SUREME COURT OF INDIA

P.M. Ashwathanarayana Setty

Vs.

State of Karnataka

(M.N. Venkatachalliah, R.S. Pathak CJI. and S.Natrajan JJ.)

22.09.1988

JUDGMENT

VENKATACHALIAH, .J.

1. The point in these appeals is the recurring and vexed theme of the policy and legality of the levy of Court fees--ad-valorem on the value or amount of the subject-matter of suits and appeals without the prescription of any upper limit--under the provisions of the Karnataka Court Fees and Suits Valuation Act 1958 ("Karnataka Act' for short). The Rajasthan Court Fees and Suits Valuation Act, 1961 (Act 23 of 19f)]) (`Rajasthan Act' for short) and the Bombay Court Fees Act, 1959 (`Bombay Act' for short). So far as the `Bombay Act' is concerned, the point raised in the concerned appeals is a limited one, confined to the question of the validity of Section 29(1) read with entry 10 of the First-Schedule to the `Bombay Act' which, without reference to the upper limit of Court Fee of Rs.15,000 prescribed for all other suits and proceedings, requires payment of ad-valorem Court fee on proceedings for grants of probate and letters of administration. One of the grounds of challenge so far as this provision in the `Bombay Act' is concerned, is the constitutional impermissibility of an unlimited exaction by way of court fee, which is common to other appeals as well. The other contention against the validity of Section 29(1) read with Entry 10 of the First- Schedule to the `Bombay Act' is based on Article 14 of the Constitution on the ground of discrimination as between the proceedings for grant of probate and Letters of Administration on the one hand and all other suits and proceedings respecting which an upper limit of Rs.15,000 is fixed under the statute, on the other.

2. The present batch of appeals and Special Leave Petitions comprise of a large number of cases arising under the said three Statutes. We may, however, refer to the facts of some of the cases which could be taken to be typical and representative of all other cases of each group. Special Leave Petition 13344 of 1988 typifies, and is representative of he appeals and Special Leave Petitions at arise out of the Rajasthan Court Fees and Suits Valuation Act, 1961. The petition arises out of and is directed against the common order dated 16th October, 1987 of the Division Bench of the Rajasthan High Court in Division1 Bench Civil Writ Petition No. 474 of 1984 and a large number of writ petitions involving the same question. In Writ Petition No. 474 of 1984, the present appellant--The State Bank of India--challenged before the High Court the Constitutional validity of the provisions of Section 20 read with Article 1 Schedule 1 of the `Rajasthan ,Act which prescribed and authorised the levy of court-fees on plaints or written statements pleading a set-off or counter-claim or memoranda of appeals presented to Courts an uniform ad- valorem impost of Rs.5 for every

hundred Rupees or part thereof on the amount or value of the subject-matter in excess of Rs.5,000. On the first slab of Rs.5.000 however certain rates are also prescribed.

We may. briefly. trace the course of development of the law as to Court-fee in Rajasthan. The Rajasthan Ordinance 9 of 1950, adapted and extended to the territories of Rajasthan with effect 1.3.1950, the Court Fees Act, 1870 (Central Act, 1870). The provisions of the Central Act, as adapted and extended to Rajasthan, were amendment from time to time till 1.11.1961 when the present `Rajasthan Act' was enacted and promulgated. Prior to 1.11.1961, at the law the stood. the levy of court-fee was subject to the maximum of Rs.7,500. This ceiling was done away with under the present Rajasthan Act and Court fee ad-valorem at 5%, without any upper limit was imposed under the impugned provisions. On 25.4.1984 the appellant-bank instituted. in the Court of District Judge, Jaipur City, a suit for recovery of a sum of Rs.5,04,75,826 from the defendant in the suit viz., The Jaipur Spinning and Weaving Mills Ltd. The Court-Fee payable on the said plaint under Section 20 read with Article 1 of the Schedule 1 of the `Rajasthan Act' was stated to be Rs.25,23,860. Incidently, it was pointed out by Shri F.S. Nariman, learned Senior Advocate for the appellant that the court-fee payable on this plaint alone would amount approximately to 1/7th of the total estimated collection of court-fee for the year 1983-84 which was estimated at Rs.176.41 lakhs in the State.

4. Special Leave Petitions 832 of 1988 and 833 of 1988-- which are representative of the Karnataka cases--arise out of and are directed against the common order dated 6.1.1988 of the Division Bench of the Karnataka High Court upholding the validity of the corresponding provisions of the Karnataka Court Fees and Suit Valuation Act, 1958 (`Karnataka Act' for short) which similarly impose an ad- valorem court fee on the plaints, written statements, pleading set-of or counter claims, or memoranda of appeals presented to any court, an at-valorem court fee at the uniform rate of Re.1 for every Rs.10 of the amount. or value of the subject matter in dispute without prescribing any upper limit.

The Bank of Baroda, the petitioner in the Special Leave Petition 832 of 1988, questions the correctness of the view taken by the Karnataka High Court in the large batch of cases disposed of by it upholding the constitutionality of the provisions in the `Karnataka Act' .

Appellant-bank had brought, in one of the civil courts in Karnataka, a suit for recovery of Rs.16,97,811.57 from the defendants therein and was called upon to pay a court fees of Rs.1,69,792 on the plaint. The provisions of section 20 read with Article 1 of Schedule 1 of the `Karnataka Act' are in pari-materia with Section 20 read with Article 1, Schedule 1 of the `Rajasthan Act' except for the rate of fee which is substantially higher under the `Karnataka Act'. The questions that arise in the appeals and Special Leave Petitions from Karnataka and Rajasthan are substantially similar.

5. In Civil Appeal No. 1511 of 1988, the State of Maharashtra has come up in appeal against the Judgment dated 1.2.1988 of the Division Bench of the Bombay High Court affirming the order dated 20.11.1987 of the Learned Single Judge striking down the provisions of Section 29(1) read with entry 10 of Schedule 1 of the `Bombay Act' in so far as they purport to prescribe an ad-valorem court fee, without any upper limit, on grants of probate, letters of Administration etc., while in respect of all other suits, appeals and proceedings an upper limit of court-fee of Rs. 15,000 is prescribed under the `Bombay Act'. The Bombay High Court has, by its judgment now under appeal held this prescription of ad-valorem court-fee without any upper limit on this class of proceedings alone constitutionally impermissible in that it seeks to single-out this class of litigants to share a

disproportionately higher share of the burden of fees while all other litigants, whatever the value of their claim or complexity of the question raised in their cases be, are not required to pay beyond Rs.15,000 which is fixed as the upper limit in all other cases. In W.P. No. 1105/86 before the High Court of Bombay, from which C.A. No. 1511/88 now before us arises, Mrs. Jyoti Nikul Jariwala and Jaiprakash Mungaturam Bairajra, Respondents herein, in their capacity as Executrix and Executor respectively as also the Trustees, under the Last Will and Testament dated 5.3.1985, said to have been executed by a certain Harihar Jethalal Jariwala alias Sanjiv Kumar had sought probate of the said will. They challenged, in the writ-petition before the High Court, the order dated 23.7.1986 of the Prothonotary and Senior Master of the High Court of Bombay made in the said probate proceedings requiring from the said Executors a probate court-fee of Rs.6,15 814.50 as a condition for the grant of the probate. The said Executors and Trustees challenged the legality and validity of this Memo and also the relevant provisions of the `Bombay Act' pursuant to and under the authority of which the said order came to be made.

