IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 151 OF 2007
[WITH CONNECTED MATTERS]

IN THE MATTER OF :

STATE OF UTTAR PRADESH & ORS. ..... **PETITIONER**

VERSUS

LALTA PRASAD VAISH ..... **RESPONDENT**

WRITTEN SUBMISSIONS ON BEHALF OF SOLICITOR GENERAL OF INDIA

INDEX

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 151 OF 2007
[WITH CONNECTED MATTERS]

IN THE MATTER OF :

STATE OF UTTAR PRADESH & ORS. ..... **PETITIONER**

VERSUS

LALTA PRASAD VAISH ..... **RESPONDENT**

WRITTEN SUBMISSIONS ON BEHALF OF SOLICITOR GENERAL OF INDIA

A. REFERENCE ORDER AND ITS SCOPE

1. The following questions[1] are referred to be decided by the bench of 9 Hon'ble Judges :

"Q. 1. Does Section 2 of the Industries (Development and Regulation) Act, 1951, have any impact on the field covered by Section 18-G of the said Act or Entry 33 of List III of the Seventh Schedule of the Constitution?

Q. 2. Does Section 18-G of the aforesaid Act fall under Entry 52 of List I of the Seventh Schedule of the Constitution, or is it covered by Entry 33 of List III thereof?

Q. 3. In the absence of any notified order by the Central Government under Section 18-G of the above Act, is the power of the State to legislate in respect of matters enumerated in Entry 33 of List III ousted?

Q. 4. Does the mere enactment of Section 18-G of the above Act, give rise to a presumption that it was the intention of the

[1] PDF Pg. 79/ Vol. V

Central Government to cover the entire field in respect of Entry 33 of List III so as to oust the States' competence to legislate in respect of matters relating thereto?

Q.5. Does the mere presence of Section 18-G of the above Act, oust the State's power to legislate in regard to matters falling under Entry 33(a) of List III?

Q.6. Does the interpretation given in Synthetics and Chemicals case [(1990) 1 SCC 109] in respect of Section 18-G of the Industries (Development and Regulation) Act, 1951, correctly state the law regarding the States' power to regulate industrial alcohol as a product of the scheduled industry under Entry 33 of List III of the Seventh Schedule of the Constitution in view of Clause (a) thereof?"

2. (a) The scope of the reference would clearly indicate that any finding recorded by this Hon'ble Court will have –

(i) Implications on the functioning of Entry 52 List I;

(ii) Entry 24, 26 & 27 List II; and

(iii) Entry 33 List III

(b) Such an interpretation may arise in future also, as there are other enactments made by the Parliament under Entry 52 List I. The illustrative list of which is as under: -

(i) The Coffee Act, 1942

(ii) The Rubber Act, 1947

(iii) The Rice-Milling Industry (Regulation) Act, 1958

(iv) The Cardamom Act, 1958

(v) The Coconut Development Board Act, 1979

(vi) Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003

(vii) Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019

(c) The interpretation given by this Hon'ble Court will not impact just alcohol (the only subject argued by the Petitioners) but every industry included in the Schedule I of Industries Regulation and Development Act, 1951[2] (hereinafter referred to as IDRA,1951) or which may be included in the Schedule in the future if conditions specified in Entry 52 List I is satisfied i.e. Parliament's satisfaction to control any industry if found 'so expedient in public interest'

(d) It may, therefore, not be desirable or possible for this Hon'ble Court to confine its legal scrutiny merely to Item No. 26 in the Schedule of the IDRA,1951 as done by the Petitioners.

3. All entries as they exist today in the Constitution of India have their historical evolution in four stages-

(i) Devolution Rules providing for devolution of powers to the Federal Legislature and the Provincial Legislatures made under Government of India Act, 1919;

(ii) The division of subjects between Centre and Provinces under the Government of India Act, 1935;

(iii) The Draft Constitution as drafted by the Drafting Committee chaired by Dr B.R. Ambedkar which was placed before the Constituent Assembly;

[2] PDF Pg. 547-600/ Vol. IV

(iv) The position of Entries as the Constitution came into force after the Constituent Assembly debated this evolution and/ or kept in mind this evolution.

It is, thus, clear that no interpretation of any Entry in the Seventh Schedule can effectively be made without-

a) Keeping the aforesaid evolution in mind; and
b) A close reading of Constituent Assembly debates which reflects the manifest intention of not only the width and scope of the Entry but also the reason why a particular Entry finds place in a particular List.

4. When a larger bench of 9 Hon'ble Judges is examining the above quoted questions and various judgments starting from **Tika Ramji Vs State of U.P. [AIR 1956 SC 676]**[3] are cited before this Hon'ble Court, it must be pointed out that neither in Tika Ram ji [Supra] nor in any subsequent judgments including **Synthetics Chemicals Ltd. Vs State of U.P. and [(1990) 1 SCC 109] [Synthetics II]**[4], this Hon'ble Court was assisted by the aforesaid evolution and the Constituent Assembly Debates. This Hon'ble Court would find that the result would have been totally different had the courts in all the judgments would have been assisted by the same.

5. On this ground, it is the respectful submission of the Respondents that all judgments starting from Tika Ram [Supra] and downwards are *per incuriam* and may not be treated as good law*, inter alia,* on this ground also.

[3] PDF Pg. 80-119/ Vol. V
[4] PDF Pg. 9-66/ Vol. V

B. EVOLUTION OF ENTRIES

I. EVOLUTION OF ENTRY 52 LIST I

6. Some of the industries have always been considered to be necessary to remain under the Central control if it is found to be in national interest. From the beginning of the evolution of this Entry, the power of the Central Government to take within its control such industries have existed.

Corresponding Entry in Devolution Rules

Entry 20 (Central Subjects List)[5]

> *20. Development of industries, in cases where such development by a central authority is declared by order of the Governor General in Council expedient in the public interest.*

Corresponding Entry in Government of India Act, 1935

Entry 34 (List I)[6]

> *34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.*

Draft by Drafting Committee[7]

> *Draft Entry 64 List I : Development of industries where development under the control of the Union is declared by Parliament by law to be expedient in the public interest.*

[5] PDF Pg. 16/ Vol. IV(B)
[6] PDF Pg. 223/ Vol. IV(B)
[7] PDF Pg. 272/ Vol. IV(B)

Entry as included in the final Constitution after Debates

Entry 7 and 52 (List I)[8]

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

*52.Industries, **the control** of which by the Union is declared by Parliament by law to be expedient in the public interest.*

Constituent Assembly Debates while examining draft Entry 64 [which is present Entry 52]

Constituent Assembly Debates dated 31 August 1949[9]: Draft Entry 64 List I = Entry 52 List I:

Debates dated 31.08.1949

'The Honourable Dr. B.R. Ambedkar : Sir, I move:

"That for entry 64 of List I, the following entry be substituted :—

'64. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest'."

Kaka Bhagwant Roy: Mr. President, my amendment is as follows:—

"That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the word 'Industries' the words 'development of Industries' be substituted."

It appears from the amendment which the Honourable Doctor has introduced in the original entry that he wants to hand over all the powers regarding industries to the Centre.

It is very good; the Centre ought to be strong, and during transition, the Centre should be vested with such powers as are essential for the Industrial development of the country. But in normal times, the Centre should not be vested with such authority. India is a very big country.

[8] PDF Pg. 354 &357/Vol. IV
[9] PDF Pg. 291-292/ Vol. IV(B)

She has many provinces. These Provinces have their own difficulties and can understand their problem much better than the Centre.

The problem of Industries is very complicated. Therefore so far this question is concerned every province should be given facilities to solve its own problems. If you make the Provinces responsible for industrial development and do not give them powers to deal with the situation, then the problem of Provinces cannot be solved and it will retard the industrial progress of the country. Although I am somewhat deviating from the point, yet I must say that the present Industrial policy of the Centre will prove a stumbling block in the path of the Country's progress.

Mr. President: You are not only speaking on your amendment, but you are opposing it.]

Shri Kaka Bhagwant Roy: I bow down to your ruling. But I would like to, say that so far industries are concerned, the Provinces should be entrusted with necessary powers; for they can understand the problem of their industries better. With these words I would request the Honourable Doctor to accept the amendment.]

Shri H. V. Kamath: Mr. President, I move amendment No. 214 of Third List (Sixth Week) which reads as follows:—

"That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the words 'the control' the words 'the development and control' be substituted."

This amendment includes or embraces the amendment Just now moved by my honourable Friend, Kaka Bhagwant Roy. The original entry as it stood in the Draft Constitution referred to the development of industries. I wonder why the Drafting Committee has suddenly developed an antipathy to the word "development" in this entry. My amendment is on the lines of a legislative measure which was introduced in the Assembly during the last Budget Session and which has been referred to a Select Committee. That Bill provided for governmental action in industries, the development and control of which was to be regulated by the Centre and the title of the Bill was "Industries (Development and Control) Bill", that is to say, the subject-matter of this entry has been already taken cognizance by the Central Government in a Bill, the title of which includes not merely control but the development of industries which are deemed necessary or expedient in the public interest. I realize it is quite possible the Drafting Committee owing to the excessive strain under which it has laboured

during the last two years and especially during the last few weeks or months, is liable to commit slips here and there, but I hope that the Drafting Committee has not developed a closed or a calcified mind, which is not receptive to any change whatsoever. I think that the meaning of this entry will be, more adequately and more fully conveyed by amending this word "control" on the lines I have suggested and seeking to incorporate in this entry not merely control but also the development of industries, which means, industries the development and control of which by the Union is declared by Parliament, by law, to be expedient in the public interests I move amendment No. 214 of List III (Sixth Week) and commend it to the House for its earnest Consideration.

The Honourable Dr. B. R. Ambedkar : Sir, the entry as it stands is perfectly all right and carries out the intention that the Drafting Committee has in mind. My submission is that once the Centre obtained jurisdiction over any particular industry as provided for in this entry that industry becomes subject to the jurisdiction of Parliament in all its aspects, not merely development but it may be in other aspects. Consequently, we have thought that the best thing is to put the industries first so as to give undoubted jurisdiction to Parliament to deal with it in any manner it likes, not necessarily development. Therefore, the entry is far wider than Mr. Kamath intends it to be.

Mr. President: The question is:

"That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the word 'Industries' the words 'Development of Industries' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the words 'the control' the words 'the development and control' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That for entry 64 of List I, the following entry be substituted:—

'64. Industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest.' "

The amendment was adopted.

Entry 64, as amended, was added to the Union List.

Note: Contrary to the arguments of the petitioner [which was confined only to alcohol as an 'industry'] and contrary to the ratio in **Tika Ramji [supra]** which wrongly lays down that Entry 52 is confined or restricted only to the actual process of manufacturing and nothing prior to that or after that is contrary to the manifest intention of the framers of the Constitution.

7. As Dr. B.R. Ambedkar clearly, categorically and unequivocally manifested the Constitutional intent by stating that once "***an industry becomes subject to jurisdiction of Parliament it so becomes in all its aspects not merely development but it may be in other aspects".***

8. The restrictive meaning to Entry 52 List I given in Tika Ramji [supra] and followed subsequently in subsequent judgments relying upon Tika Ramji [in absence of being assisted with this crucial Constituent Assembly Debates] is thus not a good law. The Parliament, under List I Entry 52 is fully entitled to control everything as per its wisdom, requirements of particular industry and to achieve the stated object of IDRA when Parliament is satisfied that–

   (i) The activities of an industry / industries which affects country as a whole;

   (ii) 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.

(iii) 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 bases at fair prices, the control of "**all aspects**" of a particular industry must be taken over.

(iv) Parliament makes such a statutory declaration in the Act [Section 2 of IDRA].

9. It is, thus, clear that not only the expressed intention of Dr. B.R. Ambedkar but the conscious choice of a wider term **"control"** over earlier expression "development" is not brought to the notice of this Hon'ble Court in Tikaram [Supra] and all subsequent judgments as a result of which Entry 52 [and even Entry 54] is interpreted in a narrow and restricted manner.

10. This wider interpretation becomes evident from the introduction and Statement of Objects and Reasons[10] of the IDRA.

> ***"INTRODUCTION***
>
> *On 6th April, 1948, the Central Government announced its industrial policy which was approved by the Central Legislature. 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 Central control. To achieve this objective the Industries (Development and Regulation) Bill was introduced in the Legislature.*
>
> *"**Statement of Objects and Reasons.** —The object of this Bill is to provide the Central Government with the means of implementing their industrial policy which was announced in their Resolution No. I(3)-44(13)-48, dated 6th April, 1948, and approved by the Central Legislature. The Bill brings under Central control the development*

[10] PDF Pg. 351/ Vol. IV(B)

and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import. 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 Government, power to make rules for the registration of existing undertakings, for regulating the production and development of the industries in the Schedule and for consultation with Provincial Government on these matters. Provision has also been made for the constitution of a Central Advisory Council, prior consultation with which will be obligatory before the Central Government takes certain measures such as the revocation of a licence or taking over the control and management of any industrial concern."

Constituent Assembly Debates

11. Also, relevant is the following discourse in the Constituent Assembly on 5th January 1949[11]:

"Shyama Prasad Mookerjee: *Sir, when clause 2 was inserted as drafted, the idea of the Government was that in respect of the entire Concurrent List it should be open to the Dominion Legislature to pass laws for the purpose of exercising executive function. At present so far as the Concurrent List is concerned the Dominion Legislature may pass laws which will supersede any laws passed by the provinces; but so far as executive authority goes, it can be discharged only by the provincial governments. In the new constitution, under article 60 which has already been adopted, it has been laid down that even with regard to the Concurrent List it will be open to the Dominion Parliament to pass laws for the purpose of exercising executive action. The question arose whether any such powers should be taken over by the Dominion Parliament during the interim period. At present under the Government of India Act, the Dominion Parliament and the Dominion Government can exercise authority in respect of matters which normally fall in the Concurrent List in three ways. We have the Essential Supplies Commodities Act which relates to certain specific commodities such as foodstuffs and certain other commodities in respect of which the Dominion Parliament and the Dominion Government have complete legislative and executive powers. This power will lapse in 1951.* ***Secondly, we have a provision which lays down that development of industries which, in the opinion of the Dominion Parliament, is of all-India importance, can be taken up by the Dominion Parliament. But***

[11] PDF Pg. 306-344/Vol. IV(B)

that relates only to the development of any industry which may be so described by the Dominion Parliament. It has been felt that in respect of industrial development it is not sufficient that the Dominion Parliament or the Dominion Government should have power only for the purpose of developing industries which are deemed to be of an all-India importance. Development has been interpreted to exclude regulation and control of such industries and also trade and commerce in such industries, control of production and distribution of the products of such industries. ***For that purpose it was first thought expedient that wide powers might be taken by the Dominion Parliament even during the interim period by a suitable amendment of the Government of India Act. Apart from industrial development there were certain other matters like statistics, censoring of films and also industrial disputes, in respect of which it was thought desirable that the Central Government should take adequate powers***.

So far as industrial and labour disputes are concerned, as has been explained by Sardar Patel, this is a Provincial subject, but it has been felt desirable that there should be some uniformity of legislation followed by necessary executive action with regard to the industrial tribunals which may be constituted under Provincial laws for the purpose of settling disputes. After consultation with the Provincial Government and some of the Provincial Premiers, and representatives of Provincial Governments who were present in Delhi, it has been deemed desirable that during the interim period completely wide powers need not be taken over by the Government of India, but a suitable amendment may be made only in respect of those particular items which are now of an urgent character and which require an immediate solution. For this purpose, you will find from Amendment No. 9 that we have referred to industrial and labour disputes, trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest: the sanctioning of cinematographic films for exhibition; and inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List. This will mean a consequential change in clause 7, as originally provided in the Bill. The latter portion of clause (a) will be omitted and put in the Concurrent List. ***The result will be that so far as legislative powers are concerned, the Dominion Parliament will have ample powers to pass laws wherever necessary and such laws will supersede provincial laws, if any; so far as the executive authority is concerned in respect of these matters, it will also be open to the Dominion Parliament to pass laws and take over responsibility for executive administration, in case such a step is considered to be desirable or necessary. Sir, it is not intended that the Provincial Governments should not be utilised for purposes***

of co-ordinating the policy of the Central Government even in respect of those matters where central regulation and control are necessary in the interests of the whole country. Obviously in normal circumstances, the executive machinery, which will be utilised, will be the Provincial ,Governments themselves. But if an occasion arises when it is necessary for the Central Government to exercise executive authority in respect of matters, which are considered to be of an all-India importance, power to do so have to be taken over by the Government of India and the Dominion Parliament. A question has arisen whether this power should be exercised by the Dominion Legislature without consultation with the Provincial Governments. Hitherto whenever the Central Government or the Dominion Legislature had an occasion to take steps for introducing legislation for development of industries, previous consultations did take place with the Provincial Governments. I believe on a suitable occasion when the matter comes up a little while later, Sardar Patel will give an assurance on behalf of the Government that during the interim period before the new Constitution comes into force, if it is necessary for the Central Government to move in accordance with the powers which are now proposed to be taken under Amendment No. 9, previous consultation with Provincial Governments will always be held and the results of such consultation will be placed before the Legislature for information.

Govind Ballabh Pant:

Sir, all the four amendments Nos. 80, 84, 87 and 88[12] *are inter-connected and inter-linked and they must stand or fall together.* ***According to the Bill, development of industries where development***

[12] Yes, Sir: amendments 84, 87 and 88. I move:

"That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words `34 of List I' the words `31 (A) of List III' be substituted."

"That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures `34 of List I' the words and figures `31-A of List III' be substituted."

"That in clause 7, the following new sub-clause be inserted at the end:- `

(d) after paragraph 31 of the Concurrent Legislative list the following paragraph shall be inserted as paragraph 31(A):-31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I.'"
We take up clause 7. Amendment No.80 standing of the name of Mr. T. T. Krishnamachari.

Mr. Vice-President, Sir, I move:

"That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words 'trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries' be deleted."

under Dominion control is declared by Dominion law to be expedient in the public interest, regulation and control of such industries, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, were to be included in List I. That is, all these subjects were to be brought within the exclusive jurisdiction of the Federal Legislature and the Federal Government. Now, that would have led to several other difficulties and complications. We all realise that so far as development of industries, where development under Dominion control is declared by Dominion law to be expedient in the public interest and regulation and control of such industries should vest in the Centre. According to the entry already contained in the Federal Legislative List, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, is already included and there is no intention of making any change so far as that is concerned. But, as proposed in this amendment regulation and control of such industries should also be placed under the jurisdiction of the Federal Legislature. So, so far as the first two parts of this clause are concerned, they will stand as they are. But with respect to the rest, that is, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, it is proposed by the series of amendments to which I referred at the outset, that these should be included in the Concurrent List and consequential changes should be made in the other amendments..

I think honourable Members will agree that the amendments that I am proposing will serve the purpose which the original clause had in view fully and will at the same time avoid other difficulties and complications which might arise if these items were not included in the Concurrent List. For, by including these in the Concurrent List, the power is vested in the Centre to legislate with regard to these matters. Power is also vested by virtue of clause 2, which has already been amended, to appoint agents directly for the administration of any of these subjects so that the Centre can have plenary, comprehensive and if it so chooses even exclusive control with regard to these matters. ***But, whatever the Centre may do, I venture to submit that it will still be necessary for the provinces to exercise a number of functions within their own provincial boundaries with regard to these matters****.* ***So, if these are made the exclusive charge of the Centre, then, the provinces will not be free to discharge the duties and obligations which will necessarily devolve on them****.* ***In order to enable the provinces to play their part subject to the overriding powers that will now vest in the Centre, it is necessary to include these items in the Concurrent List and that is what I propose****. Even now when we have got the Essential Supplies Act,*

the Centre generally frames a few basis rules and leaves the rest to the provinces. We in the provinces have been issuing orders rules and regulations with regard to these matters in our respective provinces. Whatever be the position hereafter, it will still be necessary for the provinces to exercise these powers. In our own province for example, we propose to introduce a bill so that the distribution of building materials may be regulated, that no steel or iron or coal etc, be supplied for the purpose of any building which is likely to cost more than Rs. 25,000. That is under our consideration. Now unless these items are included in the Concurrent List, we have no power to introduce such a bill in our Legislature. Besides, as I said, if these items are placed in List I, the Centre will not find it possible to administer these subjects in an efficient way. ***They require a very extensive network and I think it is not possible for the Centre to manage these things without the active co-operation and support of the provinces. So I propose that the amendments to which I referred at the outset be accepted unanimously by the House***."

