

Income-Tax Bill, 2025: An Insight into the Income Tax Bill 2025 - Income Tax and Role of the Constitutional Courts



Hon'ble Mr. Justice Akil Kureshi,

(Former Chief Justice of Rajasthan High Court and Tripura High Court)

(Summary of the speech prepared by CA. Rajesh Mehta, former Secretary General AIFTP and CA. Apurva Mehta from Online lecture of Mr. Justice Akil Kureshi)

<https://www.youtube.com/live/TGnzsDbyoeA?si=ARmFvaYApm2q3F41>

In the welcome speech, AIFTP National President Samir Jani welcomed all the participants and AIFTP team members on zoom platform and Youtube viewers extended thanks to Sr. Adv. Tushar Hemani and Sr. Adv. Dr. K. Shivaram for being instrumental in implementing this idea of lecture series on New Income -Tax Bill 2025.

In the opening remarks Sr. Adv. Tushar Hemani, Chairman of Direct Tax Committee AIFTP stated that the new Income- Tax Bill 2025 which has been introduced and probably within next 6 months it would have become an Act. The new bill in its present form initially gave an impression that there is not much to discuss and all of us thought that this is nothing but an exercise where in the name of simplification the Government has put old wine into the new bottle however after having gone through the whole bill we realize that there are large number of small changes which are going to affect all of us in the longer practice, take an example of assessment year versus previous year, the concept right from 1961 and even prior thereto we are all used to Computing the income for the previous year and paying the taxes as per the tax rate prevailing in the assessment year now that is done away with. With every change probably there comes the difficulty of accepting the change and implementing the change so also take an example of the sections which are in the in the name of simplifications the language is changed and almost at all the places at probably more than 25 places the word '**Notwithstanding**' is replaced with. '**irrespective of anything**' now what would be the implication of that replacement notwithstanding the word was well defined in the Judiciary, we had plethora of decisions where in the view that is taken is that what is notwithstanding is well defined whereas irrespective of anything is something which is yet to be tested by the judicial scrutiny though the dictionary says the meaning Remains the Same however in actual practice what is going to be the implication of this is required to be seen take an example Clause 247 (Search and Seizure), we all have been reading in the newspaper that the Government will now have access

over your electronic record , I. e. social media accounts, your emails, your WhatsApp accounts, so on and so forth all of us are worried but what if we look at minutely to Clause 247 we realize that that was only during the course of a search, however even during the course of a search what is going to be the extent of this Assumption of jurisdiction in so far as this electronic record is concerned more particularly in view of the fact that now we have a judgment of Justice **K. S. Putta Swamy v. UOI AIR 2015 SC 3081 / (2017) 10 SCC 1** wherein the view that is taken is even right to privacy is a fundamental right so then in that view of the matter we can have a wonderful discussion as regards the implication of Clause 247. Take an example of section 9 (1)(i) of the Act Business Connection where earlier the asset word was not defined now, we have the definition of asset which includes both intangible assets as well as the tangible assets. Take an example again, Section 90 (3) where in the law the existing law, said that whenever a term is not Defined, the meaning would be picked up from the Income -Tax act or from the DTAA i.e. double tax avoidance agreement itself, if the meaning is not flowing from either of them then probably the notification now the new Act has given a hierarchy that in a particular order namely in the order that firstly the agreement thereafter the central government can define a particular term then notification issued by the central government and then if we do not find the meaning of a particular term we go to Central tax laws, if we fail in doing that then we go to any Central law, so even the terms of interpretation of various section is now there in the new Act and therefore, we all thought that let us come together and discuss the nuances of this new Act rather than just simply saying that it is nothing but an exercise wherein simplification is being

done let us look at the new Act with a new angle even if it is the old Act, even if it's an old wine in the new bottle then also let us have a have a seep of that wine again.

Income -Tax and Role of the Constitutional Courts-

Hon'ble Mr. Justice Akil Kureshi.

