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States and Mining Tax

(The Hindu, 30-07-24)

In a landmark ruling on July 25, the Supreme Court affirmed that States have the legislative authority to impose taxes on minerals in addition to the royalty levied by the Centre.

- The case which has been pending for more than a quarter century was decided by an 8:1 ruling with Chief Justice of India (CJI) D.Y. Chandrachud authoring the majority opinion and Justice B.V. Nagarathna gave a dissenting opinion.

What was the case?

- Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 requires leaseholders to pay royalties for minerals removed to the lessor. The central question was whether these royalties should be classified as a "tax" and whether the Centre or States have the authority to impose such charges.
- The case originated from a dispute between India Cement Ltd and the Tamil Nadu government. India Cement, which was paying royalties, challenged a cess (additional tax) imposed by the state, arguing it exceeded the State's authority.
- In 1989, the Supreme Court's seven-judge Bench ruled in favor of India Cement, stating that States can collect royalties but cannot impose additional taxes on mining activities, as the Union government has overriding authority under Entry 54 of the Union List.
- In 2004, a five-judge Bench in a similar dispute between West Bengal and Kesoram Industries Ltd found a typographical error in the India Cement decision, clarifying that "cess on royalty is a tax." However, they could not overrule the previous ruling due to the smaller bench size.
- In 2011, a three-judge Bench led by Chief Justice S.H. Kapadia acknowledged the conflicting precedents and referred the issue to a nine-judge Bench for a definitive resolution.

What is the difference between royalty and tax?

- The majority ruling clarified the distinction between royalty and tax. It defined royalty as the "contractual consideration" paid by the mining lessee to the lessor (who may also be a private party) for the right to extract minerals.
- In contrast, a tax was characterised as an "imposition by a sovereign authority."
- The judges underscored that taxes are determined by law and can only be levied by public authorities to fund welfare schemes and public services.
- Meanwhile, royalties are paid to a lessor in exchange "for parting with their exclusive privileges in the minerals".

Can States tax mining activities?

- Entry 50 of the State List grants States the exclusive authority to tax "mineral rights," limited by any parliamentary laws on mineral **development**.
 - Entry 54 of the Union List allows the Centre to regulate "mines and mineral **development**" if necessary in public interest.
- The Centre argued that Entry 50 allows Parliament to impose limitations on mineral rights taxes via laws like the 1957 Act. However, the majority ruled that royalties are not taxes and thus not

covered by Entry 50. The 1957 Act provides States with revenue through royalties without affecting their authority to tax mineral rights.

- The court clarified that while the Centre can regulate mining under Entry 54, it cannot impose **taxes, a power reserved for State legislatures**, subject to any limitations Parliament might impose.
- The court also held that **States can tax land with mines** under Article 246 and Entry 49 (taxes on lands and buildings) of the State List, as mineral-bearing lands fall within this category. The income from the land can be used as a measure of the tax.

Why did Justice Nagarathna dissent?

- Disagreeing with the majority, Justice Nagarathna held that royalties paid under the 1957 Act should be considered as tax for developing the country's mineral resources.
- She pointed out that a central legislation, like the 1957 Act, was intended to promote mineral development and this objective could be severely undermined if States were allowed to impose levies and cesses (additional taxes) on top of the royalties they collect.
- Allowing States to tax mineral rights would lead to an "unhealthy competition between the States to derive additional revenue" resulting in a steep, uncoordinated, and uneven increase in the cost of minerals. Such a scenario might exploit the national market for arbitrage, where differences in pricing could be manipulated for profit, disrupting the market's stability.

What happens next?

- On July 31, the court will consider whether the verdict should be applied retroactively or prospectively.
- If applied retroactively, it could result in significant financial benefits for mineral-rich States such as West Bengal, Odisha, and Jharkhand, which have enacted local laws to impose additional taxes on mining lessees.

Any further delay in Census taking is perilous

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The last Census was conducted in 2011, leaving a significant data gap

- Implementation of the Women's Reservation Act (33% seats for women in Parliament and Assemblies) is pending Census completion
- Preparations include updating maps, pre-testing questionnaires, and training staff. The allocated budget of ₹1,309.46 crore could be used for preliminary activities

What are the benefits of conduction Census?

- **Accurate population data:** Helps in understanding demographic trends and changes
- **Resource allocation:** Guides budgeting for public services like healthcare, education, and infrastructure
- **Policy formulation:** Informs evidence-based policymaking and helps identify areas needing specific interventions or development
- **Electoral processes:** Aids in delimitation of constituencies thus ensuring fair representation in democratic processes

- **Economic planning:** Provides data on workforce, employment, and economic activities and helps in economic forecasting and planning
- **Social welfare:** Identifies vulnerable groups and their needs and assists in designing targeted welfare schemes
- **International comparisons:** Allows for comparison of data with other countries and helps in global development indicators and rankings
- **Historical record:** Creates a snapshot of the country at a specific point in time and is Valuable for future historical and sociological studies.

What are the key issues surrounding the National Population Register (NPR)?

- NPR is to be updated during the first phase of the Census
- New questions in the draft NPR form have raised concerns
- Some states and citizen groups oppose these additions, fearing links to the National Register of Citizens (NRC)
- The Centre has clarified that NPR data will not be used for NRC preparation

What decision does the government need to make regarding caste information in the Census?

- There's a growing demand for a caste-based census
- The government previously stated that a caste census (except for SC/ST) was unfeasible and administratively difficult

Can you answer the following question?

Discuss the importance of conducting a timely Census in India and analyze the challenges and controversies surrounding its implementation.

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