[***emphasis added***]

12. The views expressed by Pt. Govind Ballabh Pant sowed the seeds of Entry 33 List III which is explained hereinafter while discussing the evolution of Entry 33 List III.

II. EVOLUTION OF ENTRY 24 LIST II

13. Simultaneously, while showing the evolution of Entry 52 List I, it is necessary to show evolution of Entry 24 List II.

Devolution Rules

Entry 25 (List II)[13]

25. Development of Industries, including industrial research and technical education.

[13] PDF Pg. 20/ Vol. IV(B)

Government of India Act, 1935

Entry 29 (List II)[14]

> *29. Production, supply and distribution of goods, development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.*

Draft by the Drafting Committee[15]

> *Draft Entry 37 List II 'Development of industries, subject to the provision in List I with respect to the development of certain industries under the Control of Union.*

Position in the Constitution as it exists today

> Entry 24 (List II)[16]
>
> *24. Industries subject to the provisions of [entries 7 and 52] of List I.*[17]

Constituent Assembly Debates[18] for Entry 24 List II

14. The only debate which took place on this Entry is on 02.09.1949 and is as under:

> Draft Entry 37 = Present Entry 24
>
> ***Shri T. T. Krishnamachari :*** *Mr. President, Sir, I move: "That for entry 37 of List II, the following entry be substituted:*
> *'37. Industries, subject to the provisions of entry 64 of List I.""*
>
> ***Shri Brajeshwar Prasad :*** *Mr. President, Sir, I beg to move: "That in amendment No. 3620 of the List of Amendments, in the proposed entry 37 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted,"*
>
> ***Mr. President :*** *The question is.*
> *"That in amendment No. 3620 of the List of Amendments, in the proposed entry 37 of List II, for the words and figure 'provisions of List I' the words*

[14] PDF Pg. 225/ Vol. IV(B)
[15] PDF Pg. 275/ Vol. IV(B)
[16] PDF Pg. 362/ Vol. IV
[17] In the original Constitution Entry 24 was subject to only Entry 52 List I. Subsequently, by Constitution [Seventh Amendment] Act, 1956, it was also made subject to Entry 7 List I.
[18] PDF Pg. 301/Vol. IV(B)

'superintendence, direction and control of the Union Government' be substituted."

The amendment was negatived.

Mr. President : *The question is :*
"That for entry 37 of List II, the following entry be substituted:
'37. Industries, subject to the provisions of entry 64 of List I.'"
The amendment was adopted.

Mr. President : *The question is:*
"That entry 37, as amended, stand part of List II."
The motion was adopted.

Entry 37, as amended, was added to the State List.

III. EVOLUTION AND CONSTITUTIONAL HISTORY BEHIND ENTRY 33 LIST III

Devolution Rules[19]

Entry 19 (List I)[20]

15. Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor General in council or by or under legislation by the Indian legislature to be essential in the public interest.

Government of India Act, 1935

Entry 29 (List II)[21]

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

[19] In Devolution Rules equivalent Entry to List III Entry 33 was in List I. It was placed in List II in the Government of India Act,1935 and remained in List II even in the Draft by the Drafting Committee. It was shifted to List III after the Constituent Assembly Debates.
[20] PDF Pg. 16/ Vol. IV(B)
[21] PDF Pg. 225/ Vol. IV(B)

Draft by the Drafting Committee[22]

Draft Entry 36 List II : ' Production, supply and distribution of goods.'

Constituent Assembly Debates[23] for Entry 33 List III

16. Mr Shibban Lal Saxena wanted it to be shifted from List II to List I.

Shri Shibban Lal Saxena: Sir, I beg to move:

"That after entry 64 A of List I, the following new entry be added:-

64-B. Regulation of trade and commerce in and of the production, supply, price and distribution-

(a) of goods which are the products of industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest;

(b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest."

Shri Shibban Lal Saxena:

Here, I would like to draw the attention of the Drafting Committee to the fact that a similar suggestion is contained in the recommendations of the Ministry of Industry and Supply, where they have suggested that in the Seventh Schedule in the Union List, such an entry as I have suggested should be provided for. In fact, I may refer the very page– page 14 of this booklet containing the comments of the various Ministries on the Draft Constitution. There the Ministry states-

"For effective implementation by the Union Government of the industrial policy announced by the Government of India on the 6th April, 1948, and for other reasons, it is necessary to invest the Union Government with certain powers over trade and commerce in respect of and the production, supply, price and distribution of the goods produced by the industries to be brought under Central regulation and certain other goods such as wholly imported articles or agricultural products. The following additional item is, therefore, suggested:

[22] PDF Pg. 275/ Vol. IV(B)
[23] PDF Pg. 295/ Vol. IV(B)

'Regulation of trade and commerce in and of the production, supply, price and distribution-

(a) of goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest;

(b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest."

Sir, apart from the fact that this amendment has the support of the Ministry of Industry and Supply, it should also be obvious to anybody that within the last four or five years our experience has shown us that unless there is this power to regulate trade and commerce and also production and distribution, there will be chaos in the country. Even the most important questions of the supply of food and clothing and other necessaries of life, cannot be tackled on a mere provincial basis, and they must be tackled on an all-India scale. So I say this power should be given to the Union by means of an adequate provision here in the Union List. Otherwise the Centre will not have the necessary power. I think it is a most important power which should be given to the Centre. Besides…… .

Mr. President: Will it suffice if I point out that there is a proposal for a new entry–entry 35 A in the Concurrent List? That covers this point, I think.

Shri Shibban Lal Saxena: Is it an amendment, Sir?

Mr. President: Yes, amendment No.142.

Shri T. T. Krishnamachari: That amendment covers the first part of the honourable Member's amendment.

Shri Shibban Lal Saxena: It is in the Concurrent List, of course, but it is not as wide as the one that I have suggested. I personally prefer this power to be taken by the Centre alone.

Mr. President: Very well.

Shri Shibban Lal Saxena: Besides, the words that I have suggested give much larger powers to the Centre than it is proposed by the amendment in the Concurrent List. I suggest the experience of the past four or five years is sufficient reason for taking this thing in the hands of the Centre. Sir, I do not think that we should be afraid of investing the Centre with

power in regard to these vital things, like food and clothing. Otherwise, I do not think we will be able to meet the needs of the country in the manner we desire. At present also the Central Government has got the power to lay down uniform policies in regard to these matters. But the Centre should also have the power to make all parts of the country to fall in line with the Central Policy so as to meet all the needs of the country.

The Honourable Dr. B. R. Ambedkar: With regard to the first part of the amendment, there is the proposal of the Drafting Committee to put this matter in the Concurrent List, and if my Friend Prof. Saksena were to examine the Concurrent List, he will find that there is an entry corresponding to entry 64 B, (a) in entry 35A of the Concurrent List."

Debate dated 02.09.1949[24]
Draft Entry 35-A List III = Present Entry 33 List III

Entry 35-A

*"**The Honourable Dr. B. R. Ambedkar** : Sir, I move:*
"That after entry 35 of List II, the following new entry be inserted:
'35A. Trade and commerce in, and the production, supply and distribution of the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.' "
(Amendment No. 331 was not moved.)

***Mr. President** : The question is*
"That after entry 35 of List II, the following entry be inserted:
' 35 A. Trade and commerce in, and the production, supply and distribution of the products of industries where the control of such in' "
The motion was adopted.
Entry 35A. was added to the Concurrent List"

The Constitution [Third Amendment] Act,1954 regarding Entry 33 List III

17. By the Constitution Third Amendment Act (1954), Entry 33 of List III was amended to add certain articles in Entry 33 thereby empowering the Parliament [concurrently] to control the

[24] PDF Pg. 305/ Vol. IV(B)

production, supply and distribution of the commodities. The Statement and Objects of Reasons[25] is extracted below:

> ***Statement of Objects and Reasons***
> *Entry 33 of the Concurrent List enabled Parliament to legislate in respect of products of industries declared to be under Union control. In addition, Parliament was empowered by article 369, for a period of five years, to legislate in respect of certain specified essential commodities. It was not considered advisable that after article 369 lapsed on 25th January 1955, the Centre should be divested of all legal powers to control the production, supply and distribution of some of these essential commodities. The Bill sought to amplify Entry 33 of the Concurrent List accordingly.*
>
> ***Important Provisions***
> *Entry 33 of the Concurrent List has been re-enacted to include four classes of essential commodities viz., (I) foodstuffs, including edible oilseeds and oils, (2) cattle fodder, including oil cakes and other concentrates; (3) raw cotton , whether ginned or unginned, and cotton seed; and (4) raw jute. In addition, imported goods of the same kind as the products or centralized industries have also been brought within the purview of that Entry.*

18. Thus, a perusal of the relevant entries and debates clearly indicates that all aspects of a declared/controlled industry [called "scheduled industries" under the IDRA] are intended to be with the Parliament.

19. Though all the questions framed in the present reference center around the interpretation of List I Entry 52, List II Entry 24 and List III Entry 33, none of the above referred evolution of the Entries is brought to the knowledge of the Court either in Tika Ramji [Supra] or subsequent judgments which merely followed Tika Ramji. These judgments are, therefore, ***per incuriam*** and may be declared as not a good law, *inter alia*, on the ground of true facts not being pointed out.

---

[25] PDF Pg. 345-347/Vol. IV(B)

IV. ENTRIES PERTAINING TO TAXING ENTRIES OF POTABLE AND NON-POTABLE ALCOHOL

20. At the outset, it is made clear that the present reference does not deal with the taxing entries with regard to alcohol, be it potable or non-potable. Neither the questions referred in the reference deal with the same nor the petitioners have made submissions on taxing power of Parliament vis-à-vis State Legislature.

21. However, certain expressions are used with regard to "alcohol" in the taxing entries. Taxing entries for alcohol viz. Entry 84 List I and Entry 52 List II which may assist this Hon'ble Court in arriving at the correct interpretation of Entry 8 List II. A little background on the taxing entries qua alcohol may be necessary.

Entry under the Devolution Rules

Entry 16 (Provincial Subjects List)[26]

> *16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.*

22. The above referred entry in the Devolution Rules makes the following apparent:

(i) Entry 16 in Devolution Rules is a combined Entry both for taxing and other purposes [which became separate subsequently as narrated hereunder]

[26] PDF Pg. 19/ Vol. IV(B)

(ii) It covered both potable and non-potable alcohol and, therefore, there was no distinction between "alcohol for human consumption" or "intoxicating alcohol" and alcohol on one side and the remaining alcohols i.e. non-potable alcohols on the other side.

(iii) Along with the alcohol, it also combined hazardous substances called 'opium' and 'drugs'.

23. Government of India Act, 1935 With the advent of Government of India Act, 1935, the all-encompassing Entry 16 of Part II of Schedule I of Devolution Rules was split up into three heads viz. (two taxing entries i.e. Entry 45 List I[27] and Entry 40 List II[28] and one general entry with respect to 'intoxicating liquor') i.e. Entry 31 List II)

> *"Entry 45 (List I)*
>
> *45. Duties of excise on tobacco and other goods manufactured or produced in India* ***except****: —*
>
> *a. alcoholic liquors for human consumption;*
> *b. opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;*
> *c. medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry."*

24. From Entry 45 List I in the Government of India Act, 1935, the following becomes apparent-

(i) For the first time, alcoholic liquor for human consumption and other alcohol were bifurcated.

[27] PDF Pg. 223/ Vol. IV(B)
[28] PDF Pg. 226/ Vol. IV(B)

(ii) So far as 'non-potable alcohol' is concerned, it was shifted to List I as Entry 45 of Government of India Act, 1935 which is clear from the expression "except".

(iii) So far as "alcoholic liquors for human consumption" is concerned, it was kept in List II under the Government of India Act, 1935 as stated hereunder.

25. The said Entry in List II being Entry 40 in Government of India Act reads as follows-

Entry 40 (List II) Government of India Act, 1935[29]

> *40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar good manufactured or produced elsewhere in India-*
>
> *(a) alcoholic liquors for human consumption;*
>
> *(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;*
>
> *(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry*.

26. From the aforesaid two Entries, it is also clear that:

(i) "Alcoholic liquor for human consumption" was added in the Provincial /State List.

(ii) Alcoholic liquor was clubbed with other intoxicants and substances which are harmful for health like opium, Indian hemp [popularly known as BHANG] and other narcotic drugs and narcotics; non-narcotic drugs.

[29] PDF Pg. 226/ Vol. IV(B)

Entry in the Draft by Drafting Committee[30]

Entry 86 List I:

Duties of excise on tobacco and other goods manufactured or produced in India ***except*** –

(a) alcoholic liquors for human consumption
(b) Opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs

but including medicinal and toilet preparations containing alcohol or any substance included in sub paragraph (b) of this entry

Draft Entry 52 List II[31]:

Duties of excise on the following goods manufactured or produced ***in the Province*** *and countervailing duties at the same or lower rate on similar goods manufactured or produced elsewhere in India-*

(a) alcoholic liquors for human consumption
(b) opium, Indian hemp and other narcotic drugs and narcotics non-narcotic drugs; non-narcotics

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry

27. From the aforesaid, it is clear that –

(i) Entry 45 List I of Government of India Act, 1935 was re-numbered as Entry 86 List I [as it existed when the Constitution came into force].

(ii) Entry 40 List II was re-numbered as Entry 52 List II.

(iii) In the Government of India Act, 1935 the federal Government had no jurisdiction over medicinal and toilet

[30] PDF Pg. 273/ Vol. IV(B)
[31] PDF Pg. 286/ Vol. IV(B)

preparations containing alcohol etc. as per clause (c) of earlier Entry 45.

In the draft 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 containing alcohol.

Position on date of coming into force of the Constitution

Entry 84 (List I) [Pre-Amendment viz. when Constitution came into force].

84. Duties of excise on tobacco and other goods manufactured or produced in India ***except****—*

(a) alcoholic liquors for human consumption;

(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) of this entry.

Entry 84 (List I) [Substituted by the Amendment Act of 2016][32]

84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.

[32] PDF Pg. 359/ Vol. IV

Entry 51 (List II)[33]

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

Entry 54 (List II) [Pre-Amendment]

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

Entry 54 (List II) [Substituted by the Amendment Act of 2016][34]

54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.

V. EVOLUTION OF ENTRY 8 LIST II

Position in the Devolution Rules

28. As quoted above Entry 16 of Provincial List was a composite Entry containing both potable and non-potable alcohol.

Government of India Act, 1935

Entry 31 (List II)[35]

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors,

[33] PDF Pg. 364/ Vol. IV
[34] PDF Pg. 364/ Vol. IV
[35] PDF Pg. 225/ Vol. IV(B)

opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

Draft by the Drafting Committee[36]

Draft Entry 40 List II :

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, to the provisions of List I and, as respects poison and dangerous drugs, to the provisions of List III.

Constituent Assembly Debates

29. Draft Entry 40 [present Entry 8 (list II)] was placed before the Constituent Assembly. There is a short debate on the same on **02.09.1949**. It may, however, be pointed out that debate dated 02.09.1949 on which Entry 8 List II came to be finalized had a tremendous impact of the earlier debate dated **19th, 23rd and 24th November 1948** while introducing **Article 47** as one of the Directive Principles of State Policy. The debate[37] which took place regarding draft Entry 40 List II viz present Entry 8 List II is as under:

> **"Constituent Assembly Debates dated 02.09.1949**
> *Entry 40*
>
> ***Shri T.T. Krishnamachari:*** *Sir, I move:*
> *"That for entry 40 of State List II, the following entry be substituted:-*
> *'40 Intoxicating liquors, that is to say, the production, manufacture, possession transport, purchase and sale of intoxicating liquors." This amendment is necessary because we have shifted poisons and drugs to the Concurrent List and*

[36] PDF Pg. 275/ Vol. IV(B)
[37] PDF Pg. 302/ Vol. IV(B)

opium happens to be in the Central List. This entry, therefore, will suffice for the purposes of State Governments. Sir, I move.
Shri H.V. Kamath: *What is the distinction between production and manufacture? Is there any fine distinction?*

Mr. President: *Between production and manufacture?*

Dr. P.S. Deshmukh: *I suppose it is legal phraseology to cover all possibilities!*

Mr. President: *I think that is the explanation.*
So I shall put the amendment to the House. The question is:
"That for entry 40 of State List II, the following entry be substituted:-
'40 Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors."
The amendment was adopted.

Mr. President: *The question is:*
"That entry 40, as amended be added to List II."
The motion was adopted
Entry 40, as amended, was added to the State List."

30. So far as the debate which precede the debate on Entry 8 i.e. debate regarding Entry 47 and prohibition which impacted the language of Entry 8 List II being very long, the same is enclosed herewith rather than reproducing the same[38].

31. It is submitted that evolution of "intoxicating liquor" i.e. liquor as a beverage is concerned, the same had always been looked at as a form of 'vice' as a subject. It was for this reason that right from the devolution rules, the same was clubbed with other substances hazardous to health like opium, narcotic drugs, Indian hemp etc.

32. The reason clearly appears to be almost a unanimous view of Indian National Congress to discourage consumption of

[38] PDF Pg. 3-35/ Vol. IV(C)

intoxicating liquor [i.e. a beverage] as they treated it as injurious to health. The Constitution, therefore, brings in Article 47[39] in Part IV of the Constitution which reads as under:

> ***"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health****.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."*

33. This fact is noticed in the judgment of ***Ashok Lanka v. Rishi Dikshit*****, (2006) 9 SCC 90[40]:**

> ***"27.*** *The importance of Article 47 of the Constitution may have to be noticed tracing the history back from the date of Constitutional Debate. With a view to find out the intent and purport for which the said provision was inserted,* ***Shri H.M. Seervai in his treatise, Constitutional Law of India, Vol. II, 4th Edn., p. 2012*** *noticed that all sections of the society including the Mohammadan community, whose social habits were reinforced by the Koranic injunction in relation to intoxicating liquor, supported the insertion of such a provision.* ***The learned author stated:***
>
> *"The prohibition of intoxicating liquor had long been a part of the policy of the Indian National Congress; and its inclusion in Article 47 received support from the Mohammedan community whose social habits were reinforced by the Koranic injunction against intoxicating liquor. In considering the directive in Article 47, it may be observed that alcohol (the intoxicating ingredient of liquor) is a 'narcotic', a word replaced by the word 'depressant' to describe the same effects contrary to the popular belief that it is a stimulant.* ***It is not mere accident that intoxicating liquor and dangerous drugs have been clubbed together in Entry 8 List II****."*
>
> [***emphasis added***]

34. It is, thus, clear that what is permissible legislative domain of the State legislature for regulation under Entry 8 List II is the "*vice of*

---

[39] PDF Pg. 67/Vol. IV
[40] PDF Pg. 3-37/ Vol. V(F)

consumption of intoxicating liquor" as a beverage viz. for human consumption. Subsequently, other harmful items were dropped and cultivation etc. of opium was shifted to Entry 59 List I and drugs and poisons were shifted to Entry 19 List III.

The reason for the Constitution using two separate expressions i.e. "liquor for human consumption" and "intoxicating liquor"

35. Entry 8 List II on the face of it deals with potable liquor i.e. intoxicating liquor. The term "intoxicating liquor" necessarily pre-supposes a substance meant for and having the effect of "intoxication". The very term "intoxication" would mean intoxication of human beings. The entry, therefore, clearly refers to potable liquors served as beverages for human beings getting intoxicated.

36. Having said that, one would wonder as to why other entries concerning liquor, the expression used is not 'intoxicating liquor' but "liquor for human consumption".

The answer is simple and obvious. The expression "liquor for human consumption" is used only in taxing entries. While designing a linguistic expression for a field of legislature, the framers of the Constitution have very consciously chosen expressions. A taxing entry for excise duty i.e. List I Entry 84 [as it existed at the time when the Constitution came into force] and Entry 51 List II which reads as under-

Entry 84 (List I) [Pre-Amendment]

84. Duties of excise on tobacco and other goods manufactured or produced in India except—
(a) alcoholic liquors for human consumption;

(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) of this entry.

