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Assaults on Part XIII of the Constitution: Justice or Injustice?

by
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ABSTRACT

India has the federal structure to suit its soil, however, at time it resulted in intra -state and inter-state trade barriers between and amongst the State. In order to allow the freedom of trade and commerce to operate throughout India, exhaustive provisions were made in Part XIII of the Constitution of India. In 1962, in the Automobile case *the regulatory and compensatory measures, being not a restriction on the freedom, was given a green signal as not attracting article 301. This concept, operating for nearly five decades in India, was unsettled in 2016 in the* Jindal case *and a new concept, not provided specifically in the Constitution, of exemption/incentive/set off was brought in its place. In the* Jindal case, *a nine judges Bench, with six judges beating their drums in their own way have been dissected in this paper. A humble attempt is made detailing out their successes and failures in administering justice to the 'most badly drafted Part'. The paper provides suggestions to reduce more assaults on Part XIII and finally it closes with the net result of the long deliberations.*

Keywords : Compensatory Tax, Entry Tax, Exemption/incentive/set off, Judgment in an Academic style.

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I. INTRODUCTION

The discussion on Part XIII and its predecessor, section 297, goes as far back as the Butler Commission (1929) down to the Constituent Assembly, with one voice against the intolerable trade barriers or what Evalt, J. calls 'barbarism of borderism', which required to be regulated otherwise it would be a threat to the future of federalism. Part XIII saw its first encounter when the Draftsmen with good intention put the scattered provisions under one umbrella. But unfortunately, the result was that it become not only clumsy but also with exception upon exception bounded with 'subject to other provisions' and the repeated 'non-obstante' clauses, giving it the title of 'the most badly drafted Part of the Constitution'.

Just after one decade of the commencement of the Constitution of India, the judiciary started half-heartedly its dissection with no unanimous but a diffused approach. The story was further aggravated in 2016 when the nine judges Bench pronounced seven judgments, consisting of majority, minority, concurring and separate opinions, wherein the matter became further more complex and confused. Have they done justice to the provisions of Part XIII? Do the instant judgments not leave it to the lawyer and parties to do research to find out what has been finally the outcome? Is not the judiciary shirking its constitutional responsibility to provide a clear pointed binding law?

The eight judges specially and the one dissenting also joined impliedly, the other judges unsettling the settled law which operated for more than fifty years. In this

regard, an examination becomes necessary to find out whether the grounds so taken were justified. Should the Supreme Court, which has been credited with 'standing tall in the world court, withdraw itself merely because of difficulty', 'not judicial manageable dimension' or 'artificially extended meaning' or 'not specially provided in the Constitution'. The Supreme Court while interpreting Part XIII, has been repeadly crying for maintaining economic balance and a viable balance in the federal structure. Will all the above negative and positive efforts provide a viable solution or further complicate the constricted freedom of article 301, is also a subject of present study.

The author critically examines the majority and also the six other judgments of the nine Judges Bench to find out whether these judgments succeeded or failed in administering justice to the provisions of Part XIII. A new style of writing judgment by the four judges also attract the attention. These are some of the issues examined in this paper. And finally the paper closes with a bird's eyeview of the net out-put of 385 pages of the *Jindal case*: Justice or Injustice to the Freedom.

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II. THE MAIN ISSUES

Several States, including 14 States who were parties to the present proceedings, enacted laws providing for levy of a tax on the entry of goods into local areas as empowered in List II, Entry 52 of the Seventh Schedule to the Constitution. Such a tax was challenged mainly on the grounds which included that it was violative of the freedom of trade commerce and intercourse guaranteed under article 301; the levy was discriminatory attracting the provisions of article 304(a); and finally, such tax, being a restriction on the freedom, the State legislations required previous sanction of the President of India which was not done and as such there was also a violation of the proviso to article 304 (b).

