SUPREME COURT OF INDIA

New Delhi Municipal Committee

Vs.

State of Punjab D

(J.S. Verma, S.C. Agrawal and B.L. Hansaria JJ.)

19.12.1996

JUDGMENT

AHMADI, CJI.

These civil appeals and special leave petitions have been filed against the judgment and order of the Delhi High Court dated March 14, 1975 in Civil Writ Petition No. 342 of 1969 and other orders which follow this judgment. The appellant in all these matters is the New Delhi Municipal Committee (hereinafter called "the NDMC"). The respondents are the Union of India and the State of Andhra Pradesh, Gujarat, Haryana, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajashthan, Tripura and West Bengal. The Municipal Corporation of Delhi (hereinafter called "the MCD") appears as an intervenor. The Case History

The development that occasioned the setting up of the Constitution Bench may now be briefly set out. The Punjab Municipal Act, 1911 (hereinafter called "the Act") is applicable to the Union Territory of Delhi and under the provisions of this Act, the NDMC had been levying property tax on the immovable properties of the respondent States situated within Delhi. The respondents challenged the imposition of such a tax on their properties before the Delhi High Court by contending that it would fall within the exemption provided for in Article 289(1) of the Constitution. In the impugned judgment, the Delhi High Court, while accepting this contention, relied upon the relevant observations of the 9-Judge Constitution Bench of this Court in In Re The Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, [1964] 3 S.C.R. 787 (hereinafter called "The Sea Customs Case"), to quash the assessment and demands of house-tax in respect of the properties of the States and restrained the NDMC from levying such a tax in future. The NDMC filed an application under Article 133(1)(c) of the Constitution seeking the grant of a certificate for leave to appeal to the Supreme Court; while granting the Certificate, the High Court observed that the principal question before it had grave constitutional implications which required an authoritative decision by this Court.

On January 1, 1976, a Division Bench of this Court directed that the NDMC could continue to make assessments but it was not to issue demand notices or make any attempts towards realisation of the taxes. On October 29, 1987, another Division Bench of this Court directed that the matter be listed before a Constitution Bench. On January 14, 1993, a 5-Judge Constitution Bench of this Court began hearing arguments and after considering the rival submissions, on October 4, 1994, passed an order referring the matter to a 9-Judge Bench. In the said order, the Bench observed that it had

considered the decision in the Sea Customs Case and was of the opinion that the point at issue in these matters was covered therein. The decision in the Sea Customs case having been reaffirmed by the decision of this Court in Andhra Pradesh State Road Transport Corporation v. The Income Tax Officer & Another, (1969) 7 S.C.R. 17 (hereinafter called "the APSRTC case"), the Bench considered itself bound by the decision; however, it was of the view that the arguments advanced before it, which were not considered by the earlier decisions, were plausible and required consideration which necessitated the setting up of a 9-Judge Bench to hear the matter.

The Impugned Judgment An analysis of the impugned judgment may now be resorted to in order to gain an insight into the various Constitutional questions that will require our consideration. Before the High Court, the various States contended the following: by virtue of Article 289(1) of the Constitution, the property of the State is exempt from Union Taxation; the undefined phrase "Union Taxation" in Article 289(1) would mean all taxes which the Union is empowered to impose; under the Constitutional scheme and, specifically under Part VIII of the Constitution, Union Territories are to be administered by the President of India through the laws of Parliament; Parliament is the law-making body for all Union Territories and by virtue of Article 246(4), while legislating for Union Territories, the power of Parliament to make laws extends to all the three lists in Schedule VII of the Constitution pertaining to legislative competence; insofar as the Act and its application to the Union Territory of Delhi is concerned, though it relates to a matter in the State List, it would still amount to "Union Taxation" because, by virtue of its application to the Union Territory of Delhi, it would be deemed to have been incorporated in law made by Parliament and would therefore be a Union Law imposing tax; since the tax imposed by the Act amounts to Union Taxation, the exemption in Article 289(1) of the Constitution which makes the property of the States immune from Union Taxation would be attracted, and the properties of the States situated in Delhi would be exempt from all taxes on property.

For the NDMC, it was contended: the phrase "Union Taxation" would not extend to legislations in Union Territories and interpretation should be restricted to laws made by Parliament in respect of the entries in List I; the Union had no power to impose taxes on entries relating to property as they fall under List II; the Act being a State Legislation could not be treated as a Central Legislation for the purpose of attracting Article 289(1); the test to determine whether a tax forms part of "Union Taxation" is to check if the proceeds thereof form part of the Consolidated Fund of India; since the proceeds of taxes on property under the Act did not form part of the Consolidated Fund of India but were retained by the Municipality for its own purposes, such a tax would not form part of "Union Taxation" and the States were therefore not entitled to be exempted from paying it under Article 289(1); the scheme of the Constitution indicates that Part C states, which later came to be called Union Territories, were carved out as separate entities and were not to be regarded as part and parcel of the Union Government; when the Union Government legislates for Union Territories, it does so in a special and different capacity, and not as the Union Legislature; it would therefore be erroneous to treat such laws made by the Union Government for the Union Territories as part of Union Laws that would account for "Union Taxation" under Article 289(1).

To reach its conclusion, the High Court conducted an examination of the legislative history of the Act and its extension to the Union Territory of Delhi; studied the scheme of the Constitution with regard to the distribution of legislative powers between the States and the Union; considered the historical Constitutional position of Union Territories; scrutinised the series of decisions of this Court on the issue whether a Union Territory is to be regarded as a State, and analysed the decision in the Sea Customs case to appreciate the true import of Article 289(1). In arriving at its conclusion,

the High Court rejected the test of the proceeds of taxes being part of the Consolidated Fund of India as being determinative of the nature of Union Taxation. It accepted the contention that all laws applicable in a Union Territory would be deemed to be laws made y Parliament and would therefore be part of "Union Taxation" and relied upon the following observation in the Sea Customs case (at p. 812) for support: "If a State has any property in any Union Territory, that property would be exempt from Union Taxation on property under Article 289(1)."

The High Court rejected the contention that the Act was a State enactment and stated that under the scheme of the Constitution, the term "Union Territory" was distinct from "State" and therefore, the Union Territories could not claim to be States for the purpose of attracting the exemption in Article 289(1).

Faced with such a vast gamut of issues of Constitutional import, we are of the view that before we analyse the submissions put forth before us by the learned counsel for the various parties, it would be convenient if the historical background of certain aspects of the matter could be set out so as to provide a setting where the rival contentions can be better understood.

Constitutional history of the areas that are now called "Union Territories"

In the pre-Constitutional era, these territories were called Chief Commissioner's Provinces. The Government of India Act of 1919 contained specific provisions for the governance of these areas. Under the scheme of the Government of India Act, 1935 (hereinafter referred to as "the 1935 Act"), the Federation of India comprised: (a) the Provinces called Governor's Provinces; (b) the Indian States which had acceded to or were expected to accede to the Federation; and (c) the Chief Commissioner's Provinces. Part IV of the 1935 Act dealt with the Chief Commissioner's Provinces and Section 94 listed them as: (i) British Baluchistan, (ii) Delhi, (iii) Ajmer-Marwara, (iv) Coorg, (v) Andaman & Nicobar Islands, and (vi) the area known as Panth Piploda: and provided that these areas were to be administered by the Governor General, acting through a Chief Commissioner.

On July 31, 1947, during the incipient stages of the framing of the Constitution, a Committee under the Chairmanship of Dr. B. Pattabhi Sitaramayya was established to study and report on the Constitutional changes required in the administrative structure existing in the Chief Commissioner's provinces to give to the people of these provinces a due place in the democratic governance of free India. After the recommendations of this Committee were sanctioned by the Drafting Committee, they were placed before the Constituent Assembly for its consideration. The Constituent Assembly considered all aspects of the issue with a view to providing an appropriate administration for what were called Part C States, which included three former Chief Commissioner's Provinces - Delhi, Ajmer and Coorg - and some erstwhile Indian States which were retained as centrally administered areas after their merger with India; the latter group consisted of the following areas: Himachal Pradesh, Bhopal, Bilaspur, Cooch-Bihar, Kutch, Tripura, Manipur and Vindhya Pradesh. It was decided that the decision weather these territories should have legislatures and Councils of Ministers ought to be left to Parliament and, for this purpose, an enabling provision should be incorporated within the Constitution. It was also provided that these Part C States would be administered by the President, acting to such extent as he thought fit, through a Chief Commissioner or a Lieutenant Governor to be appointed by him, or through the Governor of a neighboring State, subject to certain procedural requirements. Accordingly, Articles 239 and 240 were inserted in the final draft of the Constitution.

Under the Constitution of India, as initially enacted, the Sates were divided into Part A States, Part B States, Part C States and the territories in Part D. The First Schedule to the Constitution provided details of the States falling within each of these categories. The Part C States comprised: (i) Ajmer; (ii) Bhopal; (iii) Bilaspur; (iv) Cooch-Bihar; (v) Coorg; (vi) Delhi; (vii) Himachal Pradesh; (viii) Manipur; and (ix) Tripura. The only territory under Part D was Andaman & Nicobar. Part VIII of the Constitution, comprising Articles 239-242, dealt with Part C States. Article 239 provided that Part C States were to be administered by the President acting through a Chief Commissioner or a Lieutenant Governor. Article 240 provided that Parliament could, by law, create a local legislature or a Council of Ministers or both for a Part C State and such a law would not be construed as a law amending the Constitution. Article 241 allowed Parliament to constitute High Courts for the States in Part C States. Article 242 was a special provision for Coorg. Article 243, which also constituted Part IX of the Constitution, stated that territories in Part D would be administered by the President through a Chief Commissioner or other authority to be appointed by him.

In exercise of its powers under Article 240 (as it then stood), Parliament enacted the Government of Part C States Act, 1951 whereunder provisions were made in certain Part C States for a Council of Ministers to aid and advise the Chief Commissioner and also for a legislature comprising elected representatives. Section 22 of this legislation made it clear that the legislative powers of such Part C States would be without prejudice to the plenary powers of Parliament to legislate upon any subject.

The State Reorganisation Commission which was set up in December, 1953, while studying the working of the units of the Union, took up to functioning of the Part C States for examination as an independent topic. In its Report, submitted in 1955, the Commission expressed the view that Part C States were neither financially viable nor functionally efficient, and recommended that each of them should either be amalgamated with the neighboring States or made a centrally administered territory.

Substantial changes were made by the Constitution (Seventh Amendment) Act, 1956 (hereinafter called "the Seventh Amendment Act"), which incorporated the recommendations of the States Reorganisation Commission and was to have effect in concert with the States Reorganisation Act, 1956. The four categories of States that existed prior to these Acts were reduced to two categories. The first of these categories comprised one class called `States,' and there were 14 such `States'. The second category comprised the areas which had earlier been included in Part C and Part D states; these areas were called "Union Territories" and were six in number. Some additions and deletions were made to the existing lists. While Ajmer, Bhopal, Coorg, Bilaspur and Kutch-Bihar became parts of other States. The Laccadive, Minnoy and Amindivi Islands became a Union Territory. The six Union Territories, therefore, were: (1) Delhi; (2) Himachal Prades; (3) Manipur; (4) Tripura; (5) Andaman & Nicobar Islands; (6) The Laccadive, Minnoy & Anindivi Islands.

The Seventh Amendment Act also replaced Articles 239 & 240 by new provisions; the new Article 240 allowed the President to make regulations for certain Union Territories and this provision continues to this day. It also repealed Article 242 & 243 of the Constitution.

Subsequently, Dadra & Nagar Haveli became a Union Territory by the Constitution (Tenth Amendment) Act, 1961; Goa, Daman & Diu and Pondicherry became Union Territories by the Constitution (Twelfth Amendment) Act, 1962; Chandigargh became a Union Territory by the Punjab (Reorganisation) Act, 1966.

The Constitution (Fourteenth Amendment) Act, 1962 replaced the old Article 240 as Article 293A, enabling Parliament to create a Legislature and/or a Council of Ministers for Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry. Thereafter, by the Government of Union Territories Act, 1963, Parliament did create Legislative Assemblies, comprising three nominated persons, for these territories.

Himachal Pradesh ceased to be a Union Territories by virtue of the State of Himachal Pradesh Act, 1970. Manipur and Tripura became States by virtue of the North-Eastern Areas (Reorganisation) Act, 1971. Arunachal Pradesh, Mizoram and Goa, Daman & Diu ceased to be Union Territories by virtue of the State of Arunachal Act, 1986, the State of Mizoram Act, 1986 and the Goa, Daman & Diu (Reorganisation) Act, 1987 respectively. The Laccadive, Minicoy and Amindivi Island (Alteration of Names) Act, 1973 changed the name of these Island to `Lakshadweep' but it continued to remain a Union Territory.

The present list of Union Territories is as follows: (i) Delhi; (ii) Andaman & Nicobar; (iii) Lakshdweep; (iv) Dadar & Nagar Haveli; (v) Daman & Diu; (vi) Pondicherry; and (vii) Chandigarh. However, it is to be noted that all the Union Territories do not have the same status. By the constitution (Sixth-Ninth Amendment) Act, 1991, Articles 239AA and 239AB, which are special provisions in relation to Delhi, were added. They provide that Delhi, which is to be called the National Capital Territory of Delhi, is to have a Legislative Assembly which will be competent to enact laws for matters falling in Lists II & III barring a few specific entries. As the position stands at the present moment, the Union Territories can be divided into three categories: (i) Union Territories without legislature - comprising Andaman & Nicobar, Lakshadweep, Dadar & Nagar Haveli, Daman & Diu and Chandigarh.

