

(1964) 10 BOM CK 0008

In the Bombay High Court

Case No : Misc. Petition No. 135 of 1963

Amichand Valanji and Others

APPELLANT

Vs

G.B. Kotak and Others

RESPONDENT

Date of Decision : 06-10-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Defence of India Act, 1962 — Section 3(1), 3(2), 40, 44

Citation : AIR 1966 Bom 70 : (1965) 67 BOMLR 234

Hon'ble Judges : Tambe, J;Naik, J

Bench : Division Bench

Advocate : Porus Mehta, S.J. Sorabjee and S.B. Sukthankar, instructed by Gagrut and Co. Attorneys, for the Appellant; K.H. Bhabha and A.B. Diwan, instructed by P.G. Gokhale, Attorney, for the Respondent

Judgement

Tambe, J.

(1) This is a petition under Article 226 of the constitution of India, wherein the vires of the Gold Control Rules, contained in part XIIA of the Defence of India Rules, have been challenged. In the prayer clauses of the petition no doubt, validity of the entire rule were not challenged but only some of the rule were not mentioned. But the arguments advanced before us the were in respect of rules in general. If would not therefore be necessary to consider each rule separately.

(2) The two petitioners before us are dealers in gold. They profess and parties Jain religion. The two petitioners carry onto business in the name and style of "Messrs. Chandkumar Amichand & Co". The principal business of the petitioner is in bullion. They buy and sell gold in course of their business. In their petition they say that the business carried on by the them is on a vast scale. Eleven persons are employed by them in the firm and the annual salary to the Rs. 20,000. The firm is also a registered dealer for the purpose of the sale - tax and the petitioners claim that he sales - tax paid by them in S.Y. 2018 amounted to Rs. 2,56, 395,72 nP.

(3) The challenge made by the petitioners is in substance now confined to the two grounds. Firstly, it is contended that the rule made are in excess of the rule making power to the central Government, and secondly that at any rate the rules contravene the fundamental rights conferred on the petitioners under Articles 25 and 26 of the constitution of the India. The other contentions which have been raised by the petitioner satiated before us. But Mr. Mehta, learned counsel for the petitioners stated before us that he did not advance any arguments on those contentions because the matter stood concluded by the recent decision of the Lordship of the supreme court in *Makhan Singh Vs. State of Punjab* (and connected appeals), . Mr. Mehta, however stated that the petitioners marries these contentions I the supreme court if so advised.

(4) To appreciate the contentions raised before us it is would be necessary to refer to the incidents relating to the promulgation of these impugned rules., it is common knowledge that the on 8th September 1962 Chinese troops crossed the Indian Border. By 20th October 1962, the aggression by China on the India Borders the was a on large scale. On 26th October 1962, the president offend, in execs of the powers conferred on him by Article 352 of the constitution, declared Thai a grave emergency exists, where byte security of India is threatened by external aggression. By reason of this proclamation the provisions of the Article 358 of the constitution immediately came into play. That the article provides that while a proclamation of the emergency is in operation nothing in Article 19 shall restrict the power of the state as defined in part III to make any law or to take any excessive action who is a the state would but for the provisions contained in that part be competent to make or to take but any law so made shall to the extent of the incompetence, cease to have effect to the as soon as the proclamation ceases to operate, except as respect things done or omitted to be done before the law so ceases to have effect. The declaration oft emergency further under Artless. That the 359 empowered further under Article 359 empower the presidents "to declare that he right to move any court for the enforcement of such the rights conferred by part III as may be mentioned in the order and all proceedings pending in any court for the which the shall informants of the right mentioned shall remain suspended for the period during which the proclamation of the is force or of such shorter period a may be specified I note orders" it is a necessary to notice two other Articles, and they are Article 250 and 353 (b). Art 250 provides:

"250 (1) Notwithstanding anything"s in this Chapter Parliament shall, while a proclamation of Emergency is in operation, have power to make law for the whole or any part of the territory of India with the respect to any of the matters enumerated on the state List.

(2) A law made by the parliament of which parliament of would not but for the issue of a proclamation of Emergency have been competent to make shall to the extent of the incompetence , case to have affect on the expiration of the period of the six months after the proclamation has ceased to operate to except as

respects thing done or omitted to be done before the expiration of the said period".

