

KERALA HIGH COURT

Khan Bahadur Chowakkaran Keloth Mammad Keyi

Vs.

Wealth Tax Officer

O.P. No. 674 of 1958 and O. P. No. 684 of 1959

(S. Velu Pillai, V.P. Gopalan Nambiar and T.S. Krishnamoorthy Iyer, JJ.)

28.10.1965

JUDGMENT

Velu Pillai, J.

1. The petitioner in O. P. 674 of 1958 is the karnavan of a Moplah Marumakkathayam tarwad and the petitioner in O. P. 684 of 1959 was the karnavan of a Namboodiri Illom, and they seek to quash the assessments of their families under the Wealth Tax Act, 1957, hereinafter referred to as the Act. In doing so, they have challenged inter alia the constitutionality of the Act, as having been passed by Parliament without the requisite legislative power under Entry 86 of List I of the seventh schedule and in particular, the validity of the charging Section, Section 3, as violative of Article 14 of the Constitution. The former contention was repelled and the latter was accepted, by the judgment delivered by a division bench of this Court on the 21st July, 1961. On appeals preferred against that judgment by the Revenue, the Supreme Court set aside the judgment and remanded these and the other petitions which were all heard together. Of the two contentions formulated above, the first relating to the constitutionality of the Act in relation to Entry 86 was subsequently overruled by the Supreme Court in *Banarasi Dass. v. Wealth Tax Officer*¹, and only the second remained open to the petitioners and was pressed before us, not to mention the point taken in O. P. 684 of 1959 against the merits or the propriety of the order of assessment.

2. As directed by the Supreme Court, an opportunity was given to the petitioners and to the department to file fresh affidavits. Section 3 of the Wealth Tax Act which is impugned as discriminatory, is in these terms :

"Subject to this other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

The argument of the petitioners' counsel under Article 14 was, that whereas the terms

¹ AIR 1965 SC 1387

"individual" and "Hindu undivided family" are units of assessment under Section 3, non-Hindu undivided families, such as Moplah Marumakkathayam tarwads in North Malabar and elsewhere and Christian joint families following the Hindu Law in Mysore and Coorg and elsewhere, are not such units, not being comprehended by the terms "individual" and "Hindu undivided family", with the result that with respect to them, Hindu undivided families have been discriminated against and alternatively, that if non-Hindu undivided families as aforesaid are looked upon as groups of individuals and therefore comprehended by the term "individual", these families have been discriminated against by reason of the schedule of the Act, Part I, Paragraph A, which has prescribed a lower limit of exemption for "individual" as against a higher limit for "Hindu undivided family" and that, if for that reason, non-Hindu undivided families are excluded as discriminated against, such exclusion in itself would spell discrimination against Hindu undivided families. Learned counsel for the Revenue answered, that the term "Hindu undivided family" includes not only Hindu Mitakshara and Dayabhaga joint families, but also all undivided families of Hindus, such as, Namboodiri Makkathayam families, Hindu "Marumakkathayam tarwads, such as Nair and Ezhava tarwads, that they are being assessed under the Act as "Hindu undivided family", that non-Hindu undivided families are comprehended by the term "individual" and are being assessed as such, and that in any event Moplah Marumakkathayam tarwads are so insignificant in number compared to the large number of Hindu undivided families in the Indian Union, that their exclusion either through inadvertence or otherwise is not discriminatory and would not attract Article 14. It was also suggested, that Moplah Marumakkathayam tarwads, and Hindu undivided families, including Hindu Marumakkathayam tarwads, are not similarly situated so as to attract the principle of that Article.

3. Though the counters filed by the Revenue are not quite clear on the point, it seemed common ground at the hearing of the petitions, that the term "Hindu undivided family" in Section 3 is comprehensive to include all joint or undivided families composed of those who follow the Hindu religion, whatever be their personal law, whether Makkathayam or Marumakkathayam or Allyasanthana or Mitakshara or Dayabhaga law, but not Moplah Marumakkathayam tarwads, or other non-Hindu undivided families. Though learned counsel for the petitioners at one stage contended, that the term "individual" can refer only to a single individual human being, and supported the contention by relying on the references in Section 4, to "wife", "daughter" and "child" of an "individual", I am satisfied that the meaning of the term is not to be so restricted; the contention is also against the weight of authority. I also feel that the term "individual" in singular includes "Individuals" in plural. The argument for the Revenue, that Moplah Marumakkathayam tarwads and other non-Hindu undivided families are comprehended by the term "individual", has its roots really in the interpretation of that term in Entry 86, by the division bench of this Court and by some of the other High Courts and accepted as correct by the Supreme Court, as including all undivided families, which, for the purpose of interpretation, are visualised as groups of individuals. It is useful to recall Entry 86, which reads thus :

"Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies."

The above interpretation was reached by applying the well-known canon of interpretation of legislative entries in a Constitution, which is, that the widest possible construction must be put upon the entries in the lists which confer legislative powers in the respective fields. The object of such an entry is to demarcate as wide a legislative field as possible by the use of compendious

words or expressions. The canon of interpretation of a taxing statute is different, and is, that "the subject is not to be taxed unless the language of the statute clearly imposes the obligation. In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used Still less is the language of a section to be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words". (See Maxwell on Interpretation of Statutes, 11th edition, pp. 278 and 279).

4. The term "individual" in Section 3 occurs in antithesis with the term "Hindu undivided family". If the term "individual" carries the same meaning as in Entry 86, there is no reason why "Hindu undivided family" should be taken out of it and mentioned as a distinct unit of assessment, unless it be, that non-Hindu undivided family was intended to be treated not only as separate and distinct from "Hindu undivided family" but also to be assessed at the same rates and subject to the same exemption as are applicable to "individual" properly so called; nothing was easier in that event than to mention non-Hindu undivided family also as a unit of assessment. It seems to me, that if the term "individual" in Section 3 was intended to include joint families, it was redundant to specify Hindu undivided families. But for the rule insisting on the construction of a legislative entry in its widest amplitude, I shall be experiencing great difficulty in imagining, that a joint family can ever be comprehended by the term "individual", in a taxing Act, especially in the context of the antithesis mentioned. In the case of Banarasi Dass, AIR 1965 SC 1387 cited, the Supreme Court stated the converse position at page 1391 to be that :

"The tax legislation may, for convenience or other valid reasons, have made a distinction between individuals and Hindu undivided families; but it would not be legitimate to suggest that the word 'individuals' occurring in an organic document like the Constitution must necessarily receive the same construction."

5. The use of the term "Hindu undivided family" in antithesis with "individual" was not, as the argument of counsel for the Revenue implied, to distinguish and separate undivided families on the basis of religion into those of Hindus and of non-Hindus, but was to distinguish an agglomeration or a group of individuals formed or associated by agreement or contract or otherwise between the parties, from a group in which the members take their interest by birth and are welded together into a unit by the personal law which binds them. The former pertains to the region of contract and the latter pertains to the region of status. This distinction receives considerable support from the reasoning of the Bombay High Court in *Abhay L. Khatau v. Commissioner of Wealth Tax*², in which the question was, whether joint trustees can

²1965-57 ITR 202 (Bom)

be taxed under the Act in respect of the value of the properties held by them as trustees in the status of "individual". They could not be taxed as "an association of persons", which is not a unit of assessment in the Act. While overruling the contention that even as a group, a body of trustees could not be held to be included in the term "individual" when that term is used on juxtaposition with Hindu undivided family, the Court observed as follows, after dealing with the peculiar features of a Hindu undivided family :

"The Hindu undivided family with all its incidents is purely a creature of Hindu law and

cannot be created by act of parties. It is because of the peculiar characteristic of the institution which distinguishes it from an association of persons or a firm or a company that the taxation laws which want to treat it as a unit for taxation have mentioned it as a distinct unit. We do not therefore think that the argument can be advanced that the mention of the Hindu undivided family as a unit of taxation under Section 3 of the Wealth Tax Act is intended to exclude other groups or associations of persons which are capable of being treated as a unit." These observations serve to explain the antithesis between the terms "individual" as including a group of individuals and "Hindu undivided family", as used in the Act, the former as including a group created by act of parties and the latter being a group created or bound by personal law. So far as I have seen, the Bombay case cited is the only one which has explained the antithesis in Section 3, though there are two cases, one of the Mysore High Court and the other of the Orissa High Court, which have held, that "individual" takes in non-Hindu undivided families as well.