In the *Jaiprakash Associates*, the Constitution Bench had to give an authoritative pronouncement on ten questions formulated by the two-judge Bench in this regard. These questions broadly consisted of: first, whether the levy attracted article 304(a) and also 304(b) as well; second, in case a tax is compensatory then what yardsticks has to be adopted in such matter; third, whether the tax so collected would have to be appropriated in accordance with law and for the purpose provided in the Constitution; fourth, whether entry tax may be imposed when the goods come to rest in the local area; fifth, whether the law laid in case of *The Automobile case* apply to entry tax and, whether non-discriminatory tax infringes article 301; sixth, whether such a tax also attract article 304 (b); and lastly, should the compensatory levy demonstrate the value of quantifiable benefit. However the nine judges Bench in the present case, 'after a day-long exploratory exercise', reframed the questions and put them under four heads: one, can a non-discriminatory tax attract article 301; two, whether a compensatory tax falls foul of article 301; three, what determining tests are there to find out whether a tax is compensatory; and the last, is the entry tax violative of article 301 and whether it could be tested under 304(a) and (b) as well.

III. THE LONG DRAWN ZIG-ZAG JOURNEY

The way in which Part XIII has been drafted, it was subject to judicial dissection immediately after a decade of the commencement of the Constitution wherein new interpretations were given to its provisions[1]; however later on doubt started raising its head in this regard[2]. The settled law of 1962, during 1995 and 1996 saw some extension: 'some connection' and also 'even indirect and incidental connection'[3] to

examine the test of

a compensatory tax. These extensions were brought before a two-judges Bench[4] of the Supreme Court which realised that the parameters of this judicial concept are blurred; and therefore, the Court was of the view that the matter be referred to a Constitutional Bench to lay down authoritative principles in connection with the relationship between the freedom and compensatory tax. The Constitution Bench overruled such extensions and laid down a new test of 'proportionality to the quantifiable data'[5]. Thereafter the matter went to a Division Bench which directed the high courts to re-examine the challenge in the light of the newly evolved principle[6]. The two-judges Bench, considering the importance of the issues involved in the interpretation of Part XIII, framed ten questions for the consideration of the Constitutional Bench[7]. The matter was then taken up by a five-judges Bench which decided that a suitable larger Bench may be constituted to reconsider the *Atiabari* and *Automobile cases*[8].

Finally the entire matter came before the present nine-judges Bench for its consideration[9]. In the nine-judge Bench, the case was decided by Thakur, CJI along with Sikri and Khanwilkar, JJ. However the other four judges consisting of *Bobde, Shiv Kirti Singh, Ramana and Banumathi*[10] JJ., also at most of the places concurred with the majority opinion. However Chandrachud and Ashok Bhushan JJ., were in dissent with the majority though at some places, they alone or jointly also concurred with the majority. Thus in all, there were seven judgments[11] delivered by the nine-judge Bench. The interesting aspects of this case included for example, there were a large number of petitions which were clubbed together; a large battalion of galaxy of very senior and junior advocates debated the matter for 21 days; a jungle of cases were referred to in the *Jindal case* which included the large number of the Supreme Court's own decisions; the decision of the Privy Council, Federd Court; the decisions of the High Courts of Allahabad, Hyderabad, Madras and Punjab and Haryana. The foreign precedents, including that of the courts of Britain, America, and Australia were also taken into cognizance.

IV. THE MAJORITY AND MINORITY RESPONSES: A BIRD'S EYE VIEW

Coming first to the matter where there was a larger agreement of judges, it was in the second question: can a tax which is compensatory in nature also fall foul of article 301? All the six judges concurring with the Chief Justice, turned down this concept as constitutionally not valid on different grounds. The second large agreement was on proviso to article 304 which requires previous assent of the president to the law imposing restriction on the freedom. Thakur, CJI has taken the stand that the proviso will be attracted only in case of restrictive law and not in a tax legislation which is only subject to the conditions laid down in article 304(a)[12]. Last but not the least, a grant of tax exemption and incentive to local goods being not discriminatory was outside the operation of article 304(a) and article 301. The final outcome of the long exercise was that the Chief Justice directed the registry to place the matter before the regular benches for its expeditions disposal.

