

Amar Singh and ors. Etc. Etc. Vs. the State of Bihar and ors. Etc. Etc.

Amar Singh and ors. Etc. Etc. Vs. the State of Bihar and ors. Etc. Etc.

SooperKanoon Citation : sooperkanoon.com/132254

Court : Patna

Decided On : May-30-2007

Judge : J.N. Bhatt, C.J. and Shiva Kirti Singh, J.

Acts : Bihar Tenancy Act, 1885 - Sections 1(3), 3(4), 3(5), 3(9), 3(16), 3(17), 6, 21A, 23, 23(2), 23(4), 24, 26A to 26O, 27, 28, 30, 40(1), 53 to 67, 72 to 75, 120 and 189; Bihar Tenancy (Amendment) Act, 1993 - Sections 23(1), 23(2), 23(3) and 23(4); Bihar Tenancy (Amendment) Act 1934; Bihar and Orissa Municipal Act, 1922; Madras Urban Land Tax Act - Sections 6; Bihar Rent Refixation Rules, 1995; Settled Land Act, 1925; Trust Act, 1925; Land Registration Act, 1925; Land Charges Act, 1925; Administration of Estates Act, 1925; Copyhold Act, 1841; [Government of India Act, 1935](#); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41; Bihar Rent Refixation Rules, 1995 - Rules 3, 3(1), 3(2), 3(3), 4, 4(2), 5, 6, 7 and 9; [Constitution of India](#) - Articles 13, 13(2), 14, 19, 19(1), 21, 32, 226 and 300A

Appeal No. : CWJC 5529, 5616, 5528, 5411, 5530, 5531, 5617 of 1995, 6725, 9859, 11161 of 1997, 739, 806, 1073, 11

Appellant : Amar Singh and ors. Etc. Etc.

Respondent : The State of Bihar and ors. Etc. Etc.

Advocate for Def. : P.K. Shahi, Adv. General, S.K. Ghose, AAG2, Shyam Kishore Sharma, GA 9, Vikas Kumar, JC to AG, Purnendu Singh, Adv. and Nirmal Kumar Sinha, JC to AAG 2

Advocate for Pet/Ap. : K.N. Choubey, Abhay Kumar Singh, Sidheshwari Pd. Sinha and Y.V. Giri, Sr. Advs., Basant Kr. Choudhary, Anil Jaiswal, S.D. Sanjay, Mahendra Pd. Gupta, Jyoti Saran, S.K. Mishra, Sushila Mishra, Kundam

Judgement :

Shiva Kirti Singh, J.

1. All the writ petitions covered by this common judgment have been heard together on the admitted premise that they seek to challenge the constitutionality, legality and vires of Sub-section (4) of Section 23 of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the Act'), which has been inserted by Bihar Tenancy (Amendment) Act, 1993 (Bihar Act 21/1993), as well as of provisions in the Bihar Rent Refixation Rules, 1995 (hereinafter referred to as 'the Rules').

2. During the hearing of these writ petitions on several dates no dispute or controversy of facts was raised before this Court. All the writ petitions have been argued on the basis of undisputed understanding that on account of fresh assessment of rent under the impugned provisions, treating the land to be under non-permissible industrial or commercial use and, therefore, amenable to revised rent on the basis of its market value, the liability of the petitioners towards rent payable to the State under the Act would increase manifold. In some of the written submissions filed on behalf of the petitioners it has been asserted that the liability of rent under the earlier provisions being almost nominal would now be in lakhs as demonstrated by Annexure-6 series referred to in the written submissions relating to CWJC No. 6269/1998 (Bihar Chamber of Commerce and Ors. v. the State of Bihar).

3. Before advertng to the impugned provisions and the submissions, it is deemed imperative that the legislative history of the Act and the relevant words and themes in the Act are noticed in the proper perspective. This is necessary because it is common knowledge that majority of the population of India and also in the State of Bihar, live in villages and the change brought about by the Bihar Act 21 of 1993 is bound to affect the rights and interests of majority of the population, who hold rights in lands as raiyats. Before creation of separate State of Bihar out of State of

Bengal in the year 1912, the Bengal Tenancy Act of 1885 governed the province of Bengal which included Bihar also. The history of Bengal Tenancy Act of 1885 is well recorded and there is no difficulty in finding that it was passed to repeal. The Landlord and the Tenant Act (Bengal Act 8 of 1869) and to bring about drastic changes in the law governing Zamindars and raiyats with a view to improve the status of raiyats. It modified and improved 'occupancy rights' of a raiyat and laid down the conditions on which a raiyat could be evicted. It further laid down the definition of rent under Section 3(5) as - 'whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant'. Section 3(4) defines landlord as a person immediately under whom a tenant holds, and includes the Government. Section 27 of the Act created a presumption that the rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved and Section 28 imposed restrictions on enhancement of money rents in any other manner except as provided by the Act. For securing the status of raiyat the Act provided for preparation of record of rights and for survey. The nomenclature of the Act was changed to the present one by Bihar Tenancy (Amendment) Act 1934 and the issues relating to transferability of occupancy was solved by adding new Sections 26-A to 26-O to the Act. A further amendment Act of 1947 brought a revolutionary change in the Act by adding new Section 21A whereby the status of most of the non-occupancy raiyats was elevated to that of occupancy raiyats. The Bihar Land Reforms Act 1950 improved the situation of raiyats further by abolishing the Zamindari system and the occupancy raiyats were declared to hold their lands directly under the Government. Thus, the constant object and purpose of the Act remained as improvement in the condition and status of raiyats.

4. Although it may not be of much relevance in the present day when the rights of the raiyats are already codified and governed by legislative enactments but it may be useful to notice the nature of property in land in historical perspective. B.H. Baden- Powell in the book Land System of British India, Vol.1 (1892) has, at page 226, dated the Institutes of Manu as about the 5th Century B.C. He has noted that according to Manu, a field belongs to him who cleared and tilled and the Raja takes his revenue share from every village which comprises of groups of lands. At

page 229, he has noticed that according to the author of the *Hidaya*, (a textbook of Mohammedan Law) even after conquest, if the inhabitants agree to pay capitation (*jaziya*) and land taxes, the right of property remains with the inhabitants. At page 234, while noticing how far claims to lands were adopted by the British Government, he has concluded that, 'I think, on the whole, what was meant by the various declarations in the Regulations and elsewhere, was this: that the Government claimed to succeed to the *de facto* position of the preceding ruler, only so far as to use the position (not to its full logical extent but) as a *locus standi*, for redistributing, conferring, and recognizing rights on a new basis. And the outcome of the action taken by the Government was this that it at once recognized certain rights in private individuals, and only retained such rights for itself as were necessary'. In respect of lands yielding revenue, he is of the view that the British Government- 'reserved the right necessary for the security of its income (a right which was never theoretically doubtful from the earliest times), of regarding all land as in a manner hypothecated as security for the land revenue. This hypothecation necessarily implies or includes a right of sale in case the revenue is in arrears.

5. In the Tagore Law Lectures 1874-75 compiled as 'The law relating to the Land Tenures of Lower Bengal' by Arthur Phillips, the property rights under the Hindu land system and under Mohammedan theory have been noticed. According to him (at page 39), under the Hindu land system there were two parties primarily interested in the land as far as its produce is concerned- the King and the Cultivator but there was- 'nothing approaching a proprietor in the English sense, and very little of the relation of landlord and tenant'. At page 47, he has noticed that according to the Mohammedan theory, 'the imposition of *wuzeefa Khiraj* recognized a proprietary right in the cultivator and the tax payer'. Under this theory, the cultivators were obliged to cultivate the land held by them and to pay the assessment, which was not remitted even when they hold the land but choose not to cultivate it.

6. In the Tagore Law Lectures 1895, on the topic 'The Land-Law of Bengal', by Sarada Charan Mitra, the same concept of Hindu Law that the first person who makes beneficial use of the soil has the right over it was noticed and found to have

been recognized by the Calcutta High Court in the case of Thakurani Dasi v. Bisweswar Mukherjee, BLR Sup. Vol. P.202 and by the Madras High Court in two cases from Malabar Region- Secretary v. Vira ILR 9 Mad. 175 and Secretary v. Ashtamurti ILR 13 Mad.93. The sovereign was entitled only to a share of the produce and was not proprietor of the soil; the share was payable to him as a price for the protection he afforded to the life, liberty and property of the subjects. At page 7 of the book, Sri S.C. Mitra has quoted a useful passage by Sri Charles Turner, the then Chief Justice of Madras from a judgment in the case of Secretary v. Vira (supra). It should be useful to quote the passage here also-

According to what may be termed the Hindu common law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil. The crown is entitled to assess the occupier with revenue, and if a person who has occupied land omits to use it and the claim of the crown to revenue is consequently affected, the sovereign is entitled to take measures for the protection of the revenue. Whether the practice which has obtained in certain districts of requiring a person, who desires to cultivate waste land to apply to the local revenue officer for permission to do so, has abrogated in those districts the Hindu law, or whether it may be justified by the establishment in those districts before British Rule of the analogous doctrine of the Mahomedan law, we consider it unnecessary to determine in this suit, for we have found that the land appertains to the district of Malabar, and we agree with the judge that there is no presumption in that district and in those tracts administered as a part of it that forest lands are the property of the crown.

In this case the High Court of Madras further held that 'at the commencement of the Century it was the policy of the Government to allow all lands to become private estates where that was possible'. The crown's claim of ownership over vast tracts of forest lands was dismissed but leaving unaffected right of the crown to revenue.

7. While discussing the Mohammedan policy and rules in respect of right over lands Sri S.C. Mitra has concluded that the Mohammedan rulers were compelled in India to accept in many instances ancient Hindu principles. They respected

possession and the imposition of the Khiraj did not deny the existence of property in land and take away the proprietorship of the cultivator. His right was alienable. The sovereign was entitled only to a share of the produce. In his view ' the lands cultivated continued to be the property of the inhabitants who might lawfully sell or otherwise dispose of the same. He has concluded that on the whole, the Mohammedan principles of fiscal governance did not practically vary from the Hindu. The zamindars, theoretically were mere collectors of the land revenue. At page 30, Sri S.C. Mitra has concluded that the English in India started with the assumption that all the soil belonged in absolute property to the sovereign. The existence of private property in land, a fundamental doctrine of Hindu jurisprudence followed even by the Mohammendan rulers in India was entirely ignored by them when the British Government in India, in 1793 transferred in perpetuity a vast and then unmeasured quantity of land to various zamindars declaring them to be proprietors. The remaining land, cultivated or waste was treated by the Britishers to be the property of the State.

8. As noticed earlier, the British rule in India gradually recognized the need to secure and protect the rights of the raiyats over the lands which they tilled and hence, amendments were made in the law from time to time with a view to secure and improve the rights of the raiyats in the lands under their possession. With abolition of Zamindari in the post independence era of this country, the Zamindars as intermediary were abolished as a class and the State made no pretension of being the proprietor of lands of the raiyats under their cultivation. The ownership of the raiyats or the tillers and their right to transfer their lands to any person of their choice is firmly established. The only right of the Government of the day is to collect land revenue over its own lands if given for use to others and rent from the raiyats, described in the Act as tenant on account of the use and occupation of the land held by them.

9. In the aforesaid historical background of right in land and the object and purpose of the Act, it may now be noticed the impugned provisions of law, whose vires is under challenge in all the writ petitions under consideration. Section 23(1), (2) and (3) have remained as they were before enactment of Bihar Act 21 of 1993 but for addition of the words 'except as provided in Sub-section (4)' at the end of

Section 23(1). Section 23(4) along with its four provisos is the impugned provision inserted by Act 21 of 1993 which has also inserted a new Sub-section (5) to Section 23. Now, Section 23 reads as under:

23 Rights of raiyat in respect of use of land- (1) When a raiyat has a right of occupancy in respect of any land, he may use the land and in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy except as provided in Sub-section 4.

(2) The following shall not be deemed to impair the value of the land materially or to render it unfit for the purposes of the tenancy, namely:

(a) the manufacture of bricks and tiles for the domestic or agriculture purposes of the raiyat and his family or for any educational or charitable purpose;

(b) the excavation of tanks or the digging of well intended to provided a supply of water for drinking or other domestic purposes of the raiyat and his family or to any religious or charitable institution; and

(c) the erection of buildings for the domestic or agricultural purposes of the raiyat and his family or for any educational or charitable purpose.

(3) If an occupancy-raiyat, who pays for his holding rent in any of the ways specified in Sub-section (1) of Section 40, excavates a tank on such holding for any purpose mentioned in Clause (b) of Sub-section (2) the landlord and the raiyat shall be entitled to equal shares in the produce of such tank.

(4) A raiyat may, with the previous permission of the Collector, use his land for the purposes not enumerated in Sub-section (2):

Provided that before giving such permission the Collector shall redetermine the rent of such land in the prescribed manner to the extent of five per cent of the market value of the land:

Provided further that if a raiyat has not taken prior permission of the Collector, the Collector may give post facto permission on payment of double amount of the rent which he would have paid for obtaining prior permission, for the period between

the date of commencement of use for purpose other than those enumerated in Sub-section (2) and the date of application or detection, as the case may be.

