

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE UJJAL BHUYAN
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No. 151/2007

STATE OF UP & ORS

Petitioner(s)

VERSUS

M/S LALTA PRASAD VAISH

Respondent(s)

TRANSCRIPT OF HEARING

09-April-2024

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1 **PETITIONER'S COUNSEL:** Before, we begin for the day, yesterday I had mentioned that
2 on Friday, Your Lordship had asked me to speak to the Solicitor General and request him to
3 be present is that royalty matter, My Lords, where one matter was not de-tagged.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, that oil company matter
6 remained to be de-tagged, so...

7

8 **TUSHAR MEHTA:** It needs to be de-tagged.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I just told him talk to the learned Solicitor.

11

12 **TUSHAR MEHTA:** Yes, yes. It needs to be covered by...

13

14 **PETITIONER'S COUNSEL:** I'm grateful.

15

16 **R VENKATARAMANI:** Your Lordship, this Volume 2(f) is my another brief note
17 submissions. I wouldn't take more than 10 to 15 minutes. And before I do that, I thought there's
18 another Volume 4(d) which I did not refer to the other day. It's just a, Volume 4(d) is an excerpt
19 of a book called "The Meaning of Meaning", it's about linguistics. I have placed Chapter 6 for
20 an interesting reading. So that we understand sometimes about definitions how we have some
21 issues. I don't propose to read it a great length. There are a couple of pages let me just draw
22 Your Lordship's attention to that. Before I come to that, let me take Your Lordships to Volume
23 2(f). We did a little research on the colonial period understanding of intoxicating liquor and
24 that gives us some insights on how it was understood then. So, I'll quickly read a few
25 paragraphs of my written note. In the first part, I say that the recognition of use of alcohol
26 liquids for other than potable purposes has been a subject matter of discussion during the
27 colonial period. The literature available on this subject gives us insight as to the distinction
28 between classes of alcohol with reference to their uses. It's submitted that Entry 8 is based on
29 the said distinction. The literature placed along with this note shows that there's nothing in
30 support of the proposition that intoxicating liquor was understood to include all classes of
31 alcohol liquids. Matters of trade and commerce, supply and distribution etc., referred to in
32 Entry 33, or in relation to the products of an industry under the control of the Union. The
33 nature and the extent of trade and commerce etc., will differ from product to product. Clause
34 A in Entry 33 List III came in by Third Constitutional Amendment. Enacting such a field of
35 legislation in the Concurrent List can be understood from the need for flexible distribution of

1 legislative scope within Union under States. Entry 33 is, therefore, a classic example of Article
2 254 proposition. Once it is understood that neither Entry List II, whichever way it is construed
3 and keeping in mind Entries 26 and 27 of List II which are subject to provisions of Entry 33,
4 laws made by Parliament under the authority of the two branches, namely Entry 50 of List II
5 and Entry 33 will occupy the declared field. The use of the phrase, 'that is to say', occurring in
6 Entry 8 only refers to the range of activities concerning one class of alcohol, namely
7 intoxicating liquor and is not referable to other classes of liquor, trade, commerce, supply,
8 distribution, these are all activities. The approach adopted in *Calcutta Gas*, based on
9 resolving conflicts between entries in the same list, does not appeal to logic. The mere fact that
10 Entry 25, 'gas and gas works' is treated as a distinct entry does not mean that any part of
11 dealing with 'gas and gas works', cannot even conceptually fall under Entries 24, 26 and 27 of
12 List II. The emergence and use of gas [UNCLEAR] and industries relating to such use can be
13 the only reason for a special attention to be paid to gas and gas works. The logic applied in
14 *Calcutta Gas* cannot be extended to Entry 8 List II. Now, go to the literature in the subject,
15 My Lords, kindly turn to paragraph 3. It submits, in India the use of alcohol for industrial
16 purposes and regulation were both subsequent to use and regulation of alcohol for the purpose
17 of intoxication. To understand the regulation of liquor in India, it needs to be understood that
18 colonial laws of the 19th century were guided by twin objects of generating revenue on the one
19 hand and checking in temperance of people towards safeguarding their morality. The
20 reference is available at footnote number 2. The said purpose of the Abkari Act, for instance,
21 the Bombay Abkari Act can be evinced from the contents of the reports and administration of
22 the Abkari Department of the Bombay Presidency, Sindh and Aden. For instance, para 6 of the
23 report of 1880-81 notes progressive increase in Abkari revenue which are accompanied by
24 decrease in drunkenness. Notably the details of revenue collections notes four branches of
25 Abkari revenue that's foreign liquor, country liquor, intoxicating liquor and miscellaneous,
26 that committed that even though all category were considered consumable. Intoxicating liquor
27 is considered a separate class of liquor that was ordinarily and regularly consumed, which is
28 administered and monitored separately. In the report of the administration of Abkari
29 Department of the Bombay Presidency, Sindh and Aden published in 1894, the sources of the
30 revenue are listed at one. The principle source of Abkari revenue on this Presidency are (a)
31 manufacture and sale of country liquor, which term is for the present purpose to be understood
32 as exclusive of malt liquors brewed in India and the special descriptions of liquor is referred
33 to under Clause B below. The manufacture and sale of malt liquor and of certain special
34 descriptions of country liquors excised at rates leviable under the Indian Tariff Act on liquor,
35 import of foreign liquor, (c) the sale of foreign liquors, (d) the manufacture and sale of
36 intoxicating drugs other than opium or preparation of opium. The country liquor taxed and
37 consumed are two kinds, distilled spirit and toddy or the sap of palm tree, then next paragraph.

1 The liquor in question during the first century of colonial rule was only the liquor that's
2 ordinarily being consumed, it's also worth setting the alcohol proof prescribed was never as
3 high as 90% proof as is being discussed today. Even as late as 1919, the report on the
4 administration of the Excise Department (Abkari and opium) in the Bombay Presidency,
5 Sindh and Aden notes in paragraph 4 'there was no change in the prescribed sales trend of
6 country spirit sold namely, 25%, 30% so and so. The policy discouraging the consumption of
7 stronger spirit was further pursued by the restriction, where feasible, of additional shops'.
8 Then paragraph 7 'it was at the turn of the century that alcohol achieved a different dimension'.
9 Kindly turn to paragraph 8. With the increased use of alcohol emerged from the issue of liberal
10 taxation for industrial alcohol and the conundrum that's being faced in this Hon'ble Court as
11 to what constitutes industrial alcohol. This issue was considered by the Industrial Alcohol
12 Committee in the report of 1920, where it observed, "We have some difficulty in finding a
13 satisfactory definition of the term 'industrial alcohol' and in avoiding the purely subjective
14 definition of alcohol intended for industrial purposes. At first sight, this would appear to be
15 the only possible description as there is no intrinsic difference between alcohol intended for
16 potable and non-potable purposes. Possibly the best definition of alcohol, which is exempted
17 from the excise duty leviable on potable spirit on the ground that it is intended for non-potable
18 purpose. This will cover both pure alcohol and alcohol, which has been denatured, that is
19 rendered unfit more or less completely for human consumption. It will also cover the use of
20 alcohol in experiments and research are distinct from purely commercial uses, where the
21 object is to place the finished product on the market but will exclude the use of alcohol in
22 hospital and in the preparation of medicines and tinctures. Industrial alcohol as defined above,
23 is alone dealt with in this committee." The British Interdepartmental Committee on so and so
24 paragraph report that, "All alcohol for power or traction purposes should be described as
25 power alcohol. This is satisfactory insofar as it goes and we have made suggestions for the
26 definition and regulation of such power alcohol." At the same time they suggest the term
27 'industrial alcohol' is unsatisfactory on the ground that some sections of the community
28 believe it to be alcohol for the working man. Such apprehension is not likely to arise in India,
29 power alcohol is a subdivision of industrial alcohol, and we see no reason to abandon the
30 logical classification. The report also made certain recommendations for preparation,
31 transport and taxation of power alcohol, that is, industrial alcohol used for fuel or motor
32 vehicle. Then paragraph 5 of the report, the final report of it. "All local government should be
33 requested to revise the rules regarding other forms of industrial alcohol so as to clearly
34 discriminate from alcohol intended for potable purposes and to provide for grant of special
35 licenses for experiments in the production and use of alcohol, for the user of rectified spirits
36 or specially denatured spirits in industries and they should also bring their rules into
37 conformity in various minor matters, especially as regard to denaturation, the permissible

1 quantities of private possessions and the retail of ordinary denatured spirit." So, that gives us
2 a very important insight as to the pre-colonial understanding and how it has not faded away
3 with 'intoxicating liquor' being treated as an entry in item number Entry 8. There are only few
4 observations I want to make and constitutional [UNCLEAR] that my learned Solicitor will
5 essentially deal with that in Volume VII. It's also understood in the same way. And, for instance
6 Seervai talks about it in Volume II, intoxicating liquor as meaning liquor which is consumable
7 and Justice Sinha notes about it in his judgment. These are the aspects which Solicitor and our
8 learned friends will deal with. I thought it's an important insight about what happened, which
9 went into the understanding of intoxicating liquor. So, if Your Lordships, will also look at
10 Volume IV(d), that few pages there. The question of difficulty with definitions. It's a very
11 important insight as to how we have all the difficulties in definitions and in the opening page
12 there's a quote from Oscar Wilde's four-act play, Lady Windermere's Fan. It's very interesting.
13 So this is how it reads, "Do, as a concession to my poor wits, Lord Darlington, just explain to
14 me what you really mean. I think I better, nowadays, to be intelligible is to be found out".

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Attorney General. Thank you
17 very much.

18

19 **R VENKATARAMANI:** Very well, My Lord.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Solicitor General.

22

23 **R VENKATARAMANI:** May I take Your Lordship's leave?

24

25 **TUSHAR MEHTA:** My Lord, my submissions are in Volume II(d).

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume II?

28

29 **TUSHAR MEHTA:** II(d). My Lord, earlier I have filed II(c) which is modified. So, kindly
30 ignore II(c), My Lord. If, My Lord, possible, technically, I'll delete II(c) so that there is no
31 confusion. There is nothing, My Lord...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But yeah, it may be just updated and...

34

35 **TUSHAR MEHTA:** Yes, that's all. There is nothing which has wrongly gone into II(c), and
36 I'm trying to... This is updated, brought in a little better flow.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, we'll just take II(c) to be ignored.

2

3 **TUSHAR MEHTA:** Yes. II(d). I would wish to read the questions first. And the reason is this,
4 except one question which directly concerns alcohol as a product, rest of the questions are on
5 interpretation and interplay between the Constitution of India and the Industrial
6 Development and Regulation Act. Though, Your Lordship, My Lord, the Chief Justice was
7 right that many of the products are delicensed now, but many of the products continue to be
8 under the licensing era. Even alcohol partly is under the licensing era. And therefore, whatever
9 Your Lordship ultimately adjudicates is bound to affect the operation of IDRA vis a vis. The
10 scheme of the constitution and there are certain *para materia* entries like 52. Please come to
11 PDF page 2. These are the questions. Does Section 2 of the IDRA have any impact on the field
12 covered by Section 18G of the said Act or Entry 33 of List III of the Seventh Schedule? This is
13 a generic question. Does Section 18G of the act falls under Entry 52 of List I of the Seventh
14 Schedule or is covered by Entry 33 of List III thereof? In absence of any notified order by the
15 Central Government under Section 18G of the above Act, is the power of the State Legislature
16 in respect of matters enumerated in Entry 33 of List III ousted? Does the mere enactment of
17 Section 18G of the above Act gives rise to a presumption that it was the intention of Central
18 Government to cover the entire field in respect of Entry 33 of List III so as to oust the State's
19 competence to legislate in respect of matters relating thereto? Does the mere presence of
20 Section 18G of the above Act oust the State's power to legislate in regard to matters falling
21 under Entry 33(a) of List III? Upto here these are generic questions which will hold the field
22 forever, My Lord, till it is doubted or referred something. But, IDRA any scheduled industry
23 being brought under it, would be covered by what, Your Lordships, would now decide. And
24 the last question, does the interpretation given in ***Synthetics Chemicals***, that is ***Synthetic***
25 ***II***, My Lord, in respect of Section 18G of the IDRA, correctly state the law regarding the State's
26 power to regulate industrial alcohol as a product of the scheduled industry under Entry 33 of
27 List III of the Seventh Schedule of the Constitution in view of Clause A thereof? Now, please
28 come to, My Lord, page 3, which are the existing statutes under Entry 52, List I, which would
29 directly be affected by the first questions except the last one, the Coffee Act, Rubber Act, Rice
30 Milling Industries Act, the Cardamom Act, Coconut Development Act, etc, etc., but this is an
31 illustrative list. There may be other laws also this is only to point out that kindly do not
32 consider this question only from the prism of alcohol industry. This would be, My Lord, a wider
33 question affecting every scheduled industry, which is included in the Schedule appended to
34 this Act. Now, some of the things, My Lord, which are never pointed out to Your Lordships
35 right from ***Tika Ramji***. And that is why, I would ultimately say ***Tika Ramji*** is wrong. I am
36 placing for Your Lordship's consideration the first thing which is never pointed out either in
37 ***Tika Ramji*** or in any subsequent judgments which follows ***Tika Ramji***. None of the

1 judgments. My Lord, Your Lordship had the assistance of these facts, these positions in the
2 Constitution and that is... My Lord, just giving an example, **Tika Ramji** says that industry
3 has a restricted meaning, meaning it includes manufacturing activities. It doesn't say why?
4 There is no logic, there is no rationale given. There is no discussion. But in the Constituent
5 Assembly debate, Dr. Ambedkar elaborates the term and width of the word 'industry'. There
6 are four compartments in which My Lord, Your Lordships will have to be assisted to reach the
7 correct conclusion. This is not a Centre-State issue. So, this is not, My Lord, an adversarial
8 position, I am taking a position to assist Your Lordships because U.P. is here, Maharashtra is
9 here, there is nothing political or any federal dispute etc. There are four stages Your Lordships
10 will examine *qua* interpreting each entry. First is, My Lord, called Devolution Rules. My Lord,
11 in 1990 Government of India Act was passed...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes

14

15 **TUSHAR MEHTA:** Which bifurcated the subjects between the Federal Government which
16 is the Central Government in the present parlance and the Provinces that is the State
17 Government in the present parlance. That is called Devolution Rules.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

20

21 **TUSHAR MEHTA:** Thereafter, comes Government of India Act 1935, where again this
22 bifurcation of legislative competence between Federal Government and the Provinces took
23 place. Third, is the Draft Constitution, My Lord, prepared by the Drafting Committee chaired
24 by Dr. Ambedkar. How they used certain expressions *qua* each provision and *qua* each entry.
25 My Lord, that draft entry or our draft constitutional provision was debated and how it takes
26 form of what the Constitution is at present. My Lord, I have attempted to, My Lord, show on
27 every provision which is coming for Your Lordship's consideration, all the four. And if Your
28 Lordships would... subject to Your Lordships, My Lord, approval, I can say if Your Lordships
29 find that if this would have been pointed out right from **Tika Ramji**, or at least at some stage,
30 **Tika Ramji** would have been differently decided. My Lord please come to page 6. My Lord,
31 I'm skipping what I have already orally pointed out My Lord. I come to Entry 52 first. Your
32 Lordships have PDF page 6? My Lord, the Chief Justice has it? My Lord, paragraph 6 I'll read
33 with Your Lordship's permission? 'Some of the industries have always been considered to be
34 necessary to remain under the central control if it is found to be in national interest'. My Lord,
35 throughout there is a chain of three considerations (a) industry, the functioning of which has
36 a national interest; (b) the industry, the functioning of which needs decision making at the pan
37 India level; and (c) the industry, the functioning of which needs the regulation in such a

1 fashion that the product is equitably distributed.' My Lord, Your Lordships are aware, as we
2 pointed out in Mines matters also, some of the States are endowed with some of the most
3 important resources, rest of the states do not have the benefit. And if the Constitution feels
4 that it is to be left to the Parliament, that a particular industry should be centrally governed,
5 not provincially governed, because Provincial Governments would take provincial perception
6 and the Central Government would have a holistic perception, My Lord, those industries have
7 always been conventionally, traditionally, and constitutionally been under the Centre. My
8 Lord, now corresponding entry in the Devolution Rules, the first, Devolution Rules made
9 under Government of India Act 1999. That is.....

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, all our young juniors you know
12 stand day after day, I've been noticing, you know, with their laptops in their hand. In the
13 afternoon, the Court Master will just see if we can accommodate them behind you immediately
14 so that they can sit...

15

16 **TUSHAR MEHTA:** Yes, My Lord that's what, My Lord, I was...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I just told the Court Master to find out...

19

20 **TUSHAR MEHTA:** Who are not appearing, My Lord, for example...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Also we'll see if we can even put some stools or
23 something like that...

24

25 **TUSHAR MEHTA:** No, no, My Lord some of the Counsels, My Lord, are not appearing in
26 the matter. They can My Lord, perhaps accommodate those who are at the end.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But we'll try and put some additional chairs
29 also for the juniors so that they are... They have to be close to whoever is arguing.

30

31 **TUSHAR MEHTA:** So kind of Your Lordship, My Lord, I'm immensely grateful. My Lord,
32 Entry 20, this is the root, 1990 Government of India Act, "Development of industries in cases
33 where such development by a central authority is declared by order of the Governor General
34 in Council expedient in public interest." Development, My Lord, is underlined by me, it is my
35 emphasis. Now, come to My Lord, what happened in 1935, it remains the same. Development
36 of industries where the development under federal control, the word used is now 'federal
37 control' is declared by federal law to be expedient in the public interest. My Lord, federal law

1 is an earlier version of parliamentary law. Now, My Lord, how the Drafting Committee drafts
2 this entry. "Development of industries where development is under the control of India is
3 declared by Parliament, by law to be expedient in public interest." It retains, My Lord,
4 substantial heart and soul, but make minor changes. Now please see My Lord, how it stands
5 today. And there is a reason. The reason is explained in the Constituent Assembly debates. The
6 word development is replaced by the word control.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And very interestingly, if you see our
9 Constitution, though of course, we now know it's a Federal Constitution, that's how we have
10 interpreted. Constitution doesn't use the word federal anywhere at all, unlike what happened
11 across the border. If you look at the Pakistani, they have used the word Federal Government.
12 We don't use the word. We have used Central, Union, but we have not. We have eschewed the
13 word federal in the Constitution.

14

15 **TUSHAR MEHTA:** I think, My Lord, this is my...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is semantic more than anything else, but
18 at least in the birth of the Constitution, they didn't use the word federal.

