

When Land Taxes Regulate Mining: Entry 49, Repugnancy and India's Constitutional Design for Mineral Governance

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Introduction

Historically treated as a tax, royalty has sat uncomfortably across constitutional entries, leading to recurring disputes about its character and the distribution of legislative competence between the Union and the States.¹ This ambiguity led to the decision in *Mineral Area Development Authority v Steel Authority of India Ltd* (“**MADA**”), where the Supreme Court (“**SC**”) resolved a this confusion by holding that royalty is not a tax and cannot be tested against constitutional tax principles.² More interestingly, while the Court held that Entry 54 of List I does not denude the States of their power to tax mineral rights under Entry 50 of List II, it also gave precedence to the regulatory power of the Union under Entry 54, even to the extent of complete prohibition.³ The Court further held that the States could also levy taxes on mineral-bearing lands under Entry 49 of List II, which pertains to taxes on lands and buildings, using royalty as the measure

¹ Advay Vohra, Nature of royalty paid by mine leaseholders, Supreme Court Observer, 20 March 2024, available at <https://www.scobserver.in/journal/nature-of-royalty-paid-by-mine-leaseholders-what-is-the-case-about/> (accessed 2 October 2024).

² *Mineral Area Development Authority v Steel Authority of India Ltd* 2024 SCC OnLine SC 1796 (“MADA”) [Part F].

³ The Constitution of India 1950, Seventh sch List I Entry 54: Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest (‘Entry 54’); List II Entry 50: 50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development (‘Entry 50’).

of tax without any limitations.⁴ These clarifications brought an end to a decades-long disagreement between the interpretations in *India Cement Ltd v State of Tamil Nadu* and *State of West Bengal v Kesoram Industries Ltd*.⁵ The conflict arose because *India Cement* treated royalty as a tax, thereby suggesting that Parliament's control under Entry 54 denuded States of taxing power under Entry 50, whereas *Kesoram* held that royalty is not a tax, thereby preserving the States' taxing competence under Entry 50 and Entry 49 of the State List.

While formally defensible under the tenet that 'lands' under Entry 49 include mineral-bearing land and that the measure of a tax does not determine its nature, this reasoning allows States to reproduce, in substance, a Union-regulated exaction.⁶ The result is a shadow royalty which is functionally duplicating the economic incidence of royalty while evading the Union's supervisory role under Entry 54. This not only destabilises investment conditions in the mining sector but also risks a 'race to the bottom', where States adjust taxes competitively without regard to national mineral policy.⁷

This article critiques *MADA*'s treatment of Entry 49 and to propose an alternative framework of repugnancy that does not rely solely on an

⁴ MADA [Part H]; Entry 54; Entry 50; The Constitution of India 1950, Seventh sch List II Entry 49.

⁵ *India Cement Ltd v State of Tamil Nadu* (1990) 1 SCC 12 ('India Cement'); *State of West Bengal v Kesoram Industries Ltd* (2004) 10 SCC 201 ('Kesoram').

⁶ MADA [295]-[304].

⁷ MADA (Nagarathna J) [35]; Louise Tillin, *Building a National Economy: Origins of Centralized Federalism in India*, 51(2) *Publius: The Journal of Federalism* (2021) 161.

analysis of competence. It further argues that the deeper difficulty lies in the Court's failure to classify royalty in principled terms. It contends that, by rejecting royalty as a tax without assigning it a positive constitutional character,⁸ *MADA* leaves royalty vulnerable to use as a neutral fiscal measure across entries, allowing States to deploy it as a proxy for taxation while circumventing federal safeguards. In response, the article proposes recognizing royalty as a *sui generis* fiscal instrument rooted in the Union's regulatory role under Entry 54.

The article proceeds in seven parts. Section II traces the history of the Mines and Minerals (Development & Regulation) ("MMDR") Act, 1957 and outlines the controversy in *MADA*. Section III examines the nature of royalty and explains how its misclassification generates constitutional distortions. Section IV analyses the constitutional scheme governing Entries 49, 50 and 54, alongside the concepts of legislative competence and repugnancy. Section V develops the article's central critique of the Court's narrow *vires*-based approach and proposes an alternative repugnancy framework to preserve both State taxing powers and Union control over mineral development. Section VI argues for recognizing royalty as a *sui generis* fiscal instrument under Entry 54. Section VII addresses possible objections to this framework, and Section VIII concludes.

The MMDR Act & The Controversy in *MADA*

⁸ MADA [130]-[137].

The Court's ruling *MADA* marks a turning point in India's mineral taxation regime.⁹ The SC delivered the judgement on 25 July 2024, in what was one of the longest pending cases before it, counting up to 9044 days by the time of the hearing.¹⁰ The judgment culminated sixty years of legal debate by ruling that royalty under Section 9 of the MMDR Act, 1957 is not a tax. Section 9 of the MMDR Act deals with royalties in respect of mining leases and provides that the holder of the mining lease is liable to pay royalty as a sum calculated as per the quantity of minerals removed or consumed by him.¹¹ This ruling aims to strengthen fiscal federalism by reaffirming the State's right to levy taxes on mineral resources and redefining how India's mineral wealth is governed, regulated, and taxed.¹² While the decision enhances the autonomy of States to generate revenue, it also raises concerns about double taxation, regulatory overreach, and the long-term sustainability of mineral development in India, ushering in a new era of legal and fiscal challenges for the stakeholders involved.

The MMDR Act is a comprehensive code for the regulation of mines and the development of minerals in India. The Parliament enacted the MMDR Act in the exercise of its legislative powers under Article 246

⁹ MADA.

¹⁰ Advay Vohra, 'Nature of royalty paid by mine leaseholders: What is the case about?' (Supreme Court Observer, 20 March 2024) <<https://www.scobserver.in/journal/nature-of-royalty-paid-by-mine-leaseholders-what-is-the-case-about/>>.

¹¹ MMDR Act 1957, s 9(2).

¹² The Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act), s 9.

of the Constitution and Entry 54 of List I of the Seventh Schedule.¹³ Section 9 of the MMDR Act assigned a greater responsibility to the Union government by allowing it to determine the rates of royalty as allowing States to specify the same would not lead to healthy trade owing to the disparity in royalty rates across India.¹⁴

Origin and Evolution of The Conflict

After the enactment of the MMDR Act, several states imposed 'local' cess and other imposts over and above the payment of royalty under Section 9. These taxing provisions were challenged on the ground that due to the enactment of the MMDR Act, the states no longer had taxing power under Entry 50 of List II.

The challenge led to the formulation of three questions: (1) Is royalty under Section 9 of the MMDR Act in the nature of a tax? (2) Does the enactment of the MMDR Act under Entry 54 of List I by the Union government denude the States of their power to tax mineral rights under Entry 50 of List II? (3) Can States levy taxes on mineral-bearing lands under Entry 49 of List II?