Entry 51 (List II)[41]

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

37. Since both the Entries are the taxing entries, what is relevant for taxing purposes is the point of time when the incidence of tax takes place. Every taxing Statute will have to provide for a charging section which would mention the point of time when a taxing event takes place.

38. In case of excise, the taxing event / incidence of tax is manufacturing i.e. the stage at which nobody needs to be intoxicated even in case of a potable liquor. The taxing event takes place when the manufacturing takes place even of an "alcoholic liquor for human consumption".

39. The intoxication which will result from the said product at a subsequent stage viz. the stage of consumption is not relevant for the purpose of deciding the taxing event of "liquor for human consumption". It is for this reason that for taxing event the effect of "alcohol for human consumption" which is "intoxication" is not provided as it merely provides for the field of taxation leaving it open for the taxing Statute to decide the event of taxation.

[41] PDF Pg. 364/ Vol. IV

40. It is for this reason that Article 47 also uses substantially the same expression. Article 47 which is quoted above uses the expression "intoxicating drinks and of drugs which are injurious to health".

41. The purpose of using an expansive expression "intoxicating drink" is to include not only alcoholic intoxicating drink viz. intoxication liquor but other drinks like Indian hemp [BHANG] etc. It is also used simultaneously with "drugs" which is considered by the framers of the Constitution to be injurious to health. It is for this reason that different articles in the Constitution uses different expressions for alcohol.

It, thus, becomes undeniable that Entry 8 List II provides for potable alcohol i.e. an intoxicating alcohol used as a beverage.

42. Secondly, the term "intoxicating liquors" would necessarily mean a product which can be taken "as it is" by which one gets the effect of intoxication. It may be possible that some form of industrial alcohol also may bring the effect of intoxication if diluted or mixed with some other chemical or taken in any particular manner.

Entry 8 List II, however, consciously covers the field for a product which is capable of being consumed "as it is" for bringing the effect of intoxication and not something which is not an intoxicating beverage but has the potential of being converted into an intoxicating drink.

Unless this interpretation is given, various entries regarding alcohol cannot be reconciled and the object of the framers of the Constitution will be frustrated.

43. It is submitted that as far as possible a common parlance, understanding and meaning shall have to be given to the expressions used under the Constitution. The common parlance, understanding of the expression "intoxicating liquor" is an intoxicating beverage containing the liquor and having the effect of intoxication and merely because some other form of alcohol i.e. industrial alcohol etc. can be **abused** for getting intoxicated after making some changes in the composition would never be falling within the meaning of Entry 8 List II.

C. THE HISTORY SHOWING THAT THE FIELD UNDER ENTRY 8, LIST- II IS LIMITED TO 'POTABLE ALCOHOL' I.E. THE ALCOHOL USED BY HUMANS FOR INTOXICATION

44. There is an inbuilt clue as to why Entry 8 of List II used the expression "intoxicating liquor". As pointed out in the legislative history prior to the Constitution coming into force, the expressions prevalent not only in Government of India Act, 1919 or Government of India Act, 1935 but subject specific Acts passed by the British Parliament were also the guiding light for using the expressions. This would become clear from the following chart which would show as to how the term "intoxicating liquor" found its way into our Constitution as a substitute word for a liquor-based beverage consumable by humans having the result of intoxication and making the human beings drunk. This is apparent from the following history –

10th August 1872[42]	The UK Parliament enacted '*The Licensing Act, 1872*' for regulating the sale of intoxicating liquors. The object *inter alia* was for sale of by retail of intoxicating liquor and prevention of drunkenness. Section 74 defined intoxicating liquor as: *"Intoxicating liquor" means spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without a license from the Commissioners of Inland Revenue*". **Note**: A review of the Licensing Act, 1872, in its entirety, makes it evident that the word "*intoxicating liquor*" is used in the context of human consumption. There is no reference whatsoever of it being used in the context of industrial alcohol.
17th August 1901[43]	The UK Parliament enacted the *Intoxicating Liquors (Sale to Children) Act, 1901* to prevent sale of the intoxicating liquors to children. **Note**: Even this Act used the words "*intoxicating liquor*" in reference to human consumption and not industrial use.
29th June 1904[44]	A discussion took place in the UK Parliament on the topic "*Sale of intoxicating liquor and drugs in India*" wherein certain question and answers were given regarding the sale of intoxicating liquor in India. **Note**: Pertinently, the reference to "intoxicating liquor" was in relation to human consumption.

[42] PDF Pg. 578-629/Vol. IV(B)
[43] PDF Pg. 630-631/Vol. IV(B)
[44] PDF Pg. 632-633/Vol. IV(B)

15th February 1915[45]	A discussion was held in the UK Parliament on the topic "*Liquor Traffic (India)*" wherein hours of sale of intoxicating liquors was discussed. **Note**: Again, the reference to "intoxicating liquor" was in relation to human consumption.
9th March 1923[46]	Intoxicating Liquor (Sale to persons under Eighteen) Bill, 1923 was debated before the House of Commons. In the entire discussion, the words "*intoxicating liquor*" is always used in the context of human consumption.

45. Thus, it is clear that the term "intoxicating liquor" as used in Entry 8 List II cannot have any other meaning other than an alcoholic beverage capable of human consumption "as it is" and "without any dilution or modification" which results in intoxication. The said expression has never been understood to mean any other substance which is inherently not meant to be used as a beverage but can be so used by undergoing some process of dilution or mixture.

For example, if some person gets hold of rectified spirit and dilutes it with water, it may technically become fit for human consumption and may have the effect of intoxication also. But this is not the sense in which the said expression is ever intended to be used.

[45] PDF Pg. 634-635/Vol. IV(B)
[46] PDF Pg. 636-699/Vol. IV(B)

46. Unless and until this interpretation is given, it would create a chaos since there can be several substances – many of them prohibited for any other use – which are being used for intoxication falling under Entry 8 List I. The court would always lean against such an absurd interpretation.

47. Thus, considering all the above, it is respectfully submitted that the phrase "*intoxicating liquor*" under Entry 8, does not include industrial alcohol and / or alcohol not fit for human consumption, and the State Legislatures cannot regulate with respect to the same under Entry 8 List II.

48. Reference may also be had to the relevant debates on 24 November 1948[47], during which the discussions on the use of intoxicating drinks and drugs under the article which now corresponds to Article 47 of the Constitution, the words "*intoxicating liquor*" was used at several places by the ministers in reference to consumption. The relevant discussions are produced as under:

> *[The Honourable Shri B. G. Kher]*
>
> ***I do not wish to speak at length on prohibition because after very deliberate consideration and prolonged discussion most of the provincial governments and most of those who are interested in the progress of this country have accepted the necessity of protecting our people from going to their ruin by the use of intoxicating drugs and liquor.*** *They believe that humanity will not progress on proper lines unless along with intellectual and material progress they give sufficient importance to moral progress and* ***it is too late in the day now to argue that the use of intoxicating drugs and liquor do not affect the moral sense of a person who uses them****. The very lamp which shows to you the distinction between right and wrong is extinguished and it is therefore, not a matter of individual liberty, which was one of the arguments which the honourable representative from Kolhapur used.*

[47] PDF Pg. 3-35/ Vol. IV(C)

There cannot be individual liberty to commit suicide. Society is interested in every individual's prolonged life therefore I was surprised to find such an amount of ignorance in what today is being done, thought and experienced as a result of the administration of prohibition in the provinces. Instead of getting a large excise revenue and spending it on education, the best education is to teach people to abstain from drink and drugs.

.....

I was surprised to hear an Honourable Member who represents the Adibasis attack this amendment as vicious. I am afraid that this is the way in which men's minds are perverted. ***The very object of introducing this amendment, which I am very happy to find has been accepted by the honourable Dr. Ambedkar who is in charge of the Bill, is to prevent the furtherance of vice. Is it argued that the use of intoxicating liquors and injurious drugs leads to the practice of virtue?*** *I am not quoting Mahatma Gandhi in support of my argument but* ***he has said that he would not attach any importance to any other social reform so long as this question of the prevention of consumption of intoxicating liquors and drugs was not taken up by the State.*** *The very first reform that he enjoined upon all the provinces was the stopping of this vicious thing.* ***In this country almost every section of society, whether it is the Hindus, the Muslims or even Christians, have always looked upon the use of intoxicating liquor and drugs as a vice.....***

Shri L. Krishnaswami Bharathi (Madras: General): As a sin.

The Honourable Shri. B. G. Kher: I mean sin. The drinking of liquor is one of the five deadly sins which the Smritis have laid down and that was not a matter of bigotry or prejudice but the result of vast experience. Today go to America. I met a number of people who genuinely regretted that they were not able to make prohibition a success. ***Why were they not able to make a success of it? Simply for the reason that they have gone on too long imbibing the poison and it is too late now for them to go back. But the section of the people who have the good of the community and of their country at heart still desire that it were possible to stop the deterioration of the human race, which is sure to be brought about by the use and by making the use of intoxicating drinks respectable in society. So, though a sin both for the Hindus as also for the Muslim, after the advent of the British the use of intoxicating liquors became a sign of being fashionable, a sign of progress and culture.*** *It is quite true that it is perhaps impossible to eradicate from the face of the earth for good and for ever these three vices—the use of liquor in one shape or other by some few people, the*

> *evil of gambling and the evil of prostitution: but it shall be the endeavor of every civilised government to prevent all these three cankers of human society, if it is their object that society should be healthy and happy and moral.*

49. A mere reading of Article 47 (and the debates that preceded it) indicates that the word "*intoxicating*" when used in its adjective form in conjunction with a noun, i.e., drink or a beverage – which is inherently: capable of being, meant to be, and produced to be, consumed. This is forthcoming from the fact that the word has been used in an article which focuses upon "*raising the level of nutrition*", "*standard of living*", "*improvement of public health*" "*bring about prohibition of the consumption … of intoxicating drinks … which are injurious to health*". There is no reason for the position to be any different if the noun is liquor, in place of drink. Equally, there is no reason to extend the concept of prohibition on industrial alcohol, which is used in making rubber, organic chemicals, etc. Adopting the approach suggested by the State of U.P. in its written submissions would render nugatory the plain words in the Constitution.

50. As rightly held in ***Synthetics and Chemicals Ltd Vs State of UP***, the States also cannot levy a fee as a '*price for parting with privilege'* in case of industrial alcohol since the doctrine of res extra commercium does not apply to industrial alcohol and therefore State does no enjoy any such privilege qua industrial alcohol.

51. The present reference does not require a reconsideration on the meaning of the phrase "*intoxicating liquor*" as understood in

Synthetics-II. The understanding, in ***Balsara***[48] which respectfully is erroneous, contained and consequently in ***Synthetics-I***[49], that the phrase "*intoxicating liquor*" includes "*industrial alcohol*" or "*liquor not meant/fit for human consumption, or not meant to be used as a beverage*" was rightly overruled in ***Synthetics-II***[50] [7 Judges Bench] and does not need to be reconsidered by this Hon'ble Bench. In fact, ***Bihar Distillery v. Union of India*, (1997) 2 SCC 727 (2JJ)**[51], has provided sound reasoning for holding that "*intoxicating liquor*" is limited to "*alcoholic liquor fit for human consumption*":

> *"10. A reading of the above entries would immediately disclose that Entry 51 in List II and Entry 84 in List I compliment each other. Both provide for duties of excise but while the States are empowered to levy duties of excise on (a) alcoholic liquors for human consumption and (b) opium, Indian hemp and narcotics manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India [but excluding medicinal and toilet preparation containing alcohol or any substance included in sub-para (b) of this Entry], the Union is empowered to levy duties of excise on tobacco and other goods manufactured or produced in India except (a) alcoholic liquors for human consumption and (b) opium, Indian hemp and other narcotic including drugs and narcotics. Medicinal and toilet preparations containing alcohol or any substance included in sub-para (b) which are excluded from Entry 51 in List II are expressly included in this entry. For our purposes, the relevant expression is "alcoholic liquors for human consumption" which is included in Entry 51 in List II and excluded from Entry 84 in List I. The words employed denote that there may be alcoholic liquors meant for human consumption as well as for other purposes. Now coming to Entry 8 in List II, it does not use the expression "alcoholic liquors for human consumption". **It employs the expression "intoxicating liquors" which expression is, of course, not qualified by words "for human consumption". This is for the obvious reason that the very word "intoxicating" signifies "for human consumption". Entry 8, it is***

[48] PDF Pg. 1718-1752/ Vol. V
[49] PDF Pg. 1834-1853/Vol. V
[50] See Para 68, 74, 77/ PDF Pg. 51-52,54-55,56/Vol. V
[51] PDF Pg. 76-94/ Vol. V(A)

> ***necessary to emphasize, places all aspects of intoxicating liquors within the State's sphere; production, manufacture, possession, transport, purchase and sale of intoxicating liquors is placed within the exclusive domain of the States.*** *Entry 6, which inter alia speaks of "public health" is relevant only for the reason that it furnishes a ground for prohibiting consumption of intoxicating liquors. Coming to Entry 33 in List III, the language of clause (a) thereof is significant. Even though control of certain industries may have been taken over by the Union by virtue of a declaration made by Parliament in terms of Entry 52 in List I, yet the "trade, commerce in, and the production, supply and distribution of the products" of such industry is placed in the concurrent field, which in the present context means that though the control of alcohol industry is taken over by the Union, trade, commerce in and the production, supply and distribution of the products of alcohol industry can be regulated both by the Union and the States subject, of course, to Article 254. It also means, as will be explained later, that insofar as the field is not occupied by the laws made by the Union, the States are free to legislate.*
>
> ***[Emphasis Added]***

52. Pertinently, reference made in ***Lalta Prasad***[52], also does not contain any question as regards the meaning or scope of "*intoxicating liquor*" or "liquor made for human consumption" in E-8, L-II in the Seventh Schedule of the Constitution.

53. With respect in ***Balsara***, it had been erroneously held[53] that:

> *"40. In the Oxford English Dictionary, edited by James Murry, several meanings are given to the word "liquor", of which the following may be quoted:*
>
> *Liquor….1. A liquid; matter in a liquid state; in wider sense a fluid.*
>
> *2. A liquid or a prepared solution used as a wash or bath, and in many processes in the industrial arts.*
>
> *3. Liquid for drinking; beverage, drink. Now almost exclusively a drink produced by fermentation or distillation. Malt liquor, liquor brewed from malt; ale, beer, porter, etc.*

[52] PDF Pg. 67-79/ Vol. V
[53] PDF Pg. 1731-1734/Vol. V

4. The water in which meat has been boiled; broth, sauce; the fat in which bacon, fish or the like has been fried; the liquid contained in oysters.

5. The liquid produced by infusion (in testing the quality of a tea). In liquor, in the state of an infusion.

41. ***Thus, according to the dictionary, the word "liquor" may have a general meaning in the sense of a liquid, or it may have a special meaning, which is the third meaning assigned to it in the extract quoted above viz. a drink or beverage produced by fermentation or distillation****.* ***The latter is undoubtedly the popular and most widely accepted meaning, and the basic idea of beverage seems rather prominently to run through the main provisions of the various Acts of this country as well as of America and England relating to intoxicating liquor, to which our attention was drawn****.* ***But at the same time, on a reference to these very Acts, it is difficult to hold that they deal exclusively…with beverages and are not applicable to certain articles which are strictly speaking not beverages.*** *A few instances will make the point clear. In the National Prohibition Act, 1919 of America (also known as the Volstead Act), the words "liquor" and "intoxicating liquor" are used as having the same meaning and the definition states that these words shall be construed to "include alcohol, brandy, whisky, rum, gin, beer, ale, porter and wine, and in addition thereto any spirituous, vinous malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes".* ***Having defined "liquor" and "intoxicating liquor" rather widely, the Volstead Act excepted denatured alcohol, medicinal preparations, toilet and antiseptic preparations, flavouring extracts and syrups, vinegar and preserved sweet cider (Section 4) which suggest that they were included in the definition.*** ***In some of these items, we have the qualifying words "unfit for use for beverage purposes", but the heading of Section 4 of the Volstead Act, under which these exceptions are enumerated, is "exempted liquors".***

43. […] ***I am only trying to show that the word "liquor" is capable of being used in a wide sense****.*

44. ***Coming now to the various definitions given in the Indian Acts, I may refer in the first instance to the Bombay Abkari Act of 1878 as amended by subsequent Acts, where the definition is substantially the same as in the Act with which we are concerned.*** *In the Bengal Excise*

Act, 1909, "liquor" is said to mean "liquid consisting of or containing alcohol" and includes spirit of wine, spirit, wine, tari pachwai, beer and any substance which the Provincial Government may ... declare to be liquor for the purposes of this Act". In several other Provincial Acts e.g. the Punjab Excise Act, 1914, the U.P. Excise Act, 1910, "liquor" is used as meaning intoxicating liquor and as including all liquids consisting of or containing alcohol. The definition of "liquor" in the Madras Abkari Act, 1886, is the same as in the Bombay Act of 1878. ***Even if we exclude the American and English Acts from our consideration, we find that all the Provincial Acts of this country have consistently included liquids containing alcohol in the definition of "liquor" and "intoxicating liquor". The framers of the Government of India Act, 1935, could not have been entirely ignorant of the accepted sense in which the word "liquor" has been used in the various excise Acts of this country, and, accordingly I consider the appropriate conclusion to be that the word "liquor" covers not only those alcoholic liquids which are generally used for beverage purposes and produce intoxication, but also all liquids containing alcohol. It may be that the latter meaning is not the meaning which is attributed to the word "liquor" in common parlance especially when that word is prefixed by the qualifying word "intoxicating", but in my opinion having regard to the numerous statutory definitions of that word, such a meaning could not have been intended to be excluded from the scope of the term "intoxicating liquor" as used in Entry 31 of List II****."*

[***emphasis added***]

54. ***Balsara*** may not be of any assistance in the present matter as in the said judgment the question of legislative competence was not under consideration and this Hon'ble Court, based upon pre-constitutional legislations, attempted to define liquor and intoxicated liquor.

