

(1993) 03 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 477 of 1993

Ahmad Ali Akhtar and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Citation : (1993) 03 PAT CK 0037

Final Decision : Dismissed

Judgement

B.C. Basak, C.J.—A series of writ petitions were filed in this Court in respect of several notifications issued u/s 3 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred as "the said Act"), whereby certain organisations were declared as "Unlawful Associations" within the meaning of the said Act. This particular writ petition has been filed by two petitioners, namely, one Ahmad Ali Akhtar, who has described himself as President, Bihar Zone of Jammat-e-Islami-Hind (hereinafter referred to as the said "Association") and by one Sri Qamrul Hoda, who has described himself as President, Patna Circle of the said Association. The constitutionality of the said Act and the notification issued thereunder have been challenged on various grounds in this petition. The petitioners have challenged the notification dated 10th December, 1992, issued u/s 3(1) read with proviso to Sub-section (3) of Section 3 of the said Act, whereby the said Association was declared as an "Unlawful Association" within the meaning Of the said Act (hereinafter referred to as "the said Notification"). The said notification, which came into effect from the date of its publication in the Official Gazette, subject to any order which may be made u/s 4 of the said Act, is set out hereinbelow:

MINISTRY OF HOME AFFAIRS NOTIFICATION, NEW DEHU, the 10th December, 1992. S.O. 898-(E)-Whereas Sri Sirajul Hasan, Amir of the Jammat-e-Islami-Hind (hereinafter referred to as JETH) declared in a meeting at Delhi held on the 27th May, 1990 that the separation of Kashmir from India was inevitable:

And whereas Shri Abdul Aziz, Naib-Amir of JEIH, addressing a meeting at

Malerkotla on the 11 August, 1991 observed that the Government of India should hold plebiscite on Kashmir ;

And whereas JEIH has been disclaiming and questioning the sovereignty and territorial integrity of India ;

And whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts, and materials in its possession which the Central Government considers to be against the public interest to disclose, the Central Government is of the opinion that the JEIH is an unlawful association;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Jamaat-e-Islami Hind" to be an unlawful association and directs, in exercise of the powers conferred by the proviso to Sub-section (3) of that section, that this notification shall, subject to any order that may be made u/s 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[No. II/14034/(i)/92-IS (DV)] T.N. Srivastava, Jt. Sety.

2. The petitioner have described themselves as citizen of India. It is further stated that they have been active members and also holding the respective offices of the said Association as stated hereinabove. We directed notice to be given to Attorney General of India as the vires of a Central Act was challenged and Mr. Malhotra has appeared on behalf of the Union of India and the Attorney-General of India.

3. Submissions.

3.1. The main submissions of Sri Basudeva Prasad learned Senior Advocate appearing on behalf of the petitioners, are as follows ;

(1) The said Act and particularly Section 3(1) and proviso to Sub-section (3) of Section 3(1) thereof are violative of the fundamental rights guaranteed by Articles 14, 19(1) (a) and (c) and 21 of the Constitution of India. I should point out that during the course of his reply, Mr. Prasad made it clear that so far as Article 19 is concerned, the challenge was limited to the question of procedural reasonableness and not substantive reasonableness. In support of his contention it was submitted that the law provides for a notification u/s 3(1), to be issued without giving notice to the persons concerned and without holding any enquiry. The proviso to Sub-section (3) to Section 3 enables the authority concerned to bring the said notification into immediate effect without any judicial enquiry and without any notice to persons affected. Accordingly, it was violative of the fundamental rights of the petitioners. The sheet anchor of the argument of Mr. Prasad in this connection is the decision of the Supreme Court in the case of State of Madras Vs. V.G. Row, . In any event, he submitted that proviso to Sub-section (3) of Section 3 is ultra vires Article 14 for the additional reason that it has not been specified in the said Act specifically as to the cases in which the

said proviso was to be applied, so as to make the notification u/s 3(1) come into force with immediate effect.

(2) There is lack of legislative competency so far as the Act is concern-ed. It was submitted that the Act relates to "public order" and in view of Entry 1 of List II of the VIIth Schedule it was in the State List and only a State Legislature could enact a statute in respect of the same. The Parliament was not competent to legislate in respect of the matter.

(3) The notification u/s 3(1) read with Section 3(3) proviso was also challenged on the ground that it was ultra vires the Act. It was submitted that the grounds specified therein are not germane or relevant to the object of the Act. It does not attract Section 2(f) read with Section 2(g) of the Act. Further, the order was passed on state grounds. It was passed mala fide, in colourable exercise of power.

(4) The said notification has also been challenged on the ground that this is violative of the procedural reasonableness with punitive resulting action. No reason for applying the proviso to Sub-section (3) of Section 3 of the said Act has been specified therein.

(5) Sections 10 to 14 of Chapter III of the Act, which provide for punitive provisions are also ultra vires Articles 14 and 21 of the Constitution.

In support of his contentions he has relied on various decisions.

3.2.1. Mr. Malhotra appearing on behalf of the Union of India and the Attorney-General of India has drawn our attention to the relevant provisions of the Constitution of India and the said Act and has submitted that the Act was enacted to maintain the sovereignty and integrity of India. Mr. Malhotra has submitted that the decision in the State of Madras Vs. V.G. Row, , on which great reliance has been placed by Mr. Prasad, was clearly distinguishable. He has submitted that the provisions of the Act which is under consideration before us is not the same or similar to the provisions of the Act which was struck down by the Supreme Court. In the present Act there are adequate procedural safeguards. He has submitted that the substantive aspect of the reasonableness of the restrictions imposed by the Act cannot be challenged and has not been challenged and in this background the procedural reasonableness has to be examined. He has submitted that not only the provisions for notices to the Association concerned have been made in the Act but any member or office bearer of the Association has also got the right to make his submissions before the Tribunal.

3.2.2. On the question of legislative competency, Mr. Malhotra has drawn our attention to the amendments made to Article 19 of the Constitution by the 16th Constitutional Amendment in the year 1963 and pointed out that this Act was enacted after such amendment. The object of this Act was maintenance of sovereignty and integrity of India. It is not a law relating to "public order" as sought to be contended. Accordingly, in view of Entry 97 List I read with Article

248 of the Constitution, the Parliament, and only the Parliament, had the legislative competence to enact the said Act.

3.2.3. On the question of the validity of the notification issued u/s 3, he has submitted that this is a matter which has to be gone into by the Tribunal constituted u/s 4 of the Act at least at the first instance and the writ Court should not go into the merits of the same even if it relates to jurisdictional fact. The notification was issued in the background of the incidents of 6th of December, 1992 of which judicial notice can be taken. In this connection, he has also drawn our attention to the counter affidavit filed on behalf of the Union of India.

4. Before I deal with the various contentions raised before us, I shall first set out the relevant provisions of the Constitution of India, the impugned Act and the Rules framed thereunder.

4.1. Constitution

Article 14 Equality before law.-The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 19 Protection of certain rights regarding freedom of speech etc.-(1) All citizens shall have the right:

- (a) to freedom of speech and expression ;
- (b) to assemble peaceably and without arms ;
- (c) to form associations or unions ;
- (d) to move freely throughout the territory of India ;
- (e) to reside and settle in any part of the territory of India ; and
- (g) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said Sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in Sub-clause (b) of the said Clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said Sub-clause.

(4) Nothing in Sub-clause (c) of the said Clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law

imposing in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said Sub-clause.

(5) Nothing in Sub-clause (d) and (e) of the said Clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said Sub-clauses either in the interests of the general public or for the protection of the interest of any Scheduled Tribe.

(6) Nothing in Sub-clause (g) of the said Clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said Sub-clause, and, in particular, nothing in the said Sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to:

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Article 21. Protection of life and personal liberty, No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246. Subject-matter of laws made by Parliament and by the Legislatures of State.-(1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List III in the seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Article 248. Residuary powers of legislation.~(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the powers of making any law imposing a tax not mentioned in either of those Lists.

Seventh Schedule-List I-Union List.

Entry 97, -Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II-State List

(1) Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the Civil power.

4.2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967).

Section 2. Definitions.-In this Act, unless the context otherwise requires, -

(a) "association" means any combination or body of individuals ;

(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "secession" of a part of the territory of India from the Union includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

(e) "Tribunal" means the Tribunal constituted u/s 5 ;

(f) "Unlawful activity", in relation to an individual or association, means any action taken by such, individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), -

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession ;

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty or territorial integrity of India ;

(g) "unlawful association" means any association-

(i) which has for its object any unlawful activity, or which encourage or aids persons to undertake any unlawful activity, or of which the members undertake such activity ; or

(ii) which has for its object any activity which is punishable u/s 153A or Section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in Sub-clause (ii) shall apply to the State of Jammu and Kashmir;

(a) Substituted for Clause (g) by Criminal Law (Amendment) Act, 1972 (31 of 1972) Section 4 (14-6-1972).

CHAPTER II Unlawful Association

Section 3. Declaration of an association as unlawful.-(I) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this Sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under-Section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made u/s 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily news paper, having circulation in the State in which the principal office, if any of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service namely:

(a) by affixing a copy of the notification to some conspicuous part of the office, if any of the association ; or

(b) by serving a copy of the notification, where possible, on the principal office, bearers, if any of the association ; or

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of

the notification in the area in which the activities of the association are ordinarily carried on ; or

(d) in such other manner as may be prescribed.

Section 4. Reference to Tribunal.-(I) Where any association has been declared unlawful by a notification issued under Sub-section (1) of Section 3, the Central Government shall, within thirty days from the date of publication of the notification under the said Sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under Sub-section (1) the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof the Tribunal shall hold an enquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under subsection (1) of Section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under Sub-section (3) shall be published in the official Gazette."

Section 5. Tribunal.-(I) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Govern-

Provided that no person shall be so appointed unless he is a Judge of a High Court.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:

(a) the summoning and enforcing the attendance of any witness and examining him on oath ;

(b) the discovery and production of any document or other material object producible as evidence ;

(c) the reception of evidence on affidavits ;

(d) the requisitioning of any public record from any court or office ;

(e) the issuing of any commission for the examination of witnesses.

Section 6. Period of operation and cancellation notification, -(1) Subject to the provisions of Sub-section (2), a notification issued u/s 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made u/s 4, remain in force for a period of two years from the date on which the notification becomes effective.

(2) Notwithstanding anything contained in Sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued u/s 3 whether or not the declaration made therein has been confirmed by the Tribunal.

Section 9. Procedure to be followed in the disposal of applications under this Act - Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under Sub-section (3) of Section 4 or by a Court of the District Judge in disposing of any application under Sub-section (4) of Section 7 or Sub-section (8) of Section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908. for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.