Article 353, Clause (b) provides that "while a proclamation of emergency is in operation then the power of the parliaments to make law with respect to the any matter shall include power to make law conferring powers and inputting duties, or authorizing the conferring of the power and the imposition of duties, upon the union officers and authorities of the Union it is the one which the is not enumerated intake Union list". We have already stated that the emergency was proclaimed by the president on the 26th October 1962. On the same day in exercise of the power under the article 123, the president promulgated an Ordinance styled as "the Defence of India Ordinances" It is not necessary for the purposes of this case to refer to the provisions of the defense of India ordinance, for it is not in dispute that the provisions of the Defense of India ordinance have now been incorporated in the Defence of the India Act, 1962. On 3rd November 1962, of the President in exercise of powers conferred on him by C1. Of Art 359 of the constitution by a Gazette Notification of declared that the "the rights of any person to move any court for the enforcement of the rights conferred by the Art. 21 and Art. 22 of the constitution shall remain suspended for the period during such which the proclamation of Emergency issued under loses (1) of Article 352 thereof on the 26th October 1962, is in force, if such person has been deprived of any such rights under the Defence of India Ordinances, 1962 (4 of 1962) or any rule or any rule or the order made thereunder" by a further proclamation, Art. 14 also was added to this notification. The combined effect of the all the aforesaid provisions was that the parliaments gained authority to legislate on subjects contained in Lists I, II and III as it deemed proper gained Authority emergency. The fetter on the legislative power of the parliaments contained in Article 19 was removed. Further, if the fundamental rights of the citizens under Articles 14, 21 and 22 were contravened of by any rule or order made by the Central Government under the Defence of the India Ordinance or act, recourse to court for the enforcement of the those fundamental right was barred during the period of the emergency. The Defence of India Ordinances or Act, recourse to court for enforcement of the those fundamental rights was barred during the period of the emergency. The preamble of the Defence of India Act (hereinafter called "the Act") declares that its is "an act to provide for special measures to ensure of India did and civil defense and for the trial of certain and offenses and for matter connected therewith". The preamble then revert the external aggression and the declaration of emergency by the presidents and therefore, it is therein stated: "And whereas it is necessary to provide safety and interest, defense of the India and civil defense and for the trial certain offenses and for matter connected therewith. Be it, therefore enacted by the parliaments in the Thirteenth years of the Republic offend as follows" sub - section (3) of S. 1 provided that the act shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October 1962, and for a period of Six months thereafter. The clauses of sub - section (3) provided for saying of

certain things, with which we are not there concerned. Section 2 contains definitions of certain expresses. The express "defense of India" has not been defined. Section 3 confers powers on the central governments to the make framed and the Gold Central Government to make rules on the Gold control Rules to have been framed by the Central Governments in exercise of its powers under S. 3 of the Act. The central Government promulgated the defense even there as no rule controlling or regulating there dealings in gold by the these rule. By a further amendments to the defences of India Rule Gold Controls to the rule were introduced in the Defenses of India rules as part XIIA of the Defence of India Rules. They came to into force on the 10th January 1963. The preamble of these rule reads:

"In exercise of the powers conferred by the S. 3 of the Defence of the India Act. 1962 (51 of the 1962), the central Government hereby makes the following further amendment of in the Defences of India Rules, 1962 namely:"

And the short title reads "These rule may be called the Defence of India (Amendment) Rules, 1963" The headings of part XIIA of the Defence of India Rules is "Gold Control". It conceits of the rule 126A to 126Z to and these rule are generally called and know is as "Gold Control Rules" and I would and hereafter also refer to these rules as the Gold Contra I Rules. The rules initially framed on 10th January 1963 were further amended by two amendments t the defenses of the India Rules - (1) by the 7th June, 1963 and (2) by the 9th amendments which come into force on the 23rd September 1963. It would be sufficient for the purposes of this case to refers to the provisions of the Gold Control Rules as they stands after both these amendments. It may also be stated that for the purpose, of administration of these Gold Rules initially an All India Board called " Gold Board" was constituted. At the time of the hearings of the this petition, however by reason of he amendments of Gold Control Rules, the administration of the Gold Control is notion the hands of the "Gold Board" is not the hands of the administrators. Respondents Nos 1 to 4 to this petition are members of Gold Board. No order can be passed against the are Gold Board. The other two respondents are the collectors of central excise, Bombay, and the union of the India.