Provided also that if a raiyat has been using his land for purposes other than those enumerated in Sub-section (2), from before the commencement of this Act, he shall apply within 90 days of the date of commencement of this Act for permission to the Collector who on receipt of such application shall proceed in such manner as if the above use had started on the date of commencement of this Act. If the raiyat fails to do so, he shall be liable for payment of double amount of the rent which he would have been liable to pay, had he applied in time for the period between the date of commencement of this Act and the date of application or detection as the case may be:

Provided further also that the Collector shall have the power to revise the rent so determined after every ten years.

(5)(a) An appeal against an order passed under this section shall be lie within a period of 30 days from the date of such order-

(i) If such order is passed by an officer other than the Collector of a district, to the Collector of the district or to any Officer specially empowered by the State Government by notification to hear such appeals, and

(ii) If such order is passed by the Collector of a district, to the prescribed authority:

(b) The Collector of the district may, at any time, transfer any appeal filed before him to any officer specially empowered to hear such appeals or withdraw any appeal pending before any officer so empowered, and either hear such appeal himself or transfer it for disposal to any other officer so empowered:

(c) Appeals under this section shall be heard and disposed of in accordance with the prescribed procedure.

10 In view of submissions advanced on behalf of the petitioners for challenging the vires of Section 23(4) as inserted by Bihar Act 21 of 1993 it is necessary to extract some of the relevant provisions of the Act for ready reference-

Section 1(3) Local extent - It shall extend to the whole of the State of Bihar, except

(a) the areas comprised within the district of North Chotanagpur Division, South Chotanagpur Division, Palamau Division and Santhal Parganas Division; and

(b) any area constituted or deemed to have been constituted a municipality under the Bihar and Orissa Municipal Act, 1922 (B and O, Act 7 of 1922) or part thereof or which is under a Cantonment if such area is specified in a notification issued in this behalf by the State Government.

Section 3. (5) Rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant;

In Section 53 to 67, both inclusive, Sections 72 to 75, both inclusive Chapter XII, Chapter XIII and Schedule III of this Act. 'rent' includes also money recoverable under any enactment for the time being in force as if it was rent.

Section 3. (9) 'Holding' means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

Section 3. (16) 'Collector' means the Collector of a district or any other officer appointed by the State Government to discharge any of the functions of a Collector under this Act.

Section 3. (17) 'Revenue-officer', in any provision of this Act, includes any officer whom the State Government may appoint, by name or by virtue of his office, to discharge any of the functions of a Revenue-officer under that provision.

Section 5. Meaning of 'tenure- holder' and 'raiyat'- (1) 'Tenure-holder' means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) ' Raiyat' means primarily a person who has acquired a right to hold for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is tenure-holder or a raiyat, the Court shall have regard to -

(a) a local custom, and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

Section 24. Obligation of raiyat to pay rent.- An occupancy raiyat shall pay rent for his holding at fair and equitable rates.

Section 25. Protection from eviction except on specified grounds- An occupancy raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground-

(a) which that he has used the land comprised in his holding in a manner renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Section 27. Presumption as to fair and equitable rent.- The rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved.

11. On behalf of the petitioners Section 23(4) of the Act as well as provisions in the Rules framed under Section 23 read with Section 189 of the Act have been challenged mainly on the following grounds- (i) Lack of legislative competence to levy tax on the market value of land under commercial use in the garb of 'collection of rent' under Entry 18 of List II of Schedule 7 to the [Constitution of India](#); (ii) the impugned provisions are contrary to the spirit of the Act and particularly to the meaning and definition of the term 'Rent' as provided in Section 3(5) and, therefore, they make the Act unworkable as a whole, particularly in respect of levy of rent for land put to commercial and industrial use; 'Rent' under the Act must remain not only money payable to landlord on account of the use and occupation of the land but must also be at fair and equitable rates. The imposition of levy under the impugned provisions are, therefore, not an imposition of rent as defined under the Act and such levy is in colorable exercise of power by the State legislature when in fact only the Parliament has the legislative competence to impose taxes on capital value of assets as per Entry 86 of List I of the 7th Schedule to the [Constitution of India](#); (iii) the impugned provisions impose an unreasonable restriction upon the right of a raiyat to use his land for any purpose and to support any occupation in life to sustain his right to life keeping in mind the productivity of his land/ assets. The impugned provisions are arbitrary as they ignore the essential and vital link between rent and productivity of land. They also run counter to the established law of assuring reasonable return to the raiyat and are, therefore, confiscatory in nature. In other words, the impugned provisions violate Articles 14, 19, 21 and 300A of the [Constitution of India](#); (iv) the mode of fixing market value has not been indicated in the impugned provisions and, therefore, the provisions suffer from unguided and excessive delegation of legislative function amounting to abdication of legislative function which is impermissible in law; (v) enhanced rent in urban areas amounts to effective double taxation by enabling substantial rent for the market value of land whereas municipal authorities are also entitled to levy taxes on the valuation of the building. For such unreasonableness also Article 14 is alleged to have been violated; (vi) the impugned provisions vest uncanalised and unguided discretion in the executive to impose rent from 0 to 5 per cent of the market value of the land because there are no guidelines in the impugned provisions as to when the rent

shall be at the maximum rate and when it shall be at the minimum rate; (vii) The impugned provisions have been notified to be prospective in operation but the Collector has been given such power which may be used to impose penal rent with retrospective effect and, therefore, such provisions are impermissible in law; (viii) on account of historical facts, the provisions in the Act, State's public duty and procedural impossibilities in enforcement, the impugned provisions must be held to be non- applicable to urban areas comprising in municipalities and if there be any difficulty in making such declaration, the State Government be directed to issue a notification under Section 1(3)(b) of the Act to exclude lands under Municipalities from operation of the Act, and (ix) the provision of appeal under the impugned provisions is not to judicial courts as provided in Section 109A of the Act and, therefore, suffers from procedural unfairness.

12. The provisions in the Rules have also been challenged in several writ petitions mainly on the following grounds- (i) The procedure of fixing of market value of the land for the purpose of rent under Rule 4 of the Rules is unreasonable because there is no provision to afford any opportunity of hearing to the concerned land owner/ raiyat. (ii) The provision for fixing market value of land under Rule 4, only on the basis of sale price of the lands in the vicinity immediately preceding the date of the use of the land is unjust because other methods of determining valuation of the land have been excluded without any authority of the legislature and without any good reasons, (iii) Grant of such unguided power to the executive is impermissible and the rule is bad on account of excessive delegation, (iv) The market value of the land alone and that also on the basis of sale price of only lands in the vicinity and of a date immediately preceding the date of the use of the land for commercial or industrial purpose is impossible to be determined as held by experts as also judicial authorities, (v) Rule 5 of the Rules is bad on account of being contrary to provisions in the Act which permits fixation of rent from lowest per cent up to 5 per cent of the market value whereas under Rule 5 a bar has been sought to be created by providing that in any circumstances generally it should not be less than 3 per cent. (vi) Revision of rent under Rule 9 after every 10 years is also contrary to concept of fair and reasonable rent as provided under Section 24 and 27 of the Act. (vii) While laying down the procedure for hearing of appeal under Rule 10 by the Divisional Commissioner, the prescribed authority for

hearing appeals against an order passed by the Collector of a district, there is no provision for transfer of such appeals to any other authority in case of allegation of bias etc. and. therefore, there is procedural unfairness in the Rules.

13. While considering the first issue relating to legislative competence of the State legislature in relation to impugned provisions which have been inserted as part of Bihar Tenancy Act, Entry 18 of List II of the 7th Schedule is relevant. It reads as follows:

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection or rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization

14 According to learned Counsel for the petitioners, the words 'collection of rent' would show that the State legislature has been given legislative competence to enact laws not in respect of levy by way of rents but only for collection of rent. The submission on behalf of the State by learned Advocate General is to the effect that in deciding the question of legislative competence the court should not adopt a narrow or pedantic approach. According to him, a liberal and practical approach has to be applied and the entire provision under Entry 18 should be read together and that would indicate the correct extent of power of the State legislature in respect of land both agricultural as well as non-agricultural. Such power can cover rights over land, in land tenures and shall include relation of landlord and tenant as well as the collection of rent. It shall include provisions relating to transfer and alienation of agricultural land also. Thus, according to him, unless some other Entry encroaches upon the subject matter covered by Entry 18 in a specific manner, the State legislature must be held competent to legislate over all the matters relating to rights over land and land tenures as well as relation of landlord and tenant. According to him, the Bihar Tenancy Act contains provisions which are apparently within the sweep of Entry 18 noticed above, and the impugned provisions which have come by way of amendment in the Act are covered by Entry 18 in List II of the 7th Schedule to the [Constitution of India](#).

15. As an issue of law, there is no difficulty in accepting the submission of learned Advocate General that the matters covered under the Act fall within the legislative

competence of State legislature under Entry 18 of List II. On their face, the provisions under challenge also use the term rent as defined under the Act and hence, appear to be covered by Entry 18 of List II. But the further submission on behalf of the petitioners that the impugned provisions although use the word rent but in substance levy something quite different in meaning and such levy must be construed as tax on land on the basis of their market value which is quite different in meaning than the meaning of the word rent as defined under the Act, requires a careful look at the definition of rent in the Act. under Section 3(5) of the Act rent is lawfully payable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant under Section 24, it is required to be at fair and equitable rates and Section 27 creates a presumption that the rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved. Section 30 prescribes the mode and grounds of enhancement of rent by the landlord of a holding at a money rent by an occupancy raiyat. For enhancement of money rent which is now applicable to all raiyats, the landlord has to institute a suit on the three permissible grounds (i) that there has been a rise in the average local prices of staple food crops; (ii) that the productive powers of the land have been increased by an improvement by or at the instance of the landlord, or (iii) that the productive powers of the land have increased by fluvial action.

16. There is no difficulty in gathering from the aforesaid provisions in the Act, the meaning and scope of levy by way of rent by a landlord from a tenant/ raiyat. It must be on account of the use or occupation of the land; must be fair and equitable, rent being paid by a raiyat must be presumed to be fair and equitable and for seeking increase in money rent, the landlord is required to file a suit on permissible grounds only. The words 'on account of' have been underlined only to emphasize that the rent has a definite connection to the use and occupation of the land by the tenant and traditionally as well as under the Act, it must be a limited levy keeping in view the possible production from the land and must ensure equity and fairness by leaving a minimum surplus in the hands of the tenants necessary for his upkeep and survival. In other words, if the levy is based not upon production value of the land but on some other value such as market value, it cannot be accepted as rent within the meaning of the term in the Act.

17. Having reached the aforesaid conclusion as a principle of law, now a deep look is required at the given provisions vis-a-vis the original provisions in Section 23 of the Act as it stood prior to Bihar Act 21 of 1993. Prior to the Bihar Act 21 of 1993 Section 23 enumerated the rights of raiyat in respect of use of land. Sub-section (1) explicitly and unequivocally declared that a raiyat having a right of occupancy in respect of any land may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy. Sub-section (2) is clearly illustrative in nature and enumerates some usual activities of raiyats other than agricultural and specifies that such activities shall not be deemed to impair the value of the land materially or to render it unfit for the purposes of tenancy. The illustration include manufacture of bricks and tiles for domestic, agricultural, educational or charitable purposes, excavation of tanks or digging of well for domestic, religious or charitable purposes and erection of buildings for domestic agricultural, educational or charitable purposes. Such illustrations were clearly for helping the raiyats so that they may be protected from eviction on the grounds permissible under Section 25 of the Act. There is no provision in the Act illustrating what use of the land shall definitely render it unfit for the purposes of the tenancy. Sub-section (3) relates to an occupancy raiyat who pays for his holding in any of the ways specified in Section 40(1) i.e. not in money terms only and if such an occupancy raiyat excavates a tanks on such holding for the purposes enumerated in Sub-section (2) of Section 23, the landlord and the raiyat have been made entitled to equal shares in the produce of such tanks.

18. By the impugned provisions introduced by Bihar Act 21 of 1993 the rights of raiyat in respect of use of land have been subjected to serious limitations by presuming that a raiyat had no right to use his land for the purposes not enumerated in Sub-section (2) of Section 23 and that to have such right a raiyat is required to take previous permission of the Collector. It has further been provided under various provisos to Sub-section (4) of Section 23 as to how before granting such permission the Collector is required to determine the rent of such land to the extent of 5 per cent of the market value of the land and how post facto permission shall be granted on payment of double amount of the rent payable for the prior period. For the raiyats who may have been using their land for the purpose other than those enumerated in Sub-section (2) from before the commencement of Bihar

Act 21 of 1993 which received assent of the Governor on 23.8.1993 and came into effect by publication in the Bihar Gazette dated 26.8.1993, a limitation of 90 days from the date of commencement of the amendment Act is prescribed for seeking permission of the Collector otherwise he would be liable for payment of double amount of the rent which could have been validly redetermined by the Collector if he had applied in time, for the period between date of commencement of the amendment act and the date of application or detection as the case may be. The Collector has also been vested with power to revise the rent determined under Sub-section (4) of Section 23 after every 10 years.