6. The line of reasoning which I have indicated above is consistent with the structure of the Act, while the contrary line of reasoning is inconsistent with it. Section 5, Sub-Section (1), clause (ii) of the Act provides that;

"Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee -

(ii) the interest of the assessee in the coparcenary property of any Hindu undivided family of which he is a member;"

There is no corresponding exclusion of the interest of the assessee in the property of any other undivided family, though it is true, that it has been recently held by a full bench of this Court, that the undivided share of a member of a Hindu Marumakkathayam tarwad is not liable to be attached or sold; there is no ruling of this Court on the point regarding the undivided share of a Moplah Marumakkathayam tarwad. The Madras High Court has been of the view, that the undivided share of a member of a tarwad is liable to be attached and sold. Section 15-A, as introduced by the Wealth Tax (Amendment) Act, 1964, provides for the signing and verification of a return to be made under Sections 14 and 15 of the Act. While clause (b) of Section 15-A has provided, that in the case of a Hindu undivided family the Kartha or in certain circumstances, any other adult member of the family, shall sign and verify the return of net wealth, clause (a) has provided that in the case of an individual, he himself and "where for any other reason it is impossible for the individual to sign the return", any person competent to act on his behalf shall sign and verify the return. It seems rather far-fetched to suggest, that the phrase, "impossible for the individual to sign the return", can have any application to an undivided family. Section 20(1) poses another problem, in, that while it provides for the assessment of a Hindu undivided family on a partition taking place, there is no corresponding provision for the assessment of a non-Hindu undivided family on partition.

7. In *Sarjerao Appasaheb v. Wealth Tax Officer*³, the Mysore High Court held that "the preponderance of judicial opinion is in favour of the view that the word "individual" includes a "group of individuals" knit together either by agreement or by an involuntary association brought

about by their mere birth", and accepted the contention that a Moplah Marumakkathayam tarwad is covered by the term "individuals". The cases which were relied on, were those decided under the Indian Income-tax Act, in which the units of assessment were differently stated. Some of the cases concerned a body of trustees or other association of individuals, as in *Hot/Trust of Simla v. Commissioner of Income-tax*⁴, or a partnership formed by two firms and a Hindu undivided family, as in *Mian Qhannu Factories Union v. Commissioner of Income-tax Punjab*⁵, or a co-operative society being a corporate body created by statute, as in *Commissioner of Income-tax v. Salem District Urban Bank Ltd*⁶, *Mahaviraprasad Badridas v. Yagnik*⁷, a case referred to by that court was decided under Entry 86 and in *Commissioner of Income-tax v. Sen Sodra Devi*⁸, also relied on, the Supreme Court had observed that the term "individual" is wide enough to include a group of persons forming a unit, and that "it has been held that the word 'individual' includes a corporation created by a statute, e.g., a University or a Bar Council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act". In *Ram Rattan Das Madan Gopal v. Commissioner of Income-tax*⁹ which was also referred to in the Mysore judgment, the terms "individual", and "Hindu undivided family" interpreted were employed in S, 55 of the Indian Income-tax Act, but the provision to it mentioned only "individual"; in that context, the term "individual" was construed to take in "Hindu undivided family" for the purpose of the proviso. I do not think, with respect, these can be regarded as authorities for holding that the term "individual" as used in Section 3 of the Act, can include a group of individuals as stated by the court knit together by "an involuntary association brought about by their mere birth". In *Vysya Raju Badri Narayanamurthy v. Commissioner of Wealth Tax, B. and O*¹⁰. the Orissa High Court took note of the fact that : 'the peculiar problem arising out of the existence of undivided families amongst non-Hindus does not arise in this (that) State and in most other States in India. Moplahs following the Marumakkathayam law are found only in Kerala. Similarly, Christians following the Hindu Law of coparcenary even after conversion must be very few indeed", and formulated its conclusion that : "it is open to the legislature to classify a Hindu undivided family as a distinct unit apart from an individual, for the purpose of levying a separate rate of tax. This is a well known feature found in the Indian Income-tax Act". As a result of the above discussion, I come to the conclusion that non-Hindu undivided families are not covered by the term "individual" and are therefore outside the charging section of the Act.

³1964-52 ITR 372 (Mys)

⁵1936-4 ITR 203 : AIR 1936 Lah 548

⁴AIR 1930 Lah 929

⁶1940-8 ITR 269 : (AIR 1940 Mad 612 (SB)

⁷1959-37 ITR 191 : AIR 1960 Bom 191

⁹1935-3 ITR 183 : AIR 1935 All 444

⁸1957-32 ITR 615 : AIR 1957 SC 832

¹⁰1965-56 ITR 298 : AIR 1964 Oris 128

8. There is a presumption, that Moplahs of North Malabar, to which category the petitioner in O. P. 674 of 1958 belongs, generally follow Marumakkathayam law. This has been ruled by this Court in *Koyyotan Sooppi v. Kalliani*¹¹, In *Kunhi Pathumma v. Sundara Ayyar*¹², a division bench of the Madras High Court held, that a Moplah family of North Malabar is governed by the Marumakkathayam law in all matter ? relating to property unless there happens to be private property undisposed of by will. Therefore, in most matters the Marumakkathayam law must be regarded as governing the family". In *Chakkra Kanna v. Kunhi Pokker*¹³, Srinivasa Ayyangar, J. observed thus at page 336 (of ILR Mad) :

"But the more common and familiar instances of such groups in Southern India are [the joint Hindu family governed by the Mitakshara law, the Nambudiri Illom governed by the Makkattayam law, the Nayar tarwad governed by the Marumakkattayam law, and the Aliyasantan family of South Canara. The Mappilas of North Malabar generally follow the

Marumakkattayam system and the parties to this suit are governed by that law. The incidents of such group holding are now well settled. In the case of Malabar tarwads such incidents include the impartiality of the property, the right by birth of persons born in the tarwad, and the management of the properties by the senior male member of the tarwad who is styled the karnavan."

*Raja of Arakal v. Churia Kunhi Kannan*¹⁴, related to the family of Arakal Raja, a Moplah tarwad, and it was held that the junior members have a right to take steps necessary for the protection of the interests of the tarwad. In *Arayaiprath Kunhi Pocker v. Kanthilath Ahmad Kuti Haji*¹⁵, it was held, that the members of a Moplah tarwad can divide properly by mutual consent, though no suit for compelling a partition will lie. These were all cases decided before the passing of the Mappila Marumakkathayam Act, 1938.

9. The several statutes affecting Moplahs of the former Malabar District may be briefly surveyed. The Malabar Wills Act, 1898, was enacted to make provision for the executions of Wills by Marumakkathayees or persons governed by the Marumakkathayam or Aliyasanthana Law of inheritance. The Mappila Succession Act, 1918, was, to extend the rules of Muhammadan law of intestate succession and the Mappila Wills Act, 1928, was to extend the rules of Muhammadan law of testamentary-dispositions, to Mappilas governed by the Marumakkathayam or the Aliyasanthana Law of inheritance, but these had nothing to do with a Moplah tarwad or its properties.

10. In my view, a comparative study of the Madras Marumakkathayam Act, 1932, and the Mappila Marumakkathayam Act, 1938, reveals a striking similarity between the tarwads dealt with by them. The basic concepts, like karnavan, anandiravan, tarwad, and tavazhi are practically the same. The Marumakkathayam system is defined in both, as the system in which descent is traced in the female line. In both, the karnavan is under a duty to keep accounts and to allow inspection of the same by

¹¹1957 Ker LJ 862

¹³ ILR 39 Mad 317: (AIR 1916 Mad 391 (FB))

¹² AIR 1946 Mad 32

¹⁴29 Mad LJ 632: AIR 1916 Mad 976

¹⁵ ILR 29 Mad 62

the major members of the tarwad. The power of the karnavan to alienate tarwad properties and to contract debts is the same. These provisions are alike applicable to a tavazhi and its properties. Every junior member of a tarwad has a right to be maintained by the tarwad. There are provisions in the two Acts for the registration of tarwads as impartible and a procedure is prescribed for such registration and for the cancellation of registration. While the Madras Marumakkathayam Act gave a right for tavazhi partition, the other Act conferred a right of individual partition as well. Under both, division has to be on a per capita basis. There is a saving in both, of the rules of Marumakkathayam law, custom, and usage, except to the extent specifically provided for. The rules of intestate succession are however different, the Mappila Marumakkathayam Act providing for succession according to the Islamic Law of Inheritance. In A. Section 452 of 1945 (Mad) decided by Rajamannar, C.J. and Raghava Rao, J., the Madras High Court applied the rule of severance of status laid down in decisions rendered under the Madras Marumakkathayam Act, 1932, to Moplah tarwads and observed :

"We have carefully considered the material sections of both the Acts, namely, Sections

38, 39 and 40 of the Marumakkathayam Act of 1933 and Sections 13, 14 and 17 of the Moplah Marumakkathayam Act, 1939 and we see no such difference in language as would justify us in not applying the principles laid down in the decisions above referred to the case of a Moplah tarwad."