CHAPTER III Offences and Penalties Section 10- XX XX XX Section 11- XX XX XX Section 12- XX XX XX Section 13- XX XX XX Section 14. Offences to be cognizable.-Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence punishable under this Act shall be cognizable.

CHAPTER IV Miscellaneous

Section 17. Prosecution for offences under this Act.-No Court shall take cognizance of any offence punishable under this Act except with the provision sanction of the Central Government or any officer by the Central Government in this behalf.

4.3. THE UNLAWFUL ACTIVITIES PREVENTION) RULES, 1968

Rule 3 Tribunal and District Judge to follow rules of evidence.-(I) In holding an inquiry under Sub-section (3) of Section 4 disposing of any application under Sub-section (4) of Section 7 or Sub-section (8) of Section 8, the Tribunal or the District Judge, as the case may be shall subject to the provisions of Sub-rule (2) follow as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (I of 1872).

(2) Notwithstanding anything contained in the Indian Evidence Act 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government

to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not__

(a) make such books of account or other documents a part of the records, of the proceedings before it ; or

(b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of amount or other documents by or to any person other than a party to the proceedings before it.

Rule 4, Additional modes of service of notification made u/s 3.-Without prejudice to the generality of the provisions of Sub-section (4) of Section 3, all or any of the following modes may also be followed in effecting service of a notification made under Sub-section (1) of Section 3, namely:

(a) by making an announcement over the radio from a local or nearest broadcasting station of the All India Radio, or

(b) by pasting the notification on the notice-board, of the office of the District Magistrate or the Tehsildar at the headquarters of the district or the tehsil, as the case may be, in which the principal office of the association affected is situated.

Rule 6, Service of notice issued by the Tribunal.-Every notice referred to in Sub-section (2) of Section 4 shall be served on the affected association in such manner as the Tribunal may think fit and all or any of the following modes may be followed by the Tribunal in effecting service of such notice, namely:

(a) by affixing a copy of the notice to some conspicuous part of the office, if any, of the association ; or

(b) by serving a copy of the notice, where possible, on the principal office bearers, if any of the association, by registered post or otherwise ; or

(c) by proclaiming by beat of drum or by means of loudspeakers the contents of the notification in the area in which the activities of the association are ordinarily carried on.

Rule 10, Issuing of summons.-The Tribunal or the District Judge, as the case may be, may issue summons to person whose attendant is required either to give evidence or to produce documents.

Rule 11. The mode of issuing the summons--Every summons shall be in duplicate and signed by the Registrar of the Tribunal or the District Judge, as the case may be, and sealed with the seal of the Tribunal or the Court of the District Judge, as the case may be, and it shall specify the time and place at which the person summoned is required to attend and also whether his attendance is required for the purposes of giving evidence or to produce, a document, or for both purposes.

Rule 12 Summons for the production of documents.-A. person may be summoned to produce of document, when being summoned to give evidence ; and any person summoned merely to produce document shall be deemed to

have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Rule 13. The mode of service of summons.-A summons may be served by sending it by registered post with acknowledge receipt due to the person for whom it is intended or any such other manner as may be directed by the Tribunal or the District Judge, as the case may be.

Rule 15. Other provisions of the Civil Procedure Code, 1908 to apply. The provisions of the Civil Procedure Code, 1908 (5 of 1908), shall, in so far they relate to any other matter with regard to the service of summons, as far as may be, apply to the service of any summons issued by any Tribunal or District Judge under the Act.

5. I shall first take up the various contentions raised regarding the constitutional validity of the different provisions of the said Act.

5.1. Before doing so, I shall refer to some general principles regarding interpretation of the Constitution. In this context I shall refer to some of the decisions of the Supreme Court.

(a) In a 5 Judges Bench decision of the Supreme Court in the case of *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, it was stated as follows:

The distance between societal realities and constitutional dilettantism of ten makes for dilemma of statutory validity and the arguments addressed in the present batch of certificated appeals and writ petitions evidence this forensic quandary. Likewise, the proximity between rural cumslum economics and social relief legislation makes for veering away from verbal obsessions in legal construction, A constitution is the documentation of the founding faith of a nation and the fundamental directions for their fulfilment. So much so, an organic, not pedantic, approach to interpretation, must guide the judicial process. The healing art of harmonious construction, not the tempting game of hair splitting, promotes the rhythm of the rule of law. These prologuic observations made, we proceed to deal with the common subject-matter of the appeals and the writ petitions.

Considerable eclectic study of English, Australian and American cases was displayed in the course of arguments, reverberating in Indian precedent dealing with Part XIII of the Constitution. Of course, we will refer to them with pertinent brevity, although we must administer to ourselves the caveat that the same words used in constitutional enactments of various nations may bear different connotations and when Courts are called upon to interpret them, they must acclimatise the expressions to the particular conditions prevailing in the country concerned. Different lands and lifestyles, different social milieus and thought ways, different subject-matters and human categories these vital variable influence statutory projects and interpretations, although lexicographic aids and understandings in alien jurisdictions may also be looked into for light, but not

beyond that.

(b) This question was also examined by a seven Judges Bench of the Supreme Court in the case of *Pathumma and Others Vs. State of Kerala and Others*, , wherein it was observed as follows:

Courts interpret the constitutional provisions against the social setting of the country : so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issue facing the people which the legislature in its wisdom, through beneficial legislation seeks to solve. The Judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people. this Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and the larger and broader interest of society, so that when such a right clashes with the larger interest of the country it must yield to the latter.

After referring to the observations made in the case of *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, , in this context, it was pointed out that the legislature is in the position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weaker sections of the society and for the improvement of the lot of poor people. The Court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. In this context it was pointed out that it is for this reason that the Courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same.

(c) The observations of the Supreme Court in *Jyoti Prasad's* case was as follows:

Where the legislature fulfils its purpose and enacts laws, which in its wisdom, to considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the legislature. In the constitution of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts, are not in these matters, functioning as it were in vacuum, but as parts of a society which is trying by enacted law to solve its problems and achieve a social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole.

5.2. Keeping the same in mind, I shall take up the various submissions made in support of the contention that the said Act generally and different provisions of

the said Act in particular, are violative of the fundamental rights guaranteed by the Constitution.

5.3. At first I shall take up the question whether Section 3(1) of the said Act read with Section 2 (f) and (g) thereof is ultra vires Article 19 (1) and (c) of the Constitution or whether they merely impose reasonable restrictions in respect of the exercise of such fundamental rights and, therefore, valid.

5.4. Before doing so I shall at the first instance consider the test of reasonableness and some general principles laid down by the Supreme Court regarding interpretation of the provisions relating to fundamental rights as envisaged in the Constitution.

5.5.1. On the question of the test of reasonableness as laid down in Article 19, we may point out that in the very case cited on behalf of the petitioners itself, that is, *State of Madras Vs. V.G. Row*, , the test which was laid down, is being followed basically with certain clarifications and additions for the last 40 years. The test laid down in the said decision was as follows:

...It is important in this context to bear in mind that the test of reasonableness, whenever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

5.5.2. We may only refer to some of the decisions of the Supreme Court where the aforesaid observation, were quoted and followed, *The State of West Bengal Vs. Subodh Gopal Bose and Others*, , *Virendra Vs. The State of Punjab and Another*, , *Abdul Hakim Quraishi and Others Vs. The State of Bihar*, , *LaLa Hari Chand Sarda Vs. Mizo District Council and Another*, , *Kanti Lal Babulal Vs. H.C. Patel*, , *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, , *Jagmohan Singh Vs. The State of U.P.*, , *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, , *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, , *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , *P. N. Kaushal v. Union of India AIR 1978 SC 1456* , *Excel Wear and Others Vs. Union*

of India (UOI) and Others, , Bachan Singh Vs. State of Punjab, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, .

5.5.3. While quoting with approval the aforesaid observations, in the following cases it was observed as follows:

(a) In the case of The State of Uttar Pradesh Vs. Kaushaliya and Others, , it was held:

...The reasonableness of a restriction depends upon the values of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar others. If in a particular locality the vice of prostitution is endemic degrading those he live by prostitution and demoralising others who come into contact with them the Legislature may have to impose severe restrictions on the right of the prostitute to move about and to live in a house of her choice. If the evil is rampant, it may also be necessary to provide for deporting the worst of them from the area of their operation. The magnitude of the evil and the urgency of the reform may require such drastic remedies. It cannot be gainsaid that the vice of prostitution is rampant in various parts of the country. There cannot be two views on the question of its control and regulation. One of the objects of the Act is to control the growing evil of prostitution in public places. u/s 20 of the Act the freedom of movement and residence are regulated, but, as we have stated earlier, an effective and safe judicial machinery is provided to carry out the objects of the Act. The said restrictions placed upon them are certainly in the interests of the general public and, as the imposition of the restrictions is done through a judicial process on the basis of a clearly disclosed policy, the said restrictions are clearly reasonable.

(b) In the case of Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, it was held:

...It is necessary to emphasise that the principle which underlies the structure of the rights guaranteed under Article 19 of the Constitution is the principle of balancing of the need for individual liberty with the need for social control in order that the freedoms guaranteed to the individual subserve the larger public interests. It would follow that the reasonableness of the restrictions imposed under the impugned Act would have to be judged by the magnitude of the evil which it is the purpose of the restraints to curb or eliminate.

(c) In the case of Pathumma and Others Vs. State of Kerala and Others, , a seven Judges Bench of the Supreme Court while following the said observations in the State of Madras v. V. G. Row, (supra) and after consideration of many other decisions, pointed out as follows:

There can be no doubt that Article 19 guarantees all the seven freedoms to the citizens of the country including the right to hold, acquire and dispose of property. It must, however, be remembered that Article 19 confers an "absolute and unconditional right which is subject only to reasonable restrictions to be placed by Parliament or the legislature in public interest.

Guidelines to determine the question of reasonableness of "restriction".

(1) that, in judging the reasonableness of the restrictions imposed by Clause (5) of Article 19, the Court has to bear in mind the Directive Principles of State Policy.

(2) that restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) that in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so to be of universal application and the same will vary from case to case.

(4) that a just balance has to be struck between the restriction imposed and the social control envisaged by Clause (6) of Article 19.

(5) that there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of" the citizen the object of the statute is really fulfilled or frustrated.

(6) that court must see the prevailing social values who needs are satisfied by restrictions meant to protect social welfare.

(7) that so far as the nature of reasonableness is concerned, it has to be viewed not only from the point of view of the citizen but the problem before legislature and the object which is sought to be achieved by the statute. In other words, the Courts must see whether the social control envisaged in Clause (6) of Article 19 is being effectuated by the restrictions imposed on the fundamental right.