19. On a plain reading of the impugned provisions enacted by Bihar Act 21 of 1993 two things are noticeable. First, by the impugned provisions without explicit pronouncement it has been presumed that the three illustrations in Sub-section (2) of Section 23 are the only uses available to a raiyat by way of right in respect of use of land and any other user of the land by a raiyat must be deemed to be impermissible save and except with the previous permission of the Collector who in the context of the Act represents the Government of the State as the landlord. Secondly, on account of change of user from agriculture to any purpose other than those enumerated in Sub-section (2) of Section 23 and for granting permission for such change of user, the Government i.e. the landlord becomes entitled for a rent to the extent of 5 per cent of the market value of the land. Clearly, by the impugned provisions, the raiyats are adversely affected. The rent payable by the raiyats as noticed at the beginning, on account of the changed user of land is many times the unrevised rent and in many cases it has gone in lakhs per year without any regard to rental value of the land or its productivity or the capacity of the tenant / raiyat to pay.

20. The aforesaid discussion is useful for considering various submissions advanced on behalf of the petitioners touching rights under Articles 14, 19 and 21 of the [Constitution of India](#). But first of all it must be noticed that the redetermination of the rent required to be made by the Collector before giving permission in terms of Sub-section (4) of Section 23 has no connection, relation or bearing to the yield from the land or its productivity. The levy is not on the basis of rental value or production value but only at market value of the land. In other

words, even if a tenant has constructed a building for the purpose of selling his products and some other products to add to the value of his shop, he is required to seek permission of the Collector and incur the liability of redetermined rent to the extent of 5 per cent of the market value of the land regardless of the fact whether the shop is making profit or not or is running or closed. Such levy which clearly has no nexus to the productivity of the land, is clearly not rent as defined and understood under the Act. Although the impugned provisions refer to this levy as redetermined rent of such land, it must be held that such levy is tax on market value of land which is sought to be imposed on a class of landowners, who are covered under the sweep of Section 23 of the Act which applies only to raiyats having a right of occupancy in respect of any land. Such tax is sought to be charged on the presumption that raiyats had no right to use their land for the purposes other than those enumerated in Sub-section (2) of Section 23. The tax is also based upon a presumption that any other use of land would render it unfit for the purpose of tenancy. Such presumptions inherent in the impugned statutory provisions ignore the existing facts and rights of raiyats and hence it is to be seen whether they can successfully stand the test of Article 14 of the Constitution.

21. The Supreme Court in the case of *Kunnathat Thathunni Moopil Nair v. State of Kerala* : [1961]3SCR77 , has held that a taxing statute is not wholly immune from attack on the ground that it violates Article 14 although the policy itself is not the concern of the Court. In the case of *Jagannath Baksh Singh v. State of UP* : [1962]46ITR169(SC) it was referred to and clarified that reasonableness of rate of tax is not open to scrutiny unless the infirmities were of such a serious nature as to justify a statute being described as a colourable exercise of legislative power or confiscatory. In *Assistant Commissioner, ULT Madras V. B & C Co.* : [1970]75ITR603(SC) , it has been held that as a general rule it may be said that so long as a tax retains its character as a tax and is not confiscatory or extortionate the reasonableness of the tax cannot be questioned.

22. A look at the Bihar Tenancy (Amendment) Act 1993 reveals that it neither contains any preamble nor any object or purpose. It simply seeks to amend Section 23 of Bihar Act 8 of 1885 in the manner noticed. The purpose is to augment the income of the State as a landlord under the Act. Since it has been

found that the levy imposed under the impugned provisions is not actually rent but a tax, it follows that an appropriate Entry in List II should be looked for to support such a levy otherwise the State legislature may not have legislative competence as submitted on behalf of the petitioners. However, a look at Entry 49 in List II is sufficient to repel the aforesaid submission on behalf of the petitioners because that Entry clearly reads- Taxes on lands and buildings. On the basis of this Entry a tax on the capital value of lands in urban areas in the State of Madras was held to be within the legislative competence of the State legislature as appears from the judgment of the Supreme Court in the case of Assistant Commissioner, ULT v. B & C.Co. Ltd., (supra). Even in the judgment by a Full Bench of Madras High Court in the case of V. Pattabhiraman v. the Assistant Commissioner of Urban Land Tax : AIR1971 Mad61 , imposition of tax on the basis of market value of urban land was found to be covered by Entry 49 and that judgment has been heavily relied upon by learned Counsel for the petitioners although in the context of Articles 14 and 19 of the [Constitution of India](#). Therefore, it must be held that there is no merit in the submissions on behalf of the petitioners that the impugned provisions imposing tax on land is beyond the legislative competence of the State legislature.

23. The second submission on behalf of the petitioners is that the impugned provisions are contrary to the spirit of the Act and violate the meaning and definition of the term 'rent and raiyat' as understood in the Act and hence, they make the Act unworkable as a whole. As discussed earlier, although the impugned provisions use the term rent applicable to a raiyat under the Act, they really levy a tax on the market value of all such lands, situate anywhere in the State which once upon a time had been under agricultural use and belonged to such raiyats who were required to pay rent for such land to the landlords. The raiyats covered by the impugned provisions must have a right of occupancy in respect of the concerned land. Section 21A of the Act introduced through an Amendment Act 1947, created right of occupancy in every raiyat in all lands for the time being hold by him in a village subject to proviso in that section which provides that no person, who is not a settled raiyat of the village, shall have any such right of occupancy in any bakasht land settled with him by a proprietor or tenure holder whose total acreage of such land in his possession at the date of settlement does not exceed 40 acres unless such settlement has been made by a registered instrument. The

second proviso grants some further protection to such proprietor or tenure holder. For the purpose of that Section the expression bakasht land has been explained to mean any land other than the proprietor's private land as defined in Section 120, which is, for the time being in the cultivating possession of a proprietor or tenure holder. The aforesaid provisions in the Act have been noticed only to highlight that every raiyat even after introduction of Section 21 is not a raiyat with occupancy right over his lands and, therefore, not covered by Section 23 of the Act, prior to or after the Amendment Act of 1993. To the same conclusion one will reach on looking at Section 4 of the Act which classifies tenants into three classes- (i) tenure holders, including under tenure holder, (ii) raiyats and (iii) under- raiyats, that is to say tenants holding, whether immediately or immediately, under raiyat. It further classifies raiyats into three classes- (i) raiyats holding at fixed rates, (ii) occupancy- raiyats, that is to say raiyats having a right of occupancy land held by them and (iii) non- occupancy raiyats, that is to say, raiyats not having such a right of occupancy.

24. In the light of aforesaid facts showing different classes of tenants and raiyats covered by the Act, it is clear that Section 23 applies only to a particular class of land holders covered by the Act and not to all categories. The term tenure holders has been defined in Section 5 to mean primarily a person who has acquired from a proprietor or from another tenure holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it and includes their successors in interest. On account of Bihar Land Reforms Act 1950 the interests of proprietors and tenure holders in their assets or tenures passed to and became vested in the State. Only the raiyati and under raiyati interest of tenure holders and proprietors was saved from vesting. But for the purposes of the Act the State continues to be proprietor as well as tenure holder in respect of estates or tenures which came to be vested in it. Further, till date there are different classes of raiyats as well as a class of under raiyat. Section 23 as it originally stood before Amendment Act of 1993 served the purpose of securing the right of the raiyats with occupancy rights in their lands by declaring that they could use the land in any manner but a condition was imposed, clearly to protect the interest of the tenure holder or proprietor, that the manner of use should not materially impair the value of the land or render it unfit for the purposes of the

tenancy. The purpose of imposing such condition was clearly to ensure that the rent value of the land is not diminished or impaired so as to affect the interest of the landlord. It is difficult to find any link between the purpose of Section 23 as it stood earlier and as it stands after insertion of the impugned provisions. If the industrial or commercial use of land ipso facto would impair the value of the land or render it unfit for purposes of tenancy then how the landlord is now deemed to be entitled for a much higher rent which is actually in the form of a tax on the market value of the land. If the industrial and commercial use, that is, use other than those enumerated in Sub-section (2) of Section 23 does not materially impair the value of the land or render it unfit for the purposes of the tenancy, then the entire purpose of the impugned provisions runs counter to the provisions in the Act and amounts to acquisition of certain rights of affected raiyats in respect of use of their land which such raiyats have enjoyed in the past. Such acquisition of some rights in respect of use of land is implicit but clear. Instead of compensating the raiyat concerned for acquiring at least some of his rights of use of his land, he is being selected out of several kinds of land holders for being subjected to a tax on the market value of his land in the garb of redetermined rent. Clearly, some of the protection offered against arbitrary increase of rent from raiyats and the requirement of rent being fair and equitable have been indirectly taken away and reversed by the impugned provisions creating obvious friction between different provisions of the Act which require to be read together as one whole unit.

25. The tax imposed by the impugned provisions is clearly not applicable to user of lands in any manner by tenure holders covered by Chapter III, raiyats holdings at fixed rates covered by Chapter IV, by non-occupancy raiyats covered by Chapter VI or by under raiyats covered by Chapter VII of the Act. It applies only to lands and its user by occupancy raiyats covered by Chapter V of the Act which includes Section 23. It requires no detailed reasoning to hold that because the impugned provisions have been inserted only in Section 23 of the Act, the levy of proposed redetermined rent which is in effect a tax on market value of land is clearly a class legislation. The legislature is competent to classify persons or properties and tax them differently but classification must be rational. But there does not appear any rational as to why redetermined rent on the basis of market value of the land is being realized only from land of tenants/ raiyats covered by Section 23 of the Act

and not from lands of other types of tenants / raiyats noticed earlier. Hence, the impugned provisions contravene Article 14 of the Constitution.

26. In context of Article 19 of the [Constitution of India](#), it is necessary to consider the next important submission on behalf of the petitioners that the impugned provisions impose a unreasonable restriction upon the right of a raiyat to use his land for any purpose and to support any occupation in life to sustain his right to life keeping in mind the productivity of his land/ assets. As is clear from the impugned provisions the State as a sovereign has not imposed a tax on all land holders or any select land holders for levy of tax on land, rural or urban. The impugned provisions impose the levy in the name of rent under the Act and the levy is clearly by the State in its capacity as landlord under the Act, hence the issue of unreasonableness assumes significance and deserves judicial scrutiny with greater care. In the role of a landlord under the Act the conferment of power upon the State to levy rent on market value upto 5 per cent ultimately restricts the right of a raiyat to use his land for any purpose of his choice. It is not only unreasonable and lacking in public purpose but is against the spirit of traditional, historical as well as legislative rights of the raiyats. As noted in historical context, the sovereign is entitled to protection of his revenue even if the land is left fallow and for non-productive user of the land, the interest of the landlord by way of rent cannot be allowed to suffer. If this line of reasoning / justification for safeguarding rent of the landlord is carried further, it may be reasonable to secure the future interest of the landlord for enhanced rent if the raiyat puts the land to unproductive use. In such circumstances, a demand for one time premium on reasonable basis or the procedures under the Act for enhancement of rent on the basis of increase in prices of staple foods or in productivity of lands in the neighborhood may be the remedy. But in lieu of such reasonable compensation the landlord under the Act has been granted the gift of highly enhanced rental every year and that too by presuming subsilentio that the raiyats had no right to put their lands to uses other than those enumerated in Sub-section (2) of Section 23 of the Act. The impugned provisions in Section 23(4) of the Act, therefore, have to be declared as violating Article 19(1)(g) of the Constitution because the direct effect of the provisions increases the rent liability of tenants many times. The affected tenants are bound to be deprived of their right to practice any profession, or to carry on any

occupation, trade or business because they are now made liable to confine the use of their lands only for agriculture or else face hugely enhanced rent on market value every year with clear risk of land itself being sold due to non-payment of such enhanced rent.

27. The spirit and purpose of agrarian reforms has been to improve the standard of life of raiyats who are basically engaged in agriculture and to ensure that in case of failure of crops etc. they are able to meet the needs of life with the help of their land/ assets without depending upon the alms of the State which cannot be taken for granted. It is a notorious fact that most raiyats in rural areas live in penury. Once the State, by virtue of the Bihar Land Reforms Act stepped into the shoes of the landlords for the purpose of realizing rent from the raiyats, its constitutional obligations under Articles 38, 39 and 41 enshrined under Part IV of the [Constitution of India](#) as Directive Principles of State Policy, warrant ensuring better rights to raiyats including all permissible use of their lands which may give them any occupation or vocation of their choice to which all citizens have a fundamental right under Article 19(1)(g) of the Constitution. The impugned provisions do not exhibit any interest of the general public to warrant reasonable restrictions on such fundamental rights of the citizens, particularly of raiyats who as a class are generally engaged in occupation of agriculture, live in rural India and have gained little from whatever economic gains have been made by the country since independence.

