State of Kerala v. Asianet Satellite Communications: Course-Correction or Quagmire?

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A division bench of the Supreme Court *in* ***State of Kerala v. Asianet Satellite Communications***[1] ("*Asianet*") allowed state-imposed entertainment taxes apart from Service Tax and acknowledged that merely transplanting the aspects theory is not suitable in the Indian context and restricted its scope to determining the applicability of a taxing statute.[2]

The Court held that the activity undertaken by DTH operators is not confined merely to the transmission of signals but encompasses a broader composite service involving both the act of relaying satellite signals from broadcasters and the intended objective of such transmission—namely, the delivery of entertainment to the end consumer. It recognised that the transaction embodies a dual character: the means being the broadcast of signals, and the end being the provision of entertainment, which is the dominant feature perceived by the subscriber. On this basis, the Court concluded that the element of "entertainment" is sufficiently distinct and substantive to fall within the ambit of Entry 62, List II, thereby justifying the levy of State entertainment tax alongside Service tax.

Yet much is left to be desired in addressing the lacunae in the application of the aspect theory itself.

Origin of the "Aspect Theory":

The aspect theory or 'double aspect doctrine' purportedly emerged from the observations in *Hodge v. The Queen*-

> The principle which that case and the case of the Citizens' Insurance Company illustrate is, that subjects which in one aspect and for one purpose fall within sec. 92, may in another aspect and for another purpose fall within sec. 91.[3]

In *Federation of Hotel & Restaurant Association of India* ("*Federation*"), the Court quoted a Canadian treatise, explaining that aspect must be comprehended as "the aspect or point of view of the legislator in legislating the object, purpose, and scope of the legislation".[4] The Court, in *Asianet* noted that the aspect theory is employed to

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[1] *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.
[2] *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.
[3] *Hodge v The Queen* (1883) 9 App Cas 117 (PC).
[4] *Federation of Hotel & Restaurant Association of India v Union of India* (1989) 3 SCC 634.

"resolve conflicts in legitimacy to legislate on **all** subject matters, rather than restricting its use only to entries concerning taxation", while the doctrine of pith and substance is "predominantly used to resolve conflicts" between two entries in different lists.[5] Further, it was acknowledged that-

> [The] Parliament therein has greater legislative competence to impose a wide range of taxes, but the Provinces therein are restricted to impose only direct taxes. Therefore, the scope for the use of 'Aspect theory' in taxation matters is limited in Canada. This distribution of taxation powers in Canada is markedly different from that in India. Under our Constitution, the subject matters of taxation available to Parliament are enumerated in Entries 82 to 97 - List I and those available to the State legislatures are in Entries 45 to 63 - List II. There is no taxation entry in List III or the Concurrent List.[6]

These distinctions were used to advance the argument that the aspect theory is limited to determine the applicability of a taxing statute and does not determine legislative competence in the Indian context.[7]

Discussion on "Applicability":

In *Asianet*, the Court further observed-

> **The aspect theory has really no role to play as regards determining legislative competence of a particular legislation, since the Constitution does not envisage such a test**. However, in the Indian context, the 'aspect theory' is relevant to determine the applicability of a taxing statute on the activity sought to be taxed i.e., whether the statute covers a transaction/activity which falls within a specific taxation entry either in List I or in List II. An activity may have multiple aspects on which different legislatures can impose a tax falling within its legislative competence... Such a determination of the aspects which are present in an activity is a factual inquiry. Thus, an activity could be taxed by two different legislatures on the basis of the entries in the respective lists without there being a clash and within their legislative competence. **However, the aspect of the activity which is being taxed must be relatable to the legislation under a specific entry of a particular List so as to be within legislative competence of a particular legislature**. (Emphasis supplied)

Thus, the role of the aspect theory is first stated to be a factual inquiry to the extent of determining whether the statute covers transactions falling in a particular List in Schedule VII of the Constitution.[8] However, by mandating that the aspect of an activity must be "relatable" to a legislation falling within the scope of a particular list from Schedule VII of the Constitution, "so as to be within legislative competence"[9] again

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[5] *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.
[6] *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.
[7] *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.
[8] *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.
[9] *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.

blurs the lines of distinction between these tests. It is in this light that the theoretical foundations of the theory must be analysed.

Suitability of the Aspect Theory:

The aspects theory was not transplanted into Indian jurisprudence by the *Federation* case.[10] Mr. Niranjan Venkatesan argues that the aspects doctrine is essentially indistinguishable from pith and substance, and is merely cloaked by a "more exotic name".[11] He advances three arguments towards this conclusion- First, that the Supreme Court in Federation, applied pith and substance, explained as the "true nature and character" applied in *Nagaratnam v Seshayya*.[12] Second, that the case- Hodge v. The Queen, cited in Lefroy's Canada's Federal System, relied upon the Court in *Federation*, also applied the pith and substance test, whilst merely employing the language of 'aspect'.[13] Third, that the same passage used from Hodge v. The Queen was used to justify both pith and substance as well as the aspects theory.[14]

This line of argument fundamentally challenges the premise that the aspects doctrine is a uniquely Canadian construct, distinct from the doctrine of pith and substance, and transposed into Indian constitutional jurisprudence through the Federation case. While the three components of this argument may be open to critique—either for their lack of direct correlation or for the logical gaps in their inferential reasoning, particularly in light of divergent applications in subsequent decisions—they nonetheless warrant serious engagement and do not merit is a lack of consideration.