Learned Single Judge of the High Court struck down the impugned provisions and the Division Bench has upheld the decision of the Learned Single Judge.

6. We have heard Sri l .N. Sinha. Sri F.S. Nariman, Sri K.K. Venugopal, Sri Shanti Bhushan, Sri B.R.L. Iyengar. learned Senior Advocates for the appellants in Karnataka and Rajasthan batch of cases and Sri Kuldip Singh, Additional Solicitor General and Sri Badridas Sharma, Senior Advocate for the State of Karnataka and Rajasthan respectively. Sri Bobde, learned Advocate General, Maharashtra and Sri S.K. Dholakia, Senior Advocate appeared in support of the appeals of the State of Maharashtra.

7. Though a number of contentions covering a wide field appears to have been raised and argued before the High Courts, the submissions of Learned Counsel before us were, however, less expensive and centred around what was stated to belong to certain basic values and ideals of administration of justice in a Welfare-State and to the importance of access to justice and what--in the context of the concept of a `fee'--is likely to happen to the concept if an ad-valorem exaction without any upper limit whatsoever is pushed to a point where the correlationship between the levy and the service very nearly breaks down. It ceases, it is said, to be a service and becomes a disservice. Emphasis was also placed on the basic obligations of the State to administer justice within its territories and on the Directive Principles of State Policy in Article 39A which enjoins the State to ensure that opportunities of securing justice are not denied to any citizen by reason of economic or other disabilities.

It was contended that in a system of Administration of Justice which was already encumbered by heavy expenses and long delays, the imposition of court fees at nearly 10% of the value of the subject matter in each of the courts through which the case sojourns before it reaches a finality, would seriously detract from fairness and justness of the system. The levy--ad-valorem irrespective of the nature and quality of the adjudicative process the case attracts and without reference to the demands that it makes on the judicial time--would be, it is urged, demonstrably unfair and it would be legitimate to acknowledge that somewhere in the trail of this unlimited levy the sustaining correlation between the levy and the service rendered is bound to snap. It was urged that the exaction of ad-valorem fee uniformally at a certain percentage of the subject matter without an upper limit or without the rates tapering down after a certain stage onwards would negate the concept of a fee and par-take of the character of a tax outside the boundaries of the State's power.

It is true that the twin evils that be devil the legal system and the administration of justice are the laws' delays and expenses of litigation which have become almost proverbial. Court-tee should not become another stifling factor aggravating an already, explosive situation. Constitutional ethos and the new social and economic order grimly struggling to be born lay great store by the peaceful social or economic change to be achieved through the processes of law. If social and economic change is of high constitutional priority, then, their effectuation and realisation which are directly proportional to the availability and efficacy of expeditious and unexpensive legal remedies, must also as a logical corollory, receive the same emphasis in priorities:

The public importance of the question and the public interest the policy of court-fee evokes are reflected in the trenchant humour of A.P. Herbert's "More Uncommon Law" from the words of the Judge in the fictional Hogby v. Hogby, "That if the Crown must charge for justice, at least the fee should be like the fee for postage that is to say, it should be the same, however long the journey may be. For it is no fault of one litigant that his plea to the King's judges raises questions more difficult to determine than another's and will require a longer hearing in court. He is asking for justice, not renting house-property." There is also in the following exchanges between the Attorney General and the Judge the echo of the argument that State whose primary duty is to administer justice, should do so out of public revenues and not put justice up for sale: The Attorney General: "As to that, milord, may I suggest one possible line of thought? The Crown, in this connection, means the whole body of tax-payers. Would it be fair and equitable if the general tax-payer had to provide all the facilities of the courts for the benefit of the litigant?

The Judge:

"Why not? Everybody pays for the police, but some people use them more than other. Nobody complains. You don't have to pay a special fee every time you have a burglary, or ask a policeman the way. I don't follow you, Sir Anthony. I will go further. I hold that the Crown not merely ought not, but is unable, to act in this way, by reason of the passage in the Great Charter which I have quoted. The Rules of Court, then, which purpose to impose these charges are ultra vires, unconstitutional, and of no effect: and Mr. Hogby may continue to decline to pay them.-'

9. The fortieth clause of the Great Charter of declared that Justice shall not be sold, denied or delayed: "Nulli Vendemus, nulli negabimus, aut differemus rectum aut justiclam. " What was implicit in the need for this promise was that royal justice was, otherwise, popular; but the complaint was that it was too dear and it was slow in coming. The subsequent course of history of the administration of justice in England shows that the Magna- Carta did not wholly stop the evils of delays in, and expensiveness of, Royal Justice but it did, after all, do something, perhaps something substantial, to cheapen justice and stop the abuses which were rampant in King John's Reign: (See History of English law 57-58).

Dr. R.M. Jackson "Machinery of Justice in England" Fifth Ed., 321, points out the dependence of Royal Justice in England in part atleast, on the profits of its administration earned:

"In the past the growth of royal justice was partly due to the profits that accrued from exercising jurisdiction. The early itinerant justices were more concerned with safeguarding the King s fiscal rights than with the trial of ordinary actions. A law court was expected to pay for itself and show profit for the king. It is some time since justice has been a substantial source of income, but the old survives in the idea that the courts ought not to be run at a loss.

(Emphasis supplied)

The court-fee as a limitation on access to Justice is inextricably inter-twined with a "highly emotional and even evocative subject stimulating visions of a social order in which justice will be brought within the reach of all citizens of all ranks in society. both those blessed with affluence and those depressed with their poverty." It is, it is said, like a clarion call to make the administration of civil justice available to all on the basis of equality, equity and fairness with its corollary that no-one should suffer injustice be reason of his not affording or is deterred from access to justice. The need for access to justice, recognises the primordeal need to maintain order in society disincentive of inclinations towards extra-judicial and violent means of settling disputes. On this a learned authority "access to Justice" by Cappellbtti. Vol . 1, Book 1,419 says:

"The need for access to justice may be said to be two fold; first, we must ensure that the rights of citizens should be recognised and made effective for otherwise they not be real hut merely illusory; and secondly we must enable legal disputes, conflicts and complaints which inevitably arise in society to be resolved in an orderly way according to the justice of the case so as to promote. harmony and peace in society, lest they foster and breed discontent and disturbance. In truth, the phrase itself, "access to justice", is a profound and powerful expression of a social need which is imperative, urgent and more widespread than is generally acknowledged."

10. The stipulation of court-fee is, undoubtedly a deterrent to free "access to justice", but one of the earlier avowed objects of court-fee was stated to be--as was done in the preamble of the Bengal Regulation which in 1795 imposed high court-fees--discouragement of litigation, particularly the speculative and the frivolous variety. Lord Macaulay called that Preamble "the most eminently absurd Preamble, that was ever drawn". The view of Macaulay "The Crisis of the Indian Legal System" By Upendra Baxi, 54, on the subject are worth recalling:

"If what the courts administer be justice, is justice a thing which the Government ought to grudge to the people? vexatious suits should be instituted. But it is an evil for which the Government has only itself and its agents to blame, and for which it has the power of proving a most efficient remedy. The real way to prevent unjust suits is to take care that there shall be just decision. No man goes to law except in the hope of succeeding. No man hopes to succeed in a had cause unless he has reason to believe that it will be determined according to bad laws or by bad judges. Dishonest suits will never he common unless the public entertains an unfavourable opinion of the administration of justice. And the public will never long entertain such an opinion without good reason .... (The imposition of court fees) neither makes the pleadings clearer nor the law plainer, nor the corrupt judge purer, nor the stupid judge wiser. It will no doubt drive away the honest plaintiffs who cannot pay the fee. But it will also drive away dishonest plaintiffs who are in the same situation".

