cess in that case was charged on 'surface rent'or a like value and not on royalty, the Decision could have been different. The court simply held that in this case the cess is on royalty and not on surface rent or dead rent, even Oza.J did not consider royalty to be 'tax on land'. The court observed that the manner in which the levy, initially introduced a uniform cess on all land, was slowly converted, qua mining lands, into a levy computed at multiples of the royalty amounts paid by the lessees thereof seem to bear out the contention that it is being availed of as a tax on the royalties rather than one on the annual value of the land containing the minerals.

Thus it was held that the Orissa Statute did not get the protection of Entries 45,49 or 50 of List II. This being held the second Issue was whether there was any overlap between the State Act and the Central Act, calling for a striking down of the provision of the State Act. At the outset the Court distance itself from the discussion about whether the cess is a tax or a fee, since it was not an Issue here. The respondents based their arguments on the Hingar Rampur case and the Tulloch case wherein statutes dealing with municipal administration and land acquisition by the State were upheld on grounds that these did not come into direct conflict with the Central Legislation and they could be pigeon holed into entries within the State List. These were largely cases where the Court interpreted both the Statutes harmoniously. In the instant case, it was held that the present legislation,

traceable to the legislative power under Entry 23 or Entry 50 of the State List which stood impaired by the Parliamentary declaration under Entry 54, could hardly be equated to the law for land acquisition or municipal administration which were considered in the cases cited above and which are traceable to different specific entries in List II or List III.

Citing various Decisions of the Supreme Court it was held that the distinction sought to be made between mineral development and mineral area development was not a real one as the two types of development are inextricably and integrally interconnected and also that, fees of the nature levied by the Orissa Cess Act squarely fell within the scope of the provisions of the Central Act.

The Madhya Pradesh and Bihar Acts did not get much attention since they were closer to the Tamil Nadu Act struck down in India Cements.

Thus it was held that the impugned provisions of the Statutes of the three States were repugnant to the MMRD Act and also the Constitution. Therefore they were liable to be struck down. As far as the Issue of refund was concerned, it was held that the States would be put through a lot of difficulty if they were to repay the amounts collected since most of the funds would have been diverted towards various activities of the State. Dismissing the contentions of the respondents that it would amount to a violation of the Fundamental Rights of the assesses, the Court, keeping in mind the interest of justice, gave a prospective effect to the Decision.

The appeals were partially allowed thus.

Ratio Decidendi:

1. The cess levied under the statutes of the three states do not fall within the powers given to the States under Entries 45, 49 and 50 of List II of the Act.
2. Even if they fall within the ambit of Entry 23 of List II, the same is clouded by Entry 54 of the List I of the Constitution.
3. The India Cements Decision is binding on the Court and even otherwise it could direct that the cess which has been held as un-constitutional need not be refunded in the interest of justice.

SUMMARY OF THE ARGUMENTS:

The arguments in this case were broadly on the lines taken in India Cements and Orissa Cements cases.

The Orissa Statute took up most of the discussion in this case. The levy in this case was not a direct levy on royalty. The Orissa Cess Act was a statute to codify the levy of cess on land in Orissa. The cess was to be calculated as a percentage of the annual value of the land. When it came to mining lands the cess varied from 100% to 250% and more depending on the mineral that was being excavated from the land. In case of minerals which were not contemplated by the Schedule of the Act, the cess was 100% of the royalty. Reverting back to the argument put forth in the India Cements case, the counsel for the respondents tried to distinguish the Tamil Nadu statute in question in the said Decision from the Orissa Cess Act. Branching out from this argument an attempt was made to drive home the point that the fields of operation of the Orissa Act and the MMRD Act were different and the State Act could not be held to be struck down by the Central Act.

The Madhya Pradesh and the Bihar Acts were similar to the Tamil Nadu Act and closer to the India Cements case. The arguments raised by the petitioners were similar to those in the India Cements case.

Observations (per Ranganathan J)

"It is well-settled that the entries in the three legislative lists have to be interpreted in their widest amplitude and therefore if a tax can reasonably be held to be a tax on land it will come within Entry 49. Further it is equally well-settled that tax on land may be based on the annual value of the land and would still be a tax on land and would not be beyond the competence of the State legislature on the ground that it is a tax on income" (para 15)

"These Observations establish on the one hand that the distinction sought to be made between mineral development and mineral area development is not a real one as the two types of development are inextricably and integrally interconnected and, on the other, that, fees of the nature we are concerned with squarely fall within the scope of the provisions of the Central Act." (para 41)

"In our view, we need not enter into a discussion on the principles of prospective validation enunciated by at least some of the Judges in Golaknath (supra) as the direction in' India

Cement can be supported on another well settled principle applicable in the area of the writ jurisdiction of Courts. We are inclined to accept the view urged on behalf of the State that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the Court has, and must be held to have, a certain amount of discretion. It is a well-settled proposition that it is open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice." (Para 52)

STATE OF ORISSA v. UNION OF INDIA AND ANR

MANU/SC/1004/1995

Equivalent Citation: JT1995(1)SC325, 1994(5)SCALE219, 1995Supp(2)SCC154, [1994]Supp6SCR498, 1995(1)UJ701(SC)

Date of Decision : 13.12.1994

HON'BLE JUDGES :

B.P. Jeevan Reddy and Sujata V. Manohar, JJ (per Manohar.J)

Brief Facts:

In this case, the State of Orissa had challenged the dismissal of a writ petition under Article 226 by the Orissa High Court. One of the respondents had applied for a mining lease. But the State Government did not act on the said application for more than 12 months. As per Rule 24 of the Mining Concession Rules, 1960, the same is deemed to be a refusal and as per Rule 54, a revision could be filed by the applicant before the Central Government. The Central Government,while revising the said order held that the State Government should dispose off the application within 100 days. The said order also was not complied with. The applicants filed a second revision, wherein the State Government granted the lease to the applicant by the Central Government. The State Government challenged the said order in the impugned Writ Petition. The High Court held that the Central Government being a superior authority, its order was binding on the State Government. Hence the appeal

Issue Involved:

1. Whether a Second Revision lies against the refusal of the State Government?
2. Whether the Central Government is infact a superior authority?

Decision

The Court opined that a Second Revision could not lie since the First Order of the Central Government clearly stipulated a period of 100 days for compliance whereas Rule 24 gives a period of 12 months for the State Government. Therefore the State Government has not complied with an order of the Central Government and not with Rule 24. Therefore a Second Revision does not lie against this. If the State Government has failed to carry

out any directions given to it by the Central Government the aggrieved party may seek the remedy in accordance with law. But there are no provisions in the Mining Concession Rules for a second revision.

Ratio Decidendi:

There is no provision in the Mineral Concession Rules for challenging the non-compliance of the order of the Central Government which is outside the purview of the rules.

Observations (Sujata V. Manohar J.)

"….it is necessary to note that in the first place, the State Government is not merely an authority subordinate to the Central Government which would, undoubtedly, be bound by the revisional orders of the superior authority. It is also the owner of the mines and minerals in question. If it is directed to Issue a mining lease in favour of any party, it has locus stands to challenge that order under Article 226 of the Constitution of India." (Para 12)

THE QUARRY OWNERS ASSOCIATION v. STATE OF BIHAR AND ORS

MANU/SC/0504/2000

Equivalent Citation: AIR2000SC2870, 2000(3)BLJR2043, JT2000(8)SC539, 2000(5)SCALE538, (2000)8SCC655, [2000]Supp2SCR211

DATE OF DECISION08.08.2000

HON'BLE JUDGES:

A. P. Mishra and N. Santosh Hegde, JJ

Brief Facts:

Under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, certain powers were delegated by the Parliament to the State Government. The appeals in question were directed against the judgments and orders dated 16th October, 1996 of the High Court, passed in writ petitions by which the petition of the appellants, namely, Quarry Owners Association etc. challenging the two notifications dated 17th August, 1991 and 28th September, 1994, Issued by the State using the above said delegated power including challenge to the recovery of the enhanced royalty for minor minerals under it and for the refund of the amount already paid were dismissed. The main Issue was whether the delegated i.e in this case the State Government, could travel beyond the guidelines set out in the D.K.Trivedi Case [(1986) Supp. 20] while fixing the royalty or did it have to remain within the confines of the Decision. The appellants contended that the guidelines set by the said case were the only guidelines or check on the use of delegated power by the State and hence,applying the logic of the Decision, the maximum royalty could not exceed 12% of the ex-pit sale price as mandated by Entry 54 of List II to the Act.

Issue Involved:

1. Do the impugned notifications exceed the delegated power of the State Government?

Sub-Issues

a. Is the power delegated to the State governments under the Act unbridled ?

b. If so, does the power require to be reigned in by guidelines?

c. Are the guidelines to be found in the D.K.Trivedi Decision and Item 54 of Schedule II to the Act or are there other guidelines available?

Decision

The D.K. Trivedi Decision does not directly impose any guidelines on the power of the State Government. The relevant paragraph of the D.K.Trivedi Decision which was at the root of the controversy ran thus:

"The guidelines for the exercise of the rule-making power under Section 15(1) are, thus, to be found in the object for which such power is conferred (namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith"), the meaning of the word "regulating", the scope of the phrase "for purposes connected therewith", the illustrative matters set out in Sub-section (2) of Section 13, and in the restrictions and other matters contained in Sections 4 to 12"

In the opinion of the Court the last line cannot be read in isolation from the first part. The most important guideline is the object of the Act itself. The object underlies a policy which is guiding force enough for the State Government. The objective of the Act is to regulate and enhance the mineral wealth of the country. The State has various guiding factors to look even outside the four confines of the Act including the local usage, price factor for use of its mineral wealth etc. Various provisions of the Act could also provide the guidelines. A delegation combined with a policy to show the way was enough guidelines. Also, Section 28 (3), whereby the notifications are brought to the information of the State Legislature, is also a regulating and guiding factor.

As far as Entry 54 of the Second Schedule to the Act was concerned, it was held that the said entry only talked about other major minerals not mentioned in the Schedule and had nothing to do with minor minerals.

In the given circumstances, the Court said that it could only challenge the notifications if they fixed the royalties arbitrarily, which was not a contention in this case. Taking all these facts into consideration it was held that the impugned notifications were not ultra vires the Act or the Constitution.

Ratio Decidendi:

Minor minerals are state wealth and the Act as well as the policy which guided the Act provided enough guidelines for the State governments for fixing of royalty. *D.K. Trivedi case* did not provide much of a guideline and it is actually the policy that was to guide the way.

SUMMARY OF THE ARGUMENTS:

The main contention of the appellants is that the impugned notification was in excess of the power delegated to the State Government since they exceeded the guidelines laid down by the D.K.Trivedi Decision. They based this argument on an Observations in the said Decision where the Court has observed that guidelines applicable to the Central Government under Sections 4 to 12, especially Section 9 which made fixing of liability subject to the rates fixed in Schedule II, were to apply to the power of the State Government under Section 15 with respect to minor minerals. Entry 54 of Schedule II deals with fixing of rent for 'other minerals' not dealt with before therein. They also contended that minerals being of national importance should be uniformly priced and taxed. A third argument was that under Section 28 (3) of the Act a notification made by the State Government has to be merely placed before the state legislature while under Section 28 (1) a notification made by Central Government with respect to major minerals had to be approved by the Parliament. This was an anomaly.

The respondents contended that the D.K.Trivedi Decision gave no such guidelines. Besides, after amendment of the Act, Section 15 (1A) laid down enough guidelines for the State Government. Unlike major minerals, which are of national importance, the minor minerals are essentially meant for local usage and that is the reason why the State Government have been given greater leeway to deal with them. In the opinion of the counsel for the respondents there was no anomaly in Sections 28 (1) and 28 (3). The purpose of both sections were different. One deals with minerals of national importance and hence needs Parliamentary approval, since the Parliament in the primary delegating authority. The other is merely for information of the State legislature since the State is concerned with minor minerals. Moreover a taxing statute had to be construed strictly.

Observations (Per Mishra.J)

"Any development requires, planning, execution, management and with reference to the excavation of mines, controlling the extent and manner of mining, to check its wastage,

protecting environment and controlling pollution etc. which are provided in this Act. This all require expenditure to be incurred by the State coupled with considerations for parting with the wealth of the State, as minerals belong to the State except on private land. They are all guiding factors in fixing, modifying or enhancing the rate of royalty. Thus development of mineral resources inherently refers to the price factor to be recovered by the owner" (Para 33)

"….we have to keep in mind, tax on this royalty, is distinct from other forms of taxes. This is not like a tax on income, wealth, sale or production of goods (excise) etc. This royalty includes the price for the consideration of parting with the right and privilege of the owner, namely, the State Government who own the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price, the minerals which is the property of the State. Both royalty and dead rent are integral parts of a lease. Thus, it does not constitute usual tax as commonly understood but includes return for the consideration for parting with its property. In view of this special nature of the subject under consideration, namely, the minerals, it would be too harsh to insist for a strict interpretation with reference to minerals while considering the guidelines to a delegated who is also the owner of its mineral". (Para 35)

"We have to keep in mind, in the present case, delegation of power is on the State Government which is the highest executive in the State, which is responsible to the State Legislature. In a Parliamentary democracy every act of the State Government is accountable to its people through State Legislature which itself is an additional factor which keeps the State Government under check not to act arbitrarily or unreasonably. When a policy is clearly laid down in a statute with reference to the minor minerals with main object under the Act being for its conservation and development, coupled with various other provisions to the Act guiding it, checking it and controlling it then how such delegation could be said to be unbridled". (Para 37)

"In order to adjudicate, whether any delegation of power is unbridled or excessive, the historical background of similar provisions which preceded the impugned provision which should be kept in mind, as it is also a relevant consideration" (Para 43)

INTER-STATE WATER DISPUTES

List of the Cases

1. Bharat Hydro Power Corpn. Ltd. And Ors. v. State of Assam and Anr. (2004) 2 SCC 553
2. T.N. Cauvery etc. Sangam v. Union of India, 1990 (3) SCC 440
3. In the matter of: Cauvery Water Disputes Tribunal, AIR 1992 SC 522
4. Mullaperiyar Environmental Protection Forum v. Union of India (UOI) and Ors., AIR 2006 SC 1428
5. State of Punjab v. State of Haryana and others, (2004) 12 SCC 673
6. State of Haryana v. State of Punjab, (2002) 2 SCC 507
7. State of Karnataka v. State of Andhra Pradesh & ors., AIR 2001 SC 1560
8. T.N. Godavarman Thirumulpad v. Union of India (UOI) and Ors., (2006) 10 SCC 490
9. The State of West Bengal v. Kesoram Industries Ltd. And Ors., (2004) 10 SCC 201
10. M/s Orissa Cements and Ors v. State of Orissa and Ors., AIR 1991 SC 1676

ANALYTICAL SUMMARY OF THE ARGUMENTS

It is clear from the Article 131 of the constitution that the Supreme Court has original jurisdiction, among other things, in any dispute between two or more States where the dispute involves any question whether of law or fact on which the existence and extent of a legal right depends except those matters which are specifically excluded from the said jurisdiction by the proviso. However the conferment of original jurisdiction is restricted by Article 262 of the constitution which empowers the parliament to provide by law that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any dispute or complaint with respect to use, distribution or control of the water of, or in, any Inter-State river or river valley. It, indeed, authorizes Parliament to provide by law for adjudication of any dispute or complaint on such Issues. An analysis of this article and various entries concerning the distribution of legislative powers between the centre and states has been the subject matter of various judicial pronouncements.

In Mullaperiyar Environmental *Protection Forum* V. *Union of India (UOI) and Ors* . Court categorically held that the bar imposed by Article 262 applies only to those disputes which specifically deal with the sharing of water resources and it has no applicability to ordinary agreements such as lease agreements, agreements for the use of land and water, construction work etc.

In *T.N. Cauvery etc Sangam* V. *Union of India*, court in an application filed under art 32 by a co-operative society gave specific directions to the Central Government to constitute an appropriate tribunal for the adjudication of the water dispute existing between the state of Karnataka and the state of Kerala. Court made it mandatory to the Central Government to refer any dispute, which cannot be resolved by negotiation, to the tribunal as stipulated in section 4 of the Inter-State water Dispute Act, 1956.

In Cauvery Water Dispute Tribunal reference, court after an extensive analysis of relevant entries and articles took the view that Parliament alone has exclusive legislative competence to enact laws providing for adjudication of Inter-State water dispute by virtue of Article 262 of the Constitution. It further acknowledged the principle of distribution and allocation of waters between the riparian States that the same has to be done on the basis of the equitable share of each State. There is clear indication in this judgment that any interference with the judicial power of the tribunal would fall foul of Article 262 of the Constitution

In another constitutional bench Decision *State of Karnataka* v. *State of Andhra Pradesh & Ors* court further endorsed its earlier proposition upholding the exclusive jurisdiction of

the Parliament in legislating providing for adjudication of disputes concerning sharing of water recourses. Court did not allow the parties to re agitate the Issues which have been deliberated before the tribunal.

