

court's doctrine of equality is that the test of reasonable classification based on "intelligible differentia" and "nexus to the object of the Act" do not afford any guarantee of equal treatment if the object of the legislation is unequal. The object of the legislation if accepted, on the basis of the above test, the law, it is submitted, seems to be sustainable in all the above three cases.

Colourable legislation and the validation and overriding of judicial verdicts

3.9 When a legislature nullifies the decision of a court by passing new legislation, the question has been raised whether it does not amount to an attempt to exercise judicial power. It has been held that when the legislature retrospectively validates what has been declared invalid by a court of law, and the basis of the earlier judicial decision is changed, and there is no restriction preventing the legislative power from doing it, there is no interference with the exercise of judicial power.

3.10 In *Shri Prithvi Cotton Mills v. Broach Borough Municipality*¹⁵ Hidayatullah C.J. stated the position in the following terms:

"Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's

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decision must always bind unless the condition on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances".¹⁶

It is therefore well accepted that when the basis of the decision is validly changed by the legislature there is no case of an exercise of judicial power by the legislature.¹⁷

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3.11 If however, the legislative attempt at validation merely says, without changing the basis of law, that the judicial verdict shall not apply, that would be declared an attempt to exercise the judicial power, and therefore, invalid. Thus in the Municipal Corporation of the City of Ahmedabad v. New Shrock Spinning and Weaving Co. Limited,¹⁸ the validity of section 152-A of the Bombay Provincial Municipal Corporation (Gujarat Amendment and Validating Provisions) Ordinance 1969 was in question. This section authorised the Municipal Corporation to withhold refund of the illegally collected taxes till reassessment and determination of tax notwithstanding the judgment of any court to the contrary. Criticising this provision, K.S. Hegde, J. observed:

16. Ibid, at p.195.

17. Tirath Ram Rajindra Nath v. State of U.P., A.I.R. 1973 S.C. 405; M/s. Hiralal Ratan Lal v. The Sales Tax Officer, Section III, A.I.R. 1973 S.C. 1034; Government of A.P. v. Hindustan Machine Tools Limited, A.I.R. 1975 S.C. 2037. For some of the earlier High Court cases see, Potti Sarvaiah v. Warvara Narsing Rao, A.I.R. 1955 Hyd. 257; Gulab Rao v. Pandurang, A.I.R. 1957 Bom. 266 (F.B.); M/s. Mohanlal Hargovindas v. State of M.P., A.I.R. 1962 M.P. 245. Paragraphs 9 to 13 of the judgment of this case contains a useful review of the earlier cases.

18. A.I.R. 1970 S.C. 1292.

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