Coming to major points of dissent, in case if the tax legislation restricted the free flow of trade commerce and intercourse, then according to minority such legislation had to satisfy the conditions of restriction to be reasonable and in the public interest and further, it must have received previous assent of the President. Regarding a non-discriminatory tax, if it takes the form of restriction, it will attract the provisions of article 301. And further, levy of tax on imported goods without taxing similar States goods was permissible provided it did not violate the provisions of article 304(a). Regarding tax exemption/incentive/set off, the minority has taken the stand that if it comes under the cover of unspecified exemption, it will attract article 301.

It may be pointed out by way of a general comment that the judgment writing repeatedly in a thesis like form has tremendously loaded the judgment and the credit goes to four learned justices: Ramana's judgment, having nine parts which run into 40 pages; Banumath, J., divided her judgment into ten parts having 72 pages; Justice Chandrachud's judgment is more interesting; having 13 parts and each part is further sub-divided into many rubrics, making the judgment highly loaded by 102 pages. In the race of making the judgment voluminous, Justice Ashok Bhusan did not lag behind with his 12 parts judgment running into 94 pages. The question remains: should the judges involve themselves in such an academic exercises or leave it to the researches? At this stage the author is reminded of what the great lawyer of India, M.C. Setalvad, has said that such exercise will deprive 'numerous citizens whose causes have been awaiting disposal', and

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therefore, he suggested that for such an exercise the forum could be 'legal Journals or Seminars'[13].

V. OVERVIEW OF INDIVIDUAL JUDGMENTS

In the following pages a general and not a *microfine*[14] assessment is undertaken of the majority, minority and concurring opinions so as to find out where the judges have made important contributions, if any, and where have they faulted.

Thakur, CJI in his judgment meted out the main attack against the concept of compensatory tax by laying down that it was 'not recognized by the Constitution'; 'it obliterates the distinction between a tax and a fee'; and further, its application ran into 'difficulties to an extent that the theory at some stage breaks down'[15]. Any grant of tax exemption or incentive, according to the learned Chief Justice, will not attract the provision of article 304 (a)[16]. As regards the constitutional interpretation, a narrow interpretation was not supported as it 'may have potential or tendency to subvert the delicate balance' which the constitutional framers intended, and therefore, the learned Chief Justice of India suggested for a construction which was most beneficial for a harmonious relationship between different limbs of the State[17]. In this wave length the learned Chief Justice interpreted the word 'and' appearing between article 304(a) and 304(b) to mean 'or', or depending upon the context. Taking the word 'and' to mean 'or', the Chief Justice kept a tax outside the purview of the expression 'restriction' appearing under article 304(b) and further whether a tax is discriminatory or not will be tested only under article 304(a). The final answer given was that no provisions including the proviso to article 304(b) will apply to any tax law[18].

On the other hand, Thakur CJI's judgment has brought more confusion in the badly drafted Part. The learned Chief Justice has taken the stand that no tax legislation attracts the provisions of Part XIII, except, the 'hostile discrimination'[19] under article 304 (a). Article 304 (a) nowhere makes any distinction between simple and hostile

discrimination, as such it makes the application of this article restricted. The Chief Justice further goes even to the extent saying that no 'excessive or heavy tax burden or what he calls

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forced extraction' will attract article 301, though it may be challenged under Part III of the Constitution[20]. Why such a *lakshman rekha* in case of article 301? How can there be a double standard of examination of 'restriction' under both the Parts? Furthermore the word 'restriction' appearing in article 302 can be treated unlike article 304 (b)? The allergic approach is further reflected when the learned Chief Justice keeps away from the inhibitions of article 301, any non-discriminatory tax[21]. If such a tax infact hinders the free flow of trade, it will definitely require the conditions to be fulfilled under article 304 (b), including the President's sanctions. On this point, it is submitted, the minority opinion stands in conformity with the scheme of Part XIII. Regarding the high tariff wall, the Chief Justice did not examine the issue whether it attracted article 301 or not. It is submitted that his lame excuse was that as Sinha CJ in the *automobile case* did not elaborate this point as to what will constitute a high tariff wall, and therefore, he did not want to go further in the matter. Such a closing of doors for judicial review[22] in his detailed seventy-two pages judgment is a matter of surprise.