While the Court in *Asianet* does acknowledge Mr Niranjan's arguments as "alternate propositions", yet it forges ahead by surmising-

> Despite the above observations, on a perusal of the cases in India which have referred to this theory, it would be evident that the use of 'aspect theory' in the Indian jurisprudence differs from its usage in Canada and that it is home-grown and innovated to suit the Indian context particularly in matters relating to taxation. In other words, while we may have borrowed the theory from Canada, its application in the Indian context has been within the context of the framework of the Indian Constitution.[15]

The lack of consideration of a potential fundamental flaw in construing aspect theory as a separate analytical category, rather than one that is indistinguishable from the indigenously construed doctrine of pith and substance, is a lost opportunity to

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[10] *Legislative Competence: The Union and the States - Niranjan Venkatesan*, 16 SSRN (2014). Accessed at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858565.

[11] . Niranjan, *Legislative Competence: The Union and the States*, 17 SSRN (2014). Accessed at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858565.

[12] *Nagaratnam v Seshayya* (1939) 49 LW 257 (Mad HC (FB)); Niranjan, *Legislative Competence: The Union and the States*, 17 SSRN (2014). Accessed at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858565.

[13] . Niranjan, *Legislative Competence: The Union and the States*, 17-18 SSRN (2014). Accessed at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858565.

[14] . Niranjan, *Legislative Competence: The Union and the States*, 18 SSRN (2014). Accessed at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858565.

[15] The State of Kerala vs Asianet Satellite Communications Ltd., 2025 INSC 757.

precisely delineate the precise ontological status of the theory amongst the other principles of Constitutional interpretation.

Similar treatment is meted out to Mr. Karthik Sundaram's arguments as an "alternate proposition", viewing the aspects theory as an exception to the doctrine of pith and substance.[16] Wherein, Mr. Sundaram has also pointed towards persisting incorrect and unnecessary applications of the aspect theory in *Union of India v. Mohit Minerals Pvt. Ltd.*[17]

Impact of the Judgment:

The implications of the *Asianet* judgment, has the potential to unleash a veritable Pandora's box of constitutional and regulatory uncertainty. The argument advanced by Mr. Kumar Visalaksh and Mr. Ajitesh Dayal Singh—that the Supreme Court's construction of "entertainment" as a taxable entry under Entry 62 of List II, read together with its holding that Entries 62 and 33 of List II are to be interpreted in pari materia, substantially enlarges the regulatory domain of State legislatures[18] —is both well-founded and compelling. This reading potentially empowers States to assert control over OTT platforms, streaming services, and other internet-based media which have, until now, fallen squarely within the exclusive domain of the Union under Entries 31 and 60 of List I—pertaining to telecommunications and broadcasting, respectively.

This blurring of distinct constitutional entries through interpretation may have the unintended consequence of enabling individual States to dictate the contours of what constitutes "entertainment" for their jurisdictions, thereby introducing the risk of fragmented regulatory regimes and paving the way for an additional, and possibly inconsistent, layer of censorship. Such a framework raises serious concerns from a policy and governance perspective, apart from being doctrinally untenable in a federal structure where issues of freedom of expression, digital access, and cultural diversity—already unified and protected under the constitutional scheme—remain in delicate balance and constant negotiation.

The Court's reasoning, resting precariously on the unstable basis of the aspects theory, fails to provide firm constitutional footing and instead reinforces a climate of ambiguity surrounding the theory's role and contours within Indian jurisprudence.

In conclusion, it may be time to consider whether reposing faith on the Canadian cousin – the aspects doctrine—is truly serving the needs of our constitutional structure. Instead, a principled return to the pith and substance doctrine, which has evolved indigenously with greater doctrinal clarity and institutional certainty, would offer a more stable and contextually appropriate framework for assessing legislative competence in India.

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[16] KARTHIK SUNDARAM, TAX, CONSTITUTION AND THE SUPREME COURT 85 (Oakbridge, 2019); *The State of Kerala vs Asianet Satellite Communications Ltd.*, 2025 INSC 757.
[17] 2018 SCC Online SC 1727; KARTHIK SUNDARAM, TAX, CONSTITUTION AND THE SUPREME COURT 86 (Oakbridge, 2019).
[18] https://www.barandbench.com/view-point/supreme-court-on-entertainment-tax-and-the-not-so-entertaining-consequences.