(ii) Union Territories for which legislatures have been established by Acts of Parliament under Article 239A - Pondicherry is the sole occupant of this category. (iii) Union Territories which have legislatures created by the Constitution (Articles 239AA and 239AB) - The National Capital Territory of Delhi is the sole occupant of this category.

The Constitutional History of the National Capital Territory of Delhi and the application of the Act to it. The area that is now known as the National Capital Territory of Delhi was, until 1911, classified as a District of the State of Punjab. Following the announcement of the decision to transfer the capital of British India from Calcutta to Delhi, Government Notification No. 911 dated September 17, 1912 was issued authorising the Governor General to take under his authority the territory comprising the Tehsil of Delhi and adjoining areas. The Notification provided for the administration of these areas as a separate province under the Chief Commissioner. The Delhi Laws Act, 1912 and the Delhi Laws Act, 1915 made provisions for the continuance of laws in force in the territories comprising the Chief Commissioner's Province in Delhi and for the extension of other enactments in force in any part of British India to Delhi by the Governor-in-Council. Under the Government of India Act, 1010 the Indian legislature at the power to enact laws.

Delhi was made by extension of laws force in Punjab and other States by Notifications issued under the Delhi Laws Act, 1912 and 1915. This enabled the General-in-Council to ensure, as far as possible, uniformity of laws with Punjab, since a substantial part of Delhi had originally formed an administrative district of that province. After Independence, Delhi continued to be administered directly by the Governor of India and the different Departments of that Government began to deal directly with corresponding Departments in the Chief Commissioner's Office. This arrangement

continued till shortly after the commencement of the Constitution.

In the period immediately after the commencement of the Constitution, the Part C States Act, 1951 contained a specific provision, Section 21, in respect of Delhi which enabled it to have a Legislative Assembly and a Council of Ministers with restrictive powers to make laws. As a result of this provision, Delhi continued to have a Legislative Assembly and a Council of Ministers till 1956. The States Reorganisation Commission devoted special attention to the needs of the National Capital. It noted that the dual control arising from the division of responsibility between the Union Government and the State Government of Delhi had not only hampered the development of the capital, but had also resulted in a "marked deterioration of administrative standards in Delhi". The Commission came to the conclusion that the National Capital must remain under the effective control of the Union Government. With reference to the plea for a popular Government, it observed: "We are definitely of the view that municipal autonomy in the form of the Corporation which will provide greater local autonomy than is the case in some of the important federal capitals, is the right, in fact, the only solution of the problem of Delhi State." After the Seventh Amendment Act came into force, following the recommendations of the States Reorganisation Commission, the Legislative Assembly and the Council of Ministers for Delhi ceased to exist with effect from November 1, 1956. Furthermore, the Delhi Municipal Act, 1957 was enacted constituting a Municipal Corporation for the whole of Delhi with members elected on the basis of adult franchise. The jurisdiction of the MCD covered almost the entire Union Territory of Delhi, including both urban and rural areas. The areas within the limits of NDMC and Delhi Cantonment Board were kept outside the jurisdiction of the MCD, but the territorial jurisdiction of the NDMC was reduced. As already mentioned, the Constitution (Sixty-Ninth Amendment) Act, 1991 introduced Articles 239AA and 239AB into the Constitution which provided for a Legislative Assembly and a Council of Ministers for Delhi. Subsequently, the Government of National Capital Territory of Delhi Act, 1991 was enacted to supplement these constitutional provisions.

The Act, which was enacted in 1911, was directly applicable to Delhi since at that point of time, it was a district of the State of Punjab. In 1912, when Delhi became a Chief Commissioner's Province, the provisions of the Act and various other Punjab enactments were made t continue in force in the territory of Delhi by virtue of the Delhi Laws Act of 1912 and the Delhi Laws Act of 1915. After the Constitution came into being, the Act was made to continue by virtue of the provisions of the Part C States Laws Act of 1950 and the Union Territories Laws Act of 1950. Therefore, at the time when the present dispute arose, the Act was still in force. However, in 1994, the Legislative Assembly of the National Capital Territory of Delhi enacted the New Delhi Municipal Committee Act, 1994 which is the law in force today. The MCD levied property tax on properties situated within the local limits of its jurisdiction by virtue of the provisions of the Delhi Municipal Corporation Act, 1957. However, for the purposes of deciding the case, we are concerned only with the provisions of the Act.

Before this Court, a number of parties have advanced arguments on the various issues involved in the case. Mr. B. Sen, council for the appellants, NDMC, as also the intervenor, MCD, began by challenging the essential premises of the impugned judgment and advanced elaborate arguments on the manner in which the various Constitutional provisions that are germane to the case, ought to be interpreted. The learned Attorney General for India, appearing for the Union of India, supported the stance adopted by the NDMC. These submissions were strenuously opposed by Mr. P.P. Rao, learned counsel for the State of Punjab and in this endeavour, he was assisted by Mr. A.K. Ganguli, learned counsel for the State of Tripura who buttressed the position of the States with his own

submissions. The learned counsel appearing for the State of Rajashthan lent support to the same.

The Central Issues

As before the High Court, so before us, the controversy between the parties has, in the main, centred around the question whether the properties owned and occupied by the various States within the National Capital Territory of Delhi are entitled to be exempted from the levy of taxes under the Act by virtue of the provisions of Article 289(1). The larger question involved, which will consequently require our consideration, is whether by virtue of Article 289(1), the States are entitled to exemption from the levy of taxes imposed by laws made by Parliament under Article 246(4) upon their properties situated within Union Territories.

At this stage, we may set out the provisions that are central to the adjudication of the present matter. In the following table, for the purposes of clarity and convenience, Articles 285 and 289 of the present Constitution have been contrasted against their immediate predecessors, viz., Sections 154 & 155 of the 1935 Act. ----------
GOVERNMENT OF INDIA ACT, 1935 CONSTITUTION OF INDIA

---------- Sec. 154

4. Exemption of certain public Art.285 Exemption of property property from taxation- of the Union from State Property vested in His taxation - (1) The property Majesty for purposes of the of the Union shall, save in government of the Federation so far as Parliament may by shall, save in so far as any law otherwise provide, be Federal law may otherwise exempted from all taxes provide, be exempt from all improve by a State or by any taxes imposed by, or by any authority within a State. authority within, a Province or Federated State:

Provided until any Federal (2) Nothing in clause(1) shall, law otherwise provides, until Parliament by law any property so vested otherwise provides, prevent any which was immediately authority within a State from before the commencement levying any tax on any property of Part III of this Act of the Union to which such liable, or treated as such property was immediately liable, to any such tax, before the commencement of this shall so long as that tax Constitution liable or treated continues, continue to as liable, so long as that tax be liable, or to be treated continues to be levied in that as liable, thereto. State.

Sec. 155

5. Exemption of Provincial Art.289 Exemption of property and Governments and Rulers of income of a State from Union Federated States in respect taxation - (1) The property of Federal taxation- and income of a State shall be (1) Subject as hereinafter exempt from Union taxation. provided, the Government of a Province and the Ruler (2) Nothing in clause (1) shall of a Federated State shall prevent the Union from imposing not be liable to Federal or authorising the imposition taxation in respect of if, any tax to such extent, lands or buildings situate if any, as Parliament may be in British India or income law provide in respect of a accruing, arising or trade or business of any kind received in British India; carried on by, ----------
GOVERNMENT OF INDIA ACT, 1935 CONSTITUTION OF INDIA ----------
---------- Provided that-

(a) where a trade or business or on behalf of, the of any kind is carried on by Government of a State, or or on behalf of the Government any operations connected of a Province in any part of therewith, or any property British India outside that used or occupied for the Province or by a Ruler in any purposes of such trade or part of British India, nothing business, or any income in this sub-section shall accruing or arising in exempt that Government or connection therewith. Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection occupied for the purposes thereof;

(b) nothing in this sub-section (3) Nothing in clause (2) shall exempt a Ruler from any shall apply to any trade Federal taxation in respect or business, or to any of any lands, buildings or class of trade or business, income being his personal which Parliament may be law property or personal income. declare to be incidental to the ordinary functions of government.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date.

Submissions of Counsel

Mr. Sen prefaced his submissions for the NDMC and the MCD by pointing out that the phrase "Union Taxation" used in Article 289(1) of the Constitution has not been defined either in the text of the Constitution or in any of the decisions rendered by this Court. Pointing out the differences between Article 285 & 289, Mr. Sen stated that (i) the former exempts "all taxes" whereas the latter limits its exemption to taxes relating to "property and income"; and (ii) the former uses the words "imposed by a State or by any authority within a State" whereas the latter uses the phrase "Union Taxation". Thereafter, Mr. Sen contrasted Article 289(1) and Section 155 of the 1935 Act by pointing out that while Section 155(1) uses the words "lands & buildings", Article 289(1) uses the word "property". This, he explained, was on account of the strong position adopted by representatives of the States in the Constituent Assembly who had insisted that the ambit of the exemptions be cast wider.

At this juncture, we may refer to article 246 which reads as follows:

"246. Subject-matter of laws made by Parliament and by the Legislatures of States -- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the `Union List'). (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (3), Parliament, and, subject to clause (1) the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in list III in the Seventh Schedule (in this Constitution referred to as the `Concurrent List'). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the `State List'). (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Mr. Sen then submitted that two possible meanings could be ascribed to the phrase "Union Taxation": (i) Taxes that are levied by Parliament in exercise of its powers under Article 246(1) and

pertain only to entries in List I of the Seventh Schedule; (ii) Any tax that is levied as a result of a law passed by Parliament including those that are relatable to entries in List II and List III of the Seventh Schedule. Mr. Sen vehemently urged that the former interpretation be adopted by this Court. According to him, acceptance of the latter would lead to anomalous results. He submitted that when Parliament makes laws in exercise of its powers under Article 246(4) and in doing so, legislates on entries in List-II, it is doing so in a different capacity and the character of these laws is different from ordinary Union legislations. To drive home the argument, Mr. Sen led us through certain other provisions of the Constitution, such as, Articles 249, 250, 252 and the Emergency Provisions in Part XVIII of the Constitution which empower Parliament to make laws on entries in List II, but the nature and effect of these legislations requires that they be not treated as ordinary Union legislations.

Thereafter, he took us through various provisions in Part XII of the Constitution with a view to analysing the distribution of revenues between the Union and the States. Having done so, he invited our attention to the provisions of Part VIII of the Constitution to support his stand that a Union Territory is an independent Constitutional entity akin to a State and that it has an identity separate from that of the Union Government. To this end, he drew our attention towards several decisions of this Court on the question whether a Union Territory is a State and sought to convince us that, in the present context, the answer to this query must be in the affirmative.

Referring to the two decisions of this Court on the interpretation of Article 289(1) rendered in the Sea Customs case and the APSRTC case, Mr. Sen contended that the issue arising before this Court in the present matter had not arisen for adjudication in either of these two cases. He submitted that the observation made by Sinha, C.J. in the former case would, therefore, have to be regarded as obiter dicta since the issue of laws relating to Union Territories was not before the Court. He explained that such an observation was made in the context of situations where Parliament can directly impose a tax on property to counter the argument that only States could levy taxes directly on property under the Constitution. Mr. Sen stated that the observation was founded on misconcenived premises and that there were other, more appropriate situations where Parliament could impose taxes directly on property, such as, in the case of Entry 3, List I which deals with Cantonments and the Cantonments Act, 1924 which allows Parliament to levy taxes for Cantonments. Mr. Sen then contended that such a power would be available to Parliament even when it enacts a legislation by using Entry 49, List I which relates to patents, inventions and designs, and also in the case of a few other entries in List I.

Thereafter, Mr. Sen contended that, in any event, the taxes levied by NDMC would not amount to Union Taxation because they are in the nature of a Municipal Tax. Our attention was drawn towards the Constitution (Seventh- Fourth) Amendment Act, 1992 which incorporated Part IXA, dealing with Municipalities in our Constitution. He argued that Municipalities now have an elevated Constitutional status and that since they have their own machinery for collecting taxes besides having control over the fixing and charging of the taxes, these taxes cannot be regarded as part of "Union Taxation". He then took us through the relevant provisions of the Act, the New Delhi Municipal Corporation Act, 1994 and the Delhi Municipal Corporation Act, 1957 to indicate that each of these bodies has been vested with wide powers of fixing the rates of taxes, collecting them and then using the proceeds, which go to specially created municipal funds, towards securing their objectives. Drawing sustenance from the language of Article 285, which specifically exempts taxes imposed by local authorities, Mr. Sen submitted that since such an express exemption is not referred to in Article 289(1), Municipal Taxes were not meant to be covered within its exemption and,

therefore, the States are bound to pay these taxes to the NDMC and the MCD.

The learned Attorney General for India began by stating that it is not the identification of the legislature that imposes the law which is determinative of the issue of "Union Taxation". According to him, to determine the true character of Union Taxation, the subject of the levy must be analysed. He submitted that when Parliament makes use of its power under Article 246(4), it does so in an unusual circumstance where the `theme' of the legislation undergoes a change. He, therefore, stressed that in determining the scope of "Union Taxation", attention must be paid to the `theme', (i.e., the context and the specific circumstances in which the tax is levied) rather than to the `author' (i.e. the body which is levying the tax). He, therefore, submitted that the interpretation of "Union Taxation" should be restricted to situations where Parliament makes laws imposing taxes under Article 246(1).