In *Lakshmanan v. Kamal*¹⁶, this Court held that "The Shariat Act did not abolish or purport to abolish the rights and incidents of a Mappila Marumakkathayam tarwad." The right of individual partition, was conferred by the Madras Marumakkathayam (Amendment) Act, 1958. Quite recently, in *Muthia Chettiar v. Wealth Tax Officer*¹⁷, while holding that Marumakkathayam tarwads and joint families governed by the Hindu law are not similarly situated, the Madras High Court made the following observations at pages 282 and 283 of the report :

"We have already pointed out that these Mappila tarwads occupied the same position as the Nair tarwad in the Malabar area. We have to take it that, prior to the enactment of the Madras Marumakkathayam Act, 1932, and the Mappila Marumakkathayam Act, 1939, the Mappila tarwad and the Nair tarwad stood more or less in the same position except as regards marriage, divorce, succession to separate property etc.

We find that on important matters like the right of division and the quantum of share, the tarwad, Hindu or Muslim in Malabar, differs substantially from the Hindu undivided family." Speaking with respect notwithstanding the several differences which the Madras High Court has enumerated in the case cited, between a joint family governed by the Hindu law and a Marumakkathayam tarwad, Hindu or non-Hindu, I feel that it is still open to question whether they really count at all in the context of Article 14 of the Constitution. However, as between a Moplah tarwad and Hindu Marumakkathayam tarwad whatever be the difference in matters of personal law regarding marriage, divorce, and succession to personal and separate property, in

¹⁶ AIR 1959 Ker 67 (KB)

¹⁷1964-2 Mad LJ 273

point of the structure and constitution, of the unity of ownership and possession, of the rights and powers of the karnavan of management and alienation of common properties, of the rights of junior members to protect and conserve their interest in such properties and in fact of the very concept and institution of tarwad itself, there is no scope for a classification into Hindu and non-Hindu undivided families because such differences have no relation to the object of the Act, which is to tax net wealth above certain limits in the hands of the community, whether individuals or joint families or companies. Before parting with the Madras case, I have also to state, respectfully, that in my opinion, a karnavan cannot, as held in it, be assessed as an "individual" on the net wealth of the tarwad, even if the tarwad is liable to be assessed as a group of individuals. The reason is plain, that tarwad property is not his, though he manages it for himself and the other members of his tarwad. Such property does not constitute his wealth. If tarwad wealth is assessed, the assessment is really against the tarwad, just as a Hindu undivided family is assessed as such in respect of its net wealth. The argument if accepted, implies, that a karta is liable to be assessed as individual in respect of the net wealth of the family.

11. The point as to discrimination is, that by the exclusion of Moplah tarwads from the imposition under the Act, Hindu undivided families have been singled out. On the last occasion, the division bench decided the point against the Revenue on two grounds, first, that on the

materials before it, it could not be held as contended, that Moplah tarwads constituted only an insignificant minority and second, that the classification of joint families into Hindu undivided families and Moplah tarwads had no reasonable relation to the object of the Act. On appeal, the Supreme Court remanded the cases observing that "it is for the party who comes forward with the allegation, that equality before the law or the equal protection of the laws is being denied to him to adduce facts to prove such denial". Accordingly, the burden of establishing the plea has been cast on the petitioners and has been rightly undertaken by them. Fresh affidavits have been filed in O. P. 684 of 1959 and O. P. 674 of 1958. In the affidavit of the petitioner in O. P. 684 of 1959 dated the 26th June, 1954, it was averred, that there are 22 karnavans of Moplah tarwads, "who are even now being assessed to wealth tax as individuals", in respect of the net wealth of the tarwads. Though this was not controverted in the counter, it was stated in paragraph 2, that the "non-Hindu undivided families which are in the ordinary course liable to assessments to wealth tax from 1957-58 onwards in respect of the whole of India are only 18 in number", the number in this State being 1. The petitioner denied this in his reply and explained, that apparently this has reference to "those non-Hindu families, who have been assessed to wealth-tax as such and not the very large number of undivided families which are being taxed only as individuals". This is not clear, for non-Hindu families are not assessed as families but only as individuals. In the affidavit dated the 6th November, 1964, the number of Hindu undivided families assessed to wealth tax in the year 1961-62 was stated to be 34 and in the year 1962-63 to be 23. At the hearing, learned counsel for the respondent stated, that the list of 22 karnavans of Moplah tarwads furnished in paragraph 3(vi) of the affidavit of the petitioner may be taken as correct. Thus, the number of Moplah tarwads in North Malabar who are now assessed to wealth tax as individuals may be taken to be 22. A comparative estimate is not possible, without even a rough idea as to the number of wealthy Hindu undivided families, of all categories in the whole of India. This was necessary as a part of the petitioner's plea of discrimination. The respondent has stated in the counter, that considering the population of India, the number of non-Hindu undivided families is insignificant and negligible. It is also averred by the petitioner in O. P. 684, that the native or Indian Christians in erstwhile Mysore and Coorg are governed by Hindu Law", but it was denied in the counter, that they are all followers of Hindu Law. Decided cases referred to, *Ramjee Rao v. Anandappa*¹⁸, *Kiritappa v. Aralappa*¹⁹, have only laid down, that converts from Hinduism continued to follow Hindu law except to the extent that it is inconsistent with their new religion. There is no information as to how many Christian families are followers of Hindu law of joint family. The Act no doubt is a permanent one and the number of assessable families, Hindu or non-Hindu, may vary from year to year. But the court can proceed only upon tangible data. Considering the vast population that inhabit this sub-continent, Hinduism being the predominant religion, and Hindu joint family system in all its forms being the prevailing system of enjoyment and holding of common property, in the absence of evidence to the contrary, I can only hold that 22 Moplah tarwads in India are but an insignificant or a microscopic minority; at any rate, the contrary has not been proved by the petitioners.

12. Even so, it was contended, that unequal and favoured treatment shown to one single person or family is sufficient to attract Article 14. This point did not arise on the last occasion, in view of the finding of fact to the contrary. The American cases, *Harlford S. B. I. and Ins. Co. v. Harrison*²⁰, and *State of Missouri v. S. W. Canada*²¹, were relied on as laying down, that no person or class of persons irrespective of number, can be discriminated against, under the rule of equality of law in the American Constitution. The Supreme Court of India too has similarly laid down, that legislation which differentiates a single person or class from others similarly situated

is discriminatory. A few of them which were relied on are *Charanjit Lal v. Union of India*²², *State of West Bengal v. Anwar Ali*²³, and *Ram Prasad v. State of Bihar*²⁴. These are all cases in which a minority, sometimes one or two individuals, were discriminated against. Here, the discrimination is said to be against the majority, the Hindu undivided family, by reason or in consequence of, the exemption of the minority, the Moplah tarwads, from the burden of the wealth tax. A taxation statute is not immune from attack under Article 14. There is no reason to think, nor was it contended, that the exclusion, if any, of non-Hindu undivided families was deliberate or intentional. But then, to attract Article 14, as held in *State of Madhya Pradesh v. Bhopal Sugar Industries Ltd*²⁵, discrimination need not be deliberate or intentional; that would of course be a clear case, as in *Morey v. Doud*²⁶; where by statute an exemption from the necessity to take a licence, was granted to one company which was not allowed to others, and the law was struck down. Deliberate discrimination against any class, big or small, might spell in the region of legislative mala fides and ought not to be countenanced. In the present case, the question is somewhat different. To take an extreme case by way of illustration, a law which imposed a burden or cast a duty on say 10000 individuals or classes left out a single individual or class similarly situated through ignorance or inadvertence, could the law be struck down on that ground ?

¹⁸² Mys LJ 92

²⁰(1937) 81 Law Ed 1223

¹⁹¹³ Mys LJ 302 and Regular Appeal No. 91 of 1957

²¹(1939) 83 Law Ed 208

²² AIR 1951 SC 41

²⁴ AIR 1953 SC 215

²⁶(1957) 1 Law Ed 2nd series 1485

²³ AIR 1952 SC 75

²⁵ AIR 1964 SC 1179

"The omission to tax any particular individual who may be liable, does not render the whole tax illegal and void." See American Jurisprudence, taxation, Article 153, p. 203.

I do not find anything in AIR 1964 SC 1179 cited, which precludes the court from holding, that the law need not be struck down, on the principle, that absolute or perfect equality is not always attainable or expected, especially in matters of taxation. If on the other hand, a substantial number have been exempted, the discrimination, even if inadvertent, is material discrimination and has to be relieved against.

13. I do not think that the law of discrimination as laid down by the Supreme Court in the case just cited is different from the American Law in matters of taxation. I may quote the following passages from 51 American Jurisprudence, taxation, Article 152, page 202 :

"It is frequently recognized by the courts that absolute or perfect equality and uniformity in taxation are impossible. Such a conception has been variously characterized as 'utopian' 'an unattainable good', 'a baseless dream', and 'a dream unrealised'. It has consequently been declared that the tax or revenue system which most nearly approaches perfect equality is the best, and that the most that can be expected is an approximation to this desirable end. Accordingly, substantial compliance with the requirements of equality and uniformity in taxation laid down by the Federal and State Constitutions is all that is required, and such provisions are satisfied when designed and manifest departures from the rule are avoided." And Article 268, at page 320 :

"To make out a case of discrimination such as will render the tax void, either the statute must on its face show the intent of the legislature to discriminate, or there must be actual and material discrimination in the practical operation of the law;"

Willoughby on the Constitution of the United States, Volume 3, 2nd edition, at page 1949 quotes as follows from *County of Santa Clara v. S. Pacific R. R. Co*²⁷.