(d) In the case of Laxmi Khandsari and Others Vs. State of U.P. and Others, , it was observed as follows:

It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under Clauses 2 to 6 of Article 19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the civil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. In is difficult to lay down any hard or fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand. It is manifest that in adopting the social control one of the primary

considerations which should weigh with the Court is that as the directive principles contained in the Constitution aim at the establishment of an egalitarian society so as to bring about a welfare State within the framework of the Constitution, these principles also should be kept in mind in judging the question as to whether or not the restrictions are reasonable. If the restrictions imposed appear to be consistent with the directive principles of State policy they would have to be upheld as the same would be in public interest and manifestly reasonable.

Further, restrictions may be partial complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential to the life of the community and the said restriction has been imposed for limited period in order to achieve the desired goal.

Another important consideration is that the restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and danger or evil sought to be avoided.

These are some of the general principles on the basis of which the quality of reasonableness of a particular restriction can be judged and have been lucidly adumbrated in *State of Madras Vs. V.G. Row*, . Another important test that has been laid down by this Court is that restrictions should not be excessive or arbitrary and the Court must examine the direct and immediate impact of the restrictions on the rights of the citizens and determine if the restrictions are in larger public interest while deciding the question that they contain the equality of reasonableness.

In such cases a doctrinaire approach should not be made but care should be taken to see that the real purpose which is sought to be achieved by restricting the rights of the citizens is subserved. This can be done only by examining the nature of the social control, the interest of the general public which is subserved by the restrictions, the existing circumstances which necessitated the imposition of the restrictions, the degree and urgency of the evil sought to be mitigated by the restrictions and the period during which the restrictions are to remain in force.

(e) In the case of *Sri Kalimata v. Union of India*, (1981) 2 SCR 950 , it was held:

The fundamental rights enshrined in Article 19 of the Constitution are not absolute and unqualified but are subject to reasonable restrictions which may be imposed under Sub-clauses (4) and (5) of Article 19. Whenever a complaint of violation of fundamental rights is made the Court has to determine whether or not restrictions imposed contain the quality of reasonableness. In assessing these factors a doctrinaire approach should not be made but the essential facts and realities of life have to be duly considered. Our Constitution aims at building up a Socialist State and the establishment of an egalitarian society and if

reasonable restrictions are placed on the fundamental rights in public interest, they can be fully justified by law.

(f) In the case of *Ram Narayan Agarwal and Others Vs. State of Uttar Pradesh and Others*, it was held:

With regard to the determination of the question whether a restriction imposed by a statutory provision on the fundamental right guaranteed under Article 19(1)(d) of the Constitution is reasonable or not there are now well established norms. It is settled by a long line of decisions of this Court that the restrictions must not be arbitrary or excessive in nature so as to be beyond the requirement of the general public. The Court should strike a just balance between freedom contained in Article 19(1)(d) of the Constitution and the social interest to be protected. No universal rule can be laid down in this regard. The changing social conditions, the value of human life, the prevailing social philosophy and all the surrounding circumstances should be taken into consideration. In a case like this whether public dues are to be collected, some amount of coercion is necessary to make a recalcitrant defaulter who has means to pay or who has fraudulently secreted his assets to secure them from being proceeded against to pay the dues.

(g) In the case of *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, it was pointed out:

...The Court must in considering the validity of the impugned prohibition on the carrying on of a business or a profession attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency, national or the necessity to maintain necessary supplies or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that a case for imposing restriction is made out or a less drastic restriction may ensure the object intended to be achieved.

Clause (6) of Article 19 protects a law which imposes in the interest of general public reasonable restrictions on the exercise of the right conferred by Sub-clause (g) of Clause (1) of Article 19. Obviously it is left to the court in case of a dispute to determine the reasonableness of the restrictions imposed by the law. In determining that question the court cannot proceed on a general notion of what is reasonable in the abstract or even on a condition of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by Sub-clause (g) is expressed in general language and if there had been no qualifying provision like Clause (6) the right so conferred would have been an absolute one. To the persons who have this right

any restriction will be irksome and may well be regarded by them as unreasonable. But the question cannot be decided on that basis. What the Court has to do is to consider whether the restrictions imposed are reasonable in the interest of general public.

(h) In the case of Charan Lal Sahu Vs. Union of India, , a five Judge's Bench of the Supreme Court observed as follows:

...And the test of reasonableness, wherever prescribed, should be applied to each individual Statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions of the time, should all enter into the judicial verdict. (The emphasis supplied). Chief Justice Patanjali Sastri reiterated that in evaluating such elusive factors and forming their own conception" of what reasonable, in the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision would play an important role.

In this case it was also pointed out as follows:

Hence, both the restrictions or limitations on the substantive and procedural rights in the impugned legislation will have to be judged from the point of view of the particular Statute in question. No abstract rule or standard or reasonableness can be applied. That question has to be judged having regard to the nature of the rights alleged to have been infringed in this case, the extent and urgency of the evil sought to be remedied, disproportionate imposition, prevailing conditions at the time, all these facts will have to be taken into consideration.

5.6. It is also well settled that the procedural provisions of a statute are also to be examined to ascertain the reasonableness of the statute. In this connection reference may be made to the following decisions.

(a) Kishan Chand Arora Vs. Commissioner of Police, Calcutta, the Supreme Court after referring to V. G. Row's case observed as follows:

There is no doubt that procedural provisions of a statute also enter into the verdict as to its reasonableness; but at the same time there can be no abstract or general principles which would govern the matter and each statute has to be examined in its own setting. It is undoubtedly correct that no provision has been made for giving a hearing to a person applying for a licence and the Commissioner has not to give reasons when refusing the licence, but it cannot be laid down as a general proposition that where in the case of licensing statute no provision for giving reasons for refusal the statute must be struck down as necessarily an unreasonable restriction on a fundamental right. No case has been cited before us which lays down as a general proposition.

(b) In the case of the State of Bihar Vs. Kamla Kant Misra and Others, it was

observed as follows:

As observed in *Dr. N.B. Khare Vs. The State of Delhi*, , and reiterated in *State of Madras Vs. V.G. Row*, , that in considering reasonableness of laws imposing restrictions on fundamental rights both substantive and procedural aspects of the law should be examined from the point of view of reasonableness and the test of reasonableness wherever prescribed should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. It is not possible to formulate an effective test which would enable the Court to pronounce any particular restriction to be reasonable or unreasonable per se. All the attendant circumstances must be taken into consideration and one cannot dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice.

(c) This was followed in the case of *Excel Wear and Others Vs. Union of India (UOI) and Others*, .

(d) This was also made clear in the case of *Charan Lal Sahu Vs. Union of India*, as follows:

...Hence, both the restrictions or limitations on the substantive and procedural rights in the impugned legislation will have to be judged from the point of view of the particular Statute in question. No abstract rule or standard of reasonableness can be applied. That question has to be judged having regard to the nature of the rights alleged to have been infringed in this case, the extent and urgency of the evil sought to be remedied, disproportionate imposition, prevailing conditions at the time, all these facts will have to be taken into consideration.

5.7. It is also well-settled that expression "restriction" used in Article 19(2) to 19(6) also includes "prohibition" depending on the nature of the case. The following decisions may be referred to in this connection ;

(a) In the case of *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, it was pointed out as follows:

...It is reasonable to think that the makers of the Constitution considered the work "restriction to be sufficiently wide to save laws "inconsistent" with Article 19(1), or "taking away the rights" conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the Clause. There can be no doubt, therefore, that they intended the word "restriction" to include cases of "prohibition" also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot, therefore, be accepted. It is undoubtedly correct, however, that when as in the present case, the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny of the Court.

(b) In the case of *Store of U. P. v. Kawhalya* AIR 1984 SC 416, the Supreme Court pointed out the magnitude of the evil and the urgency of the reform may require drastic remedies.

(c) In the case of *State of Maharashtra v. Himatbhai Narbheram Rao* : [1969]2SCR392, the Supreme Court made it clear that the power of the State to impose reasonable restrictions may extend to prohibiting acquisition, holding or disposal of a commodity if the commodity is likely to involve grave injury to the health or welfare of the people. This was with reference to Article 19(1)(g)

(d) In the case of *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , the Supreme Court pointed out that the State has the power to prohibit trades which are injurious to the health and welfare of the public.

(e) In the case of *Laxmi Khandsari and Others Vs. State of U.P. and Others*, , it was observed by the Supreme Court that the restrictions may be partial, complete, permanent or Temporary but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential to the life of the community and the said restriction has been imposed for a limited period in order to achieve the desired goal. It was further pointed out that another important consideration is that the restriction must be in public interest and are imposed by striking a just balance between the deprecation of right and danger or evil sought to be avoided.

(f) In the case of *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, , the Supreme Court pointed out that the rights conferred by Part III are subject to reasonable restrictions and the Constitution provides that enforcement of some of them may, in stated uncommon circumstances, be suspended. The Supreme Court while, referring to same well established principles in the construction of the constitutional provisions pointed out, inter alia, that imposition of restriction on the exercise of fundamental right may be in the form of control or prohibition. I have already quoted some of the observations made in this regard in the said judgment.

5.8. It is to be noticed that in Articles 19(2) to 19(6) while allowing reasonable restrictions, the expression used is "in the interest of". This expression was considered in the case of *Ramji Lal Modi Vs. The State of U.P.*, wherein it was pointed out that the expression used in these Articles is "in the interest of" and not "for the maintenance of". It was held that the expression "in the interest of" makes the ambit of the protection very wide, A law may not have been designed to directly maintain public order and yet it may have been enacted in the interest of public order or the general public, as the case may be. This was followed in the case of *Virendra Vs. The State of Punjab and Another*, .

5.9. So far as the burden of proving reasonableness is concerned, in the case of *State of Madras v. V. G. Mow supra* as followed in subsequent judgments, it was

pointed out that the burden is on the State to show that the restriction imposed by the impugned statute is reasonable and in public interest. However, the extent and the manner of discharges of the burden necessarily depends on the subject matter of the legislation, the nature of the inquiry, and the scope and limits of judicial review. Reference may be made in this connection to *Bachan Singh Vs. State of Punjab*, .

5.10. In determining the constitutional validity of a measure or a provision therein regard must be had to the real effect and impact thereof on the fundamental right. Reference may be made in this connection to the 7 Judges Bench decision in *Re : Kerala Education Bill 1957* AIR 1958 SC 956 at p. 981.