55. The approach in ***Balsara*** included perusal of pre-constitutional legislations containing definitions of liquor/intoxicating liquor to come to its conclusion. However, such an approach has inherent limitations. For one, this approach uses contextually limited statutory definitions, which oftentimes may go beyond ordinary meanings, to interpret the Seventh Schedule. Whilst such an

approach may provide insights (at the highest) into the march of the law, it has its own limitations. For instance, this Hon'ble Court, in ***Ahmedabad Municipal Corpn. v. GTL Infrastructure Ltd.*, (2017) 3 SCC 545[54] (2JJ)**, may deserve consideration while dealing with submissions on interpreting provisions and lists in the Constitution by referring to statutory definitions:

> *"13. Two significant aspects connected to the issues arising may be taken note of at the outset.* ***The meaning of any legislative entry e.g. "Taxes on lands and buildings" (List II Entry 49) should not be understood by reference to the definition of the very same expressions appearing in a statute traceable to the particular legislative entry****. In the present case, though the Gujarat Act defines the expressions "land" and "building", as rightly held by the High Court,* ***it would be self-defeating to understand the meaning and scope of Entry 49 of List II by reference to the definition clauses in the Gujarat Act. Definitions contained in the statute may at times be broad and expansive; beyond the natural meaning of the words or may even contain deeming provisions. Though the wide meaning that may be ascribed to a particular expression by the definition in a statute will have to be given effect to, if the statute is otherwise found to be valid, it will, indeed, be a contradiction in terms to test the validity of the statute on the touchstone of it being within the legislative entry, by a reference to the definition contained in the statute****."*
>
> [***emphasis added***]

56. Similarly, this Hon'ble Court in ***Harakchand Ratanchand Banthia v. Union of India*, (1969) 2 SCC 166 (5JJ)[55]**, on the issue of relying upon statutory definitions to interpret legislative lists in the Seventh Schedule, held as under:

> **"10.** *[...] Reference was made to the decision of this Court in Banerji v. Mukherjee, [(1952) 2 SCC 619 : 1953 SCR 302] in which it was pointed out that the word "industry" in Section 2(j) of the Industrial Disputes Act, 1947, should be construed as an activity systematically or habitually undertaken for production and distribution of goods or for rendering material services to the community at large and that such an activity generally involved Cooperation of the*

[54] PDF Pg. 438-458/Vol. V(B)
[55] PDF Pg. 52-73/Vol. V(D)

employer and the employees and its object was satisfaction of human needs. The same view was taken in the National Union of Commercial Employees v. M.R. Meher [1962 Supp (3) SCR 157] in which it was pointed out that the distinguishing feature of an industry was that for production of goods or for the rendering of service, Cooperation between capital and labour or between the employer and his employee must be direct. ***But these decisions are of no avail to the petitioners because they were concerned with the interpretation of the word "industry" in Section 2(j) of the Industrial Disputes Act, 1947*** *[…] In interpreting the word "industry" in that section the Court thought it necessary to limit the scope of the section having regard to the aim, object and scope of the whole Act. The history of the legislation made it manifest that the Industrial Disputes Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage their cooperative effort in the service of the community. It was in this context that the expression "industry" was interpreted in Banerjee case and Meher case. It was an interpretation adopted by this Court secundum subjectae materies.* ***But what we are concerned in the present case is the interpretation of the word "industry" in the legislative lists which constitute part of the Seventh Schedule of the Constitution. It is manifest that the decisions referred to above have no bearing on the question debated in the present case."***

[*emphasis added*]

57. Nevertheless, ***Synthetics-II*** **(7JJ)** answered this issue through the following observations[56]:

"54. ***We have no doubt that the framers of the Constitution when they used the expression 'alcoholic liquor for human consumption' they meant at that time and still the expression means that liquor which as it is is consumable in the sense capable of being taken by human beings as such as beverage of drinks****.* ***Hence, the expression under Entry 84, List I must be understood in that light****. We were taken through various dictionary and other meanings and also invited to the process of manufacture of alcohol in order to induce us to accept the position that denatured spirit can also be by appropriate cultivation or application or admixture with water or with others, be transformed into 'alcoholic liquor for human consumption' and as such transformation would not entail any process of manufacture as such. There will not be any organic or fundamental change in this transformation, we were*

[56] PDF Pg. 43-44, 51,52, 54- 56, 61, 62, 65 & 66/ Vol. V

told. We are, however, unable to enter into this examination. ***Constitutional provisions specially dealing with the delimitation of powers in a federal polity must be understood in a broad commonsense point of view as understood by common people for whom the Constitution is made. In terminology, as understood by the framers of the Constitution, and also as viewed at the relevant time of its interpretation, it is not possible to proceed otherwise; alcoholic or intoxicating liquors must be understood as these are, not what these are capable of or able to become.*** *It is also not possible to accept the submission that vend fee in U.P. is a pre-Constitution imposition and would not be subject to Article 245 of the Constitution. The present extent of imposition of vend fee is not a pre-Constitution imposition, as we noticed from the change of rate from time to time.*

68. ***The Balsara case [1951 SCC 860 : 1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361] was in the context of the business of potable alcohol****. Problems arose with regard to auctions, vends, licences and the business of manufacturing, selling, etc. of potable alcohol.* ***Until the case of Synthetics & Chemicals [(1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614] , which is under challenge here, all other cases since then have dealt with potable alcohol****.* ***The only case which has dealt with alcohol used for industrial purposes was the case of Indian Mica and Micanite Industries Ltd. v. State of Bihar [(1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182]*** *. The Constitution of India, it has to be borne in mind, like most other Constitutions, is an organic document. It should be interpreted in the light of the experience. It has to be flexible and dynamic so that it adapts itself to the changing conditions and accommodates itself in a pragmatic way to the goals of national development and the industrialisation of the country. This Court should, therefore, endeavour to interpret the entries and the powers in the Constitution in such a way that it helps to the attainment of undisputed national goals, as permitted by the Constitution. As mentioned hereinbefore, the relevant entries in the Seventh Schedule to the Constitution demarcate legislative fields and are closely linked and supplement one another.* ***In this connection, reference may be made to Entry 84 of List I which deals with the duties of excise on tobacco and other goods manufactured or produced in India except, inter alia, alcoholic liquors for human consumption. Similarly, Entry 51 of List II is the counterpart of Entry 84 of List I so far as the State list is concerned. It authorises the State to impose duties of excise on alcoholic liquors for human consumption and opium, etc. manufactured or produced in the State and the countervailing duties at the same or lower rates on similar goods produced or manufactured elsewhere in India. It is clear that all duties of excise save and except the items specifically***

excepted in Entry 84 of List I are generally within the taxing power of the central legislature. The State legislature has power, though limited it is, in imposing duties of excise. That power is circumscribed under Entry 51 of List II of the Seventh Schedule to the Constitution.
[…]

74. It has to be borne in mind that by common standards ethyl alcohol (which has 95 per cent) is an industrial alcohol and is not fit for human consumption. The petitioners and the appellants were manufacturing ethyl alcohol (95 per cent) (also known as rectified spirit) which is an industrial alcohol. ISI specification has divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverage and industrial alcohols are clearly and differently treated. Rectified spirit for industrial purposes is defined as "spirit purified by distillation having a strength not less than 95 per cent of volume by ethyl alcohol". Dictionaries and technical books would show that rectified spirit (95 per cent) is an industrial alcohol and is not potable as such. It appears, therefore, that industrial alcohol which is ethyl alcohol (95 per cent) by itself is not only non-potable but is highly toxic. The range of spirits of potable alcohol is from country spirit to whisky and the ethyl alcohol content varies between 19 to about 43 per cent. These standards are according to the ISI specifications. In other words, ethyl alcohol (95 per cent) is not alcoholic liquor for human consumption but can be used as raw material input after processing and substantial dilution in the production of whisky, gin, country liquor, etc. In many decisions, it was held that rectified spirit is not alcohol fit for human consumption. Reference may be made in this connection to Delhi Cloth and General Mills Co. Ltd. v. Excise Commissioner, U.P. Allahabad [Special Appeal No. 177 of 1970, decided on March 29, 1973] . In this connection, it is important to bear in mind the actual provision of Entry 8 of List II. Entry 8 of List II cannot support a tax. The above entry contains the words "intoxicating liquor". The meaning of the expression "intoxicating liquor" has been rightly interpreted by the Bombay High Court in the Balsara case. The decision of the Bombay High Court is reported in Nusserwanji Balsara v. State of Bombay [AIR 1951 Bom 210, 214 : 52 Bom LR 799 : 52 Cr LJ 80 : ILR (1951) Bom 17] . In that light, perhaps, the observations of Fazl Ali, J. in Bal- sara case [1951 SCC 860 : 1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361] requires consideration. ***It appears that in the light of the new experience and development, it is necessary to state that "intoxicating liquor" must mean liquor which is consumable by human being as it is and as such when the word "liquor" was used by Fazl Ali, J., they did not have the awareness of full use of alcohol as industrial alcohol. It is true that alcohol was used for industrial purposes then also, but the full potentiality of that user was not then comprehended or understood.***

With the passage of time, meanings do not change but new experiences give new colour to the meaning. *In Har Shankar case [(1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121] , a bench of five judges have surveyed the previous authorities. That case dealt with the auction of the right to sell potable liquor. The position laid down in that case was that the State had the exclusive privilege or right of manufacturing and selling liquor and it had the power to hold public auctions for granting the right or privilege to sell liquor and that traditionally intoxicating liquors were the subject matters of State monopoly and that there was no fundamental right in a citizen to carry on trade or business in liquor.* ***All the authorities from Cooverji Barucha case [1954 SCR 873 : AIR 1954 SC 220] to Har Shankar case [(1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121] dealt with the problems or disputes arising in connection with the sale, auction, licensing or use of potable liquor.***

76. ***Balsara case [1951 SCC 860 : 1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361] dealt with the question of reasonable restriction on medicinal and toilet preparations. In fact, it can safely be said that it impliedly and sub-silentio clearly held that medicinal and toilet preparations would not fall within the exclusive privilege of the States. If they did there was no question of striking down of Section 12(c) and (d) and Section 13(b) of the Bombay Prohibition Act, 1949 as unreasonable under Article 19(1)(f) of the Constitution because total prohibition of the same would be permissible.*** *In K.K. Narula case [K.K. Narula v. State of J&K, (1967) 3 SCR 50 : AIR 1967 SC 1368] it was held that there was right to do business even in potable liquor. It is not necessary to say whether it is good law or not. But this must be held that the reasoning therein would apply with greater force to industrial alcohol.*

77. ***Article 47 of the Constitution imposes upon the State the duty to endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and products which are injurious to health. If the meaning of the expression "intoxicating liquor" is taken in the wide sense adopted in Balsara case [1951 SCC 860 : 1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361] , it would lead to an anamolous result. Does Article 47 oblige the State to prohibit even such industries as are licensed under the IDR Act but which manufacture industrial alcohol? This was never intended by the above judgments or the Constitution. It appears to us that the decision in the Synthetics & Chemicals Ltd. case [(1980) 2 SCC 441 : (1980) 2 SCR 531 : AIR 1980 SC 614] was not correct on this aspect.***

> ***G.L. Oza, J. (concurring)—*** *While I agree with my learned brother Hon'ble Mukharji, J. as regards the conclusions but I would like to add the following reasons.*
>
> *97.* ***A comparison of the language of these two entries clearly demonstrates that the powers of taxation on alcoholic liquors have been based on the way in which they are used as admittedly alcoholic liquor is a very wide term and may include variety of types of alcoholic liquors but our Constitution-makers distributed them into two heads****:*
>
> *(a)* ***for human consumption***
> *(b)* ***other than for human consumption***
>
> *Alcoholic liquors which are for human consumption were put in Entry 51 List II authorising the State legislature to levy tax on them whereas alcoholic liquors other than for human consumption have been left to the central legislature under Entry 84 for levy of duty of excise.* ***This scheme of these two entries in Lists I and II is clear enough to indicate the line of demarcation for purposes of taxation of alcoholic liquors. What has been excluded in Entry 84 has specifically been put within the authority of the State for purposes of taxation.***
>
> *103. The main edifice of the argument on behalf of the State is that the State has the sole privilege to deal with in alcohol and alcoholic substances. This, according to the arguments, is equally applicable to alcohol for human consumption and also for denatured spirit or other categories of alcoholic liquors which though may be described as not for human consumption but are potential substances which easily could be converted as intoxicating liquors fit for human consumption.*
>
> [***emphasis added***]

D. ALCOHOL, ITS FORMS, USES AND SIGNIFICANCE

58. The term 'alcohol' means ethyl alcohol of any strength and purity having chemical composition C2H5OH.

59. 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 etc. It is used as an anti-freeze material in automobile radiator, it is also used an anti-septic. It is also used in preparation of ether, chloroform, iodoform, acetaldehyde, acetic

etc. It is also used in manufacture of drugs, perfumes etc. Ethyl alcohol is used as an industrial solvent for paints, lacquers, dyes, varnished, cosmetics etc.

60. So far as "alcohol" is concerned, the following details are relevant:

- Alcohol is derived through a distillation process where carbohydrate (sugar/starch) is fermented and then distilled to extract alcohol.

- Alcohol can be made from any feedstock which has high content of carbohydrates such as sugarcane, rice, maize, potato, beetroot etc. In India, alcohol is predominantly made from sugarcane juice, molasses (a by-product of sugar production), broken rice (Damaged Food Grains) and maize. Major types of alcohol are given below:

  i. **Rectified Spirit (R.S.):-** Rectified Spirit generated after distillation, having **minimum 95% ethanol content** is used only for industrial purpose. It is used for industrial purposes such as uses as solvent in paints, industrial chemicals etc.

  ii. **Extra Neutral Alcohol (E.N.A.):-** This neutral spirit having minimum **96% ethanol content** is made by further purifying the R.S. This is used both for potable alcohol and industrial purposes.

  iii. **Absolute Ethanol:-** Also known as absolute alcohol (AA) 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.

iv. '**Denatured alcohol**' refers to alcohol products adulterated with toxic and/or bad tasting additives (e.g., methanol, benzene, pyridine, castor oil, gasoline, isopropyl alcohol, and acetone), making it unsuitable for human consumption. It is used in fuel blending, making disinfectants, tinctures, varnishes, preserving biological specimens, industrial solvents etc.

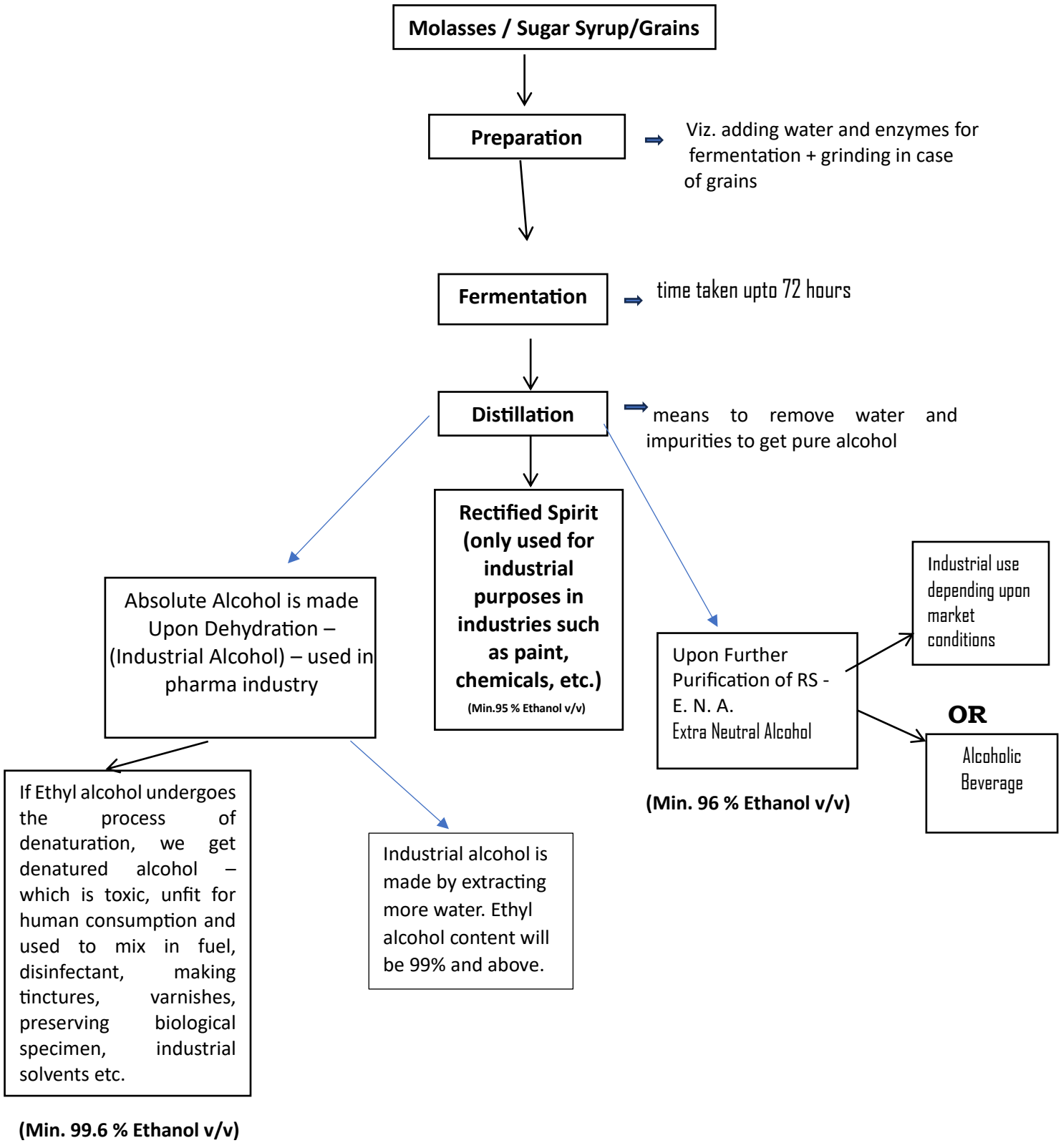
v. **Potable alcohol** i.e. for Human Consumption can be categorized as below:

   a. Indian Made Foreign Liquor – normal standard is at 42.8 %

   b. Country Liquor – varies from state to state but between 25- 35 %

Process Flow of Typical Distillery

PROCESS FLOW



61. At this stage, it is required to be pointed out that it is absolutely wrong to suggest that denatured alcohol is either potable or fit for human consumption. As a matter of fact, the additives are added in the pure alcohol to make it poisonous, bad taste, foul smell and to discourage its human consumption. In some countries, it is also dried so that it can be identified visually. It is used as a solvent and as a fuel for alcohol burner and camping stoves apart from having other industrial uses. This fact is judicially recognised by this Hon'ble Court in the judgment of **Vam Organics Vs State of U.P. (1997) 2 SCC 715**[57] Para 4 of the said judgment reads as under:-

> *"4. Before proceeding further, it will be proper to understand the difference between industrial alcohol, denatured spirit and potable liquor. Ethyl alcohol is rectified spirit of 95% v/v in strength. Rectified spirit is highly toxic and unfit for human consumption. However, rectified spirit diluted with water is country liquor. Rectified spirit, as it is, can be used for manufacture of various other products like chemicals etc. Rectified spirit, produced for industrial use is required by a notification issued under the Act to be denatured in order to prevent the spirit from being directed to human consumption. Rectified spirit is denatured by adding denaturants which make the spirit unpalatable and nauseating. As such rectified spirit can be converted to potable liquor but once denatured it can be used only as industrial alcohol. The process of denaturation described by the respondent is narrated by the High Court in the following words:*
>
> *"Denaturation of rectified spirit is a highly technical process. Every drum/lot/batch has to be tested by the Chief Development Officer at the Excise Headquarters' Laboratory so as to ensure that the same is according to the prescribed specification before they are allowed to be used for denaturing the rectified spirit. After they are properly tested, the denaturants have to be separately stored under lock and key of the officer-in-charge of the distillery, and measured quantities are pumped into denaturation vats at the time of denaturation. The process of mixing goes on for several hours. The resultant mixture is denatured spirit or specially denatured spirit, as the case may be. After denaturing, it is again tested to find out whether it has been properly denatured or not. The Excise Department is obliged to, and does maintain a laboratory*

[57] PDF Pg. 118-135/Vol. V(A)

for this purpose at the Headquarters of the Excise Commissioner. There is a Chief Development Officer, assisted by four Assistant Alcohol Technologists and a large number of supporting staff apart from apparatus and other equipment. Denaturation takes place under the close supervision of the Excise Officials in accordance with the provisions of Rule 785 of the U.P. Excise Manual, Volume I."

62. It is, thus, clear that denatured alcohol is completely out of Entry 8 List II

Justification for continuing 'alcohol' as a "scheduled industry"

Market for Alcohol in India:

As per NITI Aayog Roadmap for Ethanol blending by 2025-26[58], ethanol requirement for blending in petrol and for other uses (Potable and Industrial) is given below:

Ethanol Supply Year	**Blending level**	**Ethanol Requirement (in crore litres)**		
		For blending	**For other uses (Potable + Industrial alcohol)**	**Total Requirement**
2021-22	10%	437	270	707
2022-23	12%	542	280	822
2023-24	15%	698	290	988
2024-25	20%	988	300	1288
2025-26	20%	1016	334	1350

Ratio between demand for potable and industrial alcohol is about 70:30.

[58] PDF Pg. 36-107/ Vol. IV(C)

Country's Sugar Production and Consumption:

63. India is the second largest sugar producer in the world after Brazil and produces approx. 330 Lakhs Metric Tons (LMT) yearly. Major Sugar producing states are Uttar Pradesh, Maharashtra, Karnataka which corresponds to about 80% of sugar production in India.

Domestic consumption of the sugar in Country is around 290 LMT and growing at 2-3% per annum.