While the nature of royalty had been previously deliberated upon,¹⁵ the first time the issue was brought before the SC was in the case of *India*

¹³ MMDR Act 1957, s 2; Pradeep S Wodeyar v State of Karnataka (2021) 19 SCC 62 [49.3]; Constitution of India 1950, art 246, Seventh sch List I Entry 54.

¹⁴ JR Mehta, 'Lok Sabha Debates', (vol 8, 22 November 1957) 462; K P Varghese v ITO (1981) 4 SCC 173 [8].

¹⁵ Bherulal v State of Rajasthan 1956 SCC OnLine Raj 9 [8]; Saurashtra Cement & Chemical Industries Ltd v Union of India 1979 SCC OnLine Guj 23; Shanti Swaroop Sharma v

*Cement Ltd.*¹⁶ In this case, the state government had granted a mining lease to India Cement Ltd. in 1963 where they were to pay royalty as per Section 9 of the MMDR Act. However, the state had enacted the Madras Panchayat Act, 1958, which imposed a local cess on top of the royalty to be paid.¹⁷ The taxing provision was challenged, citing the state government's lack of competence in taxing mineral rights. In 1989, a seven-judge bench of the SC held that royalty is a tax and that imposing a cess on mineral rights was beyond the competence of the State legislature as it falls under the domain of the Union by virtue of the MMDR Act.¹⁸ Similar cases began to arise where the state governments imposed certain levies which were held to be outside of the state legislature's domain.¹⁹ The origins of the present case, *MADA*, can be traced to the writ petition which challenged the Bihar state legislation which imposed additional cess and taxes on land revenue from mineral-bearing land.²⁰

In 2004, a five-judge bench of the SC delivered the judgement in *Kesoram*, where it was observed by the majority that there had been a typographical error in the text of *India Cement*.²¹ The majority concludes

State of Punjab AIR 1969 Punj and Har 79.

¹⁶ (1990) 1 SCC 12 ('India Cement').

¹⁷ The Madras Panchayat Act 1958, s 115.

¹⁸ India Cement [34, 36].

¹⁹ Kesoram Industries Ltd (Textiles Division) v Coal India Ltd 1992 SCC OnLine Cal 253; State of Madhya Pradesh v Mahalaxmi Fabric Mills Ltd 1995 Supp (1) SCC 642; Ram Dhani Singh v Collector Sonbhadra AIR 2001 All 5.

²⁰ The Bihar Coal Mining Area Development Authority (Amendment) Act 1992.

²¹ (2004) 10 SCC 201 [70]-[71] ('Kesoram').

that the bench had mistakenly written 'royalty is a tax' while meaning that 'cess on royalty is a tax' and that royalty under section 9 of the MMDR Act is not in the nature of a tax.²² Hence, *Kesoram* preserved the States' taxing competence under Entry 50 and Entry 49 of the State List. In 2004, the SC referred *MADA* and attached cases to a three-judge bench, given the implications of the decision on the framework of mineral development in India.²³ In 2011, the three-judge bench observed that due to the conflict between the seven-judge bench judgement in *India Cement* and the five-judge bench judgement in *Kesoram*, the matter could not be resolved by a three-judge bench and referred the matter to the present nine-judge bench.²⁴

The Decision in *Mineral Area Development Authority*

The nine-judge constitutional bench held in an 8:1 majority that royalty under Section 9 is not in the nature of a tax.²⁵ Having rejected the characterisation of royalty as a tax, the majority held that the States' power to levy taxes on mineral rights under Entry 50 of List II continues to subsist, subject to the limitations that Parliament may impose by law under Entry 54.²⁶ Consequently, while Parliament may impose limitations upon State taxation of mineral rights, it cannot itself assume that taxing power.

²² *ibid.*

²³ *Mineral Area Development Authority and Anr v Steel Authority of India and Anr* (2011) 4 SCC 450.

²⁴ *ibid* [2].

²⁵ *MADA* [130].

²⁶ *MADA* [245].

Crucially, the majority went on to hold that mineral-bearing land falls within the expression “lands” in Entry 49 of List II.²⁷ It therefore concluded that States possess legislative competence to impose taxes on mineral-bearing land independently of Entry 50.²⁸ The majority thus treated the operation of Entry 49 as constitutionally insulated from the limitation framework governing Entry 50, and rejected the argument that Parliamentary control under Entry 54 could restrict the States’ land-taxing power in mining areas.

Although the majority in *MADA* resolved the formal question of legislative competence, it left open a deeper constitutional difficulty. By treating Entry 49 as entirely independent of the limitation framework governing mineral taxation under Entry 50 and regulatory control under Entry 54, the judgment permits States to impose land-based levies whose economic incidence and operational logic are directly tied to mining activity. The judgement is significant for strengthening fiscal federalism, however, it is difficult to oversee certain consequences which may follow in the wake of the majority judgment, especially pertaining to the treatment of Entry 49 which may endanger the development of mines and minerals in India.

The Nature of Royalty – the Doctrinal Limits of tax

The concept of royalty is derived from the concept of royal prerogative or *jus regalia*, which was vested in the British Crown for the mining of

²⁷ MADA [341].

²⁸ *ibid.*

gold and silver mines.²⁹ Mining of minerals was an act which could only be done if due payments were made to the Crown in the form of royalties.³⁰ Although the power in the Crown dissolved and there came to be private ownership in mineral-bearing land, the exaction of royalty remained in the hands of the landowners.³¹

The classification of royalty has long troubled Indian fiscal and constitutional jurisprudence. As previously stated, the MMDR Act is a comprehensive code for the regulation of mines and the development of minerals in India.³² The levy of royalty under Section 9 of the MMDR makes the payment of royalty a statutory obligation on the lessee towards the lessor of the mineral land for the extraction of minerals, i.e., a return for the grant of a privilege over the property. The lessor may be either the government or a private person.³³ This provision assigned a greater responsibility to the Union government by allowing it to determine the rates of royalty since allowing the States to specify the same would lead to unhealthy trade owing to the disparity in royalty rates across India.³⁴

²⁹ *Inderjit Singh Sial v Karam Chand Thapar* (1995) 6 SCC 166; Ramanatha Aiyar, *Advanced Law Lexicon*, Vol.3 2789.

³⁰ *ibid.*

³¹ JU Nef, *The Rise of the British Coal Industry* (Routledge, 1966); Royal Commission on Mining Royalties, *Final Report of the Royal Commission Appointed to Inquire into the Subject of Mining Royalties* (1893) 4.

³² *The Mines and Minerals (Development and Regulation) Act 1957* ('MMDR Act'), §2.

³³ MMDR Act 1957, §9(2); MADA [125].