"There undoubtedly are, and always will be more or less inequalities in the operation of all general legislation arising from the different conditions of persons from their means, business, or position in life, against which no foresight can guard. But this is a very different thing, both in purpose and effect, from a carefully devised scheme to produce such inequality; or a scheme, if not so devised, necessarily producing that result. Absolute equality may not be attainable, but gross and designed departures from it will necessarily bring the legislation authorizing it within the prohibition."

14. To Conform to the decision of the Supreme Court it has only to be made clear, that discrimination to attract Article 14 need not be deliberate; but even if inadvertent, it must be material. I therefore come to the conclusion, that the discrimination, if any, arising from the exclusion of Moplah tarwads is not so material as would attract Article 14. The plea under Article 14 has to be overruled.

²⁷(1886)" 18 Fed Rep 385

15. On the merits of O. P. 684 of 1959, the first point taken was, that Section 20(1) and (2) were not complied with in passing the order of assessment. For the assessment year 1957-58, wealth tax was paid as ordered, as on the relevant valuation date, the 16th September, 1956. For the assessment year 1958-59, which commenced on the 1st April, 1958, the valuation date being the 16th September, 1957, the petitioner took the plea, that his illom or joint family had ceased to exist as such, by reason of a partition which was said to have taken place on the 30th March, 1958; the plea was taken by his letter dated the 11th August, 1958. The reply dated the 31st January, 1959, was that though the illom was partitioned on the 30th March, 1958, the liability has to stand, as the valuation date was the 16th September, 1957. In reply, the petitioner wrote, that a partition having taken place, he is no longer the head of the family and could not submit the return as such and that he is not responsible for the whole tax. In the letter of the Wealth Tax Officer dated the 27th February, 1959, it was stated, that the enquiry as to partition would be held on the 15th April, 1959. On that day the Wealth Tax Officer wanted some information as to the return made by the petitioner and directed him to attend his office on the 23rd April, 1959, with documents and accounts in support of his return. On the 30th April 1959, the Wealth Tax Officer passed the assessment order itself holding, inter alia, that there had been a partition on the 30th March, 1958, but that the deed having been registered only on the 25th July, 1958, no partition could have taken place earlier. The petitioner's complaint was that under Section 20 of the Act, the Wealth Tax Officer was bound to pass an order on the issue of partition under Section 20(1) or Section 20(2) as the case may be, before proceeding to make the assessment. Such an order is appealable under Section 23(1)(e) of the Act. An order under Section 20(1) has certain consequences in law on the liability of the members for the tax assessed on the net wealth of the Illom as such. An order under Section 20(1) or Section 20(2) is a necessary prelude to the making of the assessment. What is relevant to consider under Section 20(1) is, whether there has been a partition before the making of the assessment. Even if the partition was on the 25th July, 1958, and not earlier as contended, Section 20(1) would still apply. This Section corresponds to Section 25A of the Indian Income-tax Act 1922, the principle of which has been explained in

*M/s. Lakhmichand v. Income-tax Commissioner, West Bengal*²⁸, I think the plea raised under Section 20(1) requires reconsideration by the Wealth Tax Officer.

16. The second point was that no enquiry was held as to the partition and that the theory of the Wealth Tax Officer on which he acted, that the deed of partition could not have been executed on the 30th March, 1958, when the stamp papers were purchased only on the 25th July, 1958 itself was not put to the petitioner. The petitioner in effect complained that the rules of natural justice were not observed by the officer.

17. I consider that on both these grounds, the assessment order in O. P. 684 of 1959 could not be supported; it is quashed accordingly. O. P. 684 of 1959 is allowed. O. P. 674 of 1958 also is allowed, on the ground that the Moplah Marumakkathayam tarwad of the petitioner is outside the purview of Section 3 of the Act. The demand notice is quashed. The parties in both these petitions shall bear their costs.

²⁸ AIR 1959 SC 341 at p. 344

Gopalan Nambiyar, J.

18. O. P. No. 674 of 1958: The O. P. challenges the validity of the Wealth Tax Act (Act 27 of 1957) (hereinafter referred to as the Act). The petitioner is the karnavan of a Mappila Marumakkathayam tarwad. Section 3 of the Act, as it originally stood, was as follows :

"3. Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual Hindu undivided family and company at the rate or rates specified in the schedule."

19. The material part of the schedule referred to in the above section, as it originally stood, was, as follows:

"(a) In the case of every individual :

(i) on the first rupees two lakhs of net wealth	Nil
(ii) on the next rupees ten lakhs of net wealth	½%
(iii) on the next rupees ten lakhs of net wealth	1%
(iv) on the balance of net wealth	1½%

(b) In the case of every Hindu undivided family :

(i) on the first rupees four lakhs of net wealth	Nil
(ii) on the next rupees nine lakhs of net wealth	½%
(iii) on the next rupees ten lakhs of net wealth	1%
(iv) on the balance of net wealth	1½%

XX XX XX XX"

20. By Section 13 of the Finance Act of 1960 (Act 12 of 1960) it was provided :

"Notwithstanding anything contained in the Wealth Tax Act 1957 (hereinafter referred to as the Wealth Tax Act) no tax shall be charged in respect of the net wealth of a company for any financial year commencing on or after the 1st day of April 1960."

21. By the Wealth Tax (Amendment) Act, 1964 (Act 46 of 1964) certain changes were made in the provisions of the Act which it is unnecessary to specify.

22. By Section 70 of the Finance Act 1965, for Part I of the Schedule to the Act, the following Part was substituted :

"(a) In the case of every individuals : Rate of tax

- (i) on the first rupees one lakhs of net wealth Nil
- (ii) on the next rupees four lakhs of net wealth 0.5%
- (iii) on the next rupees five lakhs of net wealth 1.0%
- (iv) on the next rupees ten lakhs of net wealth 2.0%
- (v) on the balance of net wealth 2.5%

(b) In the case of every Hindu undivided family

- (i) on the first rupees two lakhs of net wealth Nil
- (ii) on the next rupees three lakhs of net wealth 0.5%
- (iii) on the next rupees five lakhs of net wealth 1.0%
- (iv) on the next rupees ten lakhs of net wealth 2.0%
- (v) on the balance of net wealth. 2.5%

(The rest of the Schedule is not material and is not reproduced).

23. The constitutionality of the Act was impugned on two main grounds namely :

- (1) want of legislative competence to tax families under Entry 86 of List I of the 7th schedule of the Constitution; and
- (2) violation of Article 14 of the Constitution.

In the decision reported in *Mammad Keyi v. Wealth Tax Officer, Calicut*²⁹, legislative competence was upheld by a Division Bench of this Court. It was ruled that the term 'individual' in Section 3 of the Wealth Tax Act, whatever be its connotation in Entry 86 of List I of the 7th schedule of the Constitution cannot comprehend a Hindu undivided family, nor a Mappila Marumakkathayam Tarwad. It was also ruled that :

"Hindu undivided families of wealth have been singled out by the Act from other similar joint families in the country and that the State has thereby denied equal protection of the law to the former. The provisions in the Act relating to Hindu undivided families are

severable and to that extent the Act has to be struck down."

24. *Wealth Tax Officer v. Thuppan Namboodiripad*³⁰, were preferred to the Supreme Court against the decision of this Court and the Supreme Court by its judgment set aside the order of this Court and remanded the cases to consider the applicability of Article 14 of the Constitution, after giving parties full opportunity to put forward their respective cases, supported by facts and figures. It was pointed out that this Court seemed to take the view that it was for the State to show that Article 14 was not applicable; that this was not correct, for it was for the party pleading violation of Article 14 of the Constitution to adduce facts in support of the case. After remand, affidavits have been filed by the petitioner and also by the respondent in support of their respective contentions. Reference would be made to them where necessary. No arguments as to legislative competence was addressed, in view of the decision of the Supreme Court in AIR 1965 SC 1387.

25. On the provisions of the Act as they stand at present Shri. M.K. Nambiar, counsel for the petitioner, raised the following contentions.

²⁹1961 Ker LJ 1046 : AIR 1962 Kerala 110

³⁰ Civil Appeals 262 to 266 of 1963 (SC)

(1) That the expression 'individual' in Section 3 of the Act did not include joint families such as a Mappila Marumakkathayam tarwad, and the omission to include them amounted to discrimination against Hindu undivided families in general, and Hindu Marumakkathayam tarwads in particular, which had been expressly brought within the purview of the Act.