Important issues addressed by Hon'ble Mr. Justice Akil Kureshi.

1. The Interconnected Nature of Income -Tax Law

The learned speaker Honourable Mr. Justice **Akil Kureshi**, stated that " Income-tax law is not some kind of an oasis which is marooned by the other things and unconcerned or unconnected with other events in the society, we are as much part of the society, we are as much part of a fascinating process which is going on in this country and therefore I'm going to present a few thoughts on that and I will also try to mix in this presentation my experiences and my feelings of a judge but particularly in the context of writ jurisdiction so that's another aspect because it is the writ jurisdiction which brings out in the full force the true Majesty of a court its powers its Contour its canvass and its Limitless scope."

2. Peculiarities of Income -Tax Law

Honourable Justice stated that, he often wondered why the outsiders consider Income -tax as a some kind of a subject to fear it's almost as if it's something esoteric and after long hard thought what I have come to the conclusion is that Income -Tax law has more peculiarities than any other law every law has its own peculiarities, the law of Co-operative societies, the Election laws, Criminal laws, take any law it will always have certain facets and nuances which are peculiar to that law but none

as much as the Income -Tax as which he experienced and this is because Income -Tax is essentially a law based on concepts and these concepts do not emerge from these text books, take for an example the concept that once an assessment is reopened on a valid ground it stands reopened for the entire assessment at the hands of the Revenue on all grounds including those which are not recorded as reasons but not for the benefit of the assessee is a completely unknown concept to the outsiders, take also for example Protective assessment is another concept which is not found in any statute book it is completely a judge made law the law that if the assessment is reopened on a ground which is found to be invalid no additions can be sustained even on grounds which are otherwise valid, though not stating the reasons recorded comes so naturally to tax practitioners but is so alien to the outsiders, these are some of the reasons why I find the tax law is challenging, the tax law is peculiar and therefore outsiders sometimes almost fear the law but that still does not mean the tax can be separated or completely differentiated from other branches and Fields of law.

3. Complexity of New Income -Tax Bill, 2025 ?

Honourable Justice stated that a thought come to his mind is that modern Life is complex the modern trade and industries and businesses are complex, can Income -Tax law be simple, has the new Bill achieved these purposes? For example through the Income -Tax structure the government implements so many of its policies, we have or had in the past, tax concessions for providing middle income group housing, we have backward area exemptions, we have exemptions and concessions for scientific research and so on whenever you provide for a two tax

regime complications are going to arise. If you want to carve out an exception if you want to treat a certain class specially there are going to be complications. I do not know to what extent the Income -Tax Act can be made simple but the time will tell us, whether fully or substantially this purpose has been achieved or the whole purpose has failed altogether. Another stated objective though not in the bill but the Prime Minister himself has gone on record and saying that I want to reduce tax harassment again to plug the tax pilferage and loopholes is undoubtedly one important task of the Revenue at the same time not to harass honest tax payers is also equally important and this requires an extremely fine balance. I do not think such a balance can come through legislature, this balance has to come through the cultural mindset change, it's only when the people responsible for implementing the tax laws realize that Income -Tax is not all about tax collection it is all about aiding the honest Industries and trade to do their businesses easily generate income and revenue so that there is more employment generation and there is more Revenue generation.

4. Writ Jurisdiction in Income-Tax Law

Writ jurisdiction in the Income- Tax field as said at the outset permit me a little leverage I would like to expand the discussion beyond the tax implications alone because as I said the Income -Tax law is not an isolated marooned field it has its close association with the entire legal structure or the scheme of the country it is this constitutional scheme which gives Limitless powers to the courts the Constitutional courts and to understand the onus of the duty of the courts and the expectations of the society from the courts.