³⁴ JR Mehta, 'Lok Sabha Debates', (vol 8, 22 November 1957) 462; *K P Varghese v. ITO* (1981) 4 SCC 173 [8].

The Supreme Court of India has had the opportunity to analyse the term ‘royalty’ in the case of *D.K. Trivedi v. State of Gujarat*, where the court held that royalty is the payment made by the lessee to the lessor, in addition to the rent, for the right to extract minerals from the land and to appropriate them for their own use or benefit.³⁵ This payment is proportionate to the quantity of minerals so extracted.³⁶

The prerogative of the court in *MADA* was to determine ‘the nature of royalty under Section 9’ of the MMDR Act. However, the judgement of the SC has very clearly only deliberated upon the nature of royalty to the extent of determining whether it is in the nature of tax or not.³⁷ The Court has not made any positive observations on the nature of royalty with regards to the above-mentioned categories or royalties in itself.

This section dismantles the conventional fiscal labels often assigned to royalty. The goal is to show that royalty does not doctrinally fit within the category of tax and that this misclassification could create concrete constitutional problems. The nullification of this misclassification creates the space required for the positive *sui generis* argument that follows in Section VI.

³⁵ 1986 (Supp) SCC 20 [39] (‘D K Trivedi’); HRS Murthy v. Collector of Chittoor (1964) 6 SCR 666 [6].

³⁶ *ibid.*

³⁷ *MADA* [130]-[137].

Royalty is Not a Tax: Article 366(28) & Limits of Entry 50, List II

The concept of tax refers to the compulsory monetary charge imposed by legislative power upon persons or property to raise revenue.³⁸ The SC had previously held tax to be an imposition made without conferring any reciprocal benefit on the taxpayer.³⁹ Reference is necessary to Article 366(28) of the Constitution, which defines ‘taxation’ to include “*the imposition of any tax or impost, whether general local or special*”.⁴⁰ In the present case, the Court focused on the term “impost”, interpreting it to mean any “compulsory levy”, and further holding that the term “tax” encompasses all such imposts.⁴¹ However, this expansive interpretation fails on both doctrinal and functional grounds.

Firstly, as observed in *MADA*, payment of royalty is not a “*compulsory exaction by the sovereign for the collection of revenue*” as the compulsion arises from the agreement/contract between the lessor and lessee. The liability to pay royalty is a consequence of the mining lease.⁴² Contractual payments due to the government cannot be deemed to be a tax merely because a statute provides for their recovery as arrears.⁴³

³⁸ *Matthews v. Chicory Marketing Board* 60 CLR 263 (Latham CJ).

³⁹ *Commission, Hindu Religious Endowment, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) 1 SCC 412 [44].

⁴⁰ The Constitution of India 1950, Art. 366 (28).

⁴¹ *MADA* [105]-[110].

⁴² *MADA* [123].

⁴³ *Ibid* [105]-[110].

Furthermore, it has been held by the SC that the price paid for parting with an exclusive privilege is not a tax.⁴⁴

Secondly, the court recognized that the lessor can be the government or a private person.⁴⁵ This observation follows the judgement in *Thressiamma Jacob*, where it was held that the State does not have absolute proprietary rights over mineral wealth in India, and it is the owner of the land who has the rights to the surface of the land as well as sub-soil resources.⁴⁶ This would mean that royalty under Section 9 would not be a payment made only to a public authority and would not have the incidence of sovereignty in these cases.

Thirdly, in addition to the reasons given above in *MADA*, the author suggests that Article 366(28) must be read contextually, not as a catch-all that sweeps in all compulsory payments. The doctrine of *noscitur a sociis* dictates that the meaning of an unclear or ambiguous word in a statute or a contract should be determined by considering the words with which it is associated in the context.⁴⁷ Applying this interpretive canon, ‘impost’ should be limited to exactions with the essential features of taxation, i.e., sovereign extraction of revenue for general

⁴⁴ State of Punjab v. Devans Modern Breweries (2004) 11 SCC 26.

⁴⁵ MADA [60], [90]-[92].

⁴⁶ Thressiamma Jacob v. Geologist, Department of Mining & Geology (2013) 9 SCC 725; State of West Bengal v. Union of India (1964) 1 SCR 371 [18].

⁴⁷ Vepa P Sarathi, Interpretation of Statutes 121 (Dama Seshadri Naidu, 6th ed., 2023); Union of India v. ISRO Drivers Assn. (2020) 8 SCC 657.

public purposes.⁴⁸ Royalty, in contrast, is levied not by sovereign prerogative, but as a condition of a regulatory permission to exploit a public resource. Royalty payments are not exacted *per se* for public purposes and involve an element of *quid pro quo*. Thus, both doctrinal coherence and functionality support the conclusion that royalty is not a tax.

Why Misclassification Matters?

The stakes of correctly classifying royalty extend beyond doctrinal neatness. Misclassification shapes how States can design taxes in relation to Union-controlled mineral regulation, and determines whether the same economic burden can be replicated across fiscal fields. *First*, when royalty is treated as an ordinary fiscal base, States gain the ability to use it as a valuation measure for taxation in unrelated fields such as Entry 49 which will be substantiated in the subsequent section.⁴⁹ *MADA* accepts this possibility by relying on the principle that the measure of a tax does not determine its subject.⁵⁰ That principle has deep roots in Indian tax jurisprudence,⁵¹ but its unqualified application here is problematic. Unlike neutral indices such as turnover, land area, or weight of goods, royalty is not merely an external measure. It is a Union-fixed regulatory instrument,

⁴⁸ Godfrey Phillips India v. State of Uttar Pradesh (2005) 2 SCC 515 [75]-[81].

⁴⁹ See Section V.

⁵⁰ *MADA* [304].

⁵¹ *ibid.*

determined under the MMDR Act as part of Parliament's policy choices on mineral conservation, pricing, and development.⁵²

Second, this produces a distinctive form of duplication. In most instances of multiple taxation, burdens are spread across different parties. By contrast, in mineral-bearing land, the same mining lessee is both the payer of royalty to the lessor (usually the State, acting under Union authority) and the liable party for taxes as occupier.⁵³ The duplication is concentrated on a single actor, amplifying the fiscal burden and destabilising investment expectations. What appears formally as two distinct exactions, one regulatory and one fiscal, operates in practice as cumulative charges on the same lessee.

MADA does not directly confront these consequences. By treating royalty as a legally irrelevant measure, the Court avoided addressing whether reliance on a Union-created instrument by States creates a reverse denudation of the Union's regulatory field in substance. The deeper problem is that without a principled classification of royalty, courts are forced to treat it as an ordinary fiscal base, leaving open the possibility of mimicry and functional encroachment.