(Emphasis supplied).

The Krishna Iyer Committee on Legal aid also said: Something must be done, we venture to state, to arrest the escalating vice of burdensome scales of court fee. That the State should not sell justice is an obvious proposition but the high rate of court fee now levied leaves no valid alibi is also obvious. The Fourteenth Report of the Law Commission, the practice of 2 per cent in the socialist countries, and the small standard filing fee prevalent in many Western Countries make the Indian position indefensible and perilously near unconstitutional. If the legal system is not to be undemocratically

expensive, there is a strong case for reducing court fees and instituting suitors fund to meet the cost directed to be paid by a party because he is the loser but in the circumstances cannot bear the burden . (See P. 35)

11. The proverbial costs of litigation has its own dimensions of unpredictability. Even as the outcome of a litigation is said to depend on the "glorious uncertainties of the Law" the size of the bill of cost a litigant has to foot is, not so, gloriously foreseeable.

The Evershed Committee Report said:

It is notoriously impossible to count the costs of litigation beforehand. It is difficult enough for either party to forecast what his own costs are likely to be, since much depends on the manner in which the other side conducts the case. It is utterly impossible to forecast what the other side s cost will be, and this means that no litigant can have the least idea of what he will have to pay if he loses the case."

Small claims and the small litigants are at a special disadvantage in the matter of costs. The expenses of litigation very nearly consume the claim itself. This imparts to the policy formulation behind the levy of court- tee the imperative, of having lower fees for lesser claims. This is an analysis of costs in small claims: `Access to Justice, Vol. 1. Book 1; 13.

Claims, involving relatively small sums of money suffer most from the barrier of cost. If the dispute is to be resolved by formal court processes, the costs may exceed the amount in controversy or, if not, may still eat away so much of the claim as to make litigation futile. The data assembled for the Florence Project show clearly that the ratio of costs to amount in controversy steadily increases as the financial value of the claim goes down. In Germany, for example, the cost of litigating a claim for about U.S. $100 in the regular court system is estimated to be roughly U.S. $150, even though only a court of first instance is involved, while the cost for a U.S. $5,000 claim, involving two instances, would be about U.S. $4,200--still very high but a substantially smaller proportion of the claim's value. Examples need not be multiplied in this area; clearly, small claims problems require special attention if access is to be obtained.

(Emphasis supplied).

Conversely, those who are endowed with considerable financial resources that can be utilised for litigation have obvious advantages in pursuing or defending claims by or against them. It is said: "Access to Justice". Vol. 1. Book 1 15.

"Persons or organisations possessing , or relatively considerable, financial resources than can be utilized for litigation have obvious advantages in pursuing or defending claims. In the first place they can afford to litigate. They are. in addition, able to withstand the delays of litigation. Each of these capabilities, if in the hands of only one party, can be a powerful weapon; the threat of litigation becomes both credible and effective. Similarly one of two parties to a dispute ma be able to outspend he other and, as a result present his arguments more effectively. Passive decision makes, whatever their other, more admirable, characteristics, clearly exacerbate this problem by relying on the parties for investigating and presenting evidence and for developing and arguing the case" (Emphasis supplied).

12 These are the realities in the back ground of which the impact of court-fees is to he considered. Indeed all civilised Governments recognise the need for access to justice being free. Whether the whole of the expenses of administration of civil justice also--in addition to those of criminal justice--should be free and not entirely by public revenue or whether the litigants should contribute and it so. to what extent, are matters of policy. These ideals are again to be balanced against the stark realities of constraints of finance before any judicial criticism of the policy acknowledgment should be made of the Government's power to raise the resources for providing the services from those who use and benefit from the services. The idea that there should be uniform fixed fee for all cases, instead of the ad-valorem system, has its own nettling problems and bristles with anomolies. How far these policy considerations have an adjudicative disposition and how far courts can mould and give direction to the policy is much debated. The Directive Principles in Article 39A are, no doubt, fundamental in the governance of the country, though not enforceable in courts of law. The following observations of Chinappa Reddy, J. in U.B.S.E. Board v. Hari Shanker, AIR 1979 SC 69 recognise the limitations of courts: ".....the principles are `nevertheless fundamental in the governance of the country' and `it shall be the duty of the state to apply these principles in making laws'. Addressed to courts, what the injunction means is that while courts are not free to direct the making of legislation, courts are bound to evolve affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy." (Emphasis supplied)

It is in the light of these conflicting claims and interests that the propositions in the case would require to be resolved.

13. On the contentions urged at the hearing, the following points fall for determination, the first three in Karnataka and Rajasthan cases, and the last in the appeals arising under the Bombay Act'.:

(a) Whether the levies of court-fee under the "Karnataka Act" and the "Rajasthan Act" do not satisfy the requirements of the concept of a `fee' but par-take the character of a `tax', in as much as that the correlationship between the fee and the value of the services by way of quid pro quo, is not established.

(b) Whether, even if the totality of the expenses on the administration of civil justice and the totality of the court-fee collected show a broad correlation, the levy of court-fees on ad-valorem basis, without an Upper limit, renders the impost a tax, in as much as having regard to the very nature of the service, which consists of adjudication of disputes, a stage is inevitably reached after and above which an ad-valorem levy, the proportionate increase in the value of the subject matter, ceases to be a `fee' and becomes a `tax'.

(c) Whether, at all events, the distribution of the burden of the fees amongst those on whom the burden falls as the ad-valorem principles, dependent merely on the amount or value of the claim in the case irrespective of the nature, quality and extent of adjudicative services, is arbitrary and violative of Article 14 of the Constitution. (d) Whether, in so far as the provisions of section 29(i) read with Entry 20 Schedule I of the `Bombay Act' are concerned, singling out of a class of litigation viz., applications for grant of probate and letters of administration for levy of ad-valorem court-fee without the benefit of the upper limit of Rs. 15,000 prescribed in respect of all other suits and proceedings is, as declared by the High Court, exposes that class of litigants to a hostile discrimination and is violative of Article 14 of the Constitution.

14. Re: Contention (a):

The concept of a 'fee' as distinct from that of a `tax' in the Constitutional scheme has been considered in a series of pronouncements starting from The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] SCR 1 1005 upto Om Prakash Agarwal v. Guni Ray, AIR 1986 SC, 726.

Of `Fees and Taxes' a learned author, First Principles of Public Finance, by De Marco 78 says:

"Levies are divided into two large categories: fees and taxes. To this division corresponds the differentiation of public services as special or general".

"A. Fee" says another author, Public Finance, Third Ed., by Buehler, 519:

"is a charge for a particular service of special benefit to individuals or to a class and of general benefit to the public, or it is a charge to meet the cost of a regulation PG NO 173
that primarily benefits society."