5.11. In this context another aspect of the matter may be pointed out. In the case of *Babulal Parate Vs. State of Maharashtra and Others*, , on the question of validity of Section 144, Cr. P. C. a contention was raised that in order to enable the State to avail of the provisions of Clauses (2) to (6) of Article 19 a special law has to be passed. While rejecting this contention it was made clear that Clauses (2) to (6) of Article 19 do not require the making of a law solely for the purpose of placing the restrictions mentioned in them.

5.12. Another aspect of the matter is that while the Courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of legislative power. It has to be assumed that the legislative discretion is properly exercised. The motives of the legislature in passing a statute is beyond the scrutiny of Courts. Nor can the courts examine whether the legislature had applied its mind to the provisions of a statute before passing it. The property, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the Courts. No legislation can be challenged on the ground of *made fide*. Reference may be made in this connection to *T Venkata Reddy v. State of Andhra Pradesh* AIR 1955 SC 724.

5.13. In this context another aspect has to be kept in mind. In Chapter III of the Constitution, wherein; several fundamental rights have been provided for, some of them are conferred on all persons, natural and artificial, which includes the citizen but some of them are conferred only on the citizen and not on "any person". In the case of *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, it was observed as follows:

A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising from its Articles of Association, measure 1 by a sum of money for the purpose of liability, and by a share in the profit. Again a director of a company is merely its agent for the purpose of management. The holder of a deposit account in a Company is its creditor ; he is not the owner of any specific fund lying with the Company. A shareholder, a depositor or a director may not, therefore, be entitled

to move a petition for infringement of the rights of the company, unless by the action impugned by him, his rights are also infringed.

By a petition praying for a writ against infringement of fundamental rights except in a case where the petition is for a writ of habeas corpus and probably for infringement of the guarantees under Articles 17, 23 and 24, the petitioner may seek relief in respect of his own rights and not of others. The shareholder of a Company, it is true, is not the owner of its assets ; he has merely a right to participate in the profit of the Company subject to the contract contained in Articles of Association. But on that account the petitions will not fail. A measure executive or legislative may impair the rights of the Company alone, and not. of its shareholders ; it may impair the rights of the shareholders and not of the Company ; it may impair the rights of the shareholders as well as of the Company. Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired, if that action impairs the rights of the company as well. The test in determining whether the shareholder's right is impaired is not formed ; it is essentially qualitative; if the State action impairs the right of the shareholders as well as of the Company, the Court will not, concentration merely upon the technical operation of the action, deny itself jurisdiction to grant relief.

6. In the light of the general principles as set out above, I shall take up the question as to whether Section 3(1) read with Section 2 (f) and (g) or the proviso to Section 3(3) or Sections 10 to 14 of the said Act are ultra vires Article 19(1)(a) or 19(1)(c) of the Constitution.

7. I shall first consider the question as to whether Section 3(1) of the said Act, read with Section 2 (f) and (g) thereof, are violative of the fundamental rights guaranteed by Article 19(1)(a) or (c) of the Constitution. 7.1.1. As pointed out earlier, during his reply Mr. Prasad has made it clear that he is raising the question of procedural reasonableness only in this connection. However, I shall have to consider the question of substantive reasonableness also to some extent, before considering the question of procedural reasonableness. Consideration of one, cannot be totally isolated from the other. While considering the question of procedural reasonableness (the question of substantive reasonableness of the provisions should also be kept in mind.

7.1.2. Prior to the 16th Constitutional Amendment introduced in the year 1963, Clauses (2), (3) and (4) of Article 19 did not contain the expression "the sovereignty and integrity of India". This was inserted for the first time by the Constitution (Sixteenth Amendment) Act, 1963 whereby Clauses (2), (3) and (4) of Article 19 were amended by inclusion therein the expression "the maintenance of sovereignty and integrity of Indian" as a ground of reasonable restriction of the fundamental rights guaranteed by Article 19(1)(a) to (c) of the Constitution. This amendment was introduced in the year 1963 pursuant to the acceptance by the Government of an unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council. The

Act impugned herein was enacted thereafter in the year 1967. The preamble of the Act states that this was enacted to provide for more effective prevention of certain unlawful activities of individuals and associations and matters connected therewith. The object of the Bill introduced, as it would appear from the Objects and Reasons, was to make powers available for dealing with activities directed against the integrity and sovereignty of India. I have considered the different aspects of the principles regarding interpretation of the Constitution with particular reference to Article 19. I have set out hereinabove the object and relevant provisions of the said Act. Having regard to the same, particularly Section 2(b) which defines "secession of a part of the territory, of India", 2(d) which defines "secession of a part of the territory of India from the Union" Section 2(f) which defines "unlawful activities" and Section 2(g) (i) and (ii) which defines "unlawful association", which I have quoted in details, I have no hesitation in holding that Section 3(1) of the said Act read with Section 2(f) and 2(g) thereof cannot be challenged on the ground that restrictions imposed are unreasonable from substantive point of view. In my opinion, such provisions which imposes such restrictions are in the interest of sovereignty and integrity of India. Fundamental rights guaranteed under Article 19 (a) and (c) are no doubt very cherished rights ; but the rights of an individual must be subject to the greater right of the public at large. The rights conferred by Article 19 are conferred only on citizen and it is not available to all or any person or association of persons who are not citizens. This personal right of the citizen must be subject to the interest of the public at large. As pointed in the case of *Pittman and Ors. v. State of Kerala* and *Ors. (supra)* the Courts must try to strike a just balance between the fundamental rights and the larger and broader interest of society so that when such a right clashes with the larger interest of the country, it must yield to the latter. Similar observations were made in *Harakchand v. Union of India (supra)*, *Laxmi Khandsari v. State of U.P. (supra)*, and *Municipal Corporation v. Jan Mohammad (supra)*.

7.1.3. In my opinion, Section 3(1) read with Section 2(f) and 2(g) of the said Act, which enables the Central Government to declare an association as an unlawful association under the circumstances referred to therein cannot be said to have imposed any unreasonable restriction, on the substantive stand point, so far as the fundamental rights guaranteed by Article 19(1) (a) and (c) of the Constitution are concerned.

7.2.1. So far as the procedural stand point of the reasonableness is concerned, as pointed out earlier, the sheet anchor of the petitioners case was *V.G. Row's* case. Accordingly, I shall consider the said decision in detail in order to ascertain firstly the reasons for striking down the impugned provisions therein and whether the same or similar infirmities exist in the present Act.

7.2.2. In the case of *State of Madras Vs. V.G. Row*, , the appeal before the Supreme Court was from an order of the High Court of Madras adjudging Section 15(2)(b) of the Indian Criminal Law (Amendment) Act, 1908, as amended by the

Indian Criminal Law Amendment (Madras) Act, 1950, as unconstitutional and void, and quashing Government Order No. 1517|dated 10th March, 1950, whereby the State Government declared a Society called the People's Education Society an unlawful association.

The respondent, who was the general secretary of the Society, applied to the High Court under Article 226 of the Constitution complaining that the impugned Act and the order referred to above infringed the fundamental right conferred on him by Article 19(1)(c) of the Constitution to form associations or unions and seeking appropriate reliefs. A Full Bench of the High Court, consisting of three Hon"ble Judges, allowed the application and granted a certificate under Article 132. In that case the Government order was to the following effect:

Whereas in the opinion of the State Government, the Association known as the People's Education Society, Madras, has for its object interference with the administration of the law and the maintenance of law and order, and constitutes a danger to the public peace ;

Now, therefore. His Excellency the Governor of Madras, in exercise of the powers conferred by Section 16 of the Indian Criminal Law Amendment Act, 1908 (Central Act 14 of 1908) hereby declares the said association to be an unlawful association within the meaning of the said Act.

It has to be pointed out that in that case no copy of the order was served on the respondent or any other office-bearer of the society but it was notified in the official Gazette as required by the said Act.

As the Madras Amendment Act was passed on 12-8-1950 during, the pendency of the petition, which was taken up for hearing on 21-8-1950, the issues involved were decided to be determined in the light of the original Act as amended.

Before the amendment of the Madras Act, the material provisions were as follows:

15. In this Part:

(1) "association" means any combination or body of persons whether the same be known by any distinctive name or not; and

(2) "unlawful association means an association : (a) which encourage or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or (b) which has been declared to be unlawful by the Provincial Government under the powers hereby conferred.

16. If the Provincial Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Provincial Government may by notification in official Gazette declare such association to be unlawful.

The amending Act substituted for Clause (b) in Section 15(2) the following

Clause:

(b) which has been declared by the State Government by notification in the official Gazette to be unlawful on the ground (to be specified in the notification) that such association:

(i) constitutes a danger to the public peace etc.

(ii) has interfered or interferes, with the maintenance of public order or has such interference for its object, or

(iii) has interfered or interferes with the administration of the law, or has such interference for its object.

For old Section, 16 Section 16 and 16-A were substituted as follows:

16) (1) A notification issued under Clause (b) of Sub-section (2) of Section 15 in respect of any association shall:

(a) specify the ground on which it is issued, the reasons for its issue, and such other particulars, if any, as may have a bearing on the necessity thereof; and

(b) fix a reasonable period for any office bearer or member of the association or any other person interested to make a representation to the State Government in respect of the issue of the notification.

(2) Nothing in Sub-section (1) shall require the State Government to disclose any facts which it considers to be against the public interest to disclose.

Under Section 16-A the Government was required, after the expiry of the time fixed, in the notification for making representations, to place before an Advisory Board constituted by it a copy of the notification and of the representations, if any, received before such expiry and the Board was to consider the materials placed before it, after calling for such further information as it might deem necessary from the State Government or from any office bearer or member of the association concerned or any other person, and submit its report to the Government. If it was found by the Board that there was no sufficient cause for the issue of the notification in respect of the association concerned, the Government was required to cancel the notification.

By Section 6 of the amending Act notifications already issued and not cancelled before the amendment were to have effect as if they had been issued u/s 15(2) (h), as amended, and it was provided in such cases a supplementary notification should also be issued as required u/s 16(1) (a) and (b) as amended and thereafter the procedure provided by the new Section 16-A should be followed. It was under this provision that the validity of the notification issued on the 10th March, 1950 under old Section 16 fell to be considered in the light of the provisions of the amended Act when the petition came up for hearing in the High Court on 7.1.8-1950.

After consideration of the relevant provisions of the said Act, the Supreme Court

pointed out that it is on this basis that the question had to be determined as to whether Section 15(2)(b), as amended, fell within the limits of constitutionally permissible legislative abridgement of the fundamental right conferred on the citizen by Article 19(1)(c). The Supreme Court pointed out that these limits were defined in Clause (4) of the same Article. It is to be remembered that Clause (4), which was the subject matter of consideration of the Supreme Court, was Clause (4) as it was before the 16th Constitutional Amendment. Before the Supreme Court it was not disputed that the restrictions in question were imposed, "in the interest of public order", but the question involved was whether they were "reasonable" restrictions within the meaning of Article 19(4) ?