5. The Framing of the Indian Constitution.

Let me permit a little bit of discussion on the framing of the Constitution and how it has changed its form understanding and implementation over last 75 years or so as you all know the Constitution was framed under extremely trying circumstances the country though very buoyant because of the freedom which was imminent was facing extremely difficult moments the partition was looming large mindless violence, left millions of people dead on either side of the Border many more Millions lost their life, lost their houses uprooted from the motherland thrown into an unknown land there nowhere to go under such circumstances when the Constitution was framed. Some of the leading personalities as you would recall, Dr Bhimrao Ramji Ambedkar, Dr Rajendra Prasad, Pandit Jawaharlal Nehru, Sardar Vallabhai Patel they all debated what should be the road map for the new country to govern itself after 3 years of lengthy debates the constitution was framed and presented to the people of the country and it starts with a preamble which says "WE THE PEOPLE OF INDIA having solemnly resolved to constitute India in to a SOVEREIGN SOCIALIST DEMOCRATIC REPUBLIC and to secure to all its citizens :", will resolve to do what achieve social political and economic justice for all it is this fundamental principle of social economic and political Justice for all which is the heart of our constitution. At the end when the Constitution was framed two of the persons who had played a leading role in framing the Constitution said the same thing in slightly different languages Dr Rajendra Prasad who was the Chairperson of the Constituent assembly and Dr. Ambedkar was considered to be the Chief Architect of India's Constitution they both said something similar, Dr Rajendra Prasad said that we have tried to make a good Constitution

and we hope that we have succeeded in making a good Constitution, but whether this turns out to be a good Constitution or it fails will depend on the people who will work this constitution out if the people who are going to work this constitution are people of character and stature even the mistakes which might have, which might, we might have made in framing the Constitution will be glossed over but if they lack the stature and character and courage the best of the Constitutions can fail. Dr Ambedkar said something similar he said that it is perfectly legitimate to pervert the Constitution without changing it by simply making the systems inconsistent with the Constitution you do not have to amend the Constitution, you do not have to destroy the Constitution just chip away on the Democratic institutions and you'll have achieved the same purpose, therefore put the entire onus on working the constitution on the new generation, this constitution had to be tested and worked out.

6. Key Constitutional Challenges and Judicial Landmark decisions.

Honourable Judge stated that citizens have seen that Constitution of India has gone through many twists and turns from the beginning when the Constitutional challenges came in agrarian law reforms. We had four Landmark judgments from starting from **Sajjan Singh v. State of Rajasthan, (1965) AIR 845 SC, 1965 SCR (1) 933, Shankari Prasad Singh Dev v. UOI 1951 AIR 458, AIR 1951 Supreme Court 458, I. C. Golaknath v. State Of Punjab (1967) AIR 1643, 1967 SCR (2) 762 and His Holiness Keshavannd Bharti v. State of Kerala AIR 1973 SC 1461, (1973) 4 SCC 225** Keshwanand Bharti Judgment, all four judgments had two things in common one they were

relating to the right to property in the context of agrarian law reforms where after Independence zamindari had been abolished by States upon States making the tiller of the day deemed purchaser and owner of the land and these were met with huge resistance from the landlords as a class, the question arose whether the state has the power to amend the Constitution and if so to what extent can the constituent assembly amend the Constitution even before the first elected Parliament is constituted and all these questions were debated at length before The Supreme Court, finally we had the Judgment of **Keshvanand Bharti (Supra)**. where through a razor sharp majority of seven versus six the Supreme Court held that yes Parliament has the power to amend the Constitution any part of the Constitution including the fundamental rights chapter but that it cannot transgress the boundary of breaching the basic structure it cannot damage or destroy the basic structure of the Constitution and thus we came to know about this theory of basic structure came to be firmly enshrined in our legal system.