28. As a natural corollary from the aforesaid discussions and findings it follows that by putting presumed restrictions on the right of raiyats to use their lands in any manner they like (surface user only), the State, in the light of economic condition of majority of raiyats in this State, has put in jeopardy their right to live a decent life guaranteed by Article 21 of the [Constitution of India](#). The presumption which is implicit but clear in the impugned provisions that the raiyats had no right to put their lands to any use other than those enumerated in Sub-section (2) of Section 23 of the Act, as indicated earlier, amounts to acquiring sub silentio, some of the property rights already available to the raiyats without any justification on the ground of public interest and without any fair procedure. Such deprivation of the tenants of some property of theirs by way of right of user of their lands is not by

authority of law as required by Article 300A. Had the impugned provisions contained explicit stipulation of taking away some rights or property of the raiyats, the matter could have been different but they are sought to be deprived of their rights / property by simply ignoring the fact that they hold such property. It is difficult to accept that such deprivation is by authority of law and reasonable.

29. The redetermined rent as per impugned provisions can be up to 5 per cent of the market value of land regardless of whether the land yields or is incapable of that much yearly yield. In 20 years period the rent paid may be equal to and thus wipe out the market value of the land. This recurring land tax without caring for the real or potential income from the land, is clearly confiscatory because likely failure to pay such tax/ rent can lead to sale of the land itself. Tax liability only on market value without regard to income/ yield and capacity to pay or to any relevant guidelines is bound to result in unjustly discriminatory levy.

30. In view of what has been discussed and found above it is clear that impugned provisions are clearly ultra vires of Articles 14 and 19(1)(g) of the [Constitution of India](#) on the grounds noticed above. Ordinarily, it is not necessary to examine other issues for granting the reliefs claimed by the petitioners but considering the overall importance of the matter at hand it is deemed necessary to notice other important issues, at least in brief.

31. One of the issues raised on behalf of the petitioners is that the impugned provisions enable realization of enhanced rent from the present owners ignoring vital questions as to when the non- agricultural use of the land had been initiated and by whom. Prima facie, the submission appears to be attractive but by itself it cannot be a ground to invalidate the impugned provisions. A competent legislature must be presumed to have taken note of the relevant facts and the vires of taxing statute can be tested mainly on the touchstone of arbitrariness i.e. Article 14 and whether it is confiscatory in nature. These issues have already been discussed earlier. The issue of double taxation in urban areas is also not a valid ground because it is settled by decision of the Apex Court in several cases as noticed in the case of Assistant Commissioner, Madras v. B & C Company (supra) that legislature is competent to levy tax on land as well as on building and clearly the

two types of taxes, one on land and the other on the building cover two different fields.

32. In respect of the impugned provisions a major grievance has been raised that the first proviso to Sub-section (4) of Section 23 suffers from the vice of excessive delegation of power to the executive of prescribing the entire machinery for determination or redetermination of rent. The provisions have been further criticized on the ground that there is no guideline as to on what yardstick the executive shall decide whom to tax at the rate of .1 or .5 or 1 per cent and whom to tax at the rate of 5 per cent of market value of the land and similar criticism has been levelled that legislature has failed to indicate what shall be the criteria and methodology for determining the market value of land.

33. A taxation statute must be clear in the sense that the charging section must clearly convey to the persons governed by the tax what shall be their liability. If different liability is required to be imposed upon different classes of persons then the classification must be indicated by the legislature itself and must appear from the law framed by the legislature. The Executive cannot be entrusted with the task of fixing the liability of tax differently on grounds not indicated by the legislature. Hence, it must be held that the expression- 'to the extent of 5 per cent' leaves unguided discretion in the hands of the Executive of classifying persons differently for imposing rent or tax at different rates. Such unguided and uncanalised delegation of power to the Executive would amount to abdication of legislative power which is impermissible under our constitutional scheme.

34. The other submission that the executive has been given absolute freedom of laying down the manner for redetermination of rent on the basis of market value of land is also based upon the same principle that the machinery part of a taxation statute is of equal importance because it must conform to requirements of hearing and fairness. The argument, prima facie, appears attractive but does not have substance because right of hearing is not being taken away by the statute either expressly or impliedly and it is well known that determination of tax liability is quasi judicial procedure which must conform to requirements of hearing and fairness. If right of hearing is denied in the process of redetermination then a legitimate

grievance can be raised before the appellate authority or by asking for issuance of a writ and such lapses can be cured. The legislative provisions requiring framing of rules to provide manner for redetermination of rent on the market value of land does not suffer from any abdication of legislative function or excessive delegation. The market value of land is an easily understandable phrase and, therefore, the intention of the legislature is amply clear. It is for the executive to determine the market value of land in a suitable and fair manner for which the rules can be prescribed as provided by the first proviso under consideration. Thus, only the wordings- 'to the extent of 5 per cent' are found to be suffering from vice of excessive delegation without any sufficient guidelines as indicated above.

35. There is no merit in the submission that because the impugned provisions do not provide for transfer of case from Collector of a district or from the prescribed appellate authority to another authority in case someone raises allegation of bias, therefore, the impugned provisions suffer from procedural unfairness. The quasi judicial functions in relation to determination of rent or tax or hearing appeals have to be carried by the prescribed or delegated authority under the Act and in case of allegation of bias the necessary relief can be provided by extraordinary remedy through writ jurisdiction. Moreover, there is nothing in the impugned provisions to warrant an inference that Section 189A of the Act providing for transfer of proceedings by the Board of Revenue shall not be applicable to proceedings under Section 23 of the Act.

36. On behalf of some of the petitioners the validity of second and third proviso to Sub-section (4) of Section 23 was challenged on the ground that rent or tax is sought to be realized along with penal rent from dates earlier to the order of redetermination of rent and, therefore, the impugned provisions were being given retrospective effect contrary to Section 1 of Bihar Tenancy (Amendment) Act 1993 which enforces. The Amendment Act prospectively. A careful perusal of the relevant provisos makes it clear that second proviso is in respect of requirement to take prior permission after the commencement of the Act of 1993 and the third proviso relates to requirement of seeking permission of the Collector in those cases where the change of user of land had taken place prior to the commencement of the Amendment Act but the redetermined rent in all cases has

been made applicable only for the period after the commencement of the Amendment Act and double amount of rent is only for those cases where the applications for permission are not filed within the time granted by the Amendment Act of 1993. Thus, it is found that there is no retrospective application of the provisions of the Amendment Act of 1993 and hence, the submissions need no further consideration.

37. So far as challenge to the vires of the impugned provisions of the Act is concerned, there remains no other ground worth consideration. But some of the provisions of the Rules have also been seriously challenged and, therefore, submissions in that regard also require a brief scrutiny. The first challenge is to Rule 4 which requires the Collector to determine the market value of the land or part thereof on the basis of the sale price of the lands in the vicinity immediately preceding the date of the use of the land under Sub-section (4) of Section 23 of the Act i.e. for the purposes not enumerated in Sub-section (2) of Section 23 of the Act. The objection of the petitioners is that only the method of using the sale price of the land in the vicinity cannot be a fair and practicable method for determining the market value of land and the rule making authority has acted arbitrarily in shutting out several other methods for determination of market value of land which are accepted by experts in such matters as well as by judicial authorities. In support of this submission strong reliance was placed upon a full bench judgment of Madras High Court in the case of V. Pattabhiraman v. Assistant Commissioner Urban Land Tax (supra). In that case Section 6 of the Madras Urban Land Tax Act (12 of 1966) was struck down on the ground that unreasonableness and wide room for arbitrariness was writ large on the provisions of the Act prescribing mode of ascertaining the base for assessment. The ascertainment of market value of urban land as provided under Section 6 without further guidance was found to be inappropriate for heavily built up areas such as in the city of Madras and it was further found that it could result in unjustly discriminatory levy. Hence, Section 6 of the Act was struck down as violative of Articles 14 and 19(1)(f) of the Constitution.

38. During arguments in these cases a controversy had arisen whether lands falling under municipal areas could be subjected to the provisions of the Act because they require special notification from the Government for their exclusion

from the ambit of the Act or whether such lands would stand excluded from the ambit of the Act only on being included within a municipal area. Relying upon a Division Bench judgment of this Court in the case of Shri Kishun Lal v. Harihar Singh AIR (36) 1949 Pat 444 and upon a judgment of a Full Bench of this Court in the case of Hridaya Narain Singh v. Md. Sharif : AIR1968 Pat296 , the State has succeeded in showing that the provisions of the Act continue to apply to lands falling within municipal area also unless excluded by express notification. Hence, the settled position is that the impugned provisions of the Act and the Rules are to govern lands of raiyats with occupancy rights or their successors situated in the remotest village or in urban area falling within municipal area. In the case covered by the aforesaid Madras judgment, the basis for assessment was market value of urban land provided under Section 6 and the Court found many practical hurdles in ascertaining a fair market value for imposing tax only on land. Under the Act and the Rules the market value of only the land is required to be ascertained and that alone is the basis for levy of rent or tax. Nonetheless, from the detailed discussions in the said judgment in respect of different principles for ascertaining market value of land, particularly from discussions made in paragraphs 24 to 27 and 67 to 74, it is dear that at least in heavily constructed areas it may not be possible to determine the proper market value of land only on the basis of sale price of similar land in the vicinity. In such complex urban situation the same yardstick which may be appropriate for rural areas and which has been adopted in Rule 4 cannot be sufficient and suitable for imposing just and uniform rent on all concerned. The exclusion of other permissible methods for ascertaining market value at least for urban areas, must be declared unsuitable for the task of taxation under the impugned provisions and it must be held that it will result in unjust and arbitrary levy of rent/ tax. Hence, the impugned provision under Rule 4 of the Rules is found fit to be struck down as arbitrary and unreasonable. The prescribed authority must act as a quasi- judicial authority for ascertaining the market value of the land in a fair and reasonable manner. Right to notice and hearing is implied.

39. The other serious challenge is to the proviso to Rule 5 of the Rules. Rule 5 contains a pious wish that at the time of redetermination of the rent of a land the Collector shall take care to keep the rent reasonable. The impugned proviso runs as follows - 'Provided that in any circumstances generally it should not be less

than 3 per cent of the market value of the land.'

40. It is obvious on a comparison of first proviso to Sub-section (4) of Section 23 and the proviso to Rule 5 that whereas the Act permits for redetermination of rent to the extent of zero to five per cent of the market value of the land, the Rules reduce the aforesaid margin effectively by requiring the rent to be redetermined between 3 per cent to 5 per cent of the market value of the land. The proviso is clearly in teeth of and contrary to the statutory provision in the first proviso to Sub-section (4) of Section 23 and is, therefore, fit to be declared as ultra vires of the Act.

41. Although a number of written submissions have been filed and large number of case laws have been cited but the other submissions and the case laws are not found relevant and necessary to be discussed in view of discussions made above.

42. As a result of the aforesaid discussions it is held as follows:

(i) The impugned provisions are within the legal competence of the State legislature.

(ii) Although described as rent, the impugned levy is in fact, a tax on land covered by Entry 49 of List II of the 7th Schedule to the Constitution.

(iii) The impugned tax on land is discriminatory because it is imposed only on a class of land owners i.e. raiyats with occupancy rights covered by Chapter V of the Act and not to other class of and holders covered by Chapters III, IV, VI and VII of the Act.

(iv) The denial to the occupancy raiyats the right to use their land in any manner of their choice is arbitrary, unreasonable and against Articles 14 and 19(1)(g) of the Constitution.

(v) The words- 'to the extent of 5 per cent' in first proviso to Sub-section (4) of Section 23 of the Act is bad in law on account of excessive delegation and abdication of legislative function by the legislature.

(vi) Rule 4 of the Rules is bad in law for excluding other permissible modes to determine the real market value of the land which is likely to result in unfair and unjust levy of rent / tax.

(vii) The proviso to Rule 5 is ultra vires the first proviso to Section 23 (4) of the Act.

43. In view of aforesaid findings it falls for determination whether the offending provisions of the Act can be severed and remaining provisions can be treated as valid and effective for the purpose of giving effect to the Amendment Act of 1993. The answer has to be in the negative because the offending provisions which have been found violative of Articles 14 and 19(1)(g) of the [Constitution of India](#) are main and central provisions authorizing charging of tax/ rent. Hence, the redetermined rent imposed by virtue of the impugned provisions of the Act and the Rules must be declared as void and inoperative.

44. As a result, the writ petitions succeed and are allowed accordingly. The entire assessment and levy of rent on the basis of market value of the lands under the impugned provisions of the Act and Rules are set aside and quashed.

45. There shall be no order as to costs.

J.N. Bhatt, C.J.