(5) Rule 126A is an interpretation of clause. A dealer has-been defined in sub-section clause (c) as "any persons who carries on directly or otherwise the business of - (I) making manufacturing buying selling melting's processing of the converting gold for the purposes of the making or manufacturing ornaments, (ii) buying, selling, supplying, distributing melting's processing"s of the converting gold for the purposes of making or the manufacturing ornaments whether for the cash or the for deferred payments, or for commission remuneration or others valuable consideration". There is inclusive clauses including in an undivided Hindu family which carries on business, company society et. But it the is not necessary for the purposes of this case to the case to refer to these various clauses. Clause (d) defined gold : "Gold" means gold,

including its allow whether virgin, melted remitted wrought or un wrought in any shape or form of the purity of not less than nine carats and including any gold coin (Whether legal te under or not) any ornaments and any other article of gold" Clauses (f) deftness Ian finished form meant for the any personal adornments, or for the adornments of any idol, deity or any other object of religious worship, made of or manufactures of religious worship made for manufactured from gold, whether not set with stones or gems real or the artificial or with the pearls real cultures or limitation or with all or any of the them and includes prates pendants or broken pieces of ornaments" clauses (g) defines "Primary gold" as gold in any unfinished from and included all ingots, bars, blocks slabs billets, shots pellets rods and the wriest". Clauses (h) defines a "refiner" as the owner or occupier of refinery and clauses (I) defines or "refinery" as place where gold is melted, processed, converted or reigned. Part XII - A has been converted or refined sub- divided into six chapters. The first chapter, containing rules 126B, 126C and 126D relates to control of the business in gold, and these provisions are the most important provisions for the purpose are the most important provisions for the purposes aerate petition. Chapter 3 deals with licensing of the dealers and refines. Chapter 4 relates to the returns and accounts. Chapter IV - A which has been amended by the amendment effected in the September 1963, has made certain concessions in favour of petty goldsmiths, called concessions in favours of petty called certified goldsmiths. Chapter V relates to declaration of the gold by individuals and chapter VI is ambiance lanes chapter. In my opinion it is not of these various rules in the six chapters ,but the it would be sufficient to the state the combined effect the these of this case. The business of the gold has been controlled by t he these rules, principles by prohibiting manufacture of articles of gold other than ornaments by placing certain restrictions on makings of ornaments by imposing certain restrictions of ornaments imposing certain restorations of the prohibition I n the matter of grant of load by the bankers or the money lenders the hypothecation of gold, and he requiring he deletes refines, money tenders and persons other than the dealers of the refines in others than the deltas of the word common man to submit certain returns money a common certain forms. The provisions of these rules thus after deals refines money lenders as well as a common man. Now the term "Dealer" would include persons dealings in gold as well as persons dealing in ornaments and also include person who are doing the business of goldsmith. I would now proceed to summarize how these rules after these different categories of persons.

(6) Dealers : We first proceed with the category of the "Dealer" He cannot make or manufacture and article of gold except ornaments but after the 24-6-1963 a delta is allowed to make articles other than ornaments, on obtaining authorization in this respect from the Administrator. He cannot accept any ornament of a purity exceeding 14 carats for policing or repair. No dealer can make or manufacture any article of gold of a purity exceeding 14 carats. He cannot manufacture, prepare sell or the wise transfer and agree to the sell or