Figures in LMT			
Year	***Sugarcane Production**	**Sugar Production**	**Sugar Consumption**
2018-19	4054	332	255
2019-20	3705	274	249
2020-21	4054	310	265
2021-22	4394	359	273
2022-23	4905	330	280

*** Sugarcane production figures taken from Department of Agriculture and Farmers' Welfare.**

Parliamentary Legislations and Scheme on Industrial Alcohol to show that non-potable alcohol had always been controlled by the Centre

64. **Indian Power Alcohol Act, 1948**[59] : Prior to coming into force of the Constitution, Indian Power Alcohol Act, 1948 was enacted to provide for development of power alcohol industry.

[59] PDF Pg. 937-940/ Vol. IV(B)

'Power alcohol' was defined to mean ethyl alcohol containing not less than 99. 5 per cent by v/v of ethanol measured at sixty degrees Fahrenheit corresponding to 74. 4 over proof strength.

It regulated the production of power alcohol, Section 4 provided that no person shall manufacture power alcohol from any substance other than molasses or any other substance specified by Central Government. Section 5 provided for regulation of production and disposal. Section 6 empowered Central Government to direct that no petrol shall be sold or kept for sale except with an admixture of power. Indian Power Alcohol Rules, 1949 were made thereunder.

65. **Indian Power Alcohol Amendment Act, 1952[60] :** Indian Power Alcohol Amendment Act, 1952 was brought in order to make it applicable to Part B States with a view to provide for better outlet for power alcohol in the country.

66. **Central Government Constituted Alcohol Committee, 1956[61]** which recommended:

(*a*) that industrial alcohol is an input and should be available at reasonable price,

(*b*) there should be uniform railway freight,

(*c*) larger capacities of molasses etc., should be available, and

(*d*) uniform taxation policies are essential for the development of these industries.

67. **Ethyl Alcohol (Price Control) Order, 1966**: In exercise of powers conferred u/S 18G of IDRA, 1951, Ethly Alcohol (Price Control)

[60] PDF Pg. 108-111/ Vol. IV(C)
[61] PDF Pg. 766-905/Vol. IV(B)

Order, 1966 was issued regulating the price of ethyl alcohol considering the circumstances as on that time. This order was superseded by **Ethyl Alcohol (Price Control) Order, 1971**[62]. This was rescinded in 1993 vide notification dated 10.06.1993[63]. When that regulation was no longer required, while the Central Government continued to have power to regulate under Section 18G.

68. Vide **resolution dated 03.09.2002**[64], by Ministry of Petroleum and Natural Gas, Central Government resolved that 5 % ethanol doped petrol will be supplied by 9 States and 4 contiguous Union Territories w.e.f. 01.05.2003.

69. **National Biofuel Policy, 2018**[65] : The Central Government notified National Biofuel Policy on 04.06.2018 in the gazette after it was approved by the Cabinet on 16.05.2018 with a view to promote biofuels to promote biofuels in the Country through structured programmes like Ethanol Blended Petrol Programme, National Biodiesel Mission, Biodiesel Blending Programme.

70. The Niti Ayog in its report dated 02.06.2021 'Road map for Ethanol Blending in India 2020-2025' made several recommendations to ensure uniform availability of ethanol blends in the country. During the outbreak of the Covid-19 pandemic several orders were issued to ensure availability of ethanol at the notified price for the manufacture of sanitisers.

---

[62] PDF Pg. 941-944/Vol. IV(B)
[63] PDF Pg. 968-969/Vol. IV(B)
[64] PDF Pg. 112/ Vol. IV(C)
[65] PDF Pg. 906-928/Vol. IV(B)

71. In its publication Ministry of Petroleum and Natural Gas named 'Ethanol Growth Story' has traced the evolution of the use Ethanol and its significance. The Government has decided to advance the target of 20 % ethanol blending in petrol by 5 years from 2030 to 2025.

This necessarily needs control Central Government regulation pan India implementation.

72. As on 30.11.2023, the ethanol production capacity in the country is about 1380 crore litres out of which about 875 crore litres is molasses based and about 505 crore litres is grain based.

73. The Government of India has been implementing Ethanol Blended with Petrol (EBP) Programme throughout the country wherein Oil Marketing Companies (OMCs) sell petrol blended with ethanol. Under EBP Programme, Government has fixed the target of 20% blending of ethanol with petrol by 2025. Further, with a view to enhance the ethanol production capacity in the country to achieve the blending targets set under EBP Programme, the Government has notified various ethanol interest subvention schemes from July 2018 to April 2022.

74. Under this scheme viz. National Biofuel Policy, 2018, Government is facilitating entrepreneurs to set up new distilleries (molasses based, grain-based and dual-feed based) or expansion of existing distilleries (molasses based, grain-based and dual-feed based) throughout the country. Interest subvention @ 6% per annum or 50% of rate of interest charged by banks/financial institutions, whichever is lower, on the loans to be extended by banks/financial institutions is being borne by the Central Government for five

years including one-year moratorium. This would at some stage need regulation to ensure sufficient quantity of ethanol.

75. It is also "expedient in public interest" inter-alia that –

(i) The factories producing alcohol do not divert substantial portion of manufacturing to make only intoxicating liquor so that non-potable alcohol is available for other purposes. In a given state of circumstances, the Centre may have to step in.

(ii) It is also necessary to ensure that the production of sugar is also enough to meet with the domestic demand as well as international commitments. Since the raw material i.e. sugarcane is same, the Central Government may have to step in if these is any scarcity of sugar and regulate the industry.

76. It is for the aforesaid reason that under the scheme of List I, II and III, in facts of the present case i.e. alcohol, there is a central Act occupying the field namely Industrial [Development and Regulation] Act, 1951 which is enacted under Entry 52 List I read with Entry 33 List III.

77. Apart from the aforesaid interpretation of entries, the law made by the Parliament would supersede any other law made by the State Legislature under Article 246(1) of the Constitution of India.

78. Without prejudice to the arguments on the alleged nonexistence of "notified order" as contemplated under section 18G of the IDRA, it is submitted that this national bio fuel policy is and can be treated as a notified order since no specific format of the order is stipulated either under the Act or anywhere else.

E. LEGISLATIVE HISTORY OF THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

79. In this context, it is important to examine the legislative history leading to the enactment of the IDRA, and subsequent amendments thereto, which for ease of reference has been set out in a tabular form below:

DATE	PARTICULARS
1st January 1948[66]	The Indian Power Alcohol Act, 1948 was introduced. The purpose of the Act was to "*to provide for the development of the power alcohol industry. WHEREAS it is expedient in the public interest that the power alcohol industry should be developed under the control of the Central Government.*" The declaration under Section 2 reads as under: "*It is hereby declared that it is expedient in the public interest that the Union should take under its control the power alcohol industry.*"
6th April 1948	The Industrial Policy Resolution, 1948 came into force.
24th September 1951[67]	The Report of the Select Committee on the Industries (Development and Regulation) Bill, 1949. The report of the Select Committee

[66] PDF Pg. 937-940/Vol. IV(B)
[67] PDF Pg. 119-143/ Vol. IV(C)

	suggested certain amendments to the Industries (Development and Regulation) Bill, 1949.
8th May 1952[68]	The Industries (Development and Regulation) Act, 1951 came to be passed **<u>The declaration under Section 2 reads as under:</u>** ***"2. Declaration as to expediency of control by the Union: It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule***."
26th May 1953[69]	The Industries (Development and Regulation) Amendment Act, 1953 came into force. **<u>Statement of Objects and Reasons[70]</u>**: The Industries (Development and Regulation) Act, 1951, came into force on the 8 May, 1952. In the course of the working of this Act, certain practical difficulties have come to light, which difficulties were sought to be addressed by the amendment. "*At present, the power to control prices and distribution of various goods under this Act is confined to industrial undertakings registered or licensed under the Act. In all other cases, it is necessary to have recourse to powers derived from the Essential Supplies (Temporary Powers) Act, 1946 and the Supply and Prices of Goods Act, 1950. Both these enactments have a limited period of life. It is proposed to add a chapter taking power to control the distribution and price of goods produced in scheduled*

[68] PDF Pg. 547-600/ Vol. IV
[69] PDF Pg. 358-370/Vol. IV(B)
[70] PDF Pg. 351/Vol. IV(B)

	industries and of similar goods even, though they may be of imported origin." **Through this Amendment Act, Chapter IIIB was inserted into the Act. This Chapter contains Section 18G.** **Note: The SOR clearly shows that even prior to insertion of Section 18G, various provisions of IDRA were occupying the field with respect to trade and commerce in, and the production, supply and the distribution of scheduled industries. A perusal of the scheme of the IDRA (even without Section 18G) would show that the IDRA occupied the field. It is not in dispute and cannot be in dispute that the IDRA is passed in exercise of legislative powers under Entry 52, List I and Entry 33, List III.**
30th April 1956[71]	The Government of India announced its new Industrial Policy, by way of Industrial Policy Resolution dated 30 April 1956, emphasizing an all India approach to have equitable distribution. It also took into consideration the concept of socialism accepted in the Constitution of India. The introductory paragraphs thereof are reproduced hereunder: *The Government of India set out in their Resolution dated the 6th April, 1948, the policy which they proposed to pursue in the industrial field.* ***The Resolution emphasised the importance to the economy of securing a continuous increase in production and its equitable distribution****, and pointed out that the State must play a progressively active role in the development of industries. It laid down that besides arms and ammunition, atomic energy and*

[71] PDF Pg. 929-936/Vol. IV(B)

	railway transport, which would be the monopoly of the Central Government the State would be exclusively responsible for the establishment of new undertakings in six basic industries - except where, in the national interest, the State itself found it necessary to secure the co-operation of private enterprise. The rest of the industrial field was left open to private enterprise though it was made clear that the State would also progressively participate in this field. *2. Eight years have passed since this declaration on industrial policy. These eight years have witnessed many important changes and developments in India. The Constitution of India has been enacted, guaranteeing certain Fundamental Rights and enunciating Directive Principles of State Policy. Planning has proceeded on an organised basis, and the first Five Year Plan has recently been completed. Parliament has accepted the socialist pattern of society as the objective of social and economic policy. These important developments necessitate a fresh statement of industrial policy, more particularly as the second Five Year Plan will soon be placed before the country. This policy must be governed by the principles laid down in the Constitution, the objective of socialism, and the experience gained during these years.*
15th December 1956[72]	The Industries (Development and Regulation) Amendment Act, 1956 was passed. The First Schedule was substituted and at S No. 26, the following industry was added: "***THE FIRST SCHEDULE*** ***(See section 2 and 3(i))*** ***Any industry engaged in the manufacture or production of any of the articles mentioned under each heading or sub-headings, namely:-*** ***26. FERMENTATION INDUSTRIES:***

[72] PDF Pg. 371-379/Vol. IV(B)

	(1) Alcohol ***(2) Other products of fermentation industries"***
1973	The Industries (Development and Regulation) Amendment Act, 1973 amended Section 10 (3) of the Act and provided for specifying the <u>productive capacity</u> of the industrial undertaking. Sub-section (4) and (5) were also added to Section. The SOR of The Industries (Development and Regulation) Amendment Act, 1973 is extracted below[73] : **Statement of Objects and Reasons of Amendment Act 67 of *1973*.—** *At the time of enacting the Industries (Development and Regulation) Act, 1951, it was provided in the Act that the owner of every industrial undertaking which existed at the commencement of the Act shall get the undertaking registered with the* Central *Government. Such undertakings seeking registration were required to furnish information regarding monthly installed capacity, the number of shifts, number of working days in a month, past production during the last three years, etc. The form of registration certificate issued to the undertaking which was prescribed under the rules, did not, however, contain any column for specifying the productive capacity. Accordingly, in many cases, the productive capacity of the undertaking was not specified in the registration certificates.* *2. It has come to the notice of the Government that certain registered undertakings have increased their production to a much higher level than what was reported by them at the time of registration.*

[73] PDF Pg. 354/ Vol. IV(B)

	Such increases are likely to be detrimental to the interests of the small and medium units as also likely to lead to other adverse results. If such a state of affairs is allowed to continue, the production level of such undertakings will remain indeterminate and cannot be pegged to a specified level as distinguished from the undertakings licensed after the commencement of the Act, for which the specific productive capacities are mentioned in the licence. *3. The Bill, therefore, proposes to empower the Government to call for the registration certificates from any class of undertakings for entering therein the productive capacity of the industrial undertaking and other prescribed particulars. The Bill seeks to provide that for the purpose of specifying the productive capacity, the Central Government shall take into consideration the productive or installed capacity of the industrial undertakings as specified in the application for registration, the level of production immediately before the date on which application for registration was made the level of average annual production during the three years immediately preceding the commencement of the proposed Amending Act, the level of export and such other factors as the Central Government may consider relevant…*
12.01.1984	The Industries (Development and Regulation) Amendment Act, 1984 inserted Section 11B with a view to promote small and ancillary undertakings. The SOR reflects the intention of the Centre to reserve certain selected items for <u>exclusive production</u> by such undertakings. Section 29B (2B) was also inserted to further this intention. The Industries (Development and Regulation) Amendment Act, 1984 is extracted below[74]:

[74] PDF Pg. 355/ Vol. IV(B)

	Statement of Objects and Reasons of Amendment Act 4 of 1984.—*One of the important policy measures adopted by the Government to improve the competitive strength of industrial undertakings in the small scale sector, is to reserve selected items for exclusive production by such undertakings. Under this policy, 872 items are presently so reserved. The Government has been making such reservations since 19th February, 1970 through the exercise of powers under Section 29-B of the Industries (Development and Regulation)Act, 1951.*
29th January 1997[75]	Judgment in *Bihar Distillery v. Union of India*, (1997) 2 SCC 727 (3JJ), as delivered by Justice B.P. Jeevan Reddy.
June 1998[76]	The 158th report of the Law Commission of India (headed by Justice B. Jeevan Reddy) on the Amendment of The Industries (Development & Regulation) Act, 1951 was issued.
25th August 2000[77]	**The Indian Power Alcohol (Repeal) Act, 2000**. This Act was introduced to repeal the Indian Power Alcohol Act, 1948. The main objective of the Indian Power Alcohol Act, 1948 was utilization of molasses for production of power alcohol which would be mixed with petrol. However, this Act was repealed on basis that "*The situation has changed drastically and molasses is now being used as a raw material for the alcohol-based chemical industry and the potable alcohol industry. Even if admixture of petrol*

[75] PDF Pg. 76-94/Vol. V(A)
[76] PDF Pg. 559-604/Vol. IV(A)
[77] PDF Pg. 144-145/ Vol. IV(C)

	and alcohol is considered desirable, in the liberalized regime obtaining at present, such a step should be possible without the support of an enactment…" This action is known as 'regulation by forbearance'
14th May 2016[78]	The Industries (Development and Regulation) Amendment Act, 2016 came into force and the new heading to Entry 26 – "***Fermentation Industries (other than Potable Alcohol)***", was inserted/clarified with effect from 8 May 1952. Prior to the amendment, the entry read as "*Fermentation Industries*". **Statement of Objects and Reasons[79]**: "*Statement of Objects and Reasons of Amendment Act 27 of 2016.—The Industries (Development and Regulation) Act, 1951, was enacted to provide for the development and regulation of certain industries. Section 2 of the said Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule to the Act. Any industry engaged in the manufacture or production of any of the articles mentioned under each heading or sub-headings of the First Schedule to the Act would thus be under the control of the Union. The Heading 26 of the First Schedule to the Act provides for Fermentation Industries which includes Alcohol and other products of fermentation industries.* *2.* ***According to the distribution of legislative powers contained in the Seventh Schedule to the***

[78] PDF Pg. 576-577/Vol. IV(B)
[79] PDF Pg. 356-357/Vol. IV(B)

	constitution, Entry 8 of List II — State List enumerates the subject matter "Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors" and Entry 24 thereof, enumerates the subject matter "Industries subject to the provisions of Entries 7 and 52 of List I". While Entry 7 of List I—Union List provides for the subject matter "Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war", Entry 52 thereof, provides for "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". Thus, the authority to regulate the subject matter "intoxicating liquors" appears to vest both with the Union and the States. This has resulted in prolonged litigation. *3. The Supreme Court of India, in the case of Bihar Distillery v. Union of India (AIR 1997 SC 1208), has held that in the interest of proper delineation of the spheres of the Union and the States, the line of demarcation should be drawn at the stage of clearance or removal of the rectified spirit.* ***Where the removal or clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be with the Union and where the removal or clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be with the States.*** 4. ***In the backdrop of the above judgment of the Supreme Court, the Law Commission of India had recommended in its 158th Report that the Heading 26 of the First Schedule to the Act be substituted as "Fermentation Industries but not including Alcohol"****.* 5. ***The recommendation of the Law Commission of India was examined in depth by the Government. If the subject "Alcohol" is taken out of the First Schedule to the Act, both industrial alcohol and potable alcohol would come under the purview of the State Government which is not in consonance with***

	the judgment of the Supreme Court. Moreover, the effect of implementation of the recommendation of the Law Commission would be that the subject "Alcohol" which covers both industrial alcohol and potable alcohol would no longer be a Central subject. 6. ***Therefore, it is proposed to amend the First Schedule to the Industries (Development and Regulation) Act, 1951, by substituting the Heading 26 thereof, as "26 Fermentation Industries (other than Potable Alcohol)", so that it would be in conformity with the judgment of the Supreme Court and also ensure that the industries engaged in the manufacture of alcohol meant for potable purposes shall be under the total and exclusive control of States in all respects. The Central Government would continue to be responsible for formulating policy and regulating foreign collaboration (foreign direct investment and foreign technology collaboration agreements) for all products of fermentation industries, including industrial alcohol and potable alcohol.*** *7. The Bill seeks to achieve the above objectives*." ***[Emphasis added]*** The last part mentioning 'potable alcohol is with regard to the foreign trade in 'potable liquor' under Entry 41 List I.
21st December, 2016[80]	Soon after the aforesaid amendment, the Union of India issued an order highlighting that the powers of the Central Government and State Government have accordingly been clearly demarcated. The order reads as under:- *"2. Restrictions on movement of ethanol and levying of various taxes and duties by State Governments are required to be removed in order to smoothen entire*

[80] PDF Pg. 488-492/Vol. IV(A)

	ethanol supply chain and to encourage industry to produce more ethanol. In this context, the Central Government has now amended the I (D&R) Act, 1951 vide notification No. 27 of 2016 dated 14.5.2016 (Copy enclosed). As per the amendment, the Central and State powers have accordingly been clearly demarcated. With this, the States can legislate, control and/or levy taxes and duties ***on liquor meant for human consumption only****. Other than that, i.e de-natured ethanol, which is not meant for human consumption, will be controlled/legislated etc. only by the Central Government. Through this amendment, the heading "26 Fermentation Industries" in the first schedule of the IDR Act has been substituted by the heading "26 Fermentation Industries (other than potable alcohol)".* *4****. Now, all issues pertaining to fermentation industries (other than potable alcohol) such as control over its licensing and regulation of the manufacture, storage, acquisition, possession, use, consumption, transportation, trade and commerce, supply, distribution and its movement including intra state and inter-state movement thereof, and the grant or issue of such license, permits or other documents and charging/levying of fees, if any, etc. shall be under the exclusive control of the Government of India.*** *Further, any such control by State Government (s), over the fields(s) indicated above, including on intra-state movement of industrial alcohol (i.e other than potable alcohol), or alcohol for EBP Programme, stands repugnant to the amendment, issued by the Central Govt. tide amendment dated 14.5.2016 (No. 27 of 2016) to the I(D&R) Act, 1951"*
11.08.2023	IDRA, 1951 was amended by The Jan Vishwas (Amendment of Provisions) Act, 2023 revising the provisions of fines and penalties.

F. THE FIELD IS OCCUPIED BY INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

80. IDRA, 1951 which is a central Act occupies the field and, therefore, any State law for alcohol [other than potable alcohol], will be repugnant to the IDRA, 1951.

81. It is submitted that for the purpose of applying the doctrine of "occupying field", it is enough that the Parliament has exercised its legislative power to enact the laws under List I read with / without List III and such an enactment is in existence. Once the Parliamentary legislation is in existence, any State law on the subject will be repugnant and inoperative.

82. It is a settled position in law that what is required for making the State law repugnant is existence of a central legislation irrespective of as to whether such central legislation is made applicable, invoked, used or utilized.