1. PREAMBULAR PROFILE.

1. I have had the benefit of reading the judgment of my Learned Brother, Singh, J., and also having enjoyed the discussions that I have had with him, I find myself to be broadly in agreement with the conclusion reached by him, subject to following additional materials and observations in this group of petitions under Article 226 of the [Constitution of India](#), questioning the legality, validity and Constitutionality of Sub-section (4) of Section 23 of the Bihar Tenancy Act, 1885 (Act 8 of 1987) ('Tenancy Act'), which came to be incorporated by the Bihar Tenancy (Amendment) Act, 1993 (Bihar Act 21, 1993) and also, resultant provisions in the 'Bihar Rent Refixation Rules, 1995' ('Rent Rules of 1995') under Section 23(4) of the Tenancy Act.

2. BROAD STATUTORY PROVISIONS OF THE ACT & RULES.

2. With a view to appreciate the merits of the challenged provisions of the Tenancy Act and the Rent Rules of 1995, it would be expedient to look at the broad propositions of relevant Law and Rules. The Tenancy Act' aims at to amend and consolidate certain enactments relating to the law of landlord and tenant within the territories under the administration of the State.

3. 'The Tenancy Act' applicable in Bihar came to be incorporated and enacted in 1885 with the above object. This Act is divided into 16 Chapters spread over in 196 Sections.

4. Chapter II deals with classes of tenants. Chapter III deals with 'tenure-holders' and enhancement of rent. In Chapter IV provisions for raiyats holding at fixed rates have been made. The provisions are also, made in this Chapter for the transfer of tenures and holdings and landlord's registration fees, whereas, Chapter-V deals with occupancy raiyats. This chapter is very important for consideration and determination, as well as, adjudication of the Constitutionality and Vires raised about the amended provisions of Sub-section (4) of Section 23 of the Tenancy Act and the resultant provisions in the Rent Rules of 1995, thereunder.

5. The non-occupancy raiyats are considered and provided for, in Chapter VI, whereas provisions have been made about 'Under Raiyats' in Chapter VII. Chapter VII A deals with restrictions on alienation of land by Protected Tenants and in Chapter VII B provisions came to be made for settlement of 'Waste Lands', whereas, in Chapter VIII provisions have been made as to the rent. In Chapter IX miscellaneous provisions as to Landlord and Tenants have been made. The provisions relating to record-of-rights and settlement of rents have been provided in Chapter X.

6. Chapter XI of the Tenancy Act provides provisions in five Sections with regard to non-accrual of occupancy and non-occupancy rights, and records of Proprietor's Private Lands, whereas, in Chapter XII Special procedure is provided for realization of Rent in certain circumstances.

7. Let it be mentioned that in Chapter XIII procedural mechanism is provided for recovery of rent by suit. In Chapter XIV certain restrictive provisions have been made for contract and custom. Limitation provisions are made in Chapter XV, whereas, in Chapter XVI, supplemental provisions including penalties and damages have been made.

8. In the present group of petitions, We are, undoubtedly, concerned with the amended provisions of Sub-section (4) of Section 23 of the Tenancy Act incorporated in Chapter V pertaining to the right of occupancy raiyats, as well as Rules made thereunder which are dealt with in the judgment of my Learned Brother.

9. Since the vires of the said amended provisions of Section 23(4) of Tenancy Act and Rent Rules of 1995 are under challenge in this group of petitions, it will be necessary first to refer the scheme and the frame, as well as, underlying object and purpose of those rules.

10. The Rent Rules of 1995 are in the form of delegated legislation. The Rules are framed in exercise of the powers conferred by Section 23 read with Section 189 of the Tenancy Act and Bihar Tenancy (Amendment) Act, 1993 (Bihar Act 21, 1993) by the Government of Bihar after previous publication, as required by Section 190 of the Tenancy Act, which came into force by notification G.S.R. 14, dated 1st October, 1996.

11. Rule 3 provides for filing of application to the Collector by a 'raiya' intending to utilise his land under Sub-section 23 of the Tenancy Act in prescribed form for prior permission for change of user. Rule 4 prescribes the method of fixity of Market value of the land. This rule is very important for consideration to appreciate the challenge of vires.

12. As per prescription made therein, the Collector on receipt of an application under Sub-rules (1) (2) (3) of Rule 3 is obliged to determine the market value of the land or part, thereof, on the basis of the sale price of the lands in the vicinity immediately preceding the date of the use of the land under Sub-section (4) of Section 23 of the Tenancy Act for the purpose not enumerated in Sub-section (2)

of Section 23 of the Tenancy Act, whereas, it has been provided in Sub-rule (2) of Rule 4 that if the basis of the fixation of market value of the land as mentioned in Sub-rule (1) is not available, the Collector shall determine the market value of the concerned land even on the basis of the sale price of similar land in the neighboring village/tola/mohalla/panchayat provided that, if such sale price is not available in the preceding 1st year of the use of the land, the market value may be determined even on the basis of sale price in the preceding 2nd or 3rd year.

13. Again, a provision has been incorporated in the Rent Rules of 1995 fixing manner for re-determination of the rent of land. It is provided that at the time of redetermination of the rent of a land the Collector shall take care that the redetermination of rent should be reasonable, provided that in any circumstances, generally, it should not be less than 3 percent of the market value of the land. In the substantive provision, rate of rent is fixed from zero to five percent, whereas, in Sub-rule (5) a provision by a proviso is incorporated which stipulates that in any circumstances, generally, it should not be less than 3 percent of the market value of the land.

14. There is a challenge, therefore, that this Rule- provision is ultra vires of the provision of the Tenancy Act and, particularly, the amended provision of Section 23(4) of the Tenancy Act.

15. Rule 6 of the Rent Rules of 1995 provides for prior permission for change of user of the land. Post facto permission can be granted on certain conditions as per the provisions of the Rule 7. There is also payment of double rent in the event of post facto/prior permission. Thus, the Collector is empowered to give post facto/prior permission for the change of user and is empowered to direct for payment of rent double of the redetermined rent for the period between the date of use of the land till the date of detection.

16. Again, an important provision is incorporated in Rule 9 referable to the revision of rent. It has been provided that after every ten years from the date of use of the land under the fourth proviso of Sub-section (4) of Section 23 of the Tenancy Act, the Collector after reassessing the market value of the land under Rule 4 of the Rent Rules of 1995, shall predetermine the rent of the land under Rule 5 of Rent

Rules of 1995. Rule 10 provides for procedure of appeal. The hearing and disposal of an appeal under Section 23(5)(c) of the said Act, shall be made as far as possible as per the procedure laid down in Order 41 of the Code of Civil Procedure, 1908.

17. The brief survey of historical background of the concept and law relating to 'property' and 'Tenancy' would be expedient at this juncture to appreciate the challenge made in this group of petitions, as well as, to formulate an idea of the stuff real property is made of and, also, partly to introduce some of the most important technical terms.

3. HISTORICAL CHRONICLES OF THE TENANCY ACT.

18. 'The Tenancy Act' has a historical background. There is a definite purpose and specific design in legislating the law relating to Tenancy in the State of Bihar.

19. Common Law concept in England has influenced the Tenancy Law in India. So far as historical chronicles are concerned, generally, it is believed that public has favoured the philosophy of Mr. Fearne as a 'Historical Legigraphical Chart of 'Landed Property in England' from the time of Saxons to the present day era, displaying the Tenures, mode of descent, and power of Alienation of Lands in England, at all times, during that period. The work of Mr. Fearne was first published in 1769 and afterwards in 1791. A person acquainted with the subject, or who uses it as a kind of Analytical Table to an approved author, whose work is amazing, and we will find it as a performance of great ingenuity and most minute accuracy. His book on landed property, concept and philosophy, titled as 'An Essay on the Learning of Contingent Remainders and Executory Devises' first published, in 1844, in London was very well appreciated and evaluated by several experts on 'Landed Property'.

20. Obviously, a Researcher would find some historical traces and tenets in the provisions of the Tenancy Act. In his classic analysis, he made good contribution in highlighting general divisions of the Estates into those which are vested and those which are contingent.

REAL ESTATE OR PROPERTY & TENURES AT COMMON LAW

21. The English law of real property, traditionally, described by Oliver Cromwell is justly recognised as being subject of great difficulty for the beginners, partly, because of interpreting the terms and, partly, because of complexity of the language which involves use of many technical terms.

22. In 'A Manual Of The Law of Real Property' by R.E. Megarry, this subject has been, succinctly/ examined and evaluated. The nature and idea of real property and tenure holdings is beautifully elucidated along with concept of 'Estate' and 'Tenure'.

23. The history of the law of property in land in general and England in particular can be divided into six periods to appreciate the challenged provisions hereunder. English Law of Land is relevant and material in adjudication of the challenged provision:

1. Formulation of principles.

2. Growth of Equity.

3. The Statute of Uses.

4. Development of the modern law.

5. Statutory reforms like

- (i) The unrepealed portions of the Law of Property Act, 1922.

- (ii) The Settled Land Act, 1925.

- (iii) The Trust Act, 1925.

- (iv) The Land Registration Act, 1925.

- (v) The Land Charges Act, 1925.

- (vi) The Administration of Estates Act, 1925.

6. Social control of land.

24. The meaning of real property, as well as, tenure and estate would play important role in appreciating and examining the challenge of constitutionality of the aforesaid provisions of the Tenancy Law and resultant Amended Rules.

25. Let it be mentioned, as is the case with so many expressions in English law, the explanation of term 'Real Property' is, also, historical.

26. In early law, property was deemed 'real' if the courts would restore to a dispossessed owner the thing itself, the 'res', and not merely give compensation for the loss. Therefore, if X forcibly evicted Y from his free hold land, Y could bring a 'real' action, whereby, he could obtain an order from the court that X should return the land to him. But if X took Y's sword or glove from him, he could bring only a personal action which gave X the choice of either returning the article or paying the value thereof. Consequently, a distinction was made between real property (or 'realty') which could be specifically recovered, and personal property (or 'personalty') which was not thus recoverable.

27. Nature has, thus, provided one division of property, namely, into immovables (i.e. land) and movables; the English division into real and personal property is similar with one important exception. In general, all interests in land are real property, with the exception of leaseholds (or 'terms of years'), which are classified as Personalty (Not Realty). At first, a dispossessed leaseholder had no right to recover his land from anyone except the lessor who had granted him the lease. Against third parties, he remained without remedy until late in the thirteenth century, when he was enabled to recover damages but not possession.

28. Not until 1468 was this rule seriously questioned, and when in 1499 it was finally decided that he might recover the land itself, leaseholds had become too firmly established as Personalty for this change to make any difference to their status. Thus, if a testator dies today, leaving a will giving all his realty to X and all his personalty to Y, the reason for the leaseholds being included in the property passing to Y lies in a rule which ceased to exist over 400 years ago, save and except, other Legislative Schemes and Provisions.

29. No doubt, one reason for this distinction is that in early times there were no opportunities for investing in stocks and shares such as there are today. Money was therefore, often employed in buying land and letting it out on lease in order to obtain an income from the capital. Further, the relationship between landlord and tenant was regarded as being mainly contractual, the tenant on his part agreeing to pay rent, and the landlord on his side agreeing to allow the tenant to occupy the land. These conceptions were so far removed from the feudal system of landholding that leaseholds remained outside that system and for a long time were hardly regarded as being rights in the land at all.

30. In short the landed property, may be classified in three types -

(i) Realty.

(ii) Pure personalty

(iii) Chattels real.

TREASURE OF TENURES AND ESTATES

31. Let it be mentioned that the basis of English Land law is that all land in England has been owned by the Crown. A small part is in the Crown's actual occupation; the rest is occupied by tenants holding either directly or indirectly from the Crown. The doctrine of 'Nulle terre sans seigneur' is very well known which means 'no land without a lord'. Thus, there were no 'allodial land' in England like that no land owned by a subject and not held of some lord.

32. History says that this position can be traced from the Norman Conquest. William I, regarded the whole England as his by conquest. To reward his followers and those of the English who submitted to him, he granted and confirmed certain lands to be held of him as overlord. These lands were granted not by way of an out-and-out transfer, but to be held from the Crown upon certain conditions.

33. Thus, Blacacre might have been granted to 'A' on the terms that he did homage and swore fealty, that he provided five armed horsemen to fight for the Crown for forty days in each year, and the like. Whiteacre might have been

granted to 'B' on condition that he supported the King's train in his coronation. A and B might each in turn grant land to other persons to hold of them in return for services. In days when land and its rents and profits constituted nearly the whole tangible wealth of a country, it was more usual to secure the performance of services by the grant of land in return for those services than it was to secure them by payment. The whole social organization was based on landholding in return for service.

34. It is, also, to be seen from the history that the services became to a certain extent standardised. Thus, there was one set of services (which included the provision of armed horsemen for battle) which became known as knight service, and there was another set (which included the performance of some honourable service for the king in person) which was known as grand serjeanty. Each of these sets of services was known as tenure, for it showed how the land was held (tenere, to hold).

4. BASIC FEATURES OF LAND DOCTRINE

35. There are, thus, two basic doctrines in the law of real property. These are known as

i) the doctrine of tenures; all land is held of the Crown, either directly or indirectly, on one or other of the various tenures and

(ii) the doctrine of estates: a subject cannot own land, but can merely own an estate in it, authorizing him to hold it for some period of time.