The Architecture of Mineral Regulation AND Legislative Competence

⁵² MMDR Act 1957, s. 2, 9.

⁵³ MADA [153]-[155], [292].

Moving beyond the definitional ambiguity surrounding the nature of royalty, the following sections addresses the constitutional architecture that governs the regulation and taxation of minerals. It analyses the interplay between Entries 49, 50, and 54 of the Seventh Schedule, and evaluates the Court's decision in *MADA* through the lens of legislative competence and field conflict.

Entry 50 and Entry 54: Federal Safeguards and Functional Denudation

The Constitution's design of mineral taxation and regulation reflects a deliberate balance between Union oversight and State participation.⁵⁴ Entry 50 of List II empowers the States to impose "taxes on mineral rights," but makes that power expressly subject to any limitations imposed by Parliament by law relating to mineral development.⁵⁵ Entry 54 of List I, in turn, empowers Parliament to regulate the development of minerals to the extent it declares such regulation to be expedient in the public interest.⁵⁶ The rationale behind including only the 'regulation of mines' and 'development of minerals' was to ensure that the provinces were not completely cut out from the law relating to mines and minerals.⁵⁷ This creates a framework where the Parliament's legislative authority under Entry 54 operates as a limitation on State taxing powers under Entry 50. If there was inaction at the Centre, then

⁵⁴ JR Mehta, 'Lok Sabha Debates' (vol 10, 21 December 1957) 7111.

⁵⁵ Entry 50.

⁵⁶ Entry 54.

⁵⁷ *Monnet Ispat v. Union of India* (2012) 11 SC 1 [129].

the States could make their own laws.⁵⁸ The question in *MADA* then was whether the Union could also exercise such a taxing power concurrently.⁵⁹

The court in *MADA* observes that Entry 54 of List I is merely regulatory and does not include the power of taxation which is vested under Entry 50 of List II.⁶⁰ This special taxing power of Entry 50 was discussed during the Constituent Assembly debates and is evidenced by the refusal to shift Entry 50 from List II to List I.⁶¹ The court places reliance on the case of *Hoechst Pharmaceuticals*, where it was held that the Parliament cannot acquire legislative competence with respect to subject matters of taxation enumerated under List II under the guise of regulatory entries.⁶² Therefore, the Parliament cannot usurp or abrogate the taxing power to itself by denuding the State of the same. Hence, a State could exact royalty payments and also impose additional taxes upon the royalty amount as it would no longer be restricted, not being a tax on tax.

The effect of this would be that States have the potential to disrupt the uniform mineral development policy of the country by imposing

⁵⁸ *ibid.*

⁵⁹ *MADA* [Part H].

⁶⁰ *ibid* [206].

⁶¹ Constituent Assembly Debates (vol 9, 2 September 1949) 922.

⁶² *Hoechst Pharmaceuticals v. State of Bihar* (1983) 4 SCC 45; Constituent Assembly Debates, (vol 9, 1 September 1949). Dr. B R Ambedkar explained that the purpose of Entry 97 of List I is to only include “anything not included in List II or List III”.

varying taxes upon mining rights across the country. The dissenting opinion of Nagarathna J. laments the effects of this decision as it has the potential to disrupt mineral development in the country and increase competition amongst States, engaging them in what has been termed by Professor Louise Tillin as a 'race to the bottom' in a national market.⁶³ The consequential rise in prices of minerals and products which require minerals as raw material will adversely affect the overall economy of the country.

However, the majority opinion took care to give a wide import to the scope of limitations that can be imposed by the Parliament by virtue of Entry 54.⁶⁴ The court observed that the use of the expression 'any' before 'limitations' under Entry 50 indicates that the scope of the limitations is expansive and includes 'all' or 'every' limitation that could be imposed by Parliament by law relating to mineral development.⁶⁵ The court relied on the case of *Jindal Stainless Steel* to affirm that the expression 'any limitations' includes the power to prohibit as well.⁶⁶ Therefore, the Union can limit the power of taxation to the point of prohibition but it may not assume the power to tax itself.

⁶³ MADA (Nagarathna J) [35]; Louise Tillin, Building a National Economy: Origins of Centralized Federalism in India, 51(2) *Publius: The Journal of Federalism* (2021) 161.

⁶⁴ MADA [208]-[248].

⁶⁵ LDA v. MK Gupta (1994) 1 SCC 243 [4]; Raj Kumar Shivhare v. Directorate of Enforcement (2010) 4 SCC 772.

⁶⁶ *Jindal Stainless Steel Ltd v. State of Haryana* (2017) 12 SCC 1 [626.3].

Therefore, the majority opinion was not aloof to the consequences put forth by Nagarathna J. and further held that it is to counteract any adverse impact on the development of minerals in India that the Constitution has empowered Parliament under Entry 50 of List II to impose ‘any limitations’ including prohibition based on which the State legislature can tax mineral rights.⁶⁷ This design serves two purposes. Firstly, it balances the need to ensure ‘fiscal federalism’ by upholding the authority of the State governments to exact and retain royalties as per the MMDR Act with themselves. Secondly, it grants the Union the ability to keep a check on the exercise of the taxing power under Entry 50 by preventing States from imposing taxes under Entry 50 which are exorbitantly over and above the royalty payments or disproportionately low to attract companies. This framework protects lessees and investors from facing arbitrary or overlapping fiscal demands by different levels of government while also preventing a ‘race to the bottom’ which could potentially wreck the mineral economy of India.

Legislative Competence and the Threshold Inquiry

Any constitutional challenge to State fiscal measures in mining regions must begin with an inquiry into legislative competence. As Niranjan Venkatesan has demonstrated, Part XI of the Constitution draws a sharp conceptual distinction between the *existence* of legislative power and the *resolution of conflict* between validly enacted laws.⁶⁸ The former is

⁶⁷ Jindal Stainless Steel Ltd v. State of Haryana (2017) 12 SCC 1; MADA [244].

⁶⁸ V Niranjan, ‘Legislative Competence’ in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (OUP 2016) 311–

governed exclusively by Articles 245 and 246 read with the Seventh Schedule, while the latter is governed by Article 254.⁶⁹

The competence inquiry asks whether the impugned legislation, taken as a whole, is 'with respect to' a matter enumerated in the relevant legislative list.⁷⁰ This inquiry is resolved through the doctrine of pith and substance.⁷¹ Importantly, the presence of overlapping provisions, or even substantial overlap in regulatory effect, does not by itself render a law *ultra vires*. What matters is the true nature and character of the legislation as a whole, not the degree to which it touches upon matters falling within another list.⁷² Once a law is found to be relatable to a legislative entry, its validity is not affected merely because it incidentally trenches upon a field assigned to another legislature.⁷³ As Niranjan emphasises, whether the Parliament has in fact legislated in the overlapping field is entirely irrelevant to the competence inquiry.