As pointed out by the Supreme Court, the learned Judges of the High Court unanimously held that the restrictions u/s 15 (2)(b) were not reasonable on the ground of (1) the inadequacy of the publication of the notification, (2) the omission to fix a time limit for the Government sending the papers to the Advisory Board or for the latter to make its report, no safeguards being provided against the Government enforcing the penalties in the meantime, and (3) the denial to the aggrieved person of the right to appear either in person or by pleader before the Advisory Board to task his representation. In addition to these grounds one of the learned Judges of the High Court held that the impugned Act offended against Article 14 of the Constitution in that there was no reasonable basis for the differentiation in treatment between the two classes of unlawful associations mentioned in Section 15(2)(a) and (b). The other learned Judges of the High Court did not, however, agree with this view. Vishvanath Sastri, J. one of the learned Judges of the High Court, further held that the provisions for forfeiture of property contained in the impugned Act were void as they had no reasonable relation to the maintenance of public order. The other two Judges of the High Court expressed no opinion on this point. It is to be pointed out that while agreeing with the conclusion of the learned Judges of the High Court that Section 15(2)(b) was unconstitutional and void, the Supreme Court expressed the opinion that their decision could be rested on a broader and more fundamental ground. In this context, after laying down the test of reasonableness, which I have quoted hereinabove, the Supreme Court held that upon giving due weight to all the considerations indicated in the test laid down, "Section 15(2)(b) could not be upheld as falling within the limits of authorised restrictions on the right conferred by Article 19(1)(c). In this context it was observed as follows:

The right to form associations or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields that the vesting of authority in the executive Government to impose restrictions on such right, without following the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a Judicial enquiry, is a strong element, which, in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed by Section 15(2)(b) on the exercise of the fundamental right under Article 19(1)(c) for, no

summary and what is bound to be a largely sided review by an Advisory Board, even where its verdict is binding on the executive Government, can be a substitute for a judicial enquiry. The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown into the review the materials on which the Government seeks to override a basic freedom granted to the citizen, may be viewed as reasonable only in a very exceptional circumstances and within the narrowest limits and cannot receive judicial approval as a general pattern of reasonable restriction on fundamental rights.

After considering and distinguishing the two decisions in the case of *A.K. Gopalan Vs. The State of Madras*, and *Dr. Khare's case* (1950) SCR 519, the Supreme Court made a distinction between the case of preventive detention and unlawful association both and other cases and observed as follows:

Besides, both involve as dement of emergency requiring prompt steps to be taken to prevent apprehended danger to public tranquility and authority has to be vested in the Government and its Officers to take appropriate action on their own responsibility. These features are, however, absent in the grounds on which the Government is authorised, u/s 15(2)(b), to declare associations unlawful. These grounds, taken by themselves, are tactual and anticipatory or based on suspicion. An association is allowed to be declared unlawful because it "constitutes" a danger or "has interfered or interfere" with the maintenance of public order or "has such interference for its object" etc. The factual" existence of these grounds is amenable to objective determination by the Court, quite as much as the grounds mentioned in Clause (a) of Sub-section (2) of Section 15, as to which the Attorney General conceded that it would be incumbent on the Govt. to establish as a fact, that the association which it alleged to be unlawful "encouraged" or "aided" persons to commit acts of violence, etc. We are unable to discover any reasonableness in the claim of the Government in seeking, by its mere declaration, to shut out judicial enquiry into the underlying facts under Clause (b). Secondly, the East Punjab Public Safety Act was a temporary enactment which was to be in force only for a year, and any order made thereunder was to expire at the termination of the Act. What may be regarded as a reasonable restriction imposed under such a statute will sot necessarily be considered reasonable under the impugned Act, as the latter is a permanent measure, and any declaration made thereunder would continue in operation for an indefinite period until the Government should think fit to cancel it. Thirdly, while, no doubt, the Advisory Board procedure under the impugned Act provides a better safeguard than the one under the East Punjab public Safety Act, under which the report of such body is not binding on the Government, the impugned Act suffers from a far more serious defect in the absence of any provision for adequate communication of any provision for adequate communication of the Government notification u/s 15(2)(b) to the association and its members or officebearers. The Government has to fix a reasonable period in the notification for the aggrieved person to make a representation to the Government. But, as stated already, no personal service on any office bearer or member of the

association concerned or service by affixture at the office, if any, or such association is prescribed Nor is any other mode of proclamation of the notification at the place where such association carries on its activities provided for. Publication in the official Gazette, whose publicity value is by no means great, may not reach the members of the association declared unlawful, and it" the time fixed expired before they knew of such declaration, their right of making a representation which is the only opportunity of presenting their case, would be lost. Yet, the consequences to the members, which the notification involves are most serious, for, their very membership thereafter is made an offence u/s 17.

7.2.3. In my opinion, the lacunae in the Act for which it was struck down by the Supreme Court in V. G. Row's case, is absent in the present case. For the time being, I shall consider this aspect of the matter without taking into consideration the proviso to Sub-section (3) of Section 3. I shall take into consideration the question of the proviso to Sub-section (3) of Section 3 separately subsequently. In my opinion, the reasons given for striking down the Act by the Supreme Court are not applicable in respect of the Act which is challenged before us for the following, amongst other, reasons. Firstly, in the present Act, unlike the Act in the V. G. Row's case, there is no shutting out of a judicial enquiry. Secondly, though the present Act is a permanent one, the declaration made u/s 3(1) does not remain operative for any indefinite period as it was in respect of the Act in V. G. Row's case. Thirdly, in the said Act, unlike the Act before the Supreme Court, there are provisions for adequate communication of the Government's notification u/s 3(1) to the association and its members and office bearers, there is no absence of personal service or service by affixation ; there is no absence of proclamation of the notification at the place where such association carries on its activities. I shall deal with this aspect of the matter in details.

7.2.4. Under Sub-section (2) of Section 3, such notification under Sub-section (1) of Section 3 must specify the grounds. Under Sub-section (14) of Section 3, every such notification u/s 3(1) shall, in addition to the publication in the Official Gazette, be published in not less than one daily newspapers having circulation in the State in which the principal office, if any, of the Association concerned is situated. Over and above the same, such notification has also to be served on such association in the manner specified in the Sub-section (4) of Section 3 itself, which includes affixation of a copy in some conspicuous part of the office of the association, service copies on the principal office bearers of the association concerned ; by proclaiming the contents of the notification by beat of drum or by means of loud speaker in the area in which the activities of the association are ordinarily carried on or in such manner as may be prescribed by the Rules. In this connection reference may also be made to the relevant Rules framed under the Act which I have quoted hereinabove particularly Rule 4 which provides for additional modes of service of such notification. A notification u/s 3(1) as published in the Official Gazette, does not come into effect (where proviso to Section 3(3) is not attached, which I shall consider later), until and unless the Tribunal constituted u/s 5 of the said Act confirms the declaration made in the

notification u/s 3. Such notification u/s 3(1) has to be referred to the Tribunal within 30 years for adjudication whether or not there is sufficient cause for declaring the association unlawful, Under Sub-section (2) of Section 4, the Tribunal has to, on receipt of a reference u/s 4(i), call upon the association concerned by notice in writing to show cause why the said association be not declared unlawful. Every notice referred to under Sub-section (2) of Section 4 shall be served on the affected association in the manner provided in Rule 6 of the Rules which I have quoted in details hereinabove. Under Sub-section (3) of Section 4 there is also a provision for representation before the Tribunal by the office bearers and the members of the association. As provided in Sub-section (3) of Section 3 the decision has to be taken by the Tribunal as expeditiously as possible and in any case within a period of 6 months from the date of the issue of the notification under Sub-section (1) of Section 3. Under Sub-section (6) of Section 5 the Tribunal shall, for the purpose of making such enquiry, have the same power as vested in the Civil Court, as specified therein. Under Sub-section (7) of Section 5 any proceeding before the Tribunal shall be deemed to be judicial proceeding within the meaning of the Indian Penal Code and the Tribunal shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXXV of the Criminal Procedure Code. u/s 9 of the said Act the procedure to be followed by the Tribunal in holding any enquiry under Sub-section (3) of Section 4, amongst others, shall/ so far as may be, the procedure laid down in the Code of Civil Procedure: Further Rule 3 of the said Rules provide that in holding an inquiry under Sub-section (3) of Section 4, amongst others, the Tribunal shall follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act. Rules 10, 11, 12, 13 and 15 of the Rules confer power upon the Tribunal to issue summons for giving evidence or production of documents. One important aspect of the matter is that by virtue of the proviso to Sub-section (1) of Section 5 of the Act, no person shall be appointed as a Tribunal under the said Act, unless he is a Judge (and not merely a retired Judge) of a High Court. It is to be further noticed that though in a sense it is a complete prohibition for the time being but it is not in the nature of permanent prohibition. In view of Section 6(1), a notification u/s 3, even if confirmed by the Tribunal, remains in force only for a period of two years from the date on which the notification becomes effective. This is subject to the provisions of Sub-section (2) of Section 6 which provides that, whether or not the notification is confirmed by the Tribunal, the Central Government may, either on its own motion or on the application of any person aggrieved cancel such notification at any time) e.

7.2.5. Accordingly, in my opinion, Section 3(1) of the said Act cannot be struck down for the reason for which the Act before the Supreme Court was struck down in V. G. Row's case or for any other reason. Apart from the consideration of the V. G. Row's case, in my opinion Section 3(1) read with Section 3(2) (f) and (g) of the Act do not suffer from any procedural unreasonableness.

8. The next question is, even if Section 3(1) cannot be challenged as unconstitutional, whether the proviso to Section 3(3), can be challenged on the

ground that it is violative of the fundamental rights guaranteed by Article 19 of the Constitution on the ground of procedural unreasonableness.

8.1. This proviso makes an exception to the general provisions which provide that a notification u/s 1(1) shall not come into effect until and unless it is confirmed u/s 4 by the Tribunal constituted u/s 5 of the Act.