"Fees must be paid to secure the enjoyment of a particular government service such as the provisions for patents, copyrights, or the registration of mortgages, and the services of a court or a public official". Public Finance, Third Edn., p. 519.

Another review of all the earlier pronouncements of this court on the conceptual distinction between a `fee' and a `tax' and the various contexts in which the distinction becomes telling is an idle parade of familiar learning and unnecessary. What emerges from these pronouncements is that if the essential character of the impost is that some special service is intended or envisaged as a quid pro quo to the class of citizens which is intended to be benefitted by the service and there is a broad and general correlation between the amount so raised and the expenses involved in providing the services, the impost would par-take the character of a `fee' notwithstanding the circumstance that the identity of the amount so raised is not always kept distinguished but is merged in the general revenues of the State and notwithstanding the fact that such special services, for which the amount is raised, are, as they very often do, incidentally or indirectly benefit the general public also. The test is the primary object of the levy and the essential purpose it is intended to achieve. The correlationship between the amount raised through the `fee' and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate, arithmetical equivalence or precision in the correlation; but it would be sufficient that there is a broad and general correlation. But a fee loses its character as such if it is intended to and does go to enrich the general revenues of the State to be applied for general purposes of Government. Conversely, from this latter element stems the sequential proposition that the object to be served by raising the fee should not include objects which are, otherwise, within the ambit of general governmental obligations and activities. The concept of fee is not satisfied merely by showing that, the class of persons from whom the fee is collected also derives some benefit from those activities of Government. The benefit the class of payers of fee obtain in such a case is clearly not a benefit intended as special service to it but derived by it as part of the general public.

15. Nor does the concept of a fee- and this is important-require for its sustenance the requirement that every member of the class on whom the fee is imposed, must receive a corresponding benefit or degree of benefit commensurate with or proportionate to the payment that he individually makes. It

would be sufficient if the benefit of the special services is available to and received by the class as such. It is not necessary that every individual composing the class should be shown to have derived any direct benefit. A fee has also the element of a compulsory exaction which it shares in common with the concept of a tax as the class of persons intended to be benefitted by the special services has no volition to decline the benefit of the services. A fee is, therefore, a charge for the special services rendered to a class of citizens by Government or Government at agencies and is generally based on the expenses incurred in rendering the services.

16. The extent and degree of the correlation required to support the fees, has also been considered in a number of pronouncements of this court. It has been held that it is for the governmental agencies imposing the fee to justify its impost and its quantum as a return for some special services.

In Municipal Corporation of Delhi and Others v. Mohd. Yasin, [1983] 3 SCC; 233 this court relied on H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable endowments, [1963] Suppl. 2 S.C.R. 302 which held:

"If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses, incurred for rendering services, the levy would be in the nature of a fee and not in the nature of a tax ....."

(Emphasis supplied)

In Sreenivasa General Traders and others etc. v. Andhra Pradesh and Others etc., [1983] 1 AIR (SC); 1248 this court observed:

"Correlationship between the levy and the services rendered/expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered."

A fee which at the inception is supportable as one might shed its complexion as a fee and assume that of a tax by reason of the accumulation of surpluses or the happening of events which tend to affect and unsettle the requisite degree of correlation.

In State of Maharashtra & Ors. v. The Salvation Army, Western India Territory, [1975] 3 SCR; 485 this court generally indicated what, broadly, is the requisite degree of correlationship:

".....This court has expressly stated in the Delhi Cloth and General Mills case (supra) that services worth 61 per cent of contribution would be sufficient quid pro quo to make a levy a fee. So, when we find that in this case the organisation has been rendering services worth 62 per cent of the contribution, it cannot per se he said that there is no correlation between the fee levied and the services rendered."

(Emphasis supplied)

In Kewal Krishan Puri and another v. State of Punjab and other, [1979] 3 SCR 1244 this court said:

"That the element of quid pro quo may not be possible, or even necessary, to be established with

arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths must be Shown with reasonable certainly as being spent for rendering services of the kind mentioned above."

(Emphasis supplied)

In regard to the nature of court-fee we have the pronouncement of this court in Secretary, Government of Madras, Home Department and Another v. Zenith Lamp & Electrical Ltd., [1973] 2 SCR; p. 973 (1981-82). This court after referring to the legislative entries pertaining to the legislative fields distributed over the three lists of the Seventh Schedule to the Constitution, repelled the contention that `fees taken in court' occurring in Entry 3 of List II are really in the nature of a `tax' or at any rate constitute an impost sui-generis. This Court held:

"It seems to us that the separate mention of "fees taken in Court" in the Entries referred to above has no other significance than that they logically come under entries dealing with administration of Justice and courts. The draftsman has followed the scheme designed in the Court Fees Act, 1870 of dealing with fees taken in court at one place....."

"It seems plain that "fees taken in court" are not taxes, for if it were so, the word `taxes' would have been used or Some other indication given .....It follows that "fees taken in court" cannot be equated to `Taxes'. If this is so, is there any essential difference between fees taken in court and other fees? ...."

"But one thing the Legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue. In other words, it cannot tax litigation, and make litigations pay, say for road building or education or other beneficial schemes that a State may have. There must be a broad correlationship with the fees collected that the cost of administration of civil justice." In the present cases, the concerned State Governments have filed in the proceedings before the High Court statements of the receipts and expenses on the administration of Justice in their effort to establish the requisite correlation. It is not necessary to go, in any particular detail, into the break-up of these figures. Both High Courts, after an examination of the statistics felt no hesitation in upholding the correlation. We did not also understand the learned counsel for the appellants as questioning the correctness of the figures and the inference as to correlation suggested thereby. Learned counsel for the respective States submitted that if the outlays on capital- expenditure are also taken into account, there will be no shadow of doubt that the expenditure would be further higher than the fee receipts. So far as the Karnataka State is concerned, similar exercise was done in an earlier case also in Ram Bhadur Thakur & Co. and another v. State of Karnataka, AIR 1979 (SC); 119.

In the Karnataka Cases the relevant figures for the 5 years from 1980-81 to 1984-85 respectively are: (the figures in brackets indicate expenditure) 1980-81 Rs. 5,22,08,513 (Rs.6,80,33,119); 1981-82 Rs.6,69,10.019 (Rs.7,97,76,852); 1982-83 Rs.8,28,46,359 (Rs.9,41,161); 1983-84 Rs.8,21,49,626 (Rs.9,44,61,594); 1984-85 Rs.8,00,18,673 (Rs .12,15,90,418).

In the Rajasthan cases the financial-statements furnished before the High Court for the 7 years from

1977-78 to 1983-84, the receipts (in lakhs) by way of court fee and expenditure incurred for the services (furnished in brackets) are respectively: 1977-78 Rs.101.42. (Rs.264.56); 1978-79 Rs.95.50 (Rs.286-90); 1979-80 Rs.114.63 (Rs.323.04); 1980-81 Rs.134-92 (Rs.379-89); 1981-81 Rs.159.62 (Rs.444.83); 1982-83 Rs.179-87 (Rs.544.76); 1983-84 Rs.176.41 (Rs. 692.11).

It is true that in the Rajasthan statements there was no break up of the figures between expenditure on administration of civil justice and criminal justice; but having regard to the figure, a reasonable estimate of the proportion of the former is possible and the figures do indicate and establish the requisite correlationship. The contention (a) of the appellants is insubstantial.