Thus, noticeably there is no inconsistency in the judicial approach on any of the Issues considered by the court.

SUMMARY OF THE ARGUMENTS OF THE CASE

Bharat Hydro Power Corpn. Ltd. and Ors.v State of Assam and Anr.

JT2004(1)SC63, 2004(1)SCALE211, (2004)2SCC553

Decided On: 07.01.2004

Ashok Bhan and S.B. Sinha, JJ

Brief Facts:

In consonance with the policy of Central Government, the State of Assam transferred the projects of construction of hydro electric power station to one joint sector named M/S Subhash project and Marketing Ltd (hereinafter referred to as SPML) appellant no. 2 in this petition. In terms of the memorandum of understanding agreed between (SPML) and Govt. of Assam, a new company under the name and style of M/S Bharart Hydropower Corporation LTD.(Appellant No.1) came into existence.

On the 30th November Govt. of Assam keeping in view, the inordinate delay in competition of project and to safeguard the public interest, promulgated ordinance Bharat Hydro Power Corporation Limited (Acquisition and transfer of undertaking) ordinance, 1966, acquiring the project of appellant No.1. The same was subsequently replaced by Bharart Hydraulic power Cooperation Limited (Acquisition and Transfer of Undertaking) Act, 1996.In the writ petitions appellants challenged the constitutional validity of that Act and prayed that the Act be struck down being unconstitutional and beyond the competence of the State Legislature.

Issue Involved:

Whether the said Act is unconstitutional as being repugnant to the central Acts, i.e., the Indian Electricity Act, 1910 and the Electricity (Supply) Act 1948?

Decision

The Court held that there is no repugnancy between the central Acts and impugned Act and dismissed the petition. Court further observed that since there is no repugnancy the question of the State Act being kept for the consideration of the President or receiving his assent did not arise(Para 40)

Ratio Decidendi:

To examine whether a legislation has impinged in the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the Courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect: to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment.

SUMMARY OF THE ARGUMENTS:

The Counsel appearing for the appellant submitted that "Electricity" for the purpose of legislation is enumerated in Entry 38 of the Concurrent List. That electricity in broad term includes "generation of electricity from any source whether thermal, water, gas, wind or any other source". As far as generating company and licensee are concerned the Central Government has made specific provisions in the Act of 1910 and Act of 1948 for compulsory purchase of Undertaking and. a detailed procedure has been prescribed under Sections 6, 7, 7A, 8, 9, 10 and 11 of the Act of 1910 and Sections 37 of the Act of 1948. The impugned Act and Acts of 1910 and 1948 passed by the Central Legislative operate in the same field as in both the sets of Acts there are provisions for compulsory purchase of undertakings producing electricity. The State Act transgresses the Central Acts and therefore repugnant to the Central Acts. In view of the provisions of Article 254 Central Acts would prevail as the State Act was neither kept reserved for the assent of the President of India nor assented to by the President of India. The State Act was bad in law and could not be enforced being *Ultra vires* of the Constitution of India and beyond the Legislative competence of the State Legislature. (Para 24)

On the contrary the council appearing on behalf of the State of Assam contended that the impugned Act was not repugnant to the provisions of the Central Acts. According to him, impugned Act and the Central Acts in the instant case operate in two different fields without encroaching upon each others field in as much as the true nature and character of the impugned State Act is to acquire the undertaking, whereas both the Central Acts have made general provisions with regard to supply and use of electrical energy. It was vehemently contended that there was no violation of Sections 3, 4, 5, 6, 7 of 7A of the Act of 1910, by Sections 3 and 4 of the impugned Act as the appellants were not 'licensees' under the Act of 1910 and the State Government had the jurisdiction and power to acquire any property for public purposes making necessary provisions for payment

of compensation. The impugned Act has taken adequate care for payment of compensation after the proper assessment by the Commission constituted by the authority. There is no direct conflict between the provisions of the Central Act and the State Act bringing a position where one cannot be obeyed without disobeying the other and the impugned Act and the Central Act both can stand together even though the State law may provide for certain additional/supplementary provisions. In substance the submission made is that in pith and substance the State Act is not repugnant to the Central Acts as the two sets of Acts operate in different fields. (Para 25)

Having analyzed the relevant provisions, the law laid down in several Decisions and having regard to the peculiar facts involved in this case, the court made the following concluding remarks:- The impugned Act and the Central Acts in the instant case operate in two different fields without encroaching upon each other's field in as much as the true nature and character of the impugned State Act is to acquire the undertaking and pay compensation as provided in the Act whereas both the Central Acts (Acts of 1.910 and 1948) have made general provisions with regard to supply and use of electrical energy. The provisions regarding purchase of undertaking in the Act of 1910 would not be applicable as the appellants are not licensees within the meaning of the Act of 1910. There is not even a semblance of conflict what to talk of direct conflict between the impugned State Act and the Central Acts to bring about the situation where one cannot be obeyed without disobeying the others. Both the Acts can operate simultaneously as they do not occupy the same field. As the enactments operate in two different fields without encroaching upon each other's field there is no repugnancy. (Para 39)

Observations

Ashok Bhan J

After setting out the entries in three lists relating to the generation of the electricity and acquisition (Para 21) court made the following general Observations:-

In a federal Constitution, in which there is a division of legislative powers between the Central and the Provincial Legislatures controversies often arise as to whether one or the other legislature is not exceeding its legislative power, and encroaching on the other's constitutional legislative power. To resolve the dispute as to which law would prevail in a case where both the Union as well as the State Legislature have the competence to enact laws. Article 254 provides that if any provision of a law made by the Legislature of a

State is repugnant to any provision of law made by Parliament which Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy be void. Clause (2) provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to the matters, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State (Para 17)

This doctrine came to be established in India and derives its genesis from the approach adopted by the Courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of "pith and substance" regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions (Para 18)

T.N. Cauvery etc Sangam v. Union of India

1990(3) SCC 440

Before Ranagnath Mishra , P.B. Sawant and K. Ramaswamy JJ.

Decided on May 4, 1990.

Brief Facts:

An application under Article 32 of the constitution was filed by the Tamil Nadu Cauvery Neerppasana Vilaipurugal Vivasayigal Nala Urimai Padhugappu Sangam, a society registered under the society registration Act, asking this court for direction to the Union of India (respondent No. 1), to refer the dispute relating to the water utilization of the Cauvery river and equitable distribution thereof, in terms of section 4 of the Inter-State water dispute Act, 1956. In the petition it has been alleged that the petitioner society is an organization of agriculturists and they are entitled to the lower riparian rights of Cauvery River for cultivating their lands. The petitioner alleged that their right to use water has been considerably diminished due to the construction of new dams, projects and reservoirs across the river Cauvery and its tributaries by the State of Karnataka. Earlier on the request of State of Tamil Nadu a suit was failed under Act 131 of the Constitution but the same was withdrawn on political considerations and in anticipation of a mutual and negotiated settlement.

Issue Involved:

Whether the suit by petitioner, which is not state, is maintainable under Article 131 of the Constitution?

Whether the existence of the water dispute mandates the Central Government to compulsorily refer it to the tribunal contemplated under Section 4? What is the exact nature of the power of the Central Government?

Decision

Court directed the Central Government to fulfil its statutory obligation and notify in the official Gazette the constitution of an appropriate tribunal for the adjudication of the water dispute referred to in earlier part of this judgment. We further direct that the same should be done within a period of one month from today. The writ petition is accordingly allowed. There shall, however, be no order as to costs. (Para 18)

Ratio Decidendi:

Once the court has reached to the conclusion that, the Central Government must be held to be of the opinion that water dispute can no longer be settled by negotiation, it does become the obligation of the Central Government to refer the dispute to the tribunal as stipulated in Section 4 of the Inter-State water Dispute Act, 1956.

SUMMARY OF THE ARGUMENTS:

According to the petitioner several attempts were made for negotiated settlement and equitable distribution of water but no solution could be reached and the problem continued

The State of Karnataka by filing several affidavits has opposed the maintainability of the petition as also the tenability of the plea for relief. The Union of India in the Ministry of Water Resources has also opposed the maintainability of the application. Reliance has been placed on Section 11 of the Act to which we shall presently make a reference. (Para 4)

On the contrary state of Tamil Nadu filed an affidavit in this Court on May 6, 1987, wherein it not only supported the contention of the petitioner but effectively joined the dispute by adopting the stand of the petitioner. The State of Kerala has left the matter to the good sense of Union of India to bring about an amicable settlement. At the hearing of the matter the Union territory of Pondicherry was not represented though we were told that their stand was common with that of the State of Tamil Nadu(Para 5)

Observations:

On the Issue of locus of the petitioner court made following Observations:-

This petition was filed on November 18, 1983; on December 12, 1983 this Court directed Issue of notice and as already pointed out the State of Tamil Nadu by its affidavit of May 6, 1987, came to support the petitioner in toto. The adoption by the State of Tamil Nadu of the petitioner's stand by associating itself with the petitioner is perhaps total. Before this Court, societies like the petitioner as also the State of Tamil Nadu had earlier applied for the same relief as the petitioner seeks. In view of the fact that the State of Tamil Nadu has now supported the petitioner entirely and without any reservation and the court has kept the matter before it for about 7 years, now to throw out the petition at this stage by accepting the objection raised on behalf of the State of Karnataka that a petition

of a society like the petitioner of the relief indicated is not maintainable would be ignoring the actual state of affairs, would be too technical an approach and in our view would be wholly unfair and unjust. Accordingly, we treat this petition as one in which the State of Tamil Nadu is indeed the petitioner though we have not made a formal order of transposition in the absence of a specific request. (Para 6)

After setting out the relevant provision court observed that undoubtedly Section 4 while vesting power in the Central Government for setting up a Tribunal has made it conditional upon the forming of the requisite opinion by the Central Government. The dispute in question is one over which the people and the State of Tamil Nadu have been clamoring for more than 20 years now. The matter has been pending in this Court for more than 6 1/2 years. It is on record that during this period as many as 26 sittings spread over many years have been held in which Chief Ministers of Karnataka and Tamil Nadu have unsuccessfully tried to bring about settlement; some of these have been at the instance of the Central Government in which the Union Minister for Water Resources and others have participated (Para 14)

The court further observed that twenty six attempts within the period of four to five years and several more adjournments by this Court to accommodate these attempts for negotiation were certainly sufficient opportunity and time to these two States at the behest of the Centre or otherwise to negotiate the settlement. Since these attempts have failed, it would be reasonable undoubtedly to hold that the dispute cannot be settled by negotiations. Yet, since the requisite opinion to be formed is of the Central Government as required by Section 4 of the Act when we reserved judgment of April 24, 1990, we allowed two days' time to the learned Additional Solicitor General for the Central Government to report to the court the reaction of the Central Government. Mr. Goswami, learned Additional Solicitor General appearing for the Union of India informed us on April 26, 1990, in the presence of the counsel for the other parties that the Central Government did not want to undertake any further negotiation and left the matter for disposal by the court. In these circumstances, we have no option but to conclude that a clear picture has emerged that settlement by negotiation cannot be arrived at and taking the developments in the matter as indicated above it must be held that the Central Government is also of that opinion particularly when the Chief Minister of Tamil Nadu has indicated that he is no more prepared to join the negotiations. (Para 16)

In the matter of: CAUVERY WATER DISPUTES TRIBUNAL

AIR1992SC522, JT1991(4)SC361, 1991(2)SCALE1049, [1991]Supp2SCR497

Decided On: 22- 11- 1991

Ranganath Misra, C.J.I., K.N. Singh, A. M. Ahmadi,Kuldip Singh andp.B. Sawant, JJ.

Brief Facts:

The river Cauvery is an inter-State river and is one of the major rivers of the Southern Peninsula. The basin area of the river and its tributaries has substantial spread-over within the territories of the two States, namely, Karnataka and Tamil Nadu, Karnataka being the upper riparian State and Tamil Nadu being the lower riparian State. The other areas which are the beneficiaries of the river water are the territories comprised in the State of Kerala and in the Union Territory of Pondicherry (Para 3). There were two agreements of 1892 and 1924 for sharing the water of the river between these areas. The agreements comprised in the then Presidency of Madras on the one hand and the State of Mysore on the other. The last agreement expired in 1974. The river presently covers three States of Karnataka, Tamil Nadu and Kerala and the Union Territory of Pondicherry(Para 4). In 1956 the Parliament enacted the River Boards Act, 1956 for the purpose of regulation and development of inter-State rivers and river valleys and also the Inter-State Water Disputes Act, 1956 for adjudication of disputes with regard to the use, distribution or control etc. of the said waters. In 1970 Tamil Nadu invoked the provisions of Section 3 of the Inter-State Water Disputes Act, 1956 and requested the Central Government for reference of the dispute between the two States, viz. Tamil Nadu and Karnataka to a Tribunal under the Act(Para 5). Negotiations resulted in what is known as "the 1976 Understanding". This Understanding envisaged the apportionment of the surplus water in the ratio of 30:53:17 amongst the States of Tamil Nadu, Karnataka and Kerala respectively (Para 9). In June 1986, the State of Tamil Nadu lodged a Letter of Request under Section 3 of the Act with the Central Government for the Constitution of a Tribunal and for reference of the water dispute for adjudication to it. It also sought the implementation of the agreements of 1892 and 1924 which had expired in 1974 (Para 11). The Union Government by its notification dated June 2, 1990, constituted the Cauvery Water Disputes Tribunal and by another Notification of the even date referred to it the water dispute emerging from Tamil Nadu's Letter of Request dated July 6, 1986. The Cauvery Water Disputes Tribunal (hereinafter referred to as the "Tribunal") commenced

its first sitting on 20th July, 1990. Thereafter, on July 25, 1991 the Governor of Karnataka Issued an Ordinance named "the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991". It is in the context of these developments that the President has made the Reference under Art 143 of the Constitution.

Issue Involved:

1. Whether the Ordinance and the provisions thereof are in accordance with the provisions of the Constitution?
2. Whether the Water Disputes Tribunal constituted under the Act is competent to grant any interim relief to the parties to the dispute?

Decision

The ordinance is unconstitutional as being violative of the provisions of the Constitution. The tribunal is competent to grant interim relief.

SUMMARY OF THE ARGUMENTS

State of Karnataka contended that the impugned legislation clearly falls within the competence of the State legislature under Entry 17 as well as Entries 14 and 18 of List II in the Seventh Schedule of the Constitution. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power fall within Entry 17 of List II (hereinafter referred to as 'Entry 17') and the State Legislature has every right to legislate on the subject and this legislative power is subject only to Entry-56 of List I (hereinafter referred to as 'Entry 56'). That Entry deals with regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. This Entry, it is contended, does not denude the States of the power to legislate under Entry 17, since it merely empowers the Union, if Parliament has by law declared it to be in public interest, that the 'regulation and development of inter-State rivers and river valleys should, to the extent the declaration permits, be taken under the control of the Union. On a plain reading of the said Entry it is evident that barring regulation and development' of an inter-State river, subject to the declaration, the Central Government is not conferred with the power to legislate on water, etc., which is within the exclusive domain of the State Legislatures. The River Boards Act, 1956 being the only legislation made by Parliament under Entry 56, and the scope of the declaration in Section 2 thereof being limited 'to the extent hereinafter provided', that is

to say provided by that statute, and no River Board having been constituted thus far in respect of and inter-State river under the said law, the power to legislate under Entry 17 is not whittled down or restricted. Article 262 of the Constitution does not attract any Entry in list I, it is a law essentially meant to provide for the adjudication of a dispute with respect to the use, distribution or control of waters of, or in, any inter-State river or river valley and does not, therefore, step on the toe of Entry 17. Until a final adjudication is made by the Tribunal determining the shares of the respective States in the waters of an inter-State river, the States would be free to make optimum use of water within the State and the Tribunal cannot interfere with such use under the guise of an interim order (Para 30). The Tribunal must 'investigate' the matters referred to it and forward a report to the Central Government 'setting out the facts found by it' and 'giving its Decision' on the matters referred to it. It is this Decision which the Central Government must publish in the Official Gazette to make it final and binding on the parties to the dispute (Para 31). The Act has deliberately not conferred any power on the Tribunal to make an interim order for the simple reason that a water dispute has many ramifications, social, economic and political, and involves questions of equitable distribution of water which cannot be done without a full-fledged investigation of the relevant data-material including, statistical information. The jurisdiction conferred on the Tribunal under the Act to adjudicate upon a water dispute does not extend to grant of interim relief (Para 32). The scheme of the Act does not confer any power whatsoever on the Tribunal to make an interim order, even if the Act had invested power in the Central Government such a provision would have been hit by Article 262 itself as the scope of that Article is limited while Article 131 is wider in scope. An examination of both the Entries shows that the State has competence to legislate with respect to all aspect of water including water flowing through inter-State rivers, subject to certain limitations, viz. The control over the regulation and development of the inter-State river waters should not have been taken over by the Union and secondly, the State cannot pass legislation with respect to or affecting any aspect of the waters beyond its territory (Para 52). Entry 97 of the Union List is residuary and under it the Union has the power to make legislation in respect of any matter touching inter-State river water which is not enumerated in the State List or the Concurrent List. Correspondingly, the State Legislature cannot legislate in relation to the said aspects or matters (Para 54).