19

20 **TUSHAR MEHTA:** It's my perception, My Lord, subject to Your Lordships approval, that
21 federalism has several facets. I'm not going on general principles of it is quasi-federal and
22 leaning towards unitary, etc., I'm not on that. When it comes to the subjects which need
23 distribution of national resources, we have, for example 25 federating units, hypothetical
24 example, 25 States, the classical definition of federalism means each unit is independent in its
25 own way. It's not sovereign in the way American States are sovereign, but they are independent
26 in their own way. Any interference by the Centre may perhaps breach the element of
27 federalism which is involved in the Constitution without naming the term federalism. But now
28 kindly see this nuance, which is my perception, when the Centre, having an authority under
29 the Constitution does something to ensure that three or four states having incidentally major
30 resources of a particular character, do not deprive rest of the Provinces, namely federating
31 units of their right of equal treatment and the Centre interferes and makes equitable
32 distribution. That is also an element of federalism. There to maintain federalism, the power is
33 conferred upon the Centre, that now you step in. The only condition is the Centre must have a
34 backing of a constitutional provision to do so. And Entry 52 is one such provision. And it is in
35 my respectful submission, in furtherance of the principle of federalism. Please see, My Lord
36 page 7. Industries declared by Parliament, by law, to be necessary for the purpose of defence

1 or for prosecution of war, My Lord, I have put it here, because Entry 24 List II mentions Entry
2 7, therefore My Lord, for immediate reference.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

5

6 **TUSHAR MEHTA:** And 52, the way My Lord, ultimately found its place in the Constitution.
7 As it stands today, industries the control of which, by the Union, is declared by Parliament, by
8 law, to be expedient in the public interest. The earlier 1919, '35 and the draft used the
9 expression development, now it is replaced by the word control. And there is a debate, why are
10 you doing this? Some of the members felt that why are you curtailing the power of the
11 Parliament? And the answer given by Dr. Ambedkar would show that *Tika Ramji* is wrongly
12 decided because this is not pointed out. *Tika Ramji* insofar as it says that industry is
13 restricted to only manufacturing is contrary to what the Constitutional framers envisioned.
14 My Lord, page 7, let me read this debate in extent because this would have serious bearing on
15 what ultimately Your Lordship decides. Hon'ble Dr. B. R. Ambedkar, "Sir, I move that for
16 Entry 64". 64 is present 52.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

19

20 **TUSHAR MEHTA:** "For Entry 64 of List I, the following entry be substituted." My Lord,
21 whenever there is a change in the draft Constitution and what is moved, the word used is
22 substituted. "Industries, the control of which by the Union is declared by Parliament, by law,
23 to be expedient in the public interest." My Lord, then, Kaka Bhagwant Roy says this, that, he
24 moves an amendment in this, that in the amendment number 35 of List I, in the proposed
25 Entry 64, that is present 52, the word 'industries', the word 'development of industries' be
26 substituted. It appears from the amendment which the Hon'ble Dr... this is the parliamentary
27 debate. It's not my noting, my note or something.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The Constituent Assembly debate.

30

31 **TUSHAR MEHTA:** The Constituent Assembly debate, I only highlighted. Highlighting is,
32 My Lord, supplied.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I like the way you call the Dr., Dr. Ambedkar,
35 the Hon'ble Dr., in deference to Dr. Ambedkar.

36

1 **TUSHAR MEHTA:** To the person My Lord, and the persona. It appears from the... it appears
2 from the amendment which the Hon'ble Dr. has introduced in the original entry that he wants
3 to hand over all powers regarding industries to the Centre. It is very good. "Centre ought to be
4 strong and during transition, the Centre should be vested with such powers as are essential for
5 the industrial development of the country. But in normal times the Centre should not be vested
6 with such authority. India is a very big country. She has many provinces. These provinces have
7 their own difficulties and can understand their problem much better than the Centre. The
8 problem of industries is very complicated. Therefore, so far this question is concerned every
9 Province should be given facilities to solve its own problems. If you make the Provinces
10 responsible for industrial development and do not give them powers to deal with the situation,
11 then the problem of Provinces cannot be solved and it will retard the industrial progress of the
12 country. Although I am somewhat deviating from the point yet, I must say that the present
13 industrial policy of the Centre will prove a stumbling block in the part of the country's
14 progress." Kindly pause here for a minute, historically the first industrial policy came in 1948,
15 when the debates were ongoing and My Lord, Kaka Bhagwant Roy was a prominent leader
16 who was opposing that industrial policy per se. Therefore, he says that I'm deviating, But I
17 don't agree with the industrial policy. Nothing turns on debates, My Lord. "Mr. President, you
18 are only speaking on your amendment but you are opposing it. Kaka Bhagwant Roy, I bow
19 down to your ruling, but I would like to say that so far industries are concerned, the Provinces
20 should be entrusted with necessary powers. For they can understand the problem of their
21 industries better. With these words, I would request the Hon'ble Dr. to accept the
22 amendment." Then, My Lord, Shri H. V. Kamath comes, "I move the amendment as under.
23 That in the amendment, 35 of List I, in the proposed entry is 64..." present 52, "... for the words
24 'the control', the words 'the development and control' be substituted."

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

27

28 **TUSHAR MEHTA:** Then he further, My Lord... Then, My Lord Mr. Kamath further makes
29 his point before the Constituent Assembly. "This amendment includes or embraces the
30 amendment just now moved by honourable friend Kaka Bhagawant Roy. The original entry,
31 as it stood in Draft Constitution referred to the development of industries. I wonder why the
32 Drafting Committee has suddenly developed an antipathy to the word development in this
33 entry." Mr. Kamath seems to have a very good sense of sarcasm which will come, My Lord,
34 further. "My amendment is on the lines of a legislative measure which was introduced in the
35 Assembly during the last budget session and which has been referred to a select committee.
36 The bill provided for governmental action in industries, the development and control of which
37 was to be regulated by the Centre, and the title of the bill was Industries Development and

1 Control Bill, that is to say the subject matter of this entry has been already taken cognizance
 2 by the Central Government in a bill the title of which includes not merely control but the
 3 development of industries which are deemed necessary or expedient in public interest." Now
 4 he is, My Lord, sarcastic. "I realize it is quite possible the Drafting Committee, owing to the
 5 excessive strain under which it had laboured during last two years and especially during the
 6 last few weeks or months is liable to commit slips here and there. But I hope that the Drafting
 7 Committee has not developed a closed or calcified mind which is not receptive to any change
 8 whatsoever." But the sarcasm also, My Lord, was with a reasonable degree of respect and
 9 restraint.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

12

13 **TUSHAR MEHTA:** "I think that the meaning of this entry will be more adequately and more
 14 fully covered by amending this word 'control' on the lines I have suggested and seeking to
 15 incorporate in this entry not merely control, but also the development of industries, which
 16 means industries, the development and control of which, by the Union, is declared by
 17 Parliament, by law, to be expedient in public interest, I move amendments so and so." Now,
 18 My Lord, Dr. Ambedkar answers this, and this is missed. This is the heart and soul of Entry
 19 52, which is not assisted with either in *Tika Ramji* or any subsequent judgments which follow
 20 *Tika Ramji*. So far as the width of the term 'industry' is concerned.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

23

24 **TUSHAR MEHTA:** Hon'ble Dr. B. R. Ambedkar, "Sir, the entry as it stands, is perfectly all
 25 right and carries out the intention that the Drafting Committee has in mind. My submission is
 26 that, once the Centre obtained jurisdiction over any particular industry as provided for in this
 27 entry that industry becomes subject to jurisdiction of Parliament in all its aspects." Kindly
 28 mark this, My Lord. "In all its aspects not merely development, but it may be in other aspects.
 29 Consequently, we have thought that the best thing is to put the industries first so as to give
 30 undoubted jurisdiction to Parliament to deal with it in a manner it likes, not necessarily
 31 development." Once the industry comes in the First Schedule of IDRA, all its aspects are within
 32 the control of the Central Government. And *Tika Ramji* says 'No, only manufacturing part.'
 33 How, why, what rational? No reasoning, no assistance and this completely absent.

34

35 **JUSTICE HRISHIKESH ROY:** At least the view that was given by Dr. Ambedkar, as it
 36 appears, was that when the control over industry is given to Union, it will cover all aspects and

1 will not be restricted to what is given in *Tika Ramji*, that is manufacture. Now, what are the
2 all-other aspects can you just articulate straight away?

3

4 **TUSHAR MEHTA:** My Lord, in my respectful submissions this is not, My Lord, from the
5 debates. But when Dr. Ambedkar says that once it comes within the control. All aspects would
6 come in the control, My Lord, would be right from sourcing the raw material till, the
7 distribution of the product. And I'll tell you why and this is my respectful submission. My Lord,
8 which are these industries which are intended by the framers of the Constitution to be put
9 under Entry 52? The entries, My Lord, as the judgments and the subsequent development goes
10 where the Central Government or the Centre needs equitable distribution and at fair prices.
11 My Lord, I'll take Your Lordships to the...

12

13 **JUSTICE HRISHIKESH ROY:** That is the objective.

14

15 **TUSHAR MEHTA:** No, introduction and the SOR of IDRA also, My Lord, throws a direct
16 light and therefore, for example, My Lord, taking this example, just to answer Your Lordships
17 query. My Lord in a given set... I'm sorry, My Lord, Chief Justice...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

20

21 **TUSHAR MEHTA:** My Lord, in a given set of facts, My Lord, maybe 10 years down the line,
22 or maybe 15 years before there is a scarcity of sugar, which happened My Lord, during WWII,
23 the sugar was imported into Britain and because of the WWII, all imports were stopped when
24 Churchill took over. Suppose some situation arises. The raw material for production of sugar
25 is sugar cane. If all industries which are dealing with sugar or using sugarcane as a raw
26 material start using sugarcane only for the purpose of, say, making alcohol and not sugar, the
27 Central Government can step in. Suppose, considering the situation at a national level, the
28 sugarcane growers say, that we will not sell the sugar to sugar factories, we will sell only to
29 alcohol factories because we are getting more price and the interest of the nation is that right
30 now, we need production of sugar more because we are deficit in sugar that's the intention. If
31 that is the intention, then how, My Lord, I'm posing a question to myself, we exclude the raw
32 material from the control. Centre can do nothing in the example which I have given, that
33 country needs sugar, there is a sugar scarcity, sugar production needs to be enhanced, which
34 even *Tika Ramji* says manufacturing is within my control, but the raw material growers, the
35 sugar cane grower says, 'no, we will sell it to only that factory which makes either potable or
36 non-potable alcohol, because I am getting more price.' The Central Government can come out

1 with a regulation that no, this is the way in which you will distribute your raw material. You
2 distribute your product, which is a raw material for the industry.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You know some specific parts of an industry,
5 even after a declaration is made under Entry 52 of List I is taken out of the scope of Entry 52
6 of List I by Entry 33 of List III. So, distribution, because Entry 33 of List III is not a matter of
7 interpretation. It's a constitutional prescription, that even after an industry is declared under
8 Entry 52 of List I as an industry, the control over which is deemed necessary by Parliament in
9 public interest, the Central Government in public interest, despite that Entry 33 says trade and
10 commerce and production, supply and distribution of the products of any industry, where the
11 control of such industry by the Union is declared by Parliament, by law to be expedient in the
12 public interest. So Clause A of Entry 33 clearly has a reference to Entry 52 of List I. Though it
13 does not specifically refer to Entry 52, right? Therefore, at least that part, even if it is declared
14 under Entry 52 of List I, that part which falls under Entry 33 of List III is extracted away from
15 Entry 52 of List I.

16

17 **TUSHAR MEHTA:** No, My Lord, it is...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And then given to the States as well as the
20 Centre.

21

22 **TUSHAR MEHTA:** It is added to the term industry as understood in *Tika Ramji*, that not
23 just manufacturer, you can include product, its distribution, etc. But, My Lord I've given... I
24 just gave an, My Lord...

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, entry... on a slightly different plane,
27 Entry 33 seems to indicate that Entry 52 would not otherwise be confined only to manufacture,
28 because if Entry 52 was confined only to manufacture, there was no need to create Entry 33.
29 Entry 33 was to carve out something out of Entry 52, which would have otherwise been within
30 the fold of Entry 52.

31

32 **TUSHAR MEHTA:** Expanding the 52.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But what it does is, in recognition that Entry
35 52 will cover trade, commerce, production, supply and distribution. It takes it out of Entry 52
36 and puts it in Entry 53.

37

1 **TUSHAR MEHTA:** Since, I was answering, My Lord's question my proposition, which I will
2 develop a little later, if I am right and I have understood, My Lord, Dr. Ambedkar's
3 understanding correctly, then even in absence of Entry 33, can the Parliament not only under
4 Entry 52, control everything...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of course, that was Dr. Ambedkar's
7 understanding but they were not dealing in that part with Entry 33 of List III.

8

9 **TUSHAR MEHTA:** There is an interesting debate on Entry 33 as well. But, My Lord, I am
10 putting it in two alternative ways My Lord, for Your Lordship's consideration. (a) Please
11 consider Entry 52 the way, My Lord, in my submission, Dr. Ambedkar understood that
12 everything concerning the industry. Then, My Lord, I don't have to fall back on Entry 33 List
13 III also. Parliament can exclusively under 52 enact a law which takes into consideration right
14 from raw material till end product and its distribution but alternatively, 33 My Lord, as the
15 Chief Justice has rightly said, that would come in the aid and why Entry 33 came, I'll assist
16 Your Lordships...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact part of the IDRA may be traceable to
19 Entry 52. Part of the IDRA may be traceable to Entry 33 also.

20

21 **TUSHAR MEHTA:** It's a read back legislation. That's our argument.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Parliament is also competent under Entry 33
24 to control, trade and commerce, production, supply and distribution.

25

26 **TUSHAR MEHTA:** My Lord, why are we, all of us, on this side are enamelled by the raw
27 material part? Because *Tika Ramji* happened to have that fact situation. Otherwise, there is
28 no doubt that if you control an industry, you control every part of industry start from finish.
29 But *Tika Ramji* as a matter of fact, which is consistently used for a proposition which it did
30 not decide. I will come to that My Lord. *Tika Ramji* just I'm flagging it for Your Lordship so
31 that it can be kept in mind as per my submission, *Tika Ramji*, the ratio in *Tika Ramji* is
32 merely this there is an IDRA and there was a State Act. Sugar was, when *Tika Ramji* was
33 decided, a scheduled industry and therefore IRDA applied. The State law concerned sugarcane
34 and the question was is there any repugnancy between the Central law which governs sugar
35 and the State law which governs sugarcane. The court examined both the Acts says there is no
36 repugnance. It should have stopped at that. Anything other than that, I'll show, My Lord,
37 because unfortunately, one or two paras were cited in *Tika Ramji*, My Lord, before Your

1 Lordships, then subsequently also. Everybody has cited one or two paras without showing the
2 background, factual narration and what exactly is the ratio in **Tika Ramji**. **Tika Ramji**
3 merely says that there is no repugnancy between IDRA and the sugarcane control order of the
4 State Government, that's the only ratio. Now, My Lord, I will proceed further, My Lord, page
5 9 after Dr. Ambedkar's reply, My Lord, this is accepted. I need not read it further. Please come
6 to page 10 para 8. My Lord, I have said, **Tika Ramji** doesn't take note of this, My Lord. I have
7 a separate argument, separate section, how **Tika Ramji** is not a good law and how **Tika**
8 **Ramji**'s few of the findings are only orbiter because it was never called upon to decide that.
9 But that's a separate issue. I'm not touching that right now.

10

11 [NO AUDIO]

12

13 The word is Entry 33 covers production also. Yes, production and everything subsequently
14 earlier part, manufacturing and post manufacturing. They are clear with Entry 33 but for Entry
15 33 once again... but for Entry 33 all these aspects should have also been covered by Entry 52,
16 correct but because of Entry 33 once when the declaration of an industry under Entry 52 all
17 aspects pertaining to every product of the industry is governed by Entry 33. Of course, once
18 Parliament enacts the law, the State can't do anything contrary to a law enacted by Parliament
19 in the Concurrent List before that understanding of Entry 52. Of course, it's a very, Dr.
20 Ambedkar is saying it, so it's a very authority of the highest spending. But that is not dealing
21 with Entry 53 at that, Entry 33 at that scale. It is dealing subsequent subsequently, so we'll see
22 another example, another kind of why is word production used in Entry 33.

23

24 [NO AUDIO ENDS]

25

26 **DINESH DWIVEDI:** The word production is used in Entry 33. There are lots of industries
27 which are not covered in any of the lists. For instance textile industry, leather industry, so and
28 so forth. So, supposing it is not taken over by the, My Lord, taken over by the IDRA.

29

30 **TUSHAR MEHTA:** I agree. Therefore, Concurrent List, State also can subject to Entry 33(a).
31 If there is a 52 law State cannot. Otherwise, My Lord State, can. Therefore...

32

33 **DINESH DWIVEDI:** Under this My Lord, if supposing. My Lord, industries are not the ones
34 which are specified in, My Lord, Entry 52 List I, then the production may also go there, My
35 Lord. There are certain industries specified List III itself. There are certain industries like
36 electricity and other things specified in List III. Now, where would the production go then?
37 Obviously, it can't go to List II it can't go to List I. It has to go to List III.

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TUSHAR MEHTA: Correct, My Lord.

DINESH DWIVEDI: That's the reason, My Lord, why production is used there. That's all I want to clarify My Lord. Rest, we'll explain, Dr. Ambedkar's also...

CHIEF JUSTICE D. Y. CHANDRACHUD: We quite understand that once an entry, an industry is declared as a controlled industry, we use that expression under Entry 52, ordinarily everything will be covered by that aspect

TUSHAR MEHTA: My Lord there is one more example I can give Your Lordships..

CHIEF JUSTICE D. Y. CHANDRACHUD: Because whether Parliament regulates or legislates upon it under Entry 52 or Entry 33 is really... it has one significance that if Parliament is regulating on those five subjects trade, commerce, production, supply, distribution then it is regulating only under Entry 33. The consequence is (i), the parliamentary law is supreme; (ii) the States can also enact the law.

TUSHAR MEHTA: Subject to Article 254.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes, subject to Article 254. States can enact the law unless Parliament intended to exclude all power of the State's to enact a law under Entry 33, Parliament can always do that.

TUSHAR MEHTA: But if there is a law under 52, Entry 52 then Entry 33(a) would denude the State legislature from its power on trade, etc.

CHIEF JUSTICE D. Y. CHANDRACHUD: To that extent.

TUSHAR MEHTA: Yes, to that... No, not to that extent.

CHIEF JUSTICE D. Y. CHANDRACHUD: It's up to that extent.

TUSHAR MEHTA: For trade, etc.

CHIEF JUSTICE D. Y. CHANDRACHUD: And you know there's one addition to your written submission, which I'll make. Just one phrase, just one second. I was just thinking I'll

1 tell you that at this point. Then there's no problem then it's absolutely... we are all in one. In
2 your paragraph 8 where you say...