His next submission was that Articles 285 and 289 do not exhaust the entire area of taxation under the Constitution. Referring to certain other provisions where Parliament is required to make laws for subjects in List II, the learned Attorney General drew our attention towards Articles 249, 250, 252, 253 and 357. He then submitted that these provisions envisage unusual situations where, although Parliament is the law making body, the resulting laws are not Union laws in the ordinary sense and the taxes imposed by these laws cannot be said to form part of "Union Taxation". He then contended that similarly, laws made by Parliament under Article 246(4) are not the norm and cannot be said to form part of "Union Taxation". Thereafter, the learned Attorney General took us through the constitutional history of Union Territories and more specifically, that of the National Capital Territory of Delhi. Having done so, he stated that such an analysis would reveal that though Union Territories are not States, they are akin to States, being nascent States. He explained that the practice in this regard shows that, in most cases, when a territory is acquired by the Union and before it is admitted to the Indian Union as a full-fledged States, it is groomed for statehood by being nurtured as a Union Territory. He then referred us to the decision of this Court in Ramesh Birch v. Union of India, (1989) Supp. 1 SCC 430 at 471, to buttress his stance that Parliament cannot be expected to draft legislations for Union Territories on a regular basis and to explain how it meets with its obligations in this regard. Mr. P.P. Rao, learned counsel for the States of Punjab & Haryana, began his submissions by explaining the doctrine of immunity of instrumentalities, which is said to be the legal basis for the incorporation of Articles 285 and 289 into our Constitution, and also mentioned the comparative positions in the American, Canadian and Australian jurisdictions. He submitted that the doctrine positulates that in a federal set up, there should be inter-governmental tax immunities between the federal and State wings. Such an immunity is a Constitutional limitation on the low-making power of the respective legislature in the field of taxation as a whole. After its genesis in the U.S., the doctrine has come to be accepted in Canada and Australia. Mr. Rao conceded that though both the 1935 Act as well as the Constitution had incorporated such reciprocal tax immunities, they were not adopted to the same extent as in Canada and Australia. However, unlike in these countries, the Union of India has a sizeable territory of its own comprising all the Union Territories specified in the First Schedule. The power to make laws including laws authorising levy or collection of taxes of all kinds is conferred exclusively on the Union Parliament and these territories would form an important part of the reciprocal tax immunities.

He then drew our attention to Article 265 which incorporates an important constitutional limitation on the power of taxation when it states that "no tax shall be levied or collected except by authority of law". In India, there are only two legislatures that are competent to tax: `Parliament for the Union' and the `Legislature of a State'. Therefore, all taxation must fall within either of the

categories - Union Taxation or State Taxation. Municipalities and other local authorities cannot have an independent power to tax and that is why there can be no exemption for Municipal taxes independent of the exemption for State or Union Taxation. To that extent, he submits, the contention of Mr. Sen, that Article 289 exempts only Union Taxation without mentioning municipal taxes which would imply that the States would not be exempt from paying the latter, cannot be accepted.

Moving on to the definition of the term "Union Taxation", Mr. Rao pointed out that in Article 285 the term "State Taxation" has been defined as "all taxes imposed by a State or by any authority within a State". He urged us to adopt a similar interpretation for "Union Taxation" even though Article 289 does not contain any such definition by pointing out that being corollaries of each other, these terms would have been used to convey a similar meaning. If this definition were to be accepted, "Union Taxation" would mean "all taxes imposed by the Union" and, therefore, the State would be entitled for exemption from the taxes imposed by NDMC. To explain the language and ambit of Articles 285 and 289, Mr. Rao took us through a detailed examination of the provisions of the 1935 Act with a view to appreciating the true import of the predecessors of these two provisions, namely, Sections 154 and 155 of the said Act. To this end, we were taken through section 5, 6, 94, 99, 100, 104, 154 and 155 and Lists I & II of the Seventh Schedule to the 1935 Act. Mr. Rao, thereafter, contended that under the scheme of the 1935 Act, it was quite clear that by virtue of Section 155, the Provinces (predecessors of "States") were entitled to exemption from taxes on `lands and buildings' in the chief Commissioner's Provinces (predecessors of "Union Territories"). He contends that that position continues in the present Article 289 and, in fact, the immunity is much wider in scope since `property' is wider than `lands and buildings'. Mr. Rao also led us through the relevant passages of the Sea Customs case and stressed that both the minority and the majority opinions in that case had taken the view that the properties of States situated in Union Territories were exempt from taxation. To sum up, Mr. Rao put forth his submissions to counter those put forth by Mr. Sen and the learned Attorney General towards establishing that, even while exercising its powers under Article 246(1), Parliament can levy taxes directly on property. Mr. A.K. Ganguli, learned counsel for the State of Tripura, lent support to the submissions of Mr. Rao on the issue of Parliamentary laws being applicable to Union Territories; he emphasised that even after the introduction of Articles 239AA and 239AB in the Constitution, the Delhi Legislature could not be said to be a legislative body with plenary powers. The legislative powers conferred on such a body are restricted and limited to certain spheres and are subject to the powers of the Parliament to make laws with respect to any matter for the Union Territories, which obviously refers to Article 246(4) of the Constitution. By way of an analogy, he referred us to Article 244 and the Sixth Schedule to the Constitution which contain provisions for the administration of Tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram and provide for bodies with legislative powers. He led us through decisions of this Court on the point that the law making powers of these bodies, though conferred by the Constitution itself, are not plenary powers as those of Parliament or of the State Legislatures.

Counsel submitted that the provisions contained in Part XII of the Constitution relating to distribution of revenue between the Union and the States are not determinative of the scope of the expression "Union Taxation" in Article 289(1) as they only indicate that though a large number of taxes are levied by the Parliament and collected by the Union Government, eventually, a substantial portion thereof is distributed amongst the States.

After submitting that the main controversy in this case is squarely covered by the decision in the Sea Customs case, Mr. Ganguli pointed out that the Customs case, Mr. Ganguli pointed out that the

Government of India, while preparing its Receipt Budget, has always treated taxes imposed by Parliament and collected from the Union Territories as part of the total tax revenue of the Union Government in which other taxes such as corporation tax, taxes on income, customs duties and union excise duties are also included. He submitted that even in respect of non-tax revenue, the receipts from the Union Territories are treated as receipts of the Union Government. He, therefore, contended that even the Union Government was of the view that "Union Taxation" included taxes levied by Parliament in Union Territories. Learned counsel for the State of Rajashthan, Mr. Gupta, sought to bring to our notice a wider comparative position of the manner in which countries around the world have adopted the American doctrine of reciprocal immunity. Having noticed the submissions of the counsel for the various parties before us, we may now proceed to express our opinion on the diverse points raised in the present case. Analysis of the decisions rendered in the Sea Customs case and the APSRTC case The decision in the Sea Customs' case was occasioned by the emanation of a proposal to introduce in Parliament a Bill to amend Section 20 of the Sea Customs Act, 1878, and Section 3 of the Central Excise and Salt Act, 1944. These amendments would have led to the imposition of indirect taxes, namely, excise and customs duties upon the properties of various States which were being used for purposes other than those specified in Article 289(2), i.e., for purposes not relating to trade or business. A number of State Governments objected that such a law would fall foul of the interdiction in Article 289(1), and, in view of the resulting controversy, the President referred, under Article 143, the issue of the constitutionality of the proposed amendments to this Court. The issue was decided by a majority of 5 : 4. It was held that the immunity granted to States in respect of Union Taxation under Article 289 extends only to those taxes that are directly leviable upon the property and income of the States; since excise and customs duties are indirect taxes, they would not fall within the ambit of the exemption in Article 289 and Parliament could impose such duties upon the property and income of the States. There were two opinions outlining the majority view and an equal number for the minority. Sinha, C.J. delivered the first of the majority judgments on behalf of himself, Gajendragadkar, Wanchoo and Shah, JJ. while Rajagopala Ayyangar, J. delivered a separate, concurring opinion. S.K. Das, J. delivered the first of the minority opinions on behalf of himself, sarkar and Das Gupta, JJ. while Hidayatullah, J. rendered a separate minority opinion. A number of submissions were advanced before the Court with a view to facilitating a true construction of Article 289(1). In this regard, comparisons were drawn with its corollary, Article 285 and with the provisions which inspired the adoption of these two provisions, namely, Section 154 and 155 of the 1935 Act. The Court was also required to analyse the scheme of the Constitution relevant to the issue. For the moment, it is not necessary for us to analyse those aspects of the decision since, in any event, we will be required to give our independent consideration to these matters. We can, therefore, confine ourselves to those observations that have a direct bearing upon the point at issue with which we are presently concerned; this aspect was, however, not specifically adverted to in all the four opinions.

In his opinion for the majority, Sinha, C.J. has referred to the essential contentions urged before the Court. The Upon urged that the exemption in clause (1) of Article 289 be interpreted restrictively, limiting its applicability to direct taxes on the property and the income of States; the States, on the other hand, canvassed for an expansive interpretation which would exempt them from taxes having any relation whatsoever to their property and income. The learned Chief Justice noted that it was not disputed that the exemption in Article 289(1) was, as far as taxes on income are concerned, restricted to "Taxes other than on agricultural income", which is the only entry (Entry 82) in List I of the Seventh Schedule which enables Parliament to legislate on taxes relating to income. The learned Chief Justice considered this to be a significant fact as it meant that if the income of State was exempt only from taxes on income, the juxtaposition of the words "property and income" in

Article 289(1) would lead to the inference that property is also exempt only from direct taxes on property. However, it was pointed out by the States that List I does not contain any specific tax on property which would enable Parliament to pass a law relating to taxes on property and, that being so, the intention of the framers of the Constitution must have been to exempt the property of States from all taxes, be they direct or indirect. To meet this argument, the learned Solicitor General, appearing for the Union, put forth several arguments, one of which came to be accepted by the learned Chief Justice as the main plank upon which he based his rejection of the contention of the States. Since these observations are directly relevant to the present case, they may be extracted here (at p. 812): "It is true that List-I contains no tax directly on property like List-II, but it does not follow from that that the Union has no power to impose a tax directly on property under any circumstances. Article 246(4) gives power to Parliament to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. This means that so far as Union territories are concerned Parliament has power to legislate not only with respect to items in List I but also with respect to items in List II. Therefore, so far as Union territories are concerned, Parliament has power to impose a tax directly on property as such. It cannot therefore be said that the exemption of States' property under Article 289(1) would be meaningless as Parliament has no power to impose any tax directly on property. If a State has any property in any Union territory that property would be exempt from Union taxation on property under Article 289(1). The argument therefore that Article 289(1) cannot be confined to tax directly on property because there is no such tax provided in List I cannot be accepted."

(Emphasis added)

Thereafter, having referred to the language of Article 285 and the intention of the framers as perceived by him, the learned Chief Justice came to the conclusion that immunity granted by Articles 285 and 289 was of similar ambit and extended only to direct taxes without exempting indirect taxes such as excise and customs duties. Das, J., in his dissenting opinion, noted the objection of the States that List I had no entry which would enable Parliament to levy a tax directly on property. He took note of the counter-arguments advanced by the learned Solicitor General in relation to this aspect but could not bring himself to agree with the correctness of those propositions. While refereeing to the argument on Article 246(4), he noted (at p.843):

"... It would be a case of much ado about nothing if the Constitution solemnly provided for an exemption against `property tax' on State property only for such rare cases as are contemplated in Art. 246(4), the situation of state property in territory not included in a State. Such situation would be very rare, and could have hardly necessitated a solemn safeguard at the inception of the Constitution when the States were classed under Part A or Part b of the First Schedule. If the wider interpretation of clause (1) of Article 289 is accepted, such property would also be excepted from Union taxation except in cases covered by clause (2) of the article. We find it difficult to accept the contention that clause (1) of Article 289 was meant only for cases covered by Article 246(4)..."

(Emphasis added)

At this juncture, we may note that both Mr. Rao and Mr. Ganguli were at pains to point out that though Das, J. rejected the overall contention of the learned Solicitor General, he had, by stating that the exemption could not have been provided "only for such rare cases as are contemplated in Article 246(4)", implicitly accepted that these cases would fall within the exemption in Article 289(1).

Rajagopala Ayyangar, J., in his separate majority judgment, makes a specific reference to this contention of the leaned Solicitor General (at pp. 918-19) but, aside from stating that "the submission of the learned Solicitor General not without force" (at p.919), he did not make any further reference to the matter. Hidayatullah, J., in his separate minority opinion, did not advert to this issue. The preceding analysis reveals that the issue at hand was specifically answered by this Court in the Sea Custom's case. We find it difficult to accept Mr. Sen's contention that the observations of Sinha, C.J. were made by way of obiter dicta. Though the issue of legislations applicable in Union Territories was not specifically before the Court, it did arise for consideration during its analysis of the power of Parliament to levy taxes directly upon property. The latter question was squarely before the the Court and the issue relating to Union Territories, though incidental to the main question, necessarily required consideration. The observations of Sinha, C.J. are unequivocally in favour of the position adopted by the States before us, who find themselves in the enviably advantageous position of being able to draw sustenance from even the observations in the dissenting judgment of Das, J.

The decision in the Sea Custom's case was reaffirmed by a Constitution Bench of this Court in the APSRTC case was a matter relating to assessment of income-tax. The facts of that case are not directly relevant for our purpose but, what is of considerable interest to us is the manner in which the scheme of Article 289 and its three clauses were construed. Speaking for the Court, Gajendragadkar, C.J. outlined the scheme of Article 289 (at p.25) which can be stated as follows: The general proposition that flows from clause (1) is that ordinarily, the income derived by a State both from governmental and non-governmental or commercial activities shall be immune from income-tax levied by the Union. Clause (2) then provides an exception and empowers Parliament to make a law imposing a tax on the income derived by the Government of a State from trade or business carried on by it, or on its behalf. If clause (1) had stood by itself, it would not have been possible to include within its purview income derived by a State from commercial activities but since clause (2) empowers Parliament to enact a law levying taxes on such activities of a State, the inescapable conclusion is that these activities must be deemed to have been included in clause (1) and that alone can be the justification for the onwards in which clause (2) has been couched in the Constitution. Thereafter, clause (3) empowers Parliament to declare by law that any trade or business would be taken out of the purview of clause (2) and restore it to the area covered by clause (1) by declaring that the said trade or business is incidental to the ordinary functions of Government. In other words, clause (3) is an exception to the exception prescribed by clause (2). Whatever trade or business is declared to be incidental to the ordinary functions of Government, would cease to be governed by clause (2) and would then be exempt from Union taxation.