The State of Tamil Nadu contended that the real object and purpose of the legislation is to unilaterally nullify the Tribunal's interim order and has no right to unilaterally decide

the quantum of water it will appropriate or the extent to which it will diminish the flow of Cauvery waters to the State of Tamil Nadu. No single State can by the use of its legislative power arrogate unto itself the judicial function of equitable apportionment and decide for itself the quantum of water it will use from the inter-State river. Such a power cannot be read in entry 17 as it will be destructive of the principle that such water disputes are justifiable and must be left for adjudication by an independent and impartial Tribunal constituted for resolving the dispute, and not by unilateral executive or legislative interference. The object of the legislation not being bona fide, the same cannot be allowed to stand as it has the effect of overruling a judicial order passed by a Tribunal specially appointed to adjudicate on the water dispute between the parties thereto.

Ratio Decidendi:

The Parliament alone has exclusive legislative competence to enact law providing for adjudication of Inter-State water dispute by virtue of Article 262 of the Constitution. Any executive order or a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the tribunal.

Observations

P.B. Sawant, J

It is clear from the Article that this Court has original jurisdiction, among other things, in any dispute between two or more States where the dispute involves any question whether of law or fact on which the existence and extent of a legal right depends except those matters which are specifically excluded from the said jurisdiction by the proviso. However, the Parliament has also been given power by Article 262 of the Constitution to provide by law that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any dispute or complaint with respect to the use, distribution or control of the water of, or in, any interstate river or river valley Section 11 of the Act, namely, the Inter-State Water Disputes Act, 1956 (Para 56). This provision of the Act read with Article 262 thus excludes original cognizance or jurisdiction of the inter-State water dispute which may be referred to the Tribunal established under the Act, from the purview of any Court including the Supreme Court under Article 131 (Para 57). The Inter-State Water Disputes Act, 1956 is not legislation under Entry 56. Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes

between the riparian States with regard to the same and adjudication thereof, and even assuming that the expression "regulation and development" would in its width, include resolution of disputes arising there from and a provision for adjudicating them, the Act does not make the declaration required by Entry 56. This is obviously not an accidental omission but a deliberate disregard of the Entry since it is not applicable to the subject-matter of the legislation. No Entry in any of the three Lists refers specifically to the adjudication of disputes with regard to inter-State river waters.

An analysis of the Article shows that an exclusive power is given to the Parliament to enact a law providing for the adjudication of such disputes. The disputes or complaints for which adjudication may be provided relate to the "use, distribution or control" of the waters of, or in any interstate river or river valley. The provisions clearly indicate the amplitude of the scope of adjudication inasmuch as it would take within its sweep the determination of the extent, and the manner, of the use of the said waters, and the power to give directions in respect of the same. The distinction between Article 262 and Entry 56 is that whereas former speaks of adjudication of disputes with respect to use, distribution or control of the waters of any inter-State river or river valley, Entry 56 speaks of regulation and development of inter-State rivers and river valleys. Entry 17 does not speak either of adjudication of disputes or of an inter-State river as a whole as indeed it cannot, for a State can only deal with water within its territory (Para 59). Article 262, viz., Clause (2) of the Article provides that notwithstanding any other provision in the Constitution, Parliament may by law exclude the jurisdiction of any court including the Supreme Court in respect of any dispute or complaint for the adjudication of which the provision is made in such law. Section 11 of the Inter-State Water Disputes Act also makes such a provision. The Act is not relatable to Entry 56 and, therefore, does not cover either the field occupied by Entry 56 or by Entry 17. Since the subject of adjudication of the said disputes is taken care of specifically and exclusively by Article 262, by necessary implication the subject stands excluded from the field covered by Entries 56 and 17. It is not, therefore, permissible either for the Parliament under Entry 56 or for a State Legislature under Entry 17 to enact a legislation providing for adjudication of the said disputes or in any manner affecting or interfering with the adjudication or adjudicatory process of the machinery for adjudication established by law under Article 262. The adjudicatory process or the adjudication by the state made in respect of the inter-State river waters beyond its territory or with regard to disputes between itself and another State relating to the use, distribution or control of such waters will be extraterritorial in nature and, therefore,

beyond its competence (Para 60). The expression "regulation and development of Inter-State rivers and river valleys" in Entry 56 would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the intention of the Constituent Assembly to provide for the Union to take over the regulation and development under its control makes no sense and serves no purpose. The River Boards Act, 1956 enacted under Entry 56 for the regulation and development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys between riparian States. It is possible technically to separate the "regulation and development" of the inter-State river and river valley from the "use, distribution and allocation" of its water, it is neither warranted nor necessary to do so.

Though the waters of an inter-State river pass through the territories of the riparian States such waters cannot be said to be located in any one State. No State can claim exclusive ownership of such waters so as to deprive the other States of their equitable share, no State can effectively legislate for the use of such waters since its legislative power does not extend beyond its territories (Para 16). The effect of the provisions of Section 11 of the Inter-State Water Disputes Act read with Article 262 of the Constitution is that the entire judicial power of the State and, therefore, of the courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control of the water of, or in any inter-State river or river valleys has been vested in the Tribunal appointed under Section 4 of the said Act. Any executive order or a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the State (Para 66). The Ordinance is unconstitutional because it affects the jurisdiction of the Tribunal appointed under the Central Act, viz., the Inter-State Water Disputes Act which legislation has been made under Article 262of the Constitution (Para 17). The purpose of the interim order was to give effect of the interim order passed by the Tribunal on 25th June, 1991 The Ordinance has, therefore, an extra-territorial operation. Hence the Ordinance is on that account beyond the legislative competence of the State and is *ultra vires* the provisions of Article 245(1) of the Constitution (Para 67) it is only the Decision which finds support from the report of the Tribunal which in turn must be the result of a full and final investigation in full which is required to be published under Section 6 of the Act and not an order such as the one passed by the Tribunal. The present order is neither a Decision nor adjudication and hence cannot be published.

The subject of interim relief is a matter connected with or relevant to the water dispute within the meaning of Section 5(1) of the Act. Hence the Central Government could refer the matter of granting interim relief to the Tribunal for adjudication (Para 21). Sub-section (1) of Section 5 expressly empowers the Central Government to refer to the Tribunal not only the main water dispute but any matter appearing to be connected with or relevant to it. It cannot be disputed that a request for an interim relief whether in the nature of mandatory direction or prohibitory order, whether for the maintenance of status quo or for the grant of urgent relief or to prevent the final relief being rendered in fructuous, would be a matter connected with or relevant to the main dispute. The order of the Tribunal will be a report and Decision within the meaning of Section 5(2) and would have, therefore, to be published under Section 6 of the Act in order to make it effective (Para 74).

Mullaperiyar Environmental Protection Forum v. Union of India (UOI) and Ors.

AIR2006SC1428, 2006(1)ARBLR374(SC), JT2006(3)SC31, 2006(2)SCALE680, (2006)3SCC643

Decided On: 27.02.2006

Name of the Judges

Y.K. Sabharwal, C.J., C.K. Thakker and P.K. Balasubramanyan, JJ.

Composition of the bench: 3 Judges

Brief Facts:

An agreement dated 29th October, 1886 was entered into between the Maharaja of Travancore and the Secretary of State for India in Council where under about 8000 acres of land was leased for 'Mullaperiyar Project'. In pursuance of the said agreement a water reservoir was constructed across Periyar river during 1887-1895. It is known as Mullaperiyar Dam. In the past, reservoir was filled up to full level of 152 ft. State of Tamil Nadu generated electricity from the project and surrendered fishing rights in the leasehold land in favour of State of Kerala . In view of apprehension expressed in the light of leakage, in the year 1979 the water level was allowed up to 136 ft. instead of 152 ft. In 1934, Periyar Wildlife Sanctuary had been declared as a 'sanctuary' covering the grassy area, marshy areas, swamps of Mullaperiyar Dam which was expanded to 777 sq. kms under the Wild Life Protection Act, 1972 Taking into account its importance as a well known habitat of tigers which is a highly endangered species, the sanctuary has been declared as "Periyar Tiger Reserve" in 1978 under the special management programme known as 'Project Tiger'. It was said to be the oldest sanctuary in the State of Kerala which played a very important role in bio-diversity conservation in Western Ghats In this context a dispute arose between the parties concerning raising of the height of the dam.

Issue Involved:

1. Whether the jurisdiction of this Court is barred in view of Article 262 read with Section 11 of the Inter-State Water Disputes Act, 1956?
2. Whether Article 363of the Constitution bars the jurisdiction of this Court?
3. Whether the raising of water level of the reservoir from 136 ft. to 142 ft. would result in jeopardizing the safety of the people and also degradation of environment?

Decision

The State of Kerala and its officers are restrained from causing any obstruction. After the strengthening work is complete to the satisfaction of the CWC, independent experts would examine the safety angle before the water level is permitted to be raised to 152 ft (Para 32).

SUMMARY OF THE ARGUMENTS:

The State of Kerala filed an affidavit for not allowing the raising of water level from 136 feet. According to it, the life of the dam was said to be 50 years from the date of construction. Since it had completed more than 100 years, it had served the useful life. It was, therefore, dangerous to allow raising of water level beyond 136 feet serious consequences could ensue and three adjoining districts could be completely wiped out and destroyed (Para 9). CWC was the highest technical authority with the required expertise on the subject. It had inspected the dam in detail and found various allegations as incorrect and baseless. The committee consisting of experts considered the question and thereafter various recommendations were made and actions were suggested. It was, therefore, not open to the State of Kerala to refuse to cooperate and not to accept the suggestions and the recommendations of CWC (Para 10).

Observations

Y.K. Sabarwal C. J

On the question of jurisdiction court opined that the main Issue is about the safety of the dam on increase of the water level to 142 ft. For determining this Issue, neither Article 262 of the Constitution of India nor the provisions of the Inter-State Water Dispute Act, 1956 have any applicability. There is no substance in the contention that Article 262 read with Section 11 of the Inter-State Water Disputes Act bars the jurisdiction of the court in regard to nature of disputes between the two States(Para 23).

The main reason for ouster of jurisdiction of courts as provided in Article 363 was to make certain class of agreements non-justiciable and to prevent the Indian Rulers from resiling from such agreements because that would have affected the integrity of India. The agreement of the present nature would not come within the purview of Article 363. This Article has no applicability to ordinary agreements such as lease agreements, agreements for use of land and water, construction works. The present dispute is not in

respect of a right accruing or a liability or obligation arising under any provision of the Constitution (Para 24).

It cannot be said that forest or wildlife would be affected by carrying out strengthening works and increase of the water level. On the facts and circumstances of the case, the strengthening work of existing dam in the forest cannot be described as a non-forestry activity so as to attract Section 2 of the Forest (Conservation) Act, 1980, requiring prior approval of Union of India (Para 28). It was only in 1979 that the water level was brought down to 136 ft from 152 ft. The increase of water level will not affect the flora and fauna. In fact, the reports placed on record show that there will be improvement in the environment. elephant herds and the tigers will be happier when the water level slowly rises to touch the forest line. In nature, all birds and animals love water spread and exhibit their exuberant pleasure with heavy rains filling the reservoir resulting in lot of greenery and ecological environment around (Para 29). Regarding the Issue as to the safety of the dam on water level being raised to 142 ft. from the present level of 136 ft, the various reports have examined the safety angle in depth including the viewpoint of earthquake resistance. The apprehensions have been found to be baseless (Para 30). There are no visible cracks that have occurred in the body of the dam and seepage measurements indicate no cracks in the upstream side of the dam. The dam immediately in line after Mullaperiyar dam is Idukki dam. It is the case of State of Kerala that despite the 'copious rain', the Idukki reservoir is not filled to its capacity, while the capacity of reservoir is 70.500 TMC, it was filled only to the extent of 57.365 TMC. This also shows that assuming the worst happens, more than 11 TMC water would be taken by Idukki dam. The experts were having reported about the safety of the dam and the Kerala Government having adopted an obstructionist approach, cannot now be permitted to take shelter under the plea that these are disputed questions of fact. There is no report to suggest that the safety of the dam would be jeopardized if the water level is raised for the present to 142 ft. The report is to the contrary (Para 30).

State of Punjab v. State of Haryana and others

(2004) 12 SCC 673.

Decided on **June 4, 2004.**

Name of the judges:

Ruma Pal &Venketarama Reddi JJ.

Composition of the bench: 2 Judges

Brief Facts:

Same of 2002 Judgment

As per the 2002 judgment the work of the canal was to be completed within one year. But the State of Punjab did not comply with the courts decree. On 18.1.2002 it field an application for review of judgment which was dismissed on 5.3.2002. State of Harayana filed an application for enforcement of the decree dated 15.1.2002 Punjab filed a suit *inter alia* challenging the decree dated 15.1.2002 and then there was Harayana application for rejection of the plaint in Punjab's Suit.

Issue Involved:

Whether existence of cause of action is necessary prerequisite to institute a suit under Article 131 of the Constitution?

Whether in view of change circumstances State of Punjab is entitled to the modification of mandatory injunction granted against it?

SUMMARY OF THE ARGUMENTS:

Contention of Petititoners:

State of Haryana contended that a suit to set aside a decree of the apex court is not maintainable under Article 131 of the Constitution. The suit by the respondents seeks to raise Issued related to water which are not entertainable by this court by virtue of Article 262. As far as declaration of Punjab settlement as not enforceable etc. the petitioners contended that these Issues in the suit were hit by *res judicata.*

Contention of respondents

State of Punjab contended that it has a legal right to resist execution of the decree by reason of changed circumstances which right could only be enforced under Article 131 by way of a suit. Article 131 being extraordinary in character and the requirement of a cause of action could not be imported into it. Furthermore the judgment of this court dated 15.1.2002 decided a water dispute and that the Decision of this court in dismissing the review petition was wrong. As far as the Issue of *res judicata* is concerned, that is an Issue to be decided in the suit and not by way of application under Order 23 Rule 6 of the Rules.

Decision

The residurary power under Section 51(e) of the Code of Civil Procedure allows a court to pass orders for enforcing a decree in a manner which would give effect to it. The period specified in the decree for completion of the canal by Punjab is long since over and Union of India which had worked out a contingent plan to carry out the remaining work to ensure completion of work.

Following its earlier judgment court directed the Union of India to carry out its proposed action plan within the following time frame:

1) The Union of India is to mobilize a Central agency to take control of the canal works from Punjab within a month from today.

2) Punjab must hand over the works to the Central Agency within 2 (Two) weeks thereafter.

3) An empowered committee should be set up to coordinate and facilitate the early implementation of the decree within 4 (four) weeks from today. Representatives of the States of Haryana and Punjab should be included in such Committee;

4) The construction of the remaining portion of the canal including the survey, preparation of detailed estimates and other preparatory works such as repair, desilting, clearance of vegetation etc. are to be executed and completed by the Central Agency within such time as the High Powered Committee will determine.

5) The Central and the Punjab Governments should provide adequate security for the staff of the Central Agency.

Observations:

Article 131 of the Constitution which has clothed this Court with exclusive original jurisdiction to decide any dispute (a) between the Government of India and one or more States or (b) between the Government of India and any State or States on one side and one or more States on the other; or (c) between two or more States, has laid down as a condition for the exercise of such jurisdiction, that the dispute must involve any question (whether of any law or fact) on which the existence or extent of a legal right depends. It is evident that the phrase "cause of action" as occurring in Order XXIII Rule 6(a) does not appear in Article 131. The phrase, which occurs in Section 20 of the Code of Civil Procedure and is commonly used in connection with 'ordinary' suits, has, in that context, "acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously, the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action"(Para 23)

Before any suit is instituted under Article 131 of the Constitution the conditions given below must be satisfied.