3

4 **TUSHAR MEHTA:** Yes, My Lord.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just read that Mr. Solicitor again.

7

8 **TUSHAR MEHTA:** The restrictive meaning... My Lord, may I read?

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, please read.

11

12 **TUSHAR MEHTA:** The restrictive meaning to Entry 52 List I given in *Tika Ramji* and
13 followed subsequently, in subsequent judgments relying upon *Tika Ramji* in absence of
14 being assisted with the crucial Constituent Assembly debates, is thus not a good law. The
15 Parliament under List I Entry 52 is fully entitled to control everything as per its wisdom,
16 requirement of particular industry and to achieve the stated object of IDRA, when Parliament
17 is satisfied there. My Lord, this SOR, and the industrial policy...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There I would only make one little addition.
20 The Parliament under List I Entry 52, and List III Entry 33 is that the latter is also subject to
21 state, concurrent powers, subject to Article 254.

22

23 **TUSHAR MEHTA:** My Lord, that does not affect my argument, but hypothetically, as an
24 academic question.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because, once we say, that Section 18G of the
27 IDRA, is traceable because 18G seeks to impose measures on controlling trade and
28 commerce...

29

30 **ARVIND DATAR:** Not production...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not production, trade and commerce.

33

34 **TUSHAR MEHTA:** I would, My Lord, request, we never did this.

35

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You know, Section 18G covers trade and
2 commerce, supply, distribution, alright? Then to that extent, Section 18G requires a notified
3 order, and in the...

4

5 **TUSHAR MEHTA:** My Lord, that's a separate argument. There is a separate argument, My
6 Lord. I have an argument on absence of notified order under 18G, plus 18G is not the only
7 provision which occupies the field under Entry 52 read with 33.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And if 18G does not cover production...

10

11 **TUSHAR MEHTA:** There are other provisions. The entire Act is not read before Your
12 Lordships.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We will read the act, Mr. Solicitor.

15

16 **TUSHAR MEHTA:** Yes, My Lord.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright.

19

20 **TUSHAR MEHTA:** The 18G is not the only...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually we'll move forward. At this stage, we
23 wanted to only flag that true Entry 52 on a declaration is comprehensive, the control is
24 comprehensive. But however comprehensive, the control on a declaration under Entry 52 ,it
25 will still be subject to Entry 33. Because, Entry 33 extracts out of 52, certain aspects, five facets,
26 and places it in the Concurrent List.

27

28 **TUSHAR MEHTA:** Just academically, My Lord. Just, My Lord...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The Clause A of Entry 33, is a direct reference
31 to Entry 52.

32

33 **TUSHAR MEHTA:** My Lord, let's leave it at that. My Lord, I have another...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just look at it. Just look at it. Entry 33 says,
36 33(a), so that we have absolute conceptual clarity on this.

37

1 **TUSHAR MEHTA:** Yes, My Lord.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, see, interestingly, Entry 52 is not made
4 subject to Entry 33.

5

6 **TUSHAR MEHTA:** Yes.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right? Because Entry 52 has not been made
9 subject to Entry 53. But, if you now see Entry 33... Are there any entries in List I, which are
10 made subject to List III, by the way?

11

12 **TUSHAR MEHTA:** No, My Lords, not the...

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, I don't think there's anything like that.
15 Entry 32? That property of the Union is subject to legislation. But there's no entry specifically
16 in List I, which makes it subject to List III, right?

17

18 **TUSHAR MEHTA:** My Lord, my learned friend wants me to see - 'Property the Union and
19 revenue therefrom, but as regards the property situated in a State, subject to legislation by
20 State same in so far as Parliament by law otherwise provides.' So again, parliamentary
21 supremacy.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, see, if you look at now, Entry 52. Let's
24 see 52 first.

25

26 **TUSHAR MEHTA:** Yes, My Lord, 52. 'Industries, the control of which, by the Union, is
27 declared by Parliament, by law, to be expedient in public interest.' My Lord, kindly examine
28 the scenario.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, Mr. Solicitor, just conceptually, now,
31 look, let us look at 33 for a moment.

32

33 **JUSTICE B. V. NAGARATHNA:** You must say, not in public interest is mentioned in the
34 First Schedule. And First Schedule is only with regard to manufacture or production. But when
35 it comes to 18G, production is not there. There it is control of supply, distribution and price.
36 There is a distinction.

37

1 **TUSHAR MEHTA:** My Lord, please bear in mind, 18G is the only Section relied upon by
2 them.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You're looking at other sections.

5

6 **TUSHAR MEHTA:** I'm going to look at other sections, show other sections also.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fair enough. But one thing which I wanted to
9 point out to you, is this, that Entry 33(a), the expression, "The control of such industry by the
10 Union is declared by Parliament, by law, to be expedient in the public interest", these words
11 are bodily the same as Entry 52 of List I, identical words in Entry 52 of List I, identical words
12 in Entry 33 of List I, these words are identical to those too, right?

13

14 **TUSHAR MEHTA:** Referable to 52.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. Therefore, what does 33 say? Now let's
17 read 33.

18

19 **TUSHAR MEHTA:** 'Trade and commerce in and the production, supply and distribution of
20 the products of any industry, where the control of'... So scheduled industries, let me, let me
21 put it...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what this means is, so the moment there's
24 a declaration by Parliament under Entry 52 of List 1, Entry 33 of List III, kicks in, in regard to
25 trade and commerce, production, supply and distribution. So, Entry 33(a), in that sense, is a
26 carve out of Entry 52 of List I.

27

28 **TUSHAR MEHTA:** May I put it slightly differently, academically My Lord, this suits my...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then we can't say that notwithstanding Entry
31 33(a), all these aspects namely, trade and commerce, production, supply and distribution will
32 still be under the exclusive domain of Parliament under Entry 52. Will still be under the
33 domain of Parliament but not an exclusive domain.

34

35 **TUSHAR MEHTA:** May I, just. My Lord, point out. My Lord, just examine this. This doesn't,
36 My Lord, change my submission or... My Lord, suppose the constitutional framers have chosen
37 to give, 'concurrent jurisdiction' on some aspects of a controlled industry under Section 33.

1 My Lord, kindly visualize a situation academically to test, My Lord, the interpretation.
2 Suppose there would not have been any Entry 33, only Entry 52.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It would all go under Entry 52. Undoubtedly.

5

6 **TUSHAR MEHTA:** Then in that case, right from sourcing the raw material till distribution.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Absolutely. Probably you may be right.

9

10 **TUSHAR MEHTA:** Here, My Lord, 33 is given with a view to see, that under some
11 circumstances, in absence of a law under 52, the State is also competent how to distribute, how
12 to, etc., etc., whatever, how to deal with the product. So, therefore, an additional concurrent
13 power is given to the State. I may necessarily not depend upon 33, in absence of 33, also, the
14 power would flow. I means Parliament.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Under Entry 52.

17

18 **TUSHAR MEHTA:** 52.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But when Parliament is enacting a law on the
21 subjects under Entry 33. We can't then say, that that law is relatable only to Entry 52. Then it
22 is within Parliament's legislative competence. Nobody can doubt that the IDRA is within
23 Parliament's... But that part of the law then falls under Entry 33, and then we have to see to
24 what extent does that law exclude the power of the states, one. And to what extent that law
25 leaves open, some fields for the State, because that, what is left open to the States is half the...
26 we look at Parliament's legislation. Parliament can legislate on everything under Entry 33. So,
27 we have to then construe that law, IDRA, this is the area which is left to open to the States, if
28 at all some area is left open to the States.

29

30 **TUSHAR MEHTA:** I bow down. Please see page 10, My Lord. These are the four contingency
31 I have formulated when a 52 law...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is the discussion on Entry 33(a), by Dr.
34 Ambedkar there?

35

36 **TUSHAR MEHTA:** It's coming up. It's coming My Lord. I have, My Lord, my colleagues and
37 we have worked it on that, on everything.

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JUSTICE ABHAY S. OKA: That will be very relevant.

TUSHAR MEHTA: Absolutely. But, if Your Lordships permit I may go chronologically, so that the flow is maintained. So, My Lord, when 52 kicks in, 33, we for the time being, post it on the side, My lord, for the time being. The activities of an industry or industries which affects the country as a whole. This is the first condition. Then second, it ought to be governed by economic factors of an All India Import and cannot be permitted to be decided by State, according to their provincial interests. Planning of future development and sound and balanced national perspective is required to be kept in mind and to achieve *inter alia* the object of equitable distribution on pan India basis at fair prices, the control of all aspects of a particular industry must be taken over. Parliament makes such statutory declaration in the Act, here My Lord, Section 2. Now, My Lord please see paragraph 10. This is IRDA, the introduction as given in the Act and the Statement of Objects and Reasons. Am I with Your Lordships at page 11?

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: On 6th April 1948 the Central Government announced its industrial policy, which was approved by the Central Legislature. My Lord, this is what was commented upon by one of the honourable members of the Assembly that this is not a correct policy etc. As per the policy the development and regulation of a number of important industries, the activities of which affected the country as a whole, and the development of which ought to be governed by economic factors of all India import were required to be brought under the Central control. This is what, My Lord, the Parliament says. To achieve this objective, the IDRA bill was introduced in the State Legislature. Then My Lord SOR, the object of this bill is to provide the Central government with the means of implementing their industrial policy, which was announced in the resolution number so and so dated 6th April '48 and approved by the Central Legislature. The bill brings under Central control and development and regulation of a number of important industries, the activities of which affect the country as a whole. The entire activity, not manufacturing effects. The country as a whole and the development of which must be governed by economic factors of All India Import. My Lord, the development would necessarily involve right from sourcing raw materials till distribution. It has to be done at an all India level with a national perspective in mind. The planning of future development on sound and balanced lines is sought to be secured by the licensing of all new undertakings by the Central Government. The Bill confers on the government power to make rules for the registration of existing undertakings, for regulating the production and development of the

1 industries. Please mark the word, 'production'. Development of the industries in the Schedule
2 and for consultation with Provincial Government on these matters. Provision has also been
3 made for Constitution of a Central Advisory Council. Prior consultation with which will be
4 obligatory before the Central Government takes certain measures, such as revocation of
5 license or taking over the control and management of any industrial concern. Now, My Lord,
6 Constituent Assembly debates. My Lord, this is the debate, dated 5th January, 1949. Syama
7 Prasad Mukherjee, "Sir, when Clause 2 was inserted as drafted, the idea of the Government
8 was that in respect of the entire Concurrent List, it should be open to the Dominion
9 Legislation." Dominion My Lord, would be the Parliament, the corresponding legislature. "To
10 pass laws for the purpose of exercising executive function. At present, so far as the Concurrent
11 List is concerned, the Dominion Legislature may pass laws which will supersede any laws
12 passed by the provinces, but so far as executive authority goes, it can be discharged only by the
13 Provincial Government. In the new Constitution under Article 60, which has already been
14 adopted it has been laid down that even with regard to the Concurrent List, it will be open to
15 the Dominion Parliament to pass laws for the purpose of exercising executive function." My
16 Lord, I'm pausing here for a minute. The law made by the Parliament, implementation at the
17 State Government level. Dr. Mukherjee says that, "Now, for executive function you have
18 removed this exception. The question arose whether any such power should be taken over by
19 the Dominion Parliament during the interim period. At present, during the Government of
20 India Act, the Dominion Parliament and the Dominion Government can exercise authority in
21 respect of matters which normally fall in the Concurrent List in three ways. We have the
22 Essential Supplies Commodities Act which relates to certain specific commodities, such as
23 foodstuffs and certain other commodities in respect of which the Dominion Parliament and
24 the Dominion Government have complete legislative and executive powers. The power will
25 lapse in 1951." Please mark this. "Secondly, we have a provision which lays down the
26 development of industries which, in the opinion of the Dominion Parliament is of all India
27 importance can be taken up by the Dominion Parliament. But that relates only to the
28 development of an industry which may be so described by the Dominion Parliament."

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. Actually Dr. Syama Prasad Mukherjee has
31 made a very important point that control covers aspects beyond development.

32

33 **TUSHAR MEHTA:** That's the respectful submission, which was initially, My Lord, in a
34 different language, accepted by Dr., that we are expanding the meaning of development, by
35 using the term control. I'm grateful, My Lords. My Lord, only one date, Your Lordships, may
36 note, which I forgot. My Lord, that date may be noted, My Lord, in the earlier submissions,
37 My Lord, when I read Dr. Ambedkar's clarification is 31st of August 1949. The date may have

1 some relevance because on that very day, the discussion about 33 also took place. Therefore,
2 My Lord...

3

4 **JUSTICE ABHAY S. OKA:** What is the date?

5

6 **TUSHAR MEHTA:** 31st August 1949.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 31 August?

9

10 **TUSHAR MEHTA:** 31st August 1949. My Lord, now I'll come back, My Lord.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Justice Nagarathna said something very
13 valuable, which is that, she said that, my learned sister said, that, "Control will include
14 development and regulation."

15

16 **TUSHAR MEHTA:** Correct. I'm grateful. My Lord, I'm grateful. It's a wider term,
17 encompassing both. I was on page 12, My Lord. "We have Essential Supplies Commodities Act,
18 which relates to certain specific commodities, such as foodstuffs and certain other
19 commodities in respect of which the Dominion Parliament and the Dominion Government
20 have complete legislative and executive powers. This power will lapse in 1951. Secondly, we
21 have a provision, which lays down that development of industries which, in the opinion of the
22 Dominion Parliament is of all India importance, can be taken up by the Dominion Parliament.
23 But that relates only to the development of an industry which may be so described by the
24 Dominion Parliament. It has been felt that in respect of industrial development, it is not
25 sufficient that Dominion Parliament or the Dominion Government should have power only,
26 for the purpose of developing industries which are deemed to be of an all-India importance.
27 Development has been interpreted to exclude regulation and control." My Lord, what Your
28 Ladyship says, which is negative, he is putting it negatively, that it excludes. "Development has
29 been interpreted to exclude regulation and control of such industries and also trade and
30 commerce in such industries, control of production and distribution of products of such
31 industries. For that purpose, it was first thought expedient, that wide powers might be taken
32 by the Dominion Parliament even during the interim period by a suitable amendment of the
33 Government of India Act. Apart from industrial development, there were certain other matters
34 like statistics, censoring of films, and also industrial disputes in respect of which it was thought
35 desirable, that the Central Government should take adequate powers. So far as industrial and
36 labour disputes are concerned, as has been explained by Sardar Patel, this is a provincial
37 subject, but it has been felt desirable that there should be some in uniformity of legislation

1 followed by necessary executive action with regard to industrial Tribunals, which may be
2 constituted, under provincial laws for the purpose of settling disputes. After consultation with
3 Provincial Government and some of the provincial premiers and representatives of Provincial
4 Governments who were present in Delhi. It has been deemed desirable that during the interim
5 period, completely wide powers need not be taken over by the Government of India, but a
6 suitable amendment may be made only in respect of those particular items, which are now of
7 an urgent character and which require an immediate solution. For this purpose, you will find
8 from amendment number nine, that we have referred to industrial and labour disputes, trade
9 and commerce in, and production, supply and distribution of products of industries and
10 development of which is declared by dominion law to be expedient in public interest, the
11 sanctioning of cinematograph films for exhibition and inquiries and statistics for the purpose
12 of any of the matters in the Concurrent Legislative List. This will mean a consequential change
13 in Clause 7, as originally provided in the bill, the later portion of Clause A will be omitted and
14 put in the Concurrent List. Now, please see, the result will be that so far as Legislative powers
15 are concerned, the Dominion Parliament will have ample powers to pass laws wherever
16 necessary and such laws will supersede Provincial laws, if any. So far as the executive authority
17 is concerned in respect of these matters, it will also be open to the Dominion Parliament to
18 pass laws and take over responsibility for executive administration. In case such a step is
19 considered to be desirable or necessary, Sir, it is not intended, that Provincial Government
20 should not be utilized for the purpose of coordinating the policy of the Central Government,
21 even in respect of those matters where central regulation and control are necessary, in the
22 interest of the whole country. Obviously in normal circumstances, the executive machinery
23 which will be utilized, will be the Provincial Governments themselves. But if an occasion arises
24 when it is necessary for the Central Government to exercise executive authority in respect of
25 matters which are considered to be of an all-India importance, power to do so have to be taken
26 over by the Government of India and Dominion Parliament. A question has arisen whether
27 this power should be exercised by the Dominion Legislature, without consultation with the
28 Provincial Government, hitherto, whenever the central government or the Dominion
29 Legislature had an occasion to take steps for introducing legislation for development of
30 industries previous consultation did take place with the Provincial Government." That was a
31 conventional method, not a statutory, My Lord, mechanism. "I believe, on a suitable occasion
32 when the matter comes up a little while later, Sardar Patel, will give an assurance on behalf of
33 the Government that during the interim period before the new Constitution comes into force,
34 if it is necessary for the Central Government to move in accordance with the powers which are
35 now proposed to be taken under Amendment 9, previous consultation with the Provincial
36 Government will always be held, and the result of such consultation will be placed before the
37 legislature for information." Now, My Lord Pandit Govind Ballabh Pant, he sowed the seeds

1 of 33(a). If I may, My Lord, use that expression. "Sir, all the four amendments number 80, 84,
2 87 and 88..." In the footnote we have given, Your Lordships need not trouble. "... are
3 interconnected and interlinked, and they must stand or fall together according to the bill,
4 development of industries where development under Dominion control is declared by
5 Dominion law to be expedient in public interest, regulation and control of such industries
6 trade and commerce whether or not within a province in and production, supply and
7 distribution of products of such Industries were to be included in List I, that is all these
8 subjects were to be brought within the exclusive jurisdiction of Federal legislature and the
9 Federal Government. Now, that would have led to several other difficulties and complications.
10 We all realize that so far as development of industries, where development under Dominion
11 control is declared by Dominion law to be expedient in public interest and regulation and
12 control of such industries should vest in Centre. According to the entry already contained in
13 the Federal Legislative List, development of industries where development under Dominion
14 control is declared by Dominion law to be expedient in public interest is already included, and
15 there is no intention of making any change so far as that is concerned. But as proposed in this
16 amendment, regulation and control of such industries should also be placed under the
17 jurisdiction of Federal Legislature. So far as the first two parts of this Clause are concerned,
18 they will stand as they are but with respect to the rest, that is Trade and Commerce, whether
19 or not within a Province, in any production, supply and distribution of products of such
20 industries, it is proposed by the series of amendments to which I referred at the outset, that
21 these should be included in the Concurrent List and consequential changes should be made in
22 other amendments. I think honourable members will agree that amendments that I am
23 proposing will serve the purpose which the original clause had in view fully and will at the
24 same time avoid other difficulties and complications which might arise if these items were not
25 included in the Concurrent List. By including these in the Concurrent List the power is vested
26 in the Centre to legislate with regard to these matters. Power is also vested by virtue of Clause
27 2, which has already been amended to appoint agents directly for the administration of any of
28 these subjects. So, that the Centre can have plenary, comprehensive and if it so chooses, even
29 exclusive control with regard to these matters. But, whatever the Centre may do, I venture to
30 submit that it will still be necessary for the Provinces to exercise a number of functions within
31 their own provincial boundaries with regard to these matters. So if these are made the
32 exclusive charge of the Centre, then the provinces will not be free to discharge the duties and
33 obligations which will necessarily devolve on them. In order to enable the provinces to play
34 their part subject to the overriding powers that will now vest in the Centre it is necessary to
35 include these items in the Concurrent List, and that is what I propose. Even now, when we
36 have got the Essential Supplies Act, the Centre generally frames few basic rules and leaves the
37 rest to the Provinces. We in the provinces have been issuing orders, rules and regulations with

1 regard to these matters in our respective provinces. Whatever be the position hereafter, it will
2 still be necessary for the Provinces to exercise these powers. In our own Province, for example,
3 we propose to introduce a bill so that the distribution of building materials may be regulated.
4 That no steel or iron or coal, etc., be supplied for the purpose of any building which is likely to
5 cost more than rupees 25,000." The raw material for the building that Pandit Govind Ballabh
6 Pant, My Lord, subject to correction was Chief Minister of Uttar Pradesh the then United
7 Provinces. Second line, page 16. My Lord I would like to be the cause of a laughter not, My
8 Lord, the subject of laughter.