18. Re: Contention (b)

The basic argument is that having regard to the very nature of the judicial process of resolution of disputed in civil courts, the postulate that judicial-time and the service of the machinery of justice is consumed and utilised in direct proportion to the amount or value of the subject matter is the first and fundamental error. The rationale of the imposition of court-fee on an increasing scale, according as the value or the amount of the subject matter, is, it is urged, an error which is the logical result and outcome of the first. In the distribution of the burden of the court-fee amongst the litigants, it is urged, the ad- valorem yardstick, which is relevant and appropriate to taxation, is wholly inappropriate because the principle or basis of distribution in the case of a fee should be the proportionate cost of services inter-se amongst the beneficiaries. Reliance is placed on The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] SCR, 1005. Reliance is also placed on the following observations of Mukherjea J., in Commissioner Hindu Religious Endowment, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] S.C.R. 1005, relied on by Venkataramiah, J. in Om Prakash Aggarwal etc. etc. v. Giri Raj Kishori and others etc. etc. [1986] SCC (1); 730.

"Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the government in rendering the service, though in many cases the costs are arbitrarily assessed. "Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recepients to pay."

(Emphasis supplied)

The following observations of Krishna Iyer J. in N.M. Desai v. The Teesteels Ltd. and another, AIR 1980 (2) SC: 2125 are also relied upon:

"It is more deplorable that the culture of the magna carta notwithstanding the anglo-lndian forensic system- and currently free India's court process- should insist on payment of court-fee on such a profiteering scale without correlative expenditure on the administration of civil justice that the levies often smack of sale of justice in the Indian Republic where equality before the law is guaranteed constitutional fundamental and the legal system has been directed by Article 39A "to ensure that opportunities for securing justice are not denied to any citizen by reason of economic.....disabilities." The right of effective access to justice has emerged in the Third World countries as the first among the new social rights what with public interest litigation, community based actions and pro bono public proceedings. "Effective access to justice can thus be seen as the most basic requirement- the most basic `Human Right'--of a system which purports to guarantee

legal rights."

However, the observations in Shirur Mutt's case as to the uniformity of the levy must be understood in the light of the next sentence in that very passage which says: ".... These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

The criticism of Krishna Iyer J. as to the `profiteering scale' would, as the passage relied upon itself indicates, be attracted only if the levy is "without the correlative expenditure in the administration of civil justice." Reference was also made to certain observations of the learned author H.M. Seervai Constitutional Law of India, Third Edn. Vol II, 1958 that court-fee should not be a weapon to stifle suits or proceedings and that though in fixing the court-fees regard may be given to the amount involved, "a stage is reached when an increasing amount ceases to be justified."

".....Thus, an ad-valorem court fee of 1 percent for suits involving Rs. l lack or more with a maximum of Rs.15,000 or Rs.20,000 may be justified; but a court fee without limit cannot be justified, for after a certain amount is reached, no greater service can be rendered to whole classes of litigants; on the contrary, such increased court fees render disservice by rendering the cost of litigation prohibitive."

(Emphasis supplied)

Learned counsel also referred to and relied Upon the decision of the Bombay High Court in Indian Organic Chemicals v. Chemtax Fibres, [1983] Bombay LR; 406 upon certain observations of the Madras High Court in Secretary, Government of Madras, Home Department, And Another v. Zenith Lamp & Electrical Ltd., ILR 1968 (Madras); 247 and on a judgment dated 22.12.1972 of the FUll Bench of the Gujarat High Court in Lady Tanumati Girijaprasad and another v. Special Rent Acquisition Officer, Western Railway, Ahemadabad, Special Civil Application No. 979 of 1970 with Special Civil Application 287 of 1967.

19. The submissions on this point, in some areas, overlap contention (c) but the point sought to be emphasised so far as the present contention is concerned, is that the essence and the planitude of the concept of `fee' requires not only that there should be a broad correlationship between the impost and the services but also a requirement, inherent in and as a part of the concept itself, that the expenses for the services must also be distributed in an equitable manner amongst those constituting the class receiving the services. This aspect, it is urged, is distinct from the susceptibility of the impost to be declared unconstitutional on the ground that the distribution of its burden is arbitrary. The same event demonstrating the unfairness of the distribution of the burden would, it is urged, produce two distinct legal consequences: first, detracting from the fundamental concept of a fee and, secondly, by reason of the invidious discrimination wrought by it is violative of the constitutional pledge of equality.

20. State Governments would, however, say that this is merely two different ways of saying the same thing and that the concept of a `fee' never really depended for its validity, conceptually as a `fee', upon the requirement of a just and equitable distribution of its burden amongst the recipients of the service and that as long as a broad approximation between the expenses of the services and the amount raised by the fee is established, the impost would continue to retain and not shed its complexion as a fee If there is arbitrariness of inequitability in the distribution of the burden, that

aspect would, it is submitted, not detract from basic concept of the levy as a `fee' but vitiates the levy for hostile discrimination.

21. Perhaps the most lucid formulation and presentation of the appellants contention- for whatever it is worth in the ultimate analysis-are to be found in the Judgment of the Madras High Court in the Zenith Lamp Case, (lLR 1968 Mad., 247) which came up before this court in 1973(2) SCR, 973. Those observations sum up the matter succinctly: "Irrespective of the magnitude of the claim and the complexity of the case and the anxiety of the suitor, a limit will be reached so far as the service that could be rendered in courts is concerned. Judicial time is not spent in direct proportion to the value of the claim. It may have relation to the question involved. That appears to be the reason behind the maximum court fee originally prevalent and even now found in some states."

".....The problem is in the distribution of the levy in a practical and reasonable manner so as to fall fairly equitably on all suitors, that no particular class or section of them is disproportionately hit and made to bear more than their fair share of the expenditure on the administration of justice, on considerations not germane in the context of the levy authorised by law."

"As it is, as the value of the claim goes up, the levy becomes more and more unrelated to the object of the levy. A few suitors would be made to bear a heavy share of the expenditure unrelated to the services required by them with the result that, when the claims are high, only one of the two essential elements of a levy to be regarded as a fee is left While the occasion for the levy is the demand of special service by the suitor that is, one element is present, there is no reasonable. correlation between the levy and the services that is, the second element is lacking. The levy becomes excessive, grossly disproportionate and unreasonable qua the particular suitor it ceases to be a fee and becomes a tax for him." (Emphasis supplied), ILR, Mad., 1968 (368-372).

This is the crux of the matter and a fair summing-up of the arguments of the learned counsel for the appellants. This again, is what the High Court of Bombay adopted in the case of Indian Organic Chemicals v. Chemtax Fibres, [1983] LR Bombay, 406, one of the cases relied upon by the appellants.