83. In the instant case once IDRA, 1951 is on the Statute book, which is relatable to Entry 52 List I read with Entry 33 List III with regard to alcohol [other than potable alcohol] any law made by the State Government will be repugnant under Article 246 read with Article 254 of the Constitution of India.

84. It is submitted that the IDRA is a composite legislation or a "ragbag legislation" referable *inter alia* to Entries 52 List I read with Entry 33(a) List III. Parliament can exercise its legislative competence both under List I and List III as held in the judgment

of ***Ujagar Prints vs Union of India*, (1989) 3 SCC 488 [Para 53]**[81].

85. Further, in a judgment of Karnataka High Court in ***Jyoti Home Industries vs State of Karnataka,* 1986 SCC Online Kar 82**[82] ,while *inter alia* dealing with the IDRA, the Hon'ble High Court [Coram: Justice M.N. Venkatachaliah and Justice D.R. Vithal Rao JJ] stated as under[83]:

> "*20. We are unable to accede to the contention that "trade and commerce in products of a controlled industry" as a taxing entry is within entry 52, List I read with the residuary entry. A Central legislation may, however, be a composite legislation and draw upon more entries than one from both List I and List III. It can be a legislation referable to entry 52, List I, and entry 33, List III.*"

86. Entry 52, List I deals with the subject of "*Industries, the control of which by the Union is declared by Parliament by law to be expedient in public interest*".

It is submitted that the expression 'control' is a much wider term than 'regulation and development'. This is clear from the Constitutional Assembly Debates referred above.

87. The IDRA was enacted to bring under the control of the Central Government, the development and regulation of such industries the activities of which affect the nation as a whole and therefore the decision making cannot be at a provincial level as provinces cannot take into account the economic and factors of all-India implication. The Statement of Objects and Reasons of IDRA also make this clear.

---

[81] PDF Pg. 468-510/ Vol. V(I)
[82] PDF Pg. 511-550/ Vol. V(I)
[83] PDF Pg. 525/ Vol. V(I)

88. Therefore, those industries development and control of which had nation-wide ramifications and were of all-India implications were brought under the control of the Central Government through IDRA, 1951. The industrial policy of the Centre qua these industries and their regulation and development is also governed by IDRA, 1951.

Industries not so declared will fall in the legislative competence of the States under Entry 24 List II (unless any specific field is mentioned in List I or List II).

G. THE FINDING IN TIKA RAMJI'S CASE THAT THERE MUST BE A STANDING ORDER IN FORCE PURSUANT TO SECTION 18G FOR THERE TO BE REPUGNANCY IS NOT CORRECT, AND IN ANY EVENT, WERE IN THE NATURE OF OBITER (AT THE HIGHEST)

89. In ***Tika Ramji***, this Hon'ble Court observed that "*repugnancy must exist in fact, and not depend merely on a possibility*" and held[84]:

> "*30. Sulaiman, J. in Shyamakant Lal v. Rambhajan Singh [(1939) FCR 188, 212] thus laid down the principle of construction in regard to repugnancy*:
>
> *"When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility. "Their Lordships can discover no adequate*

[84] PDF Pg. 102, 105/ Vol. V

grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not and may never be in force : (Attorney-General for Ontario v. Attorney-General for the Dominion) [(1896) AC 348, 369-70] "."

32. [...] If the two fields were different and the Central legislation did not intend at all to cover that field, the field was clear for the operation of State legislation and there was no repugnancy at by between Act 65 of 1951 and the impugned Act. ***Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of Section 18-G of Act 65 of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as has been noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under Section 18-G being issued by the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise****.*

[***emphasis added***]

90. It is respectfully submitted, having come to the conclusion that the statutes in question operated in distinct fields, and also that sugarcane *per se*, although a raw material for the sugar industry, is not covered under the IDRA, there was no occasion for the Bench in ***Tika Ramji*** to further dwell on a question which had become purely academic. In this light, it is respectfully submitted that the observations at the end of Paragraph 32 of ***Tika Ramji*** are, at best, in the nature of obiter dicta. Indicatively, a Division Bench of the Hon'ble Andhra Pradesh High Court in ***Peddireddi Changal Reddy v. State of A.P.*****, 1988 SCC OnLine AP 129**, held as under: [CORAM : Justice Jeevan Reddy and Bhaskar Rao JJ]

"*56.* ***Yet another submission of the learned Advocate-General was that we should not entertain the argument of inconsistency between the Central statute and the Orders made thereunder, and the imputed Act, unless Orders are issued under the State enactment actually conflicting with the Orders made under the Central enactment (Essential Commodities Act). He submits, on the basis of certain***

observations in Tika Ramji's case (5) AIR 1956 SC 676 that any adjudication in the absence of such conflicting Orders would be uncalled for, and merely of academic interest. He emphasizes the well established principle that constitutional questions should not be pronounced upon by the Court unless it is really necessary for the decision of the case. We have already referred to the main question that fell for decision in Tika Ramji (supra). *Having held that there was no repugnancy or inconsistency between the provisions of the Central enactment (Industries (Development and Regulation) Act, 1951) and the UP Act, the Supreme Court made the following observations:*

> *"Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of 818 G of Act 65 of 1951, it it to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as has been noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under S. 18-G being issued by the Central Government would not be enough. The existence of such an order would be the essential pre-requisite before any repugnancy could ever arise".*

It would immediately be noticed that the said observations are more in the nature of obiter. The Court held in the first instance that there was no inconsistency between the Central enactment and the State enactment. Having so held, it made the above observations on the assumption that even if both the enactments provided for the same matter, viz., regulation of production and distribution of sugar, no question of repugnancy would arise because no Order was issued by the Central Government under Section 18-G of the Central enactment. *We are not, of course saying that obiter dicta of the Supreme Court is not binding upon us; it is undoubtedly binding upon us. We are merely pointing out the context in which the said observations were made. Secondly, this argument was not reiterated while examining the question of inconsistency between the Essential Commodities Act and the Sugarcane (Control) Order made thereunder, and the State enactment and the Order made thereunder.* ***Indeed, this argument was noticed but was not followed in State of Orissa v. M.A, Tulloch & Co., (6) AIR 1964 SC 1284. Paragraph 13 of the judgment shows that this argument was addressed prominently on behalf of the State of Orissa. The passage extracted by us hereinbefore from Tika Ramji (supra) was expressly relied upon and was reproduced in full. The argument was rejected in the following words****:*

"*We consider that this submission in relation to the Act before us is without force besides being based on a* ***misapprehension of the true legal position.*** *In the first place the point is concluded by the earlier decision of this Court in AIR 1961 SC 459 where this Court said:*

> *"In order that the declaration should be effective it is not necessary that rules should be made or enforced. All that this required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not".*

***But even if the matter was res Integra, the argument cannot be accepted Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion, of repugnancy, for, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance*…..".

Making allowance for the context in which the said observations were made as noticed hereinbefore, in Tulloch & Company's case the Supreme Court was concerned with the questions; to what extent the Parliament has taken over control of mines and mineral development by enacting the 1957 Act. we are of the opinion that the said observations do have the effect of watering down the effect of the aforesaid observations in Tika Ramji (supra). *Even otherwise, we are of the opinion that the said principle has no application in- the case before us. So far as the Central enactment is concerned, i.e., the Essential Commodities Act, a large number of Control Orders have been made, both by the Central Government as well as the State Government, in exercise of the rule-making power conferred upon them by the Act. So far as the State enactment is concerned, it is true that no Rules have been made as such; but, the provisions mentioned in the comparative Table above are self-evident.* ***Repugnancy is arising because of the very provisions in the Act, and not by virtue of any Orders made thereunder.*** *What all remains to be done is to take action*

in pursuance thereof. Action can be taken under the said provisions even without making the Rules. Indeed, though the Act was made in early 1987, no attempt has been made to frame the Rules so far, though certain bodies contemplated by the Act were constituted in March 1988. Mr. S. Ramachandra Rao, learned counsel for the petitioner, points out further that this aspect was not really urged before, nor considered by the Supreme Court while declaring the A.P. Commissioner ate of Higher Education Act, 1986, as void on the ground of repugnancy with the University Grants Commission Act, 1956."

[***emphasis added***]

91. These observations in ***Tika Ramji*** have been indicated to be a misapprehension of the true legal position. In ***State of Orissa v. M.A. Tulloch & Co.*, (1964) 4 SCR 461 (5JJ)** ("***Tulloch***")[85], an argument was made that Section 18(1) of the Mines and Minerals (Development and Regulation) Act, 1951[86]:

"*13. ... **merely lays a duty on the Central Government to "take steps" for ensuring the conservation and development of the mineral resources of the country and in that sense is not self-acting. The submission is** that even assuming that under the powers conferred thereunder read in conjunction with Section 13 and the other provisions in the Act, it would be competent for the Central Government to frame rules on the lines of the Orissa Act i.e. for the development of "mining areas" and for that purpose to provide for the imposition of fees and for the constitution of a fund made up of these monies, still **no such rules had been framed and until such rules were made or such steps taken, the Central Act would not cover the field so that the Orissa Act would continue to operate in full force**. **In support of this submission reliance was placed on the decision of this court in Chapter Tika Ramji etc. v. State of Uttar Pradesh [(1956) SCR 393] and in particular on a passage at p. 432 reading:***

"Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of Section 18-G of Act 65 of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as has been noted above, repugnancy must exist in fact and not depend merely on a possibility of an order under Section 18-G being issued by the Central

[85] PDF Pg. 113-130/ Vol. V(B)

[86] PDF Pg. 123/ Vol. V(B)

Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise."

14. ***We consider that this submission in relation to the Act before us is without force besides being based on a misapprehension of the true legal position. In the first place the point is concluded by the earlier decision of this court in Hingir Rampur Coal Co. Ltd. v. State of Orissa where this court said***:

"***In order that the declaration should be effective it is not necessary that rules should be made or enforced. All that this required is a declaration by Parliament that it was expedient in the public interest to take the regulation of development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not***."

But even if the matter was res integra, the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. ***The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation****. In the present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act."*

[***emphasis added***]

92. In ***Hingir-Rampur Coal Co. Ltd. v. State of Orissa*, 1960 SCC OnLine SC 60 : (1961) 2 SCR 537**[87], this Hon'ble Court observed[88]:

> ***25.*** *It is urged by Mr Amin that the field covered by the impugned Act has already been covered by the Mines and Minerals (Regulation and Development) Act, 1948, (53 of 1948) and he contends that in view of the declaration made by Section 2 of this Act the impugned Act is ultra vires. This Central Act was passed to provide for the regulation of mines and oil fields and for the development of minerals. It may be stated at this stage that by Act 67 of 1957 which has been subsequently passed by Parliament, Act 53 of 1948 has now been limited only to oil fields. We are, however, concerned with the operation of the said Act in 1952, and at that time it applied to mines as well as oil fields. Section 2 of the Act contains a declaration as to the expediency and control by the Central Government. It reads thus:"It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oil fields and the development of minerals to the extent hereinafter provided". It is common ground that at the relevant time this Act applied to coal mines. Section 4 of the Act provides that no mining lease shall be granted after the commencement of this Act otherwise than in accordance with the rules made under this Act. Section 5 empowers the Central Government to make rules by notification for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. Sections 4 and 5 thus purport to prescribe necessary conditions in accordance with which mining leases have to be executed. This part of the Act has no relevance to our present purpose. Section 6 of the Act, however, empowers the Central Government to make rules by notification in the Official Gazette for the conservation and development of minerals. Section 6(2) lays down several matters in respect of which rules can be framed by the Central Government. This power is, however, without prejudice to the generality of powers conferred on the Central Government by Section 6(1). Amongst the matters covered by Section 6(2) is the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected. It is true that no rules have in fact been framed by the Central Government in regard to the levy and collection of any fees; but, in our opinion, that would not make any difference. If it is held that this Act contains the declaration referred to in Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation*

[87] PDF Pg. 396-428/ Vol. V(F)
[88] PDF Pg. 409/ Vol. V(F)

*and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration**. In order that the declaration should be effective it is not necessary that rules should be made or enforced**; all that this required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act 53 of 1948.*

[*emphasis added*]

93. The said principle laid down in ***Tulloch*** was followed in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N.*, (1996) 3 SCC 15[89] (2JJ)**, while examining the provisions of Section 10-A of the Indian Medical Council Act, wherein the Hon'ble Bench observed as under[90]:

***"24.** In Deep Chand v. State of U.P. [1959 Supp (2) SCR 8 : AIR 1959 SC 648] this Court, while dealing with Article 254 of the Constitution, has held: (SCR p. 43)*

"Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

(1) Whether there is direct conflict between the two provisions;

[89] PDF Pg. 38-59/ Vol. V(F)

[90] PDF Pg. 51/ Vol. V(F)

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State legislature; and

(3) Whether the law made by Parliament and the law made by the State legislature occupy the same field."

***25.** In State of Orissa v. M.A. Tulloch & Co. [(1964) 4 SCR 461 : AIR 1964 SC 1284] it has been observed: (SCR p. 477)*

"Repugnancy arises when two enactments both within the competence of the two legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance."

***26. It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field.** The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country."*

[Emphasis added]

94. Most pertinently, ***Tulloch*** was discussed and followed by a Constitution Bench of this Hon'ble Court in ***State of Kerala v. Mar Appraem Kuri Co. Ltd.*, (2012) 7 SCC 106** (**5JJ**)[91]:

[91] PDF Pg. 2382/ Vol. V

"*71. The only question that arose in Tika Ramji [AIR 1956 SC 676 : 1956 SCR 393] was whether Parliament and the State Legislature sought to exercise their powers over the same subject-matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or whether such Acts evinced an intention to cover the whole field. This Court held that as "sugarcane" was not the subject-matter of the Central Act, there was no intention to cover the whole field and, consequently, both the Acts could coexist without repugnancy. Having come to the conclusion that there was no repugnancy, the Court observed that: (AIR p. 703, para 34)*

> "*34. … **Even assuming** that sugarcane was an article ... relatable to the sugar industry [as a final product] within the meaning of Section 18-G of Act 65 of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because ... repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under Section 18-G being issued by the Central Government would not be enough. The existence of such an order [was an] essential **pre-requisite** before any repugnancy could ever arise*." (emphasis supplied)

This sentence has been relied upon by the learned counsel for the State of Kerala in the present case in support of his submission that repugnancy must exist in fact and not depend on a mere possibility.

72. ***According to the learned counsel**, in the present case, applying the ratio of the judgment in Tika Ramji [AIR 1956 SC 676 : 1956 SCR 393], **it is clear that the repugnancy has not arisen in the present case before us for the simple reason that the (Central) Chit Funds Act, 1982 has not come into force in the State of Kerala**. **That, a mere possibility of the Central Act coming into force in future in the State of Kerala would not give rise to repugnancy**.*

73. In State of Orissa v. M.A. Tulloch and Co. [AIR 1964 SC 1284 : (1964) 4 SCR 461] , the facts were as follows: on a lease being granted by the State of Orissa under the Mines and Minerals (Development and Regulation) Act, 1948 (Central Act), Tulloch and Company started working a manganese mine. The State of Orissa passed the Orissa Mining Areas Development Fund Act, 1952 under which the State Government was authorised to levy a fee for development of "mining areas" in the State. After bringing these provisions into operation, the State of Orissa demanded from Tulloch and Company on 1-8-1960 fees for the period July 1957 to March 1958. Tulloch and Company challenged the legality of the demand before the High Court under

Article 226 of the Constitution. The writ petition was allowed on the ground that on the coming into force of the Mines and Minerals (Development and Regulation) Act of 1957 (hereinafter called "the Central Act of 1957"), which was brought into force from 1-6-1953 the Orissa Mining Areas Development Fund Act, 1952 should be deemed to be non-existent. This was the controversy which came before this Court.

74. ***One of the points which arose for determination in Tulloch case [AIR 1964 SC 1284 : (1964) 4 SCR 461] was that of repugnancy***. *It was urged that the object and purpose of the Orissa Mining Areas Development Fund Act, 1952 was distinct and different from the object and purpose of the Central Act of 1957, with the result that both the enactments could validly coexist since they did not cover the same field. This argument was rejected by this Court.* ***It was held that having regard to the terms of Section 18(1) the intention of Parliament was to cover the entire field. That, by reason of declaration by Parliament under the said section the entire subject-matter of conservation and development of minerals was taken over for being dealt with by Parliament thus depriving the State of the power hitherto possessed***.

75. ***Relying on the judgment of the Constitution Bench of this Court in Hingir-Rampur Coal Co. Ltd. v. State of Orissa [AIR 1961 SC 459 : (1961) 2 SCR 537] , it was held in Tulloch case [AIR 1964 SC 1284 : (1964) 4 SCR 461] that for the declaration to be effective it is not necessary that the rules should be made or enforced; all that was required was a declaration by Parliament to the effect that in public interest regulation and development of the mines should come under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not***. ***Applying the said test, in Tulloch case [AIR 1964 SC 1284 : (1964) 4 SCR 461] , the Constitution Bench held that the Central Act of 1957 intended to cover the entire field dealing with regulation and development of mines being under the control of the Central Government. In Tulloch case [AIR 1964 SC 1284 : (1964) 4 SCR 461] , reliance was placed on the above underlined*** *[Ed.: Herein italicised: refer to emphasised text in para 71 quoted from Tika Ramji v. State of U.P., AIR 1956 SC 676] portion* in *Tika Ramji case [AIR 1956 SC 676 : 1956 SCR 393] which, as stated above, was on the assumption that sugarcane was an article relatable to sugar industry within Section 18-G of the Central Act 65 of 1951.*

76. *It was urged on behalf of the State of Orissa in Tulloch case [AIR 1964 SC 1284 : (1964) 4 SCR 461] that Section 18(1) of the Central Act of 1957 merely imposes a duty on the Central Government to take steps*

for ensuring conservation and development of mineral resources. ***That, since the Central Government had not framed rules under the Act for development of mining areas till such rules were framed, the Central Act of 1957 did not cover the entire field, and thus, the Orissa Mining Areas Development Fund Act, 1952 continued to operate in full force till the Central Government enacted rules under Section 18 of the 1957 Act****.*

77. ***The said contention of the State of Orissa was rejected by the Constitution Bench of this Court in Tulloch case [AIR 1964 SC 1284 : (1964) 4 SCR 461] by placing reliance on the judgment of this Court in Hingir-Rampur case [AIR 1961 SC 459 : (1961) 2 SCR 537] in the following words: (Tulloch case [AIR 1964 SC 1284 : (1964) 4 SCR 461] , AIR pp. 1291-92, paras 14-15)***

> *"14. We consider that this submission in relation to the Act before us is without force besides being based on* ***a misapprehension of the true legal position.*** *In the first place the point is concluded by the earlier decision of this Court in Hingir-Rampur Coal Co. Ltd. v. State of Orissa [AIR 1961 SC 459 : (1961) 2 SCR 537] where this Court said: (AIR p. 470, para 24)*
>
> > *'24. ... In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that this required is a declaration by Parliament that it [was] expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not.'*
>
> *15. But even if the matter was res integra, the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of*

provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act."