The first question to be answered is: do these disputes involve any question (whether legal or factual) on which the existence or extent of a legal right of the plaintiff depends? If it does then the next question is, whether the raising of such disputes is barred by any law? If any of these questions is answered in the affirmative then the plaint must be rejected as a whole. On the other hand, if any part of the dispute crosses both hurdles, the suit must survive because there cannot be a partial rejection of the plaint(Para 36)

The court on facts held that there has been no change in the circumstances

On the basis of which earlier decree was passed an order the parties to be abide by its earlier judgment whereby the State of Punjab was directed to complete the construction of SYL canal. The mandate in the decree was to carry out the obligations under agreement dated December 31, 1981. It did not envisage a "continuing process over which the equity court necessarily retains jurisdiction in order to do equity". Principle (b) relating to modification of decrees enunciated earlier is therefore absent.(Para 56)

Further court refused any Observations on the interpretation of article 131 and article 262, and as the same has been answered in the constitutional bench Decision.

Article 145(3) was relied on because it was said that the scope of Article 131 and 262 had to be interpreted. We had said in the judgment dated January 15, 2002, that in the Constitution Bench Decision in *State of Karnataka Vs. State of A.P.* this Court had considered the provisions of Article 262(2) of the Constitution and Section 11 and Section 2(c) of the Inter- State Water Disputes Act and its impact on a suit filed under Article 131 of the Constitution. By that Decision two cross suits were disposed of (*the State of Karnataka Vs. State of A.P. and by the State of A.P. Vs. State of Karnataka*). Two separate judgments were delivered. The State of A.P. had prayed for 14 reliefs but, the Court observed, the reliefs essentially related to the construction of the Almatti Dam on the river Krishna by the State of Karnataka to a height of 524.056 metres. Issue No.2 related to the jurisdiction of this Court to entertain and try the suit under the provisions of Article 262 of the Constitution and Sections 11 and 2(c) of the Inter-State Water Disputes Act, 1956. The Issue was conceded by the State of Maharashtra which had raised the Issue. Over and above that, the Court was independently of the view that this Court had the jurisdiction to entertain and hear the suit and answered Issue 2 in the affirmative (Para 65)

Ruma Pal J.(P. 712)

We conclude this chapter with a reminder to the State of Punjab that: (US p. 36)

"Great States have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end.

STATE OF HARYANA v. STATE OF PUNJAB

(2002) 2 Supreme Court Cases 507

Decided on January 15, 2002.

Name of the Judges:

G.B.Pattanaik and Ruma Pal, JJ.

Composition of the Bench: 2 Judges

Brief Facts:

State of Haryana was created from the erstwhile State of Punjab under the Punjab Reorganization Act with the formation of new state its needs and requirements had to be taken care of. Since Haryana had large arid tract and several drought prone areas hence more water was required by the state. Hence the Union Government allotted 3.5 MAF in favour of Haryana with some stipulations. Since the existing canal system was not capable of utilizing 3.5 MAF of water and it was agreed that SYL canal would be constructed. The Punjab Government sought an increase in its share of water and linked the SYL canal Issues to it. Both the states filed suit in the apex court – Haryana demanding expeditious completion of SYL canal and Punjab challenging the competence of Central Government to make any allocation under Section 78 of the Punjab Reorganization Act. During pendency of the suits an agreement was arrived at between Chief Ministers of Punjab, Haryana and Rajasthan and the suits were withdrawn. But SYL canal could not take shape due to militancy and other related Issues. Finally "Punjab settlement" took place and a tribunal was set up by the insertion of S. 14 in the Water Dispute Act, 1956 to look into the matters but not the matters which relate to construction of SYL canal. Hence the present suit under Art. 131 by State of Haryana impleading State of Punjab as Defendant 1 and Union of India as Defendant 2.

Issue Involved:

Issue *inter alia* are whether in the facts and circumstances of the cases Defendant 1 (the State of Punjab) and alternatively, Defendant 2 (the Union of India) were and are bound to construct and complete, in a time bound manner, the Sutlej-Yamuna link Canal (SYL Canal) Project, in the Punjab portion/ territory and whether the plaintiff (State of Haryana) is entitled to the reliefs prayed for against the defendants.

Decision

The State of Punjab was directed by way of mandatory injunction to complete the SYL canal project within one year from the date of Decision. Central Government has a solemn duty to see that the terms of the agreement which the state have entered among themselves on the intervention of the Prime Minister are complied with in toto. It was held that more than Rs. 700 crores of public revenue cannot be allowed to be washed down the drain when the entire portion of the said canal within the territory of Haryana has already been completed and major portion of the said canal within the territory of Punjab also has been dug out leaving only minor patches within the said territory of Punjab to the completed.

Haryana was cautioned from taking excess water than allocated after the completion of the project and in event that Tribunal does some reallocation then it may also consider issuing appropriate direction as to how much water can be drawn through SYL canal.

Ratio Decidendi:

In view of clauses (i) and (ii) of Section 2(c) of the Inter State Water Disputes Act the Dispute would be a water dispute within the meaning of Section 2(c)when the dispute is in relation to the use, distribution or control of the waters of any Inter-State river or interpretation of the terms of an agreement relating to the use, distribute on control of such waters or implementation of such agreement.

SUMMARY OF THE ARGUMENTS

Submission of the Petitioners

It has been averred by the petitioners that SYL canal is the very life line of the farmers of Haryana and the livelihood of the farmers depends on water drawn by the canal. They contended that allocation of water was done after due consideration of all these factors and State of Haryana not being a riparian state could only draw the allocated water by digging a canal. Non completion of canal work is resulting in a loss of agricultural production of over eight lakh tones per annum and the defendant state has been going back from its promises which they made by signing agreements. It further averred that about 90% of the work stood completed at a cost of Rs. 600 crores and failure on the part of State of Punjab to complete the project is causing incalculable harm to the petitioner state.

Submission of the Respondents

State of Punjab

It was *inter alia* contended that dispute falls within the Inter-State Water Dispute Act, 1956 and so jurisdiction of Supreme Court is barred. The "Punjab Settlement" was by Harchand Singh Longawal which is not legally binding. Moreover, State of Haryana is getting an additional water supply through River Yamuna under the agreement dated 12.5.1994 between the States of Uttar Pradesh, Haryana, Delhi and Himachal Pradesh, hence SYL canal can be dispensed with. In addition Haryana is already getting 1.62 MAF of water in Ravi Beas Waters through the existing canal system of Bhakra Main line/ Narwana Branch. This water should suffice State of Haryana and if at all the allocation of 3.5 MAF comes through it would deprive the State of Punjab of irrigation facilities to lakhs of acres of land. Accordingly no cause of action has accrued to the plaintiff to file the present suit, invoking Article 131 of the Constitution and at no stage, the State of Punjab committed itself to the construction of SYL canal.

Union of India

Union of India took the stand that it is for the State Government to build the canal and on their part they have issued directions for the same. They had constituted the Ravi and Beas Waters Tribunal which in its interim report has submitted that the canal is the lifeline of the farmers of Haryana and needs to be completed expeditiously and on their part they have given financial assistance for the same to State of Punjab.

Observations:

Pattanaik J.

"[I]t was indeed for the Central Government to see that the canal is excavated and the recalcitrant State should have been prevailed upon. In a semi-federal system of Government, which has been adopted under the Indian Constitution, all the essential powers, both legislative and executive have been conferred upon the Central Government. True federalism means the distribution of powers between a Central authority and the constituent units. Dicey's concept of federalism is a national constitution for a body of States, which desire union and do not desire unity. According to him, a federal State is a political contrivance intended to reconcile national unity and power with the maintenance of State rights. The essence of a federation is, therefore, existence of a Union and its

States and the division of power between the Union and the States. If the component parts of a State have no power of policy Decision in any field, but are confined to carrying out the Central Government directives through the medium of an institutional fabric of federal form, it is not a federal but a unitary State. Political integrity of the Union and each State seems to be essential to the federal concept. Authors, therefore, described our Government to be one which is federal in structure but somewhat unitary in spirit. The Constitution of India, defines the political authority, locates the sources of political power and indicates, how the power has to be exercised, setting out the limits on its own use. Our Constitution is more than fifty years old and during this half century, several developments have taken place, which have moulded the working of the Constitution and brought out several difficulties in its working and has provoked a number of controversies. "

State of Karnataka

V.

State of Andhra Pradesh & Ors

Equivalent Citation: AIR2001SC1560, JT2000(6)SC1, 1999(4)SCALE332, (2000)9SCC572

Decided On: 25.04.2000

.B. Majmudar, G.B. Pattanaik, V.N. Khare, U.C. Banerjee and R.P. Sethi, JJ

Brief Facts:

River Krishna originates in the State of Maharashtra and flows down through the State of Karnataka and State of Andhra Pradesh and meets the Bay of Bengal in Andhra Pradesh. It has got several tributaries and in the pre-independence era, there was not much dispute between the then States for sharing water of any inter-State river. Finally on April 10, 1969, Government of India constituted the Krishna Water Disputes Tribunal and called upon the Tribunal for adjudication of the water disputes regarding the inter-State river Krishna and the river valley thereof. The Tribunal was constituted under Section 4 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as 'the Act'), which Act has been enacted by the Parliament in exercise of powers conferred under Article 262 of the Constitution of India. The said Tribunal on consideration of the materials placed before it, investigated into the matters referred to it and forwarded a report to the Central Government, setting out the facts found by it and giving its Decisions of the matters referred to it, on December 24, 1973, under Section 5(2) of the Act. The Central Government construed the aforesaid Final Order to be the Decision of the tribunal and accordingly, published the same in the Extraordinary Gazette dated May 31, 1976 and on such publication, the said Final Order has statutorily become final and binding oh the parties to the dispute. In the Report of the tribunal as well as in the further Report, submitted by the tribunal, two Schemes have been evolved - Scheme "A" and Scheme "B". But for proper implementation of Scheme "B", the Constitution of the Krishna Valley Authority was absolutely necessary and the State of Andhra Pradesh not having agreed for Constitution of the controlling authority, the tribunal did not make Scheme "B" as part of its Final Order. The State of Karnataka however being of the opinion that Scheme "B" having formed a part of the Decision of the tribunal was also required to be

notified by the Central Government under Section 6 of the Act, making it binding on the parties, and the same not having been done, filed the present suit on 1st of March, 1997, impleading the State of Andhra Pradesh, the State of Maharashtra and the Union of India as party defendants, invoking the jurisdiction of this Court under Article 131 of the Constitution. The State of Karnataka has prayed for mandatory injunction to the defendant No. 3 Union of India to notify Scheme "B" framed by the tribunal

Issue Involved:

Whether the suit under Article131 is barred by Article 262(2) of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956?

Decision

If any of the riparian State approaches the Central Government, the Central Government would do well in constituting a Tribunal which Tribunal can go into the entire gamut of disputes and in the said proceedings the parties can certainly place the datas and materials on the basis of which Bacchawat Tribunal had evolved the two Schemes for efficacious allocation of water in river Krishna. It will also be open for the parties to place fresh datas on the basis of improved method of gauging even for finding out the availability of water in Krishna basin. The suit is accordingly dismissed with these Observations

Ratio Decidendi:

Any water dispute not raised before the tribunal or raised but left open by the it would be a fresh water dispute and as such would be barred under Article 262 read with Section11 of the Inter-State Water Disputes Act, 1956. The only way to resolve such kind of disputes is to refer them to the tribunal contemplated under the Inter-State Water Disputes Act, 1956

SUMMARY OF THE ARGUMENTS

Salve, the learned Solicitor General, appearing for the Union Government, reiterated the stand taken by the two other defendant States and submitted that the tribunal itself has never thought Scheme "B" to be its Decision and the expression "Decision" has to be interpreted with reference to the water dispute defined in Section 2(c), the complaints and reference made under Section 3 and the adjudication provided for in Section 5. A combined reading of the aforesaid provisions of the Act, according to Mr. Salve, indicates that it is that adjudication of the tribunal which is capable of being implemented on its

own, which can be held to be the Decision of the tribunal, binding on the parties and not Observations made or consideration of several proposed schemes by the tribunal itself, in course of the proceedings. He further submitted that the relief sought for by the plaintiff-State is itself a water dispute under the Act, and therefore, the suit is not maintainable in view of Section 11 of the Act. The sharing of surplus as evolved under Scheme 'B' and as such the prayer amounts to have a new Scheme altogether not evolved by the Tribunal itself and, consequently, a fresh water dispute and therefore, such a dispute cannot be entertained by this Court under Article 131 of the Constitution, the same being barred under Section 11 of the Act.

Observations

G.B. Pattanaik J

In terms of the judgment of this Court in Cauvery Water Disputes case, Scheme 'B' had not been meant to be implemented and given effect to by the parties to the dispute and as such cannot be a Decision of the Tribunal under Section 5(2) of the Act. It can be held to be 'facts found' in the report submitted. (Para12) After examining the relevant portions in the Decision of the tribunal court further observed that the Tribunal both in the Original report as well as the further report unequivocally indicate that the Tribunal never considered Scheme 'B' to form a part of its Decision for being implemented even though there cannot be any doubt about the efficacy of the Scheme in question (Para16) It will be for the appropriate authority to be entrusted with the task of resolving the long simmering water dispute in Krishna basin between the three riparian States to come to its own Decision on the basis of the data placed before it by the contesting States. Scheme -B formulated by the earlier Tribunal can only serve as a useful blueprint to this authority, though it may not strictly be binding on it.(Para19)While answering the first Issue in favour of the plaintiff further observed that it is difficult to hold that it constitutes a dispute within the meaning of Section 2(c) of the Act, and therefore, the jurisdiction of this Court gets barred under Article 262 read with Section 11 of the Act. In fact, the assertions made in the plaint and the relief sought for can be held to be a claim on the basis of an adjudicated dispute, the enforcement whereof is sought for by filing a suit under Article 131 of the Constitution. Such a suit cannot be held to be barred under Article 262 of the Constitution read with Section 11 of the Act. It is true, we have held while deciding Issues 4, 5 and 7 that Scheme "B" evolved by the tribunal is not the Decision of the tribunal under Section 5(2) of the Act but such conclusion of ours, would

not necessarily lead to the conclusion that the suit itself gets barred under Section 11 of the Act, as contended by the learned Solicitor General. The question whether the jurisdiction of this Court gets barred in view of Section11 of the Act has to be answered by examining the assertions in the plaint and the relief sought for and by doing so, we are not in a position to hold that the assertions in the plaint together with the relief sought for, constitute a dispute under Section 2(c) of the Act, thereby ousting the jurisdiction of this Court under Section 11. (Para24) Further it is appropriate for the Central Government to exercise the discretion while granting any scheme or project of the lowest riparian state and bearing in mind, what is really meant by the liberty granted, so that the lowest riparian state should not be allowed to proceed ahead with large-scale water projects for utilisation of the surplus water in excess of the allocated quantity over which, the State has no right. It is the Central Government which has to exercise this discretion while clearing projects of the lowest riparian State and it should be so exercised that there should not be any apprehension in the minds of the upper States ' that for all times to come, their right of sharing the surplus water would in any manner be endangered. (Para27)

S. B. Mujumdar J

Any simmering dispute between the state requires to be' adjudicated upon by a competent Tribunal as noted earlier. It is axiomatic that crucial question for determination under Section 3 of the Disputes Act is whether the interest of the State of Maharashtra or of any of its inhabitants in Krishna river valley will be prejudiced by the executive action of another riparian State, like the Defendant No. 1. The State is one integral unit and its interest includes the well-being of its inhabitants within its territory including areas outside the river basin. (Para58)

Banerjee J

Any dispute not raised before the tribunal would be a fresh water dispute and would not come within the adjudicated dispute and Decision thereon by the tribunal itself and, therefore, the suit filed under Article 131 is not maintainable (Para70)

But a dispute between the two states in relation to the said Inter-State River arising out of the user of the water by one State would be a fresh water dispute and as such would be barred under Article 262 read with Section11 of the Inter-State Water Disputes Act, 1956. The question of submergence of land pursuant to the user of water in respect of an Inter-State river allocated in favour of a particular State is inextricably connected with the

allocation of water itself and the present grievance of the State of Maharashtra would be a complaint on account of an executive action of the State of Karnataka within the meaning of Section 3(a) and also would be a water dispute within the ambit of Section 2(c) and, therefore, it would not be appropriate for this Court to entertain and examine and answer the same (Para93).

Sethi J

The disputes relating to water management, its development and its distribution are to be considered not from rigid technical or legal angle but from the preeminently important humanitarian point of view as water wealth admittedly forms a focal point and basis for the biological essence and assistance of socio economic progress and well being of human folk of all the countries. In resolution of the disputes relating to development, management and distribution of the water reliance has to be placed upon the long usage, customs, prevalent practices, rules, regulation Acts and judicial Decisions. There is no dispute that under the constitutional scheme in our country right to water is a right to life and thus a fundamental right. (Para186)

Further he expressed that that as and when action is initiated upon this judgment, the Tribunal or the authority appointed in consequence thereof, for the purposes shall expedite the matter and ensure that the most precious gift of nature - water and the public money is not wasted in uncalled for, avoidable and imaginary litigation. (Para 189)

T.N. Godavarman Thirumulpad v. Union of India (UOI) and Ors.