36. It will be, therefore, very easy to sum up in short that the term answers the question - 'How, is it held?', the estate the question 'For how long?' It is this doctrine of estates, coupled with the permanence of land as opposed to mere destructible chattels, which makes the law relating to land, so much more complex, than the law governing chattels. At common law, it can in general be said that only two distinct legal rights can exist at the same time in chattels, namely, possession and ownership. If A lends his watch to B, the ownership of the watch remains vested in A, while B has possession of it. But, in the case of land, a large

number of legal rights could and still can exist at the same time.

37. Thus, the position of Blacacre in 1920 might have been that A was entitled to the land for life, B to a life estate in remainder (i.e. after A's death), and C to the fee simple remainder. At the same time D might own a lease for 99 years, subject to a sub-lease in favour of E for 21 years, and the land might be subject to a mortgage in favour of F, a rent charge in favour of G, easements such as rights of way in favour of H, J and K, and so almost ad-indefinitum. These two doctrines of tenures and estates are considered in greater detail so as to appreciate challenge of the amended provisions of the Tenancy Law, as well as, resultant Tenancy Rules.

5. DOCTRINES OF TENURES

38. The main tenures which existed at common law may be classified as follows:

1 Free tenures:

A Tenures in Chivalry (or Military Tenures),

B Tenures in Socage.

C Spiritual Tenures.

2 Unfree tenures.

3 Miscellaneous tenures.

REDUCTION IN THE NUMBER OF TENURES

39. With a view to curb rich complexity of feudal tenures by statutes in three different stages spread over seven centuries, the effective and legislative measures have been made first, the creation of new tenures was prohibited next, a number of existing tenures were abolished; and finally, for all practical purposes all tenures were abolished except free hold, the modern name for socage.

40. Ancient background is, clear, before the period 1290 in respect of landed property. Under the feudal system after 1066, it was usually possible for new

tenures and tenancies to be created at the will of the tenant. Therefore, the doctrine of Quia Emptores, 1290, new tenures and tenancy could be created. However, two ideas were in conflict first, that tenants should be able to alienate their land freely, and secondly, that lords should be able to restrain alienations which injured them; but the fact that many persons were both lord and tenant prevented the conflict from becoming very clearly defined. Ultimately, free alienability triumphed, though in restricted form.

LAW OF LANDED PROPERTY IN GENERAL PRINCIPLES OF THE STATUTE QUIA EMPTORES.

41. This statute was further examined and changes came in view of Magna Carta, 1217. It made minor improvement in the position of the lords, but the important change was made by the statute Quia Emptores, 1290. In England, doctrine of Quia Emptores, 1290 is still in force and may be regarded as one of the pillars of the law of real property.

THE ENGLISH PROFILE

6. THE TENURES ABOLITION ACT, 1660.

42. By the seventeenth century, the feudal system of land-holding had long ceased to accord with realities, and statutory reform was badly needed. The Tenures Abolition Act, 1660, confirmed a resolution of the Long Parliament made on February 24, 1646. As from this date, the statute abolished grand serjeanty and knight service, and provided that land formerly held by such tenures should be held forthwith in free and common socage. The statute also abolished many burdensome incidents, including aids for the knighting of the lord's eldest son and the marriage of his eldest daughter, wardships, marriages, primer seisin, ouster le main, and most fines for alienation; and it abolished the Court of Wards and Liveries which the Crown had set up to enforce some of these incidents against tenants in capite.

43. The Crown, which was always Lord and never-tenant, was compensated for its loss of revenue by being granted a tax on certain beverages. Fixed rents, heriots

and suit of court were expressly saved, and reliefs were restricted to those payable for land of socage tenure, i.e. one year's rent. The general abolition of homage meant the disappearance of any remaining tenure in homage ancestral.

44. It could very well be visualized from the aforesaid aspect that the principal results of the statute of 1660 can be summarized thus:

(i) The Court of Wards and Liveries and a number of burdensome incidents were abolished, whatever the tenure of the land.

(ii) All tenures in chivalry and homage ancestral were converted into free and common socage; but the honourable incidents of grand sergeanty were expressly preserved.

(iii) In other respect, tenures remained unaltered. Thus, petty sergeanty, being a form of socage, still existed, and the same apply to burgage.

7. THE FRAME OF THE 1925 LEGISLATION

45. Before, 1926, provision had been made by statute for the enfranchisement of copyholds, i.e. the conversion of land of copyhold tenure into socage. The Copyhold Acts of 1841, 1843 and 1844 provided for voluntary enfranchisement, i.e. enfranchisement where both lord and tenant agreed. The Copyhold Acts of 1852, 1858 and 1887 (consolidated in the Copyhold Act, 1894) enabled either lord or tenant to secure compulsory enfranchisement. But apart from any proceedings taken under these Acts, the various tenures remained substantially unaltered until the legislation of 1925 came into force.

8. SUMMARY OF THE PRESENT LAW

46. In English system, there is only one feudal tenure left today, namely, socage, and now called free hold. All feudal incidents have disappeared, except for land formerly held in grand sergeanty, petty sergeanty, or copyhold where some traces of the former tenure remain. Except in the case of land formerly copyhold, mesne lordships have nearly all disappeared, for it is many years since there were any enforceable rights to preserve evidence of the relationship of lord and tenant and

consequently the land is presumed to be held directly of the Crown. Yet, despite the sweeping changes made by statute, 'the fundamental principles of the law of ownership of land remain the same as before the legislation of 1925. Land is still the object of feudal tenure; the King remains the lord paramount of all the land within the realm every parcel of land is still held of some lord and the greatest interest which any subject can have in land is still an estate in fee simple and no more.

47. Therefore, the title 'tenant in fee simple' is still the technically correct description of a person who is popularly regarded as the owner of the land. Nevertheless, as will be seen, for all practical purposes of ownership a fee simple 'differs from the absolute dominion of a chattel, in nothing except the physical indestructibility of its subject'.

48. It would be interesting to refer to classification of estates.

Under the English law estate were divided into two classes:

1. Estates of free hold;
2. Estates less than free hold.

9. ENGLISH CATEGORY OR CLASSES OF LAND

49. The estate of free hold signifies that there are three estates of free hold:

TRINITY

- (a) Fee simple
- (b) fee tail; and
- (c) life estate.

THE SOCIAL CONTROL OF LAND

50. During the first half of the 20th Century, great changes have been made in the law governing the use and enjoyment of land. These changes are quite distinct

from the property legislation of 1925, which concerned the ownership of estates and interests in land rather than the fruits of enjoyment. Further, they are piecemeal and unsystematic, whereas the 1925 legislation was unified. In addition to the changes in the law, the greatly increased burden of taxation has had a marked effect on the dispositions which landowners wish to make. The changes which can here be considered only in outline, may be grouped under four main heads, namely,:

1 Increased taxation.

2 Planning control.

3 Agricultural control.

4 The protection of tenants.

10. JUDICIAL REVIEW; RELEVANT LEGAL PARAMETERS FOR TESTING LAW

51. History, which has been described as a chronicle of the crimes, follies and misfortunes of man, bears witness to the process of change and transformation which goes on all the time. However, one factor has remained constant throughout the story of human civilization. Right from the earliest times up-to-date, the majority of mankind at any given moment in world history have always lived under conditions which are the negation of democracy, of the rule of law and of basic human freedoms. Even today, whether out of a total world population of more than 6000 millions, the majority of men do not enjoy the basic human freedoms as found in one Research Work. India is lucky enough to have a Constitution in which the fundamental rights are enshrined and which has appointed an independent judiciary as the bulwark of the citizens' liberties against the forces of authoritarianism. In a democracy, the rule of a fearless independent judiciary is indispensable and cannot be overemphasized.

52. In the process of judicial review of legislative and executive action, the courts pick out the golden thread of reason and meaning in a law; they shape and mould the law, reveal its finenesses and nuances, smooth the angularities, strike down the bad law or illegal action, and, most essential of all, exert the strong moral

forces of restraint in times when expediency is all.

53. The provision for judicial review thus has been, foresightedly, in-built in our Constitution, in order that the integrity of the Constitution may be preserved against any hasty or ill-considered changes, 'the fruit of passion or ignorance'. As Justice Frankfurter has rightly said, man being what he is cannot safely be trusted with complete power in depriving others of their rights. Had it not been for the prescience of our Constitution - makers, our fundamental rights and liberties would by now have been in sorry tatters. The Supreme Court and the High Courts have rendered memorable and enduring service to the Republic during the last more than 50 years. They have upheld and justified the Fundamental Rights and prevented the encroachment of the State upon the rights of the citizens. The vast majority of cases which come before the Supreme court under the Constitutional law are cases which help to preserve and maintain, in the ultimate result, the individual rights of the small man, the common man, against the predatory instincts of the State.

54. This treatise discusses Judicial Review of Legislative Acts in the context of its history and, also, in its theoretical and practical aspects.

55. In a State where the constitutional supremacy prevails the Constitution can remain a living moral and intellectual force only by the system of 'Judicial Review'. The subject of Judicial Review is of paramount importance and its critical, analytical and objective study is useful, as well as, interesting. To undertake research in the field of Judicial Review is a matter of great responsibility. Nevertheless, Judicial Review being the main weapon of democracy, the study and research in this area are highly essential and efficacious in the modern world. Through the process of Judicial Review the court has succeeded in moulding the governmental process and regulating the social and economic structure of the society.

56. The history of the practical operation of Judicial Review is a matter of abundant interest and curiosity and pruning out of the unconstitutional legislation through constitutional litigation is the most effective method of upholding the Constitution. Cooley rightly and warmly has said - 'Legislators have their authority

measured by the Constitution, they are chosen to do what it permits, and nothing more and they take solemn oath and support it.' The law which is in conflict with the Constitution is no law and the Constitution has imposed a solemn duty on the judiciary to determine the legality of all laws.

57. The process of judicial scrutiny of the legislative Acts on the touchstone of the Constitution is technically called 'Judicial Review'. The doctrine of Judicial Review is the enforcement of the rights assured and guaranteed under the Constitution through Constitutional remedies. It is one of the great assets of federalism, and is the protector of the fundamental rights. It is a living product of Democracy and is a creative force in its evolution. Its historical and philosophical approach leads to the enactment of only legal laws based on ethical and rational thinking, which protects and maintains individual liberty and freedom, create social and economic harmony and has the glorious role of reconciling political imbalances and despotism by establishing constitutional balance and justice in the society.

58. The fundamental object of judicial review is to exert a great moral force upon the legislature to keep it within the limits of the Constitution and to save the people from the democratic tyranny. But to ensure an effective working of judicial review is a necessary to know the history of the Constitution concerned, geographical position, social structure, economic development, racial composition, the history of the impugned legislation, necessity of its, enactment and the ethical background, as well as, its social effects, and also its impact on individual citizens. All these combine to facilitate to a right conclusion about the constitutionality of law in the process of judicial review. Where the system of judicial review prevails, it has contributed greatly to the constitutional development of the country. The legislature has to enact laws forsaken of tyranny and in conformity with the will of the sovereign people, embodied in the Constitution. Legislative Acts which are repugnant to the will of the sovereign people that is against the Constitutional limitations, restrictions and prohibitions are void and have no legal sanctity.

59. Law cannot claim obedience unless it is for the benefit of the society and resistance to law is the fundamental human instinct, if it be not conducive to the human good. Harold J. Laski has remarked - 'Its claim to obedience depends upon

what it does to the lives of the individual citizens.... The right to resist the law is the reserve power in the society....' (Harold J. Laski, *An Introduction to Politics*, P. 41, George Allan and Unwin Ltd., London, 1960). The most beneficial and effective method of resistance to undesirable and unconstitutional law is through the Judicial organ of the State by judicial review. J.C. Shah, Ex-Chief Justice of India in his Dorabji Tata Memorial Lectures has rightly observed that India has not adopted the British doctrine of the supremacy of Parliament and rights of Parliament are restricted by clear Constitutional mandates and so the courts are competent to invalidate any trespass by Parliament upon fields outside its authority (Shri J.C. Shah, Ex Chief Justice of India, *Judicial Review of Action, Legislative & Administrative in India*, Dorab Tata Memorial Lectures, delivered in April, 1971. *The Search Light*, Patna, April, 16, 1971 Page 6).

60. The Courts, however, adopt judicial restraint in discharging their functions of judicial review in order to maintain harmony between the judiciary and the legislature. 'The power of judicial review of legislative Acts vested in the High Courts and Supreme Court must be exercised with wisdom, and restraint and not in a spirit of cold war between Parliament, or State Legislatures and courts. Noninterference with the view of the majority in Parliament with regard to what is reasonable and interference with what is prohibited by the Constitution may perhaps, be harmonious path for the future.'

(From the Letter to the author dated 19th April, 1971, by Shri G.N. Vaidya, Judge, High Court, Bombay.)