(2) If the expression 'individual' in Section 3 be held to include joint families, such as a Mappila Marumakkathayam Tarwad, they have been dealt with as 'individual' differently from Hindu undivided families in general and Hindu Marumakkathayam Tarwads in particular, which are similarly situated, and the same is violative of Article 14 of the Constitution.

26. According to Shri Nambiar, the term "Hindu undivided family" comprises a family which is Hindu in personnel, that is, which is composed of persons who are Hindus by religion, and not merely a family governed by the Hindu Personal Law. Thus, the expression would cover in its sweep Hindu Joint families governed by the Marumakkathayam Law, Aliyasanthana families and also Nambudri families or Illoms. There was no controversy on this part of the case, and counsel for the Revenue was at one with Counsel for the petitioners in regard to the scope and content of the expression "Hindu undivided family" in Section 3 of the Act.

27. Counsel however joined issue on the ambit of the expression "individual" occurring in Section 3 of the Act. According to Shri Nambiar, the said expression would not comprehend non-Hindu joint families. It was claimed that there were at least three such joint families in this country, namely :

- (1) Mappila Marumakkathayam tarwads.
- (2) Certain Christian families governed by Hindu Law, and
- (3) Families of a section of Muhammedaus - the Khojas - following the Hindu Law.

It was the contention of Shri Nambiar that the exclusion of these families would spell discrimination against Hindu undivided families. The definite stand taken up by counsel for the Revenue in the course of the arguments before us was that the term 'individual' is wide enough to include all non-Hindu families, including Mappila Marumakkathayam tarwads, and that these have not been left out. (This stand is somewhat different from what is stated in paragraph 3 of the affidavit of the respondent dated 16-8-1964). There was the alternative argument, which, stated in the language of counsel for Revenue, was to the effect that if the term 'individual' could not take in non-Hindu joint families, these latter are so insignificant in numbers and importance that their omission or exclusion would not amount to discrimination. There was no case before us that a Hindu undivided family in Section 3 of the Act comprised only one governed by the Hindu Law, and the question of discrimination on the basis of any such case does not fall for consideration.

28. It seems unnecessary to examine the claim made by Shri Nambiyar about the factual existence of a section of Muslims and a section of Christians who are governed by Hindu Law relating to joint families. Para 2 of the affidavit of the respondent dated 28-8-1964 gives the figures of the "Mappila or Mohammedan and other non-Hindu undivided families, which are in the ordinary course liable to assessments to wealth tax from 1957-58 onwards in respect of the whole of India." I would therefore proceed on the assumption that there are in fact a few such families within the purview of the Act. The question for consideration would be whether such families, and the Mappila Marumakkathayam Tarwad in particular, are included in the term 'individual' occurring in Section 3 of the Act.

29. In AIR 1965 SC 1387, it was ruled by the Supreme Court with respect to Entry 86 of List I of the 7th schedule of the Constitution that the word 'individuals' included Hindu undivided families. It was pressed before the Supreme Court that the legislative history in the matter of tax legislation supported the distinction between 'individuals' and 'Hindu undivided families'. The Supreme Court observed :

"The tax legislation may for convenience or other valid reasons have made a distinction between individuals and Hindu undivided families, but it would not be legitimate to suggest that the word 'individuals' occurring in an organic document like the Constitution must necessarily receive the same construction."

The above observations seem to throw some doubt whether the identical construction could be placed upon the word 'individual' occurring in a taxing statute in juxtaposition with the word 'Hindu undivided family'. It is contended that the word 'individual' taking its color from the context in which it is used in juxtaposition with 'Hindu undivided family' would not comprehend a non-Hindu family or a Mappila Marumakkathayam Tarwad. The argument is sought to be supported by reference to Sections 5(ii), 15A(b), and Section 20 of the Act and the schedule thereto. I am not prepared to say that there is no force, in this contention; but at the same time, the antithesis may well be between 'Hindu undivided family' which was a concept well known to the law and an 'individual' which might well comprise groups of individuals and joint families other than 'Hindu undivided family'. In 1957-32 ITR 615 : AIR 1957 SC 832, while construing Section 16(3) of the Indian Income-tax Act, 1922, the Supreme Court observed :

"Whereas the word 'individual' is narrower in its connotation being one of the units for the purposes of taxation than the word 'assessee', the word 'individual' has not been defined in the Act and there is authority for the proposition that the word 'individual' does not mean only a human being but is wide enough to include a group of persons forming a unit. It has been held that the word 'individual' includes a corporation created by a statute, e.g., a university or a bar council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind."

30. Entry 86 of List I of the 7th Schedule to the Constitution which fell to be construed in Banarsi Dass's case, AIR 1065 SC 1387 read :

"Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies." in holding that the term 'individuals' comprised groups of individuals, the Supreme Court observed :

"Since companies are specifically mentioned along with individuals, it may be permissible to contend that companies in the context are not included in the word 'individuals' or it may perhaps be that since Entry 86 wanted to specify that the taxes leviable under it have to be taxes on the capital of the companies, it was thought desirable that companies should be specified as a matter of precaution along with individuals. However, that may be, it is not easy to understand why the word 'individuals' cannot take in its sweep groups of individuals like Hindu undivided families. The use of the word 'individuals' in the plural is not of any special significance, because under Section 13(2) of the General Clauses Act, 1897 (No. 10 of 1897), words in the singular shall include the plural, and vice versa."

On the strength of the above authorities, I am inclined to take the view that the expression 'individuals' in Section 3 of the Act includes non-Hindu families such as a Mappila Marumakkathayam Tarwad.

31. If so, the next question would be whether the differential treatment accorded to a Mappila Marumakkathayam Tarwad by assessing it as an 'individual' with a lower limit of exemption from tax, and a higher incidence of taxation (vide the schedule to the Act) would amount to discrimination in comparison with the preferential treatment accorded to a Hindu undivided family, which is given a higher limit of exemption and a more beneficial incidence of taxation. It is claimed that a Mappila Marumakkathayam Tarwad and a Hindu undivided family in general, and a Hindu Marumakkathayam Tarwad in particular, are similarly situated, and the differential treatment, accorded to them is violative of Article 14 of the Constitution.

32. It is unnecessary to consider, whether a Mappila Marumakkathayam Tarwad and a Hindu undivided family governed by the Hindu Law, are similarly placed. No such family of the latter type is before us, either in this 6. P. or the cases heard along with it and I refrain from expressing any opinion on the question. For the same reason, I express no opinion as to the similarity or otherwise between a Christian or Muhammeden family governed by the Hindu Law and a Hindu

undivided family. A pronouncement on these questions is unnecessary, as, if there is discrimination against the Mappila Marumakkathayam tarwad and in favor of the Hindu Marumakkathayam Tarwad, (one of the components of a Hindu undivided family) any question of discrimination on a larger basis, does not call for consideration.

33. As far as the Hindu Marumakkathayam Tarwads are concerned, the relevant statute dealing with them in the Malabar area of this State, with which we are concerned in this O. P., is the Madras Marumakkathayam Act, XXII of 1933. The Marumakkathayam Mappilas in the Malabar area are governed by the provisions of the Mappila Marumakkathayam Act (Madras Act 17 of 1939).

34. The prevalence of Marumakkathayam among the Mappilas of the erstwhile Districts of North Malabar (comprising of the Taluks of Chirakkal, Kottayam, Kurumbranad and Wynad) and South Kanara is thus accounted for by Sundara Iyer in his book on 'Malabar and Aliyasanthana Law', at page 4 :

"This is due to the fact that they were converts from Hinduism and did not change their law of property when they changed their religion. While therefore, the religion of Mohamed and the ordinances of his followers govern their religious and social life, it is strangely intermingled with the rules of property and of succession that govern the Nayars. Their rules of marriage are exactly identical with those that govern other Muhammedans but their rules of property are regulated according to Marumakkathayam Law. Sometimes we find the rules of Muhammedan Law modifying those of Marumakkathayam Law, especially with regard to self-acquired property and this admixture at times gives rise to certain curious problems, by no means, easy of solution."

35. At page 236 of the above work, Sundara Iyer refers to certain customs among Marumakkathayam Mappilas which the recognition of the Marumakkathayam rule of inheritance and the Mohammedan rule as to marriage has given rise to. I do not pause to examine these, or the differences between the statutory provisions of the Madras Acts XXII of 1933 and XVII of 1939, as little was said by counsel for the Revenue to make out that the Mappila tarwad could constitute a class or category separate from the Hindu Marumakkathayam tarwad.