8.2. In my opinion Section 3(1) deals with ordinary circumstances whereas the proviso to Sub-section (3) of Section 3 deals with extraordinary circumstances. In ordinary circumstances if the Section 3(1) of notification is made effective after confirmation by the Tribunal, the object and purpose of the Act may serve. However, there may be some extraordinary situation ; a situation of urgency ; a situation of emergency. There may be circumstances where it becomes absolutely necessary to take immediate action in the matter. In this context, I may point out that the notification u/s 3(1) in the present case is preceded by the incidents of 6th December, 1992 and its aftermath, of which we can take judicial notice. Reference may also be made in this connection to the counter affidavit filed on behalf of the Union of India referred to in details hereinafter. Unless some provision is made for dealing with situations arising out of an extraordinary circumstance or to deal with a case of emergency, the whole object and purpose of the said Act may become infructuous. As it is made clear in the proviso itself, the proviso is not attracted unless the Central Government is of the opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect. Only in such cases that the notification u/s 3(1) can be made to come into effect from the date of its publication in the official Gazette. However, as provided in the proviso itself, even in such cases, the necessity of confirmation by the Tribunal of the declaration u/s 3(1) is not dispensed with. If the notification u/s 3(1) cannot under any circumstances be given effect to unless certain formalities regarding enquiry by the Tribunal is complied with, it might serve the interest of a particular "unlawful" association or the office-bearers or the individual members of the association concerned, but it will certainly not serve the interest of the general public or the interest of the sovereignty or integrity of India even when the question of urgency or emergency is involved and even if ultimately it is confirmed by the Tribunal. This is an Act for preservation of the sovereignty and integrity of India. It is in the interest of the sovereignty and integrity of India. A situation might arise where the sovereignty and integrity of India is seriously threatened. In such a case, unless some immediate action is taken, the whole purpose of the Act will be made infructuous. By the time the confirmation is made by the Tribunal, the country might suffer irreparable damage so far as its sovereignty and/or integrity is concerned and no useful purpose may then be served in enforcing the notification issued u/s 3(1) of the Act if the confirmation of the Tribunal is to be awaited before any action can be taken. Such action includes action to be taken under Sections 8 and 9 of the Act quoted above. Such action includes prosecution for offences specified in Chapter III of the Act.

8.3. As already pointed out, the test of reasonable cannot be put in a straight jacket. It would depend on the facts and circumstances of each case.

8.4. As pointed out in *State of Madras v. V. O. Row*, (supra) itself, extent and urgency of the evil sought to be remedied is one of the factors to be taken into consideration in ascertaining the reasonableness. Similar observations were made in the case of *State of V. P. v. Kaushailya suprali and Laxmi Khandsari v. State of V.P.* (supra). This proviso is to be applied in exceptional situation as contemplated in the case of *Municipal Corporation v. Jan Mohammad*, (supra).

8.5. Accordingly, in my opinion, the proviso to Sub-section (3) of Section 3 of the said Act cannot also be struck down on the ground that it imposes unreasonable restrictions on the fundamental right of a citizen from the procedural aspect.

9. The next question is whether the said Section 3(1) or proviso to Sub-section (3) of Section 3 is arbitrary and ultra vires on the ground that it violates the fundamental rights guaranteed by Article 14 of the Constitution.

9.1. The principles underlying this Article are now well-settled.

(a) In the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , where, after consideration of various judgments, it was observed as follows:

A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Article 14 of the Constitution may be placed in one or other of the following given classes:

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such. differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or things. Where the Court finds that the classification satisfies the tests, the Court uphold the validity of the law.

(ii) A statute may direct its provisions against one individual person or things or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of corn-men Knowledge, In such a case the court will strike down the law as an instance of naked discrimination.

(iii) A statute may not make any classification of the persons or things for the

purpose of applying its provisions but may leave it to the direction of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection of classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law.

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification ; the Court will uphold the law as constitutional.

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, e.g. in *Kathi Raning Rawat v. The State of Saurashtra* (E) (supra) that in such a case the executive action but not the statute should be condemned as unconstitutional.

(b) In the case of *The State of Bombay Vs. Parshottam Kanaiyalal* , it was pointed out as follows ;

(1) If the statute itself or the rule made under it applies unequally to persons or things similarly situated, it would be an instance of a direct violation of the constitutional guarantee and the provision of the statute or the rule in question would have to be struck down.

(2) The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the Legislature vests a discretion in an authority, be-, it the Government or an administrative

official acting either as an executive officer or even a quasi judicial capacity by a legislation which does not lay down any policy, or disclose any tangible or intelligible purpose, thus, clothing the authority with unguided and arbitrary powers enabling it to discriminate.

In such circumstances the very provision of the law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded by Article 14.

(3) The above rule would not apply to cases where the Legislature lays down the policy and indicates the rule or the line of action which should serve as a guidance to the authority. Where such guidance is expressed in the statutory provision conferring the power, no question of violation of Article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applies to persons or things similarly situated. Even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of violation of Article 14, but as really being beyond its power.

(4) It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself.

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits.

In the circumstances indicated under the fourth head, just as in the third, the law enacted would be valid being neither a case of excessive delegation or application of legislative authority viewed from one aspect, nor open to objection on the ground of violation of Article 14 as authorising or permitting discriminatory treatment of persons similarly situated. The particular executive or quasi judicial act would, however, be open to challenge on the ground not so much that it is in violation of the equal protection of the laws guaranteed by Article 14 because ex concerns that was not permitted by the statute but on the ground of the same being ultra vires as not being sanctioned or authorised by the enactment itself. The situation in such cases would be parallel to the test to be applied for determining the validity of rules made under statute which enable the rule making authority to enact subsidiary legisla-"to carry out the purposes of the Act." The criteria to be applied to determine the validity of such rules could be appropriately applied to determine the validity of the action under the provisions like the one dealt with under the last two heads.

9.2. Applying the test laid down, in my opinion, there is ample guideline laid down so far as the power conferred by Section 3(1) and the proviso to Sub-

section (3) of the said Act are concerned. Section 3(1) as such cannot be challenged as violative of Article 14. The Statute has laid down the guideline sufficiently ; the object is very clear. The exercise of power by the Central Government is to be guided by the same. There is no delegation of arbitrary or uncontrolled power to the Government to enable it to discriminate between persons or things similarly situate. It cannot be said that discrimination is inherent in the Statute itself. Which making the selection or classifications if the Government does not proceed or follow such policy or principle, if the Government acts outside the scope of the Act, the particular notification may be challenged but for that reason alone the provisions of the Act itself cannot be struck down as unconditional. Mere possibility of an abuse of power is not sufficient for striking down the conferment of the power as such. As it is well-settled, it is not necessary that the rules as to equal protection, the rules for the guidance of the designated authority, should be laid down in express terms in the statutory provision itself. In the present case the Objects and Reasons of the Bill, the preamble read in the light of the Bill, the preamble read in the light of the surrounding circumstances which necessitated the legislation in conjunction with the well, known facts of which the Courts may take judicial notice, it is clear that there is a guiding policy and that there is no conferment of any arbitrary or naked power. Accordingly, there is no merit in this contention and it is rejected.

9.3. In the light of the same, in my opinion, even the proviso to Sub-section (3) of Section 3 cannot be challenged on the ground that the same violates the provisions of Article 14. At already discussed hereinabove it is made clear from the said proviso itself, the cases where the said proviso can be taken resort to. Where such extraordinary power can be exercised, has been indicated in the proviso itself. In this connection reference may also be made to the Object and purpose of the said Act. The guideline has been laid down in the Act itself. It cannot be said to be arbitrary or discriminatory or in any manner violative of Article 14. In the facts of a case, there may be an urgent necessity of applying a notification immediately in the greater public interest. The provisions of an Act, which confer such power, cannot be challenged, though, if in a given case, while exercising such power, there is any abuse of such power, the exercise of such power can be challenged. Reference may be made in this connection to Pannalal Binraj Vs. Union of India (UOI), and Virendra Vs. The State of Punjab and Another, .

9.4. Accordingly, there is no merit in this contention and the same is rejected.

10. The next question is whether Section 3(1) or Section 3(3) proviso is ultra vires Article 21.

10.1. It is no doubt true that so far as the relationship between Articles 14, 19 and 21 is concerned, the correct position in law is that even if there is a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21, this has to stand the test of one or more of the fundamental rights conferred under Article 14 or 19, which may be

applicable in a given situation This position was made clear in the cases of Sambhu Nath Sarkar Vs. The State of West Bengal and Others, , Haradhan Saha Vs. The State of West Bengal and Others, and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . I have already held that Section 3(1) and the proviso to Section 3(3) are not violative of the provisions of Articles 14 or 19 of the Constitution. Under these circumstances there is no additional ground to hold that the said sections are ultra vires Article 21, though they are not ultra vires Articles 14 and 19 of the Constitution.

10.2. Accordingly, there is no merit in this contention and the same is rejected

11. The next question is the question of constitutionality of the provisions of Sections 10 to 14 of the said Act.

11.1. In this context it is to be pointed out that they come under Chapter III which provides for "offences and penalties". This is in order to achieve the purpose and object of the Act. I have held that the main provisions are not violative of Article 14 or 19 or 21 of the Constitution. When such an Act is enacted, some provisions regarding offences and penalties must be provided for without which no purpose would be served by merely issuing a notification u/s 3(1) of the said Act, even if it is issued in conjunction with the proviso to Section 3(3). The provisions of Sections 10 to 14, which are merely corollary thereto, cannot also be challenged on the alleged ground of violation of any violation of any such fundamental right. In this context I may also point out that in view of Section 14 of the said Act the offence punishable under this Act shall be cognizable. Further, u/s 17 of the Act, no Court shall take cognizance of any offence under the said Act except with the previous sanction of the Central Government or any officer authorised by the Central Government. Accordingly, there is sufficient safeguard.

11.2. Accordingly, I hold that Sections 10 to 14 of the said Act are not violative of the provisions of Article 14 or 19 or 21 of the Constitution.

12. I shall now take up the question of legislative competency of the Parliament to enact the said Act.

12.1. At the outset, I must point out certain principles to be followed regarding interpretation of legislative lists.

(a) In the case of The State of Rajasthan Vs. G. Chawla and Dr. Pohumal, , a 5 Judges Bench of the Supreme Court observed as follows:

...It must be held as settled that the Legislature in our Country possesses plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the List conferring respectively powers on them. These Entries it has been ruled on many an occasion, though meant to be mutually exclusive are sometime not really so. They occasionally overlap, and are to be regarded as enumeration simple of broad categories. Where in an

organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within an Entry of Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding.

(b) In this context reference was made to the observation made by the Federal Court in AIR 1941 47 (Federal Court) to the following effect;

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a larger number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance" or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that.

(c) It was further pointed out that this dictum was expressly approved and applied by the Judicial Committee in *Prafulla Kumar v. Bank of Commerce Ltd.* 74 IA 23. It was noted that the same view was expressed by the Supreme Court on more than one occasion. In this context it was further pointed out that it is equally well settled that the power to legislate on a topic of legislation carried with it the power to legislate on an ancillary matter which can be said to reasonably included in the power given.