agreed to the transfer or expose or offer to sell or offer to the transfer any ornaments having gold or a purity exceeding 14 carats. It may however be stated that on months period from the commencements of these rule was allowed to the which dealers for disposal of stock of gold ornaments which was already in their possession. A dealer in was required to convert the primary gold already in the his possession prior to the coming into force of these rules into gold to purity of 14 carats. He is also similarly required to convert within the a week gold that the might be subsequently coming into the hi possession. A dealer cannot carry on the business on money lending on the same premises in which his carrying the business of the dealer. He cannot sell or otherwise transfer to any perinea any load irrespective which he has advanced any load was advanced of the fact whether the loan was before or after the commencement of the order. This additional condition has been imposed by the amendments which come into effect on the 24th June 1963. He cannot also deliver bank the gold to the borrower even where the load has been repaid by him, much less before without the permission of the administrative. A dealer who has been registered under the Sales Tax act cannot any more carry on business except or boating the license from the administrator. Such a dealer is required to the make an application for a license. If a dealer who is required to make an application for a license, fails to the apply or the whose application has been rejected or canceled has to sell or otherwise transfer all the Gold in the his possession has otherwise transfer all the gold the intake his possession to another dealer or refiner licensed under the Act with the given time. A dealer who is required to make an application for license or to whom a licenses has been gated haste file periodically returns relating to the gold in his possession or under his control, and to give his such further particulars as may be prescribed from time to time. In the periodical returns, which his required to submit, in the has to show that additional gold coming into this possession after he has last coming in to the possession after the he has last made his return. A dealer cannot come acquire or agree to the acquire or but gold, from the any person other than licensed dealer or refiner. He cannot sell gold , the her than ornaments to any persons other than a person a holding permit or a licensed dealer or refiner.

(7) Refiner: A refiner cannot make or manufacture any article of gold other than primary gold. However after 24th June 1963, he is allowed to make or manufacture articles other than ornaments of any purity from the administrator. A refiner was required to convert gold in this possession of the purity exceeding 14 carats into god to purity not exceeding 14 carats within the week of the date, or such further period as may be allowed from the date the rules come into force. Similarly he is required to convert the primary to the gold acquired by him subsequently into gold to the purity not exceeding 14 carats. The administrators however cold authorities into gold to exceeding in 14 carats. The primary gold manufactured of sold by the refiner after the date of the rules common to the force is required to be stamped by the a stamp approved by the Administrators giving certain prescribed particulars including the date of manufacture its purity

and identify of the maker or manufacturer. By a subsequent notification of issued on the 1st May 1964, however, this rules has been relaxed and exemption has been granted in respect of article such as foils, leaves answers. But these articles are required to be labeled for the purpose of identification with the referee to purity, date to the make or manufacture maker or manufacturer. A refiner is required to obtain a license from the Administrator in order to the enable to the him continue the business of refiner. He has to make periodical returns of the gold in his possession or under this control giving certain details as prescribed including the quantity and description thereof. He has to the maintain account books In the prescribed forms. He cannot sell or deliver gold to the any person a permit from the Administrator.

(8) Common man: As regards a common man, which includes a minor, lunatic, deity, trusts, court of the Wards, Receiver official assignee a Hindu undimmed family, company firm wake institution and an individual he cannot place any other with the dealer whether licensed or not for making manufacturing or preparation of ornaments having gold of purity exceeding 14 carts. He has within 30 days oft date on which thermals came into force. To declare gold other than ornaments I this possession in excess of 20 grams in the case of the minor, and 50 grams in the case of any other person. He cannot but or otherwise iron obtaining a permit from the administrator, gold so acquired on permit cannot be sold without a permit. Gold not required to the be declared a permit gold without permits . it may however, been grated to certified goldsmiths. It is possible for the common man to convent his old ornaments new ornaments not exceeding that purity.

(9) Concession of granted to certified Goldsmiths: This is an concession granted to the petty dealers who were not register for the purposes of sales tax and who were carrying on business of goldsmiths since before the coming into force the Gold Control Rules on obtaining is certificate from the Administrator. They are allowed to do certain kind of business. They can accept from the person other than a dealer or a refiner any ornaments of the purity in excess of 14 carats for the purpose of makings or manufacturing new ornaments subject to the restriction of that the gold contained in then ornaments that the gold contained in the new unman does not exceed purity and total quantity of gold contained intake or negative primary got of the purity exceeding 14 cares by the melting or processing or coverings any ornaments subject to the prime gold in the excess of 100 grams. On cancellations oft his certificates., he has be transfer gold to the dealers or are refiner.

(10) These is brief are the restriction and prohibitions imposed by the gold control rules of deters refines money lenders and other person. It is hardly necessary to the state that the effect of the Gold Control Rules are ferreting and largely affecting these persons. The effect in short is that business in gold exceeding purity more than 14 carats has been brogues partially to a standstill. It is only open to the convert old ornaments into new ornaments of purity

exceeding 14 carats. The other effect its persons possession of the gold other than ornaments over certain very small quantity have to declare to the gold inter possession and thirdly, for much periodical possession and thirdly from three periodical returns which was are required to be furnished by the person falling in the aforesaid control categories the Administrator of gold. It is there provisions which have been challenged before me by the petitioners who is a dealer in gold.