Repugnancy as a Distinct Inquiry from Competence

The constitutional problem arises only after both the Union and State enactments are found to be *intra vires*. Repugnancy is not a species of competence analysis. It is a separate constitutional mechanism for

336 ('Niranjan').

⁶⁹ Niranjan, 312; The Constitution of India, Arts 245, 246, 254.

⁷⁰ Niranjan, 313-320; Prafulla Kumar Mukherjee v Bank of Commerce Ltd, Khulna (1946-47) 74 IA 23.

⁷¹ Niranjan, 319; HM Seervai, *Constitutional Law of India: A Critical Commentary*, vol 3 (4th edn, Universal Book Traders 2002) 2.93.

⁷² Niranjan, 320.

⁷³ *ibid.*

resolving conflicts between validly enacted laws.⁷⁴ Niranjan shows that Indian constitutional doctrine has repeatedly erred by conflating these two inquiries, thereby allowing tests of purpose, effect or pith and substance to be imported into the repugnancy analysis. Properly understood, repugnancy is concerned with the coexistence of legal norms and not with the source of legislative authority.

Repugnancy can arise only when there is an actual operational conflict between two laws that are both within legislative competence.⁷⁵ The mere possibility of conflict, or the fact that Parliament could have legislated in the field but has not done so, is constitutionally insufficient.⁷⁶ This separation is of particular importance in the mining context.

Even where a State levy on land is relatable to Entry 49, a distinct constitutional inquiry must still be undertaken to determine whether the operation of that levy conflicts with, or undermines, a Union regulatory framework enacted under Entry 54 of List I.

Scope of Entry 49: AN UNREGULATED Doctrinal Backdoor

In *MADA*, the SC held that the States' taxing power under Entry 49 of List II extends to "lands and buildings," which includes mineral-

⁷⁴ Niranjan, 319-320.

⁷⁵ Niranjan, 312-320.

⁷⁶ *ibid.*

bearing land used for mining.⁷⁷ Until recently, its application to mining contexts was peripheral and incidental due to the decision in *India Cements*. The Court further reasoned that such taxation may validly employ royalty as a measure, since the “*measure of a tax is not determinative of its subject*”.⁷⁸ This reasoning unsettles the constitutional architecture of mineral regulation.⁷⁹ Reading mineral-bearing land into Entry 49 produces a structural overlap with Entries 50 and 54 as it allows States to re-tax a subject that is already specifically allocated to them under Entry 50, but in a form that evades the supervisory limitation imposed by Parliament under Entry 54. The result is that States can achieve indirectly under Entry 49 what they cannot do directly under Entry 50,⁸⁰ namely, impose royalty-like burdens unchecked by Union limitation. The author argues that such a duplicative fiscal burden undermines the supervisory design of the Seventh Schedule and collapses the distinctions between taxing powers and regulatory powers.

As per *MADA*, duplication of fiscal burdens is not constitutionally problematic as mineral rights may be taxed under Entry 50, and mineral-bearing land may simultaneously be taxed under Entry 49.⁸¹ However, the author in this section argues that this conflict of a

⁷⁷ MADA [295].

⁷⁸ MADA [304].

⁷⁹ Entry 54

⁸⁰ *KC Gajapati Narayan Dea v State of Orissa* (1953) 2 SCC 178, [11].

⁸¹ MADA [362].

duplicative financial burden is best understood not as a question of competence, which the court in *MADA* has focused on, but of repugnancy. The author seeks to argue, by relying on the doctrine of repugnance,⁸² that taxing mineral-bearing land under Entry 49, especially when pegged to royalty, flouts Parliament's supervisory authority under Entry 54 by allowing States to reconstitute a Union instrument as their own fiscal base. This amounts to an operational conflict, even if competence can be traced to Entry 49.

The author makes two separate arguments regarding the treatment of Entry 49 by *MADA*: *First*, that even though Entry 49 of List II will give States the formal competence to tax 'lands', this power of taxation ought to be limited by Entry 54 of List I due to the doctrine of constitutional repugnancy. *Second*, that royalty cannot be used as a measure to tax mineral bearing lands under Entry 49 as it would amount to functionally duplicating a regulatory instrument which falls under the prerogative of the Union under Entry 54.

Beyond *Vires*: Repugnancy, Mimicry and Entry 49

With regards to the *first* argument, such a framework of competence and repugnance will allow the Union to impose reasonable limitations while also allowing States to exercise their power of taxation under Entry 49 including mineral-bearing land. Even if States were to adopt alternative measures, such as land area or production capacity, the

⁸² V Niranjana, 'Legislative Competence' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (OUP 2016) 311–336 ('Niranjana').

fiscal effect could be equal or greater than royalty, producing unpredictable and uneven burdens across States. In essence, the Union may invoke limitations under Entry 54 if a State imposes a tax on mineral-bearing land in such a way that it is closely linked to, and significantly affects, the regulatory framework of mineral extraction. In such cases, the levy could be considered colourable, as it indirectly seeks to achieve what the restrictions under Entry 50 expressly forbid.⁸³

The framework of repugnancy, developed by V. Niranjan,⁸⁴ offers a compelling and doctrinally sound lens through which to analyse this issue. Niranjan contends that courts must move beyond mere textual overlap and evaluate whether the practical effect of a State enactment denudes a Union entry of its operative space, even if no express contradiction exists.⁸⁵ This framework becomes especially relevant when the measure used by a State is so closely tied to the regulatory field of the Union that it essentially mimics the substance of a Union-controlled exaction. While *MADA* addressed the question of *vires*, that is, whether States have the legislative competence to tax land under Entry 49,⁸⁶ it failed to meaningfully engage with the distinct issue of repugnancy under Article 256 of the Constitution. The challenge

⁸³ KC Gajapati Narayan Dea v State of Orissa (1953) 2 SCC 178, [11].

⁸⁴ V Niranjan, 'Legislative Competence' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (OUP 2016) 311–336 ('Niranjan').

⁸⁵ Niranjan, 313–317.

⁸⁶ *MADA* [281]–[282].

before the Court was not merely whether a State has the abstract power to tax mineral-bearing land, but whether such a power could be exercised in a practical manner without undermining or functionally duplicating the Union's regulatory control under Entry 54.

MADA had relied on *Western Coalfields Ltd v Special Area Development Authority* to support its position with regards to competence of the States to impose tax on mineral-bearing land under Entry 49.⁸⁷ In *Western Coalfields*, the Court had upheld a local development cess imposed on mining land, holding that a land tax remained valid under Entry 49 even if calculated based on business turnover. It is argued that the case dealt with a narrow *vires* question of whether a State could tax mineral-bearing land under Entry 49, which the author agrees would lie with the States, and not with repugnancy or conflict under Entry 54 arising from using royalty as a measure. It did not consider the implications of one legislative field co-opting or bypassing the core tenets of another.