36. The Mappila Succession Act (Madras Act 1 of 1918), applied the rules of Mohammedan Law to intestate succession among Mappilas. But the explanation to Section 2 of the said Act excluded tarwad property from its operation unless the person dying intestate was exclusively entitled to it. The Mappila Wills Act of 1928 (Madras Act 7 of 1928) applied the Mohammedan Law to the testamentary dispositions of Mappilas governed by the Marumakkathayam Law, in respect of property covered by the Mappila Succession Act of 1918, Neither the Muslim Personal Law (Shariat) Application Act (Central XXVI of 1937) nor its Madras amendment by Act 18 of 1949 had" any effect on the rights and incidents of Mappila tarwad (See *Puthiya Purayil Abdurahiman Karnavan v. T.K. Avoomma*³¹, and *Achamma v. Yousuff*³².)

37. The above is a brief resume of the position of the Marumakkathayam Mupplias of the Malabar area of this State. Little has been said to justify the classification of the Mappila tarwads

as a category separate from the Hindu Marumakkathayam tarwads. As two entities similarly situated are subjected to the different incidence of taxation, I am of the view, that there is discrimination against the Mappila Marumakkathayam Tarwads, by reason of the favorable treatment accorded to the Hindu Marumakkathayam Tarwads.

38. But it does not seem to me to follow on this account that the entire Act is liable to be struck down, as contended by Shri M.R. Nambiyar. It appears to me that the vice of unconstitutionally and discrimination can be met by excising the content of the term 'individual in S, 3 of the Act, so as to exclude the Mappila tarwad from its ambit.

³¹ AIR 1956 Mad 244

³² 1958 Ker LJ 305

There seems to me sufficient warrant for such a course.

39. In *R.M.D. Chamarbaugwala v. Union of India*³³, the Supreme Court was called upon to consider the constitutional validity of the Prize Competitions Act, 42 of 1955. Section 2(d) of the said Act defined 'prize competition' in language wide enough to cover not only competitions in the nature of gambling, but even competitions wherein success depended to a substantial extent on skill. On an analysis of the provisions of the Act, the Supreme Court concluded that the competitions sought to be controlled and regulated by the Act are only those in which success did not depend to any substantial degree on skill. Assuming however, that the definition in Section 2(d) of the Act comprised even competitions in which success depended to a substantial degree on skill, the Supreme Court observed :

"The conclusion is therefore, inescapable that the impugned provisions, assuming that they applied by virtue of the definition in Section 2(d) to all kinds of competitions are severable in their application to competitions in which success does not depend to any substantial extent on skill."

40. In *Kedaranath v. State of Bihar*³⁴, the validity of the definition of sedition in Section 124-A of the Indian Penal Code and of the offence under Section 505 of the Code fell to be considered by the Supreme Court. The sections were attacked as contravening the fundamental right of freedom of speech and expression under Article 19(1)(a) of the Constitution. The Supreme Court held :

"The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes, the correct balance between individual fundamental rights and the interest of public order. It is also

well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words, used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress (vide (1) *Bengal Immunity Co. Ltd. v. State of Bihar*³⁵, and (2) 1957 SCR 930 : AIR 1957 SC 628). Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving: intention or tendency to create disorder, or disturbance of law and order, or incitement to violence".

³³ AIR 1957 SC 628

³⁵1955-2 SCR 603 : AIR 1955 SC 661

³⁴ AIR 1962 SC 955

(underlining (here into ' ') mine),

41. The principle of the above decisions' was applied by this Court in *Mohamed Khan v. State of Kerala*³⁶, The question in the said case was whether the term 'prejudicial report' in Section 31 of the Travencore-Cochin Public Safety Measures Act 5 of 1950 would comprehend reports both true as well as false, so as to render a persons liable to be proceeded against for dissemination of even a true report. It was held on a proper construction of the section in its context and setting that only false reports were comprehended; but assuming that the dissemination of even true reports were within its purview, this Court was of the opinion that the entire section cannot be declared unconstitutional.

42. Following the principle of the above decisions, I hold that by reason of the inclusion of the Mappila Marumakkathayam Tarwads within the term 'individual' in Section 3 of the Act, and the resultant discrimination against it in comparison with the Hindu Marumakkathayam Tarwads, the entire Act is not liable to be struck down as unconstitutional. The content of the expression 'individual' in section 3 of the Act should be narrowed down so as to exclude a Mappila Marumakkathayam Tarwad. This part of the section and the Act is clearly severable, and such severance involves no re-writing of their provisions, and seems unobjectionable on principle.

43. I shall next proceed to consider the position on the assumption that a Mappila Marumakkathayam Tarwad is not included within the term 'individual' in Section 3 of the Act. It seems to me to make little difference whether a Mappila Tarwad is not included in the term 'individual' in Section 3 of the Act, or, being included, is liable to be excised by reason of the violation of Article 14 of the Constitution. Either way, I am of the view, that the legislation cannot be struck down, as discriminatory on the ground of an initial omission or a subsequent exclusion of the Mappila Tarwad. The object of the Wealth Tax Act, as I understand it, seems to be to levy a tax on the wealth of "every individual, Hindu undivided family and company." It seems to me to be a well-recognised principle, that the legislature has a wide discretion in the matter of taxation and that it is not bound to tax everything in order to tax something. Legislation aimed at a particular object need not be all embracing; and is not open to attack on the ground that, while certain objects have been brought within the purview of a taxing I statute, those similarly situated, have been left out or are excluded.

44. In *Sakhavant Ali v. State of Orissa*³⁷, ((s) the validity of Section 16(1)(ix) of the Orissa Municipal Act came up for consideration. The section stated that :

(1)"No person shall be qualified for election to a seat in a municipality, if such person

..... (is) is employed as a paid legal practitioner on behalf of the municipality or as legal practitioner against the municipality"

45. The above section was attacked as contravening Article 14 of the Constitution. The classification was claimed to be of legal practitioners employed on payment, on behalf of, or against, the Municipality. The object or purpose to be achieved by the

³⁶1963 Ker LJ 718 : AIR 1964 Ker 104

³⁷ AIR 1955 SC 166

provision was the purity of public life, by avoiding situations where there was conflict between interest and duty. It was urged that besides the category provided for in the section, such conflict was likely to arise in many other similar situations, and that in so far as they were not covered by the section, the provision was discriminatory. The argument was met by the Supreme Court as follows :

"The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation and left out would not render which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the constitution".

(Underlining (here into ' ') mine)

46. As I read the above passage, the Supreme Court did not sustain the omission to provide for similar categories on the ground of reasonable classification of what was provided for, but on the principle that the legislation aimed at a particular object need not be all embracing.

47. In *Raja Jaganath Baksh Singh v. State of Uttar Pradesh*³⁸, the Supreme Court stated as follows :

"16. A taxing statute can be held to contravene Article 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that it is for the Legislature to decide on what objects to levy what rate of tax and it is not for the courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also true that the legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects. But, if in its operation, any taxing statute is found to contravene Article 14 it would be open to courts to strike it down as denying to the citizens equality before the law guaranteed by Article 14."

48. As I understand the above passage, the freedom of choice given to the legislature in the

determination of the objects of taxation and the right to classify persons or properties into different categories for taxation, are stated as two distinct and different norms.

49. In *East India Tobacco Co., v. State of Andhra Pradesh*³⁹, the Supreme Court approved the following statement of the law in Willis on Constitutional Law, page 587 :

³⁸ AIR 1962 SC 1563

³⁹ AIR 1962 SC 1733

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation. "

50. The above case was concerned with the validity of the levy of sales-tax on Virginia Tobacco. The levy was attacked as discriminatory on the ground that Nattu Tobacco had not been taxed. In paragraph 4 of the AIR report the differences between the two types of tobacco are pointed out and it is stated that these differences would justify Virginia Tobacco being treated as a class in itself. In paragraph 5 of the same report, the argument of counsel is noticed that the differences between the two types of tobacco are not germane to the levy of sales-tax, and so there is no valid classification. Adverting to the said argument, the Supreme Court observed :

"We are unable to agree with this contention. If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation."

51. The above passage seems to me to indicate that the range of choice conceded to the State in matter of taxation is quite independent of its power of reasonable classification. I am quite alive to the statement in paragraph 8 of the AIR report where the differences between the two varieties of tobacco were held sufficient to found a reasonable classification.

52. In *Southern Roadways (Private) Ltd. v. Union of India*⁴⁰, the Supreme Court had to consider the validity of the proviso to Section 10(2)(vi)(b) of the Indian Income-tax Act, 1922 (added by the Taxation Laws Amendment Act 1960). The said proviso read :-

"Provided further that no allowance under this clause shall be made in respect of any machinery or plant which consist of office appliances or road transport vehicles. "The attack based on Article 14 of the Constitution against the above proviso was repelled thus "It was contended on behalf of the petitioner that the proviso offends Article 14 in that it discriminates between machinery which is office appliance or road transport vehicles and other kind of machinery. It is difficult to accept such a contention because there is nothing in the Constitution which prevents the Legislature from choosing the object of taxation from amongst various classes of machinery for the purpose of giving development rebate. The Constitution does not prohibit any such classification which has been made in the present case."