7. Judicial Reforms and the Rise of the Supreme Court's Authority

Honourable Judge stated that soon thereafter as you know the government sort of hit back, Mrs. Gandhi's election was set aside by a single judge of Allahabad High court **Raj Narain v. Indira Neharu Gandhi, AIR 1974 All 324**, in **State of UP Indira Neharu Gnadhi (Smt.) v. Raj Narain (1975) 4 SCC 428, AIR 1975 865 (1975) Supp. SCC 1**, the Honouarble Supreme Court did not give complete stay only partial protection was granted, Mrs. Gandhi as a prime minister resigned this was soon followed by imposition of emergency what

followed was extremely difficult time for the country including the judicial system, judges were punished for being courageous, random transfers were affected, in **ADM Jabalpur v. Shivkant Shukla** (1976) 2 SCC 521, AIR 1976 1207 the Supreme Court gave a most disappointing judgment holding that during emergency the right to approach the court for enforcement of fundamental right of life and Liberty is also suspended by a majority of 5: 4, the Supreme Court upheld the view of the government and held that writ petitions filed before different High courts and which most of the high courts had held were maintainable, were not maintainable, the lone dissenting shining view came from Justice Mr. HR Kanna, I say this, not just shining but also courageous, he was forewarned if you go ahead with this view, you will not be made the Chief Justice of India which was his right by succession seniority he still went ahead Expressed his opinion, his words are golden, he said that I do not think that Article 21 is a sole repository of right to life and Liberty, the right to life and Liberty inheres in every citizen of a civilized society by simply being a member of the society you may therefore abolish the fundamental rights chapter, you may remove the Constitution but a person's right to life and Liberty will still survive and at the end he said a very beautiful, he quoted a US Supreme Court judge and he said that I'm conscious that I'm in minority and ordinarily for the highest court of the country it is better to speak in unanimity despite this I've have chosen to express my opinion in writing so that it becomes a brooding spirit for the generations to come and to correct a mistake if it is committed, this was perhaps the lowest point to which the Supreme Court of India and Judiciary in general had reached, it had that bills had to turn back and slowly Supreme Court cloud its way back

after one judgment after another, one process after another, Supreme Court stamped its authority of Supremacy in its field of law we have seen judges case one, judges case two and judges case three, through these judgments a Collegian system was put in place which is now come to be known as judges appoint judges system, you also had the PIL jurisdiction expansion I'll refer to this little bit of PIL jurisdiction expansion in the context of writ jurisdiction but you have seen that from the early '70s when Justice P.N. Bhagwati and Justice M.P. Thakkar in Gujarat High Court initially took the baby steps for recognizing newspaper reports or a letter by way of a writ petition and taking Suo Moto cognizance PIL jurisdiction over a period of time has thrived sometimes it is being criticized as overuse of Court's Powers but that's a separate aspect through four different elements the Supreme Court of India became the most powerful Court in the world, one the system of Judges appoint judges eliminating to a large extent the role of the executive in appointment and transfer of High court judges and appointment of the Supreme Court judges, two our courts have recognized the powers of the Constitutional courts to strike down the laws framed by the Parliament and the state legislatures and now with the **Keshvanand Bharti judgment (Supra)** even Constitutional Amendments extremely powerful tools in the hands of the Constitutional courts that's second, third as I said the basic structure theory has made our constitution anti- majoritarianism the entire Parliament as we saw in the NJAC case cannot amend the Constitution so as to breach the basic structure and that has been used multiple times and the lastly the PIL jurisdiction through these four different sources of power the Supreme Court of India became the most powerful Court in the world

friends through all these struggles and twists and turns what we can see is a people's hopes, aspirations and expectations of Justice from the courts it was for a long time it is said that initial about 25 years or so of the Supreme Court it was a status quoist Court, the court which looked at the Constitution more of a colonial Birds view rather than the Indian aspirations the struggle within the shove and the push from the political class which had a huge mandate behind her forced the Supreme Court to change its strategy and forced the Supreme Court to look at the constitution in a different manner.