(emphasis supplied)

79. The proviso to Article 254(2) provides that a law made by the State Legislature with the President's assent shall not prevent Parliament from making at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by a State Legislature. Thus, Parliament need not wait for the law made by the State Legislature with the President's assent to be brought into force as it can repeal, amend, vary or add to the assented State law no sooner it is made or enacted. We see no justification for inhibiting Parliament from repealing, amending or varying any State legislation, which has received the President's assent, overriding within the State's territory, an earlier parliamentary enactment in the concurrent sphere, before it is brought into force. Parliament can repeal, amend, or vary such State law no sooner it is assented to by the President and that it need not wait till such assented-to State law is brought into force. ***This view finds support in the judgment of this Court in Tulloch*** *[AIR 1964 SC 1284 : (1964) 4 SCR 461]."*

[***emphasis added***]

95. Similarly, this Hon'ble Court in ***Pt. Rishikesh v. Salma Begum*, (1995) 4 SCC 718**, has observed:

17. *Section 97(1), with a marginal note "repeal and savings", envisages that any amendment made or any provision incorporated in the principal Act by a State Legislature or a High Court before the commencement of the Central Act shall, except insofar as amendment or provision is consistent with the provisions of the principal Act as amended by the Central Act, stand repealed. The emphasis as rightly stressed by Shri Parag is "any amendment to CPC made by the State Legislature or a provision by the High Court" before the 'commencement' of this Act stood repealed. It is to be noted here that the Central Act is an Amending Act, not a repealing and consolidating statute to supplant the principal Act, namely, Act 5 of 1908. Since CPC is a concurrent subject, Parliament and the Legislature of a State or a High Court in respect of orders in the Schedule are competent to enact or amend CPC respectively. In fact several local amendments made to*

CPC before the commencement of the Central Act do exist. Pursuant to the recommendation made by the Law Commission of India to shorten the litigation, Parliament made the Central Act to streamline the procedure. It is true that inconsistency in the operation of the Central and the State law would generally arise only after the respective Acts commenced their operation. Section 3(13) of the General Clauses Act defines 'commencement' to mean the day on which the Act or Regulation comes into force. The Founding Fathers were cognizant to the distinction between making the law and commencement of the operation of the Act or Regulation. Article 254, clauses (1) and (2) and in a way Section 97 of the Central Act are also alive to the distinction between making the law and commencement of the law. In Collins English Dictionary, at p. 889 'make' is defined to mean, to "cause to exist", "to bring about" or "to produce". In Black's Law Dictionary, 6th Edn. at p. 955, 'make' is defined as "to cause to exist ... to do in form of law; to perform with due formalities; to execute in legal form; ...". The verb 'made' in Article 254 brings out the constitutional emanation that it is the making of the law by the respective constituent legislatures, namely, Parliament and the State Legislature as decisive factor. Commencement of the Act is distinct from making the law. As soon as assent is given by the President to the law passed by Parliament it becomes law. Commencement of the Act may be expressed in the Act itself, namely, from the moment the assent was given by the President and published in the Gazette, it becomes operative. The operation may be postponed giving power to the executive or delegated legislation to bring the Act into force at a particular time unless otherwise provided. The Central Act came into operation on the date it received the assent of the President and shall be published in the Gazette and immediately on the expiration of the day preceding its commencement it became operative. Therefore, from midnight on the day on which the Central Act was published in the Gazette of India, it became the law. Admittedly, the Central Act was assented to by the President on 9-9-1976 and was published in the Gazette of India on 10-9-1976. This would be clear when we see the legislative procedure envisaged in Articles 107 to 109 and assent of the President under Article 111 which says that when a Bill has been passed by the House of the People, it shall be presented to the President and the President shall either give his assent to the Bill or withhold his assent therefrom. The proviso is not material for the purpose of this case. Once the President gives assent it becomes law and becomes effective when it is published in the Gazette. The making of the law is thus complete unless it is amended in accordance with the procedure prescribed in Articles 107 to 109 of the Constitution. Equally is the procedure of the State Legislature. Inconsistency or incompatibility in the law on concurrent subject, by operation of

> *Article 254, clauses (1) and (2) does not depend upon the commencement of the respective Acts made by Parliament and the State Legislature. Therefore, the emphasis on commencement of the Act and inconsistency in the operation thereafter does not become relevant when its voidness is required to be decided on the anvil of Article 254(1). Moreover, the legislative business of making law entailing with valuable public time and enormous expenditure would not be made to depend on the volition of the executive to notify the commencement of the Act. Incompatibility or repugnancy would be apparent when the effect of the operation is visualised by comparative study.*

96. Likewise, this Hon'ble Court in ***Godawat Pan Masala Products I.P. Ltd. v. Union of India*, (2004) 7 SCC 68**[92], observed[93]:

> ***42.*** *The respondents contend that inasmuch as Act 34 of 2003, though passed by Parliament, and assented to by the President, is not brought into force by the Central Government by notification, the question of conflict with the provisions of the Act does not arise. We need not consider this contention since Act 34 of 2003 has now been brought into force w.e.f. 1-5-2004. In any event, as pointed out in Pt. Rishikesh v. Salma Begum [(1995) 4 SCC 718] there is distinction between "making law" and "commencement of the operation of an Act" and a situation of conflict can arise even when a law has been made and not brought into force.*

97. It is submitted that the reference order in ***Lalta Prasad***, which gives rise to the present proceedings proceeds on the premise that the Bench in ***Synthetics II*** did not have the *"benefit of the views expressed by this Court earlier in Tika Ramji case"* ***(Para 36)***, It is respectfully submitted that the Bench in ***Synthetics II*** rightly did not consider the observations in ***Tika Ramji*** regarding absence of a 'notified order' of the Central Government under Section 18-G of the IRDA, as such observations were in the nature of *obiter dicta*, at best. Further, it cannot be assumed that the Bench in

[92] PDF Pg. 2334-2372/ Vol. V
[93] PDF Pg. 2359/ Vol. V

Synthetics II was not aware of these observations given that they had been discussed at length in ***Synthetics I,*** the correctness of which was being directly examined in ***Synthetics II.***

98. The judgment in Ch. **Tika Ramji and Ors. Vs State of Uttar Pradesh & ors. AIR 1956 SC 676**[94] does not lay down the correct law and is also an *obiter dicta*. The judgment in Tika Ramji [Supra] is no longer a good law for the following reasons –

(i) This Hon'ble Court was not assisted with the Constituent Assembly Debates quoted above where Dr. B.R. Ambedkar specifically, categorically and unequivocally declare the intention behind using the expression **"control"** in List I Entry 51 so as to include "**everything"** connected with the industry. In absence of any assistance on this crucial aid of interpretation, Tika Ramji is an *obiter dicta*.

(ii) Tika Ramji does not give any reason as to why it gives restricted sphere for the IDRA to operate i.e. only the manufacturing part. The Statement of Objects and Reasons of IDRA categorically mentions that "*the Bill brings under Central control the development and regulation of a number of important industries,* ***the activities of which affect the country as a whole and the development of which must be governed by economic factors of India import***".

(iii) It is submitted that in view of this stated legislative intent, the intention of the legislature can never be achieved fully unless all activities of the industry starting from procuring raw

[94] PDF Pg. 80-119/ Vol. V

material till sale and distribution of final product is presumed to be brought under the control of Central Government by declaring such industry to be a scheduled industry under IDRA.

(iv) No finding is recorded or reasons are assigned as to why such a restrictive meaning is given to the entire industrial activity while holding that only a part of the activity starting from manufacturing get controlled under the Act.

(v) This restricted meaning is contrary to the scheme of the Act in general and that of Section 6(4) read with Second Schedule, Section 10, 11B(1)(b), 15 and 18G of the IDRA in particular. There is no discussion about the said provisions which categorically empower the Central Government to regulate even raw materials.

(vi) Considering the very object behind Entry 52 List I, the IDRA and the legislative intent behind it and the industrial policy declared from time to time with the intention to have equitable distribution and availability of critical goods at fair prices and an inbuilt intention of controlling even the raw materials, Tika Ramji is a bad law.

(vii) It is submitted that giving such a restrictive meaning will defeat the object and purpose stated above. If in case the circumstances so arise at a national level, the Central Government may be required to regulate the sourcing of the raw material also. Every aspect of manufacturing including the sourcing raw material manufacturing and / or the

product being manufactured and / or its distribution so as to subserve the national good. This is the ultimate object why Entry 52 List I is introduced in the Constitution and why the IDRA is enacted.

(viii) Tika Ramji, on its holistic reading merely compares the IDRA with U.P. Sugarcane [Regulation of Supply and Purchase] Act, 1953 and comes to conclusion that both the said Statutes operate in different fields and, therefore, are not repugnant to each other. This is the only ratio which the law laid down in Tika Ramji which is evident from the following passages:

> *"31. In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act. The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subject- matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to cover the whole field. It would be necessary, therefore, to compare the provisions of Act 65 of 1951 as amended by Act 26 of 1953, Act 10 of 1955 and the Sugar Control Order, 1955 issued thereunder with those of the impugned Act and U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 passed thereunder."*

(ix) Except comparing the aforesaid two provisions respectively of the Centre legislation and State legislation, the judgment was not required to say anything further. Whatever is said thereafter is, thus, merely *obiter dicta* and not *ratio decidendi*.

(x) The *obiter dicta* to the effect that "repugnancy must exist in fact and not depending merely on a possibility" is not only not the ratio [as Tika Ramji was not supposed to decide the same] but is otherwise also a bad law.

It is a settled position in law that once a Central legislation occupies the filed on the subject matter under List III, any State law on the same subject matter shall be repugnant merely due to the existence of the central legislation. Whether the central legislation had been used, is being used, can be used or will be used are irrelevant considerations for deciding the repugnancy. This is what is held in subsequent judgments which are quoted hereinabove.

(xi) The observations made in Tika Ramji regarding "notified order" as used in Section 18G is also an *obiter dicta* since having come to the conclusion specifically that there is no repugnancy between the Central and State Act, there was no occasion for the Court to pronounce upon the presence or absence of a notified order under section 18G.

The said observations are merely observations in passing without examining the details of the law being unenforceable merely because of non-passing of a notified order and without examining the very basic and accepted concept of regulation by forbearance.

Post Tika Ramji judgment

99. The restrictive and incorrect interpretation to the word 'industries' in Entry 52 List I in Tika Ram Ji has been followed in the following cases:

(i) *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.* [95] *AIR 1962 SC 1044* at para 9

(ii) *Kannan Devan Hills Produce v. State of Kerala,*[96]

[95] PDF Pg. 2149-2161/ Vol. V
[96] PDF Pg. 2162-2183/ Vol. V

(1972) 2 SCC 218 at para 28 and 30

(iii) *Ganga Sugar Corpn. Ltd. v. State of U.P.,*[97]
(1980) 1 SCC 223 at para 37

(iv) ITC Ltd Vs Agricultural Produce Market Committee[98]
(2002) 9 SCC 232
Per Sabharwal J. para 63
Per Rumapal J. para 126,127
Per Pattanaik J. para 189

H. REPUGNANCY

100. Article 246(2) states that the Parliament, and subject to clause (1) of Article 246, the Legislature of Any State also, have the power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule, i.e., the Concurrent List.

101. As per Article 254(1), the question and application of the repugnancy test arises between "*any provision of a law made by the Legislature of a State*" and "*any provision of a law made by Parliament*". Furthermore, if there is to be a requirement that the repugnancy must exist in fact, then the existence/absence of such a fact must be borne out on a comparison between "*any provision of a law made by the Legislature of a State*" and "*any provision of a law made by Parliament*", and not a subordinate legislation, or an executive action under a law made by Parliament.

102. In ***Forum for People's Collective Efforts***[99], this Hon'ble Court dealt with the constitutional validity of the W.B. Housing Industry Regulation Act, 2017. The question that had arisen was whether

[97] PDF Pg. 1780-1797/ Vol. V
[98] PDF Pg. 1597-1717/ Vol. V
[99] PDF Pg. 60-213/Vol. V(F)

in view of the Parliament having enacted the Real Estate (Regulation and Development) Act, 2016, the state legislature could enact a law over the subject-matter by setting up a parallel legislation. At paragraphs 113-133 this Hon'ble Court discussed the constitutional scheme of Article 264 and repugnancy. This Hon'ble Court took the journey of tracing precedents commencing from 1954 (***Zaverbhai Amaidas v. State of Bombay, 1955 1 SCR 799***[100]) up until 2017 (***Innovative Industries v. ICICI Bank, (2018) 1 SCC 407***).

103. After setting out the various judgments over six decades, on the issue of repugnancy, ***Forum for People's Collective Efforts*** summarized the position as follows[101]:

> "*132. The initial part of clause (1) alludes to a law enacted by a State Legislature being "repugnant" to a law enacted by Parliament or to an existing law. The concluding part of clause (1) provides for a consequence, namely, that the State law would be void "to the extent of the repugnancy" and the parliamentary enactment shall prevail. The concept of repugnancy emerges from the decisions of this Court which have elaborated on the context of clause (1) of Article 254. Clause (2) of Article 254 has also employed the expression "repugnant" while providing that a law enacted by the legislature of a State which is repugnant to a law enacted by Parliament or an existing law on a matter within the Concurrent List shall, if it has received the assent of the President, prevail in the State. The decisions of this Court essentially contemplate three types of repugnancy:*
>
> *132.1.* ***The first envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behaviour or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other****.*

[100] PDF Pg. 251-259/ Vol. V(F)
[101] PDF Pg. 185/ Vol. V(F)

132.2. ***The second situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field emerges when a parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a parliamentary enactment not because of an actual conflict with the absolute terms of a parliamentary law but because the nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject****.*

132.3. ***The third test of repugnancy is where the law enacted by Parliament and by the State Legislature regulate the same subject. In such a case, the repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject****.*

133. The distinction between the first test on the one hand with the second and third tests on the other lies in the fact that ***the first is grounded in an irreconcilable conflict between the provisions of the two statutes each of which operates in the Concurrent List****. The conflict between the two statutes gives rise to a repugnancy, the consequence of which is that the State legislation will be void to the extent of the repugnancy. The expression "to the extent of the repugnancy" postulates that those elements or portions of the State law which run into conflict with the Central legislation shall be excised on the ground that they are void.* ***The second and third tests, on the other hand, are not grounded in a conflict borne out of a comparative evaluation of the text of the two provisions. Where a law enacted by Parliament is an exhaustive code, the second test may come into being. The intent of Parliament in enacting an exhaustive code on a subject in the Concurrent List may well be to promote uniformity and standardisation of its legislative scheme as a matter of public interest. Parliament in a given case may intend to secure the protection of vital interests which require a uniformity of law and a consistency of its application all over the country. A uniform national legislation is considered necessary by Parliament in many cases to prevent vulnerabilities of a segment of society being exploited by an asymmetry of information and unequal power in a societal context. The exhaustive nature of the parliamentary code is then an indicator of the exercise of the State's power to legislate being repugnant on the same subject****.* ***The third test of repugnancy may arise where both Parliament and the State legislation cover the same subject-matter.***

Allowing the exercise of power over the same subject-matter would trigger the application of the concept of repugnancy*. This may implicate the doctrine of implied repeal in that the State legislation cannot coexist with a legislation enacted by Parliament. But even here if the legislation by the State covers distinct subject-matters, no repugnancy would exist.* ***In deciding whether a case of repugnancy arises on the application of the second and third tests, both the text and the context of the parliamentary legislation have to be borne in mind****.* ***The nature of the subject-matter which is legislated upon, the purpose of the legislation, the rights which are sought to be protected, the legislative history and the nature and ambit of the statutory provisions are among the factors that provide guidance in the exercise of judicial review.*** ***The text of the statute would indicate whether Parliament contemplated the existence of State legislation on the subject within the ambit of the Concurrent List.*** ***Often times, a legislative draftsperson may utilise either of both of two legislative techniques****.* ***The draftsperson may provide that the parliamentary law shall have overriding force and effect notwithstanding anything to the contrary contained in any other law for the time being in force****.* ***Such a provision is indicative of a parliamentary intent to override anything inconsistent or in conflict with its provisions.*** *T****he parliamentary legislation may also stipulate that its provisions are in addition to and not in derogation of other laws.*** ***Those other laws may be specifically referred to by name, in which event this is an indication that the operation of those specifically named laws is not to be affected.*** ***Such a legislative device is often adopted by Parliament by saving the operation of other parliamentary legislation which is specifically named.*** ***When such a provision is utilised, it is an indicator of Parliament intending to allow the specific legislation which is enlisted or enumerated to exist unaffected by a subsequent law.*** ***Alternatively, Parliament may provide that its legislation shall be in addition to and not in derogation of other laws or of remedies, without specifically elucidating specifically any other legislation.*** ***In such cases where the competent legislation has been enacted by the same legislature, techniques such as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can coexist. Where, however, the competing statutes are not of the same legislature, it then becomes necessary to apply the concept of repugnancy, bearing in mind the intent of Parliament.*** ***The primary effort in the exercise of judicial review must be an endeavour to harmonise.*** ***Repugnancy in other words is not an option of first choice but something which can be drawn where a clear case based on the application of one of the three tests arises for determination****."*

[emphasis added]

104. After summarizing the position of law and the tests of repugnancy, and applying the same, this Hon'ble Court held that the W.B. Housing Industry Regulation Act, 2017 is repugnant to the Real Estate (Regulation and Development) Act, 2016.

105. After the year 1991 when new industrial policy was declared which was a liberalized policy, the Parliament has chosen not to either repeal IDRA or delete any of the scheduled industries though some of them are delicensed. This clearly show that the intention is to continue with the regime so as to exercise the power as and when the situation so demands. It is, therefore, necessary that a judicial finding is recorded on the validity of Tika Ramji judgment.

106. It is further submitted that even while the Parliament amended the IDRA in the year 2016, the Parliament chose to merely amend Entry 26 and not delete the same. This also shows that all scheduled industries, most of them are under the regime of forbearance leaving it open for the Centre to step in as and when so justified.

I. EFFECT OF ABSENCE OF "NOTIFIED ORDER" WHEN THE CONSTITUTION SPECIFICALLY CONFERS COMPETENCE ON THE PARLIAMENT TO PREVENT LAW MADE BY STATE LEGISLATURE.

Regulatory Forbearance

107. Forbearance is also accepted as one of the modes of regulation. The concept of regulatory forbearance has been defined by several authors from various perspectives. One such author Codos defines it as any programme or set of procedure whereby

supervisory restraint is exercised. The conscious choice of exercising restrains in "exercising the power to regulate" is also one important facet of regulation only.

108. Forbearance is a deliberate, conscious, intentional policy choice of non-interference not resulting from inaction or inability but resulting from a conscious decision to permit the market forces to operate on their own while keeping a watchful eye.

Regulatory forbearance is exercised by enforcing regulation when it is needed and also making a conscious choice of not doing so it for a particular period of time and to step in by way of an active regulation i.e. by passing a "notified order".

109. Regulatory forbearance should not be understood as equivalent to deregulate or lack of regulation. It also does not imply "no regulation" or "NIL regulation". It merely means a conscious choice made by the regulator to allow the market forces to play in absence of any regulation and achieve the object of development and regulation of scheduled industries till the change of circumstances at which time the regulator has the power to step in.

110. It is respectfully submitted that in view of the aforesaid distinction absence of "notified order" would necessarily fall within regulatory forbearance and, therefore, it would still be an act of regulation.

111. In other words, if the regulator i.e. the Central Government chooses to take a positive decision by regulating the articles relatable to the scheduled industry, presence of a "notified order" will be necessary. A conscious choice not to regulate till the circumstances so justify however would not denude the Central

Government of its power to regulate through the regulatory forbearance till the time it decides to step in by way of a positive action at which stage a "notified order" can be issued.

112. The object and purpose of section 18G is to secure equitable distribution and availability of fair prices any article relatable to the scheduled industries [as repeatedly emphasised by the periodical industrial policies]. To achieve this object [which is doubtlessly in national interest], the Central Government is required to continuously monitor market forces and is entitled to [in fact, duty bound to] take a conscious call not to regulate and allow the market forces to play its role. This would be a continuous process. If this Hon'ble Court were to take the view that to achieve the object of equitable distribution and availability at fair price existence of a "notified order" is *sine qua non*, it would defeat the very object of regulatory forbearance which, in many and most circumstances, be a better way of regulating through market forces and achieve the object of the equitable distribution and availability of fair prices.

113. In ***Cellular Operators Assn. of India v. Telecom Regulatory Authority of India*, (2015) 4 SCC 309**, this Hon'ble Court has referred to the principle of regulatory forbearance:

> ***20.*** *The respondent has prescribed the tariffs for various calls/telecom services under the Telecommunication Tariff Order, 1999 as amended from time to time. As a general condition Para 6 of the Tariff Order prescribes that no service provider shall, in any manner, discriminate between subscribers of the same class and such classification shall not be arbitrary. Further, Para 2(k) of the Tariff Order defines "Non-discrimination" to mean that service provider shall not, in the matter of application of tariffs, discriminate between subscribers of the same class and such classification of subscribers*

shall not be arbitrary. Para 2(k) and Para 6 of the Tariff Order are reproduced hereinunder:

> *"**2. (k)** '**Non-discrimination**' means that service providers shall not, in the matter of application of tariffs, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary;*
> ***
> ***6.Non-discrimination**.—No service provider shall, in any manner, discriminate between subscribers of the same class and such classification shall not be arbitrary."*

In terms of the above Tariff Order, the first respondent in September 2002, introduced forbearance in prescribing tariffs as far as cellular calls are concerned and in taking this decision the first respondent took note of the emerging market scenario and came to the conclusion that a stage had been reached, when market forces could effectively regulate the cellular tariff.