These observations of Gajendragadkar, C.J. having been made in the context of income tax levied in the facts of that case, mention only taxes relating to income. They are equally applicable to the taxes relating to property referred to in Article 289. The essence of this analysis is that clause (3) of Article 289 is an exception to clause (2), which in turn is an exception to the first clause of the Article.

Analysis of this Court's previous rulings on the Constitutional status of Union Territories We may now refer to a catena of decisions of this Court on the seemingly innocuous issue whether or not a Union Territory has, under the scheme of our Constitution, a status distinct from that of the Union and the States. The fact that so many decisions of this Court exist on the issue would indicate that the matter is not one that can be disposed of by simply pointing to the separate parts of the

Constitution which deal with Union Territories as distinct units.

Before dealing with the specific circumstances of and the decision in, each of these cases, it is necessary that a few provisions which figure prominently be dealt with. Article 246(4) of the Constitution, as it stood on January 26, 1950, allowed Parliament to "make laws with respect to any matter for any part of the territory of India not included in Part A or Part B of the First Schedule". The Seventh Amendment Act brought about a number of changes affecting Union Territories, some of which have already been noticed by us. The other changes brought about by it are also relevant; it caused Article 246 to be changed to its present form where Parliament is empowered to make laws with respect to "any part of the territory of India not included in a State". The word "State" has not been defined in the Constitution. Article 1(3) defines the territory of India as comprising: (a) the territories of the States; (b) the Union Territories specified in the First Schedule; and (c) such other territories as may be acquired. The word `Union Territory' has been defined in Article 366(30) to mean "any Union Territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule".

Tho not defined in the Constitution, the word "State" has been defined in the General Clauses Act, 1897 (hereinafter called "the General Clauses Act"). Article 367 of the Constitution states that the General Clauses Act, 1897 shall, unless the context otherwise requires and subject to any adoptions and modifications made under Article 372, apply for the interpretation of the Constitution. Therefore, on a plain reading of the provisions involved, it would appear that the definition of "State" in the General Clauses Act would be applicable for the purposes of interpreting the Constitution. Article 372 is the saving clause of the Constitution which enables all laws in force before the commencement of the Constitution to continue in the territory of India. Article 372A, which, once again, owes its origin to the Seventh Amendment Act, empowers the President to make further adaptations in particular situations.

Section 3(58) of the General Clauses Act, having been amended by the Seventh Amendment Act, reads as follows: "3. Definitions. -- In this Act, and in all General Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context, --

(58) "State", --

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State; and (b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory;"

(Emphasis added)

The latter part of the definition, which states that a Union Territory is included within the definition of a State, has introduced an element of controversy in the interpretation of the Constitution.

While appreciating the reasoning of this Court in dealing with cases where it had to confront the issue of the status of Union Territories, the time-frame and the history of the Union Territories which we have adverted to in the earlier part of this judgment, must be borne in mind. The first of these cases was that of Satya Dev Bushhri v. Padam Deo and Ors., [1955] 1 S.C.R. 549 This was a case relating to election law and one of the contention of the appellant, who was seeking to

disqualify the respondents under the provisions of the Representation of Peoples' Act, 1951, was that contracts entered into by the respondents with the Part C States were, in effect, contracts entered into with the Central Government. This contention was based on the reasoning that the executive action of the Central Government is vested in the President; the President is also the Executive Head of the Part C States; therefore, contracts with the Part C States are contracts with the Central Government. The Court, speaking through Venkataraman Ayyar, J., rejected this contention and stated that when the President exercised functions as the Head of the Part C States, he occupied a position analogous to the Governor in Part A States. Furthermore, Section 38(22) of the Government of Part C States Act, 1951 clearly provided that all executive action of the State would be taken in the name of the Chief Commissioner. It was, therefore, held that contracts with the Part C States could not be said to be contracts with the Central Government. Analysing Articles 239, 240 and 241 of the Constitution, the Court held that it could not be said that these had the effect of converting Part C States into the Central Government and that they have a distinct status. However, when the case came up for review, in Satya Dev Bushahri v. Padam Deo and Ors., [1955] 1 S.C.R. 561, the Court, after having been directed towards, and having taken note of the provisions of, Section 3(8) and Section 3(60) of the General Clauses Act which define "Central Government" and "State Government" respectively, and stipulate that for Part C States, references to "State Government" would mean the "Central Government", held that a contract with the Chief Commissioner in a Part C State is a contract with the Central Government. It, however, added that this would not affect the status of Part C States as independent units, distinct from the Union Government under the Constitution. The State of Madhya Pradesh v. Shri Maula Bux & Ors., [1962] 2 S.C.R. 794, a decision rendered by a Constitution Bench, concerned the State of Vindhya Pradesh which, at the relevant time, was a Part C State and raised the issue whether, in a civil suit, the State of Vindhya Pradesh was the proper party to be sued under Section 79(a) of the Code of Civil Procedure, 1908. The argument of the respondents, based on Sections 3(8) and 3(60) of the General Clauses Act, was that if, in case of the Part C States, "State Government" means the "Central Government", the proper party to be sued would be the Union of India instead of the State of Vindhya Pradesh. Hidayatullah, J., speaking for the Constitution Bench, at pp. 798-802, relied on the observations in the first of the Satya Dev cases to the effect that Part C States had a separate existence and were not merged with the Central Government and went on to hold that the State of Vindhya Pradesh, having a distinct identity, was the proper party to be sued. Although the reviewed decision in Satya Dev's case was not referred to, since the proposition relied upon by Hidayatullah, J. was in fact reaffirmed in the review, the relevant proposition of law laid down in the case does not suffer from any infirmity.

These cases are useful for our purpose to the limited extent that they declare that Union Territories are not part of the Central Government and are, to that extent, distinct Constitutional entities. However, the issue whether Union Territories are distinct from States was not considered in these cases; it did however arise for consideration in the following cases.

In Ram Kishore Sen v. Union of India, [1966] 1 S.C.R. 430, the Court had to consider whether the word "State" used in article 3(c) of the Constitution would include Union Territories; the Constitution Bench followed the stipulation in Articles 367 and 372 to notice the definition of "State" in Section 3(58) of the General Clauses Act and the context of Article 3 to hold that the word `State' in Article 3(c) would have to be interpreted in the light of Section 3(58) of the General Clause Act and would include Union Territories. The correctness of this proposition was doubted by Hidayatullah, J. in a subsequent case which we will refer to in due course. The fact however remains that the definition in Section 3(58) of the General Clauses Act has been utilised for

interpreting a Constitutional provision. The question that therefore arises is whether this will affect the status of Union Territories in matters relating to Article 246, to which an answer was provided in a subsequent case to which we shall immediately advert. T.M. Kanniyan v. Income-Tax Officer, Pondicherry & Anr., [1968] 2 S.C.R. 103, was a case in which the petitioners had challenged the vires of a regulation by which the President had, in exercise of powers under Article 240, repealed the laws in force in relation to Income-Tax within the Union Territory of Pondicherry and had made the Income-Tax Act, 1961 applicable to it. Explaining that Parliament, and through it the President, had plenary powers to make laws for Union Territories on all matters, Bachawat, J., speaking for the Constitution Bench, stated as follows (at pp. 108-109):

"Parliament has plenary power to legislate for the Union Territories with regard to any subject. With regard to Union Territories there is no distribution of legislative powers... [The] inclusive definition [in Section 3(58) of the General Clauses Act] is repugnant to the subject and context of Article 246. There, the expression "State" means the States specified in the First Schedule. There is a distribution of legislative power between Parliament and the legislatures of the States. Exclusive power to legislate with respect to the matters enumerated in the State List is assigned to the legislatures of the States established by Part VI. There is no distribution of legislative power with respect to Union Territories. That is why Parliament is given power by Article 246(4) to legislate even with respect to matters enumerated in the State List. If the inclusive definition of "State" in Section 3(58) of the General Clause Act were to apply to Article 246(4), Parliament would have no power to legislate for the Union Territories with respect to matters enumerated in the State List and until a legislature empowered to legislate on those matters is created under Article 239A for the Union Territories, there would be no legislature competent to legislate on those matters; moreover, for certain territories such as the Andaman and Nicobar Islands, no legislature can be created under Article 239A, and for such territories there can be no authority competent to legislate with respect to matters enumerated in the State List. Such a construction is repugnant to the subject and context of Article 246.

It follows that in view of Article 246(4), Parliament has plenary powers to make laws for Union Territories on all matters."

The Court, therefore, held that Parliament was empowered to make laws for Union Territories on all matters and the regulation made by the President in exercise of his powers under Article 240 was valid. The ratio of this decision, therefore, is that the definition of "State" provided by Section 3(58) of the General Clauses Act would not apply for the purposes of Article 246. This ratio is equally applicable at the present moment for, despite several changes having been made in respect of Union Territories since the decision in Kanniyan's case, of the seven existing Union Territories, as many as five do not have Legislature of their own. The controversy was not, however, put to rest by the decision in Kanniyan's case. In Management of Advance Insurance Co. Ltd. v. Shri Gurudasmal & Ors., [1970] 3 S.C.R. 881, the main issue before another Constitution Bench was whether the word "State" used in Entry 80 of List I of the Seventh Schedule could be said to exclude the application of the definition in Section 3(58) of the General Clauses Act. Relying on the decision in Kanniyan's case, Hidayatullah, J. held that, ordinarily, the definition would apply in the interpretation of the Constitution unless it is repugnant to the subject or context. However, the noted, that after the Seventh Amendment Act where Union Territories have been mentioned as separate entities, the distinction between "Union Territories" and "States" cannot be lost sight of. He expressly approved the reasoning of Bachawat, J. in holding that in the context of Article 246, the definition provided in Section 3(58) would not apply; however, on the facts and in the circumstances of the case before

him, he felt that the subject and context of Entry 80 of the Union List required the application of the definition given in Section 3(58). While referring to the decision in Ram Kishore's case, Hidayatullah, J. noted that this decision was per incuriam for the reason that it referred to Article 372 whereas the proper reference ought to have been to Article 372A.

The same issue was thereafter considered by a Constitution Bench in S.K. Singh v. Shri V.V. Giri, [1971] 2 S.C.R. 197, wherein Bhargava, J., while delivering an opinion concurring with the majority, reached the conclusion that the definition in Section 3(58) of the General Clauses Act would not apply to matters involving interpretation of the Constitution. The case, which involved a challenge to the election of Shri V.V. Giri as the President of India, required the Court to consider the issue in the context of Article 54 which provides that the electoral college for the President consists of the elected members of both Houses of Parliament, and the elected members of the Legislative Assemblies of the States. Relying on the definition of "State" in Section 3(58) of the General Clauses Act, it was argued that Union Territories are also States and, consequently, the elected members of the Legislative Assemblies of the Union Territories must also be included in the electoral college; their omission was said to be a material irregularity which would vitiate the election. Responding to this contention, the learned Judge held as follows (at pp. 313-314):

"Article 54, no doubt, lays down that all elected members of the legislative assemblies of the States are to be included in the electoral college; but the word `States' used Territories. It is true that, under Article 367, the General Clauses Act applies for interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India; but that Act has been applied as it stood on 26th January, 1950, when the Constitution came into force, subject only to any adoptions and modifications that may be made therein under Article 372. The General Clausers Act, as it was in 1950 and as adapted or modified under Article 372, did not define "State" so as to include a Union Territory. The Constitution was amended by the Constitution (Seventh Amendment) Act, 1956, which introduced Article 372A in the Constitution permitting adoptions and modifications of all laws which may be necessary or expedient for the purpose of bringing the provisions of the law into accord with the Constitution as amended by the Seventh Amendment Act, 1956. It was in exercise of this power under Article 372A that Section 3(58) of the General Clauses Act was amended, so that, thereafter, "State" as defined include Union Territories also. The new definition of "State" in Section 3(58) of the General Clauses Act as a result of modifications and adoptions under Article 372A would, no doubt, apply to the interpretation of all laws of Parliament, but it cannot apply to the interpretation of the Constitution, because Article 367 was not amended and it was not laid down that the General Clauses Act, as adapted or modified under any Article other than Article 372, will also apply to the interpretation of the Constitution. Since, until its amendment in 1956, Section 3(58) of the General Clauses Act did not define "State" as including Union Territories for purposes of interpretation of Article 54, the Union Territories cannot be treated as included in the word "State"."

The view of the learned Judge does seem to have considerable force and it is also to be remembered that Hidayatullah, J. had doubted the correctness of the proposition laid down in Ram Kishore's case on the ground that the proper reference in it should have been to Article 372A, rather than to Article 372. However, we must refrain from making any comment because the issue whether or not the General Clause Act applies to the interpretation of the Constitution is not properly before us in the facts and circumstances of the present case; what is more, no arguments have been canvassed before us on this issue. For the present, we can draw support from the observations in Kanniyan's case as affirmed in the Advance Insurance case to the effect that the definition in Section 3(58) of the

General Clauses Act is repugnant to the subject and context of Article 246. We can, therefore, proceed on the assumption that for our purposes, a Union Territory is not a State; we must, however, hasten to add that this assumption will be open to reconsideration subsequent to our analysis of the Constitutional scheme regarding the issues before us. Interpretation of "Union Taxation" in Article 289(1) and scope of its ambit.