When the repugnancy framework is applied to the present context, the Court's reasoning in *MADA* is excessively formalist as it simply asserted that the limitations of Entry 54 will not apply to Entry 49 as it is a self-contained entry with no limitations prescribed for the exercise of the powers under it.⁸⁸ It proceeds on the basis that since the tax in question is formally imposed on land under Entry 49, it need

⁸⁷ *Western Coalfields Ltd v Special Area Development Authority* (1982) 1 SCC 125.

⁸⁸ *MADA* [298].

not consider whether the tax, the measure of which is also tied to the royalty payments, would also fall within the regulatory domain of the Union under Entry 54 at least for the purpose of imposing limitations.⁸⁹ This is in-line with *MADA*'s reasoning with respect to Entry 54 and 50 that Entry 54 does not denude the taxing power of Entry 54 but it can impose 'any limitation' for the purposes of mineral development in India.⁹⁰ Therefore, the author argues that when the economic incidence, logic, and basis of the State tax are tied to the same activity governed by Entry 54 (mineral development), Entry 49 ceases to operate purely within its field. This, following Niranjana's approach, is not merely a matter of 'overlap', rather it is a case of field conflict, where a facially valid State law frustrates the purpose and effect of a Union law.⁹¹

The case of *State of Bihar v Indian Aluminium Company* which was relied upon by the respondents to argue repugnancy becomes relevant to the present discussion.⁹² In that case, the SC struck down a levy that purported to tax "voids" created by mining, holding that the tax was in substance on mining activity, not on land.⁹³ The Court recognized that labelled subject matter (land) could not disguise a true subject (mining), and that State laws could not recharacterize a Union-

⁸⁹ MADA [335]-[339].

⁹⁰ MADA [Part H].

⁹¹ Niranjana, 313-317.

⁹² *State of Bihar v Indian Aluminium Company* (1997) 8 SCC 360.

⁹³ *ibid.*

regulated activity simply by invoking a different constitutional entry. Yet, *MADA* attempts to distinguish *Indian Aluminium* narrowly, on the ground that the tax there was imposed on non-land (voids), whereas here, land is the formal subject.⁹⁴ The author disputes this distinction as weak, especially in light of the repugnancy framework. The core principle of *Indian Aluminium* is that functional identity, not formal labels, must determine legislative validity.⁹⁵ Therefore, the SC ought to have assessed whether taxation, even if formally under Entry 49, substantially alters the incidence, structure, or effectiveness of the Union's mineral regulation under Entry 54.

The *second* argument is with regards to measure of tax under Entry 49. The author places a *caveat* that this argument is separate from the previous as it would not be required if the first argument holds. However, the author contends that royalty cannot be used as a measure to tax mineral bearing lands under Entry 49. This is because when States use royalty as the basis for taxing land, they are functionally duplicating a Union-controlled regulatory instrument.⁹⁶ The problem manifests itself as constitutional mimicry. The State 'land' tax mirrors the economic logic, incidence, and structure of royalty, thereby allowing States to reproduce a fiscal burden already imposed by the Union, but without the Union's legislative authority or regulatory

⁹⁴ MADA [338].

⁹⁵ *State of Bihar v Indian Aluminium Company* (1997) 8 SCC 360 [15].

⁹⁶ See Section III.

safeguards under Entry 54 of List I.⁹⁷ The result is a 'shadow royalty,' immunized from federal control, but identical in impact. It is argued that *MADA* fails to prevent the States from exercising restraint with regards to an instrument which only the Union may exercise under Entry 54. Hence, if the State's levy is structured to follow the contours of royalty, the problem is that the States are doing so by invoking a Union-determined measure (royalty) and thereby entering a field from which they are constitutionally excluded.

Therefore, the effect of the proposed framework will prevent a denudation of the taxation powers of the States by the Union while also ensuring that the Union will have the power to impose limitations for the purposes of safeguarding and regulating mineral development in India by treading a balanced middle path. This will prevent exorbitant fiscal and tax burdens on mining lessees and also allay Nagarathna J.'s fears of a 'race to the bottom' for the mineral industry in India.⁹⁸

Royalty as a *Sui Generis* Fiscal Instrument

Building upon the idea of mimicry, this section briefly proposes a positive reclassification of royalty that can assist in the clarification of the doctrinal and constitutional problems created by the imposition of royalty under varying Entries. The author suggests that royalty, as

⁹⁷ MMDR Act, s. 2; Entry 54.

⁹⁸ *MADA* (Nagarathna J) [35]; Louise Tillin, Building a National Economy: Origins of Centralized Federalism in India, 51(2) *Publius: The Journal of Federalism* (2021) 161.

imposed under the MMDR Act, should be understood as a *sui generis* fiscal instrument. This classification is not merely theoretical. It carries with it significant implications for resolving the legislative conflict exposed in *MADA*, for protecting the structural logic of Entries 49, 50, and 54, and for restoring coherence to India's mineral governance regime. The reclassification of royalty provides a doctrinal firewall in the way it can help insulate the Union's regulatory exaction from being repurposed as a proxy measure for State-imposed taxes under Entry 49, and offers a functional test for courts to detect and invalidate such fiscal mimicry.

The Constitutional Logic of *Sui Generis* Classification

The concept of a *sui generis* classification, although not explicitly recognised in the Constitution, has long found implicit expression in Indian constitutional jurisprudence.⁹⁹ Courts have acknowledged that certain legal constructs, whether procedural, substantive, or fiscal, may warrant distinct doctrinal treatment where they do not fit squarely within established categories.¹⁰⁰

Royalty, as levied under Section 9 of the MMDR Act, arises as a condition of the mining lease and is triggered by the extraction of minerals from the public domain. Its quantum is fixed centrally, based on statutory criteria under Schedule II of the MMDR that typically

⁹⁹ Kesavananda Bharati v State of Kerala (1973) 4 SCC 225.

¹⁰⁰ Avinder Singh v. State of Punjab, (1979) 1 SCC 137; HM Seervai, *Constitutional Law of India*, Vol 3 (4th ed, 1991), 2181–82; Bryan A Garner, *A Dictionary of Modern Legal Usage* 851 (3rd ed, 2011).

aligns with the quantity or value of minerals extracted.¹⁰¹ This pricing mechanism is not designed to raise revenue per se, nor is it determined through market negotiation. Rather, it is imposed to reflect the public cost of mineral depletion, and to ensure that extraction occurs in a manner that internalises environmental and social burdens.¹⁰²

The distinctiveness of royalty lies in the constitutional function it serves. Royalty is not merely a charge for access but it is the legal expression of the State's custodial duty over mineral resources.¹⁰³ Indian courts have long affirmed that natural resources are held in public trust,¹⁰⁴ a doctrine most prominently articulated in *M.C. Mehta v Kamal Nath*, where the SC held that the State holds natural resources in fiduciary capacity for the benefit of the people.¹⁰⁵ This custodianship principle would paint royalty not as a transaction but a tool of stewardship designed to regulate access to common property and to ensure that resource extraction aligns with principles of sustainability, equity, and intergenerational justice. To misclassify such an instrument is not merely doctrinally inaccurate but it also destabilises the constitutional framework and vision of mineral governance.