9
10 **JUSTICE HRISHIKESH ROY:** When you give the example of sugar, control of sugar and
11 suppose the industries, they divert towards preparing only alcohol. That example, did you pick
12 up by virtue of you being a Gujarati or something?

13
14 **TUSHAR MEHTA:** My Lord, Gujarat, Maharashtra, Karnataka, these are, My Lord, the
15 major sugarcane producing States.

16
17 **JUSTICE HRISHIKESH ROY:** So, how much emphasis on sugar?

18
19 **TUSHAR MEHTA:** Yes, My Lord, in terms of, My Lord, the language as well as the food.

20
21 **JUSTICE HRISHIKESH ROY:** Language, yes, yes. Just wondering, so that discussion that
22 was going on, was on that only.

23
24 **TUSHAR MEHTA:** Sometimes, My Lord, I'll just on a lighter note, sometimes without
25 listening to someone who is going on and on and on becomes boring. Once in the House of
26 Commons, one honourable member started and he would never stop and everyone was bored.
27 And Winston Churchill desperately wanted to convey that, that now you are boring everyone.
28 But how to say that? He immediately found one member, who was the listener using the
29 hearing aid, so, Churchill immediately interrupted the Speaker and said, I want to know the
30 name of this honourable member, who is denying himself the natural advantage, he has the
31 advantage of removing the hearing aid, why is he...

32
33 **JUSTICE ABHAY S. OKA:** But Solicitor, we may accept your submission, we may not
34 accept. But you are not boring because there's always a smile on your face.

35
36 **TUSHAR MEHTA:** I'm grateful, I'm grateful, My Lord.

37

1 **JUSTICE ABHAY S. OKA:** One more thing, after going through your entire submissions,
2 ultimately it all revolves around *Tika Ram*. *Tika Ram* is wrong, ultimately you will show
3 that. But again, to create laughter when you criticize *Tika Ram*. You must remember that
4 there is Ram in *Tika Ram*.

5

6 **TUSHAR MEHTA:** Yes, *Tika Ramji*, My Lord, everyone says *Tika Ramji*.

7

8 **JUSTICE ABHAY S. OKA:** Your entire submissions, actually it will boil down to that.

9

10 **TUSHAR MEHTA:** *Kesoram* also in the earlier matter. I will not be criticizing *Tika*
11 *Ramji*. I'll be criticizing the judgment, because *Tika Ramji* was right in filing a petition.
12 Judgment was not in his control. And what was argued or more particularly, what was not
13 argued was not in his control. I'm on page 16.

14

15 **JUSTICE ABHAY S. OKA:** No statement by Dr. Ambedkar?

16

17 **TUSHAR MEHTA:** No.

18

19 **JUSTICE ABHAY S. OKA:** In your note?

20

21 **TUSHAR MEHTA:** No. 33, My Lords, something would turn.

22

23 **JUSTICE ABHAY S. OKA:** Right.

24

25 **TUSHAR MEHTA:** Kindly come to 16, only highlighted part, he's, My Lord Dr. Govind
26 Ballabh Pant, is advocating that Provinces also must be having their say. "They require a very
27 extensive network, and I think it is not possible for the Centre to manage these things without
28 the active cooperation and support of the Provinces. So, I propose that the amendment to
29 which I referred at the outset, be accepted unanimously." This is how he sowed the seeds. Now,
30 please see at the foot. I'm not going to read this, this is only for the purpose of completion.
31 Evolution of Entry 24, List II the industries except 52. My Lord, to put it, to paraphrase, it
32 doesn't assist Your Lordships or the other side either way, so I'll not touch that. Please come
33 to page 18. The evolution of 33, and that is crucial, My Lord, let me go a little slowly. As I have
34 said that I am giving four stages, Devolution Rules, Act of 1935, the Draft Constitution, and
35 the Constitution as ultimately, My Lord, adopted. How it comes from Central List to the
36 Concurrent List, that's the journey of 33, the predecessor of 33, My Lord, with different
37 language was in Central List. Page 18 devolution and constitutional history behind Entry 33,

1 List III. Then Devolution Rules. It was in Entry 19, List I. Control of production, supply and
2 distribution of any articles in respect of which control by a central authority, is declared, by
3 rule made by the Governor General in Council or by or under Legislation by the Indian
4 Legislature to be essential in public interest. My Lord with change of words, it is substantially
5 52 plus 33. Now, My Lord, in Government of India Act, it becomes like this. It comes in List
6 II, now, 'exclusive state domain'. Production... I'm sorry.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. Production supply and...

9

10 **TUSHAR MEHTA:** Production supply and distribution of goods, development of industries
11 subject to provisions in List I with respect to development of certain industries under Federal
12 control. My Lord, this came in List II in 1935 Act. It is substantially the predecessor of 33 that
13 production, supply, etc., etc., subject to List I which is under Federal control. Now draft by the
14 Drafting Committee, My Lord, page 19.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

17

18 **TUSHAR MEHTA:** Draft Entry 36 'production, supply and distribution of goods'. Even the
19 draft Constitution put it in List II. Kindly mark that, My Lord, the draft Constitution also puts
20 it in List II. Now, the Constituent Assembly debates. My Lord, kindly note here, I've forgotten
21 to note, it is 31st August 1949 when Entry 52 was being debated this was also debated on the
22 same day. Nothing turns on that but they had both scenario in mind, that's all, My Lord.
23 Shibban Lal Saxena wanted it to be shifted from List II to List I. It was, My Lord, in the draft
24 List II. Shibban Lal Saxena. "Sir, I beg to move that after Entry 64(a) of List I, the following
25 new entry be added. 'Regulation of trade and commerce in and of production, supply, price
26 and distribution of goods, which are the products of industries whose regulation under the
27 control of the Union is declared by Parliament, by law, to be necessary or expedient in public
28 interest of any other goods whose regulations similarly is declared by Parliament, by law, to
29 be necessary or expedient in public interest.'" Then he says My Lord, Shri Shibban Lal Saxena,
30 "Here, I would like to draw the attention of the Drafting Committee to the fact that a similar
31 suggestion is contained in the recommendations of the Ministry of Industry and Supply, where
32 they have suggested that in the Seventh Schedule in Union List, such an entry as I have
33 suggested should be provided for. In fact, I may refer to the very page, page 14 of this booklet
34 containing the comments of the various Ministries on the Draft Constitution. There, the
35 Ministry states, for effective implementation by the Union Government of the industrial policy
36 announced by the Government of India on 6th April 1948 and for other reasons it is necessary
37 to invest the Union Government with certain powers over trade and commerce in respect of

1 and the production, supply, price and distribution of goods produced by the industries to be
 2 brought under central regulation and certain other goods, such as wholly imported articles or
 3 agricultural products. The following additional item is therefore suggested Regulation of Trade
 4 and Commerce in and of production, supply, price and distribution of goods which are..." My
 5 Lord, this is the government suggesting, the then Government suggesting. The Government,
 6 My Lord, the Government is never 'the then' it's, My Lord, continued. "(a) of goods which are
 7 the products of the industries whose regulation under the control of the Union is declared by
 8 Parliament, by law, to be necessary or expedient in public interest; (b) of any other goods
 9 whose regulation similarly is declared by Parliament, by law, to be necessary or expedient in
 10 public interest. Sir, apart from the fact that this amendment has the support of Ministry of
 11 Industry and Supply. It should also be obvious to anybody that within the last four or five
 12 years, our experience has shown us that unless there is this power to regulate trade and
 13 commerce and also production and distribution, there will be chaos in the country. Even the
 14 most important questions of supply of foods and food and clothing and other necessities of life
 15 cannot be tackled on a mere provincial basis. And they must be tackled on an all-India scale.
 16 So, I say this power should be given to the Union by means of an adequate provision here in
 17 the Union List. Otherwise the Centre will not have the necessary power. I think it is most
 18 important power which should be given to the Centre. Besides, Mr. President, will it suffice if
 19 I point out that there is a proposal, for a new Entry 35(a) in the Concurrent List, that covers
 20 this point, I think. Shibban Lal Saxena, is it an amendment, sir? Yes. Amendment number
 21 142." Then T. T. Krishnamachari, "That amendment covers the first part of the honourable
 22 members amendment. Shibban Lal Saxena, it is in the Concurrent List, of course, but it is not
 23 as wide as one that I have suggested. I personally prefer this power to be taken over by Centre
 24 alone." President, "Very well." Shri. Shibban Lal Saxena, "Besides, the words that I have
 25 suggested give much larger powers to the Centre than it is proposed by the amendment in the
 26 Concurrent List. I suggest the experience of our past four or five years, is sufficient reason for
 27 taking this thing, in the heads of the Centre. Sir, I do not think, that we should be afraid of
 28 investing of Centre with power in regard to these vital things, like food and clothing.
 29 Otherwise, I do not think we'll be able to meet the needs of the country in the manner we
 30 desire. At present also, the Central Government has got the power to lay down uniform policies
 31 in regard to these matters. But the Centre should also have the power to make all parts of the
 32 country to fall in line, with the central policy, so as to meet all the needs of the country." Then
 33 Honourable Dr. B.R. Ambedkar, "With regard to the first part of the amendment, there is
 34 proposal of the Drafting Committee to put this matter in the Concurrent List."

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

37

1 **TUSHAR MEHTA:** "And if my friend, Professor Saxena, were to examine the Concurrent
2 list, he will find that, there is an Entry corresponding to 64(b)(a), in Entry 35(a). 35(a), My
3 Lord, is 33, present 33. Then, My Lord, 35(a), Hon'ble Dr. B. R Ambedkar. "Sir, I move, that
4 after Entry 35 of List II, the following new Entry be inserted. Trade and commerce in and the
5 production, supply and distribution of products of industries where the control of such
6 industries by the Union is declared by Parliament, by law, to be expedient in public interest."
7 My Lord, this was accepted. My Lord, thereafter comes an amendment, My Lord, in 1954, My
8 Lord, four or five items were added apart...

9
10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr Datar had said, because of Article 369.
11 Therefore five years, Parliament could control some other articles, like cattle feed, raw cotton,
12 jute. After five years the...

13
14 **TUSHAR MEHTA:** 369 was a transitory provision. Thereafter, My Lord, this is read. But
15 please see, My Lord, Statement of Objects and Reasons of that amendment. Constitution,
16 Third Amendment Act, 1954, which amends Entry 33. They must be having a herculean task,
17 My Lord. 1919, '35, then transitory provisions, to look at the future. Statement of Objects and
18 Reasons, "Entry 33 of the Concurrent List enabled Parliament to legislate in respect of
19 products of industries declared to be under the Union control. In addition, Parliament was
20 empowered by Article 369, for a period of five years to legislate in respect of certain specified
21 essential commodities. It was not considered advisable that after Article 369 lapsed on 25th
22 January '55, the Centre should be divested of all legal powers to control the production, supply
23 and distribution of some of these essential commodities", specifically, My Lord. Then, My
24 Lord, addition, I may not, My Lord, read. Now, My Lord, kindly see, page 23 because the
25 respectful submission of the other side was about Entry 8, List II. Intoxicating liquor, what it
26 means? My Lord, the last line first. It only means 'a beverage having the effect of intoxication'
27 and when we say intoxication, we necessarily say of human being, which is capable of being
28 consumed as it is. If I buy denatured alcohol and do some activity, do some process in it and
29 make it drinkable, it might give me an effect of intoxication. But that is not what is meant in
30 Entry 8. It's beverage, meant for human consumption, for the purpose of intoxication. My
31 Lord, two caveats, before My Lord, I go through that. Number one, what is the import of Entry
32 8 is not a question referred, but when I am before a Nine Hon'ble... Bench of Nine Hon'ble
33 judges, I can't stand on that technicality and in any case, Your Lordship will have to examine
34 8, My Lord, to answer the questions whether specifically referred or not, and therefore, My
35 Lord, I have answered it fully. Number two, here Your Lordships are aware, for any product,
36 there are two categories of Entry, one General Entry, another Taxing Entry. Here, we are not
37 concerned with the taxing entry, they have also not argued, and that's not the question arising.

1 Whoever is taxing whatever, that continues. Now page 23, somewhere in the middle, 'Entry,
2 under the Devolution Rules. Entry 16, Provincial Subject List. It was in List II, My Lord, in the
3 present parlance. 'Excise, that is to say the control of production, manufacture, possession,
4 transport, purchase and sale of alcoholic liquor and intoxicating drugs'. My Lord, this is an
5 entry... taxing entry, but we are just trying to understand what Constitutional framers
6 understood when they say 'intoxicating liquor'. One thing...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

9

10 **TUSHAR MEHTA:** One thing, Your Lordships, will find as a thread, historically that
11 alcoholic liquor, is always spoken of, along with other drugs, opium, poison, et- cetera. So, in
12 a negative sense. It was considered to be a vice, rather than a product. My Lord, I'll... My Lord,
13 with respect, as... this is what comes out... this is not my personal view, but that is how My
14 Lord, it comes out. So, 'excise', that is to say, 'the control, production, manufacturer,
15 possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs'. My Lord,
16 intoxicating drug can be *bhaang* which comes subsequently by name Indian hemp. 'And the
17 levying of excise duties and license fees on or in relation to such articles, but excluding in the
18 case of opium, control of cultivation, manufacture and sale of export'. So, all consumables, My
19 Lord. Alcoholic liquor and intoxicating drugs, which were... Opium, is also an intoxicating
20 drug, which was excluded. Now, 'the above referred Entry makes the following apparent. Entry
21 16 in Devolution Rules is a combined entry, both for taxing and other purposes'. My Lord,
22 thereafter, there is a distinction. I'm sorry, My Lord, kindly pause here for a minute. So ,far as
23 this entry is concerned, it is a combined entry for regulation as well as for taxation.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

26

27 **TUSHAR MEHTA:** Which, My Lord, gets bifurcated subsequently. Second, at page 24, it
28 covered both potable and non-potable alcohol, and therefore, there was no distinction between
29 alcohol for human consumption or intoxicating alcohol and alcohol on one side and remaining
30 alcohol that is non-potable alcohols on the other side. Alcohol as a generic word along with its
31 taxing power was a subject in the State List under 1919 Devolution Rules. Alcoholic liquor, My
32 Lord. Now, My Lord, kindly come to page 24, para 23. Again, My Lord taxing entry, but now
33 it is split in three heads. My Lord, two are taxing and one is general. I did not, My Lord,
34 elaborate much on taxing entry being different from general entry, [UNCLEAR] and other
35 judgments are very clear, My Lord. This would... I'm sorry.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

1
2 **TUSHAR MEHTA:** My Lord, this would also give, Your Lordships, an assistance. Your
3 Lordships, would have noticed in some of the entries, there are two words used, two
4 expressions used. One, is 'intoxicating liquor' and in taxing entries the expression used is
5 'alcohol fit for human consumption'. 'Alcoholic liquor for human consumption'. Why? My
6 Lords, we were just wondering, why there are two expressions used? My Lord, I'll come to that.
7 Now, My Lord Government of India Act 1935 Entry 45, List I. Now, My Lord, it comes in List
8 I, that is the Federal Government, the Central Government, so to say, My Lord in present.
9 'Duties of excise on tobacco and other goods manufactured or produced in India except', My
10 Lord now, this comes in the exception and therefore, goes in II List. So, tobacco is Central
11 subject. Now, please see the expression 'alcoholic liquors'... I'm sorry, My Lords.

12
13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

14
15 **TUSHAR MEHTA:** First is, kindly see the expression, 'alcoholic liquors for human
16 consumption', then second, 'opium, Indian hemp.' My Lord, Indian hemp is *bhaang*. 'And
17 other narcotic drugs and narcotics and non-narcotic drugs'. There are some other non-narcotic
18 drugs having the effect of intoxicating you, but not falling strictly within the definition of
19 narcotic. Then (c) 'medicinal and toilet preparations containing alcohol or any substance,
20 included in sub-paragraph (b) of this entry'. Now, My Lord, please see Government of India
21 Act. It is apparent, that for the first time, alcoholic liquor for human consumption and other
22 alcohol were bifurcated. For the first time, this bifurcation takes place which remains till date,
23 My Lords. Two, so far as non-potable alcohol is concerned, it was shifted to List I as Entry 45
24 of Government of India Act, which is clear from the expression, 'except', My Lord, kindly pause
25 here for a minute. Alcohol for human consumption is taken out Entry I and given to the
26 Provincial List. Meaning thereby alcohol not for human consumption, that is non-potable
27 alcohol is with the Centre. Now, comes My Lord, corresponding entry My Lord, in the State
28 List for taxing purpose. We are not concerned with the taxing power, My Lord. I'm not arguing
29 taxing power. I'm just showing the evolution, how that word is understood. 'intoxicating
30 liquor' and 'alcoholic liquor for human consumption'. Entry 40, List II, Government of India
31 Act. Now, this is for My Lord, List II, State has this, My Lord. 'Duties of excise on the following
32 goods manufactured or produced in the province and countervailing duties at the same or
33 lower rates on similar good manufactured or produce elsewhere in India:-

34
35 (a) Alcoholic liquors for human consumption.' It goes in the State List. According to me, even
36 today, this is there in Entry 8, in with the State. There is no dispute. Non-potable liquor is,
37 with the Centre. That's My Lord, what ultimately, My Lord, I would like to assist, Your

1 Lordships. And similar, My Lord, opium, Indian hemp and other, so and so, so and so, so and
2 so. All these three exceptions are now in the State List. Para 26. I can skip that, My Lord. Now,
3 please come to page 26. How the Drafting Committee drafted this. 'Duties of excise...'

