



12TH NALSAR JUSTICE B. R. SAWHNY MEMORIAL MOOT COURT COMPETITION, 2018

NALSAR UNIVERSITY OF LAW, HYDERABAD

12-14 October 2018



MOOT PROPOSITION

Knowledge Partners



1. The Democratic Republic of Vyalikaval, a nation that won its independence from British colonial rule around the same time as India (in 1952), adopted a constitution that was more or less *in pari materia* with the Constitution of India, in the year 1955.
2. Vyalikaval is composed of nine States and one national capital territory, Renaura. Each of the States were actually colonies ruled by the British and after a prolonged freedom struggle, came together to form the Union of Vyalikaval. Like with India, every five years, a Finance Commission is constituted to recommend the division of Union revenue among the states in accordance with the Constitution.
3. Just the way the Indian Finance Commission evolved the “Gadgil Formula”, since the first Finance Commission (constituted in the year 1956), union revenues have been divided among the states on the “Deekayshi formula” – where 50% of all Union tax revenues would be divided among the states using the following criteria with the relevant weight (given in brackets):
 - a. Income distance, that is to say the difference between the GSDP of a given state and the richest state in Vyalikaval (50%). Further the income distance, higher share to be given to a state.
 - b. Total area of the State as a percentage of total area of the country (10%). Higher percentage would lead to a higher share.
 - c. Forest cover as a percentage of total area of the state (10%). A higher percentage would lead to a higher share.
 - d. Population of the state as determined in the last census (20%). Higher population would lead to a higher share.
 - e. Fiscal discipline of the state government, that is to say whether and to what extent the fiscal deficit in the last five years exceeds 3% of the GSDP of the state. (10%). Lower deficit is would lead to a higher share.
4. On the basis of the above criteria and weights, states would be given a total share and the revenues allocated on the basis of the shares.
5. On this basis, the 50% of the Union’s revenues were divided in the following manner by the 13th Finance Commission of Vyalikaval among the following provinces:

State	% share in Union Tax Revenue (approximate)
Magrathea	18%
Uttam Pradesh	16.5%
Eriador	11%

Andalos	11%
Ahmednagar	11%
Shangrila	9%
Muziris	9%
Kukkutarma	8%
Trisolaria	6.5%
Total	100%

6. Despite the wide variation in the amounts given to different states, no one particular state raised an objection to the Deekayshi formula though over the years they have asked for the weights to be changed to give each other a little more or a little less revenue.
7. Different states have found themselves with a greater or lesser share over the years given that population and economic growth.
8. The recommendation of the 13th Finance Commission was accepted in toto by the Vyalikaval government and implemented for the next five years with no major objections by the States.
9. The 14th Finance Commission was constituted in 2021 and headed by Ms Arushka Tadri, a former bureaucrat who had served in the Vyalikaval Finance Ministry.
10. Among the terms of reference for the 14th Finance Commission was a request by the Union Government to re-consider the Deekayshi formula and come up with a new formula for division of the revenues of the states.
11. Different states and stakeholders made submissions to the 14th Finance Commission, some contending that the Deekayshi formula had become outdated and needed to be fully replaced whereas others argued that the criteria taken into account in the Deekayshi formula were still relevant, but at most a change in the weights should be changed.
12. In 2022, the 14th Finance Commission published the “Tadri formula” for distribution of revenue among states, which consisted of the following factors and the following weights:
 - a. Ratio of Population of the state in the 2011 census to the 1991 census (30%) Higher number will lead to a higher share.
 - b. Reduction in the Total Fertility Rate of the State between the 1961 census and 2021 census (30%). Higher reduction will lead to a higher share.
 - c. Average per capita income growth in the State between 1961 and 2021. (30%) Higher growth number will lead to a higher share.

- d. Annual increase in forest cover as a percentage of state area between 1961 and 2021.
(10%) Higher number will lead to a higher share.

13. The 14th Finance Commission did not suggest any change in the percentage of the Union's revenues which needed to be devolved to the States, retaining the figure at 50% of the Union's tax revenues.

14. As a result of the Tadri formula, the Union's revenues were divided in the following manner:

State	% share in Union Tax Revenue (approximate)
Trisolaria	20%
Kukkutarma	20%
Shangrila	11%
Ahmednagar	10%
Muziris	10%
Andalos	8.5%
Eriador	7%
Magrathea	7%
Uttam Pradesh	6.5%
Total	100%

15. The changes suggested prompted widespread consternation in the states of Magrathea and Uttam Pradesh as, applying this formula, the budgets of these two State Governments would decrease by an average of 30% over the next five years.

16. Editorials in newspapers called the Tadri formula a "tawdry formula" as it left revenue strapped states such as Magrathea and Uttam Pradesh with even less money since on three of the criteria mentioned, these two states got lower shares as compared to the other states whereas under the previous formula, they had higher shares and hence got a greater share of the Union's tax revenues.

17. The report of the 14th Finance Commission explained the changes as follows:

"We have changed the Deekayshi formula for the following reasons:

- a. Population growth is a terrible problem for Vyalikaval and we wish to incentivise states to reduce their population growth and reward those states which have reduced population growth.

- b. Total fertility rates are largely the result of increased levels of education of women and for this purpose, and we want to incentivise states to increase female literacy and reward those states which already have.
- c. Economic growth in a state is a function of how well the State has spent money in improving infrastructure and increasing state capacity, and we therefore wish for states to take this path in the future, apart from rewarding the states which already have done so.
- d. Instead of simply giving states money for having retained forest cover, we want to reward states which have taken active measures increase forest cover and incentivise states to do the same.”