We may now address the central issue in the case which involves the determination of the ambit of Article 289(1). In order to appreciate the true import of the words used in this provision, it will be to our benefit to examine the Constitutional history of Article 289 as well as that of its corollary, Article 285.

Articles 285 and 289 are modified versions of Sections 154 and 155 of the 1953 Act, as in obvious from a comparative study made in the earlier part of this judgment. While Articles 285 and 289 seek to provide reciprocal immunities within the Republic of India to the Union and the States from each other's taxing powers, Sections 154 and 155 strove to achieve the same result within British India in respect of the Federal Government on the one hand, and the Governments of the Provinces and the Federal States on the other. However, in the process of adopting the provisions of the 1935 Act for our Constitution, a number of changes occurred and we must analyse some of these in greater detail for they are extremely relevant for our purposes. To appreciate the true import of Sections 154 and 155, it will be necessary to refer to a few provisions of the 1935 Act so as to obtain an understanding of its general scheme. Section 5 of the 1935 Act stated that the Federation of India would comprise the Provisions, the Indian States and the Chief Commissioner's Provinces. Section 6 defined a `Federated States' as an Indian State which had acceded to or might accede to the Federation. Section 94 provided a list of the Chief Commissioner's Provinces and stated that they would be administered by the Governor General acting through a Chief Commissioner. Section 99, which provided the manner in which legislative powers were to be distributed between the Federal and Provincial legislatures, stated that the Federal Legislature was empowered to make laws for the whole or any part of British India or for any Federated States, while the Provincial Legislatures were empowered to make laws for the provinces. Section 311(1) defined `British India' as "All territories or the time being comprised within the Governor's Provinces and the Chief Commissioner's Provinces". Section 100, which dealt with the subject matter of Federal and Provincial laws, provided that the Federal Legislature would have power to make laws with respect to matters enumerated in List I of the Seventh Schedule to the 1935 Act, which was to be called the "Federal Legislative List"; the Provincial Legislature would have powers to make laws in respect of matters in List II of the Seventh Schedule, called "the Provincial Legislative List"; and, in respect of Matters provided in List III of the Seventh Schedule, called "the Concurrent Legislative List", both the Provincial and the Federal Legislature would have jurisdiction. Clause (4) of Section 100, which is of considerable importance for our purpose, provided in express terms that the Federal Legislature would have "power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof". It was, therefore, clearly contemplated that the Federal Legislature would have the power to make laws for matters in the Provincial Legislative List in respect of the Chief Commissioner's Provinces and the Federated States. Under the scheme of the 1935 Act, situations where the Federal Legislature could enact laws with respect to matters in the Provincial Legislative List were, therefore, not considered to be rare or unusual.

While both the Federal Legislative List and the Provincial Legislative List contained entries allowing the levy of taxes, the Federal Legislative List did not contain any entry which allowed the Federal Legislature to levy taxes directly on property. Entry 42 of the Provincial Legislative List

empowered the Provincial Legislatures to levy taxes specifically on lands and buildings. The Concurrent Legislative List contained only one entry relating to taxes, namely, Entry 13 which referred to stamp duties.

Section 154, in material terms, provided that the property of the Federal Government would be exempt from all taxes imposed by Provinces and Federated States and the local authorities within them. The proviso added that, in the absence of any Federal law stipulating otherwise, those properties of the Federal Government which were subject to the levy of taxes before the commencement of Part III of that Act would continue to be liable to pay them. The exemption in Section 154, therfore, did not extend to such taxes, including taxes levied under Municipal laws. It is to be noted that Section 154 did not provide for an exemption in respect of the income of the Federal Government primarily because the Provinces lacked the legislative competence to enact laws levying taxes on income.

Section 155(1) stated that the Government of a Province and the ruler of a Federated State would not be liable to "Federal Taxation" in respect of "lands or buildings situated in British India". Proviso (a) stipulated that all the trading and business activities carried on by Provinces and the Federated States outside their territorial jurisdiction would be subjected to Federal Taxation in British India. Provision (b) stipulated that the personal property and income of a Ruler of a Federated State would also be subject to Federal Taxation. Clause (2) of the Section being self-explanatory, does not require elucidation. In response to a query from us, Mr. Sen sought to find the reason for the existence of the exemption in Section 155(1); it appears that the purpose was to avoid the liabilities imposed by Sections 3 and 9 of the Income Tax Act, 1912 upon the Provinces.

Comprising the text of Sections 154 and 155, it becomes clear that even under the scheme of the 1935 Act, the ambit of the reciprocal immunities was not equal in length and breadth; while Section 154 exempted the property of the Federal Government from "all taxes", the Provincial Governments and Rulers of Federated States were entitled to an exemption only in respect of "lands or buildings" situated in British India and "income" accruing thereof. This feature will gain some importance when we deal with the comparative Constitutional position at a later stage. The term "Federal Taxation" was not defined in the 1935 Act but some clue to its meaning can be discerned by referring to Sections 99 and 100 which described the legislative powers of the Federal Legislature. As we have already seen, the Federal Legislative List did not allow the Federal Legislature to levy taxes on lands and buildings; in fact this subject was expressly included in the Provincial Legislative List. On the face of it, this would make the exemption in Section 155 otiose. However, the confusion clears when one notices Clause (4) of Section 100 which expressly enables the Federal Legislature to legislate in respect of matters in the Provincial Legislative List for territories apart from the Provinces. Viewed in this context, and taking into account the definition of "British India" in Section 311(1), Section 155 would have to be read as exempting the Governments of Provinces and the rulers of Federated States from "Federal Taxation" in respect of lands or buildings situated in the Chief Commissioner's Provinces. This is the only possible interpretation which will give meaning to the words of Section 155. Since, at the time of the enactment of the legislation, there were only six territories classified as Chief Commissioner's Provinces, the exemption could not be said to be at par with the exemption provided in Section 154 but, all the same, in terms of the revenue amount involved, it could not be considered insignificant either. It therefore becomes clear that, under the scheme of the 1935 Act, "Federal Taxation" included taxes leviable by the Federal Government in the Chief Commissioner's Provinces and that the properties of the Provinces and the Rulers of the Federated States situated within these Chief Commissioners Provinces would be

exempt from such "Federal Taxation". It remains to be seen whether the position came to be changed during the process of transformation of these sections into the existing provisions of the Constitution.

In the earlier stages of the framing of the Constitution, the issue of financial relations between the Centre and the units was addressed by two Committees - the Union Powers Committee and the Union Constitution Committee. These Committees recommended that the schemes envisaged by the 1935 Act should be generally followed. In the Draft Constitution prepared by the Constitutional Adviser, Sir B.N. Rau, in October 1947, Clauses 205 and 207 were modified versions of Sections 154 and 155. On October 2, 1947, an Expert Committee on Financial Provisions was appointed to make recommendations as to the provisions on the subject to be embodied in the new Constitution after taking into account the views of the States and also the Draft prepared by the Constitutional Adviser. The Drafting Committee of the Constitution took up the issue in January 1948 and took into consideration the Drafts prepared by the Constitutional Adviser as also the Expert Committee on Financial Provision. Thereafter, these provisions came to be numbered as Articles 264 and 266 of the Draft Constitution. After the Constitute Assembly had considered the matter at length and formally approved these provisions, they came to be renumbered as Articles 285 and 289.

The present Article 285 is much the same as its predecessor Section 154 and, though there were some changes in its text as the provision charted its course through the stages enumerated above, not being relevant for our purposes, we shall ignore its discussion.

The present Article 289 was Clause 207 in the Draft Constitution prepared by the Constitutional Adviser. It provided that the Government of a unit would not be liable to Federal Taxation in respect of lands or buildings situated within the territories of the Federation or income accruing, arising or received within such territories; the two exceptions provided were in favour of (a) any income accruing to a unit's Government through trade or business and (b) the personal property or the personal income of the Ruler of Indian State. As we have observed, under Section 155, the Provinces and Federated States were liable to taxation only in respect of trade and business operations carried on by them outside their own territories. To that extent Clause 207 had made a substantial departure. The Constitutional Adviser relied on the decisions of the Supreme Court of the United States of America in McCulloch v. Maryland, 4 L. Ed 579 (1890), and South Carolina v. United States, 199 U.S. 437 (1905), to buttress his stance that the Federation should have the power to tax the units, but not vice versa for the reason that when the Federation taxed the instrumentalities of the units, it taxed its constituents, whereas when a unit taxed the operations of the Federal Government, it acted upon instrumentalities created, not by its own constituents, but by people over whom it could claim no control.

The Expert Committee on Financial Provisions approved the Constitutional Adviser's recommendation that the trading operations of the units, as also of local bodies, whether carried on within or without their jurisdiction should be liable to central taxation; they, however, suggested that quasi-trading operations incidental to the normal functions of Government should be exempt from such taxation. When the Drafting Committee took up the matter, it duly noted the recommendations of the Constitutional Adviser and the Expert Committee and, in July 1949, convened a Premier's Conference to discuss these provisions. Draft Article 266 came in for a lot of criticism and a number of States suggested that insofar as Article 266 did not exempt the trading and business operations of State Governments from Union Taxation, it be dispensed with altogether. Other suggestions were also forwarded to the Drafting Committee: a number of States were of the view that the provision

was inequitable and one-sided insofar as it sought to subject trade and business operations of the State Governments to Union Taxation, while under Article 264, States were debarred from taxing the property of the Union. Such a provision, it was felt, was bound to retard the industrial development of the Provinces, taking away the incentive for State enterprise.

Reconsidering the provision in the light of the comments of the Provincial Governments, the Drafting Committee decided, in consultation with the Central Ministry of Finance, to introduce some important changes in Article

266. The ambit of the exemption in Clause (1) was expanded by including `property' instead of `lands or buildings' thereby bringing within its purview, movable property as well. On the issue of trade and business, a provision similar to the present Article 289(2) was included. This provision would enable Parliament to pass a law to declare which of the trading and business activities of the States were to be classified as ordinary functions of the Government allowing them to be exempted, and making the rest of the activities liable to tax. Drafting Article 266 was considered by the Constitutent Assembly on September 9, 1949. Some members representing the States of Tranvancore- Cochin and Mysore expressed apprehensions that Union Taxation of industrial and commercial activities would check the expansion of industrialisation and would reduce the capacity of States to discharge their ordinary governmental functions. Mr. P.T. Chacko from Travancore-Cochin referred to the principle of immunity from inter-governmental taxation as it stood in the United States of America and the fact of its incorporation in Draft Article 264; he sought the extension of the doctrine to States as well. While allaying their apprehensions, Mr. Alladi Krishnaswami Ayyar noted the fact that the Australian, Canadian and American Constitutions had incorporated the principle of inter- governmental immunities. He stated that the Australian and Canadian experiences were irrelevant for the purposes of the Indian Constitution for, when they were drafted, it was not envisaged that large schemes of socialisation would be implemented. referring to the American position, he pointed out that even within that jurisdiction, the doctrine had begun to lose favour and was in the process of being discarded. Thereafter, he observed that under the provision as it was placed before the Constituent Assembly, Parliament was left with the option of making the law which would declare those trading and business operations of the States which would be liable to Union Taxation after taking into account the general interests of trade and industry of the whole country and other democratic factors. He therfore felt that the provision was "very salutary". Subsequently, following the reassurances given by the Central Finance Minister, the amendments were withdrawn and Draft Article 266 was accepted in toto. [Note: For a study of the evolution of Articles 285 and 289 within the Constituent Assembly, See B. Shiva Rao, The Framing of the Indian Constitution: A Study, N.M. Tripathi Pvt. Ltd., Bombay (1968) pp. 649-99; for reference to original documents, See B. Shiva Rao, ibid, Vols. III & IV].

Mr. P.P. Rao and the other learned counsel appearing for the States have argued before us that the present Articles 285 and 289 are based on the U.S. doctrine of reciprocal immunity of instrumentalities which has also been incorporated in the Canadian and Australian Constitution, apart from certain other Constitutions. Before we begin to examine the text of Articles 285 and 289 with to finding a solution to the Constitutional conundrum posed by the case before us, we must analyse this proposition closely. The doctrine of inter-governmental immunity has been the subject to some controversy in the country of its origin, the United States of America. The origin of this doctrine is ascribed to the judgment of Chief Justice John Marshall in the case of McCulloch v. Maryland (supra). However, as pointed out by commentators, on the facts of the case, where a State Tax sought to be levied on a Federal Bank was held to be void, the decision was more in favour of

declaring the supremacy of the Federal Government than of upholding the rights of States. It was, therefore, the basis for establishing federal immunity from State Taxation. However, later decisions interpreted the judgment to hold that its corollary, that the property of States would be exempt from Federal Taxation was equally applicable; more than 50 years after the decision in McCulloch's case, the Supreme Court, in Collector v. Day, [[11. Wall. 113 (1871)] made the theory of inter-governmental immunity reciprocal. The doctrine, as propounded in Collector Vs. Day, was never applied widely and, in subsequent years, underwent significant modifications. In The South Carolina case, which was the second case relied upon the Constitutional Adviser in preparing Clause 207 of his Draft Constitution, the Supreme Court dealt a further blow to the concept of immunity of States from Federal Taxation, when it held that South Carolina was bound to pay a National Excise Tax on liquor-dealers which was being levied by the Federal Government. The Supreme Court drew a distinction between State functions which were strictly governmental and those which were commercial in nature; it was held that the governmental functions of State would be immune from taxation but when the States entered into ordinary business, no immunity would exist. This created fresh problems and over time, several Judges of the Supreme Court protested against the illogical distinction between governmental and business activities, calling for a complete reexamination of the entire doctrine. In later years, the doctrine was considerably modified. In recent years, the Supreme Court has come to recognise a narrower tax immunity for the States than for the National Government on the basis of a theory that combines the principle of national supremacy with the argument that the interests of States received more representation in Congress than national interest received in State Legislature. It is to be noted that we have had this position from the time that the Constitution was originally enacted.