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

6

7 **TUSHAR MEHTA:** 'Duties of excise on tobacco and other goods manufactured or produced
8 in India, except alcoholic liquor for human consumption.' Please note, My Lord, this is a taxing
9 entry and therefore the Constitution uses the expression 'alcoholic liquor for human
10 consumption'. '(b) Opium, Indian hemp and other narcotic drugs and other non-narcotic
11 drugs, but including medicinal and toilet preparations, et cetera'. Now, My Lord, Draft Entry
12 52, List II. 'Duties of excise on the following goods manufactured or produced in the province'.
13 There were a distinction earlier that produced in the province and other than province. My
14 Lord, the purpose of showing this history is to show, that what is 'intoxicating liquor' under
15 Entry 8, has always been with the State and non-potable, has always been with the Centre.

16

17 **JUSTICE B. V. NAGARATHNA:** But taxing of potable alcohol is with the Centre?

18

19 **TUSHAR MEHTA:** Yes, My Lord. That comes. That comes, My Lord. Non-potable.

20

21 **JUSTICE B. V. NAGARATHNA:** Taxing of alcoholic liquor for human consumption, that
22 is, with the State?

23

24 **TUSHAR MEHTA:** Yes.

25

26 **JUSTICE B. V. NAGARATHNA:** That is, with the State.

27

28 **TUSHAR MEHTA:** Because it's for the human consumption.

29

30 **JUSTICE B. V. NAGARATHNA:** Yes.

31

32 **TUSHAR MEHTA:** But non-potable by its very definition, not consumable by the human.
33 You may add something, you can make something, My Lord, that's not for human
34 consumption. You are forcibly making it for getting intoxicated. Now, para 27 on page 26. Your
35 Lordship... I'm sorry.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 26?

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TUSHAR MEHTA: Page 26, para 27.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: 'From the aforesaid, it is clear that Entry 45, List I of Government of India Act was re-numbered as Entry 86, List I, as it existed when Constitution came into force.' My Lord, I'll show subsequently, it is amended. 'Then Entry 40, List II, was renumbered as Entry 52, List II'. That is, My Lord, similar provision for taxation. 86 is Central Government's power of tax. 52, List II. My Lord, this is not 52, List I. 52, List II, is similar power of taxation by the State Government. 'In the Government of India Act, the Federal Government had no jurisdiction over medicinal and toilet preparations containing alcohol, et cetera, as per Clause (c). In the draft of... by the Drafting Committee, the said exception was removed, meaning thereby the Central Government was conferred with the power to levy excise on medicinal and toilet preparations. Now come, My Lord, to 84. This is pre-amendment. My Lord, this is now a Constitutional Entry. I'm not going into, My Lord... I have already shown the history. Devolution Rules, 35, Draft, etc. Now, My Lord, this is List I, Entry 84 to give what is meant by the alcohol for human consumption and intoxicating liquor. We are not concerned with the taxing entry but we get the clue from the taxing entry. My Lord, List 1 Entry 84 says duties of excise on tobacco and other goods manufactured or produced in India, except (a) alcoholic liquors for human consumption. So, taxation power goes from Centre for alcoholic liquor human consumption that is potable alcohol. And I'll say why. I'll show why alcohol liquor for human consumption is potable liquor. And second why in taxing entries, it says alcoholic liquor for human consumption. There is a reason. Then (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b). Now in 2016, this is only for completion. Nothing turns on that but I may not be accused of not pointing out either way, against me or for them or against them or for me, nothing turns. But this 84 is amended in 2016, where this alcohol is deleted, because now it is gone in GST regime, therefore, not that central control is deleted, but it's in a different regime with which we are not concerned. Now, page 28, Entry 51 List II. Now, the taxation power of the State. Earlier Your Lordships, have seen unamended Entry 84 except alcoholic liquor for human consumption. Now, it says for alcoholic liquor for human consumption, page 28 Entry 51 List 2, taxing Entry of 51 of List 2, Duties of Excise on the following goods manufactured so and so (a) alcoholic liquors from human consumption. It was removed in '84 from the Central List at the time of the Constitution itself and brought within the taxing power of the State Legislature at the time when the Constitution came into force. There is one important entry, I'll just make a mention

1 which will assist Your Lordships, My Lord, that is Entry 54, List II this has undergone an
2 amendment.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Constitution then brings in Entry 51 of List II?

5

6 **TUSHAR MEHTA:** Yes.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alcoholic liquors for human consumption.

9

10 **TUSHAR MEHTA:** For taxation purposes. It's a fiscal... taxing entry.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And then you have Entry 84, which is a
13 corresponding entry?

14

15 **TUSHAR MEHTA:** Yes, corresponding is the correct word My Lord, I was searching for that
16 word. 84 and 51 are corresponding entries, respectively, for Centre and the State.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

19

20 **TUSHAR MEHTA:** My Lord, Entry 54 List II prior to amendment, again in 2016, it is
21 amended because of GST regime, "taxes on..." This is pre-amendment. "Taxes on the sale or
22 purchase of goods other than newspapers subject to provisions of Entry 92(a) of List I." Now,
23 in 2016, "Taxes on the sale of petroleum crude, high speed diesel, motor spirit commonly
24 known as petrol, natural gas, aviation turbine fuel and alcoholic liquor for human
25 consumption, but not including sales in the course of interstate trade, etc., etc." So again, My
26 Lord, alcoholic liquor for human consumption, comes in. But I leave it at that, My Lord.
27 Nothing much turns on that. The bottom line is that, alcoholic liquor for human consumption
28 is used in taxing entries. And Entry 8, List II is different. Now, My Lord, please see evolution
29 of Entry 8, List II. This was, My Lord, the quintessential debate which took place. My Lord,
30 what was the position in Government of India Act 1935? My Lord, there is no similar
31 corresponding provision in Devolution Rules. I'm sorry. My Lord, it was quoted at page 23
32 para 21. I'm sorry, My Lord, I stand corrected. I'm thankful to my learned friend. It was... My
33 Lord, I pointed out it...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is a new topic, now. Should we wait or should
36 we begin after lunch? Because this is really now coming into the heart. We've seen now the
37 broader... Taxing entries uses the expression 'alcoholic liquor for human consumption'.

1 Because the heart of their submission is Entry 8, therefore, we just want to have a little bit of
2 time to reflect on what you argued earlier. We'll return at 2 o'clock.

3

4 **TUSHAR MEHTA:** Yes, My Lord. There are other, My Lord, issues also we would... I would
5 like to address, but we are now on Entry 8 certainly.

6

7 **JUSTICE HRISHIKESH ROY:** Also on the interpretation, Mr. Mehta?

8

9 **TUSHAR MEHTA:** Yes, My Lord.

10

11 **JUSTICE HRISHIKESH ROY:** Intoxicating is the keyword, right? So, we have a kind of
12 people who have great capacity to consume. They never sort of...

13

14 **TUSHAR MEHTA:** What is the level?

15

16 **JUSTICE HRISHIKESH ROY:** Will the interpretation differ depending upon the
17 personal...

18

19 **TUSHAR MEHTA:** Capacity.

20

21 **JUSTICE HRISHIKESH ROY:** Capacity to...

22

23 **TUSHAR MEHTA:** It should, My Lord, in fact the Constituion has not taken care of that.

24

25 **DINESH DWIVEDI:** But I shall not fall for that trap, My Lord.

26

27 **TUSHAR MEHTA:** My learned friend seems to have a larger capacity.

28

29 **JUSTICE B. V. NAGARATHNA:** In both the phrases is the word 'liquor'. One is
30 intoxicating, the other is alcohol.

31

32 **TUSHAR MEHTA:** And human consumption.

33

34 **JUSTICE B. V. NAGARATHNA:** Yes.

35

36 **JUSTICE ABHAY S. OKA:** You'll have to explain the difference between the two,
37 intoxicating liquor and alcoholic liquor. What is the difference between the two?

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TUSHAR MEHTA: And why the word 'human consumption' is used only in taxing entry.

JUSTICE ABHAY S. OKA: This is a classic case where non-taxing entry becomes more taxing.

TUSHAR MEHTA: Yes, for... yes, Your Lordships are right. Obligated, My Lord.

TUSHAR MEHTA: I was on page 28.

CHIEF JUSTICE D. Y. CHANDRACHUD: We will get better stools for your juniors on Monday. It's only for today. if it could bear my weight. I think it can bear your weight. Because my weight is a little more because I don't run around as much as your juniors.

TUSHAR MEHTA: My Lord, weight... going by not the physical weight.

CHIEF JUSTICE D. Y. CHANDRACHUD: I am talking about physical weight.

TUSHAR MEHTA: Because sometimes we have seen Your Lordship's portion of foods. Yes, weight, yes. But not physical weight. My Lords, we are grateful. We were discussing that only that's really a great gesture. We are immensely grateful. Page 28. Here so far as Entry 8 is concerned, the Constituent Assembly debates does not throw much light but I want to show those four stages again here also to show how this was clubbed, with what products it was clubbed. My Lord, at the foot, Government of India Act 1935, has shown the devolution rules had both the entries taxing and regular entry. 'Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject as respects opium through the provisions of List I and as respects poisons and dangerous drugs to the provisions of List III.' Then draft by the drafting committee - 'Intoxicating liquor and narcotic drugs.' Substantially the same, Your Lordships may consider ignoring that. Now kindly see - 'Draft Entry 40 was placed before the Constituent Assembly. There is a short debate on the same on 2nd September '49. It may, however, be pointed out that the debate dated 2nd September, on which Entry 8 List II came to be final finalized, had a tremendous impact of the earlier debate, dated 19th, 23rd, 24th November '48, while introducing Article 47 as one of the directive principles of State Policy. The debate which took place regarding Draft Entry 40 List II, that is present Entry 8 is as

1 under.' Your Lordships can skip. Nothing much will assist Your Lordship. Now, kindly directly
2 come to page 31. There is a, the very extensive debate preceding Article 47, Directive Principles
3 of State Policy. One of the honourable members, on the lighter side, and he says this. He said
4 that - 'I have never spoken in my life. I never used to participate even in debate competitions.
5 In this Constituent Assembly debate also, I am speaking for the first time. But I feel so strongly
6 that I want to speak.' So, there is a detailed debate which I have not quoted, I have annexed,
7 so that Your Lordships can get the immediate reference. 'Duty of the State to raise the level of
8 nutrition and the standard of living and to improve public health. The State shall regard the
9 raising of level of nutrition and standard of living of its people and improvement of public
10 health, as amongst its primary duties and in particular, State shall endeavour to bring about
11 prohibition of consumption, except for medicinal purposes of intoxicating drinks and drugs
12 which are injurious to health.' The Honourable Court would notice and Your Ladyship remark,
13 here the word used is 'intoxicating drink' because the Parliament wanted to give a little
14 expansive meaning because apart from intoxicating liquor, there are drinks like *bhang*, et
15 cetera. Therefore, it's an expansive meaning. Now, this is considered in one judgment where
16 Your Lordship caught quotes Seervai. Please see. 'The importance of Article 47' - This is
17 ***Ashok Lenka vs Rishi Dikshit***. 'The importance of Article 47 of the Constitution may have
18 to be noticed tracing the history back, from the date of Constitutional debate. With a view to
19 find out the intent and purpose for which the state provision was inserted, so and so noticed
20 that all sections of the society, including Mohammedan community, whose social habits were
21 reinforced by the Quranic injunction in relation to intoxicating liquor supported the insertion
22 of such a provision.' Consumption of intoxicating liquor in Quranic culture can never mean
23 non-potable. It has to be potable liquor. 'The prohibition of intoxicating liquor had long been
24 a part of the policy of Indian National Congress.' Congress would never have a policy for non-
25 potable industrial alcohol. 'And its inclusion in Article 47 received support from the
26 Mohammedan community, whose social habits were reinforced by the Quranic injunction
27 against intoxicating liquor. In considering the directive in Article 47, it may be observed that
28 the alcohol, the intoxicating ingredient of liquor is a narcotic, a word replaced by the word
29 'depression', to describe the same effects, contrary to the popular belief that it is a stimulant.
30 It is not mere accident that intoxicating liquor and dangerous drugs have been clubbed
31 together in Entry 8, List II.' This is My Lord, commentary of honourable Seervai. Please come
32 to now the main question, My Lord, why there are two different expressions used? My Lord,
33 I'll read three or four paragraphs, but just let me paraphrase my submissions. So far as Entry
34 8, List II is concerned, *prima facie* textually, contextually it means a beverage which can be
35 consumed which has the effect of intoxication [NO AUDIO] The Parliament is not concerned
36 with the intoxicating effect which the person will have or will not have or it is alcoholic, et
37 cetera, et cetera. Therefore, with a view to ensure that the Legislature providing for the

1 taxation of non potable liquor can decide the incident of tax. My Lord, it is not saying
2 intoxicating liquor. My Lord, kindly in this context please see para 32... para 35 at page 32.
3 That's the only distinction which we can get. 'These words, expressions.....'

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But if you look at it in support of what you are
6 saying, which is that alcoholic liquor for human consumption is a species of intoxicating
7 liquor, right? So intoxicating liquor will include a variety of products, a variety of products...
8 I'll say goods, including alcoholic liquor for human consumption. When the Legislature
9 imposes a tax, it has to impose a tax with clarity. Therefore, they identify the product itself,
10 namely alcoholic liquor for human consumption. When it comes to the regulatory power of
11 the State that regulatory power of the State under Entry 8 is couched in much wider terms
12 than the taxing power for the reason that when you regulate, you regulate both what is legal
13 and what is illegal. So the idea of conferring the power on the States to regulate intoxicating
14 liquor was to allow them to also deal with...

15

16 **TUSHAR MEHTA:** After effects, social effects, et cetera.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And where the intoxication may not be due to
19 alcohol, but non-alcoholic intoxication also in that liquor. So alcoholic, the alcoholic content
20 of the liquor, maybe one source of intoxication. But to give regulatory, suppose they were to
21 use the expression instead of 'intoxicating liquor' in Entry 8, suppose they were to use the
22 expression 'alcoholic liquor', the States would not have the power to deal them on a regulatory
23 basis with other things which are not exactly, which are not alcoholic, but which are
24 intoxicating nonetheless. So, the regulatory domain of the States was widened as compared to
25 the taxing domain. Because the taxing domain has to be always extremely specific because you
26 have to specify what is the taxing event.

27

28 **TUSHAR MEHTA:** My Lord, I'm grateful, that I could not have put it that more succinctly
29 than that. For example, My Lord, for regulating the consumption liquor, the liquor which is
30 meant for being consumed, the State may need several regulations - don't drink in public in
31 some circumstances, don't do certain things et cetera, et cetera. And we trace the history in
32 Britain. Because ultimately 1919 Act, 1935 Act had an impact. It was... We were a British
33 Colony. And even in the Constitution so far as some expressions are concerned it has the
34 British, My Lord, imprint.

35

36 **JUSTICE ABHAY S. OKA:** Liquor is much wider than alcoholic liquor.

37

1 **TUSHAR MEHTA:** Yes.

2

3 **JUSTICE ABHAY S. OKA:** That's what you are driving at.

4

5 **TUSHAR MEHTA:** That is 1. Number 2, while providing for a taxing entry, the taxing statute
6 will have to define the incident of tax. For example, excise when the liquor is manufactured.
7 Which liquor? Liquor which is ultimately going to be used for human consumption. For
8 example, under Entry 52, List II, taxing power of the State. Same expression, alcohol... liquor
9 for human consumption.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, it specifies the taxing event.

12

13 **TUSHAR MEHTA:** Taxing event.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is alcohol. But it is defined with the reference
16 of the purpose.

17

18 **TUSHAR MEHTA:** Yes, purpose and it necessarily involves human being, because the word
19 'intoxicating' means someone is getting intoxicated. Here for the taxation purpose it's not
20 necessary. You manufacture alcohol, whether it is potable or non-potable. The taxing event
21 takes place. Whether it may be consumed, may not be consumed. It may have 'X' intoxicating
22 effect, 'Y' toxicating effect. The taxing statute is not concerned. Therefore, it is only in the
23 taxing entries that the word 'alcohol for human consumption' is used. That I am
24 manufacturing, I am liable to excise. I am selling at this point of time when the sale...Your
25 Lordship knows several judgments. Whether sale takes place at the time when the contract is
26 entered into or when the delivery is done or when sale is complete. That's a matter of separate
27 argument in taxation. But then for defining incident of tax, they put it in a general way. That
28 whenever you produce alcohol for human consumption this is the incident of tax.

29

30 **JUSTICE B. V. NAGARATHNA:** That is the end use of that product, is the basis.

31

32 **TUSHAR MEHTA:** If it is to be regulated other than tax, fiscal regulation then Entry 8, List
33 II.

34

35 **JUSTICE B. V. NAGARATHNA:** But for taxation it is the end use of that product.

36

37 **TUSHAR MEHTA:** Which is relevant, yes.

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JUSTICE B. V. NAGARATHNA: Which is relevant.

TUSHAR MEHTA: But at what point of time it becomes taxable that is Entry 86 and 52, respectively, of List I and List II.

CHIEF JUSTICE D. Y. CHANDRACHUD: But you know, just as brother Oka said, intoxicating liquor is wider than alcohol for human consumption but according to you even in the intoxicating liquor it has to be something which is intoxicating *qua* human being.

TUSHAR MEHTA: Correct. Has to be My Lords, because the word intoxic, otherwise it loses its meaning.

CHIEF JUSTICE D. Y. CHANDRACHUD: Not necessarily alcohol. For instance, you may have all these classical cases on somebody being inebriated with the distilled essence of Mahua flowers, right? In law college they taught that case to us when somebody was you know... But so that is not alcohol. I'm not conversant with it, I may be wrong.

TUSHAR MEHTA: Mahua is the raw material for an alcohol.

CHIEF JUSTICE D. Y. CHANDRACHUD: But Mahua flowers essence is not alcohol. But you can still regulate it as... can you regulate it as intoxicating liquor?

TUSHAR MEHTA: Yes, Mahua yes. No, not Mahua flower per se, but Mahua liquor. Mahua is converted into liquor. Supposed to be stronger than the regular liquor.

CHIEF JUSTICE D. Y. CHANDRACHUD: What are those intoxicating substances which may not be alcohol?