22. We may, briefly, refer to the setting in which the matter arose before the Bombay High Court. In the proceedings, the plaintiffs challenged the provisions of the Bombay Court Fees (Second Amendment) Act, 1974 by which, inter-alia, the upper limit of the court fee, of Rs.15,000 then obtaining was done away with. The consequence was that ad-valorem court fee, without any upper limit, had had to be paid. The matter arose out of what was alleged as the `Backbay Scandal' in which various plots of land reclaimed from the Sea in South Bombay were disposed of by Government, according to plaintiffs' allegation, in violation of the prescribed rules and for a pittance in order to confer a largesse on the chosen. The allotment of plots appears initially, to have been challenged in writ proceedings; but ultimately a suit had had to be filed as disputed questions of facts were stated to have been involved. The value of the subject matter of the suit was Rs. 5,56,30,731.87 and the court fee payable was Rs.5,60,000 under the amended Act which had, in the meantime, come into force. The amendment was challenged on three grounds. The first was that the legislation was itself mala fide and was ushered in with oblique motives of stifling the very suit and the challenge to the impugned allotments. The second was that levy of court-fees ad-valorem without any upper limit would alter the character of the levy and convert it from `fee' into a `tax'. The third contention was that the amendment was a colourable piece of legislation and was not a legitimate exercise to raise a fee but to impose, in the cloak of a fee, a tax to augment the general

public revenues.

The Bombay High Court rejected the first contention; but accepted the second and held that even if the Government had satisfied itself that there was necessity for collection of enhanced quantum of court-fee, it could have done so on the basis of a rationalised structure which might result in the enhancement of the ceiling from Rs. 15,000 to 20,000 or even 25,000 in which event the court would not be able to hold that the levy had become so excessive and so grossly disproportionate and unreasonable qua a particular suitor as to cease to be a fee and become a tax. The High Court held: ".....In the case before us the fact that the plaintiff on its claim is called upon to pay after the amending Act of 1974 court-fees of Rs. 5,60,000 eloquently testifies to the harshness, the excessive character and the unreasonableness of the levy and once such conclusions are reached, it will have to be held that this levy at the higher figure which is secured by the impugned Act has converted exation from a `fee' into a `tax'. If that be the result secured through the enactment, which has brought about this result would be liable to be struck down." (ILR), Bom.; 1981 Vol. 83; 415- 16.

On the third ground also the court upheld the challenge, being of the view that the Government had not established the quid pro quo to the requisite extent.

23. So far as the decision of the Full Bench of the Gujarat High Court in Lady Tanumati Girijaprasad and another v. Special Rent Acquisition Officer, Western Railway, Ahemadabad, Special Civil Application No. 979 of 1970 with Special Civil Application 287 of 1967, is concerned, that decision, even to the extent it goes, is not on the aspects emphasised in these appeals. The decision really turned on the question whether correlation between the services and the fee had taken established or not. The High Court was of the view that it had not.

24. Sri F.S. Nariman submitted that the facts of the Rajasthan appeal were itself demonstrative of the arbitrariness and inequities inherent in the imposition of the ad-valorem impost without an upper limit. In that case the appellant was called upon to pay on his plaint almost l/7th of the entire estimated court-fees receipts of the year and it would be inconceivable that, proportionately, 1/7th of the judicial-time would be spent on this suit. Learned counsel submitted that in the very nature of the judicial process, a stage is reached beyond which there could be no proportionate or progressive increase in the services rendered to a litigant either qualitatively or quantitatively. Unless that limit is recognised and a corresponding ceiling of court fee fixed, the impost qua the particular litigant, it is urged, would shed its complexion as a fee and would par-take of the nature of an exaction more resembling a tax than a fee. Learned counsel submitted that in the process of adjudication of disputes before courts, judicial-time and the machinery of justice are not utilised in direct proportion to the value or the amount of the subject matter of the controversy. Cases involving very small claims might raise difficult questions of fact and law requiring the expenditure of judicial time wholly disproportionate to the court-fee paid in the case. Conversely, claims involving heavy financial sums might not, as in the case of suits on negotiable instruments generally, take much time of the court at all. That apart, it is urged, a recognition of the outer-most limit of the possible services and a prescription of a corresponding upper limit of court fee should be made, lest the levy, in excess of that conceptual limit, becomes a tax. The ideal measure or yardstick of court fee, learned counsel said, was a fee in proportionate to the judicial the expended over a case and if this measure or yardstick is difficult of application owing to its practical difficulties in its effectuation, either of the two further alternatives could save a legislation imposing a fee. One such was to fix an upper limit commensurate with conceptionalised outer most limit of the money value of the maximum possible services. hypothetically so conceived. The second was to stipulate after a

particular stage, progressively lower rates on correspondingly increasing slabs of the value of the subject matter or in other words, after a certain stage, to make the rates go-down according as the value goes-up.

25. We have given our careful and anxious consideration to this vexed problem which is a subject matter of considerable debate both in and outside courts. The anomalies that the policy behind the impugned provisions can produce in conceivable cases could, indeed, be inequitable or even quite startling. But, the argument, in the last analysis, becomes indistinguishable from the contention that the correlation of the services to the fee would have to be decided on the basis of how the correlation operates in each individual case. It would be an insistance on testing the conceptual nature of the fee on the basis of the degree of the quid pro quo in the case of each individual payer of the fee. That is the peccant part of the argument. Once a broad correlation between the totality of the expenses on the services, conceived as a whole, on the one hand and the totality of the funds raised by way of the fee, on the other, is established, it would be no part of the legitimate exercise in the examination of the constitutionality of the concept of the impost to embark upon its effect in individual cases. Such a grievance would be one of disproportionate nature of the distribution of the fees amongst these liable to contribute and not one touching the conceptual nature of the fee. Indeed this position was clearly recognised by the Madras High Court in Zenith Lamp's case itself in the following passage of the Judgment:

"If, in substance, the levy is not to raise revenues also for the general purpose of the State the mere absence of uniformity of the fact that it has no direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service, or that some of the contributories do not obtain the same degree of service as other may, will not change the essential character of the levy." ILR Mad., 1968; 340-41.

26. There might, conceivably, be cases where a particular individual-contributor may not derive any benefit at all, though as a member of the class he has no option but to make the contribution. The principle underlying the contention that beyond a point the impost ceases to have the quality of a fee, if valid, can be visualised and applied even to cases where, despite the uniformity in the distribution of the burden, a particular individual does not obtain any service at all. This cannot be a legitimate and permissible ground of invalidation.

This is, however, not to say that if the scheme of distribution of the burden is so arbitrary, so unreasonable and disproportionate as to offend the requirements of Article 14, the levy does not fail as violative of Article 14.

In H.H. Sudhundra Thirtha Swamiar v. Commissioner For Hindu Religious & Charitable Endowments, Mysore, [1963] 2 SCR Suppl. 323 this court held:

".....Nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax." (Emphasis supplied)

In The City Corporation of Calicut v. Thachambalath Sadasivan and others, [l985] 2 SCC, 115 this

court held: "It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.

(Emphasis supplied)

27. What emerges from the foregoing discussion is that when a broad and general correlation between the totality of the fee on the one h;and and the totality of the expenses of the services on the other is established, the levy will not fail in its essential character of a fee on the ground alone that the measure of its distribution on the persons of incidence is disproportionate to the actual services obtainable by them. The argument that where the levy, in an individual case, for exceeds the maximum value, in terms of money, of the services that could at all be possible, them, qua that contributor, the correlation breaks down is a subtle and attractive argument. However, on a proper comprehension of the true concept of a fee the argument seems to us to be more subtle than accurate. The test of the correlation is not in context of individual contributors. The test is on the comprehensive level of the value of the totality of the services, set-off against the totality of the receipts of the character of the `fee' is thus established, the vagaries in its distribution amongst the class, do not detract from the concept of a `fee' as such, though a wholly arbitrary distribution of the burden might violate other constitutional limitation. This idea that the test of the correlation is at the "aggregate" level and not at "individual" level is expressed thus. First Principles of Public Finance by De Marco. 83.