114. Therefore, it is submitted that the IDRA, in pith and substance, is a legislation dealing with declared industries, as well as trade and commerce in, and production, supply and distribution of products of such industries. Accordingly, the field provided by Entry 33(a), List III stands occupied by the IRDA *qua* non-potable liquor/ alcohol not fit for human consumption. These aspects were not considered in ***Bihar Distillery v. Union of India*, (1997) 2 SCC 727 (2JJ)**[102]:

> '23. […] *Yet another and additional circumstance is this: It is not brought to our notice that any notified orders have been issued under Section 18-G of the IDR Act regulating the sale, disposal or use of rectified spirit for the purpose of obtaining or manufacturing potable liquors which means that by virtue of Entry 33 of List III, the States do have the power to legislate on this field — field not occupied by any law made by the Union…*'

[102] PDF Pg.91-92 / Vol.V(A)

115. Bihar Distillery [Supra] is, therefore, not a good law. Moreover, its finding is erroneous, and contrary to the purport of the law laid down in ***Synthetics II.***

J. THE CONCEPT OF FEDERALISM IN THE CONTEXT OF PROVISIONS LIKE ENTRY 52 AND ENTRY 54.

116. As it has been repeatedly held, Indian Constitution is a federal constitution in the sense that all federating units i.e. the States are equal and there is no supremacy of the Central Government except in cases provided in the Constitution itself.

117. Whenever the Courts apply the principles of federalism, the concept of federalism is used in its classical sense viz. leaning in favour of acceptance of competence / power of the federating units i.e. the States as against the Centre.

118. However, on a closer scrutiny of various provisions under the Constitution of India would show that both in the Constitution and the Lists in the Seventh Schedule, there are two very broad demarcations –

(i) The issues / subjects which affects and concerns the entire nation requiring a holistic pan-India approach to deal with all India – or at times international – implications.

(ii) The issues / subjects which have mere provincial implications i.e. implications within the State.

119. There is a very broad third category also which concerns the subjects or issues which may perhaps could have been entrusted to the Centre alone but are entrusted to the States also

simultaneously giving supremacy to Central enactments in case of conflict.

120. The present case reflects the position of the first category. Entries 23, 24, 27, 32, 52, 53, 54 and 56 of List I[103] deal with subjects where the implication of any decision is pan-India and also outside India. In a situation where the Court is called upon to interpret an Entry which covers a subject having not only pan-India impact but an international impact also, it is the Union Government which is conferred supremacy by the Constitution itself.

> *"23. Highways declared by or under law made by Parliament to be national highways.*
>
> *24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.*
>
> *27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein*
>
> *32. Property of the Union and the revenue therefrom, but as regards property situated in a State 1 *** subject to legislation by the State, save in so far as Parliament by law otherwise provides*
>
> *53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.*
>
> *54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.*
>
> *56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the*

[103] PDF Pg. 355-357/ Vol. IV

control of the Union is declared by Parliament by law to be expedient in the public interest."

121. There is yet another dimension which needs to be examined while deciding the question of federalism. When a question of either distribution of a national wealth, equitable distribution of certain commodities, pan-India development of a particular industry etc. is concerned, the India federalism operates differently.

In a case where out of all federating units namely States only some of the federating units are blessed with some strategic commodity / resources which, by its very nature, requires to be shared equitably with rest of the States also, the Constitution confers the responsibility of such equitable distribution upon the Union Government. When the Centre does this, it is also a part of federalism only and not that of supremacy of the Centre since Centre [through Parliament] is merely discharging its obligation imposed by the Constitution [by various fields covered in entries] to treat every state uniformly.

122. In the respectful submission of the Union Government when it comes to progress and development of country at a national level, which needs to be nationally integrated and for the said object, a coordinated national level approach is needed, the Centre exercising the powers in the larger interest of collective development of all federating units shall also be a part of federalism.

123. The following view of Dr B.R. Ambedkar, as recorded in the Constituent Assembly Debates of 4 November 1948 is instructive in this regard:

B. R. Ambedkar

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

B. R. Ambedkar
There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws-if we have twenty States in the Union-of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques , banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country.

The following judgments would assist this Hon'ble Court-

(i) *State of Rajasthan v. Union of India*, (1977) 3 SCC 592[104]

"57. The degree to which the State rights are separately preserved and safeguarded gives the extent to which expression is given to one of the two contradictory urges so that there is a union without a unity in matters of Government. In a sense, therefore, the Indian union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually uplifted. In such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the

[104] PDF Pg. 2-107/ Vol. V(I)

Central Government. The question of legitimacy of particular actions of the Central Government taking us in particular directions can often be tested and determined only by the verdicts of the people at appropriate times rather than by decisions of Courts. For this reason, they become, properly speaking, matters for political debates rather than for legal discussion. If the special needs of our country, to have political coherence, national integration, and planned economic development of all parts of the country, so as to build a welfare State where "justice—social, economic and political" are to prevail and rapid strides are to be taken towards fulfilling the other noble aspirations, set out in the Preamble, strong central direction seems inevitable. It is the country's need. That, at any rate, seems to be the basic assumption behind a number of our constitutional provisions.

*****

59. In our country national planning involves disbursements of vast amounts of money collected as taxes from citizens residing in all the States and placed at the disposal of the Central Government for the benefits of the States without even the "conditional grants" mentioned above. Hence, the manner in which State Governments function and deal with sums placed at their disposal by the Union Government or how they carry on the general administration may also be matters of considerable concern to the Union Government.

60. Although Dr Ambedkar thought that our Constitution is federal "inasmuch as it establishes what may be called a Dual Polity", he also said, in the Constituent Assembly, that our Constitution-makers had avoided the 'tight mould of federalism" in which the American Constitution was forged. Dr Ambedkar, one of the principal architects of our Constitution, considered our Constitution to be "both unitary as well as federal according to the requirements of time and circumstances".

(ii) *SBI v. Santosh Gupta*, (2017) 2 SCC 538[105]

"10. As Article 1 of the Constitution of India states, India is a Union of States. In an illuminating judgment, namely, State of W.B. v. Union of India [State of W.B. v. Union of India, (1964) 1 SCR 371 : AIR 1963 SC 1241] , Sinha, C.J. in the majority judgment, has held that India is quasi-federal with a strong tilt to the Centre. In so

[105] PDF Pg. 108-154/Vol. V(I)

holding, the learned Judge referred to four indicia of a real federation, as follows : (AIR p. 1252, para 26 : SCR pp. 396-97)

"(a) A truly federal form of Government envisages a compact or agreement between independent and sovereign units to surrender partially their authority in their common interest and vesting it in a Union and retaining the residue of the authority in the constituent units. Ordinarily each constituent unit has its separate Constitution by which it is governed in all matters except those surrendered to the Union, and the Constitution of the Union primarily operates upon the administration of the units. Our Constitution was not the result of any such compact or agreement: Units constituting a unitary State which were non-sovereign were transformed by abdication of power into a Union.

(b) Supremacy of the Constitution which cannot be altered except by the component units. Our Constitution is undoubtedly supreme but it is liable to be altered by the Union Parliament alone and the units have no power to alter it.

(c) Distribution of powers between the Union and the regional units each in its sphere coordinate and independent of the other. The basis of such distribution of power is that in matters of national importance in which a uniform policy is desirable in the interest of the units, authority is entrusted to the Union, and matters of local concern remain with the State.

(d) Supreme authority of the courts to interpret the Constitution and to invalidate action violative of the Constitution. A federal Constitution, by its very nature, consists of checks and balances and must contain provisions for resolving conflicts between the executive and legislative authority of the Union and the regional units."

(iii) ***S. Rukmini Madegowda v. State Election Commission*, 2022 SCC OnLine SC 1218**[106]

"71. India is a quasi-federal State. Article 1 of the Constitution describes India as a "Union of States". Every State is an integral and inseverable part of India. The Indian polity combines the features of a federal Government with certain features of a unitary Constitution. While the division of powers between the Union Government and the State Governments is an essential feature of federalism, in matters of national importance, a uniform policy is essential in the interest of all the states, without disturbing the clear

[106] PDF Pg. 155-168/ Vol. V(I)

division of powers, so that the Union and the States legislate within their respective spheres. The Constitution is the supreme law for the Union and for the States supported by an independent judiciary which acts as the guardian of the Constitution."

(iv) ***S.R. Bommai v. Union of India*, (1994) 3 SCC 1[107]**

Per A.M Ahmadi, J.

- Federal Character of the Constitution

13. India, as the Preamble proclaims, is a Sovereign, Socialist, Secular, Democratic Republic. It promises liberty of thought, expression, belief, faith and worship, besides equality of status and opportunity. What is paramount is the unity and integrity of the nation. In order to maintain the unity and integrity of the nation our Founding Fathers appear to have leaned in favour of a strong Centre while distributing the powers and functions between the Centre and the States. This becomes obvious from even a cursory examination of the provisions of the Constitution. There was considerable argument at the Bar on the question whether our Constitution could be said to be 'Federal' in character.

14. In order to understand whether our Constitution is truly federal, it is essential to know the true concept of federalism. Dicey calls it a political contrivance for a body of States which desire Union but not unity. Federalism is, therefore, a concept which unites separate States into a Union without sacrificing their own fundamental political integrity. Separate States, therefore, desire to unite so that all the member-States may share in formulation of the basic policies applicable to all and participate in the execution of decisions made in pursuance of such basic policies. Thus the essence of a federation is the existence of the Union and the States and the distribution of powers between them. Federalism, therefore, essentially implies demarcation of powers in a federal compact.

*****

17. Our Founding Fathers did not deem it wise to shake the basic structure of Government and in distributing the legislative functions they, by and large, followed the pattern of the Government of India Act, 1935. Some of the subjects of common interest were, however, transferred to the Union List, thereby enlarging the powers of the Union to enable speedy and planned economic development of the nation. The scheme for the distribution of powers between the Union

[107] PDF Pg. 169-467/ Vol. V(I)

and the States was largely maintained except that some of the subjects of common interest were transferred from the Provincial List to the Union List thereby strengthening the administrative control of the Union. It is in this context that this Court in State of W.B.v. Union of India [(1964) 1 SCR 371 : AIR 1963 SC 1241] observed : (SCR p. 397)

"The exercise of power as, legislative and executive, in the allotted fields is hedged in by the numerous restrictions, so that the powers of the States are not co-ordinate with the Union and are not in many respects independent."

20. In State of Rajasthan v. Union of India [(1977) 3 SCC 592 : AIR 1977 SC 1361 : (1978) 1 SCR 1] Beg, C.J., observed in (AIR) paragraph 51 as under : (SCC p. 621, para 56)

"A conspectus of the provisions of our Constitution will indicate that, whatever appearance of a federal structure our Constitution may have, its operations are certainly, judged both by the contents of power which a number of its provisions carry with them and the use that has been made of them, more unitary than federal."

Further, in (AIR) paragraph 52, the learned Chief Justice proceeded to add : (SCC p. 622, para 57)

"In a sense, therefore, the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually uplifted. In such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government."

Pointing out that national planning involves disbursement of vast amount of money collected as taxes from citizens spread over all the States and placed at the disposal of the Central Government for the benefit of the States, the learned Chief Justice proceeds to observe in (AIR) paragraph 56 of the judgment : (SCC p. 623, para 61)

"If then our Constitution creates a Central Government which is 'amphibian', in the sense that it can move either on the federal or unitary plane, according to the needs of the situation and circumstances of a case, the question which we are driven back to consider is whether an assessment of the 'situation' in which the Union Government should move either on the federal or unitary plane are matters for the Union Government itself or for this Court to consider and determine."

It would thus seem that the Indian Constitution has, in it, not only features of a pragmatic federalism which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strongly 'unitary' features, particularly exhibited by lodging in Parliament the residuary legislative powers, and in the Central Government the executive power of appointing certain constitutional functionaries including High Court and Supreme Court Judges and issuing appropriate directions to the State Governments and even displacing the State Legislatures and the Governments in emergency situations, vide Articles 352 to 360 of the Constitution.

Per K. Ramaswamy, J.

169. The federal State is a political convenience intended to reconcile national unity and integrity and power with maintenance of the State's right. The end aim of the essential character of the Indian federalism is to place the nation as a whole under control of a national Government, while the States are allowed to exercise their sovereign power within their legislative and coextensive executive and administrative sphere. The common interest is shared by the Centre and the local interests are controlled by the States. The distribution of the legislative and executive power within limits and coordinate authority of different organs are delineated in the organic law of the land, namely the Constitution itself. The essence of federalism, therefore, is distribution of the power of the State among its coordinate bodies. Each is organised and controlled by the Constitution. The division of power between the Union and the States is made in such a way that whatever has been the power distributed, legislative and executive, be exercised by the respective units making each a sovereign in its sphere and the rule of law requires that there should be a responsible Government. Thus the State is a federal status. The State qua the Centre has quasi-federal unit. In the language of Prof. K.C. Wheare in his Federal Government, 1963 Edn. at page 12 to ascertain the federal character, the important point is, "whether the powers of the Government are divided between coordinate independent authorities or not", and at page 33 he stated that "the systems of Government embody predominantly on division of powers between Centre and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so is that Government federal?"

174. ... Dr Ambedkar stated on the floor of the Constituent Assembly that the Constitution is, "both unitary as well as federal according to the requirement of time and circumstances". He also further

stated that the Centre would work for common good and for general interest of the country as a whole while the States work for local interest. He also refuted the plea for exclusive autonomy of the States. It would thus appear that the overwhelming opinion of the Founding Fathers and the law of the land is to preserve the unity and territorial integrity of the nation and entrusted the common wheel (sic weal) to the Union insulating from future divisive forces or local zealots with disintegrating India. It neither leaned heavily in favour of wider powers in favour of the Union while maintaining to preserve the federal character of the States which are an integral part of the Union. The Constitution being permanent and not self-destructive, the Union of India is indestructible. The democratic form of Government should nurture and work within the constitutional parameters provided by the system of law and balancing wheel has been entrusted in the hands of the Union Judiciary to harmonise the conflicts and adopt constitutional construction to subserve the purpose envisioned by the Constitution.

Per B.P. Jeevan Reddy, J.

The Federal Nature of The Constitution

274. The expression "federation" or "federal form of Government" has no fixed meaning. It broadly indicates a division of powers between a Central (federal) Government and the units (States) comprised therein. No two federal constitutions are alike. Each of them, be it of USA, Canada, Australia or of any other country, has its own distinct character. Each of them is the culmination of certain historical process. So is our Constitution. It is, therefore, futile to try to ascertain and fit our Constitution into any particular mould. It must be understood in the light of our own historical process and the constitutional evolution. One thing is clear — it was not a case of independent States coming together to form a Federation as in the case of USA.

K. RESPONSE TO THE QUESTIONS REFERRED

In view of the aforesaid principles of law, the questions referred in *Lalta Prasad* may be answered as under:

Q.1 Does Section 2 of the Industries (Development and Regulation) Act, 1951, have any impact on the field covered

by Section 18-G of the said Act or Entry 33 of List III of the Seventh Schedule of the Constitution?

Ans-1: Once Parliament makes a declaration under Entry 52 of List I of the Seventh Schedule of the Constitution, the "industry" in respect of which the declaration has been made comes within the domain of Parliament. Section 2 of the Industries (Development and Regulation) Act, 1951 (**"IDRA"**) contains the aforesaid declaration, by which Parliament has evinced a clear intention to occupy the entire field with respect to industries mentioned in the First Schedule. Item 26 of the First Schedule to the IDRA mentions *'Fermentation Industries (Other than Potable Alcohol)'*. Once such a declaration has been made by Parliament under Entry 52 of List I, the production, supply and distribution of and trade and commerce in the article / class of articles relatable to such industry, automatically come within the scope and ambit of Entry 33 (a) of List III. Accordingly, Parliament has the competence to enact legislation in respect thereof and has done so by virtue of the enactment of Section 18-G of the IDRA in particular and IDRA in general.

Q.2 Does Section 18-G of the aforesaid Act fall under Entry 52 of List I of the Seventh Schedule of the Constitution, or is it covered by Entry 33 of List III thereof?

Ans-2: Under Section 18-G of the IDRA, provisions have been made for the supply and distribution of and trade and commerce in any article or class of articles relatable to any scheduled industry. The scope, ambit and wording of Section 18-G of the IDRA suggest that it is enacted pursuant to the legislative competence of Parliament under Entry 33 of List III of the Seventh Schedule.

Q.3 In the absence of any notified order by the Central Government under Section 18-G of the above Act, is the power of the State to legislate in respect of matters enumerated in Entry 33 of List III ousted?

Ans.3: The enactment of Section18-G of the IDRA itself ousts the competence of the States to legislate in respect of the matters enumerated in Entry 33(a) of List III in respect of the article or

class of articles of any industry specified under the First Schedule of IDRA. The presence or absence of a notified order is irrelevant to the question of repugnancy, which results from the mere existence of the legislation / provisions of law enacted by Parliament i.e. in this case Section 18-G of the IDRA intended to occupy the field. It is submitted that in this context, the observations made in the case of ***Ch. Tika Ramji and Ors. etc v. State of Uttar Pradesh and Others 1956 SCR 393,*** which in any event were in the nature of *obiter dicta*, may be declared to be incorrect and bad in law. In this context, it is respectfully submitted that the determination of repugnancy is not dependent on the execution of any subordinate legislation or executive action, but rather the existence of a parliamentary legislation on the same subject matter. Any requirement for repugnancy to exist cannot be stretched to insist that there be a notified order issued, as the test of repugnancy is a test between competing plenary legislation as is clear from Article 254 itself, and is not dependant on subordinate legislation or executive action thereunder.

Q.4 Does the mere enactment of Section 18-G of the above Act give rise to a presumption that it was the intention of the Central Government to cover the entire filed in respect of Entry 33 of List III so as to oust the States' competence to legislate in respect of matters relating thereof?

Q.5 Does the mere presence of Section 18-G of the above Act, oust the State's power to legislate in regard to matters falling under Entry 33(a) of List III?

Ans.4 & 5: The mere enactment of Section 18-G of the IDRA makes it clear that intention of Parliament was to cover the entire field with respect to matters enumerated in Entry 33 of List III with respect to articles or class of articles of a scheduled industry under the IDRA. This enactment of Section 18G itself is sufficient to oust the competence of the State Legislatures on matters enumerated in Entry 33 (a) of List III. Section 18-G also has to be read with other provisions of IDRA Act 1951.

Q.6 Does the interpretation given in Synthetics and Chemicals case in respect of Section 18-G of the Industries (Development and Regulation) Act, 1951, correctly state the

law regarding the States' power to regulate industrial alcohol as a product of the scheduled industry under Entry 33 of List III of the Seventh Schedule of the Constitution in view of Clause (a) thereof?

Ans.6: The tests for repugnancy under Article 254 of the Constitution as most recently summed up in ***Forum For People's Collective Efforts (FPCE) and Anr. v. State of West Bengal and Anr. (2021) 8 SCC 599 (Para 132)***, repugnancy may arise not only in cases of a direct and irreconcilable conflict, but also if (a) Parliament has evinced an intention to occupy the field or (b) if Parliament and the State Legislature enact a law on the same subject matter. As *"industrial alcohol"* would fall within the ambit of Entry 26 of the First Schedule of the IDRA, and the Parliament having occupied the field with respect to the regulation of the supply and distribution of and trade and commerce, in the articles or class of articles of the said industry, it is submitted any State enactment on the same subject matter would be repugnant. Thus, the interpretation of Section 18-G in **Synthetics and Chemicals Ltd. v. State of U.P and Ors. (1990) 1 SCC 109** correctly states the law and, it is humbly submitted, does not require reconsideration.