TUSHAR MEHTA: *Bhang*, My Lords, for example.

JUSTICE ABHAY S. OKA: *Bhang* does not contain alcohol?

TUSHAR MEHTA: No. It contains some narcotic substance. It is a non-alcohol... it's non-alcoholic intoxicant.

JUSTICE B. V. NAGARATHNA: It's not liquor.

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TUSHAR MEHTA: My Lord Bhang is a separate item, even for excise. Yes, yes. It is uncontrolled. Bhang is the worst intoxicant.

ARVIND DATAR: If Your Lordship goes to Konkan also, you get coconut tree toddy, if you get... also...

CHIEF JUSTICE D. Y. CHANDRACHUD: Toddy, *neera*.

TUSHAR MEHTA: After evening *neera* becomes toddy.

ARVIND DATAR: This is what is called self-generating alcohol, kashayams all in Ayurvedic medicine. Alcohol itself by internal fermentation is generated here.

CHIEF JUSTICE D. Y. CHANDRACHUD: So for instance, in Kerala, if you go to Kerala, even Goa, in the evening, somebody will come to the coconut palm, climb up in a moment and get you the toddy. You have it. It's very extremely pungent, but it's not alcoholic. If you keep it for the day, it becomes alcohol.

ARVIND DATAR: You keep it for the day...

CHIEF JUSTICE D. Y. CHANDRACHUD: It becomes alcoholic.

TUSHAR MEHTA: It becomes alcohol by the evening.

CHIEF JUSTICE D. Y. CHANDRACHUD: Down from the tree, it's strapped from the trees, it is not alcoholic. You may still not going to have it because it has a very distinct odour. But it's not alcoholic at all. Fermentation..

DINESH DWIVEDI: Fermentation takes place, then it becomes alcoholic.

TUSHAR MEHTA: Toddy shops are closed after afternoon.

CHIEF JUSTICE D. Y. CHANDRACHUD: So many times on the highway in Maharashtra you'll find little steel kiosks which say '*Yethe neera vikrila aahe*'.

1 **ARVIND DATAR:** Also neera becomes madi, and madi becomes toddy, that's what I was told
2 in Konkan.

3

4 **DINESH DWIVEDI:** Even in UP neera is had in the morning.

5

6 **TUSHAR MEHTA:** Mr. Datar is right.

7

8 **ARVIND DATAR:** Even in our younger days we used to go to the village, we get morning
9 neera, it's quite tasty and fresh. [UNCLEAR] it becomes more and more...

10

11 **TUSHAR MEHTA:** Therefore, Gujarat being a prohibited state, all neera shops are closed
12 after 02:00 P.M. because then it starts getting fermented.

13

14 **JUSTICE ABHAY S. OKA:** Fermentation process starts.

15

16 **DINESH DWIVEDI:** But that is alcohol.

17

18 **ARVIND DATAR:** It becomes alcohol.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It becomes alcohol.

21

22 **TUSHAR MEHTA:** Now, My Lord, I may show some history.

23

24 **JUSTICE J. B. PARDIWALA:** They will not permit to carry... even we have it today.

25

26 **DINESH DWIVEDI:** Neera seems to be little intoxicating. Lordships are so deeply
27 engrossed in the discussion.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are discussing how toddy is added to
30 *appam* to make it fluffy.

31

32 **DINESH DWIVEDI:** But toddy, my friend said, during my young days used to have it, I
33 think that is wrong. Toddy even today is delicious, I mean, sorry, neera. It's delicious and it's
34 healthy. They say, it's healthy.

35

36 **TUSHAR MEHTA:** Delicious is a subjective thing, but yes, it is healthy. It's pungent.

37

1 **DINESH DWIVEDI:** No. No. Neera is not pungent.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What Mr. Dwivedi is saying is that even
4 Solicitor General can have Neera.

5

6 **TUSHAR MEHTA:** Neera is not toddy.

7

8 **DINESH DWIVEDI:** My friend talks of alcohol. He recites a couplets of also about alcohol
9 flowing from the ice perhaps.

10

11 **TUSHAR MEHTA:** My Lord, para 42, kindly see. One of this argument...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The only point they have been trying to make
14 is that the word 'intoxicating' *per se* does not exclude intoxicating liquor which is not for
15 human consumption. That's their case.

16

17 **TUSHAR MEHTA:** That is para 42. I wanted to...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 42?

20

21 **TUSHAR MEHTA:** Because it should be consumable. You cannot make it drinkable, it has
22 to be a beverage. Para 42 at page 34. 'Secondly, the term 'intoxicating liquor' would necessarily
23 mean a product which can be taken as it is, by which one gets the effect of intoxication. It may
24 be possible that some form of industrial alcohol - that is non-potable - 'may bring the effect of
25 intoxicant if diluted or mixed with some other chemical or taken in a particular manner. Entry
26 8, List II, however, consciously covers the field for a product which is capable of being
27 consumed as it is for bringing the effect of intoxication and not something which is not an
28 intoxicating beverage, but has the potential of being converted into an intoxicating thing. My
29 Lord, you can't go into the market and say that give me denatured spirit or give me ENA and
30 then mix it with something or dilute it with something. It has to be consumable as it is, as a
31 beverage, which gives the effect of intoxication to a human being. Otherwise, there is
32 impossible to reconcile this, My Lord, that Centre has non-potable, State has potable. But 43
33 also. Para 43 at page 35 also. My Lord, I've given the distinction that something can be used,
34 something can be abused. Please see My Lords. 'It is submitted that as far as possible, a
35 common parlance understanding and meaning shall have to be given to the expressions used
36 in the Constitution. The common parlance understanding of the expression, 'intoxicating
37 liquor' is an intoxicating beverage containing liquor and having the effect of intoxication and

1 merely because some other form of alcohol, that is, industrial alcohol, et cetera, can be abused
2 for getting intoxicated after making some changes in the composition would never be falling
3 within the meaning of Entry 8, List II.' And there is a reason, My Lords. So, there is a reason.
4 My Lords, Entry 8 is a regulatory entry. Suppose we read in intoxicating liquor even non-
5 potable alcohol, would the State, I'm posing a question to myself, regulate that when you buy
6 non-potable alcohol, namely ENA or any industrial alcohol, I hereby regulate, don't add more
7 than 30% weight for volume water or add more than 50% volume for water. That's not
8 regulation contemplative.

9
10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But there's only one area in Mr. Solicitor, one
11 area, just consider it. Suppose there is some kind of, and there is now as we know, intoxicating
12 liquor, sorry, industrial alcohol or I can say denatured spirit. Industrial alcohol is an
13 inappropriate phrase. Denatured spirit which can, and we know that it can, be converted into
14 intoxicating liquor either by a process or by whatever. Now, if that possibility of abuse is there,
15 can we deny to the State its regulatory power to ensure that the abuse does not take place? I'll
16 tell you why. Centre is a... Centre is... I mean it's not pejorative. Centre is a disconnected entity
17 from the states. You're a national entity, you're not going to control what's happening in
18 every... in every district, in every collectorate. Suppose there is a strong possibility of
19 denatured spirit being misused for the purpose of consumption, State is vitally concerned as
20 the custodian of public health, where I don't want this liquor tragedy to take place within my
21 jurisdiction. So State can impose regulations for ensuring that that abuse does not take place.
22 If we concede to that State, the power to regulate for the limited purpose, even assuming you
23 are right, that Entry 8 covers only intoxicating liquor and liquor, which is therefore
24 intoxicating for human consumption. The State is still keen on ensuring that somebody else
25 does not use a product which may be of grave danger to public health by misusing the nature
26 of the product. They can make regulations limited for that purpose. And as an incident of
27 making regulations for that purpose, why should we deny them the power to impose fees for
28 that purpose?

29
30 **TUSHAR MEHTA:** Not a fees, My Lord. The regulatory power would be not to consume that.

31
32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not to consume it or for instance if you are
33 transporting denatured spirit, but you must have whatever passes, licenses or that you will
34 transport it under certain conditions, declaration in a certain form, variety of regulatory
35 processes.

36

1 **TUSHAR MEHTA:** That can be done by the Centre. I'll show from IDRA that is what is
2 contemplated. For so far as non...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can the State not... can the State not also say,
5 look this is happening within my territory. This is likely to affect, and we now know that these
6 tragedies, hooch tragedies and all these tragedies take pace.

7

8 **TUSHAR MEHTA:** Hooch is different.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No. No. I'm just giving an example that these
11 tragedies do take place. The States are vitally concerned with the health of their citizens. Now,
12 why should the State not have the power to just regulate? And if they can regulate to ensure
13 that, there is no misuse, then you can impose any fees as an incident of your power to regulate.

14

15 **TUSHAR MEHTA:** Health is a separate Entry 6. Entry 6 in List III. In the second list. My
16 Lord, we may... in exercise of that power, they can. But so far as the industrial alcohol, non-
17 potable is concerned, the regulation under the IRDA will have to be by the Centre. Maybe
18 delegating the exercise of powers to the State. That these are the statutory regulations, every
19 company manufacturing denatured alcohol will have to get these many registers. It will have
20 to make entries. It will have to sell it only to authorized dealers. It will have to ensure that it
21 doesn't go to unauthorized hands. Your police officials will ensure that it is not being used for
22 the purpose of converting clandestinely into something which gives intoxication et cetera, et
23 cetera. But law will have to be, in my submission, traced under 52 only, because it is non-
24 potable alcohol. It will not fall within 8. This is how the drink is treated. Intoxicating liquor is
25 treated historically, and that in a short while I'll just give... If My Lord can come to page 35.

26

27 **JUSTICE ABHAY S. OKA:** Solicitor, it was argued that denatured spirit can be converted
28 into something which can be consumed. It becomes intoxicating liquor. So State has power to
29 legislate for regulating something which is prepared by using denatured spirit. Suppose
30 denatured spirit is converted by some process into intoxicating liquor, that aspect can be also
31 regulated by the State Government.

32

33 **TUSHAR MEHTA:** I'm sorry. The argument is fallacious.

34

35 **JUSTICE ABHAY S. OKA:** First, you tell us whether it is possible to convert denatured
36 spirit into an intoxicating liquor.

37

1 **TUSHAR MEHTA:** That argument, I am respectfully submitting, is fallacious for the reason.
2 Denatured alcohol without any industrial process, by some clandestine process, can never be
3 converted into a consumable product. It is converted into a product which gives you
4 intoxication. For example, snake bites in a limited quantity gives you intoxication. Some cough
5 syrups have alcohol content, more alcohol content. People drink the entire bottle and get the
6 intoxication. This is an intoxicating drink but not permitted. When you convert it
7 clandestinely... My Lord, what they do in the brewery, they convert industrial alcohol into
8 potable alcohol but by way of a methodology, by way of machines, by way of controlled
9 environment, by way of a particular temperature being maintained, et cetera and the purpose
10 is to create the beverage for human consumption. What we are discussing and what my learned
11 friend was giving an example, it is capable of being converted, meaning thereby we can add
12 something and we'll get intoxicated. But that is not intoxicating liquor. You are clandestinely
13 misusing the product with a view to ensure that you get intoxicated.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** See it's a regulatory entry structuring the
16 regulatory power of the State. So, when Entry 8 says intoxicating liquor, it should be very
17 restrictive for us to say that, this will apply only to properly so-called intoxicating liquor. Why
18 can't this... Why can't it extend to regulating those products, which are misused for the purpose
19 of selling them off as intoxicating liquor because then what we'll be doing is, we will be telling
20 the States that - 'You can't do anything, even though there's a great danger that this would be
21 used for the purpose of... '

22

23 **TUSHAR MEHTA:** Many things. I'll show.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But under the Central Law, you are saying...

26

27 **TUSHAR MEHTA:** No, even under the State Law. no, Please see, how this history has
28 developed. How United Nations used to and still controls the word 'intoxicating liquor'. We
29 have derived the imprint of this expression from United States.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, you concede... not concede, you
32 accept that the States do have the limited power, whatever that power is we'll see, to regulate...

33

34 **TUSHAR MEHTA:** For health. Hooch is different. Hooch is completely different. It's kind of
35 an unauthorized small brewery. What my learned friend is talking about is that I buy
36 denatured spirit, add water into it. And if I drink... I buy the...

37

1 **JUSTICE ABHAY S. OKA:** You talked about clandestinely made intoxicating liquor. So if it
2 is a clandestinely made intoxicating liquor, it will be Entry 8.

3

4 **TUSHAR MEHTA:** No, it would be health, law and order, et cetera. Because intoxicating
5 liquor means pure and simple beverage manufactured, commonly used for the purpose of
6 serving to people. We will have to give that meaning. Otherwise, there may be several...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But it will also cover those liquors, which are
9 passed off as intoxicating liquors, because they have a deleterious effect.

10

11 **TUSHAR MEHTA:** They can't cover exceptions.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 6 and Entry 8 of List II are not, in that
14 sense, disjunctive entries. They are both... the States have both powers, the domain under
15 Entry 6 and the domain under Entry 8. Entry 6 is public health. Entry 8 says intoxicating
16 liquor. Why can't the State say that - 'Well, we are concerned about the fact that there are
17 products in the nature of denatured spirit which are being passed off as intoxicating liquor,
18 and we want to prevent that happening by having regulatory measures in place.' Limited to
19 that purpose.

20

21 **JUSTICE ABHAY S. OKA:** One way of interpreting it is...

22

23 **TUSHAR MEHTA:** Entry 6. Even law and order. Even law and order. The reason I'll tell Your
24 Lordships.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Once we accept that the States can do it,
27 whether it's under Entry 6 or Entry 8, it makes no difference.

28

29 **TUSHAR MEHTA:** I am protecting 52.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Incidental. Incidentally, it is Entry 6.

32

33 **JUSTICE B.V. NAGARATHNA:** It is Entry 6 only.

34

35 **TUSHAR MEHTA:** I am protecting 52. Sum total would be, sum total... I am sorry. To share
36 Your Lordship's concern that so far as the effect of an abuse is concerned, the State would be
37 more concerned in regulating that. My Lord, kindly examine that from another angle. What

1 would be the Constitutional position if that view is taken. That's my respectful submission. My
2 Lord, one thing is clear, if I am right, that non-potable liquor the regulation is with the Centre.
3 Potable liquor, regulation is with the State. That's the Constitutional position. Now, Your
4 Lordships by a judicial verdict create a third category that any abuse of non-potable liquor as
5 potable liquor will go to the States. My Lord, which would amount to amending the Entry.
6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I'll take the case of say the State of Gujarat or
8 the State of Bihar, they have imposed prohibition, they have a policy of prohibition. No liquor
9 consumption. No consumption of liquor or alcohol for potable purposes. That is completely
10 therefore outlawed within the state. If we accept your very rigid classification, that would mean
11 that much as though these two states have imposed a policy of prohibition, you cannot control
12 the inflow of this clandestine trade, in say, denatured spirit or industrial alcohol, which is
13 capable of being, and is being used for the purposes of consumption.
14

15 **TUSHAR MEHTA:** That is My Lord, a practical way of looking at it. But My Lord, kindly see
16 where do we stop. If that is so, the State can... If that is right, then the State can legitimately
17 say that non-potable alcohol which is manufactured in Gujarat or Bihar also, we will control,
18 that it has to have a particular degree of alcohol so that it is not abused. Then they start
19 regulating the manufacture also. How do we define the abuse? Because maybe at some
20 percentage of alcohol in the denatured alcohol, it is either easily possible to abuse or it is
21 difficult to abuse. Then My Lords, they can say that for the purpose of ensuring that my
22 prohibition law is not flouted by clandestine means, I will issue a direction to the breweries
23 that this is how you will exercise the power... exercise the manufacturing process of bringing
24 denatured alcohol. My Lord, therefore, even for the purpose of My Lord, a very right concern
25 expressed by Your Lordships, the solution is a directive by the Centre under the IDRA that this
26 is how you will have to control because this is not a problem only in the prohibited state. I
27 mean, states having prohibition. This is everywhere because of financial reasons.
28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Except in the prohibition states the stakes are
30 much higher because you can't get it lawfully.
31

32 **TUSHAR MEHTA:** Yes, yes. My Lord, there are...
33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The stricter the regulation, the more the people
35 want to evade. Right? That's why in the prohibition states there's a greater, there's a premium
36 for people who want to evade, and they extract that premium. It's a hard right.
37

1 **TUSHAR MEHTA:** There are certain things, My Lord. For example, even where there is no
2 prohibition, now, people are fed up. We have studied something. With the regular kick, which
3 the alcohol gives, for some states, I can't name the states. It doesn't look good. People consume
4 very regularly, one or two bottles of cough syrup because they say it's a different kind of a kick.
5 Your Lordships would be amazed, Iodex, which is used for the purpose of some pain, et cetera.
6 Iodex, they not only smell, they put it on a jam like a... put it on a bread like jam. And they eat.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, usually our, these NDPS bail
9 applications, recovery of 3000 bottles of cough syrup.

10

11 **JUSTICE ABHAY S. OKA:** Codeine.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Codeine. 3000 bottles of cough syrup.

14

15 **TUSHAR MEHTA:** My Lord, for example, white ink, the eraser ink. My Lord, eraser ink.
16 Eraser ink is a product. We used to use it when we used to have a manual typewriter. That is
17 being used for intoxication. Then My Lord, though eraser ink may not be within the State
18 subject, which have you to ensure that it is not misused. The State can on that very logic
19 regulate even eraser ink. That white ink all of us might have used it before... These people may
20 not have known.

21

22 **JUSTICE B. V. NAGARATHNA:** Erase X. That product is called... That whitener.

23

24 **TUSHAR MEHTA:** Whitener. Yes, that's the correct word. The whitener.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have those ball points also where you just
27 press it and it just comes out. Earlier you had those brushes. That's right.

28

29 **JUSTICE B. V. NAGARATHNA:** See, that is not an intoxicating liquor at any rate, it is an
30 industrial product.

31

32 **TUSHAR MEHTA:** No, I'm saying something else. Say, for example, hypothetically this
33 whitener or white ink is controlled otherwise by the Centre under some entry but with a view
34 to avoid its abuse, it can be controlled by the State also, if this argument is right... this
35 interpretation is right.

36

37 **JUSTICE B. V. NAGARATHNA:** Under Entry 6 of List II, health purpose.

1

2 **TUSHAR MEHTA:** No, I am saying under 52, they cannot do it. But if there is any other
3 power, of course, nobody can take away except by amending the Constitution. The entry... My
4 Lord, my respectful submission is Your Lordships would go by the generic sense of the word
5 rather than abuse. If we go by each entry, its abuse may find place in some other entry as well,
6 in some other list as well. And I will show when I come to the scheme. My learned friends have
7 already shown 18-G of the IDRA. There are power to issue directions. That you do this, you do
8 that, you do that, et cetera, et cetera. And maybe regulations can be framed for that purpose.
9 That's the answer. Conferring power and tracing it under Entry 8 may perhaps not be the
10 correct position. Now kindly come to page 36. We have borrowed this expression from British
11 legislations.