(d) In the case of *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, , the Constitution Bench of the Supreme Court Held that the state has legislative competence to legislate on the Entry 18 List II and Entry 42 List III. In this context, it was pointed out that this power cannot be denied on the ground that it has some effect on industry Controlled under Entry 52 List I .It was pointed out further that the "effect" is not the matter in list 1 it does not cease to be a legislative with respect to an entry in List II or List III.

(e) In the case of *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, , a % Judge Bench held as follows:

The power to legislate is given to the appropriate Legislature by Article 246 of the Constitution. The entries in the three Lists are only legislative heads of fields of Legislation ; they demarcate area over which the appropriate legislatures can operate It is also well-settled that widest amplitude should be given to the language of the entries in the different Lists or in the same Lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them When the question arose about reconciling entry 45 of List I, duties of excise and Entry 18 of List II taxes on the sale of goods, of the Government of

India Act, 1935. Gwyer, C.J. in Central Provinces and Lubricants Taxation Act, 1938. in the matter of 1939 FCR 18 : AIR 1939 FCI 78. observed:

A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense ; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by considerations arising out of what appears to be the general scheme of the Act.

The learned Chief justice proceeded to state:

...an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary, modifying the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then and only then, will the non-obstante Clause operate and the federal power prevail.

(f) In the case of Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, , it was observed as follows:

The power to legislate is given to the appropriate Legislatures by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation ; they demarcate the area over which the appropriate Legislatures can operate. It is well established that the widest amplitude should be given to the language of the entries. But some of the entries in the different lists or in the same list may overlap or may appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring a harmonious construction. AIR 1939 1 (Federal Court) . Sir Maurice Gwyer proceeded to state:

Only in the Indian Constitution Act can the particular problem arise which is now under consideration; and an endeavour must be made to solve it, as the Judicial Committee have said by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting and, where necessary, modifying, the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the non-obstante Clause operate and the federal power prevail ;for the Clause ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship."

...It is well-settled that the entries in three lists are only legislative heads or fields of legislation and they demarcate the area over which the appropriate Legislature can operate. The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of subjects to the lists is not by way of scientific or logical definition but is mere enumeration of broad and comprehensive categories....

(g) In the case of International Tourist Corporation and Others Vs. State of Haryana and Others, , it was held by the Supreme Court as follows:

Before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislative must be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III and in the case of a tax if it is not mentioned in either of those lists. In a Federal Constitution like ours where there is a division of legislative subjects but the residuary power is vested in Parliament, such residuary power cannot be so expansively interpreted as to whittle down the power of the State Legislature. That might affect and jeopardise the very federal principle. The federal nature of the constitution demands that an interpretation which allow the exercise of legislative power by Parliament pursuant to the residuary powers vested in it to trench upon State Legislation and which would thereby destroy or belittle State autonomy must be rejected. In *Attorney-General for Ontario v. Attorney-General for the Dominion* 1896 AC 348, it was observed by the House of Lords at pp. 360-361:

...the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in Section 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon Provincial legislation with respect to any of the classes of subjects enumerated in Section 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by Section 91, would, in their Lordships' opinion, not only be contrary to the intention of the Act, but would practically destroy the autonomy of the Provinces.

(h) AIR 1941 47 (Federal Court) , the Federal Court said (at p. 55).

But resort to that residual power should be the very last refuge. It is only when all the categories in the three lists are absolutely exhausted that one can think of falling back upon a nondescript.

(i) Again in AIR 1947 1 (Federal Court) , the Federal Court observed (at p. 55):

In the Indian Constitution Act, Section 104 has been inserted for the very purpose of enabling legislation to be enacted in respect of subjects omitted from the three lists in the Seventh Schedule. There is not therefore the same necessity for Courts in India to find that a subject must be comprised within the entries in the Lists. But when there is a choice between two possible constructions of an entry or entries, one of which will result in legislative power being conferred by some entry or entries in the Lists and the other in a finding of no existing power, but if legislation is required that recourse must be had to Section 104, the first construction should on principles analogous to those applied to the Canadian Constitution be preferred.

It is, therefore, but proper that where the competing entries are an entry in List

II and entry 97 of List I, the entry in the State list must be given a broad and plentiful interpretation.

(j) In the case of *Federation of Hotel and Restaurant v. Union of India* AIR 1980 SC 1637, the Constitution Bench consisting of the five Judges was considering the question of, inter alia, the legislative competency of the Parliament to enact Expenditure Tax Act, 1987. In connection with the question of construction of the entries in the different Lists it was observed as follows:

...The principal question is whether the text envisaged by the impugned law is within the legislative competence of the Union Parliament, In that sense, the constitutionality of the law becomes essentially a question of power which in a federal Constitution, unlike a legally omnipotent Legislature like the British Parliament, turns upon the construction of the entries in the legislative lists. If a legislature with limited or qualified jurisdiction transgresses its powers, such transgression may be open, direct and overt, or disguised, indirect and covert. The latter kind of trespass is figuratively referred to as "colourable legislation", connoting that although apparently the Legislature purports to act within the limits of its own powers yet, in substance and in reality, it encroaches upon a field prohibited to it, requiring an examination, with some strictness, the substance of the legislation for the purpose of determining what is that the Legislature was really doing. Wherever legislative powers are distributed between the Union and States, situations may arise where the two legislative fields might apparently overlap. It is the duty of the Courts, however difficult it may be, to ascertain to what degree and to what extent, the authority to deal with matters falling within these classes of subjects exists in each Legislature and to define, in the particular case before them, the limits of the respective powers. It could not have been the intention that a conflict should exist; and in order to prevent such a result the two provisions must be read together, and the language of one interpreted, and, where necessary modified by that of the other.

The Judicial Committee in 1945 F.C.R. 179 (Federal Court), referred to with approval the following observations of Sir Maurice Gwyer, C. J. in *Subrahmanyam Chettiar's case* AIR 1947 FC 47 at p. 51:

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that.

This necessitates as an "essential of Federal Government the role of an impartial

body, independent of general and regional Government", to decide upon the meaning of decision of powers. The Court is this body.

On the question that subjects which in one aspect and for one purpose fall within the power of a particular legislation may in another aspect and for another purpose fall within another legislative power it was observed as follows:

Indeed, the law "with respect to" a subject might incidentally affect another subject in some way ; but that is not the same thing as the law being on the latter subject. There might be overlapping ; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is an overlapping does not detract from the distinctiveness of the aspects. Lord Simonds in AIR 1945 98 (Privy Council) , in context of concept of Duties of Excise d Tax on Sale of Goods said ;

...The two taxes, the one levied on a manufacturer in respect of his goods, the other on a vendor in respect of his sales, may, as is there pointed out in one sence overlap. But in law there is no overlapping. The taxes are separate and distinct imposts. If in fact they overlap, that may be because the taking authority, imposing a-duty of excise, finds it convenient to impose that duty at the moment when the excisable article leaves the factory or workshop for the first time on the occasion of its sale....

Referring to the "aspect" doctrine Laskin's "Canadian Constitutional Law" states:

The "aspect" doctrine bears some resemblance to those just noted but, unlike them, deals not with what the "matter" is but with what it "comes within"....

...It applies where some of the constitutive elements about whose combination the statute is concerned (that is, they are its "matter"), are a kind most often met with in connection with one class or subjects and others are of a kind mostly dealt with in connection with another. As in the case of a pocket gadger compactly assembling knife blade, screwdriver fishealer, nailnle, etc. a description of it must mention everything but in characterizing if the particular use proposed to be made of it determines what it is.

...I pause to comment on certain corelations of operative incompatibility and the "aspect" doctrine. Both grapple with the issues arising from the composite nature of a statute, one as regards the preclusory impact of federal law on provincial measures bearing on constituents of federally regulated conduct the other to indentify what parts of the whole making up a "matter" bring it within a class of subject....

The distinction between what is "ancillariness" and what "incidentally affecting" the treatise says:

...There is one big difference though it is little mentioned. Ancillariness is usually associated with an explicit statutory provision of a peripheral nature ; talk about "incidentally affecting" crops up in connection with the potential of a non-

differentiating statute to affect indiscriminately in its application matters assertedly immune from control and others. But it seems immaterial really whether it is its words or its works which draw the flotsam within the statute swake.

(k) In a recent decision of the Supreme Court in Krishna Bhimrao Deshpande Vs. Land Tribunal, Dharwad and others, , the observations made in Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal (supra) was quoted with approval. Further, while referring to the decision in Kannan Devon Hills Produce Co, Ltd. v. State of Kerala (supra), it was observed as follows:

It is well-settled that the legislative power of the State has to be reconciled with that of the Parliament and that in their respective fields each is supreme. Even assuming that the State enactment has same effect on the subject-matter falling within the Parliament's legislative competence, that by itself will not render such law invalid or inoperative.

(1) This aspect of (he matter has been considered and dealt with by me in the case of Delhi Cloth and General Mills Co. Ltd. and Others Vs. The Agricultural Produce Market Committee and Others where the question of competency of the State Legislature, to enact Section 27 of the Bihar Agricultural Produce Markets Act, 1960 was under consideration. In this context I have observed as follows:

It is the question of application the doctrine of pith and substance. A State legislation falls entirely within the scope of an entry within the competence of State Legislature, the State Act will not be struck down. If in pith and substance, the State Legislation falls within one entry or the other of the State List, then it must be held to be valid in its entirety, even though it might incidentally trench upon and enter a field in the Union List. If such entrenchment is minimal and that does not affect the dominant part which is within the competence of the State Legislature, the State Act must be upheld as constitutionally valid. Unless the field is completely occupied by List I, the State Legislature is not incompetent to legislate. On the contrary, if the field is not wholly occupied, a mere minimal encroachment or entrenchment would not affect the validity of the State Legislation.

12.2. I have no hesitation in holding that Entry I of List II, that is, the State list, of 7th Schedule, has no application in the present case. The said entry relates to "public order". What is meant by "public order" has been dealt with in various decisions. Mostly they deal with the preventive detentions where the question is whether the grounds relate to "law and order" or "public order". In the case of Rev. Stanislaus Vs. State of Madhya Pradesh and Others, , a five Judges Bench of the Supreme Court considered what is meant by "public order". In this context it was observed as follows:

the expression "public order" is of wide connotation. It must have the connotation, which it is meant to provide as the very first Entry in List II. It has been held by this Court in Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay, that "public order" is an expression of wide

connotation and signifies state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established.

12.3. If the expression may be treated as of wide connotation, but the question is whether in pith and substance the Act relates to "public order". I have already examined in details the scope of object of the Act and I have no hesitation in holding that in pith and substance it is not a law relating to "public order".