As we have already noticed, the Constitutional Adviser relied upon the decisions in McCulloch's case and The South Carolina case, for justifying the reduction in the ambit of the immunity of States from Union Taxation rather than for establishing reciprocal immunity between the States and the Union. Furthermore, in the Constituent Assembly, Mr. Alladi Krishanswami Ayyar had doubted the applicability of the doctrine to the Indian Constitution and had instead commended the present scheme whereby the troublesome issue of determining which of the trading and business operations of State should be subject to Union Taxation has been left to Parliament; while enacting such a law Parliament would be forced to cater to the interests of the States on account of the presence of their representatives in it. The usefulness of any further discussion on the applicability of this doctrine to the Indian Constitution is rendered questionable by virtue of the fact that this Court had, on earlier occasions, rejected it. In State of West Bengal v. Union of India, [1964] 1 S.C.R. 371, Sinha, C.J., speaking for the majority in a six-Judge Constitution Bench expressly held (at p. 407) that the doctrine of immunity of instrumentalities had been rejected by the Privy Council as inapplicable to the Canadian and Australian Constitutions and having practically been given up in the United States, it was equally inapplicable to the Indian Constitution. In the APSRTC case (supra, at p. 24), the Court rejected the contention of the Advocate-General of Andhra Pradesh urging it to adopt the American doctrine, by relying upon these observations of Sinha, C.J.

It is, therefore, clear that in seeking a solution to the problem faced by us, we must rely primarily on the bare text of Articles 285 and 289. Comparing these provisions, it becomes evident that the Constitution does envisage some form of inter-governmental immunity. Article 285(1), while exempting the property of the Union from all taxes, does not attempt to provide an exemption in respect of income as the States do not possess legislative competence to levy taxes on income as such; however, taxes relating to income that have a bearing on property such as the taxes on agricultural income levied by using Entry 46 of the State List will also be exempt in view of the

wide-ranging, all-embracing nature of the exemption. Article 285(2) saves, until Parliament by law decides otherwise, all pre-Constitutional taxes applicable to Union property.

With respect to Article 289, we have already examined the manner in which this provision was analysed by this Court in the APSRTC case. We are in agreement with the proposition that the three clauses of Article 289 are interlinked, in that, Clause (3) is an exception to Clause (2) which in turn is an exception to Clause (1). As we have noticed for ourselves, the framers of the Constitution had consciously conferred Parliament with the option of deciding which of the trading and business activities of the States would be subject to the levy of Union taxes. So, while Article 289(1) generally exempts the property and income of the States from Union taxation, Clauses (2) and (3) grant to Parliament the aforementioned prerogatives. Having understood the scheme of Articles 285 and 289, we must sharply focus on the specific wording of Article 289(1) and, in particular, on the meaning of the phrase "Union Taxation". It may be noted that the phrase "Union Taxation" appears in only two places in the entire Constitution - in the marginal heading of Article 289 and in the main text of Article 289(1). It is suggested that some guidance may be obtained by analysing the term "State Taxation" which appears in the marginal heading of Article 285 and has been described in the text of Article 285(1) as "all taxes imposed by a State". On that reasoning, "Union Taxation" would mean "all taxes imposed by the Union". The word "taxation" has been defined in Article 366(28) which states that unless the context otherwise requires, the word "taxation" includes "the imposition of any tax or impost, whether general or local or special and, `tax' shall be construed accordingly". This definition was accepted by Das, J. and Hidayatullah, J. in their minority opinions (at pp. 834-35 and 893-94 respectively) in the Sea Customs case for interpreting Article 289(1). However, Sinha, C.J., in his majority opinion (at pp. 923-34), rejected the application of this definition to Article 289(1) as, in his opinion, the context of Article 289(1) precluded the application of the definition. Rajagopala Ayyangar, J., in his separate majority opinion (at pp. 921-93), also felt that the definition would not apply. We concur with the majority view in the Sea Customs case that the definition of "taxation" provided in Article 366(28) will not apply for the purpose of interpreting Article 289(1). Our attention has been drawn towards the provisions contained in Part XII of the Constitution which has a bearing on the scheme of the Constitution with respect to financial relations between the Union and the States. Since this aspect and its relevance to Article 289(1) was discussed at length in the Sea Customs case, we may advert to those observations. Das, J. (at p. 852), was of the opinion that the provisions of Part XII of the Constitution would have no bearing on the import of Articles 285 and 289 which ought to be construed on their own terms. Sinha, C.J., however, analysed these provisions at length and the relevant observations in this behalf may be reproduced (at pp. 809-10):

"It will thus appear that Part XII of the Constitution has made elaborate provisions as to the revenues of the Union and of the States, and as to how the Union will share the proceeds of duties and taxes imposed by it and collected either by the Union or by the States. Sources of revenue which have been allocated to the Union are not meant entirely for the purposes of the Union but have to be distributed according to the principles laid down by Parliamentary legislation as contemplated by the Articles aforesaid. Thus all the taxes and duties levied by the Union and collected either by the Union or by the States do not form part of the Consolidated Fund of India but many of those taxes and duties are distributed among the States and form part of the Consolidated Fund of the States. Even those taxes and duties which constitute the Consolidated Fund of India may constitute the Consolidated Fund of India may be used for the purposes of supplementing the revenues of the States in accordance with their needs. ....The financial arrangement and adjustment suggested in Part XII of the Constitution has been designed by the Constitution-makers in such a

way as to ensure an equitable distribution of the revenues between the Union and the States, even though those revenues may be derived from taxes and duties imposed by the Union and collected by it or through the agency of the States. ....It will thus be seen that the powers of taxation assigned to the Union are based mostly on considerations of convenience of imposition and collection and not with a view to allocate them solely to the Union;

that is to say, it was not intended that all taxes and duties imposed by the Union Parliament should be expended on the activities of the Centre and not on the activities of the States. ...The resources of the Union Government are not meant exclusively for the benefit of the Union activities; they are also meant for subsidising the activities of the States in accordance with their respective needs, irrespective of the amounts collected by or through them. In other words, the Union and the States together form one organic whole for the purposes of utilisation of the resources of the territories of India as a whole."

We are of the view that an analysis of some of the provisions in Part XI, Chapter I of the Constitution, which deals with the legislative relations between the Union and the States will be crucial to the determination of the central issue in this case. We may first notice certain provisions in the Constitution which enable Parliament to make laws for subjects contained in the State List, to which our attention was drawn by counsel for the appellants as also the learned Attorney General. We must note that these provisions conceive of extraordinary situations. Article 279 provides for a situation where, if the Council of States declare by a resolution that it is necessary in the national interest to do so, Parliament may make laws in respect of matters enumerated in the State List. Article 250 empowers Parliament to make laws for the whole or any part of India in respect of matters enumerated in the State List while a Proclamation of Emergency is in operation. Article 252 empowers Parliament to make laws with respect to matters enumerated in the State List if two or more States resolve that such a course of action is desirable. Article 253 reserves to Parliament the exclusive power to make laws for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or any decision made at any international conference, association or any other body. The Emergency Provisions outlined in Part XVIII of the Constitution and comprising Articles 352 to 360 conceive of special situations in which Parliament is empowered to enact laws on matters in List II.

It has been urged that when Parliament legislates for Union Territories in exercise of powers under Article 246(4), it is a situation similar to those enumerated above and is to be treated as an exceptional situation, not forming part of the ordinary constitutional scheme and hence falling outside the ambit of "Union Taxation". Having analysed the scheme of Part VIII of the Constitution including the changes wrought into it, we are of the view that despite the fact that, of late, Union Territories have been granted greater powers, they continue to be very much under the control and supervision of the Union Government for their governance. Some clue as to the reasons for the recent amendments in Part VIII may be found in the observations of this Court in Ramesh Brich's case, which we have extracted earlier. It is possible that since Parliament may not have enough time at its disposal to enact entire volumes of legislations for certain Union Territories, it may decide, at least in respect of those Union Territories whose importance is enhanced on account of the size of their territories and their geographical location, that they should be given more autonomy in legislative matters. However, these changes will not have the effect of making such Union Territories as independent as the States. This point is best illustrated by referring to the case of the National Capital Territory of Delhi which is today a Union Territory and enjoys the maximum autonomy on account of the fact that it has a Legislature created by the Constitution. However,

Clauses 3(b) and 3(c) of Article 239AA make it abundantly clear that the plenary power to legislate upon matters affecting Delhi still vests with Parliament as it retains the power to legislate upon any matter relating to Delhi and, in the event of any repugnancy, it is the Parliamentary law which will prevail. It is, therefore, clear that Union Territories are in fact under the supervision of the Union Government and it cannot be contended that their position is akin to that of the States. Having analysed the relevant Constitutional provisions as also the applicable precedents, we are of the view that under the scheme of the Indian Constitution, the position of the Union Territories cannot be equated with that of the States. Though they do have a separate identity within the Constitutional framework, this will not enable them to avail of the privileges available to the States. It has been urged before us that the phrase "Union Taxation" has to be interpreted in the context of Article 246, which deals with the subject matter of laws made by Parliament and the State Legislatures, and that the context of "Union Taxation" should be limited to those matter falling within Articles 246(1), where Parliament has the legislative competence to levy taxes with respect to matters enumerated in the Union List. We see no reason why such a limiting principle must be read into the definition of the phrase "Union Taxation". In our view, the term can and should be given the widest amplitude, allowing it to encompass all taxes that are levied by the authority of Parliamentary laws. Though the amplitude of the term "Union Taxation" was not expressly before the Court in the Sea Customs case, it is clear from an analysis of the majority judgment that the learned Judges considered the term "Union Taxation" to mean all taxes leviable by the Union. As Clause (4) of Article 246 itself envisages situations where Parliament is to make laws in respect of matters in the State List, it cannot be said that this is a rare or an unusual circumstance. The Constitution does not contain any provision which would indicate that the definition of "Union Taxation" should be restrictively interpreted so as to be within the confines of Article 246(1). The specific situations envisaged in Articles 249, 250, 252, 253 and the Emergency Provisions in Part XVIII of the Constitution do not make for the creation of any anomalous situations. These Articles, which provide for unusual exercises of Parliamentary power involving the matters enumerated in the State List, can be regarded as exceptions to the general rule. We are, therefore, of the view that, unless the context requires otherwise - as in the case of Articles 249, 250, 252, 253 and the Emergency Provisions in Part XVIII of the Constitution - the broad definition of "Union Taxation" embracing all taxes leviable by Parliament ought to be accepted for the purpose of interpreting Article 289(1). As already noticed by us, under the scheme of the 1935 Act, those lands or buildings of the Provinces and Federated States which were situated within the Chief Commissioner's Provinces were, by virtue of Section 155(1), exempted from Federal Taxation. There can be dispute about such a construction of the provision for, otherwise, the exemption in Section 155(1) would have no meaning. Section 155(1) formed the basis for the present Article 289(1) and, having closely examined the various stages by which Article 289(1) replaced Section 155(1), we find that this position was never sought to be deviated from. The presumption, therefore, is that it was the intention of the framers of the Constitution to maintain the status quo with respect to the position regarding the Chief Commissioner's Provinces which are now called "Union Territories". That presumption is further reinforced by the general scheme of the Constitution which furthers Article 289(1) and its applicability in respect of the Union Territories. Unlike other Federations, the Union of India has a sizeable territory of its own comprising the Union Territories which have been specified in the First Schedule to the Constitution. Therefore, the limited reciprocal inter-governmental immunity bestowed by the Constitution in Articles 285 and 289 is given fuller meaning by virtue of the adoption of the wider meaning of "Union Taxation"; this would mean that, just as the properties of the Union are exempt from taxes on property leviable by the States, the properties of the States will also be exempt from taxes on property leviable by the Union in areas falling within its territorial jurisdiction.

While attempting to demonstrate that the reasoning of Sinha, C.J. in the Sea Customs case was incorrect insofar as his acceptance of the contention that Article 246(4) enables Parliament to levy taxes directly on property was concerned, Mr. B. Sen contended that Article 246(4) was not in the contemplation of the framers of the Constitution when they carved out the exemption in favour of the property of the States from Union Taxation; he then proceeded to cite examples of specific circumstances in which Parliament can levy taxes directly on property which, according to him, was what the framers had intended to exempt under Article 289(1). He drew our attention to Entry 3 of the Union List ["Delimitation of Cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of home accommodation (including the control of rents) in such areas"] and stated that by virtue of this entry, Parliament is rendered competent to levy taxes on the use or occupation of properties located within areas declared as Cantonments. He then referred to Entry 54 of the Union List ("Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest") and to the Mines and Minerals (Regulation & Development) Act, 1956 which together empower Parliament to levy taxes on mines and minerals which would be in the nature of a tax on property. Referring to Entry 49 of the Union List ("Patents, Inventions and Designs; copyright; trade-marks and merchandise marks"), Mr. Sen contended that since these subjects are regarded as intangible or incorporeal properties, taxes levied by Parliament upon them would also amount to taxes on property. Additionally, Mr. Sen has referred to the following Entries in the Union Lists: Entries 24 & 25 (relating to Shipping activities), Entry 47 ("Insurance"), Entry 52 ("Industries, the control of which by the Union is declared by Parliament by law to be in the public interest"): to demonstrate that Parliament does have power to levy taxes directly on property. Mr. A.K. Ganguli controverted Mr. Sen's contention in this respect; he argued that Entry 3 of the Union List does not contemplate the levy of taxes by Parliament. With respect to Entries 47 & 54, he argued that these entries would be covered by Article 289(2) of the Constitution. The same contention would, presumably, be applicable in respect of the other entries cited by Mr. Sen.