MANU/SC/8551/2006

Equivalent Citation: 133(2006)DLT605(SC), 2006(10)SCALE246, (2006)10SCC490

Decided On: 17.10.2006

HON'BLE JUDGES

Arijit Pasayat and S.H. Kapadia, JJ.

Brief Facts:

The case relates to the acceptance of the report of the expert committee constituted to look into the violations, if any, of the environment protection norms arising out of any development project.

Issue Involved:

1) Was the impugned area a part of ridge or was it constraint land?
2) Whether the Expert Committee's report, that seeks to undertake 'damage-control' by imposing a penalty on the project proponents who commenced construction works without obtaining environmental clearance, should be accepted?

Decision

It was clarified by the Supreme Court that the land in question has been treated as "constraint area". Though both the EPCA and the Expert Committee's report refer to the land as "similar to ridge area" but in the absence of a statutory definition of "ridge", it would be inappropriate to reopen the whole Issue.

The Court further held that though environmental clearances were not obtained by DDA and the Authority should have been more transparent in its dealings, demolition cannot be accepted as a viable solution since the allottees themselves had not indulged in any malpractices for securing allotment and most of the constructions had become complete or functional.

Finally the Court accepted the recommendations made by the Expert Committee and directed that remedial measures including costs should be imposed.

The Court gave time of two months to take a Decision and accordingly disposed of the IAs.

Ratio Decidendi:

1) The land was held to be constraint area and not a part of ridge.

2) The Expert Committee report's recommendations were accepted by the Court.

SUMMARY OF THE ARGUMENTS:

The applicants contended that the impugned stretch of land (92 hectares) was never declared to be not a part of the ridge. Moreover, the environment factors were not in favour of urban development use of land and thus the whole stretch should be developed as green. It was also contended that since the Expert Committee's report focuses more on the aspects of regularizing the unauthorized areas rather than on the consequences flowing from the non observance of the procedure before undertaking any construction, it should not be accepted. On the other hand, DDA and the allottees submitted that it had been long settled by a Supreme Court order dated 13.09.96 was constraint area and not an integral part of Delhi Ridge. It was also pleaded that the application should be dismissed for it is trying to re-open an Issue which had become final long back

Observations (per Arijit Pasayat, J.)

"The EPCA's report dated 6.10.1999 nowhere indicates that the land in question was a part of the ridge. Both the EPCA and the Expert Committee's report under consideration refer to the land as "similar to ridge area". Significantly, the EPCA in its report has taken note of the fact that there is no statutory definition of "ridge". That being so, at this juncture, it would be inappropriate to reopen the whole Issue as to whether the land in question was a constraint area or ridge land. A bare reading of the order dated 19.8.1997 makes the position clear that this Court had treated the land as constraint area." (para 6)

"The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. Some of the allottees are the National Book Trust, School of Planning or Architecture, Shri Ram Vithala Sikha Seva Samiti, International center for Alternate Dispute

Resolution and Institute for Studies and Industrial Development. In most of these cases the constructions are already complete and have become functional." (para 8)

"In view of what has been stated above, the MoEF has now to take a Decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the stands projected by the respondents…What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken. Let the MoEF take a Decision within a period of 2 months from today to avoid unnecessary delay." (para 10)

(this case does not seem to pertain to Centre-State relations)

The State of West Bengal v. Kesoram Industries Ltd. and Ors.

2004 (1) SCALE 425: (2004)10 SCC 201: MANU/SC/0038/2004

V.N. Khare, C.J., R.C. Lahoti, B.N. Agarwal, S.B. Sinha and AR. Lakshmanan, JJ.

Decided On: 15.01.2004

Brief Facts :

In this batch of matters, some appeals by special leave under Article 136 of the Constitution and some writ petitions filed in this Court, raise a few questions of constitutional significance centring around Entries 52, 54 and 97 in List I and Entries 23, 49, 50 and 66 in List II of the Seventh Schedule to the Constitution of India as also the extent and purport of the residuary power of legislation vested in the Union of India. Cesses on coal-bearing land levied in exercise of the power conferred by State legislation have been struck down by a Division Bench of the Calcutta High Court. In exercise of the same power cesses have also been levied on tea plantation land which are the subject-matter of writ petitions filed in this Court. The Bengal Brickfield Owners' Association has also come up to this Court by filing a writ petition under Article 32 of the Constitution, laying challenge to the same cesses levied on the removal of brick earth. These three sets of matters arise from West Bengal. The High Court of Allahabad has upheld the constitutional validity of cess levied in the State of U.P. on minor minerals, which Decisions are the subject matter of civil appeals filed under Article 136 of the Constitution. For the sake of convenience, these matters have respectively been called (A) Coal matters, (B) Tea matters, (C) Brick earth matters, and (D) Minor mineral matters. However, this brief is limited to the discussion vis-à-vis 'coal matters' and 'minor mineral matters'.

Coal matters

A Division Bench of the Calcutta High Court had, it's vide judgment dated 25:11:1992, reported as *Kesoram Industries Ltd. (Textile Division) v. Coal India Ltd.*, [AIR 1993 Cal 78], struck down certain levies by way of cess on coal as unconstitutional for want of legislative competence in the State Legislature. The High Court has placed reliance on *India Cement Ltd. and ors. v. State of Tamil Nadu and ors. and Orissa Cement Ltd. V. State of Orissa and ors.* Feeling aggrieved, the State of W.B. had come up in appeal by special leave.

Minor mineral matters

Batch of appeals were filed challenging the judgment dated 01:03:2000 delivered by a Division Bench of the Allahabad High Court, upholding the constitutional validity of a

cess on mineral rights levied under Section 35 of the U.P. Special Area Development Authorities act, 1986 read with rule 3 of the Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997. The High Court held the SADA Act, the SADA Cess Rules and the levy of cess fall within the competence of State Legislature by reference to Entry 5 in List II.

Issue Involved:

1. Whether the State legislature's power to impose cess traceable to Entries 49 and 50 of List II vis-a-vis Entries 52, 54 of List I of the Seventh Schedule of the Constitution of India?
2. Does the measure of tax solely determine the character/ nature of tax?

Decision

Majority R.C. Lahoti J (for himself and on behalf of V.N. Khare, C.J., B.N. Agrawal and Dr. A.R. Lakshmanan, JJ.)

Coal matters:

Before answering the Issues in hand the court clarified that India Cements was a case of cess levied by state legislature on royalty and not on mineral rights or land and buildings; the cess was struck down as royalty is income and State Legislatures are not competent to tax a income. Similarly, in Orissa Cement Ltd. the levy of cess by the state was based on the royalty derived from mining lands and thus struck down. The court also pointed out that *State of Orissa v. Mahanadi Coalfields Ltd.* and ors. was erroneously decided as the court in that case wrongly opined that the cess was levied on minerals and mineral rights and not on land and thus outside the legislative competence of the State.

The Court upholding the vires of West Bengal Taxation Act, 1992 observed that the impugned levy is a tax on coal-bearing and mineral-bearing land and is covered by Entry 49 in List II. Though the method of quantifying the tax is by reference to the annual value of land (which in turn is determined by considering the quantum of coal or mineral produced and dispatched), yet it cannot be deemed to be a tax on coal and minerals.

Even if it is assumed to be a tax on mineral rights, it lies within the legislative competence of State (under Entry 50 of List II) in the absence of any limitations cast by Central government (by reference to Entry 54 of List I and Entry 50 of List II) on the State Legislature's power to tax mineral rights or land.

Minor Mineral matters:

On similar lines, while dealing with the minor mineral matters the Court held that the levy of cess falls within the scope of Entry 49 of List II. It would also fall within Entry 50 of List II if it is not placed under limitation by the Parliament. Moreover, State Legislature's power to levy any tax or fee can be delegated to any institution of local government constituted by law within the meaning of Entry 5 in List II.

The Court also pointed out that the impugned levy does not have the effect of increasing the royalty. Merely because the cess is quantified by taking into consideration the quantity of the mineral produced, it does not acquire the character of royalty. Drawing a distinction between royalty and cess, the court observed that the former is the rent of the land on which the mine is situated or the price of the privilege of winning the minerals from the land parted by the government in favour of the mining lessee. On the other hand, the cess is a levy on mineral rights with impact on the land and quantified by reference to the quantum of minerals produced.

Accordingly the civil appeals on coal matters are allowed and the civil appeals on minor mineral matters are dismissed.

MINORITY

Sinha J.

According to the minority opinion since State is the owner of the minerals and grant of mineral right is controlled by the Parliamentary statute, the State is denuded of its power to impose any tax on mineral right in terms of Entry 50 of List II of the Seventh Schedule of Constitution of India.

Levy of tax on coal bearing lands and mineral bearing lands where mining operations are being carried out through the process of incline or digging pits is illegal, inasmuch as the underground mining right would be larger in area than the surface right and, thus, it is not possible to uphold the validity of, such statute with reference to the extent of the surface right as mineral is being extracted from a larger underground area. Different rights may belong to different persons over the same surface land and similarly different rights may belong to different persons in respect of or over underground rights and the impugned statutes having not made any provision of different method of levy, the impugned statutes are *ultra vires*.

The impugned provisions do not specify who would be liable to pay in relation to different rights and who would be considered to be the owner of the land and to what extent. If the extent of surface land is treated to be the unit, the same having regard to different mining rights granted to different persons over different minerals would all be liable to pay cess although they may not have any right over the surface at all or exercise such right there over only over a part thereof.

It was also held that tax on lands and buildings in terms of Entry 49 of List II of the Seventh Schedule of the Constitution of India can be levied on land as a unit only and since minerals bearing lands cannot be treated as an independent unit in respect of which tax can be invoked, the impugned Acts must be held to be unconstitutional.

Accordingly allowed all the appeals and writ petitions except the appeals filed by State of West Bengal.

Ratio Decidendi:

The State legislature has the power to tax mineral rights by virtue of entry 50 of List II to the extent this power is not limited by the Parliament by virtue of Entries 52 and 54 in List I. The States are permitted to impose a tax or fee on mineral rights till it remains in pith and substance a tax or fee for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government.

The method adopted by Legislature for quantification of tax cannot be solely decisive of the nature of tax and would not alter the character of the levy.

SUMMARY OF THE ARGUMENTS:

Coal matters:

The appellant- State of West Bengal has submitted that having regard to the real nature of the levy, it clearly falls within the legislative field of Entry 49 in List II. On the other hand the respondents contended that since the cess is assessed on the basis of value of coal produced from the coal bearing land, it cannot be said to be a cess on land so as to be covered by Entry 49 in List II.

Minor Mineral matters:

It was contended by the writ-petitioners that the SADA Cess Rules fall outside the legislative competence of the State Legislature and actually fall within the scope of Entry

54 of List I. It was also submitted that the impugned cess would have the effect of adding to the royalty already being paid and thereby increasing the same, which was *ultra vires* the power of the State Government as that power was exercisable only by the Central Government.

Observations (per R.C. Lahoti J.)

"…Merely because the quantum of coal produced and dispatched or the, quantum of mineral produced and dispatched from the land is the factor taken into consideration for determining the value of the land, it does not become a tax on coal or minerals. Being a tax on land it is fully covered by Entry 49 in List II. Assuming it to be a tax on mineral rights it would be covered by Entry 50 in List II. Taxes on mineral rights lie within the legislative competence of the Stats Legislature "subject to" any limitation imposed by Parliament by law, relating to mineral development. The Central legislation has not placed any limitation on the power of the States to legislate in the field of taxation on mineral rights." (para 134)

"…There is nothing wrong in the state legislation levying cess by way of tax so as to generate its funds. Although it is termed as, a 'cess on mineral right', the impact thereof falls on the land delivering the minerals. Thus, the levy of cess also falls within the scope of Entry 49 of List II Inasmuch as the levy on mineral rights does not contravene any of the limitations imposed by the Parliament by law relating to mineral development, it is also covered by Entry 50 of List II. The power to levy any tax or fee lying within the legislative competence of the State Legislature can be delegated to any institution of local government constituted by law within the meaning of Entry 5 in List II. The Entries 5, 23, 49. 50 and 66 of List II provide adequate constitutional coverage to the impugned levy of cess. True it is that the method of quantifying the cess is by reference to the quantum of mineral produced. This would not alter the character of the levy." (para 147)

M/S ORISSA CEMENTS AND ORS v. STATE OF ORISSA AND ORS

MANU/SC/381/1991

Equivalent Citation: AIR1991SC1676, JT1991(2)SC439, 1991(1)SCALE617, 1991Supp(1)SCC430, [1991]2SCR105

Date of Decision : 04.04.91

HON'BLE JUDGES

S. Ranganathan, N.M. Kasliwal and S.C. Agrawal, JJ

Brief Facts:

The case is constituted by appeals from various High Court Decisions wherein State statutes levying cess on royalties were struck down by the High Courts. This Decision came soon after the Decision of the Supreme Court in the India Cements case (discussed earlier) wherein a similar provision in the Madras Panchayat Act was struck down by the Supreme Court as being *ultra vires* the Mines and Minerals (Regulation and Development) Act and Entry 54 List I of the Constitution.

Issue Involved:

The major Issues were framed keeping in mind the Orissa Act. They were:

(1) Can the cess be considered as "land revenue" under Entry 45 or as a "tax on land" under Entry 49 or as a "tax on mineral rights" under Entry 50 of the State List?

(2) If the answer to question (1) is in the negative, can the cess be considered to be a fee pertaining to the field covered by Entry 23 of the State List or has the State been denuded of the legislative competence under this Entry because of Parliament having enacted the MMRD Act, 1957?

To this was added a third general Issue:

(3) If the Statutory provisions were struck down are the petitioners/assesses entitled to refund?

Decision

Entry 45 of List II gave the State Government power to legislate on 'land revenue'. But since the India Cements case was on the very same Issue and in that case it was categorically held that cess cannot be brought under the definition of 'land revenue' the argument did not hold much water.

Entry 50 of List II deals with taxing of mineral rights. Relying on the Decision in *Hingir Rampur case* it was held that tax on mineral rights dealt with levies like taxes on leases of mineral rights and on premiums and royalties etc and the same did not encompass a tax on the minerals actually extracted, which amount to being an excise duty. Since the India Cements Decision held that tax on royalties would not amount to tax on minerals, the Court was bound by the latter Decision and this argument was also negatived.

Moving on to Entry 49 of List II which dealt with tax on land and building, which was the strongest argument for the respondents in the Orissa case. Distinguishing with the India Cements Decision, it was contended that the cess was not a tax on royalty but the royalty was merely a figure to quantify the levy. The court held that though the argument was appealing, the view had already been dealt with in the India Cements Decision. The arguments were equated to those put forth in the Murthy case which was reversed in India Cements. The respondents tried to take refuge in the concluding remarks of Oza.J in India Cements where he had said if the cess in that case was charged on 'surface rent'or a like value and not on royalty, the Decision could have been different. The court simply held that in this case the cess is on royalty and not on surface rent or dead rent, even Oza.J did not consider royalty to be 'tax on land'. The court observed that the manner in which the levy, initially introduced a uniform cess on all land, was slowly converted, qua mining lands, into a levy computed at multiples of the royalty amounts paid by the lessees thereof seem to bear out the contention that it is being availed of as a tax on the royalties rather than one on the annual value of the land containing the minerals.

Thus it was held that the Orissa Statute did not get the protection of Entries 45,49 or 50 of List II. This being held the second Issue was whether there was any overlap between the State Act and the Central Act, calling for a striking down of the provision of the State Act. At the outset the Court distance itself from the discussion about whether the cess is a tax or a fee, since it was not an Issue here. The respondents based their arguments on the *Hingar Rampur case* and the *Tulloch case* wherein statutes dealing with municipal administration and land acquisition by the State were upheld on grounds that these did not come into direct conflict with the Central Legislation and they could be pigeon holed into entries within the State List. These were largely cases where the Court interpreted both the Statutes harmoniously. In the instant case, it was held that the present legislation, traceable to the legislative power under Entry 23 or Entry 50 of the State List which stood impaired by the Parliamentary declaration under Entry 54, could hardly be equated to the law for land acquisition or municipal administration which were considered in the cases cited above and which are traceable to different specific entries in List 11 or List III.

Citing various Decisions of the Supreme Court it was held that the distinction sought to be made between mineral development and mineral area development was not a real one as the two types of development are inextricably and integrally interconnected and also that, fees of the nature levied by the Orissa Cess Act squarely fell within the scope of the provisions of the Central Act.