* * * *

53. In *Khyerbari Tea Co. Ltd., v. State of Assam*⁴¹, the validity of the Assam Taxation (on goods carried by Road or on Inland Waterways) Act 10 of 1961 was attacked, inter alia on the ground that the Act had singled out only Tea and Jute as objects of

⁴⁰ 1962 : 44 ITR 708 (SC)

⁴¹ AIR 1964 SC 925

taxation. Gajendragadkar, J. (as he then was) speaking for the majority of the Court, repelled the argument as follows :

"The argument appears to be that the legislature should have taxed other commodities along with tea and jute and in so far as only tea and jute have been selected for the purpose of taxation, Article 14 has been contravened. This argument is entirely fallacious. It is not disputed that tea and jute are the main products of the State of Assam and it is not surprising that the Assam Legislature, therefore levied tax on the said two articles. Besides, the legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate, vide (1963) 1 SCR 220 : (1962) 2 SCA 679 . It would be idle to contend that a State must tax everything in order to tax something. In tax matters, "the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. The Supreme Court of the United States of America has been practical and has permitted a very wide latitude in classification for taxation. (Willis on Constitutional Law p. 587). This approach has been approved by this - Court in the case of (1963) 1 SCR 404, at p. 409 : (AIR 1962 SC 1733 at p. 1735)."

54. I may next refer to the decision of a Division Bench of this Court in *Essa Ismail v. State of Kerala*⁴², The validity of the Kerala Plantations (Additional Tax) Act 1960, was attacked inter alia on the ground that while seven enumerated plantations have been taxed, some other plantations similarly placed had been omitted from the purview of the Act, and the omission to do so violated Article 14. The argument was repelled as follows :-

"It may also be true that there are other items, which could have been brought within the purview of the Act; but that does not mean that there has been a violation of Article 14 of the Constitution."

55. The learned Chief Justice who delivered the judgment of the Bench then proceeded to refer to the passage from Willis noticed above, and to the decision in AIR 1955 SC 166. I see nothing in the judgment to show that this specification of the seven plantations was justified on the ground of reasonable classification based on intelligible differentia. The omission to include similar items was in respect of cashewnut, lemon grass and tapioca plantations. (See *Thuttamper Planting Co. v. Tahsildar Chittur*⁴³)

56. In the light of the principle laid down in the above cases I am not prepared to hold that the mere omission or exclusion of the Mappila Marumakkathayam Tarwad from the purview of the Act would render the legislation discriminatory.

57. Shri M.K. Nambiar referred to a series of decisions of the American Supreme Court such as

(1937) 81 Law Ed 1223; (1939) 83 Law Ed 208 and *National Union of Marine Cooks and Stewards v. George Arnold*⁴⁴, to show that discrimination would

⁴²1965 Ker LT 944

⁴⁴(1954) 99 Law Ed 46

⁴³1964 Ker LT 47: (AIR 1964 Ker 141)

not depend on the number of persons discriminated against. It seems to me that the cases are distinguishable on principle. They were uncomplicated by any principle which concedes a wide range and flexibility to the State in its power to classify for the purpose of taxation.

58. In 1965-56 ITR 298 : AIR 1964 Orissa 128 a Division Bench of the Orissa H.C. sustained the validity of the Act. Adverting to the argument, with which we are concerned in the present O. P., the Court observed;

"The peculiar problem arising out of the existences of undivided families amongst non-Hindus does not arise in this State and in most other States in India. Moplals, following the Marumakkathayam Law are found only in Kerala. Similarly, Christians following the Hindu Law of coparcenary even after conversion must be very few indeed.

It is open to Parliament to say that the number of undivided families of non-Hindus who may be assessable to Wealth Tax is so negligible that it is not necessary to treat them as a separate entity. Again, it is open to the legislature to classify a Hindu undivided family as a distinct unit apart from an individual, for the purpose of levying a separate rate of tax. This is a well known feature found in the Indian Income-tax Act also, and, as far as I know, such classification has not been challenged as offending Article 14. With respect, therefore, I am unable to agree with the view taken by the Kerala High Court."

59. In 1964-2 Mad LJ 273, a Division Bench of the Madras High Court sustained the validity of the Act. The decision appears to take the view that a Mappila Marumakkathayam Tarwad is included in the term 'individual' (see page 286). The argument of discrimination based on differential treatment of the Mappila tarwad was repelled on the ground that the Hindu undivided family and a Mappila tarwad are not similar objects entitled to equal treatment. The question pointedly argued before us, namely, the similarity between a Mappila Tarwad and a Hindu Marumakkathayam Tarwad in particular, (and not a Hindu joint family) does not appear to have received specific or pointed consideration in the Madras Ruling. The Madras Decision took the view, that the karnavan of a Mappila Tarwad is an individual and can be assessed as such for the properties of the tarwad in his hands. In the view I take, it is unnecessary to deal with this aspect of the matter.

60. It seems to me that if in passing the Wealth Tax Act, the All India Legislature selected the main types of joint families in this country, and individuals for the purpose of taxation, the same cannot be held to be discriminatory. Nor am I prepared to hold that such choice of the main types of joint families in this country for the purpose of taxation would be either unreasonable or beyond the wide latitude conceded to the State in matters of taxation.

61. To sum up, my conclusions are :

(1) that on a construction of Section 3 of the Act "a Mappila Marumakkathayam Tarwad is included in the term 'individual' occurring therein,

(2) That its inclusion in the term 'individual' in the said section, and the differential treatment accorded to it by the schedule to the Act as compared to Hindu Marumakkathayam tarwrads, are violative of Article 14 of the Constitution,

(3) As a result of the above discrimination, neither the entire Act nor Section 3 thereof, is liable to be struck down; but only the scope and content of the term 'individual' is liable to be narrowed down so as to exclude a Mappila Marumakkathayam Tarwad,

(4) That neither on the ground of any initial omission of the Mappila Marumakkathayam Tarwad from the purview of Section 3 of the Act, (assuming such to be the position) nor on the ground of its subsequent exclusion as a result of discrimination, can the Act or Section 3 thereof, be said to be discriminatory. The legislature has a wide discretion in choosing its objects of taxation, and cannot be said to have exercised its power either arbitrarily or unreasonably in taxing the main types of joint families in this country.

62. On the above conclusion that a Mappila Marumakkathayam Tarwad is liable to be excluded from the definition of the term 'individual', the petitioner's tarwad, being outside the ambit of the Act, is not liable to be assessed under its provisions. It follows that the O. P. must be allowed on this ground, and I do so. There will be no order as to costs.

O. P. No. 684 of 1959

63. The petitioner in the above O. P. is the Karnavan of a Namboodiri Illom, who seeks to quash the order of assessment under the provisions of the Wealth Tax Act, 1957 for the assessment year 1957-58. The main-challenge to the order has been on the ground of the unconstitutionality of the Act in that it discriminates against Hindu undivided families by omitting the Mappila tarwad altogether from taxation. Alternatively, it is argued that even if the Mappila tarwad is included within the purview of the Act, it is dealt with differently, and this again would amount to discrimination. These arguments have been considered and dealt with by me in my judgment in O. P. 674 of 1958. The challenge to the constitutionality of the Act must therefore fail.

64. Regarding the attack on the merits of the assessment, I agree with the order of my learned brother Velu Pillai, J. that this O. P. should be allowed for reasons stated in his judgment. I would order accordingly.

T. S. Krishnamoorthy Iyer, J.

O. P. No. 674 of 1958.

65. The two questions raised in the above original petition are :- (1) whether the net wealth of the Mappila Marumakkathayam Tharwad registered as impartible within the meaning of Section 20(1) of the Madras Act 17 of 1939 is assessable to tax under Section 3 of the Wealth Tax Act, 1957 (hereinafter referred to as the 'Act') and (2) if such wealth is not assessable under Section 3, whether it is violative of Article 14 of the Constitution.

66. I agree with the conclusion reached by Mr. Justice Nambiyar that the expression 'individual' in Section 3 of the Act will include a group of individuals who are members of a Mappila

Marumakkathayam tharwad. The term 'individual' has not been defined in the Act. Their Lordships of the Supreme Court in 1957-32 ITR 615 at p. 620 : AIR 1957 SC 832 at pp. 834-35 observed :

". the word 'individual' has not been, defined in the Act (Indian Income-tax Act 1922) and there is authority for the proposition that the word 'individual' does not mean only a human being but is wide enough to include a group of persons forming a natural unit."

The decision in 1957-32 ITR 615 : AIR 1957 SC 832 is referred to with approval by their Lordships in (1965) 56 ITR 224 to 233 : AIR 1965 SC 1387 at p. 1392. It was admitted by both sides that the expression 'Hindu undivided family' in Section 3 of the Act will comprehend 'Hindu undivided family' governed by different schools of Hindu Law as well as Marumakkathayam Law. It was conceded by the learned advocate for the petitioner at the time of the argument that if Section 3 of the - Act is read omitting the expression 'Hindu undivided family', then the word 'individual' in Section 3 of the Act will take in groups of individuals who form members of tarwads or un-divided families. But the argument of the Seamed advocate for the petitioner is that the specific mention of 'Hindu undivided family' which comprises a natural group of individuals created by law in Section 3 of the Act implies that other groups of individuals forming natural units must be deemed to have been excluded.