18. In response to criticism that the States’ balance sheets were severely affected by this move, the 14th Finance Commission also stated in its report that States should overcome deficits by increasing taxation, and if there are any shortfalls, the Union could always make up for it with discretionary grants as required.

19. The 14th Finance Commission to this end also recommended that the Vyalikaval Government remove all limits on the State’s power to levy taxes on professions.

20. The Union Government accepted the recommendations of the 14th Finance Commission in total.

21. Further, the Constitution of Vyalikaval was amended by the Vyalikaval Parliament to remove any limits on a State’s power to levy taxes on professions and trades.

22. Consequently, the earlier cap of VYR 10,000 was removed and States were free to levy as much professional tax as they chose to.

23. Subsequent to the amendment, the State of Magrathea passed the Magrathea Professional Tax Act, 2022 which, *inter alia*, levied a tax on all persons practising a profession, with the amount payable being levied to be determined by the income of the person practising the profession.

24. Under the MPTA, all advocates registered with the Magrathea Bar Council (in accordance with the Vyalikaval Advocates Act) had to pay a professional tax in accordance with the below table:

Annual income of advocate (VYR)	Tax payable (annually)
0 – 10,000	0

10,001 - 50,000	500
50,001 - 1,00,000	2,000
1,00,001 - 5,00,000	5,000
5,00,001 and above	20,000 or 2.5% of annual income, whichever is higher.

25. Further, for the first time, all advocates (irrespective of where they were enrolled) who appeared before any court in Magrathea had to pay a flat tax of VYR one lakh as an annual one-time payment.
26. The MPTA also repealed the Magrathea Professional Tax Act, 1956 which, *inter alia* levied a flat tax of Rs. 500 on all advocates enrolled with the MBC.
27. Mr Zakib Hassain, an advocate enrolled in the Magrathea Bar Council, filed a Writ Petition before the Magrathea High Court challenging the constitutional validity of the MPTA.
28. Mr Hassain's advocate in the matter engaged Ms Bharti Rajan, a senior advocate enrolled in the Trisolian Bar Council to appear in the Magrathea High Court given her experience and expertise in constitutional law and taxation.
29. After she returned to Trisolaris, Ms Rajan received a notice from the tax authorities in Magrathea demanding payment of VYR one lakh as professional tax.
30. She filed a writ petition on her own behalf in the Trisolaris High Court contending that the notice ought to be quashed as being unconstitutional.
31. The Trisolaris High Court set aside the notice holding that State of Magrathea had no power to levy an extra-territorial tax under the Constitution.
32. Soon after, the Magrathea High Court struck down the MPTA holding that it was essentially a tax on income and therefore outside the powers of the State Government.
33. Further, it was held that a professional tax on advocates amounted to a violation of Article 21 of the Constitution as it amounted to a tax on the exercise of a fundamental right to legal counsel and access to justice.

34. The Government of Magrathea filed two appeals to the Supreme Court of Vyalikaval under Article 136 of the Constitution challenging the correctness of the judgements of the Magrathea High Court and also the Trisolaris High Court respectively.
35. The Supreme Court granted leave to appeal in both appeals.
36. This was also the time when the first budget of the Magrathea government was presented and it was found that the revenue shortfall in the first year after the 14th F.C. recommendations was nearly 40% from estimates made in the previous year (prior to the 14th F.C. recommendations).
37. A request was made by the Magrathea Government to the Vyalikaval Government to make discretionary grants to cover this deficit.
38. The request was denied on the basis that the policy of the Vyalikaval Government was not to make such discretionary grants to fill deficits.
39. Magrathea thereafter filed a suit against the Vyalikaval Government seeking a declaration that the Tadri Formula was unconstitutional as being against the basic structure of the Constitution and that the refusal of the Vyalikaval Government to give a discretionary grant, a violation of the rights of residents of Magrathea.
40. The Supreme Court of Vyalikaval, while issuing notice in the suit decided to tag it along with the pending appeals against the judgements of the Magrathea and Trisolaris High Courts and the Chief Justice of Vyalikaval directed that the cases be heard by a Constitution Bench given common questions of fact and law which needed to be decided.
41. All the cases will be heard together by a Constitution bench of five judges of the Vyalikaval Supreme Court on the following issues:
 - a. Whether the declaration sought by Magrathea in respect of the 14th Finance Commission can and should be granted?
 - b. Whether the Supreme Court can and should direct the Vyalikaval Government to make discretionary grants to Magrathea?
 - c. Whether the MTPA violates the Constitution of Vyalikaval on the grounds given by the Magrathea and Trisolaris High Courts?
 - d. Any other issue that needs to be decided in order to answer the above questions.

Note:

1. One side will have to argue for Magrathea whereas the other side will represent the cases of Vyalikaval, Ms Rajan and Mr Hassain.
2. The Vyalikaval Supreme Court considers judgements of Indian courts to be of persuasive value but no more than any other jurisdiction following common law jurisdictions.

DRAFTED BY:
ADV. ALOK PRASANNA KUMAR
SENIOR RESIDENT FELLOW, VIDHI CENTRE FOR LEGAL POLICY

(Please note that any attempts to contact him for matters relating to this proposition or the 12th NALSAR Justice BR Sawhny Memorial Moot Court Competition, 2018 shall result in immediate disqualification.)