The Learned Chief Justice in order to defend his stand took the side that 'reasonableness' and 'public interest' are implicit in a tax legislation[23], as such the Constituent Assembly would never have thought to bring them under article 301. If a tax law is restrictive, the judiciary on the above ground cannot deny any scope of judicial review. Further a mistaken interpretation, it is submitted, is given while differentiating section 297 and article 301 by saying the essence of freedom 'remained the same'[24]. But the basic materials used for the Draft clauses and detailed Debates in the Constituent Assembly reflect that they do not belong to same species. The Chief Justice, along with other judges, has unsettled the settled law of the concept of compensatory tax for the simple reasons that it would bring 'more serious difficulties' for the judiciary; 'that beset the application'[25]; 'no comprehensive parameters can be laid down'[26]; 'created doctrine inconsistencies and uncertainly'[27]; or 'carving out a new exception to article 301'[28]. All these grounds raised the doubt whether its application alone or the concept of compensatory tax as such was declared as unconstitutional by the majority of the judges. In such a situation, though the *Automobile* may be

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supposed to be buried by the *Jindal case*, but its revival in future can not be denied.

The learned Chief Justice has brought in one more exception to article 301 and that is of any 'tax incentive or exemption[29]. The justification given is that it is not 'inherently discriminatory'[30] rather it will allow a faster industrial and economic growth to equalise the position of the developing and under-developed States. Is not it surprising that when the learned Chief Justice along with other judges overturned the concept of compensatory tax 'as not provided in Part XIII', then how can he exempt the application of article 301 in the above case which do not find any place in Part XIII? Moreover such incentive will provoke the States to create tariff walls. The Chief Justice to further support his stand, has taken another via media of a distinction

between *'differentiation'* v. *'discrimination'*. In differentiation, it would treat the subject a separate class by itself as such whatever terminology may be used if it mainly and substantiality makes a discrimination then it will attract article 304(a). So finally, the majority in its directional justice has, it is humbly submitted, brought in chaos, opened a pandora box, allowing a further dissection in future. Further, the learned Chief Justice in his 72 pages judgment has left many questions open/unanswered[31].

Coming to the concurring opinions of Bobde[32] and Shiva Kirti Singh, JJ.[33], their judgments run into one or two pages, agreeing with the Chief Justice's judgment, it is submitted, they hardly make any specific contribution. The question arises: should these judges, instead of further padding the judgment, not joined with the two other judges with the Chief Justice? This could have provided a clear majority judgment instead of what we may call a 'hung majority judgment' of the three judges.

Next comes, Ramana, J. who joins hands with the Chief Justice on the points which include, for example, treating the concept of compensatory tax not a part of the Constitution[34]; no Presidential sanction was necessary for imposition of tax on goods imported from outside the State[35]; there was no prohibition on levying discriminatory tax on goods produced within the State[36]; and, the tax exemption/set off did not attract the provision of article 301, however he rightly put a rider in this regard that it must be for a

limited period[37]. Further, the learned judge, unlike other judges, takes the stand, rightly so, that section 297 of the Government of India Act, 1935 and article 301 do not travel on the same wave length[38].

Coming to the critical review of his judgment, the learned judge initially proposes 'a brief' and 'a judgment with no place for wondering complexities' but the reality, it is submitted, is otherwise. The judgment runs into forty pages creating more complexities which included for example, the change over from the traditional to thesis like judgment writing, having VIII chapters and only at the end comes the main issue involved in the present case. Justice Ramana has concurred with the judgment of the Chief Justice on 'most of the issues' which included rejection of the concept of compensatory tax[39]; no tax legislation requires the presidents assent under the proviso to article 304 (b)[40]; tax cannot be treated as restriction under article 304(b); no prohibition under Part XIII on levy of discriminatory tax on goods produced within the State as power of levy of tax was an attribute of sovereignty[41] and last but not the least, the learned judge takes a surprising stand while interpreting the disputed legislation and Part XIII that the Preamble to the Constitution and the Directive Principles of State Policy must play an important role[42].