¹⁰¹ The MMDR Act, 1957, Schedule II.

¹⁰² JR Mehta, 'Lok Sabha Debates', (vol 8, 22 November 1957) 462; K P Varghese v. ITO (1981) 4 SCC 173 [8].

¹⁰³ *ibid.*

¹⁰⁴ *Thressiamma Jacob v. Geologist, Department of Mining & Geology* (2013) 9 SCC 725.

¹⁰⁵ *M.C. Mehta v Kamal Nath* (1997) 1 SCC 388.

In the absence of doctrinal clarity, States are able to treat royalty as a neutral measure or proxy measure such as for imposing taxes on mineral-bearing land under Entry 49 using royalty as the measure. This creates a workaround whereby royalty, though regulated by the Union under Entry 54, is appropriated by the States to impose a duplicative fiscal burden, without triggering the constitutional limitations embedded in Entry 50.¹⁰⁶ A *sui generis* classification resolves this by treating royalty as a category of its own, thereby removing it from the interpretive tools that enable mimicry. It does so by reinforcing the Union's exclusive competence over the regulation of mineral development, by recognising royalty as integral to the architecture of that regulation.

Preventing Mimicry under Entry 49

The most immediate benefit of reclassifying royalty as *sui generis* lies in its ability to prevent fiscal mimicry under Entry 49. States may use royalty as a base for calculating taxes under Entry 49. This tactic enables States to achieve indirectly what they cannot do directly, i.e., impose levies that replicate the effect of royalty, without being constrained by the constitutional limits of Entry 54.¹⁰⁷ The reclassification of royalty breaks this logic. By recognising that royalty is not simply a fiscal measure, but a regulatory device intrinsic to Entry 54, courts gain a doctrinal basis to distinguish legitimate land taxes from colourable attempts to duplicate Union-regulated exactions.

¹⁰⁶ See Section V.

¹⁰⁷ *Jagir Singh vs Ranbir Singh* 1979 AIR 381.

To implement this, courts may adopt a functional mimicry test. The author suggests that such a test could examine whether a purported land tax (a) is imposed primarily on mineral-bearing land; (b) uses royalty as defined under the MMDR Act as its measure; and (c) results in a fiscal burden that substantially mimics royalty imposed under the MMDR Act.

Where these conditions are met, the tax should be scrutinised as legislative mimicry, and invalidated as repugnant to the Union's regulatory field. Importantly, this does not require abandoning the principle that 'measure does not determine subject'.¹⁰⁸ Rather, it qualifies that principle in contexts where the measure is structurally integral to a separate regulatory regime. This doctrinal approach also restores the integrity of Entry 54. By reaffirming that taxes on mineral rights must respect parliamentary limitations, courts can preserve the Union's ability to regulate mining holistically including pricing, allocation, and environmental norms without being undermined by duplicative State exactions.

Fiscal Federalism & Union Regulation of Mining Taxes

This section aims to deal with certain objections which may be raised as a counter-argument to the proposed repugnancy-based framework.

¹⁰⁸ MADA [286]; *Goodricke Group Ltd v State of West Bengal* 1995 Supp (1) SCC 707; *RR Engineering Co. v Zilla Parishad, Bareilly* (1980) 3 SCC 380 [16].

Whether the use of Royalty as a measure of taxation under Entry 49 is *per se* objectionable

A recurring objection is that the use of royalty as a valuation proxy for taxing mineral-bearing land under Entry 49 is not, in economic terms, objectionable. Since the commercial value of mineral-bearing land is directly determined by the quantity and quality of minerals available beneath the surface,¹⁰⁹ it is argued that a land tax calibrated by reference to royalty merely reflects the enhanced market value of such land and therefore represents a rational and proportionate fiscal design.

This objection, however, misconceives the constitutional character of the present enquiry. The problem is not whether the adoption of royalty as a proxy is economically efficient or administratively convenient for the States. The constitutional concern lies in the institutional allocation of regulatory authority over mineral development. Land taxes imposed under Entry 49, when structured so as to track mining output or royalty rates, operate directly upon the costs of extraction and consequently upon the economic viability of mining operations.¹¹⁰ They therefore intervene at the very level at which Parliament is constitutionally entrusted with coordinating mineral development under Entry 54 of List I.¹¹¹ The question is not whether such taxation benefits the States fiscally, but whether the

¹⁰⁹ State of West Bengal v Kesoram Industries Ltd (2004) 10 SCC 201 [129]–[131].

¹¹⁰ See Section V.

¹¹¹ *ibid.*

Constitution permits such regulatory impact on mining activity to remain entirely beyond the supervisory reach of Parliament.

If Parliament were to conclude that land-based levies calibrated to mining output were desirable instruments of mineral governance, there would be no constitutional objection to such a framework being introduced through Union legislation under Entry 54.³ The difficulty arises only because, following *MADA*, taxation of mineral-bearing land under Entry 49 is insulated from any form of Union limitation.¹¹² It is this regulatory gap that necessitates either a repugnancy-based limitation or an express constitutional adjustment.

Whether 'lands' under Entry 49 should include Mineral-bearing lands

A further objection is that a more compelling solution would be to interpret Entry 49 itself as excluding mineral-bearing land wherever such taxation impedes Union regulation under Entry 54. This approach, however, would require a substantial departure from settled doctrine. The expression 'lands' in Entry 49 has consistently been interpreted broadly to include all categories of land.¹¹³ In *Raja Jagannath Bakesh Singh v State of Uttar Pradesh*, a Constitution Bench held that the word 'lands' in Entry 49 is of wide amplitude and is not confined to any particular class of land.¹¹⁴ This understanding was expressly relied

¹¹² *MADA* [341], [342].

¹¹³ Entry 49.