In our opinion, there is no warrant for an authoritative pronouncement upon this aspect for, even if we assume that Mr. Sen's contention is correct and that all these Entries do in fact empower Parliament to levy taxes directly on property, it would not in any way detract from the correctness of our interpretation that the levy of taxes under Article 246(4) is covered by the phrase "Union Taxation" in Article 289(1); these Entries would then provide additional areas in respect of which the States can claim exemption from Union Taxation under Article 289(10, thus lending greater weight to the solemnity and the actual worth, in real terms, of the phraseology of Article 289(1). However, we find ourselves unable to agree with Mr. Sen when he contends that the entries cited by him were the only instances kept in contemplation by the framers at the time of the drafting of Article 289(1). If that were so, the ambit of the exemption would traverse an extremely narrow field which would then lend credence to the observation of Das, J. in the Sea Customs case, albeit made in the converse context, that the exemption in Article 289(1) would amount to "much ado about nothing".

Classification of taxes imposed by Municipalities We may now turn to Mr. Sen's alternatives submission that the taxes levied by the NDMC under the Act would not be covered by the exemption in Article 289(1) as that provision cannot be construed to encompass Municipal Taxes. To appreciate this contention, we will be required to analyse certain provisions of the Act as also those of the Constitution. Section 61 of the Act, which is the charging section, at the relevant time,

empowered the Municipality to levy a tax payable by the owner on lands and buildings subject to, and to the extent of, the qualifying conditions provided therein. It is clear from an analysis of this provision that it provides for the levy of a consolidated tax, combining within it the tax element and the service element. Section 51 of the Act provides for the constitution of a Municipal fund and states that all sums received by the Municipal Committee are to be credited to it. Section 52 of the Act provides the manner in which the sums collected in the Municipal Fund are to be applied by the Municipal Committee. Our attention has also been drawn towards analogous provisions in the New Delhi Municipal Committee Act and the Delhi Municipal Committee Act to form the foundation of the argument that, under all these legislations, the Municipalities have been vested with a great deal of financial autonomy; they have the power to fix their own budgets, levy taxes within prescribed limits, collect the proceeds of such imposition which are to be diverted to Municipal Funds which function entirely under the supervision of the Committees. It is argued that such a stance is further reinforced by the introduction of Part IXA into the Constitution which allows for Municipalities to be vested with substantial powers, including the power to tax, thereby providing Constitutional support. The argument, therefore, is that now that the Constitution itself recognises Municipal taxes as a separate category of taxes, they should not be construed to fall within the exemption provided by Article 289(1). Another limb of this submission is that while under Article 285, taxes imposed by any "authority within a State", which would necessarily include Municipal taxes, have been expressly exempted, Article 289 does not provide for any such facility and, to that extent, taxes levied by Municipalities within the Union Territories are not covered by the exemption in Article 289(1). We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that "no tax shall be levied or collected except by authority of law". Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Article 79 as "Parliament for the Union" and the State Legislatures, which are described by Article 168 in the singular as "Legislature of a State". While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Article 243X of the Constitution which reads as under:

"243X. Power to impose taxes by, and Funds of, the Municipalities.

The Legislature of a State may, by law,--

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) ... ...

(c) ... ...

(d) ... ...

as may be specified in law."

Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than ever before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

We have already held that despite the fact that certain Union Territories have Legislative Assemblies of their own, they are very much under the supervision of the Union Government and cannot be said to have an independent status. Under our Constitutional scheme, all taxation must fall within either of two categories: State Taxation or Union Taxation. Since it is axiomatic that taxes levied by authorities within a State would amount to State taxation, it would appear that the words "or by any authority within a State" have been added in Article 285(1) by way of abundant caution. It could also be that these words one their presence in the provision to historical reasons; it may be noted that Section 154 of the 1935 Act was similarly worded. The fact that Article 289(1), which in its phraseology is different from Section 155 of the 1935 Act having been drafted by the Drafting Committee to meet specific objections, does not contain words similar to those in Article 285(1), will not in any way further the case of the appellant, because the phrase "Union Taxation" will encompass Municipal taxes levied by Municipalities in Union Territories.

Before we part, we must refer to Part IV of the judgment of Jeevan Reddy, J. where Clause (2) of Article 289 has been invoked to validate the levy of taxes under the Act and the Delhi Municipal Corporation Act upon those properties of State Governments which are being occupied for commercial or trade purposes.

At the outset, we must express our great reluctance to deal with this proposition, for it is not based on any contention advanced by any of the counsel who appeared before us, either in their written pleadings or in their oral submissions. This is not because we feel constrained to restrict ourselves to the parameters prescribed by the submissions of counsel, but because we feel that the opposite side did not have a fair opportunity to answer the line of reasoning adopted in that behalf. The view taken by Reddy, J. has the effect of imposing considerable tax liabilities upon the properties of the State Governments and, in our view, it would only be proper that their views in this behalf be obtained before visiting them with such liability. We have only the rule of caution in mind which warns that ordinarily, courts should, particularly in constitutional matters, refrain from expressing opinions on points not raised or not fully and effectively argued by counsel on either side.

Be that as it may, we must, for the record, express ourselves on the view taken by Reddy, J. after closely examining it. Reddy, J. begins his examination of the issue by noting that the Act, the Delhi Municipal Corporation Act and the New Delhi Municipal Committee Act contain specific provisions exempting the properties of the Union from local taxation in accordance with Article 285. It is then stated that since none of these Acts contain similar exemptions in favour of the

properties of States, it is clear that they purport to levy taxes on them. This is followed by the observation that though the States seek an exemption from such levies on the basis of clause (1) of Article 289, as per the ratio of the APSRTC Case, clause (1) has to be read in the context of clauses (2) and (3) of that Article. This would, it is stated, lead to the consequence that if a Parliamentary law within the meaning of clause (2) of Article 289 is made, the area covered by that law would be removed from the field occupied in clause (1); for support, an analogy is drawn from the decision in R.C. Cooper v. Union of India [1970] 1 SCR 248.

Thereafter, the meaning and scope of Article 289 as well as its underlying objective are ascertained by contrasting it with Section 155 of the 1935 Act. The use of the words "lands and buildings" in Section 155(1) is analysed to arrive at the conclusion that these words were included to empower the federal legislature to levy taxes on lands and buildings situated within the Chief Commissioner's Provinces. It is then noted that Article 289 uses the wider expression `property', but that the same reasoning holds good for the preset Union Territories, making the property and income of State situated within Union Territories exempt from "Union Taxation". With respect to the provision to Section 155(1), it is observed that the provision was automatically applicable on its own force. It did not define the trading and business operations of Provincial Governments, nor did it specify which of these operations would be subject to Federal Taxation. It is then stated that the same position continues in Article 289 with the only difference being the requirement of a the enactment of a law by Parliament in this behalf. Thereafter, it is observed that the exemption in clause (1) of Article 289 is subject to clause (2) of Article 289. Clause (2) is analysed and interpreted as clarifying clause (1) to the extent that the exemption upon the income of Provincial Government operates only when such income is carried on for the purpose of governmental functions and not for trade and business activities, carried on with the profit motive. It is stated that though "trade and business" ordinarily has a very wide and ambiguous meaning (certain English and Indian authorities are cited to illustrate this point), but, for the purposes of clause (2) of Article 289, they have to be given a restricted meaning. It is, therefore, stated that under Article 289(2), the trading and business activities of State Governments, which are carried on with the profit motive, will be liable to tax and cannot avail of the exemptions in Article 289(1).

Clause (2) is further analysed and is interpreted as having been included for the purpose of removing the trading and business activities of State Governments from the purview of the exemption in clause (1). However, it is stated, such a removal is not automatic and is dependent upon the enactment of a Parliamentary Law which imposes taxes on specified trading and business activities of State Governments.

Thereafter, the question whether Parliament has, in exercise of powers under Article 289(2), imposed taxes on the trading and business activities of State Governments, is sought to be addressed. In this respect, the Act, the New Delhi Municipal Committee Act and the Delhi Municipal Corporation Act, which are deemed to be post-Constitutional enactments, are examined. It is noted that while these enactments contain specific exemptions in favour of properties of the Union and also exempt properties used for `charitable purposes' and `public worship', they do not exempt properties of State Governments. It is stated that the latter omission must be deemed to be deliberate. Thereafter, it is stated that two views are possible in this regard. The first is to adopt the position that since neither of these enactments are purported to have been made under Article 289(2), they should not be treated as having been enacted for that purpose and, consequently, should be held to be incapable of levying taxes on any property, whether occupied for governmental or trading purposes, of the State Governments. The second view, which Reddy, J. adopts, is to take the

position that the Doctrine of Presumption of Constitutionality of Legislations points in favour of holding that the Act and the Delhi Municipal Corporation Act are laws made by Parliament under Article 289(2), and taxes imposed by them upon the properties occupied for trading and business activities by State Governments would be valid and effective. A number of decisions of this Court are cited to show the jurisprudential basis of this tool of Constitutional interpretation. It is pointed out that though neither of these legislations purport to have been made under Article 289(2), but, since this is normal practice in that no legislation specifies the provision of the Constitution that it is enacted under, this fact need not be over-emphasised. It is, therefore, held that the levy of property taxes by these enactment is valid to the extent that it relates to lands and buildings owned by State Governments and used by them for trade and business purposes. [In an earlier part of the opinion, the difficulty in drawing a distinction between governmental and business functions is noted and an example in respect of gues-touses maintained by State Governments is supplied]. Thereafter, it is stated that it is for the "appropriate assessing authority" to determine "which land/building falls within which category in accordance with law and take appropriate further action". It is then stated that since, under these enactments, the assessing authorities are required to decide several difficult questions as to what amounts to `charitable purpose' etc., the obligation imposed by such directions would not prove to be too onerous to discharge. Reddy, J. sums up the issue by recommending to the Union that it consider granting a total exemption in favour of all properties of State Governments. We are of the opinion that of the two possible views expressed by Reddy, J., it is the first which ought to be preferred. We think that the second view is fraught with several difficulties. Such a construction, while being violative of the scheme envisaged by the Framers of the Constitution, may well result in a situation that was sought to be avoided by them. The directions may also lead to grave practical difficulties; moreover, since the effect of the directions would be to vest the executive authorities with substantial policy making powers, their issuance might well be offensive to established principles of delegation of powers.

We shall now set out the reasons which cause us to so think; in doing so, we may have to revisit some of the ground that has already been traversed by us, but the repetition can be justified by the narrower focus that will now be imparted to those aspects.

Articles 285 and 289, and their predecessors in the 1935 Act, owe their origin to the American doctrine of Inter-governmental Tax Immunity. This doctrine was enunciated n the case of McCulloch Vs. Maryland (supra). However, the doctrine was substantially modified by the decision in South Carolina Vs. United States (supra) which drew a distinction between strictly governmental and business functions of governments. In the latter case, it was held that the governmental functions of State Governments would be exempt from Federal Taxation but their commercial functions would be subject to the levy of Federal Taxes. This case imposed upon Courts the heavy burden of determining in specific cases when a particular function was or was not governmental. A number of conflicting decisions were rendered and caused a great deal of confusion as to which of the activities of governments were to be classified as 'business' or 'proprietary' and were, therefore, to be liable to Federal Taxation. The controversy was set at rest by a unanimous decision of the U.S. Supreme Court in new York Vs. United States [326 U.S. 572; 90 L.ED. 326 (1946)] wherein it was concluded that the artificial distinction between governmental and proprietary/business functions of States was unworkable and required to be abandoned. The difficulty in determining the distinction between a governmental function and a trading or business function of the State has also been felt and recognised in Australia. In South Australia Vs. Commonwealth [(1942) 65 C.L.R. 373], the changing character of government functions of the State was noted and it was held that, "In a fully self-government country when a Parliament determines legislative policy and an executive

government carries it out, any activity may become a function of government if Parliament so determines" [supra at p.423]. The Court in this decision come to the conclusion that the best way to avoid the controversy was to allow Parliament to decide, by law, which of the activities of the State would be classified as relating to business and would consequently be liable to taxation.

Under the predecessor of Article 289, i.e., under proviso (a) to Sections 155 (1) of the 1935 Act, the Federal government was empowered to levy taxes on lands and buildings of Provincial Governments used by them for trade or business. The provision itself vested the Federal Government with the power to levy such taxes and there was no requirement for the enactment of a specific law in that behalf. This position continued till the Constitution came into force.

When Sir B.N. Rau prepared his Draft Constitution, Clause 207 (present Article 289) was drafted on the basis of Section 155 of the 1935 Act. An attempt was made to incorporate the U.S. position prevailing after the decision in the South Carolina case (supra) by stipulating that all trading activities of State Governments would be liable to Union Taxation. However, even under this provision, the power to tax was automatic and did not require a specific law. [See : A Note on certain clauses by the Constitutional Adviser, B. Shiva Rao, Vol. III, p.197 at PP. 204-205]. The Expert Committee on Financial Provisions, however, recommended that quasi-trading activities of State Governments should be exempt from Union Taxation. [See : Report of the Expert Committee, B. Shiva Rao, Vol. III, p.260 at p.266].