The Madhya Pradesh and Bihar Acts did not get much attention since they were closer to the Tamil Nadu Act struck down in India Cements. While dealing with the Bihar statute the court pointed out that even the attempt to sustain the tax on the basis of Article 227 cannot succeed because firstly, the levy is a post-constitution levy and secondly, Article 227 only saves taxes, duties and cesses mentioned therein if they continue to be applied for the same purposes and until Parliament by law provides to the contrary and with the enactment of the M.M.R.D. Act, 1957, they cease to be valid.

Turning to Madhya Pradesh Act, the court upheld the conclusion of the high court that such fee would be referable to item 23 and hence out of bounds for the State legislature after the enactment of the M.M.R.D. Act. It was also pointed out that though the tax appears to be a tax on land, in substance, it is a tax on minerals produced therefrom and thus not covered by entry 49 of the State List. The tax is not even referable to entry 50 as it is not imposed on the mineral rights of every holder of mining lease but it is actually levied on minerals produced in land held under mining lease.

Thus it was held that the impugned provisions of the Statutes of the three States were repugnant to the MMRD Act and also the Constitution. Therefore they were liable to be struck down. As far as the Issue of refund was concerned, it was held that the States would be put through a lot of difficulty if they were to repay the amounts collected since most of the funds would have been diverted towards various activities of the State. Dismissing the contentions of the respondents that it would amount to a violation of the Fundamental Rights of the assesses, the Court, keeping in mind the interest of justice, gave a prospective effect to the Decision.

The appeals were partially allowed thus.

Ratio Decidendi:

The cess levied under the statutes of the three states do not fall within the powers given to the States under Entries 45, 49 and 50 of List II of the Act.

Even if they fall within the ambit of Entry 23 of List II, the same is clouded by Entry 54 of the List I of the Constitution.

The India Cements Decision is binding on the Court and even otherwise it could direct that the cess which has been held as un-constitutional need not be refunded in the interest of justice.

SUMMARY OF THE ARGUMENTS:

The Orissa Statute took up most of the discussion in this case. The levy in this case was not a direct levy on royalty. The Orissa Cess Act was a statute to codify the levy of cess on land in Orissa. The cess was to be calculated as a percentage of the annual value of the land. When it came to mining lands the cess varied from 100% to 250% and more depending on the mineral that was being excavated from the land. In case of minerals which were not contemplated by the Schedule of the Act, the cess was 100% of the royalty. Reverting back to the argument put forth in the India Cements case, the counsel for the respondents tried to distinguish the Tamil Nadu statute in question in the said Decision from the Orissa Cess Act. Branching out from this argument an attempt was made to drive home the point that the fields of operation of the Orissa Act and the MMRD Act were different and the State Act could not be held to be struck down by the Central Act.

The Bihar and the Madhya Pradesh Acts were similar to the Tamil Nadu Act and closer to the India Cements case. The arguments raised by the petitioners were similar to those in the India Cements case. In addition, with reference to the Bihar statute it was also contended that the State cannot seek to sustain the levy by relying on Article 227 of the Constitution.

Observations (per Ranganathan J)

"It is well-settled that the entries in the three legislative lists have to be interpreted in their widest amplitude and therefore if a tax can reasonably be held to be a tax on land it will come within Entry 49. Further it is equally well-settled that tax on land may be based on the annual value of the land and would still be a tax on land and would not be beyond

the competence of the State Legislature on the ground that it is a tax on income" (para 15)

"These Observations establish on the one hand that the distinction sought to be made between mineral development and mineral area development is not a real one as the two types of development are inextricably and integrally interconnected and, on the other, that, fees of the nature we are concerned with squarely fall within the scope of the provisions of the Central Act." (para 41)

"In our view, we need not enter into a discussion on the principles of prospective validation enunciated by at least some of the Judges in Golaknath (supra) as the direction in' India Cement can be supported on another well settled principle applicable in the area of the writ jurisdiction of Courts. We are inclined to accept the view urged on behalf of the State that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the Court has, and must be held to have, a certain amount of discretion. It is a well-settled proposition that it is open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice." (Para 52)

PANCHAYATI RAJ INSTITUTIONS

List of the cases

1. M. Kesavulu and Ors. v. State of Andhra Pradesh and Ors., 2003 (6) ALD 522
2. Ranga Reddy District Sarpanches' Association and others v. Government of Andhra Pradesh, Panchayath Raj Department, Hyderabad and others, 2004 (1) ALT 659 (L.B.)
3. Rakesh Kumar Sharma v. State of U.P and Another, 2004 (3) AWC 2234

ANALYTICAL SUMMARY OF THE ARGUMENTS

After an analysis of all the cases coming under Panchayati Raj Institutions to find out if there is any Issue of conflict affecting Center-State relations, it has been found that no case had such ramifications. Cases on Panchayati Raj Institutions mainly deal with panchayat elections; reservation of posts; grounds of disqualification; powers of state election commission and election tribunals; removal/suspension of functionaries; no confidence motions; powers of panchayats; dissolution of panchayats; delimitation/ amalgamation of panchayats; etc. None of these cases have, therefore, any direct connection with Center-State relations as they are confined to intra-state or intra-district Issues of local nature only. Therefore, it was felt not necessary to analyse these cases as they would not fit in the perspective of Inter-State Relations

M. Kesavulu and ors. v. State of Andhra Pradesh and ors.

2003(6)ALD522

G. Bikshapathy and M. Narayana Reddy JJ.

Decided on :18.09.2003

Brief Facts:

The present batch of writ petitions were filed against the order of the tribunal upholding the validity of G.O. Ms. No. 505 and G.O. Ms. No. 538 which provided for integration of services of teachers of Panchayat and Government schools.

Issue Involved:

Is the integration of services of teachers of Panchayati Raj Institutions and teachers of government schools constitutionally valid?

Ratio Decidendi:

Integration cannot be affected by the government order as it violates Articles 14 and 16 and goes against the spirit of Article 243G of the Constitution.

Decision

The court struck down the government orders that provided for integration of teachers of Panchayati Raj institutions and teachers of government schools as the teachers in both Panchayati Raj institutions and government schools form distinct category vis-à-vis appointment procedure as well as cadre.

SUMMARY OF THE ARGUMENTS:

The petitioners contended that integration is illegal and contrary to law as the teachers working in the government schools and the teachers working in the schools under Zilla Parishads and panchayat samitis (Panchayat Raj institutions/ PRIs) form distinct category of service with their respective service rules framed under Education Act and Panchayat Raj Act. Further, a local cadre service (teachers working for government schools) cannot be integrated with the non-local cadre service (teachers working in panchayati raj institutions). It was also submitted that the impugned notifications go against the spirit of Article 243 and is violative of Article 14 and 16 of the Constitution. It was also

argued that when once separate service rules are framed in respect of teachers working in the panchayati raj institutions by virtue of the provisions contained in Panchayati Raj Act, no separate rules can be made by virtue of the proviso to Article 309 of the Constitution of India.

Observations (per G. Bikshapathy J.)

1. With the Constitution (Seventy Third) Amendment Act, the Panchayati Raj Institutions were sought to be treated as independent entities with separate powers and responsibilities under the Constitution. Thus by virtue of Article 243G read with item 17 of 11th Schedule (primary and secondary schools), the panchayats are required to undertake responsibilities for imparting of education and maintenance of schools both primary and secondary.

2. The teachers in Education Department and PRIs are treated separately for the purpose of appointment, promotion etc. rules regulating the service conditions of teachers in government schools and rules regulation of the service conditions of teachers in PRIs were separate under G.O. Ms. Nos. 278 owing to the fact that the control and management of government school lies with the government and control and management of schools under PRIs lies with the Mandal Praja Parishads and Zilla Parishads.

3. Separate set of rules are made applicable to the teachers in the Education Department and also teachers in the Panchayat raj Institutions. The source of appointment was different. Recruitment procedure was duly prescribed and the appointment authority is duly stipulated and even after the provincialisation also, their services were treated duly under G.O. Ms. No. 278. Even though the services are provincialised and the pay scales and the other benefits as enjoyed by the government teachers is equally made applicable to the teachers in Panchayati Raj institutions, yet, they continue to stand on a different footing, as already stated, the protection of autonomy of Panchayati Raj institutions, which aimed at achieving the status of local self government. Therefore by provincialisation of services it would not create any difference. As far as their status is concerned they cannot be treated as absorbed teachers in government service. (para70)

4. "It is not the case of the government that the schools under the control of the Panchayati Raj institutions were taken over by the government and the teachers working in the Panchayati Raj are absorbed in the government schools. In

such a situation, carving out any rules making applicable to both the types of employees viz. government teachers and panchayat teachers, is violative of articles 14 and 16 of the Constitution of India. Since the field in respect of service conditions of teachers was already occupied by the rules framed in G.O. Ms. No. 278 the government has no power to again frame the rules under the proviso to Article 309 of the Constitution of India and also under the provisions of A.P. Education Act". (para71)

5. " The cadres are different. The teachers in government schools are a different cadre and likewise Panchayat Raj institutions are different. Therefore the question of merger of these two cadres would not arise…It is to be noted right from the inception of Panchayat Raj setup these institutions are treated on a different line. The schools were always under the control and management of Panchayat Raj institutions subject however to the supervision of the government." (para 78)

6. "..the independent identity of the Panchayat Raj bodies as local self governments has to be recognized. Every attempt has to be made to enliven the cherished goal under the Constitution under Article 40 but the democratic polity of the panchayat raj institutions cannot be emasculated by dissipating and divesting their power of control and management over the educational institutions upto secondaty level. The tribunal failed to concentrate on this aspect and erred in holding that it is competent for the government to frame the rules under proviso to Article 309 of the Constitution of India, if not under the provision of Education Act. (para 79)

Ranga Reddy District Sarpanches' Association and others v. Government of Andhra Pradesh, Panchayath Raj Department, Hyderabad and others[289]

2004 (1) ALT 659 (L.B).

MANU/AP/001/2004

Decided On: 29.01.2004

Hon'ble Judges:

Devinder Gupta, C.J., Motilal B. Naik, B. Sudershan Reddy, G. Raghuram and P.S. Narayana, JJ.

Brief Facts:

The instant writ petition under Article 226 is filed by Ranga Reddy District Sarpanche's Association, represented by its President and Convenor and others, questioning certain provisions of A.P Panchayat Raj Act, 1994 and certain government rules and orders.

Issue Involved:

The questions before the courts were regarding the impact of Part IX on the existing constitutional scheme and distribution of legislative powers under the Panchayath Raj system and whether part IX gives limited autonomy or confers full autonomy without state's role in the functioning of the Panchayats. Consequently the court had to deal with the question whether Part IX of the Constitution overrides Articles 243, 256 and List II of the seventh schedule of the Constitution. The basic question that the court is called upon to answer is about the extent of the power of judicial review available in such like matters where the question is about the sufficiency or inadequacy of power or authority conferred upon the Panchayat Raj institutions.

Contentions

The constitutionality of the Act and the Government orders and rules are challenged to be unconstitutional on the following grounds-

1) The State Legislature is bound to act in conformity with Article 243-G of the Constitution which is mandatory.

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2) The power to legislate regarding the entries in the eleventh schedule is well conditioned and controlled and hence state cannot make any legislation relating to these entries though they overlaps with such corresponding entries in seventh schedule in view of chapter IX, introduced by 73rd Constitutional Amendment or such legislation should be in conformity eleventh schedule only conferring powers on gram panchayats.

3) The provisions challenged in the Act, G.Os and rules are not in conformity with Article 243-G and on the contrary they are violative of the constitutional mandate envisaged by 73rd Amendment.

4) The spirit and object of the 73rd Amendment had not been carried out by the provisions of the Act and on the contrary the conferment of powers on excess on the officials and deprivation of powers to the elected representatives, would go to show that the very purpose of 73rd Amendment had not been carried out, but had been defeated.

5) Though a writ of mandamus to make a law cannot be Issued definitely in the light of the facts and circumstances well explained, necessary declaration atleast can be made in his regard while exercising powers under Article 226 of the Constitution of India.

Contentions of state of A.P *inter alia* are the following-

(i) The writ, as filed, is not maintainable. The substantial relief sought is a direction to the Legislature to enact a law, though couched in the form of seeking a direction to the respondents to take immediate and appropriate steps to give effect to Articles 243 G, H, I and N of the Constitution. Issuance of such a direction is beyond the Charter of this Court.

(iv) Article 243G is an enabling provision subject to the provisions of the Constitution. The extent to which power and authority is to be endowed on the Panchayats to enable them to function as institutions of self-Government is for the Legislature of the State to decide and not for the Courts.

(v) The XI Schedule of the Constitution does not per se confer powers of legislation though it enumerates the fields of legislation. In view of the provisions of VII Schedule read with Article 246 of the Constitution, the State Legislature is empowered to make laws without conferring the powers enumerated in the XI Schedule of the Constitution, exclusively on the Panchayats. The 73rd Amendment to the Constitution does not

eviscerate the legislative field of the State in respect of the matters specified in the XI Schedule of the Constitution. The discretion of the State Legislature to enact a law in relation to any of the Entries in List II or III of the VII Schedule of the Constitution, including in respect of matters enumerated in the XI Schedule of the Constitution, is not affected by the enabling provisions of Article 243G. The discretion of the Legislature whether to devolve powers, authority and responsibility to the Panchayats, to what extent and at what level is plenary and un-instructed by any provision in Part IX, including Article 243G of the Constitution.

(xii) The Panchayat Raj Institutions are distinct from their elected representatives. Powers have been devolved on the Panchayat Raj Institutions. Powers need not be conferred only on elected bodies and representatives. There is no constitutional requirement that powers be not delegated to the officials of the Panchayat Raj Institutions.

(xiii) The extent to which functions have to be assigned to the Panchayat Raj Institutions and/or its elected representatives is for the Government to decide and in respect of the exercise of rule making power of the Government conferred by the Act, no mandamus can Issue.

(xiv) The statutory provisions enabling removal of elected representatives or dissolution of the Panchayats are in accordance with the constitutional provisions of Part IX of the Constitution.

Decision

The court unanimously held that organizing the Panchayati Raj institutions do not constitute the third tier of the federal structure exemplifying a further unit in the vertical division of the power of governance under the constitution and held the impugned Act as unconstitutional.

Observations

Majority and concurring view

"It is for the State Legislature to decide by expressing its will through legislation or subordinate legislation that to what extent the Panchayat Raj Institutions should be conferred with power and authority. The power of the Court in such like matters cannot be stretched too far while exercising the jurisdiction under I Article 226 of the Constitution so as to question the political wisdom unless it is established that there is clear infraction

and breach of the imperative constitutional provisions. Adequacy or inadequacy of the powers cannot be gone into unless it is shown that the same offends any provisions contained in any part of the Constitutional scheme. We are of the view that in pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or unwisdom, the justness or otherwise of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law, must be upheld whatever a Court may think of it. We are also of the view that the words "endow them with such powers and authority as may be necessary to enable them" used in Article 40 of the Constitution and the similar words used in Article 243-G also cannot be so interpreted to mean that the extent of the powers and authority endowed by the State Legislature should be limitless or be to the fullest extent. Both the provisions have left it to the wisdom of the State Legislature even as regards the extent of the powers and authority to be endowed on the Panchayat Raj Institutions."(para 6).

"The power of the State Legislature to legislate on a subject relating to an entry in State List or Concurrent List is well governed by specific provisions and hence it cannot be said that by introduction of Article 243G by 73rd Constitutional Amendment, the power to legislate relating to those entries is in any way curtailed since Article 243G cannot override Articles 245 and 246 and these provisions are to be harmoniously construed. It may be that there may be some overlapping in respect of entries in Eleventh Schedule and Seventh Schedule, but by that itself the power to legislate relating to an entry in Seventh Schedule cannot be said to be in any way altered if otherwise the State Legislature is competent to do so, especially in the light of the language employed in Article 243G." (para 14).

"The concept of Basic structure and Federalism cannot be stretched too far so as to include these Panchayat Raj Institutions also as part of Federal concept in distribution of powers or allocation of powers. A directive in the form envisaged by Article 243 G cannot be equated with an enforceable legal right flowing from a Constitutional mandate. Autonomy to these Institutions is only limited autonomy, be it fiscal or otherwise, and the Constitutional directive envisaged under Article 243 G has to be interpreted as only a discretionary directive and nothing more." (para 23)

"The excessive interference by bureaucrats and the non-participation or minimum participation by elected representatives of the local bodies is made the main ground of attack by the petitioners. The State Government cannot be said to be either an intruder or encroacher in this regard. The minimal checks of Government control is aimed at

streamlining the local body administration. This cannot be styled as excessive bureaucrism in the context of limited autonomy which these local bodies enjoy in the light of the Constitutional scheme."(para 30).