8. Judicial Activism and the Role of the Courts in a Welfare State

Justice PN Bhagwati, Justice Krishna Iyer, Justice D A Desai and Justice Chinnappa Reddy revolutionized the way we look at the Constitution, one of the landmark judgments in the field of service law, **State of Kerala v. N.M. Thomas, (1976) 2 SCC 310, AIR 1976 SC 490** came when Justice Mathew said that Clause 4 of article 16 is not an exception as you know 16(1) says there will be equal opportunity in public employment, Clause four says that nothing provided in sub Clause one will apply when reservation is to be made for the class of scheduled caste Scheduled tribes and other classes which are not sufficiently represented for a long time it was believed that Clause 4 is an exception to Clause one, this is Mathew said no, it is not an exception, it's merely a more emphatic way of saying what article 16(1) already says because there cannot be equality amongst unequal class of people equality can be only amongst the equals, these are some of the landmark judgments which gave the life to our constitution and try to fulfill the vision of

justice under the Constitution, the thing is like this a modern welfare state, performs range of functions which are not merely Sovereign functions, it undertakes a task of ensuring public health of Education, of maintaining Industrial piece, of infrastructure development such as building roads and dams and buildings providing for industrial Estates and so many other tasks the state gets involved in and to perform all these tasks the state requires vast Powers, say for example the government today has the power of compulsory acquisition of private property for any public purpose and these powers which are possible of good use are also possible of misuse and sometimes abuse what does a citizen do when he's wronged by a state action it basically has three cures or remedies one is an electoral cure if the people of the country feel that the executive is not delivering the promises it can vote the government out during the next elections but this limitation number one it is general and does not have cure for individual injustices and two it can happen only once in a 5 years period or so, the second check on the executive is the parliament, in theory at least the parliament frames the policies which the executive is supposed to implement but in the times of Brute majorities instead of parliament governing the executive it's the executive which controls the Parliament and the second cure therefore fails the third cure or the Third Avenue of voicing Injustice therefore is a court of law when a person perceives Injustice particularly the hands of the executive.

9. Writ Jurisdiction and the Constitutional Courts

It's easy access is to knock the doors of Justice before the Constitutional Court and this is where the entire writ jurisdiction comes into play with

its full force and Majesty the powers are Limitless the responsibility enormous to exercise these Powers judiciously and with great restraint you know Justice Benjamin Cardozo had once said that the function of law is to ensure Justice and equilibrium, the origin of law is not the main thing, the goal is there is no wisdom in choice of legal paths unless we know where it will lead according to him he had said the final cause of Law's very existence is the well-being of the society, it is this philosophic approach to the law that the very reason for existence of the law is for the betterment of the society sometimes separates the pragmatic judges from the conventional judges, the conventional judges tend to look at the letter of Law and uphold it to the last full point, the pragmatic judges try to look at the Spirit of the law try to expand try to give meaning to the law avoid absurdity and so on.

10. A Case Study on Legal Interpretation

One nice example I came across in one of the legal books, take for example that there is a national park, national park has a boundary and in the front of the boundary there is a gate, at the gate there is a board which says no vehicles allowed beyond this point simple they want to encourage Travelers and people going inside on foot, but want to maintain the Tranquility no vehicles are allowed no harm done, so on a Sunday morning a few youngsters boys and girls enter the park, go for a walk after a long hike deep inside the park one of them has a bad fall and injures herself badly, she needs immediate medical attention somebody calls an ambulance, ambulance rushes to the gate of the national park, there is a gatekeeper he reads the board what does it read, no vehicles allowed Beyond this point, is ambulance a vehicle,