Even when the Drafting Committee incorporated the provision as Draft Article 266 and subsequently modified it, there was no stipulation for a law before the power to tax could be exercised. [See the text of Draft Article 266, B. Shiva Rao, Vol. IV, p.676]. At the Premier's Conference held in July, 1949, the provision met with severe criticism. The Premier of the United Province suggested that all trading and business activities of State Governments be exempt from Union Taxation. Several other Provinces also made similar representations. Based on these representations, the Drafting Committee made a substantial change in the text of Draft Article 266. A provision similar to the present Article 289(2), whereby Parliament would have the power to determine which of the trading and business activities of State Governments would be liable to Union Taxation was incorporated. [See : Revised draft by the Ministry of Finance, B. Shiva Rao, Vol. IV, pp.731-732]. When Draft Article 266 was discussed in the Assembly, a number of members expressed fears that Union Taxation of commercial activities of State Governments would check the expansion of industrialisation and reduce the capacity of States to perform their ordinary functions. They, therefore, demanded that the trading and business activities of State Governments be exempt from Union Taxation. Alladi Krishnaswamy Ayyar sought to allay these apprehensions by making an elaborate statement, the relevant part of which is quoted below [Constituent Assembly Debates, Vol. IX, pp. 1167-69]:

"....It is a permissive power that is given to Parliament under the section. There is no duty case upon Parliament to levy a tax and I am sure in the larger interest of trade and industry, Parliament will certainly not go to the length of taxing ... industries which have been thriving. .... So far as the United States is concerned in the early days though there was no express provision through the medium of the doctrine of Instrumentality, they held that the State cannot tax the Federal Government and the Federal Government cannot tax the State instrumentality because both are parts of a single composite mechanism and if you permit one to tax the other, it may destroy the whole mechanism. Later, the doctrine of instrumentality itself was felt to be not n the large interest of the State, and quite recently the swing of the pendulum is the other way. The other day one of the most

enlightened of Supreme Court Judges held in what is known as the Spring of the State of New York, in regard to certain springs which were worked by the State of New York - for this part of business they held that there is no immunity of the State from tax. They said 'You have to draw some line between one kind of activity of a State and another kind of activity. Of course it cannot be a rigid definition. What may be in one sphere may easily pass into another sphere with the progress of the State and with the development of the polity in the particular State'. [In all probability, this is a reference to the opinion of Frankfurter, J. in new York Vs. United States (supra) which upheld the application of a Federal Excise Tax to the sale of mineral waters bottled by the State of New York with a view to providing funds for a State health resort]. ....

[N]ormally speaking, you cannot regard at the present day under existing conditions the carrying on of trade and business as a normal or ordinary function of the Government. It may develop into ordinary function - certain aspects of it, especially the transport service and certain key industries, may soon become the parts of the State enterprise. .... The Parliament will take note of the progressive tendency of the particular times and may at once declare accordingly. It might not have been the ordinary function of Government before. Now it may become an ordinary function. There will be sufficient elasticity in clause (3) to enable the Government to exempt from taxation particular trades or industries which are started as public utility services or declare them as regular State industries. Nobody can question a law made by Parliament because the Parliament has stated that a particular industry is an ordinary function of the State whereas according to the notions of an individual economist A or B it is not a ordinary function of a Government. Parliament will lay down the law of the land and it will be the sole arbiter of the question as to whether it is an ordinary function of Government or not.

Therefore having regard:

(a) to the plenary power of Parliament to exempt and particular industries, and particular business from the operation of the tax provision.

(b) having regard to the fact that it is not obligatory on Parliament to levy any tax.

(c) that the very conception of State industry may change with the further evolution of the State and changing times, and

(d) to the inter-connection between one State and another.

it will be very difficult to differentiate between particular States, between States which have been working certain industries and other States. .... [T]o lay down a general principle of law that even at the present day before the provinces are on their feet every trade or business is exempt from taxation will lead to wild-goose schemes being started by various provinces. They may not take into account the general interests of the trade and industry in the whole country. They may not of industry and another. Under those circumstances the particular provision which has been inserted by Dr. Ambedkar is a very salutary one and is consistent with the most advanced principles of democratic and federal policy in all the countries."

(Comment and Emphasis supplied)

It is, therefore, clear that clause (2) of Article 289 was a well-considered compromise which was

arrived at after balancing the demands of those who sought complete exemption of commercial activities of State Governments from Union Taxation and those who were in favour of levying such Union Taxes. The Framers desired that the issue whether the trading and business activities of State governments should be subject to Union Taxation, be left to the wisdom of Parliament. As is evident from the reference to New York Vs. United States (supra) in the extracted portion, the Framers were conscious of the difficulty in drawing a line between the governmental and commercial functions of State Governments and they hoped that Parliament would take into account a shot of relevant factors before enacting a law which would specify the trading activities of State Governments making them liable to Union Taxation. It is important to note that the Framers did not expressly confer upon the Union the power to tax commercial activities of State governments. The exercise of such a power is made conditional upon the enactment of a special, duly considered, legislation. It is also important to note that clause (2) of Article 289 has made a departure from the proviso to Section 155(1). Under the present scheme, the power to tax is not automatic and the responsibility of specifying the trading and business activities of State Governments which would be liable to Union Taxation is expressly vested in Parliament.

Neither the Act, which is a 1911 enactment, nor the Delhi Municipal Corporation Act, can qualify as laws under Article 289. They do not specify which of the trading activities of State Governments are liable to taxation; indeed, by their very nature, they cannot purport to do so. It must be remembered that the Act and the Delhi Municipal Corporation Act are not Parliamentary Laws in the sense envisaged by Article 289(2). Though the Act is sought to be construed as a post-Constitutional, Parliamentary enactment, the fact remains that it is a pre-Constitutional, colonial legislation. As for the Delhi Municipal Corporation Act, it is, in essence, an ordinary Municipal legislation. What makes it special is the fact, occasioned in its case by geographical and historical factors, that it was enacted by Parliament instead of by a State legislature. In this regard, we may recall the submissions of the learned Attorney General n respect of how Parliament discharges its obligation towards enacting laws for Union Territories. After stating that Parliament cannot afford to undertake threadbare discussions before legislating for Union Territories, the learned Attorney General referred us to the following passage of the decision of chis Court in Ramesh Birch v. Union of India (1989) Supp.1 SCC 430 at 471: "[Union Territories] are territories situated in the midst of contiguous territories which have a proper legislature. They are small territories falling under the legislative jurisdiction of Parliament which has hardly sufficient time to look after the details of all their legislative needs and requirements. To require or expect Parliament to legislate for them will entail a disproportionate pressure on its legislative schedule. It will also mean the unnecessary utilisation of the time of a large number of members of Parliament for, except the few (less than ten) members returned to Parliament from the Union territory, none else is likely to be interested in such legislation. In such a situation, the most convenient course of legislating for them is the adaptation, by extension, of laws in force in other areas of the country. As Fazal Ali, J. pointed out in the Delhi Laws Act case, it is not a power to make laws that is delegated but only a power to 'transplant' laws already in force after having undergone scrutiny by Parliament or one of the State legislatures, and that too, without any material change."

It is, therefore, clear that it would be quite dangerous to assume that when Parliament enacted the Delhi Municipal Corporation Act, it had intended that the enactment should secure the purpose enshrined in Article 289(2). If any safe assumption is to be drawn, it is this: in all probability, while enacting tee Delhi Municipal Corporation Act, Parliament must have 'transplanted' a municipal legislation existing in a certain State, made the necessary changes and completed the procedural formalities. That would explain why the Delhi Municipal Corporation Act (as also the new Delhi

Municipal Committee Act) contains an exemption on the lines of the one prescribed by Article 285 - this is a typical feature of ordinary Municipal legislations, which are enacted by State legislatures who are conscious of the mandate of Article 285. Moreover, such legislations do not contain exemptions in favour of properties of State Governments because, within the territory of a State, the properties of other State Governments are liable to taxation. So, when such a legislation is 'transplanted' almost verbatim into a Union Territory, it will obviously not contain an exemption in favour of properties of State Governments. In the face of the actual conditions which govern the enactment of laws for Union Territories by Parliament, (these conditions have been statutorily provided; moreover this Court has already taken notice of them) it is difficult to assume that the omission of an exemption in the Delhi Municipal Corporation Act in favour of State Governments, is deliberate. The Act and the Delhi Municipal Corporation Act cannot, therefore, be said to meet the special requirements which have been expressed by the Framers to be necessary for complying with the spirit of Article 289(2).

Reddy, J. has taken the view that the Doctrine of Presumption of Constitutionality of Legislations requires the saving of the taxes which these Acts impose upon the commercial activities of State Governments. The Act is a pre-Constitutional enactment. The basis of this doctrine is the assumed intention of the legislators not to transgress Constitutional boundaries. It is difficult to appreciate how that intention can be assumed when, at the time that the law was passed, there was no such barrier and the limitation was brought in by a Constitution long after the enactment of the law. (This Court has in a Constitution Bench decision, Gulabbhai Vs. Union of India, AIR 1967 SC 1110 at 1117, raised doubts along similar lines). The Framers obviously wanted the law under Article 289(2) to be of a very high standard. Can these laws, which are silent on the most important aspect required by Article 289(2), i.e., the specification of the trading activities of State Governments which would be liable to Union Taxation, be said to meet with that standard?

The Doctrine of Presumption of Constitutionality of Legislations is not one of infinite application; it has recognised limitations. It is settled law that if any interpretation is possible which will save an Act from the attack of unconstitutionality, that interpretation should always be accepted in preference to an alternative interpretation that might also be possible, under which the statute would be void. However, this Court has consistently followed a policy of not putting an unnatural and forced meaning on the words that have been used by the legislature in the search for an interpretation which would save the statutory provisions. We are not "free to stretch or pervert the language of the enactment in the interests of any legal or Constitutional theory" See In Re the Central Provinces & Berar Act No. XIV of 1938, (1939) FCR 18 at p. 37; also see : Diamond Sugar Mills Ltd. Vs. The State of U.P. [1961] 3 SCR 242 at 248-249.

The Act and the Delhi Municipal Corporation Act are ordinary Municipal legislations. They do not, and cannot, purport to be laws made by Parliament under Article 289(2). There is no reason why such a strained reasoning should be employed to save some of the taxes that may be capable of being imposed on certain properties of State Governments. There seems to be no pressing reason for invoking the doctrine. Reddy, J. has, in the earlier part of his opinion, held that a large number of properties of State Governments would be exempt from taxes leviable under these Acts due to the operation of Article 289(1). To employ such reasoning to construe Article 289(2) in a bid to save what would only be a reduced amount, does not seem justified. The practical effect of the directions recommended by Reddy, J. is also worth noticing. It is abundantly clear that the task of determining which of the activities of Governments are governmental and which are commercial, is an extremely difficult one. Reddy, J. entrusts this assignment to the "assessing authorities under the Acts" who

can only be municipal authorities. This is an issue which has confounded courts in the U.S. and in Australia for several years. This issue was considered to be so troublesome by the Framers that they entrusted it to Parliament in the hope that it would fully deliberate the matter before enacting a comprehensive legislation.

In the In Re: The Delhi Laws Act case, AIR 1951 SC 324, this Court authoritatively held that the legislature cannot delegate its essential policy-making function. Over the years, this Court has elaborated this proposition to hold that the legislature can delegate some of its legislative functions provided it lays down the policy in clear terms. The legislature is required to declare the policy of law in unambiguous terms, lay down elaborate legal principles and provide illuminating standards for the guidance of the delegate. Even though this Court has, on occasions, sanctioned very broad delegations of taxing power to municipal bodies, to delegate the task of carving out the distinction between governmental and business functions of State Governments to municipal authorities would clearly be against the interdiction in the Delhi Laws Act case as the assignment requires not only the making of policy, but indeed, the making of very difficult and challenging policy choices. Reddy, J. has noted that the Delhi Municipal Corporation Act provides exemptions in favour of activities that are capable of being classified as 'charitable purpose', 'public worship' etc. and states that to ascertain the ambit of these categories is an equally difficult task which is already being discharged by the assessing authorities. However, the point that needs to be emphasised, is that Section 115 of the Delhi Municipal Corporation Act defines these terms and provides guidelines in respect thereof. However, there is no provision in the Delhi Municipal Corporation Act which states that the trading and business operations of State Governments would be subject to property taxes. The Act is equally silent on this aspect. Consequently, no guidelines in this behalf are to be found within the parameters of these legislations. Under these circumstances, in the complete absence of any statutory policy or any guidelines for the delegation of such a policy, we believe that it would be impermissible and hazardous to directly assign such a function, nay power, to executive Municipal authorities.

The decision whether the properties of State Governments occupied for commercial purposes should be subject to the levy of Union Taxes is one that is required by Article 289(2) to be made by a legislation which specifies the activities which would be liable to tax. This decision cannot be entrusted to municipal functionaries. For these reasons, we find ourselves unable to agree with Reddy, J. in his finding that the properties of State Governments occupied by them for trade or business purposes are subject to the levy of taxes under the Act and the Delhi Municipal Corporation Act.

we may now summarise our conclusions:

i) The central issue in the present matter, namely, whether the properties owned by the States which are situated within Union Territories are exempt from paying property taxes, was specifically answered in the affirmative in the Sea Customs case; the observations in this regard are part of the ratio decidendi of the case and having been re-affirmed by a Constitution Bench which was bearing a litigation inter partes in the APSRTC case, they constitute good law; ii) The definition of 'State' provided in Section 3(58) of the General Clauses Act, which declares that the word 'State' would include 'Union Territory', is inapplicable to Article 246 (4);

iii) The term "Union Taxation" used in Article 289(1) will ordinarily mean "all taxes leviable by the Union" and it includes within its ambit taxes on property levied within Union Territories; therefore,

the States can avail of the exemption provided in Article 289(1) in respect of their properties situated within Union Territories;

iv) Property taxes levied by municipalities within Union Territories are properly within the ambit of the exemption provided in Article 289(1) and the States can avail of the exemption.

In the result, the Civil Appeals and the Special leave Petitions are dismissed. There shall be no order as to costs.