12

13 **DINESH DWIVEDI:** My Lord, my only submission is, is my friend arguing that *Synthetics*
14 is wrong. *Synthetics* says the power is there to regulate industrial alcohol.

15

16 **TUSHAR MEHTA:** We are on the... I'll respond My Lord. Paragraph 36. Page 36. There is a
17 chart, My Lord. We have borrowed some of the expressions from the British Legislations. How
18 British used to... because this has come from 1919 and 1935, at least during the British regime.
19 So we can safely rely upon what they used to consider intoxicating liquor. And I'll show the
20 statement of objects and reasons of this act, the Licensing Act.

21

22 **JUSTICE ABHAY S. OKA:** Before we read this, your submission is that intoxicating liquor
23 means something which can be consumed...

24

25 **TUSHAR MEHTA:** As a beverage.

26

27 **JUSTICE ABHAY S. OKA:** By a human being and if there is an abuse, there are other
28 powers, other entries which can take care of that. That is what some substance [UNCLEAR]

29

30 **TUSHAR MEHTA:** In my submission, it cannot be traced to Entry 8.

31

32 **JUSTICE ABHAY S. OKA:** There are other entries...

33

34 **TUSHAR MEHTA:** Because it is potable alcohol. My Lord, UK Parliament enacted the
35 Licensing Act in....

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Many of these acts which were brought into
2 the chart are also those covered in *Balsara*? Are they, some of these also... because we'll have
3 to deal with *Balsara*. We will have to answer *Balsara*. Many of these, I think, are in
4 *Balsara* also, right?

5

6 **TUSHAR MEHTA:** No My Lord, *Balsara* has not analyzed these acts.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It has not analyzed?

9

10 **TUSHAR MEHTA:** It has not analyzed.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I thought some of these are also the ones which
13 *Balsara*...

14

15 **TUSHAR MEHTA:** *Balsara* mentions this but they have not... *Balsara* doesn't analyse
16 and I would wish to show..

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But we find mention in the judgement, we find
19 mention in the judgement.

20

21 **TUSHAR MEHTA:** Yes, My Lord.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's what I was asking.

24

25 **TUSHAR MEHTA:** Please see page 36 'intoxicating liquor'. And I'll request Your Lordships
26 to read the... read, which is not taken note of by *Balsara* - 'The definition of 'intoxicating
27 liquor' means spirits, wine, beer, water, cedar, parry and sweets and any fermented, distilled
28 or spirituous liquor which cannot, according to any law, for the time being enforced, be legally
29 sold without a license from the Commissioner of Inland Revenue.' Now please come to page
30 578, Volume IV(b). Preamble of this Act, this is not taken note of by *Balsara*. Your Lordship
31 gets, Volume IV(b), page 578? 'An Act for Regulating the Sale of Intoxicating liquors.' The
32 same expression we have borrowed. Please see where... does Your Lordships get? [UNCLEAR]
33 'Whereas it is expedient to amend the law for the sale by retail of intoxicating liquors and the
34 regulation of public houses and other places in which intoxicating liquors are sold and to
35 make...' I'm sorry. Page 578..

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, I got it. Yes. What were you reading?

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TUSHAR MEHTA: I'm reading the preamble of an Act for regulating sale of intoxicating liquor. It is Licensing Act 1872. So 'intoxicating liquor' is the expression we have used in our Constitution. Volume IV(b). My Lord, just...

JUSTICE HRISHIKESH ROY: It says, it is not applicable to Scotland.

TUSHAR MEHTA: Maybe. I am told there are separate acts.

JUSTICE HRISHIKESH ROY: No, most of the scotches are from...

TUSHAR MEHTA: Scotches made in Scotland. 'Whereas it is expedient to amend the law for the sale by retail of intoxicating liquors and the regulation of public houses and other places in which intoxicating liquors are sold and to make further provision in respect of the grant of new licenses for the sale of intoxicating liquor and better prevention of drunkenness.' A human being is necessary and intoxicating liquor, please see section 3 'No person shall sell or expose for sell by retail any intoxicating liquor without being duly licensed to sell the same or at any place where he is not authorized by his license to sell the same. Any person selling or exposing for sale by retail, any intoxicating liquor which is not licensed to sell, et cetera, et cetera.' Please see Section 5, also at page 579. Your Lordship gets, at the foot of page 579?

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: The marginal notice. 'Seller liable for drinking on premises contrary to license. If any purchaser of any intoxicating liquor from a person who is not licensed to sell the same be drunk.' That human element of getting intoxicated. ' On the premises, drink such liquor on the premises where the same is sold or any other highway adjoining or near such premises, the seller or such liquor shell, if it appears that such drinking was with the privity or consent, et cetera, et cetera.' My Lord, similarly see 6. Drunkenness is the subject matter My Lord. This is the regulation which the State can mean. 6 - 'If any person having a license to sell intoxicating liquor not to be drunk on the premises, himself takes or carries or employs or suffers any other person to take or carry any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account.' So and so, so and so, so and so. Kindly see last three lines. 'The purchaser thereof, on the premises of such licensed person with his privity and consent and such licensed person shall be punished accordingly in manner provided by this Act.' This is the regulation which the State can mean. Now similarly 8. 'Every person shall sell all intoxicating liquor which is sold by retail and not in cask or bottle and is

1 not sold in a quantity less than half a pint, et cetera et cetera.' My Lord, this can be then
2 offenses and penalties at 582. Then My Lord, I'm not....

3

4 **JUSTICE HRISHIKESH ROY:** The meaning of the expression 'sober as a judge'.

5

6 **TUSHAR MEHTA:** My Lord, sober as a judge from the point of view of the bar. Has nothing
7 to do with alcohol.

8

9 **JUSTICE ABHAY S. OKA:** That's a good one.

10

11 **JUSTICE B. V. NAGARATHNA:** The question is which bar?

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Domain expert who is going to argue now in
14 your side, following your argument.

15

16 **TUSHAR MEHTA:** On alcohol?

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I didn't say that. I just said domain expert.

19

20 **TUSHAR MEHTA:** I can come back after Your Lordship knows about the story of
21 Shankaracharya. I'll just take two minutes. Shankaracharya used to do *shastrarth*, which is a
22 debate with everyone. So he went to a very great scholar and a very elderly rishi.
23 Shankaracharya was very young, obviously. It's called...

24

25 **JUSTICE B. V. NAGARATHNA:** Mandana Mishra.

26

27 **TUSHAR MEHTA:** Mandana Mishra. And Mandana Mishra said that - 'You are young. I am
28 very old, so I'll give you one advantage. You choose the judge who will decide who won.'
29 Shankaracharya says that - 'Your wife who is also equally learned will be the judge.' And the
30 debate started. The wife started realizing that - my husband is losing. So at some stage, almost
31 at the end she said that - 'I am the wife of the contestant and I'm a *ardhangini*, so I am also
32 supposed to ask you certain questions. I can also. I'm entitled to ask you questions.'
33 Technically, you are right. You can ask me questions. Then she started asking questions about
34 sex. Because he was a celibate. So Shankaracharya was taken aback. He said - 'Then give me
35 some time.' Then he... *parakaya pravesh* etc. It is believed that he learned about it and
36 thereafter answered it. I can answer it after this long weekend. After becoming a domain

1 expert. Well, ultimately My Lord... But My Lord, she declared Shankaracharya to be the
2 winner. The wife... then she only declared Shankaracharya.

3

4 **JUSTICE HRISHIKESH ROY:** The final question sealed the victory. The final question.

5

6 **TUSHAR MEHTA:** Yes. Now, please see page... and none of these is considered in *Balsara*.
7 They note the Act. 632 same volume. Yes. My Lord. Page 4(b). This is House of Commons
8 debate. This is not taken note of by *Balsara*. I'm just showing how Britain used to
9 conceptualize or consider or define the term 'intoxicating liquor'. Mr. Herbert Roberts... Your
10 Lordship gets? Because we have the imprints of this law. Let us face it. The expressions are the
11 same. Your Lordship gets, the Chief Justice gets?

12

13 **JUSTICE HRISHIKESH ROY:** This is pertaining to intoxicating liquor and drugs in India.
14 Although the debate is in British parliament.

15

16 **TUSHAR MEHTA:** British India. 'I beg to ask the Secretary of State for India whether he is
17 aware of the number of shops open, for the sale of intoxicating liquor and drugs in India rose
18 from so and so to so and so that the net revenue on liquor and drugs consumed in India for
19 the years so and so, has increase of so and so and so, and last shops opened and consequent
20 increase in consumption.' Then the Secretary of State for India, Mr. Brodrick answers - 'The
21 increase in the number of shops was considerable only in the two provinces of Bengal and
22 Central Provinces. In Bengal it was chiefly due to the fact that many shops sanctioned, but
23 unlet in 1902, were let in in '02-'03 and in the Central Provinces to the Government taking
24 over the excise arrangements in certain semi fiduciary areas and to consequent, to the
25 consequent more strict enforcement of the law. As the increase of revenue in 1902 to '03 over
26 1901 to '02 in these two provinces was not marked, the additional shops could not have had
27 much effect on consumption.' They also use it in the sense of consumption in shops. How we
28 regulate, how would the State regulate potable liquor? They will give license. That only
29 licensed person can sell. The licensed person will have this much capacity. The licensed person
30 will have to make certain arrangements for securities. The licensed person will have to ensure
31 that it is not sold or consumed in public places. That is the regulation contemplated under
32 Entry 8. If somebody abuses it, that is not within the domain of the State. Similar, I'm not
33 duplicating. 634. It further goes, 'Hours of sale of intoxicating liquors.' Page 634, 'Herbert
34 Roberts asked the Under-secretary of State of India whether he is aware that Government of
35 India have expressed an opinion in favour of curtailing the hours of sale of intoxicating
36 liquors.' Sale of intoxicating liquors as beverages. That is how it has always been understood.
37 'Whether he has seen the statement, et cetera, et cetera.' Then I'm not duplicating. But please

1 see the answer. Next, My Lord - 'Herbert Roberts asked the Under-secretary for India, whether
2 he's aware of the almost unanimous consensus of opinion amongst district officers in Bombay,
3 that the change from the unrestricted optioning of license has resulted in a noticeable
4 improvement in the management of liquor traffic, whether since the introduction of the fixed
5 fee system in Bombay, there has been a substantial diminution of the consumption of
6 intoxicating liquor, et cetera.' Intoxicating liquor has... This only to show intoxicating liquor
7 has always been understood as meaning something which is sold as a beverage which has an
8 impact on impact of intoxication on human beings under licensed premises or under a valid
9 license. And when we say human consumption, we necessarily say human legitimate
10 consumption. Last Act at page 37. I'm not reading it. Intoxicating liquor, Sale to persons under
11 18, Bill 1923.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page?

14

15 **TUSHAR MEHTA:** 37, My Lords. There are two Acts, My Lord. I'm sorry, one Act which
16 remains, last in the chart. 'Intoxicating liquor (Sale to persons under 18), Bill 1923.' Your
17 Lordships can just note page 636 of the same volume, but it is using the expression in the same
18 term. So my respectful submission is Your Lordships would consider using this giving
19 interpretation to this expression the way it has always been understood. My Lord, for example,
20 snake bite is the latest form of kick in some cases. My Lord suppose, it is capable of being
21 converted into a drink, it would be intoxicating. It may have some amount of liquor, we do not
22 know. Now would it be treated as an intoxicating liquor? Answer is no. It is alcohol-based
23 drink, which is served as a beverage for human beings, effect, having the effect of intoxication,
24 which is popularly consumed. Now, I would wish Your Lordships to have what is alcohol and
25 its forms. That is at page... I'll come to *Balsara* a little later when I take judgments My Lord,
26 all the judgments I'll take simultaneously, and then I'll show the scheme of IDRA. Page 50, if
27 Your Lordships can see. This is My Lord, sitting with the officials, we have prepared this, that
28 what is the type of alcohol. Your Lordships were taken through them. There is some deviation.
29 Your Lordships would like me to skip this.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah, yeah, I'm discussing something else.

32

33 **TUSHAR MEHTA:** Please, Your Lordship.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which para?

36

37 **TUSHAR MEHTA:** My Lord, I am on page 51, para 60.

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JUSTICE HRISHIKESH ROY: In the same volume?

TUSHAR MEHTA: Same volume. Written submissions, My Lord. My Lord, I am on para 60, page 51. Rather, if Your Lordships can go a little back, para 58, that may give a little holistic picture. And then I'll show the scheme of the Industrial Dispute Act, to demolish that this very fundamental argument that 18-G is the only provision is absolutely fallacious. The Act occupies the entire field. But, para 58. Your Lordships get it? My Lord the Chief Justice gets it? Para 58. 'The term alcohol means Ethyl alcohol at any strength and purity having chemical composition C_2H_5OH . OH sorry. Ethyl alcohol, which is non-potable, is a very vital and widely used raw material in several industries such as pharmaceutical and drugs, rubber, petroleum, et cetera. It is used as an antifreeze material in automobile radiator. It is also used as antiseptic. It is also used in preparation of ether, chloroform, iodoform, so and so, so and so. It is also used in manufacture of drugs, perfumes et cetera. Ethyl alcohol is used as an industrial solvent for paints, lacquers, dyes, varnishes, cosmetics, et cetera. So far as alcohol is concerned, the following details are relevant. Alcohol is derived through a distillation process where carbohydrate, sugar or starch is fermented and then distilled to extract alcohol. Alcohol can be made from any feedstock which has high content of carbohydrates, such as sugar cane, rice, maize, potato, beetroot, et cetera. In India, alcohol is predominantly made from sugarcane juice, molasses, byproduct of sugar production, broken rice and maize. Major types of alcohol are given below. Rectified Spirit. Rectified spirit generated after distillation having minimum 95% of Ethanol content is used only for industrial purpose. It is used for industrial purposes, such as used as solvent in paints, industrial chemicals, et cetera. Then Extra Neutral Alcohol. This neutral spirit having minimum 96% Ethanol content is made by further purifying the RS that is the rectified spirit. This is used both for potable alcohol and industrial purposes. Then Absolute Alcohol. Also known as absolute alcohol, having minimum 99.6% Ethanol content is also an industrial alcohol and is produced by further removing the water from rectified spirit and used in pharma industry. Denatured Alcohol. Refers to alcohol products adulterated with toxic and or bad testing additives that is, methanol, benzene, pyridine, castor oil, gasoline, so and so and so and so making it unsuitable for human consumption.' Please mark this. 'Denatured Alcohol is not fit for human consumption. It is used in fuel blending, making disinfectants, tinctures, varnishes, preserving biological specimens, industrial solvents, et cetera.' Then Potable Alcohol for human consumption can be categorized, that is, India made foreign liquor. Normal standard is at 42.8% and country liquor varies from state to state, but between 25% to 35%.' Please see the chart which we have prepared in consultation with the officers. First is molasses, sugar syrup or grains. Then this is the raw material. Please note this. This is the raw material for production of alcohol. Then adding water and enzymes for

1 fermentation plus grinding in case of grains. That is the preparation. Third is fermentation.
2 Time is taken up to 72 hours. Then distillation means removing of water and impurities to get
3 pure alcohol. From there three things which we can obtain. One is rectified spirit, only used
4 for industrial purposes in industries such as paint, chemicals, et cetera. That is minimum 95%
5 of Ethanol weight per volume. Then absolute alcohol is made upon dehydration that is called
6 industrial alcohol used in pharma industry. And on the right-hand side, Your Lordships would
7 find upon further purification of rectified spirit or ENA we get industrial use depending upon
8 the market conditions. This is where regulation comes. Some industries go for only industrial
9 alcohol and some industries go for alcoholic beverages. That is scotch, whiskey, rum, gin, et
10 cetera, et cetera. Now on the left-hand side again. If Ethyl alcohol undergoes the process of
11 denaturation, we get denatured alcohol, which is toxic. The argument was denatured alcohol
12 is fit for human consumption. I'll show it is toxic. It is not fit for human consumption. Toxic,
13 unfit for human consumption and used to mix in fuel, disinfectant, making tinctures
14 varnishes, preserving biological specimen, et cetera. Now, please see there is one judgment
15 **Vam Organics**, which directly deals with denatured alcohol. This judgement **Vam**
16 **Organics**, Justice Oka had an occasion to deal with in Bombay High Court sitting with Justice
17 Chagla. It is authored by Justice Chagla but Your Lordships have seen this. I'll just read page
18 54 para 61. 'At this stage, it is required to be pointed out that it is absolutely wrong to suggest
19 that denatured alcohol is either potable or fit for human consumption. As a matter of fact, the
20 additives are added in pure alcohol to make it poisonous, bad taste, foul smell and to
21 discourage its human consumption. In some countries it is also dyed so that it can be identified
22 visually.' It should be dyed. Kindly allow me to. It should be dyed. 'It is used as a solvent and
23 as a fuel for alcohol burner and camping stalls apart from having other industrial uses. This
24 fact is judicially recognized by this Honourable Court in the judgment of **Vam Organics.**'
25 My Lord, I'll just read this para. 'Before proceeding further it will be proper to understand, the
26 difference between industrial alcohol, denatured spirit and potable liquor. Ethyl alcohol is
27 rectified spirit of 95% weight per volume in strength. Rectified spirit is highly toxic and unfit
28 for human consumption. However, rectified spirit diluted with water is country liquor.
29 Rectified spirit as it is, can be used for manufacture of various other products, like chemicals,
30 et cetera. Rectified spirit produced for industrial use is required by notification issued under
31 the act, to be demonstrated in order to prevent the spirit from being directed to human
32 consumption. Rectified spirit is denatured by adding denaturants which make the spirit
33 unpalatable and nauseating. As such, rectified spirit can be converted to potable liquor but
34 once denatured, it can be used only as an industrial alcohol. The process of denaturation
35 described by the Respondent is narrated by the High Court in the following terms.' I can skip
36 that. Eventually, it says that denatured alcohol is toxic. It is made toxic so that people don't
37 consume it. In some countries it is even dyed. Dye is added to it. So the argument the

1 denatured spirit with some dilution can still be consumed is fallacious. I'll come to the position
2 of sugar, et cetera, a little later. Now let me take Your Lordships to the Industrial Development
3 And Regulation. I want some statistics to be shown, that why this regulation is necessary. For
4 example, during Covid, the maximum requirement was that of this sanitizer, alcohol-based
5 sanitizer. The Government did issue directions. They were under the Essential Commodities
6 Act because it is stricter, but it can be issued even under the IDRA, that 'don't produce
7 anything, don't produce the potable liquor right now. Produce only industrial alcohol.'
8 Government issued directions, Chief Justice is aware in some other context, My Lords have
9 seen this. When we needed oxygen, all steel plants were closed up. That 'you will not
10 manufacture' because every steel plant has oxygen generation stations. They generate
11 industrial oxygen...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which is form of purified than the regular.