61. The Courts in India have great constitutional responsibility and they cannot be slow in determining the unconstitutionality of an impugned statute as they are guardians and sentinels of the rights of the people. Of course, it cannot be denied that the harmonious workings of the judiciary and the Legislature always advanced the cause of democracy. 'In any Written Constitutional, Sovereignty vests in the people as represented by three wings- the executive, the judiciary and the legislative and no wing can claim supremacy over any other wing. Their spheres are well defined with balances and counter-balances. There may be occasions for a conflict.

62. If they are solved in a spirit of the 'Rule of Law' democracy survives.'(From the Letter to the author dated 8.5.1971 of Shri P.K. Tare, Ex-Chief Justice of Madhya Pradesh High Court).

63. In the democratic federal State the court is considered to be the sole arbiter of the Constitution and is the authoritative interpreter of the will of the sovereign people. Such work of the judiciary with the co-operation of the members of the bar and supported by the sovereign people is nothing but developing of the cause of democracy in the Republic of India. M.C. Setalvad has said ' The integrated and independent judiciary to which our Constitution has entrusted the life and liberties of the subject is at once a guarantee and bulwark of the freedom of the subject' (M.C. Shetalvad, the Indian Constitution, 1950-65 P. 35, University of Bombay, 1967 (Kashi Nath Tribak Telang Lectures).

64. The judiciary under the power of the judicial review has tried to relief the people of the legislative tyranny. But the problem of judicial review in the Indian democracy needs rejuvenation. In India, judicial review should not be allowed to depend merely upon the accident of litigation. The tradition of judicial self restraint requires some workable change. Certain innovations in the scope of judicial review also requires attention, and as such, in India, the role of the Supreme Court and of the High Courts is that of nation-builders. They have to evolve indigenous and more democratic system of Judicial Review, which may be helpful in lessening legislative tyranny and social tensions. The Judicial version of the Constitution enables the citizens of India to live in a free and just society with pride and dignity and as such the strengthening of Judicial Review may be very luminous efforts on the part of the Indian judiciary to articulate with glory and certainty the aspirations of the people. The task of Judicial Review for Constitutional Judges is, really, heavy and onerous, but the working of Judicial Review with vigilant and searching mind greatly lightens the burden.

65. The Legislature is not the sole judge of its law-making. All legislative acts are liable to be tested on the touch stone of the Constitution, Judicial Review is a great weapon, not only for the enforcement of the Rule of Law, but also for the establishing and strengthening of the Reign of Law, upon which a democratic.

Constitution is founded. Democracy cannot prosper if the Rule of Law and universal ideal of justice are abrogated, and the fundamental rights and other constitutional limitations and restrictions are allowed to exist only in theory. Chief Justice Earl Warren of America observed, 'We have in fact accepted not only the Rule of Law, but through our unique practice of Judicial Review of legislation, the Reign of Law.' (The public papers of Chief Justice Earl Warren edited by Henry M. Christman, p. 227,)

66. In the constitutional history of the world the first written Constitution which envisaged Judicial Review saw light in 1787, in the United States of America. Although no specific provision of Judicial Review was incorporated in the Constitution, the field for Judicial Review was, already, pregnant with its seeds. Chief Justice Marshall gave practical and definite shape to Judicial Review in 1803 in his epoch - making decision of *Marbury v. Madison* 1 Cr. 137 (1803).

67. Thereafter, the Supreme Court of the United States of America strengthened this doctrine by a number of splendid constitutional decisions.

68. The Republic of India has a Democratic Federal Constitution, which is the Supreme Law of the Land, and all other laws are subject to this Supreme Law. In the nascent democracy of India the legislative career is the process of maturity. A large number of union and State laws have been enacted in response to political, social, and economic urges of the people, but a considerable number of them have been proved to be constitutionally invalid. The tendency in the growth and prolixity of the unconstitutional legislation in India unquestionably signifies a matter of great concern and it requires alertness and determination to cultivate the habit of enacting laws in conformity with the Constitution.

69. The Constitution makers of India very wisely incorporated in the Constitution itself, the provisions of Judicial Review so as to maintain the balance of federalism, to protect the fundamental rights guaranteed to the citizens and to afford a useful weapon for equality, liberty and freedom. The system of Judicial Review in India has not only a legal basis but it has also a philosophical and ethical foundation, and the vitality of this system stands mostly on the historical perspective, social and economic view of life, and, also, on the persuasive

conscience of the judiciary. Forced obedience to unjust and arbitrary laws can itself be treated as an impediment and unreasonable limitation on liberty. Locke is of opinion that there is no freedom where obedience to positive laws is mandatory, whether they are just or unjust.

70. Taking a very rigid view of the scope of Judicial Review, the Judicial power to annul unconstitutional Acts of the legislature may perhaps be justified in confining the method of scrutiny to test the legislative acts, merely, on the plain words of the Constitution, divorced from the moral and philosophical backgrounds. But, such a stinted approach would not always be helpful, and some elasticity in the system of Judicial Review appears to be expedient and necessary in the present complex Socio-economic conditions and developing political uncertainty in this country. Even A.L. Goodhart representing the English concept and sentiment of law, where the system of Judicial Review of legislative Acts does not prevail, remarks that law which is divorced from morality tends to wither and becomes ineffective.

71. It seems manifestly clear that for the ultimate benefit of the governed, Judicial vision in Judicial Review of legislative Acts has, necessarily, to be wider and flexible for the preservation of liberty and freedom. The Indian Constitution has worked for the last more than five decades and in this period of extreme earnestness Judicial Review has assumed several phases. The political pressures have been counter-balanced by Judicial verdicts tending to create an atmosphere of constitutional harmony. Thus, on a pragmatic approach, Judicial Review is unavoidably necessary in a developing country like India, wherever there is a constant danger of legislative lapses and appalling erosion of ethical standards in the society.

72. The absence of judicial review in the Indian Constitution might have created extreme social and economic revolutions leading to the complete annihilation of Democracy. Thus, researches in the field of Judicial Review, have the practical utility of invigorating and enlivening the cause of democracy. They may reveal better understanding of the nature and process of the working of Judicial Review and may, also, relieve socio-economic tensions in the nation's life; this may also tend to create a better democratic atmosphere in the country.

73. The fundamental aspect of the system of Judicial Review has a moral and ethical background, which leads to the creation of a form of society able to generate harmonious adjustment between the government and the governed and to evolve an ideal and well-developed socio-economic structure in the country. In India, so long as constitutional democracy prevails, Judicial democracy is sure to have a firm stand. The Indian courts have to rise to the occasion and to meet the new circumstances to relieve the citizens of India of legislative and executive impositions repugnant to constitutional rights, the national spirit and the natural liberties of the people.

74. The powers of the Indian courts are wider in this respect than those of the American Courts. But the present Constitutional amendments may have some diminishing effect. It may not be out of place to mention that strengthening of the Indian democracy is possible only when we have a better and real understanding of the working of the Supreme Court, as well as of the High Courts of India, in the region of the determination of the constitutionality or otherwise of legislative Act. The legislators are not to be worried about such function of the courts, which the Constitution obliges them to discharge and the Courts have also to be very firm in their obligations. The executive and the members of the legislature have often failed to appreciate this solemn constitutional obligations of the judiciary, as is apparent from the observation made by M.C. Setalvad. 'Though the power of Judicial Review was implicit in the [Government of India Act, 1935](#), and had been frequently exercised by the courts, the average politician has not apparently fully appreciated its implications. The power was however expressly conferred by the Constitution and the Constitution went further in enabling courts to act, as it were, in a supervisory capacity over the legislatures, enabling them to judge whether legislation was in certain circumstances reasonable in the general interests of the public or not. When, after the Constitution was enacted, this power came to be exercised by the courts, there was an unusual ferment among politicians and legislators, who thought that the courts were trying to arrogate to themselves powers which they did not possess.... The legislator continued to be agitated about what he thought to be an invasion of his right' (M.C. Setalvad, My Life - Law and other things, PP 174 - 175, N.M. Tripathi Pvt. Ltd., Bombay, 1970).

75. But the recent decisions of the Supreme Court made it clear that the judiciary is firm in its constitutional obligations; and for the ultimate benefit of the nation, it will always continue to be the guardian of the rights and liberties of the citizens of India. It was, rightly, observed in the very beginning of the functioning of the constitution'. If, then the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution.... While the court naturally attaches great weight to the legislative judgment it cannot desert its own duty to determine finally the constitutionality of an impugned statute (State of Madras v. V.G. Row : 1952 CriLJ966 (Patanjali Shashtri, CJ.).

76. It is, rightly, said that the ignoble passions are sometimes in full blast and gross shortsightedness of policy of political operators crystallize in distortion, and distortions resulting in a quarrel with the sacrosanct Constitution, the Supreme law of the land, the legislature losing its former luster and its significant role, confrontation between the rival interests trying to circumvent even the legal course. It is in this context, the balanced role of judiciary in a parliamentary, democratic secular, socialist, welfare State like ours, assumes higher significance and wider ramifications.

77. The doctrine of 'ultra-vires' is invoked in these petitions raising challenge against the legislative action in enacting the Impugned Act enacted by the State of Bihar. Ultra vires is a Latin phrase, which means, beyond power transcending authority and is frequently employed in relation to Acts or enactments of the authority or Legislature in excess of their constitutional or statutory rights or jurisdictional sweep. Thus, ultra-vires' means an act performed without any legal authority to act and action beyond the scope of the powers of the decision making authority and beyond the scope of legal sanction.

78. Initially, in common law, categorization of the grounds for judicial review and the nature of any remedy available from the courts depended upon the characterization of the power exercised by the body under review. The repository of the power under review is supposed to act judicially and legally. While exercising the said power, there are supposed to be separate grounds for review

and remedy. The concept and philosophy of judicial review is widening. It can be used against the judicial error and error of law within the jurisdiction and such exercise is reviewable.

79. The doctrine of jurisdictional error contemplates existence of error of law within the power, whereas, the doctrine of 'ultra-vires' permits no error of law within the power. Sometimes, the term simple 'ultra -vires' is used to describe action which is beyond the extent of what has been authorised and extended, 'Ultra-vires' is used to describe actions of the-authorities within the power granted, but otherwise unlawful. At times, the problem of 'ultra-vires' is tested upon judicial review even with the help of Wednesbury's reasonableness.

80. Judicial review is a great weapon in the armory of administration of justice. The doctrine of judicial review is an integral part of judicial and constitutional process and mechanism. Judicial review has two important functions; (i) testing or review of legitimizing Governmental and Legislative actions (ii) to protect the Constitution against any undue encroachments by the Government. Both these functions are inter-related. Justice Douglas characterizes judicial review as 'tailoring an Act to make it constitutional' and explains further that if construction of the Act is possible that will save from being constitutionally infirm. The court will adopt that construction. This is a part of judicial strategy in deciding the constitutional controversies.

81. When court is faced with several alternative Interpretations of constitutional provision, it would choose one of these, as in one sense, it performs a law making function, that is branded as Judicial legislation. The primary function of the Court is to settle dispute and dispense justice. The Court constitutes dispute resolving mechanism in many countries including India with written Constitution, there prevails the doctrine of Judicial review. It means that Constitution is the Supreme law of the land and any law inconsistent therewith is 'ultra-vires' or void. The Court of law has to perform the role of interpreting and expounding the provisions of the Constitution and exercise of power and declare any law or administrative action which may be inconsistent with the Constitution as unconstitutional.

82. In so far as judicial review of legislative action, as in the present case is concerned, we deem it necessary to place on record, and herald the celebrated and well-known jurisprudential principles, and promising and pioneering perceptions of new-classic Constitutionalism.

(1) At first instance, there is a presumption in favour of the constitutionality of the statute and initially the onus of proof of its unconstitutionality lies, on the person who challenges it.

(2) Thus, where the validity of the law made by the competent legislature is questioned in a Court of law, that Court is bound to presume in favour of its legality, validity and constitutionality and unless on the face of it, palpably, is spelt out wrong and illegal.

(3) Equally true is that while considering the validity of a legislation, the Court will not consider itself circumscribed or restricted to the pleadings of the State or the parties and would be free to satisfy itself whether under any provision of the Constitution or law it can be sustained or not.

(4) The validity of the legislation is not to be judged merely by affidavits filed on behalf of the parties but by all the relevant circumstances which the Court may ultimately find and more specifically by what may be gathered including from what the legislature has itself said, its history and object, etc. and in the backdrop of factual and legal profile.

(5) In order to sustain the presumption of constitutionality, the court may take, into consideration matters of common knowledge, matters of common report, history of times and may assume every set of facts which can be conceived existing at the time of legislation.

(6) At times the Courts have departed from the normal rule of presumption of constitutionality when on the face of the impugned statute, there is no classification at all and no attempt made to select any individual with reference to any differentiating attribute peculiar to it and not possessed by others. The Courts may not let the State depend on the presumption in favour of the validity of

enactment under Article 14 of the Constitution in a special and peculiar panorama and profile of the case and even if need be, from pre-files.

(7) The Courts usually adopt a liberal attitude towards socio-economic legislation. At times, in case of economic legislation, the Courts feel more inclined to judicial deference to legislative judgment than any other areas, where, fundamental human rights and larger public interests are involved.