67. The general scheme of the Act is to assess all persons who happen to own wealth beyond the particular limit fixed by the statute to Wealth Tax. Even in a taxing statute it is the duty of the court to attribute to the words their reasonable meaning. Since the Act imposes a general tax on the entire wealth of the community, the presumption is of equality of incidence of tax rather than of the exemption of a few. The specific mention of 'Hindu undivided family' in Section 3, according to me, does not result in the exclusion of a group of individuals who form a unit by reason of their birth from the operation of Section 3 of the Act. The Act contemplates that in the case of members of the 'Hindu undivided family' the unit of assessment shall be the family itself and not each individual member. A 'Hindu undivided family' including a Marumakkathayam tharwad or a Mappilia Marumakkathayam tharwad has no separate legal existence distinct from the members of the family or tharwad. This position is supported by the observations of the Supreme Court in *C.A. Cherian v. A. Menon*⁴⁵, Such undivided family or tharwad does not have the attributes of a legal person distinct from the members of the undivided family or tharwad. The absence of machinery provisions similar to those applicable to 'Hindu undivided family', for

⁴⁵ AIR 1963 SC 128

assessing a group of individuals who form a non-Hindu undivided family or a non-Hindu Marumakkathayam tharwad cannot in my view affect the question. If the charging provision in the Act is clear, the fact that there are not enough machinery provisions to cover all contingencies cannot in any way control the charging section. I am not also impressed with the argument based on the juxtaposition of the expression 'Hindu undivided family' in Section 3 of the Act. As I have already indicated, when, for purposes of assessment under the Act, 'Hindu undivided family' is treated as a separate assessable entity, the specific mention of the same in the section cannot restrict the meaning of the expression 'individual' therein. I therefore feel that the net wealth of the group of individuals who are members of Mappila Marumakkathayam tharwad within the meaning of Section 20(1) of Madras Act 17 of 1939 is assessable under Section 3 of the Act.

68. The second contention of the petitioner is based on Article 14 of the Constitution. It is now well settled that while a taxation law cannot claim immunity from the equality clause of the Constitution, it may not be possible for the courts to scrutinize very meticulously the impact of the burden of such a statute on different persons or interests. The Legislature is competent to classify persons or properties into different categories and tax them differently. If the classification thus made is rational, the taxing statute cannot be challenged merely because different rates are prescribed for different categories of persons or objects. The Legislature is further permitted a wider discretion in classification under the power of taxation. In American Jurisprudence Vol. 51, page 179 the statement of law is thus summed up :

"The rule requiring equality of taxation within the same class does not prevent sub-classifications in taxing statutes, it having been asserted in this connection that the legislature is not bound to tax every member of a class or none, but may make distinctions of degree having a rational basis. On the other hand, it has been said that although the taxing power may sub-divide a class, it cannot unjustly discriminate between the sub-divisions so made." In 1962-46 ITR 169 at p. 179 : AIR 1962 SC 1563 at p. 1570 their Lordships of the Supreme Court observed :

"A taxing statute can be held to contravene Article 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that it is for the legislature to decide on what objects to levy what rate of tax and it is not for the courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also true that the legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects. But, if in its operation, any taxing statute is found to contravene article 14, it would be open to courts to strike it down as denying to the citizens the equality before the law guaranteed by article 14."

69. The contention based on Article 14 of the Constitution is on account of the difference in the rate of tax prescribed for 'individual' and 'Hindu undivided family' in Part I of the Schedule to Section 3 of the Act. The material part of the Schedule referred to in Section 3 of the Act as it stood at the relevant date is extracted below :

"(a) In the case of every individual :

- | | |
|--|-----|
| (i) on the first rupees two lakhs of net wealth | Nil |
| (ii) on the next rupees ten lakhs of net wealth | ½% |
| (iii) on the next rupees ten lakhs of net wealth | 1% |
| (iv) on the balance of net wealth | 1½% |

(b) In the case of every Hindu undivided family :-

- | | |
|--|-----|
| (i) on the first rupees four lakhs of net wealth | Nil |
| (ii) on the next rupees nine lakhs of net wealth | ½% |

- (iii) on the next rupees fen lakhs of net wealth 1%
- (iv) on the balance of net wealth 1½%

70. The submission of the learned advocate for the petitioner is that while a higher limit of exemption is allowed to a 'Hindu undivided family', the group of individuals forming a Mappila Marumakkathayam tharawad is not given the same benefit. But, for them, the initial exemption is less.

71. It has been held in *Kochuni v. States of Madras and Kerala*⁴⁶, that there is a fundamental difference between a 'Hindu undivided family' and a Marumakkathayam tharawad. The ground of attack under Article 14 was on the ground that a Mappila Marumakkathayam tharawad and a Hindu Marumakkathayam tharwad are similarly situated and the difference in the rate of tax prescribed by the schedule offends the equality clause. Sundara Aiyar in his book on Malabar and Aliasanthana Law, at page 4 observes :

"The Marumakkathayam Law obtains not only amongst the Hindus but also amongst the Mappilas, a class of Muhamniadans, in North Malabar, who speak Malayalam. This is due to the fact that they were converts from Hinduism and did not change their law of property when they changed their religion. While therefore, the religion of Mahomed and the ordinances of his followers govern their religious and social life, it is strangely intermingled with the rules of property and of succession that govern the Nayars. Their rules of marriage are exactly identical with those that govern other Muhammedans but their rules of property are regulated according to Marumakkathayam Law. Sometimes we find the rules of Muhammedan Law modifying those of Marumakkathayam Law, especially with regard to self-acquired property and this admixture at times gives rise to certain curious problems, by no means, easy of solution."

The learned author has further pointed out the development of certain peculiar customs among Mappilas governed by Marumakkathayam law on account of the recognition of the Marumakkathayam rule of inheritance and at the same time of the Muhamedan rule as to marriage. It is therefore not possible to hold that a Hindu Marumakkathayam tharawad and Mappila Marumakkathayam tharawad are so similar that the classification made by the legislature is not at all rational. The provision in the schedule of the Act for a lower limit of exemption to 'individual' and a higher

⁴⁵ AIR 1960 SC 1080

limit of exemption to 'Hindu undivided family' cannot amount to hostile discrimination against the group of individuals who constitute Mappila Marumakkathayam tharawad. Once a 'Hindu undivided family' is assessed as a unit of assessment, it must continue to be assessed even after disruption until an order is passed by the Wealth Tax Officer under Sub-Section 1 of Section 20 of the Act recognising the partition. Sub section 2 of Section 20 of the Act enables the officer even to declare that such family shall be deemed to continue to be a 'Hindu undivided family' liable to be assessed as such. In this connection, the observations, though with reference to Section 171 of the Income-tax Act 1961, at pages 53 and 54 in the "Law and Practice of Income-tax" by Kanga and Palkhivala are pertinent.

"Once a family is assessed as undivided, it would continue, even after partition, to be assessed as an undivided family till a finding of partition is given under Section 171 by the Income-tax Officer. The rigour of the law taxing an undivided family just as an individual is mitigated by special provisions granting a higher ceiling of deduction on account of insurance premium and by a larger initial margin of income exempt from income-tax."

The above observations must in my view apply to the assessment of a 'Hindu undivided family' under the Wealth Tax Act also. If so, the complaint based on hostile discrimination is without any force. I am therefore of the view that the argument based on Article 14 of the Constitution cannot stand, O. P. No. 674 of 1958 is therefore without any substance and is dismissed with costs. O. P. No. 684 of 1959.

72. Since I have held in O. P. No. 674 of 1958 that a group of individuals constituting a Mappila Marumakkathayam tharawad are assessable under Section 3 of the Act, the contention that the imposition of tax on 'Hindu undivided family' is violative of Article 14 of the Constitution on account of the exclusion of Mappila Marumakkathayam tharawad from the scope of Section 3 of the Act cannot stand. On the merits of O. P. No. 684 of 1959, I concur with Mr. Justice Velu Pillai that the plea raised I under Section 20(1) requires reconsideration by the Wealth Tax Officer. I am therefore of the view that O. P. No. 684 of 1959 has to be allowed.

JUDGMENT OF THE COURT

73. In view of the unanimous decision that O.P. 684 of 1959 should succeed on the merits, that petition is allowed, with directions to the Wealth Tax Officer to comply with Section 20 of the Act before making a fresh assessment; and in view of the decision of the majority in O. P. 674 of 1958 that petition also is allowed. In the circumstances of the case, we do not make any order as to costs in either of the petitions.

Petitions allowed.