12.4. As pointed out earlier, that Act was framed pursuant to the acceptance by the Government of the unanimous recommendation of the Committee of National Integration and Regionalism appointed by the National Integration Counsel. The 16th Constitutional Amendment empowered the State, within the meaning of Article 12, to impose by law some reasonable restrictions regarding the fundamental rights guaranteed under Article 19 in the interest of sovereignty and integrity of India. This is clear from the statement of "Objects and Reasons" of the BUI itself. This would also be clear from the "Objects and Reasons" of the Amending Act of 1959 itself, wherein it was specified that as Article 248 of the Constitution and Entry 97 of the Union List, relating to the residuary powers of Parliament did not apply to the State of Jammu and Kashmir. When that Act was enacted, some doubts expressed whether the Act was extended to that State. To remove any such doubt, the Constitution (Application to Jammu and Kashmir) Amendment Order, 1969 was issued. By Act of 1969, the said Act was amended by re-enacting Sub-section (9) of Section 1 to put the application of the law to Jammu and Kashmir beyond doubt. It would also be clear from the definition of "unlawful activity" as quoted above that it is not a mere matter of "public order". At the most, it may be said that Act touches, incidentally, the subject of "public order". At the most, it may be said that there is some overlapping but it is a minor one. In this connection reference may be made to the cases of *State of Rajasthan v. G. Chawla* {supra} ; *Harak Chand Ratan Chand v. Union of India* (supra) and *Federation of Hotel and Restaurant v. Union of India* (supra). By applying the principle of pith and substance, I have no hesitation in holding that it is not a law relating to "public order" but it is a law relating to "sovereignty and integrity of India", even if it may incidentally affect "public order". This subject is not the subject-matter of any specific entry of any of the List and accordingly, in view of Article 248 read with List I Entry 97, it is the Parliament which alone can legislate regarding the subject and not any State Legislature. Accordingly, there is no merit in this contention and the same is rejected.

13. I shall now consider the submissions made regarding the validity of the notification as such.

13.1. It is no doubt true that though an Act conferring a power may not be successfully challenged, if there is any abuse of power it can be challenged by appropriate action. What can be struck down in such cases is not the provision contained in the Act but the order passed thereunder which may be mala fide. If there is any abuse of power what will be struck down is not the statute but the

abuse of power. Reference may be made in this connection to Pannalal Binjraj Vs. Union of India (UOI), and Virendra Vs. The State of Punjab and Another, . The notification can be challenged on the ground that the grounds are not germane to the object of the power conferred or that it is mala fide whether on fact or in law. However, as already noticed, the Tribunal which has been conferred with all the powers of a Civil Court and where even the principles of Evidence Act would apply, is fully empowered to go into the question of the merits of the issuance of such notification. It shall be entitled to decide whether or not there was any sufficient cause for declaring the association in question to be unlawful. It can confirm the notification ; it can cancel the notification. In the process it can go into the merits of the grounds stated in the notification. It can go into the correctness of the allegations made therein. It can go into the question as to whether any "unlawful activity" within the meaning of the Act is involved or whether it is an "unlawful association" within the meaning of the said Act. These considerations involve consideration of the factual aspect of the allegations made therein.

13.2. In the case of Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others, , the Supreme Court pointed out that if a statute sets up a Tribunal confining to it, jurisdiction over certain matters and if a proceeding is properly taken before it in respect of such matters, the High Court will not, in the exercise of its (extraordinary jurisdiction under Article 226, issue a prerogative writ so as to remove the proceedings out of the hands of the Tribunal or interfere with their course before it. However, when proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course.

13.3. It is true that no authority, much less a quasi-judicial authority 980 confer jurisdiction on itself by deciding a jurisdictional wrongly, The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari Reference may be made in this connection to the decision in Raza Textiles Ltd. Vs. Income Tax Officer, Rampur, .

13.4. However, even if it can be termed as "jurisdictional" fact, it is a matter for the Tribunal, at least at the first instance, to go into the same. It is not for this Court at this stage to take up the role of the Tribunal and decide as to whether there was any justification for issuance of such a notification or whether the grounds are justified or not. Reference may be made in this connection to the decision in the case of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, .

13.5. Of course, it is open to the Court even at the preliminary stage and without waiting for the decision of the Tribunal on the merits to strike down any notification under the said Act when it is shown that, on the facts of the

notification itself, it is based on extraneous ground or that the grounds specified therein are not germane to the scope and object of the Act empowering the issuance of such notification. However, in the present case, having regard to the facts set out in the notification and having regard to the scope and subject of the Act, I am unable to hold that notification, on the face of it, shows that any extraneous matter has been taken into consideration or that the grounds for issuing such a notification are not germane to the scope and object of the said Act. In my opinion, if the grounds set out in notification exist and they are correct which question can be gone into by the Tribunal then it certainly amounts to unlawful activity" and the organisation becomes an "unlawful organisation" within the meaning of Section 3(1) read with Section 2(f) and Section 2(g) of the said Act and it cannot be said that such notification is ultra vires the said Act.

13.6. Further, in my opinion, it was not necessary to set out in the notification the justification for issuance of the notification u/s 3(1) or for resorting to the proviso to Sub-section (3) of Section 3. If challenged, it can be justified, as it has been done in the present case in the counter affidavit filed on behalf of the Central Government the relevant portion of which is set out hereinbelow:

17. In the wake of unfortunate events of demolition of the disputed Ram Janma Bhoomi Babri Masjid structure, the Central Government, in the Ministry of Home Affairs, has issued a notification dated 1042-1992 in exercise of powers conferred under Sub-section (1) of Section 3, read with proviso to Sub-section (3) of that section, declaring five associations, namely, R.S.S.V.H.P. Bajrang Dal, JEIH and ISS as unlawful associations and has further directed that the said notification shall have the effect from the date of their publication in the official Gazette forthwith, subject to any order that may be made u/s 4 of the Act by the Tribunal to be constituted. The course of events and facts leading to the demolition of the disputed structure are no longer uncommon and the answering respondents do not wish to dilate upon the various factual aspects of the same for the purposes of answering the legal challenge raised by the petitioners to the validity of the Act, Rules and the notification, except in so far as it is considered relevant. The notification was issued after the Government was satisfied and had recorded its satisfaction in its files in accordance with the provisions of the Act.

18. There was sufficient material before the Central Government for exercise of power u/s 3(1) read with proviso to Sub-section (3) of Section 3. It is against public interest to disclose the material and activities of the banned parties to them or to the public. Judicial notice can be taken of the fact that as a result of demolition of the disputed structure on 6-12-1993, as a backlash to the incident, uncontrollable communal riots have broken out through out the country. It is submitted that the sufficient material in its possession and knowledge establishing with definiteness that members of banned organisations were the members of R= S. S. were likely to promote communal disharmony and entice communal feelings amongst different religious sects in the country. In this background of circumstances of with the entire country is fully aware, the Central

Government had to take recourse to the exercise of power u/s 3(1) read with the proviso to Sub-section (3) of Section 3 of the Act to declare R.S.S. as an unlawful association with immediate effect. The declaration was made also with a view to prevent further spread of communal disharmony and hatred between the two different religious sects for which the leaders and members of banned organisations were found largely responsible. It is submitted that for such purpose, sufficient materials were available with the Central Government.

19. That in the body of the notification dated 10-12-1992, respondent No. 1 has set out in detail the facts constituting grounds for declaring banned organisations as unlawful associations. Further, besides the grounds mentioned in the notification, it has more materials and facts in its possession which the Central Government considered to be against public interest to disclose. Thus, the notification dated 10-12-1992 has been issued for reasons which are sufficient and relevant. The exercise of power has been in good faith for achieving the object of the Act and is not used as a weapon in the hands of political parties used against adversaries.

20. The answering respondents respectfully submit that for exercise of power under proviso to Sub-section (i) of Section 3, overwhelming reasons constituting jurisdiction exist. The reasons which are set out in the notification are also appropriately the relevant reasons justifying minimum exercise of power to declare the association as unlawful with minimum effect within the contemplation of proviso to Sub-section (3). Apart from the above, the reasons do exist on file which were taken into account and recorded at the time of issuance of the notification dated 10-12-1992. The answering respondents categorically deny that there has been any breach of the provisions of Section 3 or proviso to Sub-section (3) of Section 3 while issuing the notification in question.

13.7. For the aforesaid reasons the said notification cannot be challenged as mala fide.

13.8. The notification cannot also be challenged on the ground that it was made on stale grounds. Any sole and individual ground based on some incident which had taken place 2 or 3 years back, may or may not be a stale ground depending on the facts and circumstances of the particular case. In some case a solitary ground based on some fact which took place some time back may not be, without anything else, sufficient for passing such a notification. But when not only one incident of 2 years back, but the same along with some other relevant grounds are taken into consideration, in the background of the recent happening, it cannot certainly be said that the grounds are stale. Some incident might occur which the authority concerned might ignore for the time being on the basis of the same being treated as an isolated incident. But having regard to the subsequent situation and/or subsequent acts or conduct and the atmosphere prevailing they may decide to take action under the said Act though no such action was taken earlier on some isolated grounds. In my opinion, the grounds cannot be held to be stale and accordingly an abuse of power conferred.

13.9. Accordingly, I am not inclined to hold that the particular notification in the present case issued u/s 3 read with the proviso to Sub-section (3) of Section 30 has been made mala fide or in colourable exercise of power.

14. Before concluding, I may point out some salient features of my decision, without any intention of summarising the same. "

(1) Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 is not ultra vires Article 19(i) (a) or (c) of the Constitution either from substantive or procedural point. The restrictions imposed are reasonable. (Para 7)

(2) The proviso to Sub-section (3) of Section 3 of the said Act is also not ultra vires Article 19(1) (a) or (c) of the Constitution. (Para 8)

(3) The said Section 3(1) and proviso to Sub-section (3) of Section 3 thereof are not ultra vires Article 14 of the Constitution. (Para 9)

(4) The said Section 3(1) and proviso to Sub-section (3) of Section 3 thereof are not ultra vires Article 21 of the Constitution. (Para 10)

(5) Sections 10 to 14 of Chapter 111 of the said Act are not ultra vires Article 14 or 21 of the Constitution. (Para 11)

(6) The Parliament had the legislative competency to enact the said Act. (Para 12)

(7) The notification u/s 3(1) cannot be challenged as mala fide or in colourable exercise of power. It was not based on stale grounds.

15. All the contentions raised in support of the writ petition having been rejected, this writ petition is dismissed. There will be no order as to costs.

N. Pandey, J.

16. I agree.

S.K. Singh, J.

17. I agree.