answer is yes, should it allow the vehicle inside, the ordinary answer is no, but a pragmatic judge would say this is not the purpose of putting this restriction you do not need a whole essay that if the vehicle is to be allowed for you saving a human life this Clause will not apply you don't have to say that if there is a maintenance work needed the vehicle can be allowed or that if there is a fire and fire tenders have to be resent the vehicle can be allowed so what I'm trying to say is that writ jurisdiction gives a scope to a judge to give the full play to his interpretation to the principles of doing Justice he can mould the relief he can extend the relief he can give purposive interpretation very often in a petition when the relief Clause is either restricted or different from what I wanted to give the opponent would say look he has not prayed for this relief I would say first I'll Grant him the relief and then ask him to amend on the spot that's a beauty of writ jurisdiction you don't stand on technicality what is the Injustice what is his right and what is the cure in law for that Injustice answer these three simple questions the result would be very simple and will be very visible to you as I said do not allow technicalities to stand in way of doing Justice the lawyer may have drafted the petition a slightly different way he may either have been a young lawyer or he may have been in a hurry or maybe the judge's thinking or point of view is slightly different from the lawyer's drafting but that should not stop the judge from granting the relief, which the person really deserves and that as I said is the Contour of the writ jurisdiction.

11. Economic and Social Issues Under Writ Jurisdiction

Through this writ scope the courts in India are today tackling with such vast nature of disputes and issues as you know on the one end of the spectrum are the matters of extreme economic implications some of them transcending International boundaries say for example transfer pricing, anti-dumping Duty regime or International arbitrations as you know in arbitration if there is an International arbitration the parties can decide that the arbitration will be held in Singapore, laws of England will apply, if the arbitration contract is executed in India the laws of India will apply to test the validity of the agreement and when finally an arbitration award is passed by an international arbitral tribunal it can come before the Indian high court for execution if the award debtor has his properties in his jurisdiction and the parties will argue that the Singapore Court failed or wrongly applied the English law and the judge will have to decide these things but on the other end of the spectrum, we have such vibrant social issues being discussed by the Supreme Court and the High courts, you know Sabri Mala judgment where one lady came to the Supreme Court and said that in a particular Temple women between the certain age group of something like 14 to 55 or 60 are not allowed this is unconstitutional, declare so, Supreme Court give a landmark judgment, it is being under review, but great discussions will be found there. **(Indian Young Lawyers' Association v. State of Kerala (2019) 11 SCC 1)** You are also aware of **Navtej Singh Johar v. UOI (2018) 10 SCC 1, AIR 2018 Supreme Court 4321, AIR 2018 SC (CRI) 1169, (2018) 10 SCALE 3886** or Naz Foundation case where the gay rights are now recognized by the Supreme Court what the Supreme Court has said in one single sentence is what two

consenting adults do in the privacy of their bedroom the state cannot reach out and stop that, you also know of **Shayara Bano v. UOI AIR 2017 SC 4609, (2017) 9SCC 1** case where the Supreme Court in a landmark judgment declared the age-old practice of divorcing a Muslim women by simply using the word talak three times as unconstitutional. There are all these principles apply in the general law but also in the income tax field but with greater Clarity.

12. Judicial Deference to Policy Matters

Two principles which the income tax law has recognized firmly are, one that courts will not interfere in policy matters be it executive policy or be it the legislative policy, the courts will always have a healthy regard for the state to frame its economic policies, in **R.K. Garg v. UOI (1981) 4 SCC 675 / 1981 AIR 2138 (SC) / 1982 SCR (1) 947 / (1982) 133 ITR 329 (SC)**, the Honourable Supreme Court has said that all laws particularly the tax laws are necessarily empirical in nature, trial and error some play in The Joint is always permitted the income tax law therefore recognizes the state's power to frame policy through executive fiat or even through legislation and the courts would not Venture into the field at the same time the other principle which is firmly anchored in the tax law is that if there is no authority to collect tax the courts will broke no patience article 265 as you know says there shall be no collection and Levy of tax without authority of Law and from that we have seen so many Landmark judgments once it is shown that the tax which is sought to be levied is not backed by any lawful Authority the court would then not be concerned about anything else the only scope and in fact the only mandate for the court is to strike it down

there and then as swiftly and as decisively as possible. Availability of alternative remedy or appeal routes etc. in such cases are wholly redundant.