"The fee must be equal, in the aggregate to the cost of production of the service. That is the aggregate amount of the fees which the State collects from individual consumers must equal the aggregate expenses of production." (Emphasis supplied).

The view taken of the matter by the Bombay High Court in the Indian Organic Chemicals case and the view of the earlier Madras High Court in Zenith Lamp's case do not commend themselves as sound, having regard to the accepted tests to determine the nature of a `fee'.

Contention (b) is not substantiated.

28. Re Contention (c)

It is urged that even if the requisite correlationship could be held to have been established, the Rajasthan and the Karnataka legislations, by distributing the burden on the ad-valorem principles based merely on the value of the subject matter, independently of considerations of the utilisation of Judicial time, are per-se irrational and bring about an arbitrary and disproportionate distribution of the burden so irrational and so divorced from relevant criteria that the impugned provisions violate Article 14. It is urged that a litigation, on which a litigant might have paid a mere Rs. 50 by way of court fee, might involve far more substantial questions and take-up judicial time in a measure far greater than a litigation on which a litigant is called upon to pay Rs. 25 lakhs by way of court fee. It is urged that the ad-valorem principle which is appropriate to taxation would be inapposite in the context of an impost which is meant as a contribution towards the costs of services.

29. The contention of the States is that as long as their power to raise the funds to meet the expenses

of administration of civil justice is not disputed and as long as the funds as raised show a correlation to such expenses, the State, should have sufficient play at the joints to work-out the incidents of the levy in some reasonable and practical way. It would, quite obviously impracticable, so proceeds the argument, to measure-out the levy directly in proportion to the actual judicial time consumed in each individual case; hence the need to tailor some rough and ready workable basis which though may not be an ideal or the most perfect one, would at least hostile. Perfection in any system of imposition of monetary exactions is an unattainable goal and that, therefore, the satisfaction of high positive virtues in the scheme is not to be expected but what is to be seen is whether any serious vice of blatant discrimination without any rational basis whatsoever vitiates the system. It will, obviously, be unreasonable, says the States' learned counsel, to distribute the total expenses amongst all the litigants uniformally irrespective of the amount or value of the subject matter of the litigation. If, contends counsel, an upper limit is fixed and the collection fell short of what the Government intends and is entitled to collect, this would eventually result in the enhancement of the general rates of court-fee for all categories. The ad-valorem principle is a well recognised principle; it may not provide the best or the most perfect answer; but it can, it is urged, reasonably be expected to provide the least hostile and workable basis of distribution of the burden. If the value of the subject matter is a relevant factor in proportioning the burden of the court fee, is indeed it has been so held, where the line should be drawn in applying the principle it is more a matter of legislative wisdom and preference than of the strict judicial evaluation and adjudication. There might possibly be better methods of administering the collections but that by itself, it is contended, is no ground to strike down what might appearing to be a less perfect system particularly when economic measures and regulations are concerned. So far as the Directive Principles in Article 39A are concerned, the learned Solicitor General said that the directive principles are fundamental in the governance of the country cannot be gainsaid, but in implementing them, policy considerations and priorities will have to be duly evaluated, having regard to the financial constraints. The grievance in these petitions is by the class of the litigants consisting of big financial institutions with superior economic power. The superiority of the economic power is not, it is urged, irrelevant in making them share a higher burden of a public impost. At all events, it is urged, courts can not compel the State to bring-forth any legislation to implement and effectuate a Directive Principle.

30. The problem is, indeed, a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside Article 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the Legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the Legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The Legislature possesses the greatest freedom in such areas. The analogy of principles of the burden of tax may not also be inapposite in dealing with the validity of the distribution of the burden of a `fee' as well.

31. This Court in East India Tobacco Co. v. State of Andhra pradesh [1963] 1 SCR 411 referred to with approval the following passage in Rottschaefer's "Constitutional Law", p. 668:

"The decisions of the Supreme Court in this field have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes."

The Legislature has to reckon with practical difficulties of adjustments of conflicting interests. It has to bring to bear a pragmatic approach to the resolution of these conflicts and evolve a fiscal policy it thinks is best suited to the felt needs. The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental models. Social and economic problems of a policy do not accord with preconceived stereotypes so as to be amenable to pre-determined solutions. In The State of Gujarat and Another v. Shri Ambica Mills Ltd., Ahemdabad Etc., [1974] 3 SCR 764 this court observed:

".....The court must be aware of its own remoteness and lack of familiarity with the local problems. Classification is dependent on the particular needs and specific difficulties of the community which are beyond the easy ken of the court, and which the legislature alone was competent to make. Consequently, lacking the capacity to inform itself fully about the peculiarities of a particular local situation, a court should hesitate to dub the legislative classification as irrational...."

".....The question whether, under Article 14, a classification is reasonable or unreasonable must, in the ultimate analysis depend upon the judicial approach to the problem. The more complicated society becomes, the greater the diversity of its problems and the more does legislation direct itself to the diversities. In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not official deference to legislative judgment. The courts have only the power to destroy but not to reconstruct. When to this are added the complexity of economic regulation, the uncertainty the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events, self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability." "Laws regulating economic activity should be viewed differently from laws which touch and concern freedom of speech and religion, voting procreation, rights with respect to criminal procedure etc. Judicial deference to legislature in instances of economic regulation is explained by the argument that rationality of a classification depends upon local conditions about which local legislative or administrative bodies would be better informed than a court."

The lack of perfection in a legislative measure does not necessary imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services. In G.K. Krishnan etc., etc., v. The Stale of Tamil Nadu and Anr. etc., [1975] 2 SCR, 715 (730) this Court referred to, with approval, the majority view in San Antonio Independend School District v. Bodrigues speaking through Justice Stewart,, 411 US. I at page 41):

"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause." and also to the dissent of Marshall, J. who summed up his conclusions thus:

"In summary, it seems to me inescapably clear that this court has consistently adjusted the care with which it will review state discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests we find that discriminatory state action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover, "the extremes to which the court has gone in dreaming up rational bases for state regulation in that area may in many instances be described to a healthy revulsion from the court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls." Dandridge v. Williams, 397 US at 520.

The observations of this court in Income Tax Officer, Shillong and Anr. Etc. v. N. Takim Roy Rymbai Etc. Etc. [1976] 3 SCR; 413 made in the context of taxation laws are worth recalling:

"The mere fact that a tax falls more heavily on same in the same category, is not by itself a ground to render the law invalid. It is only when, within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14."

(Emphasis supplied).

32. The question whether the measure of a tax or a `fee' should be ad-valorem or ad-quantum is again a matter of fiscal policy.

In the Zenith Lamp's Case this court observed: "The fee must have relation to the administration of civil justice. While levying fees the appropriate legislature is competent to take into account all relevant factors, the value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14." (Emphasis supplied).