Furthermore Justice Ramana says that the provision of Part XIII have been 'bothering the nation for about fifty years' but the fact is that it did not lead to any national crisis. Further the learned judge's judgment goes off track in discussing the general justice delivery system[43]; the Preamble and Directive Principle[44]; right to property[45]; reference to the form of Government and Rule of law[46]; President Rule and the *Bommai case*[47]; poverty, unemployment; adverse climate, national calamities[48]; data of sharing of economy by the States and country's population[49]. Was all this necessary to decide the main issue involved in the case? The learned judge, it seems, was allergic to take help of the Debates of the Constituent Assembly, but in fact the learned judge has taken its help at several places in interpreting

Part XIII[50]. Furthermore, the learned judge proclaims repeatedly that he is in agreement with the opinion of the Chief Justice 'on most of the issues' and finally also in his 'Conclusions',[51] as such he comes to the same wave length as has been taken by the Chief Justice while answering question 1 to 4. In view of this, the learned judge, it is submitted, could have recorded only his dissenting stand, if any, in the matter rather than a thesis like judgment. Even the learned judge supported Lord Denning, 'a short and unobscure' and 'never at much length' a judgment[52], does such advocacy find a place in his one's judgment?

Coming to the next judgment of Banumathi, J., it deserves appreciation on three counts: one, she alone examined the application of the doctrine of 'unjust enrichment', and applied it conditionally. Two, the learned judge deviated from the majority by conditionally accepting the concept of compensatory tax, and therefore, the stand taken in the *Bhagatram* and *Bihar Chamber of Commerce* was treated by the learned judge as correct[53]. And three, she is the one who has taken help of the doctrine of original package wherein, according to Banumathi, J., article 304 (a) will not apply[54]. However, the learned judge does not go on further to narrate the tactics of the traders who in order to get the benefit of the above doctrine involved themselves in 'border hopping' cases also.

The concurring view of Banumathi, J., also attracts some criticisms for example, the learned judge changes the style of writing judgment from the traditional to thesis like style, running into 67 pages with 10 chapters having materials and also literature which was not of much relevance to the main issue on hand, as such it could have been avoided or abridged. Apart from the four questions for investigation, Banumathi, J., also raises some incidental questions. It is submitted that when the learned judge had endorsed the view of the Chief Justice, was it necessary to go in detailed *Ramayan* of the case? In order to protect the entry tax, the learned judge takes the stand that such a tax is imposed at the termination of movement[55]; and therefore, article 301 will not apply. The impact of such a tax is at the point of entry, and as such the application of the provisions of Part XIII cannot be denied. Banumathi, J. brought an exorbitant tax within the purview of article 14 and 19(1)(g)[56] but unfortunately she remains silent on the application of article 301. Such a tax being a restriction on the freedom of article 19(1)(g), how can there be two parameters for 'restriction' under the two articles?

The learned judge has also taken a stand that a tax legislation fulfills the requirement of 'reasonableness' and 'public interest'[57]. But the fact is that all the laws passed in a democratic manner, may still attract the constitutional limitation. Banumathi, J. takes a further surprising stand that if a tax law is brought under article 304(b), the question she raises is where is the legislative subject in List II[58]? The Supreme Court has time and again taken the stand[59] that more entries in the concerned or different lists may be clubbed together to locate the legislative subject rather than reading only one entry in isolation. Another surprising stand taken by the learned Judge is that in case a tax law is brought under article 301 or the President's

assent is required in case of such a law, the federal form of Constitution would 'erode the pillars of federalism'[60] or imbalance the 'Centre-State relations and cooperative federalism'[61]. In one of the judgments in the present case, it has been recorded that the President 'never vetoed' the State legislation coming under article 304 (b)[62]. Moreover, the Indian federal structure, instead of being eroded, it is submitted, has successfully withstood all the crises before it during nearly seven decades.