13. Testing the Vires of Legislative Actions

In the tax law as well as in general, the courts also tests the vires of the laws framed by the Parliament and the state legislature, here also you are well aware about the contours, for a long time it was always recognized that the laws framed by the legislature can be struck down only on two grounds, one that it is opposed to the fundamental rights or any of the other provisions of the Constitution or that the legislature does not have competence what we call the legislative competence. Here also I would like to touch on a small area, for a long time it is sometimes said that the union legislature has Supremacy over the state legislature this in my view would not be quite correct because in the field of the state list the state has exclusive power and the supremacy of the Union legislature does not transgress the state's powers to make the laws which are exclusively reserved for the State subject it is only when the subject Falls in a concurrent list that the union legislature has a Supremacy the law framed by the parliament will prevail over that of the state legislature there are also however some exceptions in the **Shayara Bano v. UOI AIR 2017 SC 4609**, the Supreme Court opened an Avenue for the third ground on which the legislature can be struck down and it is the ground of manifest arbitrariness the full contours of this principle are yet to be tested guidelines will have to be laid down by the Supreme Court otherwise it can become an unruly

horse but the times will come and the Supreme Court I'm sure will lay down guidelines to govern these principles in future.

14. Illustrative Cases in Tax Law

I would like to recount two cases which I had occasion to deal with which particularly manifests the possibilities of a writ Court in tax field when I was in Bombay there are there to be two seasons as you used to call one the reopening of assessment Seasons right at 31st December so many notices would be issued so that they do not become Time barred and towards the end of March would be the recovery Seasons the authorities sometimes have targets to fulfill and whatever other reasons at random large number of recovery notices would be issued one of the companies received a notice of recovery of tax of 5,000 crores and the ground was that according to the authority the company had not deducted tax at source while making the payment at the prescribed rate and therefore the entire expenditure was to be disallowed the company came directly to the High Court. We examined the facts heard the matter at considerable length and we realized that the ground of the revenue is completely unsustainable and we struck down the notice without asking the assessee to go in appeal route or the alternative remedies two points I would like to make from this experience number one as a writ Court the judge should not allow his mind to Boggle by sheer numbers and two these issues also have practical implications suppose we had not entertained this writ petition the assessee would have had to file an appeal the commissioner ideally would have said deposit 20 percent of the tax disputed then I'll hear appeal which company moves around with a cheque book with a liquidity of 1,000 crores to deposit in

a matter of few days there would be huge liquidity crunch for any company for any corporate and therefore I say the writ court has to be very careful in either exercising or even refusing to exercise writ jurisdiction.

Another very interesting case came up before us in Gujarat High Court in **Larsen & Toubro Ltd. v. UOI (Guj)(HC) MANU /GJ/2014 /2016 (SCA No. 5575 of 2011 dt. 2-9 2011)** there was a turnkey project undertaken from Hazira Surat to be installed in Bombay High somewhere in the high seas some 90 or 100 nautical miles from the shores of Surat and on this the company paid no sales tax The adjudicating Authority demanded tax and confirmed the tax demand of 129 crores or so with matching penalties and interest and etc the company directly challenged this before the high court in which I was part of the bench and we examined the facts it so happens that as we all know Indian Territory the territory of Indian Union extends to 12 nautical miles from the shore Beyond 12 nautical miles it is not India but the world Community realized that there would be natural resources to be tapped and therefore there through treaties it has been decided that up to 200 nautical miles from the shore the country adjacent to the region would have right to explore and exploit natural resources now Bombay High therefore was set up some 90 - 100 nautical miles away from the shore it was not India and the counsel argued that this is not a local sale I'm not producing in Surat and selling in Ahmedabad this is not within the state he argue that this is not Interstate sale because I'm not producing Surat and selling in Pune this is also not an export sale because export means taking the goods to some other country not just taking out of the country but taking to some other country and I have