In the context of levy of market fee, a similar argument was advanced before a High Court that the imposition of market fee advalorem on different commodities irrespective of their weight or volume and irrespective of the extent of the market services rendered in respect of their marketing produced inequality and hostile discrimination. It was urged that the nature and extent of services afforded by the Market-Committees must necessarily vary having regard to the nature and volume of the agricultural produce and therefore a blind ad-valorem levy would be arbitrary as the services rendered to a buyer who buys say a quintal of cotton or tamarind is quantitatively and qualitatively more than the services that may be envisaged to the class of traders dealing with spices of equivalent money-value. The distribution of the burden of the fee on the basis of the value of the commodity, it is argued, was arbitrary as it did not recognise that the services are inherently different for different classes of commodities but treated unequals equally. This argument has its ring of familiarity, with the arguments in the present case. But the High Court ILR 1982 (Karnataka): 399 (reserved by the Supreme Court on another point repelled this contention:

We are unable to subscribe to this view. Indeed it appears to us that if the impost was 'ad quantum" and not "ad valorem" it might have attracted. quite legitimately perhaps. the criticism of being arbitrary. By an advalorem impost, the goods independently of their volume and quality are treated

equally in term of their value. An impost advalorem" is a well accepted concept in taxation Indeed in Ganga Sagar Corporation's case (AIR 1980 (SC), 286 Supreme Court dealing, though in a different context stated: . . . Article 14, a great right by any canon by its promiscuous forensic misuse, despite the Dalmia decision has given the impression of being the last sanctuary of losing litigants Price is surely a safe guide but other methods are not necessarily vocational. It depends

33. It was then argued that various States have different standards and that while some States have rightly recognised the need for an upper limit to save the constitutionality of the levy, other States like, Karnataka, Tamil Nadu, etc. envisaged an ad-valorem levy with-out any upper limit. It is contended that though India is a federal polity, the judicial system, however, is an integrated one and that therefore different standards of court fee in different States would be unconstitutional. But it is trite that for purposes of testing a law enacted by one State in exercise of its own independent legislative powers for its alleged violation of Article 14 it cannot he contrasted with laws enacted by other States. In The State of Madhya Pradesh v. G.C. Mandawar. [1955] 1 SCR; 599 this court observed:

"Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor Does it contemplates a law of the Center or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments.'

34. Having regard to the nature and complexity of this matter it is, perhaps, difficult to say that the ad-valorem principle which may not be an ideal basis for distribution of a tee can at the same time be said to be so irrational as to incur any unconstitutional infirmity. The presumption of constitutionality of laws requires that any doubt as to the constitutionality of a law has to be resolved in favour of constitutionality. Though the scheme cannot be upheld, at the sametime, it cannot be struck down either.

35. The State is in theory entitled to raise the totality of the expenses by way of fee. Any interference with the present yardstick for sharing the burden might in turn produce a yardstick less advantageous to litigants at lower levels. Subject to certain observations and suggestions we propose to make in regard to the rationalisation of the levies in view of the general importance of the matter to the administration of civil justice, we think we should decline to strike down the law.

36. Re: Contention (d) A

In the appeal of the State of Maharashtra arising out of the Bombay Court Fees Act, 1959, the High Court has struck down the impugned provisions on the ground that the levy of court fee on proceedings for grant of probate and letters of administration ad-valorem without the upper limit prescribed for all other litigants--the court-fee in the present case amounts to Rs.6,14,814--is discriminatory. The High Court has also held that, there is no intelligible or rational differentia between the two class of litigation and that having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. The argument was noticed by the Learned Single Judge thus:

"Petitioners next contend that the impugned clause discriminates as between different types of suiters and that there is no justification for this discrimination. Plaintiffs who go to civil courts claiming decrees are not required to pay court-fees in excess of Rs. 15,000. This is irrespective of

the amounts claimed over and above Rs. 15 lacs. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable." This contention was accepted by the Learned Single Judge who has upheld the appeal. Indeed, where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs. 15,000 on the court fees is fixed, there is no logical justification for singling out this proceeding for an ad- valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. Neither before the High Court--nor before us here-was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate 'fee' from another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else. The discrimination brought about by the statute, in our opinion, fails to pass the constitutional master as rightly pointed out by the High Court. The High Court, in our opinion rightly, held:

"There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained "

We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone. In view of this any other ground urged against the constitutionality of the levy is Unnecessary to be examined. Contention (d) is accordingly held an answer against the appellant and the appeals preferred by the State of Maharashtra are liable to be and are hereby dismissed.

37. Now at the end of the day, what remains is the suggestion necessary in regard to the rationalisation of the court-fees under the 'Rajasthan Act' and the 'Karnataka Act The arguments in the case highlight an important aspect. The levy of court-fee at rates reaching 10% ad-valorem operates harshly and almost tends to price justice out of the reach of many distressed litigants. The Directive Principles of State Policy, though not strictly enforceable in courts of law, are yet fundamental in the governance in the country. They constitute fonsjuris in a Welfare State. The prescription of such high rates of courtfees even in small claims as also without an upper limit in larger claims is perilously close to arbitrariness, an unconstitutionality. The ideal is. of course, a state of affairs where the state is enabled to do away with the pricing of justice in its courts of justice. In this reach for the ideal it serves to recall the words of Robert Kennedy:"Some men see thing as they are and say why, I dream things that never were and say why not? "
The power to raise funds through the fiscal tool of a fee is not to be confused with a compulsion so to do. While 'fee meant to defray expenses of services cannot be applied towards objects of general public utility as part of general revenues, the converse is not valid General Public revenues can, with justification, be utilised to meet. wholly or in substantial part, the expenses on the administration of civil justice. Many States including Karnataka and Rajasthan had earlier, statutory upper-limits fixed for the court fee. But later legislations has sought to do away with the prescription of an upper limit. The insistence on raising court fees at high rates recalls of what Adam Smith Wealth of Nations said:

"There is no art which one government sooner learns of another than that of drawing money from the pockets of the people.

Fees are levied no doubt to defray the cost of services but as observed by Findlay Shirras Science of Public Finance, Vol. II, 674-675:

"Fees are levied in order to defray usually a part, in rare cases the whole of the cost of services done in public interest and conferring some degree of advantage on the fee payer.

(Emphasis supplied)

Though we have abstained from striking down the legislation, yet, it appears to us that immediate steps are called for and are imperative to rationalise the levies. In doing so the States should realise the desirability of levying on the initial slab of the subject matter--say upto Rs. 15,000--a nominal court-fees not exceeding 2 to 2-1/2% so that small claims are not priced out of Courts. "Those who have less in life' it is said should have more in law". Claims in excess of Rs. 15,000 might admit of an ad-volorem levy at rates which, preferrably, should not exceed 71/2% subject further to an upper limit which, having regard to all circumstances, could be envisaged at Rs.75,000. The upper limit even piror to 1974 under the Bombay Act was Rs.15,000 and prior to 1961 under the Rajasthan Act' at Rs.7,500. Having regard to steep inflation over the two decades the upper limit could perhaps go upto Rs.75,000. After that limit is reached, it is appropriate to impose on gradually increasing slabs of the value of the subject matter, progressively decreasing rates, say from 7-l/2/% down to 1/2% in graduated scales. The Governments concerned should bestow attention on these matters and bring about a rationalisation of the levies.

With these observations and directions we dismiss the appeals, writ petitions and special leave petitions, but in the circumstances, without an order as to costs. R.S.S. Appeals & Petitions dismissed.

</html