Coming to the second last judgment of Chandrachud J., the dissenting at places concurring opinion, the appreciable points include: not all taxes are subject to Part XIII, but those which are discriminatory under article 304 (a) and which effectively and directly impede the free flow of trade, commerce and intercourse will attract article 301[63]. Second the discriminatory fiscal imposition in article 304 (a), according to the learned judge, is an illustration and 'not exhaustive of other fiscal impediments' on article 301[64]. The word 'restriction' in the marginal note of article 304 is a broad indicator of pointer to the meaning intended thereto[65]. The learned judge supported this point of view by reading article 302. If the expression 'restriction' for the purpose of article 302 does not exclude a legislative measure by way of fiscal imposition, and therefore, he pointed out correctly, it cannot be evidently excluded from the ambit of article 304 (b). Furthermore, laws in Part XIII must mean all laws including taxing legislations. As such, the learned judge concluded correctly, that taxes under certain circumstance may amount to

restriction, attracting the provisions of article 304 (b). The discrimination inhibited under article 304 (a), according to the learned judge, will cover not only discrimination in a positive manner against the imported goods but also the reverse discrimination against domestic goods[66]. In order to test whether it offends article 304(b) or not, the learned judges provides the test of 'demonstrable material' to establish it. In order to avoid confusion created by exception upon exception, the judge has tried to solve it by treating rightly 'the non-obstante clause' being 'incongruous' 'unnecessary'[67]. Chandrachud, J., while comparing article 19(1)(g) with article 301, has taken a stand that, 'both reflect the shades of *same* universe freedom'[68]. But the fact is that both have different setting: one is titled as 'fundamental rights'; and the other, is 'trade commerce and intercourse within the territory of India'. Further, in the former case, it is not only a part of basic structure of the Constitution but also these rights are enforceable as a fundamental right directly through the Supreme Court. No such higher pedestal exists in case of Part XIII.

Finally comes the judgment of Justice Ashok Bhushan, dissenting with majority at most of the places, also concurring at some place and even dissenting with the minority opinion. The learned judge has taken some important stands which include, for example, even tax on intra-state trade and commerce would attract article 301[69]; defending tax law, restricting the flow of freedom, if it is not brought under article 304 (b) the State will not be empowered to impose restriction on intra-State trade[70]; in order to exempt exemption/set off, there are two essential conditions: one, it should be for a limited extent; and two, it must be based on intelligible differentia[71]. Coming to the other side of the judgment, the learned judge has once again repeated the same story of thesis like judgment running into 94 pages divided into 10 Parts with further sub-divided Parts. Apart from the four questions which the learned judge was supposed to answer, he has further raised nine more incidental questions which he has answered in just one page[72]. In this jungle of opinions, it is submitted, one will find hardly any important individual contribution by the learned judge. And therefore, the

judgment of Justice Ashok Bhushan, it is felt instead of repeating what has been already stated in the other judgment, needed no further dissection.

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VI. THE NET RESULT

The *Jindal case* has unsettled a nearly seven decades settled law of compensatory tax on weak grounds raising a hope of its survival in future. The tax law has been treated a class by itself operating in a self-contained code under the sovereign umbrella, and therefore, it has been put on a higher pedestal. The concept of compensatory tax, being not provided in the Constitution, was thrown out to wind; whereas the tax exemption/incentive/set off, not provided in the Constitution, was impliedly brought within Part XIII. Seven out of nine judges have discarded the application of the President's sanction as required under the proviso to article 304 (b) as it will distort the Centre-State relations and also the 'pillars of federalism'.