not done that in any case exports probably would not have any tax implications but we realized that he was absolutely right Provisions were shown in Income- Tax Act where the section which defines India. Section 2(25A) of the Act which defines India, had to be amended to include the territorial waters and other areas which are for the purpose of tax only consider and that had to be done in 2007 with retrospective effect you'll find a similar provision in the Customs act which defines India to include the territorial Waters such a provision was not made in the sales tax and by this legislative slip it was simply not possible to tax this transaction we verified for ourselves that it was a sale which had been completed at Bombay high as you know there are indications to decide where has the sale taken place had the sale taken place at Surat tax implications would follow but it was almost an admitted position that a sale was completed or took place at Bombay high and we struck down the entire demand without insisting on the assessee taking an appeal route for the simple reason that for such a complex issue on the grounds on which we was so clear on the principles which do not rely on Gathering any facts why should we drive the assessee to go in appeal where the commissioner will first grapple with this if it against the commissioner is it'll go to the tribunal then again to the high court what I'm trying to say is that income tax in particular but writ jurisdiction in general permits a decisive and incisive examination of the state actions the writ court is enjoined with a duty to exercise such Powers when it is found that a state action is illegal or lacks authority not hesitate in granting decisive relief that is what the whole purpose of the Constitution is that is what the whole writ jurisdiction is all about.

15. The Judge's Dilemma: Law vs. Justice ?

I would like to share two Thoughts with you, you know one of the most fascinating aspects of a judges duties that he performs is a Eternal dilemma when he finds that law and Justice do not Converge on one side he finds his law on the other side he finds his Justice a ticklish issue presents itself before him should he uphold the law and do Injustice or should he try to do Justice by breaking the law this comes rarely in a judge's life but they present some of the most challenging and fascinating aspects of the judges duties performance the second aspect which a judge experiences ever so often more so in writ jurisdiction is you know many people come to the judges seeking solutions to their problems and the people who come include some of the poorest and the weakest to the richest and the mightiest once in a while the poorest and the weakest is pitted against the richest and the mightiest all that the judge has to do is to provide a Level Playing Field and then allow the law to take over and see the Majesty of law being played out in front of him the weakest person can succeed even though he may not have the best legal assistance and if the rich person succeeds it is not because he's rich but he succeeds because law is in his favor and this satisfaction for a judge is unmatched.

16. Philosophical Approach to Law

One legal philosopher has said that essentially all orders of the courts are violent in nature when a court passes a decree of specific performance of an agreement Court mandates an unwilling party to execute a document when the court declares a marriage void or grants Divorce by force of law the court annuls a marriage even when one of

the parties is not willing about it and therefore the Court's actions are being respected not because of the force of law but because of the moral Authority and the trust that the people have in this legal system.

17. Challenges in the Justice Delivery System

We are passing through some trouble times if the people lose faith in the Justice delivery system there will be end of our lofty ideas and thoughts it is our duty combined to uphold the Majesty of law to ensure that the Justice delivery system functions as expected under the Constitution and today the courts are carrying back breaking backlogs it is our duty to ensure that the courts function more efficiently I request the lawyers to be mindful of the judge's burden help the judges by being more systematic in presenting the cases and being precise and helping the judges to clear cases as fast as possible I have seen the Contours of the Justice delivery system changing over last 45 years or so in 1980s I attended the courts as a law student and I was told that earlier judges like justice S. S. Seth or Justice B.K. Mehta they would hear a law point for two three days before giving judgment from then to quicker judges to more matters to today judges are simply flooded with work there is little time for expansion of thoughts very little time for expansion of law but we have to work within this we have to ensure that the Justice delivery system maintains its trust that the people have reposed in it and we have to ensure that the judges are able to function efficiently and the onus is on all of you.

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All disputes are subject to Mumbai Jurisdiction.

Mr. Rajesh Mehta (Former Secretary General AIFTP)

Lecture Series held on 28/03/2025

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