14

15 **TUSHAR MEHTA:** Regular. But they were all directed not to generate any industrial oxygen,
16 generate only medical oxygen and medical oxygen used to be transported everywhere. But I'll
17 show those figures, why this regulation is necessary. Kindly see My Lord, IDRA. Volume IV,
18 547. I may be permitted to use for limited purpose the book. 547, the statute, Industrial
19 Development and Regulation Act. The purpose is to show that the outside dimension, that 18-
20 G is not the only section. The Act as a whole, occupies the field and there is manifest
21 parliamentary intention to occupy the field. Your Lordships may kindly see Section 2. My Lord,
22 I'll take Your Lordships to the history of this Act a little later. First, let me show the Act itself.
23 'Declaration as to expediency of control by the Union. It is hereby declared that it is expedient
24 in the public interest that the Union should take under its control the industries specified in
25 the First Schedule.' My Lord this is a declaration contemplated under Entry 52, List I. Correct,
26 My Lords? Now, please see scheduled industry is as specified. Please see Section 5.
27 'Establishment and constitution of Central Advisory Council and its functions. For the purpose
28 of advising it on matters concerning development and regulation of scheduled industries, the
29 Central Government may by notified order.' My Lord please mark this, 'notified order' word is
30 used at more than one places. I'll have to squarely meet with that argument and I have an
31 answer. Respectfully My Lord, I would try and persuade Your Lordships. 'Notified order,
32 establish a council to be called the Central Advisory Council. The Advisory Council shall
33 consist of a Chairman, so and so.' Your Lordships can skip. Rest is not necessary. Section 6
34 ,My Lord. 'Establishment and Constitution of Development Council and their functions.' Rest
35 may not be relevant for Your Lordships, My Lord. Please see Sub-Section 4. Your Lordship
36 gets Sub-Section 4? 'A Development Council shall perform such functions of a kind specified
37 in the Second Schedule as may be assigned to it by the Central Government and for whose

1 exercise by the Development Council it appears to the Central Government expedient to
2 provide in order to increase the efficiency or productivity in the scheduled industry.' Please
3 mark this My Lord. The productivity comes. 'or group of scheduled industries for which the
4 Development Council is established to improve or develop the service that such industry or
5 group of industries renders or could render to the community or to enable such industry or
6 group of industries to render such service more amicably.' My Lord, pausing here for a minute,
7 please come to Schedule 2. Your Lordships would get it My Lord at... I will just show My Lord
8 some of the functions so that Your Lordships may not have to go through all the functions.
9 These are the Second Schedule 64. Does Your Lordships get My Lord? It is at page 598, My
10 Lord. Same volume, 598. These are the functions of the Council which will advise the Central
11 Government. And Central Government thereafter takes actions, if required. My Lord one,
12 function number one - I'll read only those which are relevant for the present matter.
13 'Recommending targets for production, coordinating production programs and reviewing
14 progress from time to time.' The production is a regulated activity. Then 2 - 'Suggesting norms
15 of efficiency with a view to eliminating waste, obtaining maximum production, improving
16 quality and reducing cost.' All this is regulated. 3 - 'Recommending measures for securing the
17 fuller utilization of the installed capacity and for improving the working of the industry,
18 particularly of the less efficient units.' Promoting, then My Lord, 5 - 'Promoting
19 standardization of products.' The product is directly controlled through the Council. Then 7 -
20 'Promoting or undertaking inquiry as to materials and equipment and as to methods of
21 production, management and labour utilization, including the discovery and development of
22 new materials, equipment, and methods of improvement in those already in use, the
23 assessment of advantages of different alternatives and the conduct of experimental
24 establishments and of tests on a commercial scale.' When we say promoting or undertaking
25 inquiry as to the material and equipment for method of production, it necessarily includes raw
26 material also. That you procure raw material in a particular fashion so that your maximum
27 productivity and efficiency is improved. Last, 14 My Lord. 'Promoting the adoption of
28 measures for increasing the productivity of labour, including measures for securing safer and
29 better working conditions and provision and improvement of amenities and incentives for the
30 workers.' Your Lordships may also see 10 and 13. I'm sorry I missed that. 'Promoting or
31 undertaking scientific and industrial research. Research into matters affecting industrial
32 psychology and research into matters relating to production and to the consumption of use of
33 goods and service supplied by the industry.' Even consumption can be regulated. If the Council
34 advises there can be a direction from the Central Government. This is how the consumption
35 will be utilized. The consumption of non-potable alcohol. And My Lord, 13 - 'Investigating
36 possibilities of decentralizing stage and process of production with a view to encouraging the
37 growth of allied small scale and cottage industries.' It's a comprehensive regulatory

1 mechanism. Now coming back to the Act. Please come to Section 10, page 553. Section 10. It's
2 absolutely fallacious to say that 18-G is the only section which is occupying the field. The entire
3 Act... There is a well thought of intention of the Parliament to occupy the field of regulation in
4 whatever manner possible. Right from sourcing the raw material till consumption. Your
5 Lordships may come to its registration of existing industrial undertaking, but please come to
6 Sub-Section 3. I'm not wasting Your Lordships' time around for what is not relevant. Sub-
7 Section 3 - 'Where an industrial undertaking is registered under this section, there shall be
8 issued to the owner of the undertaking or the Central Government as the case may be, a
9 certificate of registration.'- Now please see- 'containing the productive capacity of the
10 industrial undertaking and such other particulars as may be prescribed.' The production is
11 regulated in the license itself. Then 4 -'The owner of every industrial undertaking to whom a
12 certificate of registration has been issued under this Section before commencement of the
13 Amendment Act shall, if the undertaking falls within such class of undertaking as the Central
14 Government may, by notification in the official gazette, specified in this behalf produced
15 within such period as may be specified in such notification, the certificate of registration for
16 entering therein. The productive capacity of the industrial undertaking and other prescribed
17 particulars. If specifying the... In specifying the productive capacity in any certificate of
18 registration issued under Sub-Section 3, the Central Government shall take into consideration
19 the productive or installed capacity of the industrial undertaking as specified in the application
20 for registration made under Sub-Section 1, the level of production immediately before the date
21 on which the application for registration was made under Sub-Section 1, the level of the highest
22 annual production during the three years immediately preceding the introduction in
23 Parliament, the so and so amendment bill, et cetera, et cetera.' So, production is very much a
24 controlled item. Please come to 11(2). Now this is licensing of new industrial undertaking, Sub-
25 Section 2. A license... 554. Page 554. Your Lordship gets? 'A license or permission under Sub-
26 Section 1 may contain such conditions, including in particular, conditions as to the location of
27 the undertaking and the minimum standards in respect of size to be provided therein, as the
28 Central Government may deem fit to impose in accordance with rules, if any, made under
29 Section 30.' The Central Government can even say that your location would be here, because
30 your raw material is here and therefore the transport time would be less, giving you more
31 efficiency and more productivity. Then, 11(a) - 'The owner of an industrial undertaking, not
32 being the Central Government, which is registered under Section 10 or in respect of which a
33 license of permission has been issued under 11, shall not produce...' I apologize. I'm getting a
34 little monotonous.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section 11, right?

37

1 **TUSHAR MEHTA:** 11(a)... 'So you will not produce or manufacture any new article unless,
2 in the case of an industrial undertaking registered under Section 10, he has obtained a license
3 for producing or manufacturing such new article.' If you want to produce new article that
4 production needs another...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What a draconian act, Mr Solicitor.

7

8 **TUSHAR MEHTA:** My Lord, It's not under challenge.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I know. If we had anachronism in India today,
11 completely different economy, different regulatory regime.

12

13 **TUSHAR MEHTA:** That is going to be my answer when I answer the notified order.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can't produce a new product until you have
16 a license in respect to that product.

17

18 **TUSHAR MEHTA:** My purpose is not...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We understand. And there's no challenge to
21 this act.

22

23 **TUSHAR MEHTA:** There is no challenge. But the purpose is...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now saying, I mean, reading these provisions...

26

27 **TUSHAR MEHTA:** Purpose is twofold, and I'll...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** License Raj. Absolutely. Part of the License
30 Raj.

31

32 **TUSHAR MEHTA:** It used to be called License Raj. The Industrial Policy '91 downwards is
33 diluting the License Raj. I'm not on that. The power is there, whether it is to be exercised or
34 not, that depends upon the facts and circumstances. I'm doing...

35

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just as an aside, I mean, it has nothing to do
2 with this case. Has the coverage of the Act being brought down by the Central Government by
3 deleting industries from the schedule or what?

4

5 **TUSHAR MEHTA:** No. Amending the schedule, for example, there was potable, non-
6 potable. It is now only non-potable, et cetera. But I'll point out, answering Your Lordship's
7 question. I'm not answering it right now. I'll elaborate...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** These parts of the Act, they are designed to kill
10 productivity, not really enhance productivity. Because, I mean, imagine entrusting to some
11 bureaucrats somewhere in the ministry. If you want a new product, you have to be licensed to
12 have the new product.

13

14 **TUSHAR MEHTA:** I fully agree with it. The purpose of pointing out is, that productivity is a
15 field occupied, number one. Number two.... And My Lord, I will be very careful in answering
16 this question. When we talk about regulation. Regulations are of two types. I'm going to
17 develop it, My Lord, with some assistance from other side. And kindly My Lord, listen to this
18 very carefully because this is my answer to notify the order. My Lord, whenever the Act says
19 'notified order', by way of a notified order, it gives an enabling power to the Central
20 Government to do or not to do. A regulatory power can be of two categories. a) A positive
21 regulation, an active regulation. By doing something, that you will not do it, take license,
22 without license don't do it. License also have conditions, et cetera. My Lord, the second mode
23 of regulation recognized throughout the world is regulation by forbearance. That right now I
24 am not regulating. But that is the way I am regulating, by making a conscious choice of not
25 regulating. But I have the power. My Lord, suppose a situation arises like Covid, then we can
26 step in. Otherwise My Lord, this is an area which I will assist Your Lordship with when we say
27 'notified order', absence of a notified order is a regime of forbearance, that let the market forces
28 play. Everything is going hunky-dory. There is no difficulty. We don't need to step in. But if
29 the circumstances so exist, there is a statutory backing under which we can step it. But that
30 conscious choice is regulation by forbearance. This is a concept which is developed throughout
31 the world in all regulating bodies. So My Lord, my purpose of showing the provisions of the
32 Act is twofold, that there is occupying the field. The Act occupies the field. Good, bad,
33 indifferent, constitutional, unconstitutional, et cetera. That's not the question right now. The
34 Act occupies the field. But it is regulating by forbearance. When we say license raj is given up,
35 doesn't mean that this Act is repealed. The Act is not acted upon by a conscious economic
36 policy call, but that is also a regulation. Therefore, you can regulate by not issuing a notified
37 order.

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JUSTICE HRISHIKESH ROY: What you were telling us just a while back, say, the switchover from potable alcohol to industrial alcohol, sanitizers and the industrial oxygen to medical oxygen, all that power exercised under this 1951 Act?

TUSHAR MEHTA: Yes. And suppose. My Lord, even for non-potable alcohol, which is a scheduled product, scheduled industry, the Central Government can make a conscious choice that we will not regulate. We will regulate by forbearing to regulate. Let the market forces play its role. We will watch the market forces and if everything is going on which is in national interest, maximum productivity, equitable distribution, et cetera, we will not step in. But we have the power to step in. So, that is regulation by forbearance. So, there is no notified order, meaning thereby, we are regulating by exercising the regime of forbearance. And that's the new concept, My Lord. That's a new concept worldwide in all regulatory bodies, that you retain the power and choose not to regulate. But that is also a choice. That is also a power of regulation.

JUSTICE HRISHIKESH ROY: And as we read along with you, we find that so many nuances are there and it's good that you're pointing it out. But it actually is capable of interfering in every facet of anybody doing anything.

TUSHAR MEHTA: That's my purpose of showing. The purpose is that it occupies the field.

JUSTICE HRISHIKESH ROY: But it is inconsistent with what the Government is saying all along. I mean I'm talking about not in the context of...

TUSHAR MEHTA: We are in a forbearance regime. But the Act occupies the field. That's the limited purpose of showing this. I am not showing that this is all I can do. I'm saying this is all provided for and therefore, there is a law which occupies the field which is not under challenge on the ground of unconstitutionality. Right now Your Lordships are examining whether if the central law occupies the field which is traceable to Entry 52, List I and Entry 33, List II, then the State Government's power is ousted. I am showing it occupies the field.

CHIEF JUSTICE D. Y. CHANDRACHUD: So you are saying, irrespective of whether there is a notified order or not under 18-G, I have the power to issue a notified order and therefore, the States are ousted by my creating that opportunity for myself.

1 **TUSHAR MEHTA:** The reason is, I will develop it. Since it fell from Your Lordships, this is
2 draconian. I just wanted to say that we are in a regime of forbearance. But I will develop that,
3 and it may sound a little ambitious argument on this, but My Lord, world over regulators are
4 exercising regulatory powers, power of regulation by forbearers.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But Mr. Solicitor, not this kind of regulation.
7 Regulators are exercising different kinds of regulatory powers, not... Every time you want to
8 set up an undertaking, you will license it. New product, license it.

9

10 **TUSHAR MEHTA:** Your Lordships are not examining Article 14. This is not 19(1)(g) or 14.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This whole statute is an anachronism today. It
13 is a complete anachronism.

14

15 **TUSHAR MEHTA:** Your Lordships are... I am, with respect, repeating. Right now the only
16 thing which Your Lordships would see is whether by a good law or a bad law, the field by
17 Central Legislature is occupied or not. Whether that law is valid or not is not the question.

18

19 **JUSTICE B. V. NAGARATHNA:** But the law itself, that is Section 18-G says, if you want to
20 regulate, you have to issue a notified order. With notified order you can regulate.

21

22 **TUSHAR MEHTA:** There are four or five places where notified order...

23

24 **JUSTICE B. V. NAGARATHNA:** No. Where is the regulation?

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Look at the kind of products it covers. Cutlery,
27 calculating machine, vacuum cleaners, sewing machines.

28

29 **TUSHAR MEHTA:** I'll show My Lord that there are only four industries which are under
30 regulation. Others are forbearance regime. That's the economic policy of the country. But Your
31 Lordships are again examining the validity from 14 and 19(1)(G) point.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Economic policy therefore means, because
34 obviously the Government is, on the one hand demonstrating that they are moving
35 increasingly to market driven economy.

36

37 **TUSHAR MEHTA:** Market driven economy.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Market driven economy. You attract investment, you want to create a business-friendly climate and therefore, there is forbearance from enforcing this in regard to four industries.

TUSHAR MEHTA: I'm sorry, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: Therefore, we can't say then there is doctrine of occupied field. It's a conscious decision not to implement the provisions of this Act.

TUSHAR MEHTA: Yes, My Lord. I'll show that. I will show that. Right now My Lord, again Your Lordships are persuaded... Your Lordships have persuaded yourself to go into Article 14 and 19(1)(g) arguments. Which is not right now, my purpose. My purpose is good, bad or deemed different. There is a provision which occupies the field, and we have chosen not to implement that so far. May be My Lord, suppose there is a defence industry. Defence industry is one of the exceptions in Article 24 List II because of...

CHIEF JUSTICE D. Y. CHANDRACHUD: So which are the four industries in relation to which the Act was now enforced by the Government.

TUSHAR MEHTA: I'll show that. Let me complete the scheme of it.

CHIEF JUSTICE D. Y. CHANDRACHUD: It's about 3.55 p. m. We have to go for Justice Bose's farewell.

TUSHAR MEHTA: I know. Can I start My Lord, on the next...

CHIEF JUSTICE D. Y. CHANDRACHUD: We have come up to Section 11A.

TUSHAR MEHTA: But please do not examine it from the point of view of constitutionality.

CHIEF JUSTICE D. Y. CHANDRACHUD: And Mr. Solicitor now, how much time will you take?

TUSHAR MEHTA: Your Lordships would agree that I have never repeated anything.

CHIEF JUSTICE D. Y. CHANDRACHUD: We are not trying to tell you that you have.

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TUSHAR MEHTA: I think one session and one hour.

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Solicitor, if you can wrap it up in one session, so we can give 1 hour to the people who are following you. After you who's going to argue?

TUSHAR MEHTA: I definitely make an attempt. But Your Lordships will not mind my saying this *Tika Ramji* doesn't consider any of these.

CHIEF JUSTICE D. Y. CHANDRACHUD: That point you will make. Absolutely you will make. We're not saying that you are...

TUSHAR MEHTA: In one brush, one line it says that, it's only for manufacture.

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Solicitor, we are not rushing you at all.

TUSHAR MEHTA: I will try to be as precise.

CHIEF JUSTICE D. Y. CHANDRACHUD: If you can wrap it up by the first session on Tuesday, then the others can wrap it up, say, by Tuesday.

TUSHAR MEHTA: By possibly Tuesday. Your Lordships knows. Maybe a [UNCLEAR]

CHIEF JUSTICE D. Y. CHANDRACHUD: No, Tuesday is...

JUSTICE ABHAY S OKA: Wednesday is a holiday.

CHIEF JUSTICE D. Y. CHANDRACHUD: Wednesday is a holiday. So we have Tuesday and Thursday.

TUSHAR MEHTA: I have not difficulty. I thought because Monday is a holiday... Monday is not a holiday?

JUSTICE HRISHIKESH ROY: You were thinking about the long weekend taking the Monday into account for educating...

1 **TUSHAR MEHTA:** The child in me has not died so far, that the school is closed. I get the
2 same thrill.

3

4 **JUSTICE HRISHIKESH ROY:** You wanted to educate yourself on certain facets.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have to be in some good company over the
7 weekend, Mr. Solicitor.

8

9 **TUSHAR MEHTA:** Yes, My Lord.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you can't look at... For reason of professional
12 ethics, you can't look to your right, you can look to your left. You'll find some good company
13 on this side.

14

15 **TUSHAR MEHTA:** Yes, yes.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, Tuesday we'll come.

18

19 **TUSHAR MEHTA:** Tuesday. Obligated Your Lordships.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There are two directions. Some Constitution
22 Benches for directions. It won't take more than five minutes each.

23

24 **TUSHAR MEHTA:** 902, My Lord.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Light motor vehicles and that arbitration.

27

28 **TUSHAR MEHTA:** Obligated. .

29

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END OF DAY'S PROCEEDINGS