Per Justice Raghuram

"The construction of the expression "may" taken together with the text, philosophy and object of the 73rd Amendment, we are of the considered view that the expression "may" occurring in Article 243G approximates more to a constitutional command couched in a deferential verbal choice, in recognition of the fact that the command is addressed to a high authority -the legislature."(para 110).

"A balanced theory of interpretation of the Constitution's de-centralisation of power values, warrants the conclusion that while incorporating provisions for control of the Panchayat Raj Institutions to achieve the over all and legitimate purposes of the State, such controls ought not to entail total stultification, emasculation or negation of the democratic choice of the local population expressed in the elections to local bodies. Governance power and autonomy in some discemable manner should of necessity inhere in the elected representatives of the Panchayats to enable characterization of these institutions as 'self-Government' institutions. A State Legislation that divests or withholds effective power of local governance from the elected representatives of the Panchayats would tantamount to a Legislation that subverts the constitutional purposes of Part-IX."(para 113)

" We have noticed earlier in this judgment that the State is a component of the federal structure under our Constitution and the Panchayats are not. However, consequent on the 73rd Amendment, the Panchayats are guaranteed a role in governance, at the sub-State level. Their governance structure is democratic and republican. This characteristic of the Panchayats is a constitutional grant and must be accorded a meaning, which needs be effectuated. The Panchayats are legal inhabitants of the constitutional space and have a legitimate share in the governance process though at the sub-State level. They are more than mere dependencies of the State, They are also self-Government(s)."(para 128).

Rakesh Kumar Sharma v. State of U.P and Another[290]

MANU/AP/285/2004

Equivalent Citation: 2004(3)AWC2234

Decided On: 21.05.2004

Tarun Chatterjee, C.J. and Ashok Bhushan, J.

Brief Facts:

The writ petition consist of a bunch of petitions filed by petitioners who are advocates, a registered society, a social worker and a non-governmental organization, challenging the notifications Issued by the government of U.P on January 13, 2004 in exercise of the power under Section 11 of the U.P Land Revenue Act, 1901, by virtue of which nine districts and four divisions of the state have been abolished.

Issue Involved:

1) whether the writ petitioners, who have filed these writ petitions challenging the notification dated January 13, 2004, abolishing nine districts and four divisions have any *locus standi* to maintain these writ petitions?

2) Whether the 'district' contemplated under Section 11 of the Act is different from the 'district' as defined in Part IX and IX-A of the Constitution of India.

3) Whether exercise of power under Section 11 of the Act by the State Government is purely executive or administrative in nature or it is purely legislative or not.

4) Whether it was mandatory on the part of, the State Government to comply with the principles of natural justice by affording an opportunity to the residents of the districts while taking a Decision to create or abolish the districts and divisions in the exercise of its power under Section 11 of the Act.

5) Whether consultation was necessary with the High Court before the State Government could exercise of Issue the notifications under Section 11 of the Act abolishing the districts and divisions already created.

[290] MANU/AP/285/2004

6) Whether the notification Issued by the State Government under Section 11 of the Act was a policy Decision of the state, whether there can be a judicial review of such policy Decision of the State Government while exercising its power under Section 11 of the Act.

7) a) Whether the Decision is arbitrary, discriminatory of unreasonable offending Article 14 of the Constitution of India.

b) whether the policy Decision taken by the state in exercise of its delegated legislative power contrary to the purpose and object of the parent statute or any other constitutional provision.

8) whether the State Government while taking Decision to abolish disricts, which were created similarly in the exercise of its power under Section 11 of the Act have taken in to consideration the relevant factors, which were required to be taken for reaching to a Decision for abolition of districts and divisions.

9) Whether there is a hostile discrimination in the Decision of the State Government in the matter of issuing a notification under Section 11 of the Act since some districts have not been abolished.

Contentions

The petitioner contended that the power to be exercised under Section 11 of the Act should conform to Article 14 and according to them after the 74th amendment exercise of power under the aforesaid provision must be in accordance with the factors as required under Article 14. The State Government by selectively abolishing the districts have acted discriminately, arbitrarily, whimsically and irrationally. They also point out to the fact that government has spent crores of rupees in the construction of infrastructure and the districts have generated considerable amount of revenue also. Further, according to them there is a total defiance of the provisions of Cr. PC viz sections 7, 9 (6), 11, 12, 14 and 24 (3). The State Government has not consulted the High Court before issuing the notification.

They also challenge the provision in the notification ordering transferring of the pending cases to another district court as only High Court has the power to pass orders regarding pending cases in district courts in exercise of its power under Article 235 of the Constitution. Further, it was contended that it is not permissible for the state to refer to provisions of the Act to throttle the constitutional provision contained in Part IX and part IXA of the Constitution. They also challenge it on the basis of violation of the principle of natural justice as no opportunity was given to the residents to assert their

right. According to them, creation or abolition or alteration of boundary entails civil consequences and further, vested right accrued to the residents of the area to assert their right to development which is a fundamental right under Article 21 is also violated.

According to the petitioners the concept of district as contained in the Act has become redundant after the 73rd and 74th Amendment, by referring to various Articles inserted by the amendment which, contains the concept of district.

The state has primarily challenged the locus standi of the petitioners on the ground that the petitioners have not discloses as to what rights of the petitioners or other persons to whom the petitioners purports to represent have been violated by issuance of the impugned notification. The power of the state to create or abolish a district or a division is of a legislative character and it doe not affect the individual in any manner and thus neither Article 14 nor Article 243Q shall apply. They also refuted the contention of the petitioners that the Decision was taken without studying the financial viability.

Decision

As regards the question of *locus standi*, the court after quoting extensively from precedents came to the conclusion that the principle of locus standi is as rigid as it originally was. Court observed that to entertain a public interest litigation it cannot be said that all cases can be placed in straight jacket formula, but they must be judged individually on their merits. Further, the court found that, the petioners have sufficient interest in the matter. For eg. lawyers and lawyer's associations have contented in their petition that abolition of the Districts will affect the functioning of the district. Such contentions cannot be rejected on the basis of *locus standi*.

According to the court the power to create or abolish a district is exclusively on the state and the court found no other statute dealing with the power of creation, abolition or alteration of a district. The court accepted the contention of the state that, no new scheme for creation of district is contained in part IX and part IXA, since the Constitution framers and Parliament and Legislature knew the concept of district to be existing. Thus the court rejected the contention of the petitioners that the notifications Issue Involved under Section 11 of the Act were redundant and not relevant for part IX and IXA of the Constitution.

As regards the third Issue as to whether the power of the State Government under Section 11 is purely executive or administrative in nature or it is purely legislative, the court

referred to a number of authorities and came to the conclusion that the notification is a legislative instrument laying down the general rule of conduct and the power exercised does not concern with the interest of the individual and it relates to the public in general. The court held that the power of the State Government in issuing the notification under Section 11 of the Act is legislative in nature and is not a purely administrative or executive power. The court further, dealing with the question of compliance with the principles of natural justice held that, as it is a legislative action it was not mandatory on the part of the state to give opportunity to the residents of the respective districts and members of the Bar association and others before issuing the impugned notification. It referred to various Decisions of the Supreme Court wherein it has been held that legislative action, plenary of delegated, is not subject to the principles of natural justice. The parliament may provide for a notice and hearing, which right is in the nature of a concession, which is not to be detracted from the character of the activity as legislative.

Further, the court found that it was not necessary for the State Government to consult the High Court for the creation or abolition of districts or divisions under the Act. According to the court it is clear from the notification itself that the court mentioned therein is a revenue court and not a district court and it is not necessary to decide such a question in these bunch of writ petitions.

The court, then concerned itself with the question whether it is a policy Decision of the state and if so, to what extent such a Decision can be judicially reviewed. From the earlier Decisions of the apex court the court came to the conclusion that even in a case of legislative action, judicial review was possible only in cases where the prohibition of Article 14 is attracted. Thus a policy Decision of the state can be challenged as violative of Article 14 of the Constitution in a petition under Article 226.

It was held by the court, in the light of the seventh Issue that the impugned policy Decision of the cabinet dated January 13, 2004, was discriminatory and violative of Article 14 of the Constitution. The court accepted the contention of the petiotioners that the policy Decision to abolish nine districts and four divisions was selective and discriminatory and dome districts were saved from the action on arbitrary grounds. There was no valid classification as mandated by Article 14 of the Constitution. Further, there has been neither any rational object sought to be achieved by leaving out many newly created districts nor any intelligible differentia has been followed with those districts which have been abolished.

The court also found that the state has failed to take in to account the relevant factors while reaching a Decision to abolish the districts the state of infrastructure, the revenue receipts from the district etc. it also observed that financial constraints and the inability of the state to provide for the state cannot be taken as the sole ground for the abolition of these districts. The court came to the conclusion that the impugned notification is arbitrary and violative of Article 14 of the constitution of India and thus quashed the notifications to the extent indicated above.

Observations

Part IX does not contemplate creation of district or district level by any notification or any action of the Governor or any other authority. The constitutional scheme shows that district as existing in a State has been adopted for purposes of Part IX of the Constitution and no concept of creation of a district is contained in Part IX or Part IX-A of the Constitution. The district level as contemplated in Article 243(c) and 243(b) is nothing, but district as existing in a State. The submission of the learned counsel for the writ petitioners that Constitution contemplates a district for the purposes of Part IX and Part IX-A separately independent from revenue district is not acceptable.(para 50)

From the aforesaid principles as laid down by the Supreme Court, it is, therefore, clear that the word 'district' has definite meaning and concept of district was well known to the Legislature at the time of 73rd and 74th Amendment in the Constitution and the district as existing at that time was adopted for the purposes of Part IX and Part IX-A. As already held that neither Part IX and Part IX-A contemplate creation of district for purposes of Part IX and Part IX-A nor the concept of district in Part IX and Part IX-A was different from the normal meaning of 'district' as understood by the Legislature.

(para 54)

" From a plain reading of this paragraph rendered in the aforesaid Decision of the Supreme Court, namely, *Union of India v. Cynamide India Ltd.* (supra), it appears that the Supreme Court in that Decision has clearly laid down the principles that the legislative action plenary or subordinate is riot subject to rules of natural justice. It was further laid down by the Supreme Court that in the case of subordinate legislation. It may happen that the Parliament may itself provide for a notice and for hearing, which right is in the nature of a concession, which is not to be detracted from the character of the activity as legislative.

From the aforesaid Observations of the Supreme Court, it can further be deduced that the Supreme Court has laid down the principle to the extent that where the Legislature had not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity." (para 78)

"..exercise of power under Section 11 of the Act by the State Government was legislative, in nature and, therefore, in view of the aforesaid discussions and applying the principles laid down by the Supreme Court in its aforesaid Decisions, as noted hereinearlier, we are of the view that the State Government was not duty bound to follow the principle of natural justice by giving opportunity to the residents of the respective districts and the members of the Bar Associations and others before issuing the impugned notifications" (para 80)

"From the discussions made hereinabove and applying the principle laid down by the Supreme Court as referred to above, we are, therefore, of the view that even in a case of legislative action, judicial review was possible only in cases where the prohibition of Article 14 of the Constitution of India was attracted."(para 95)

ADMINISTRATIVE RELATIONS

List of the Cases

A.P

1. Andhra Pradesh Power Generation Corporation Ltd. v. Assistant Commissioner of Income-Tax and Anr., and Commissioner of Income-Tax v. Nizam Sugars Ltd., 2006 (280) ITR 388

S.C

1. Oil and Natural Gas Commission v. Collector of Central Excise, 1995 (4) SCC 541
2. Canara Bank and Ors. v. National Thermal Power Corpn. and Anr., 2001 (1) SCC 43
3. Chief Conservator of Forests, Govt. of A.P.v The Collector and Ors., 2003 (3) SCC 472
4. Samatha v. State of A.P. and Ors., AIR 1997 SC 3297

Analytical Summary of the Arguments

Disputes between the Centre and the State are required to be resolved in accordance with the provisions of the Constitution, which provide the mechanism as well as the forum for resolution of all such disputes. There is no forum, as such, created or constituted by the Central Government to resolve disputes between State Government public sector undertakings on the one hand and Departments of the Central Government on the other. Nor is there any mechanism or forum created and constituted for resolution of disputes between State Government public sector undertakings and Central Government public sector undertakings.[291]

Litigation between Public Sector Undertaking and Union of India leads to wastage of procedural expenses and wastage of public time.[292] In *Oil and Natural Gas Commission* v. *Collector of Central Excise*,[293] the Supreme Court expressed its reservation for the manner in which the Central Government and its public sector undertakings were fighting their litigation in the courts by spending money and wasting public time. The Court ordered for setting up of High Power Committee (HPC) for resolving disputes between Union of India and its Public Sector Undertakings. The purpose of setting up of HPC is to avoid time consuming and expensive litigations.[294] HPC ensures that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house Committee. In this regard, all Departments of the Government of India as well as to Public Undertakings of the Central Government[295] have to refrain from litigations and to

[291] *Andhra Pradesh Power Generation Corporation Ltd.* v. *Assistant Commissioner of Income-tax and Anr*., 2006) 202 CTR (AP) 62, [2006] 280 ITR 388 (AP).

[292] *Oil and Natural Gas Commission* v. *Collector of Central Excise,* 1992 (61) ELT3 (SC), JT 1991 (4) SC 158, 1992 Supp (2)SCC 432.

[293] 1995 Supp (4) SCC 541.

[294] *Oil and Natural Gas Commission* v. *Collector of Central Excise*, (2004) 6 SCC 437.

[295] In *Andhra Pradesh Power Generation Corporation Ltd.* v. *Assistant Commissioner of Income-tax and Anr*., *Supra* note 1, it was observed that there is no "High-Powered Committee" constituted for resolution of any dispute between the Central Government and the State Government or between the public sector undertakings of the State Government and public sector undertakings of the Central Government or between one Department of the Central Government and the State governments or between Departments of the Central Government and Departments of the State Government. Obviously, no such "High-Powered Committee" could have been constituted by the Central Government to resolve the disputes between the Central Government and the State governments, for which purpose, the Constitution itself provides a mechanism as well as the forum for resolution of such disputes. In this case, the High Court of Andhra Pradesh declined to agree with the view taken by the Rajasthan High Court in *State of Rajasthan* v. *ITAT*, 2003) 179 CTR (Raj) 196, [2003] 259 ITR 686 (Raj) and Delhi High Court in *CIT* v. *Delhi Tourism and Transportation Development Corporation Ltd*., [2005] 274 ITR 35 (Delhi).

resolve disputes, regardless of the type, amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration.[296] In *Collector of Central Excise* v. *Jeesop and Co. Ltd*.,[297] the Supreme Court declined to entertain an appeal preferred by the Collector of Central Excise on the ground that the litigation between the Central Government and public sector undertakings is not to be resorted to without the matter being examined by a "High-Powered Committee" of Secretaries and with its clearance.

Further in *Canara Bank* v. *National Thermal Power Corporation*, [298] the apex court having referred to the orders passed in Oil and Natural Gas Commission cases made it clear that it is frivolous litigation between Government Departments and public sector undertakings of the Union of India should not be dragged in the courts but be amicably resolved by the Committee. The judgment is intended to prevent avoidable litigation between Government departments and undertakings of the Union of India. There is no room for any further clarification. The court intended to put an end to frivolous and *inter se* disputes between Government Departments as well as disputes between public sector undertakings among themselves and disputes between public sector undertakings and various Departments of the Government of India. None of the orders passed were with regard to disputes between public sector undertakings of the State Government and Departments of the Central Government. The Committee of Disputes in the Cabinet Secretariat is not intended to be a dispute resolution mechanism to resolve disputes between public sector undertakings of the State governments and Departments of the Central Government.

In *Chief Conservator of Forests* v. *Collector*,[299] the Supreme Court, in the context of litigation between the Forest Department and the Revenue Department of the Government of Andhra Pradesh, observed that it was not contemplated by the framers of the Constitution that two departments of a State or the Union of India to fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law (page 481) : "Such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various Departments of the Government are its limbs ; therefore, they must act in co-ordination and not in confrontation." The Supreme Court having noticed that in cases of dispute between public sector undertakings and the Union of India, the court in Oil and Natural Gas Commission cases (supra 1 to 3) directed the Central Government to set

[296] *Supra* note 4.
[297] [1999] 9 SCC 181. also see *Mahanagar Telephone Nigam Ltd.* v. *Chairman*, *CBDT*, AIR 2004 SC 2434.
[298] [2001] 1 SCC 43 : [2001] 104 Comp Cas 97.
[299] 2003 (2) SCALE 429, (2003) 3 SCC 472, [2003] 2 SCR 180.

up a Committee consisting of representatives to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation and further having found that no such similar committee or mechanism was available to resolve the controversy arising between various departments of the State or the State and any of its undertakings.