The concurring and dissenting opinions, though have tried in their own way to see as to how to reduce the controversies and conflicts in the interpretation of Part XIII, but these judges, it is submitted, hardly realised that it has added fuel to the fire, bringing more confusion in the most badly drafted Part of the Constitution. Is it upholding the Constitution as provided in the Constitutional oath? As regard the thesis like academic judgments running into total 308 pages, the Chief Justice of India cannot and should not sit silently on the other side and allow everyone on the Bench to beat his drum audible to the stake holders. It is time to adopt some mechanism to discourage such exercises. Further, the Chief Justice of India must ensure that in case of a large Bench, he must convene a judicial conference on the point to get a clear pointed judgment(s) instead of writing again and again what the other judges have written, a padding of judgment.

The net result of the *Jindal's* jungle is that a diffused directional justice was administered and it was left to the concerned regular Bench hearing the matter for an expeditions disposal, a further delay in the administration of justice, opening a pandora box for further litigations and more battles to be fought thus making the dream of a clear picture of Part XIII, a dream of distant future. However, the entry tax like other taxes will be subsumed under the GST, which now will make the question only academic. So what is the final verdict? The long battle has further pushed back Part XIII to more controversies and confusion, an injudicious exercise. In the environment of trust and distrust, will not *jindal* add fuel to the fire? Thus on the whole, instead of justice, injustice was done to that Part XIII of the Constitution of India.

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[1] *Atiabari Tea Co. Ltd.* v. *State of Assam*, AIR 1961 SC 232; *Automobile Transport (Rajasthan) Ltd.* v. *State of Rajasthan*, AIR 1962 SC 1406.

[2] *G.K. Krishnan* v. *State of T.N.*, (1975) 1 SCC 375 : AIR 1975 SC 583.

[3] *Bhagatram Rajeevkumar* v. *CST*, 1995 Supp (1) SCC 673; *State of Bihar* v. *Bihar Chamber of Commerce*, (1996) 9 SCC 136 : AIR 1996 SC 2344 respectively.

[4] *Jindal Strips Ltd.* v. *State of Haryana* (1), (2003) 8 SCC 60 : 2003 AIR SCW 5625.

[5] *Jindal Stainless Ltd.* v. *State of Haryana* (2), (2006) 7 SCC 241 : AIR 2006 SC 2550.

[6] *Jindal Stainless Ltd.* v. *State of Haryana* (3), (2006) 7 SCC 271 : 2006 AIR SCW 3846.

[7] *Jaiprakash Associates Ltd.* v. *State of M.P.*, (2009) 7 SCC 339 : 2009 AIR SCW 2314.

[8] *Jindal Stainless Ltd.* v. *State of Haryana* (4), (2010) 4 SCC 595 : 2010 AIR SCW 2916.

[9] *Jindal Stainless Ltd.* v. *State of Haryana* (5), (2017) 12 SCC 1 : AIR 2016 SC 5617. (Hereinafter referred to as "*Jindal*").

[10] Dissented with majority and Chandrachud, J., see *ibid* at 5781, 5820, 5824, 5836, 5842, etc.

[11] *See*, for example *Ibid* at 5953, 5653, 6045.

[12] *Ibid.* at 5706. On this point Bobde, Shiva Kirti Singh, Ramana and Banumathi, JJ. concurred with the opinion of the Chief Justice; whereas Chandrachud and Ashok Bhusan, JJ.; dissented on this point.

[13] *See*, M.C. Setalvad, *My Life: Law and Other Things*, 590, (Reprint) 2006. *See* also Lord Denning, *The Family Story*, 207, 1999.

[14] *Emphasis supplied.*

[15] *Ibid* at 5702-5703 which gets support of Ramana and Banumathi, JJ. and also concurred with Chandrachud and Ashok Bhusan, JJ.

[16] *Ibid.* at 5735. Also concurred with Ramana and Banumathi, JJ.

[17] *Ibid.* at 5669 which has the support of Ramana, Banumathi and even Ashok Bhusan, JJ.

[18] On this point the minority opinions have declared the law laid down in the *Atiabari* and *Automobile cases* as correct.