¹¹⁴ *Raja Jagannath Bakesh Singh v State of Uttar Pradesh* (1963) 1 SCR 220.

upon in *MADA* in concluding that mineral-bearing land continues to fall within the scope of Entry 49.¹¹⁵

The present difficulty does not arise because mineral-bearing land is included within the expression ‘lands’ as a matter of ordinary constitutional interpretation. It arises because the Constitution simultaneously creates a specialised taxing entry in Entry 50 for mineral rights and subjects that entry to Parliamentary control under laws relating to mineral development.¹¹⁶ The existence of a dedicated taxing field for mineral rights, coupled with an express supervisory mechanism through Entry 54, indicates that the Constitution contemplates mineral extraction as a distinct regulatory and fiscal domain. Mineral-bearing land is not merely land used incidentally for mining; it is the very site through which mineral rights are exercised.¹¹⁷ To permit the economic base of mineral extraction to be reconstructed entirely through Entry 49, while insulating such levies from Union limitation, undermines the structural logic of this special constitutional arrangement.

The distinction from *Raja Jagannath Baksh Singh* is therefore not grounded in the physical character of the land,¹¹⁸ but in the presence of a constitutionally differentiated fiscal field governing mineral

¹¹⁵ *MADA* [270].

¹¹⁶ Entry 50; Entry 54.

¹¹⁷ *Kesoram Industries* [117]–[120]; *India Cement* [34].

¹¹⁸ *Raja Jagannath Baksh Singh v State of Uttar Pradesh* (1963) 1 SCR 220.

activity. Agricultural land was not subject to any parallel specialised taxing and regulatory entry comparable to Entry 50 read with Entry 54.¹¹⁹ In contrast, the constitutional treatment of minerals expressly separates ordinary land taxation from the fiscal and regulatory governance of mineral exploitation. In the alternative, and recognising the doctrinal novelty involved in extending repugnancy to an entry which does not contain an express limitation clause, an explicit constitutional amendment bringing taxation of mineral-bearing land within the supervisory framework of Entry 54, either through an amendment to Entry 49 or through an expanded limitation under Entry 50 would provide a clearer and more stable solution.

Fiscal Federalism and revenue-raising capacity of the States

The constitutional controversy surrounding the use of Entry 49 to impose taxes on mineral-bearing land cannot be examined in isolation from the broader tensions that characterise India's fiscal federal structure. Mineral-rich States occupy a structurally distinctive position within the federal economy. While they contribute disproportionately to national resource extraction and industrial supply chains, they simultaneously bear the most acute localised costs of mining activity, i.e., environmental degradation, land displacement, public health externalities, infrastructure stress and social conflict.¹²⁰

¹¹⁹ *ibid.*

¹²⁰ Planning Commission, Report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India (Government of India 2014) Ch 8-10; Ministry of Environment, Forest and Climate Change, Government of India, Sustainable Sand Mining Management Guidelines, (2016) Ch 3.

At the same time, the contemporary architecture of fiscal federalism significantly constrains the independent revenue-raising capacity of States. The expansion of harmonised indirect taxation following the introduction of the Goods and Services Tax has consolidated major revenue streams at the Union level and increased State dependence upon central transfers, while expenditure responsibilities continue to expand.¹²¹ In this setting, mineral-bearing regions experience a persistent mismatch between fiscal capacity and fiscal burden. This structural pressure creates powerful incentives for States to seek alternative and politically defensible revenue instruments within their own legislative competence. Entry 49, which authorises taxes on lands and buildings without any express constitutional limitation, emerges as a particularly attractive vehicle.¹²²

With respect to the proposed repugnancy-based framework, it is objected that limitations upon the State to tax under Entry 49 would be a further cause of concern for fiscal federalism. This concern is well-taken. No constitutional doctrine can immunise regulated industries from all revenue-motivated State interventions. The proposed framework does not seek to control the absolute quantum of land taxation. It seeks to prevent a specific form of constitutional circumvention, i.e., the functional reproduction of Union-regulated extraction charges through a formally unrelated taxing entry. Finally,

¹²¹ The Constitution of India (One Hundred and First Amendment) Act 2016; Fifteenth Finance Commission, Report for the Period 2021-26 (Government of India, 2021) Vol I, Ch 4.

¹²² See Section V.

this position does not deny fiscal autonomy to mineral-rich States. It preserves their power to determine appropriate fiscal instruments in light of local environmental and social burdens, while simultaneously ensuring that the cumulative cost imposed on mining activity remains compatible with nationally coordinated mineral policy. The objective is not to centralise revenue collection, but to constitutionally align fiscally significant interventions in the mining sector with the supervisory framework deliberately assigned to Parliament under Entry 54.

Conclusion

This article has argued that the constitutional difficulty exposed by *MADA* lies in its treatment of Entry 49 of List II as a constitutionally insulated taxing field even when its operation directly reshapes the economics of mineral extraction. By permitting States to tax mineral-bearing land under Entry 49 without any supervisory constraint under Entry 54, the majority judgment creates a structural pathway through which a Union-designed regulatory instrument can be repurposed as a State revenue base. What formally appears as a land tax is capable, in effect, of operating as a parallel extraction charge. This article has described this phenomenon as fiscal mimicry and has argued that it represents a form of constitutional circumvention rather than a benign overlap of legislative fields. Permitting the same economic base to be reconstructed under Entry 49, and thereby insulated from Union oversight, undermines constitutional design. This article proposes that the appropriate constitutional lens for evaluating State taxation of mineral-bearing land is repugnancy and

field conflict rather than *vires*. This repugnancy-based framework neither denies States their general power to tax land nor converts Entry 54 into an exclusionary field. It requires only that where State fiscal instruments are structured so as to operate directly upon the economics of extraction, particularly when royalty is employed as their valuation base, they remain subject to Union supervision for the limited purpose of safeguarding nationally coordinated mineral policy. The article has further shown that recognising royalty as a *sui generis* fiscal instrument intrinsically linked to Parliament's regulatory authority under Entry 54 would operate as a doctrinal firewall against its use as a proxy tax base under Entry 49 and would provide courts with a coherent basis for identifying functional duplication of Union-controlled exactions.

The article further acknowledged that mineral-rich States bear disproportionate environmental, social and infrastructural burdens arising from extraction and that contemporary fiscal federalism has constrained State revenue autonomy. These considerations make recourse to Entry 49 both understandable and normatively compelling. The constitutional question, however, is not whether States should possess adequate fiscal space, but whether fiscal instruments that materially shape the cost and viability of mineral extraction may remain entirely outside the supervisory architecture that the Constitution assigns to Parliament in the national interest. In the alternative, and should courts remain reluctant to extend repugnancy doctrine in this manner, an explicit constitutional or statutory intervention bringing taxation of mineral-bearing land within the supervisory framework of Entry 54 would offer a clearer and more stable institutional solution.

Ultimately, this article reframes the post-*MADA* debate from questions of semantic classification and formal competence towards the structural integrity of India's mineral governance framework. Without a functional safeguard against fiscal mimicry, the constitutional balance between State revenue autonomy and nationally coordinated mineral development risks being progressively eroded in practice.