(8) The courts are also not concerned with the need or propriety of legislations. The function of the judiciary is not to project or canvass the legislative judgment or to hold the impugned judgment to be ill-advised or unjustified. The main anxiety of the Court in determining the validity of the legislation should be, to see whether the law in question transgresses any constitutional restrictions or any statutory limitations imposed on the legislative jurisdiction and parameters.

(9) The doctrine of reading down or recasting the statute can, also be considered to be applied in limited situations for the purpose of saving the statute from being wholly struck down on account of its some provisions being unconstitutional i.e. partial unconstitutionality.

(10) The grounds for striking down an Act are only two:

(i) lack of legislative competence which is not the question or issue before us in this petition and

(ii) violation of fundamental rights or other constitutional or legal provisions.

(11) The entire gist of the grievance in this group of petitions is the constitutional challenge against the impugned Act, mainly, on the ground of being violative of the constitutional provisions of Articles 14 and 19. It is, therefore, necessary for us to examine this aspect with deeper probe, and inner evaluation.

(12) The traditional approach has been to focus on whether the impugned action or Impugned Act is 'ultra-vires', substantively or procedurally, and if yes, to provide a remedy against such an impugned action or the Act which is 'ultra-vires' and it is the core of the whole process of judicial review.

(13) Few institutions reveal the attempt of our times, as nearly as judicial review of the constitutionality of legislation. Written Constitutions and the subordination by the Courts of statutory law to those Constitutions, represent innovations with deep philosophical roots. From the earliest times, men have sought to create or discover a hierarchy of laws, and to guarantee these hierarchies, indeed this search is one aspect of man's never ending attempt to find something immutable in the continuous change, which is his destiny. Laws change, but the law must remain with its fundamental values. A view which contravenes the highest law is not at all a law.

(14) Another characteristic of modern constitutionalism, beyond the desire to incorporate immutable ideals into a positive law, shows a similar convergence of natural law and positivism. This trend is specially apparent in the context of judicial review. The Constitution expresses, 'positivisation' or higher values; judicial review is a method for rendering these values effective and the operative method is instrument of the movement towards harmonization and of the search of recognizable and acceptable values and cultures. It is linked together and form an integral part of new dimensions, dynamics and neo-direction in modern jurisprudence.

(15) Judicial review of the constitutionality of legislation reveals and represents an exciting and perplexing encounter between legislature and Judge, between statute and judgment. However, judicial review is but a part of much larger whole, if one defines the constitutional justice as that can be achieved and in which the citizens may trust their Government to uphold certain rights considered inviolable. It is clear that judicial review of enactments is only one way of attaining this goal in a happy State.

(16) All actions of the State or its authorities, i.e. bureaucracy, legislation or administrative domains, ought to be carried out, compatible to the constitutional provisions and, also, within the defined limits and earmarked parameters prescribed by the law and the constitutionalism. It is very evident from our Constitution that the power of judicial review, is, therefore, one of the basic features of the Indian Constitution. Our Constitution has provided an independent

mechanism of judicial administration which has been vested with the power of judicial review to determine and decide the legality of the executive action and the authority of enactment passed by the legislatures.

(17) It must, therefore, be remembered that the judiciary has constitutional and solemn duty to check and keep the different branch of State Administration within the limits of their powers, conferred upon them by the Constitution. Articles 32 and 226 of the [Constitution of India](#) confer judiciary with the power of judicial review. It is, therefore, clear that judiciary is the guardian and has to uphold the constitutional values and to enforce the constitutional limitations. Undoubtedly, the power of judicial review is one of the significant parts and parcel of our constitutional mechanism. Judicial review in our country relates and embraces and is comprised of three main aspects: (1) Judicial review of legislative action; (2) review of administrative action and (3) review of judicial verdicts.

(18) Obviously, every classification is, in some degree likely to cause some inequality and that, ipso facto, is not enough to void a legislative permissible exercise. If a legislation deals equally with members of a well-defined class, it is not prohibited or obnoxious and it is not open to the charge of denial of equal protection or breach of equality on the ground that it has no application to other persons.

(19) What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. The proposition of law on this score is very well established since 1952 on the anvil of judicial review and lucidly emanated in *Budhan v. State of Bihar* : 1955 CriLJ374 . Till date, if the legislative body takes care of reasonable classified persons for legislative purpose and if it deals equally with all persons belonging to 'a well-defined class', it is not open to challenge in the guise of denial of equality or equal protection of law contending that the law does not apply to persons after the cut-off date. Of course, to pass the rest of permissible classification following two conditions must be established:

(i) That the classification must be founded on intelligible differentia which distinguishes persons or things that are grown together from others left out of the group and

(ii) That the differentia must have a rational relation or direct nexus to the purpose and objects sought to be attained by the impugned statute.

(20) Thus, what is required is, that there ought to be nexus between the basis for classification and the design and desideratum of the impugned Act sought to be achieved as held in *Kedarnath v. State of West Bengal* 1954 SCR 30. It is also not necessary that there ought to be scientifically perfect or logically complete nexus like precision of clock or principles of geometry.

(21) In the event of challenge against the legislative action of a legislature on the basis of equality and equal protection, the question for determination is not whether it has resulted in equality, but whether there is some difference which bears just and reasonable relation to the purpose and object of the legislation. Needless to reiterate that mere differential or inequality treatment, ipso facto, does not amount to dissection within inhibition of equal protection doctrine as provided in Article 14 of the [Constitution of India](#). Reasonableness is to be adjudicated with reference to the purpose and object of the legislation and not on spasmodic sentiments or moral feelings of fanciful perception.

(22) The basis of classification which can be held to be permissible is not possible to exclusively articulate or no specific criteria could afford reasonable basis for classification in all cases. Obviously, it depends on the purpose and design of the legislation in view and whatever has a reasonable relation to think of the legislation or reasonable basis for classification of the objects coming under the purview of the enactment.

(23) Therefore, the basis of classification has to be taken into consideration, it may be geographical, historical, difference in times, socio-economic considerations, law and order situation, so on and so forth. The anxiety of the Court should be, whether the impugned classification in the Act or the legislative exercise has led to any violation of the provisions of the Constitution or whether, such legislation can be condemned as arbitrary, improper or irrational? Whether a law of general application can be challenged as discriminatory as it has been vehemently submitted in this group of public interest petitions, merely because the object of its enactment was to benefit a particular class of individuals.

(24) Article 13 provides that no law shall be inconsistent with or in derogation of fundamental rights. Article 13(1) deals with pre Constitution laws and provides that laws in force before the commencement of the Constitution, in so far as, they are inconsistent with the provisions of the fundamental rights, shall to that extent of such inconsistency be void. Whereas, Article 13(2) provides that the State shall not make any law which takes away or abridge the fundamental rights and any law made, in contravention shall to the extent of contravention be void. It is, therefore, very clear that the provisions of the Impugned Act are required to be examined in the light of the provisions of Part III of the [Constitution of India](#) providing for fundamental rights.

(25) The terms 'legislative facts' and 'adjudicative facts' came to be used by Prof. K.C. Davis in his book on Administrative Law Treaties and Authority on American Administrative Law, whereas, Dr. H.W.R. Wade has pointed out distinction in somewhat formidable terms, which on inspection came to be close relative of old friends or old enemy, the distinction between the question of policy and question which must be determined objectively. Therefore, when the Legislature decides to enact a law, it has an object and policy in contemplation which is to be carried out by the Legislature. The evolution of the policy is based on many factors, such as, socio-economic conditions. It is very well, now known that the administration, no less than the Legislature has been empowered to Act in its discretion in the matter of policy. Justifiability of such an aspect is very much circumscribed. It is only the existence of the facts on which the policy is based, that is to be established. If the action based on such policy is challenged, the sufficiency of those facts to support the policy has to be shown.

(26) The constitutionality of the statute has to be determined on the totality of its provisions. A law has to be judged on the constitutionality and the generality of its provisions which is a celebrated principle and not by freaks and exceptions as held by the Hon'ble Apex Court in R.S. Joshi v. Ahit Mills Limited 1977 (40) STC 497. Imperfection only does not expose an Act or provisions to invalidity, despicably, that relating to socio-economic or affecting law and order situation. It must be remembered that legislation is directed at practical problems. Socio-economic mechanism is, highly, sensitive and complex. Many problems are singular and

contingent. Laws are not abstract proposition and do not relate to obstruct and are not to be measured by abstract symmetry. Several legislation, particularly, in socio-economic matter are essential and based on experiments or experience or what one made on trial and error method and that it cannot provide for all possible situations and anticipate all possible abuses or misuses.

83. The summary of other propositions and challenged provisions is lucidly made in the judgment of my Learned Brother, as well as, conspectus of arguments and reasons. It is, therefore, not necessary to reiterate the factual profile in order to appreciate the rival contentions. An attempt is here, therefore, made to highlight the additional relevant legal material and historical chronicles and background with a view to appreciating the merits of the writ petitions questioning the vires, legality, and constitutionality of the aforesaid provisions, as well as the issue of legal competence on the ground of being violative of the main provisions of the Tenancy Act and the constitutionality of the provisions of Articles 14 and 19(1)(g) of the [Constitution of India](#).

84. The rival submissions have been critically analyzed by my Learned Brother in his judgment. Therefore, it may not be necessary to reiterate the same grounds. My learned Brother has also dealt with Law of Land in India, in general, and in the State of Bihar in particular. Therefore, I deemed it expedient to highlight the additional statutory profile of the Tenancy Act and some of the principles relating to Law of Land, as well as, English Law of Landlords and Tenants along with relevant provisions incorporated in the [Constitution of India](#), in foregoing discussions.

85. When the delegated legislations are under challenge, the tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislations. In order that delegated legislations can be struck down, such legislation must be palpably and manifestly arbitrary. The concept of equality as envisaged under Article 14 of the [Constitution of India](#) is a positive concept which cannot be enforced in a negative manner. When benefit is extended to some persons in an illegal and irregular manner, the same cannot be claimed by others on the plea of equality.

86. The concept of equality is an inherent limitation arising from the very nature guaranteed under the Constitution and those who are similarly circumstanced are entitled to equal treatment. If a rational classification was made, equality is not violated. Doctrine of discrimination is founded upon existence of an enforceable right. If one is discriminated and denied equity as some similarly situated person had been given the same relief, Article 14 can be applied only when invidious discrimination is meted out to equally similarly circumstanced without any rational basis or relationship in that event.

87. Article 14 of the Constitution prohibits discriminatory, confiscatory and arbitrary legislative power. No doubt, it does not prohibit reasonable classification and for this purpose even one person or group of persons can be a valid class.

88. As far as lack of classification or basis of classification are concerned, qua Article 14, it has to be shown by the challenger that either there is lack of classification or it is discriminatory, as otherwise, law is presumed to be legal and valid.

89. Article 14 prohibits class legislation, it does not forbid reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on intelligible differentia which distinguishes persons or things that are grouped together from those left out of the group and that the differentia must have rational relation to the object sought to be achieved by the enactment in question.

Essential legislative functions cannot be delegated but where the law lays down the principles and affords guidance with the subordinate law making authority details may be left for being filled up by the executive or by other authorities vested with quasi-legislative power. The power to fix a rate of taxes is an essential legislative function and, therefore, unless the subordinate law-making authority is afforded guidance by the policies being formulated, principles enunciated and standard laid down the legislation will suffer from vice of excessive delegation and would be void, arbitrary, and unconstitutional.

90. The reasonableness, concept of arbitrariness or excessive delegation issue will have to be decided both from the procedural and substantive aspects. No body can expect that it should not be bound by processual preciousness or jurisprudence of remedies. The broad criterion is whether the law strikes a proper balance between social control on one and the right of the individual on the other hand. The Court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time.

91. Before concluding, I deem it expedient to refer the following observations made in paragraph 102 in the judgment of the Hon'ble Apex Court in the case of I.R. Coelho (dead) by L.Rs. v. State of Tamil Nadu : AIR 2007 SC861 :

102. Regarding the status and stature in respect of fundamental rights in Constitutional scheme, it is to be remembered that Fundamental Rights are those rights of citizens or those negative obligations of the State which do not permit encroachment on individual liberties. The State is to deny no one equality before the law. The object of the Fundamental Rights is to foster the social revolution by creating a society egalitarian to the extent that all citizens are to be equally free from coercion or restriction by the State. By enacting Fundamental Rights and directive Principles which are negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the government to adopt a middle path between individual liberty and public good. Fundamental Rights and Directive Principles have to be balanced. That balance can be tilted in favour of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. Thus balance is an essential feature of the Constitution.

92. It is always open for the Constitutional Court under Article 226 of the Constitution to limit the relief in the light of the facts and circumstances and backdrop of the legal profile. It is in this context, the benefit of this judgment shall be available only in the pending cases. Thus, the relief shall be circumscribed. In other words, cases which have attained finality shall not be reopened due to the

effect or operation of this judgment.

Shiva Kirti Singh, J.

I agree with the observation and direction that benefit of this judgment shall be available only in the pending cases.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com