[19] *Ibid.* at 5735 (*emphasis supplied*). *see* also Ramana, J., *Ibid* at 5779.

[20] *Ibid.* at 5629.

[21] *Ibid.* 5728. Ramana, J., concurring and Banumathi, J. supporting. This view is also supported by H.M. Seervai, *Constitutional Law of India: A Critical Commentary*, (4th edn.) vol. 3, 2609, 1996. This view was even endorsed by D.D. Basu in 1967 but has now taken a contra stand, See *The Constitution of India*, (4th edn.), vol. 4, 485-490, 1967.

[22] *Ibid.* at 5723.

[23] *Ibid.* at 5707.

[24] *Ibid.* at 5708.

[25] *Ibid.* at 5702-5703.

[26] *Ibid.* at 5848.

[27] *Ibid.* at 5953.

[28] *Ibid.* at 6045.

[29] *Ibid.* at 5731, 5735.

[30] *Ibid.* at 5778, per Ramana, J., *see* also Banumathi, J., it makes "differentiation" and not discrimination *ibid.* at 5834.

[31] *See*, for example, *Ibid.* at 5724, 5725, 5731, 5735.

[32] The learned Judge dissents with majority and joins the minority of Ashok Bhushan on the point that a tax on imported goods, when no such goods are produced or manufactured within the State, would attract Art. 301. *See*, (2017) 12 SCC 1, para 140.

[33] *Ibid.* at 5824.

[34] *Ibid.* at 5780.

[35] *Ibid.* at 5775-5776.

[36] *Ibid.* at 5770.

[37] *Ibid.* at 5780.

[38] *Ibid.* at 5771, 5779 — *see*, contra, Banumathi, J. at 5781.

[39] *Ibid.* at 5780.

[40] *Ibid.* at 5775.

[41] *Ibid.* at 5769 and 5754 respectively.

[42] *Ibid.* at 5748-5749.

[43] *See*, particularly at *ibid.* at 5747 — the number of judgments delivered in last sixty years by the Constitution Bench, Bench consisting of more than nine Judges and by the nine-Judges Bench.

[44] *Ibid.* at 5748.

[45] *Ibid.* at 5748.

[46] *Ibid.* at 5752.

[47] *Ibid.*

[48] *Ibid.* at 5751.

[49] *Ibid.* at 5749.

[50] *See*, for example (2017) 12 SCC 1, *see* paras 500, 503, 506, 515, 529, 661.

[51] *Ibid.* at 5780.

[52] *Ibid.* at 5741.

[53] *Ibid.* at 5781.

[54] *Ibid.* at 5821.

[55] *Ibid.* at 5821.

[56] *Ibid.* at 5836.

[57] *Ibid.* at 5795.

[58] *Ibid.* at 5816.

[59] *See*, for example, *All-India Federation of Tax Practitioners* v. *Union of India*, (2007) 7 SCC 527 : AIR 2007 SC 2990 and *State of A.P.* v. *NTPC Ltd.*, (2002) 5 SCC 203 : AIR 2002 SC 1895. This view is also correctly supported in this judgment by Chandrachud, J., *Ibid* at 5942.

[60] *Ibid.* at 5818. It is surprising that the Judges in the present case are clear about the nature of the Constitution of India: "federal", "quasi-federal" or "cooperative federal".

[61] *Ibid.* at 5816.

[62] *See*, *Ibid.* at 6015-6016.

[63] *Ibid.* at 5915, as such the *Atiabari* and *Automobile cases* on this point have been given oxygen to revive again in future.

[64] *Ibid.* at 5917.

[65] *Ibid.* at 5917.

[66] *Ibid.* at 5942.

[67] *Ibid.* at 5915.

[68] (2017) 12 SCC 1, para 602 (*emphasis supplied*). *See* contra Ramana, J., at 5760, Banumathi, J., at 5791.

[69] *Ibid.* at 6002.

[70] *Ibid.* at 6002.

[71] *Ibid.* at 6026.

[72] *See*, *Ibid.* at 6048.