The Court considered the validity of the grant of mining lease of Government land in a scheduled area to the 'Non-Tribals' in *Samatha* v. *State of A.P. and Ors.* [300] The Court had to consider the effect and applicability of Section 3(1) of the A.P. Scheduled Areas and Land Transfer Regulation, 1959 which reads as follows:

> Transfer of immovable property by a member of a Scheduled Tribe- (1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribe.

While interpreting the said Regulation framed by the Governor in exercise of powers under Article 244 read with para 5(2) of the Fifth Schedule of the Constitution, this Court held that the words "transfer of immovable property ...by a person" in that clause included the transfer by way of grant of mining lease by the State Government. Section 3(1) was interpreted as prohibiting any such transfer in favour of a non-scheduled tribe and it was further declared that such transfer shall be absolutely null and void.

[300] AIR 1997 SC 3297.

Oil and Natural Gas Commission v. Collector of Central Excise

(1992) 104 CTR (SC) 31

Ranganath Misra, C.J., P.B. Sawant and S. Mohan, JJ.

The Court had earlier issued orders for setting up of High Power Committee (HPC) for resolving disputes between Union of India and its Public Sector Undertakings.[301]

Through the order in this case, the Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline. Every Court and every Tribunal are obliged to demand a clearance from the Committee in the event a dispute is raised.

[301] See also, *Oil and Natural Gas Commission* cases, 1992(61)ELT3(SC) and 1994(70)ELT45(SC).

Canara Bank and Ors. v. National Thermal Power Corpn. and Anr.

[2001] 104 CompCas 97 (SC), 2000 (8) SCALE 139

Decided On**:** 05.12.2000

K.T. Thomas and R.P. Sethi, JJ.

Brief Facts:

The appellants challenged the impugned judgment passed by the High Court in Company Appeals by which the orders passed by the Company Law Board have been set aside and disputes allegedly existing between the parties referred to the High powered Committee in terms of the judgment of Oil & Natural Gas Commission. It is contended that the dictum in ONGC's case was not applicable to the facts of the cases under appeals, as there did not exist a genuine dispute between the parties which could be referred to the High Powered Committee.

The appellants filed Company Petition under Section 111 (4), (5) & (7) of the Companies Act before the Company Law Board, stating therein that they were Trustees of Canara Bank Mutual Fund, a Trust, constituted under the Indian Trusts, Acts, 1882. The main object of the Trust is to conduct business of mutual fund by permitting savings of small and individual investors through various schemes, inviting subscriptions from the prospective investors and channelizing the funds into the capital market for attractive returns. The National Thermal Power Corporation (respondent no. 1), is a Government of India Enterprise and respondent No. 2 a Banking Company which went into liquidation. On September 25, 1992, CBMF lodged with the corporation for registration of the bonds of FV Rs. 50.05 lacs in the name of Canara Bank, Trustee CBMF. The Corporation wanted the CBMF to produce no objection certificate from the Official Liquidator of the Bank of Karad for the purpose of registering the transfer of the bonds. On October 18, 1993 the CBMF was informed that as 'no objection certificate' had not been furnished, the original bond certificates were being returned for further necessary action by the CBMF

Issue Involved:

- Whether the official liquidator was not justified in not issuing the no-objection certificate.

- Whether the corporation was bound and liable in law to transfer the aforesaid bonds in the name of Canara Bank, Trustee of CBMF and pay the redemption proceeds in respect thereof since the transaction was not transgression of Section 531 of the Companies Act.

Decision

There does not exist a genuine dispute between the Government of India undertakings. In this case one of the public sector undertakings is shown to be acting not as an undertaking but as Trustee of a Trust. The Board was, therefore, justified in holding "that the real litigation in this case, therefore, is between Mutual Fund and NTPC" and not between the two undertakings. ONGC's judgment is not applicable in the facts and circumstances of the present case.

Ratio Decidendi:

The Trustees of the Trust constituted by the Canara Bank as Settler for the benefit of numerous units holders cannot be termed and styled as Government Company or Public Sector Undertaking.

SUMMARY OF THE ARGUMENTS

Arguments of the appellants:

The National Thermal Power Corporation be ordered and directed to transfer the bonds, in the name of Canara Bank: Trustee. NTPC be directed to rectify the Register of Bond Holders and delete the name of Bank of karad or any other holder appearing in such Register and instead insert the name of Canara Bank: Trustee Can bank Mutual Fund. To directed the NTPC to pay to Canara Bank: Trustee Can bank Mutual Fund the redemption amount in respect of the said bonds along with other interest at 24% from the date of maturity till the payment.

Arguments of the Respondent

That the Company ought not to have returned to the bond certificates which were lodged for registration. The company was indulging in dilatory tactics and was unnecessarily delaying in entering the name of Canara Bank: Trustee Can bank Mutual Fund in the register of bond holders and paying the redemption amount, without any justifiable cause or reason.

Observations

What the Court has directed in ONGC's case is that frivolous litigation between Government Departments and Public Sector Undertakings of the Union of India should not be dragged in the courts and be amicably resolved by the Committee. The judgment is intended to prevent avoidable litigation between the Government Departments and the Undertakings of the Union of India. In the present litigation there does not appear to be a genuine dispute between the Government of India undertakings.

In this case one of the public sector undertaking is shown to be acting not as an undertaking but as Trustee of a Trust. The Board was, therefore, justified in holding "that the real litigation in this case, therefore, is between Mutual Fund and NTPC" and not between the two undertakings. The meaning of word "dispute" is, 'a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other'.

(page 103, para 10-11, R.P. Sethi, J.)

Andhra Pradesh Power Generation Corporation Ltd. v. Assistant Commissioner of Income-tax and Anr.

AND

Commissioner of Income-Tax v. Nizam Sugars Ltd.

2006) 202 CTR(AP) 62, [2006] 280 ITR 388(AP)

Decided On**:** 03.11.2005

B. Sudershan Reddy and S. Ananda Reddy, JJ.

Brief Facts:

The dispute between the petitioner, a State Government undertaking and the Income-tax Department relates to the applicability of the provisions of Section 195 of the Income-tax Act, 1961. The first respondent has determined the tax payable by the petitioner by grossing up all the amounts under Section 195A of the Income-tax Act as against which the petitioner preferred appeals before the Commissioner of Income-tax (Appeals)

The Commissioner of Income-tax (Appeals)—passed a common order partly allowing the appeals holding that the petitioner was under obligation to deduct tax with respect to payments made to Sumitomo Corporation.

The Income-tax Appellate Tribunal— held that the matter has to be referred to the Committee of Disputes and accordingly dismissed the stay petitions in limine with the further Observations that the appeals preferred by the petitioner cannot be admitted.

Issue Involved:

Whether the Appellate tribunal is justified in holding that prior clearance from the Committee of Disputes as mandatory requirement for entertaining the appeal at the instance of the Income-tax Department against the undertaking owned by the Government of Andhra Pradesh.

Decision

The principle of clearance from the Committee of Disputes enunciated by the Supreme Court in Oil and Natural Gas Commission cases is not applicable to the disputes arising between the Income-tax Department (Union of India) and undertakings owned by the

State governments. The Appellate Tribunal is not justified in holding that prior clearance from the Committee of Disputes as mandatory requirement for entertaining the appeal at the instance of the Income-tax Department against the undertaking owned by the Government of Andhra Pradesh. The impugned orders are accordingly set aside and the appeals are accordingly allowed.

Ratio Decidendi:

The Tribunal misdirected itself in applying the Decisions of the Supreme Court in Oil and Natural Gas Commission cases.

The orders of the Supreme Court referred to Oil and Natural Gas Commission cases were in the matter of setting up and functioning of the "High-Powered Committee" for resolving disputes between the Union of India on the one hand and its public sector undertakings on the other, by recourse to the "High-Powered Committee".

SUMMARY OF THE ARGUMENTS: N.A

Observations

Disputes between the Centre and the State are required to be resolved in accordance with the provisions of the Constitution, which provides the mechanism as well as the forum for resolution of all such disputes. There is no forum, as such, created or constituted by the Central Government to resolve disputes between State Government public sector undertakings on the one hand and Departments of the Central Government on the other. Nor is there any mechanism or forum created and constituted for resolution of disputes between State Government public sector undertakings and Central Government public sector undertakings. (B. Sudershan Reddy, J. para.12)

The court also observed thus by referring to S.R. Bommai:[21]

It is not possible—nor is it necessary—for our present purposes to make any detailed analysis as regards the nature of the Indian Federation with reference to its historical background, the distribution of legislative powers, financial and administrative relations, etc. It is enough to note that notwithstanding the fact that there are many provisions in the Constitution whereunder the Centre has been given powers to override the States, "our Constitution is a federal Constitution. It means that the States are sovereign in the field which is left to them.... They are neither satellites nor agents of the Centre.

Chief Conservator of Forests, Govt. of A. P. v. The Collector and Ors.

AIR 2003 SC 1805, 2003 (4) ALD 27 (SC), 2003 (2) JCR 175 (SC), JT 2003 (5) SC 210, (2003) 2 MLJ 57 (SC), 2003 (2) SCALE 429, (2003) 3 SCC 472, [2003] SCR 180

Decided On: 18.02.2003

S.S.M. Quadri and Ashok Bhan, JJ.

Brief Facts:

In view of the dispute between the two departments of the Government with regard to the title to the lands in question, the Government of Andhra Pradesh Issued orders on August 17, 1979 directing the Commissioner of Survey, Settlement and Land Record to make an enquiry under Section 166-B of the Land Revenue Act and to pass a speaking order after hearing the parties concerned. Pursuant to the said order of the Government, the Commissioner conducted an enquiry, heard both the parties and opined that the order of the Collector, passed under Section 87 of the Land Revenue Act, was correct and did not call for any interference therewith. That order was passed by the Commissioner on December 5, 1981. The Government apparently accepted that order of the Commissioner as no further steps were taken by it to correct or set aside that order.

The trial court**,** after conducting trial and on consideration of the evidence on record, decreed the suit with costs, insofar as the reliefs of declaration of title and rendition of accounts but declined the relief of award of compensation/damages.

The Appeal was dismissed by a Division Bench of the High Court.

Issue Involved:

How the Central Govt. or Govt. of a State may sue or be sued in its own name.

Decision

The Supreme Court, in the context of litigation between the Forest Department and the Revenue Department of the Government of Andhra Pradesh, observed that it was not contemplated by the framers of the Constitution that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law.

Ratio Decidendi:

A plain reading of the statutory order passed by the Commissioner of Survey, Settlement and Land Record under Section 166-B of the Land Revenue Act on December 5, 1981 places the matter beyond doubt that the suit lands were patta lands of the Pattedars.

SUMMARY OF THE ARGUMENTS

The **respondent** raised a preliminary objection as to the maintainability of the writ petition filed by the Chief Conservator of Forest as well as the appeal arising therefrom. It was also contended that no individual officer of the Government under the scheme of the Constitution or the Code of Civil Procedure can file a suit or initiate any proceeding in the name of the post he is holding, which is not a juristic person.

On the other hand **the appellants**, has argued that before filing the appeal, the Chief Conservator of Forest had obtained orders and, therefore, the writ petition and the appeal should be deemed to be filed by the Government of Andhra Pradesh; not naming the Government of Andhra Pradesh in the writ petition as the petitioner or in the appeal as the appellant is only a procedural matter and, therefore, it is not fatal to the maintainability of the writ petition and the appeal.

Observations

"Such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various Departments of the Government are its limbs; therefore, they must act in co-ordination and not in confrontation." The Supreme Court having noticed that in cases of dispute between public sector undertakings and the Union of India, the court in Oil and Natural Gas Commission cases (supra 1 to 3) directed the Central Government to set up a Committee consisting of representatives to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation and further having found that no such similar committee or mechanism was available to resolve the controversy arising between various departments of the State or the State and any of its undertakings observed (page 482) : "... it would be appropriate for the State governments to set up a Committee consisting of the Chief Secretary of the State, the Secretaries of the concerned Departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance."

Syed Shah Mohammed Quardi, J.

Samatha v. State of A.P. and Ors.

AIR 1997 SC 3297, JT 1997 (6) SC 449, 1997 (4) SCALE 746, (1997) 8 SCC 191, [1997] Supp 2 SCR 305

Decided On: 11.07.1997

K. Ramaswamy, S.Saghir Ahmed and G.B. Pattanaik, JJ.

Brief Facts:

In this case the High Court of Hyderabad has held that the Andhra Pradesh Scheduled Area Land Transfer Regulation as amended by Regulation 2 of 1970 and the Mining Act do not prohibit grant of mining leases of Government land in the scheduled area to the non-tribals. The Forest Conservation Act, 1980 does not apply to the renewals. The Andhra Pradesh Forest Act, 1967 also does not apply to the renewal of the leases. It, accordingly, dismissed the writ petitions filed by the appellant challenging the power of the Government to transfer the Government land situated in the tribal area to the non-tribals for mining purpose. The Division Bench, earlier had taken the view and held that mining leases are illegal. The word' 'person' used in Section 3 of the Regulation includes Government. Any lease to the non-tribals even of a Government land situated in scheduled area is in violation of Section 3 and so is void. Equally, it held that a mining lease in a forest area for non-forest purpose or renewal thereof, without prior approval of the Central Government, is in violation of Section 2 of the FC Act. Accordingly, the Division Bench directed the Government to prohibit mining operations in scheduled area except that the mines stacked on the surface be permitted to be removed after obtaining proper permits.

Issue Involved:

- Whether lease constituted transfer - Section 105 defines 'lease' as transfer of right to enjoy immovable property for certain period for consideration of price paid or promised to transferor on such terms and conditions - lease creates right or interest in enjoyment to remain in possession for duration of lease unless it is determined in accordance with contract or statute.
- Whether grant of mining lease in Scheduled Areas is outside purview of Regulation - word 'person' would include State Government and transfer of land in Scheduled Area for mining purposes in favour of non-tribals stands prohibited - non-tribals have transferred their lease hold interest in favour of respondent companies.

- Whether leases are in violation of Forest Conservation Act or Environment Protection Act - object of Forest Conservation Act is to prevent any further deforestation which causes ecological imbalance and leads to environment degradation - it is necessary for State Government to obtain prior permission of Central Government - before granting leases State Government obliged to obtain concurrence of Central Government.

Decision

Section 11(5) of the MMRD Act being prospective in nature will have no application to the existing mining leases and, therefore, the leases of the respondents' can't be annulled on that score. Thus the appeals are disposed of with the aforesaid Observations and directions.

Ratio Decidendi:

The word 'person' used in Section 3(1)(a) of the Andhra Pradesh Scheduled Area Land Transfer Regulation as amended in 1970 has to be construed to convey and same meaning throughout the Section and the said expression does not include the State Government.

Neither the legislative history nor the object with which special power has been conferred on the Governor under Fifth Schedule to the Constitution make it necessary to construe the word 'person' in the first part of Section 3(1)(a) differently from the rest part of the Section so as to include State Government within the said expression.

Arguments of the Appellants

The Conservation Act has been enacted for conservation of forest and for matters connected therewith or ancillary or incidental thereto. Deforestation having caused ecological imbalance and having lead to environmental deterioration, with a view to checking further deforestation, the President promulgated the Forest (Conservation) Ordinance, 1980 on October 25, 1980. The said Ordinance had made the prior approval of the Central government necessary for deforestation of reserved forests or for use of forest land for non-forest purposes.

Respondents

The respondent contended that the proposition that the expression 'forest land' in the Conservation Act should be given wider meaning and that mining activities over the

forest land cannot continue unless prior approval of the Central Government has been obtained in accordance with Section 2 of the Conservation Act. They contended that the mining activities of the respondents are not over any forest land and the appellants have not produced any material from which this Court can come to the conclusion that it forms a part of the forest even going by the extended meaning of the term 'forest'. As has been stated earlier while narrating the pleadings of the parties, the private respondents have all along asserted that the mining activities in question and then-leasehold area over which mining activities are continuing do not form a part of the forest.

Observations

"Though under Section 2 of the Forest conservation Act use of any forest land for any non-forest purpose is prohibited without the prior consent of the Central Government and as such mining activities being a non-forest purpose would attract the mischief of said Section 2 of the conservation Act, but in the absence of any materials to conclusively come to the conclusion that the land over which the respondents are carrying on the mining activities form a part of the forest land, it would not be proper for this Court to Issue any direction prohibiting the mining activities. At the same time it would be proper to direct the State of Andhra Pradesh through its Forest Department to examine whether the mining activities are being carried on over the forest land and if it comes to the conclusion that the lands do form a part of the forest land then immediate steps should be taken prohibiting continuance of the mining activities until the Central Government in exercise of power under Section 2 agrees to the same, and we accordingly so direct.'

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