(11) I have already stated the two principal contentions which have been raised onto behalf of the Petitioner. The arguments advanced of by Mr. Mehta, learned counsel for the petitioners in short, is that the S. 3 o the act authorities the center l Government to make rules for certain purposes mentioned in sub - section (1) S. 3. The rules framed have in intimate real or proximate connection with the any to those purposes. On the other hand of the rule have been framed for the purposes of the bringing about a socio - economic reform with the view to changing the age long habits of the people of India, a purposes entirely outside the scope of the sub - section (1) of S. 3 of the Act. In other words the arguments of Mr. Mehta is that the rule framed are not with the competence of the central government inasmuch as they are in because of the rule making power contained in the sub -section (1) S. 3 of the Defenses of the India At, and is colorable piece of the legislation. According to Mr. Mehta, there are the statutes book various enactment's of the relating of the control of the smudging of the gold and the foreign the exchanges of India. If really the government wanted to control smudging, they could easily have achieved this purpose by the suitable amending s those governments button the framing there rules, the governments has not really the motive oft controlling the smuggling of gold but on the other hand the has the motive of the effecting a socio - economic reform which the a view to the make people changes of the their habits. The other aspect of the arguments affirm. Mehta is the that the rule violate of the provisions of S. 44 of the act, inasmuch as they excessively and the UN unsanitary interfere with the ordinary avocations of the life and the enjoyments of the property of persons. The other contentions party is violation of the Articles 25 and 26 and the constitution.

(12) Mr. Bhabha, learned counsel for the Respondents, o the other hand argues that in the constitutiong the rules that these rules haven placed before the parliament as required by the S. 41 of the Act. The parliaments has not thought it necessary either to modify or annual house rules. The fetter imposed onto legislative powers by Article 358 of the constitution. Enforcement's of fundamental rights under Article 14, 21 and 22 have been barred. The entire legislative power rests with the a parliaments by reasons of the provisions of the power Article 250 and 353(b) of the constitution of the power to make rules is not confined be the sub - section (1) S. 3. On the other hand, the legislature in enacting sub - section (2) S. 3 has declared its intention that the rule made under any one oft more of the clauses of the sub - section (2) would necessarily be for securing any one or more of the purpose of the At. Therefore, where it is shown that the rule fall under any one or more of the clauses of the sub - section

(2), it is no more necessary for the respondents to establish any excuse of the real or proximate connection of between the rules or providence connection of between the rules framed and the purpose mentioned I sub - section (1) . such rule can be struck and down only if it is show by the persons challenging the rules that that are totally incapable of being related to sub - section (1) of S. 3 of the At. According in to Mr. Bhabha, the rules falls nude clauses 23, and 33 of the sub =section (2) of S. 3 of the Act. In the alternative Mr. Bhabha contends that there is a real and proximate connections of that between the rules real and framed and the purpose mentioned in sub- section (1) S. 3 of the Act. The object of these lees is to the Act. The object to these rule is to arrest smuggling, and thereby to improve the position of the Government relating to foreign exchange. This objects has direct and proximate connection with the "Defense of India" and also for the arguments affirm. Bhabha that the expression "defense of India" is a form of wide amplitude, and would include by the Government to secure of the purposes mentioned in sub -section (1) of S. 3 of the act. There is a presumption oft in favor of validity . section 44 of the act imposes no restriction on the rule making powers of the central government. As regards the arguments affirm. Mehta that the Government could have achieved the object by suitably amending of other enactment"s. Mr. Bhabha contends that the it is open to this court to make any inquiry as to the necessity of making these rules so consider the question whether the Central Governments could have achieved the object by doing something"s else. The powers conferred on the central Governments under S. 3 of are of very wide amplitude, and the matter has been left to the discretion of the central governments entirely. As regards of the challenges under the Article 25 and Article 26 oft constitution Mr.Bhabha contends that the respondents of facts made o the petition. The decision of the this question involves the decisions of disputed questions of fact therefore could not be gone into enthuse petition. If at all the court feels inclined to go into these question the matter be remanded to the trial courtier the evidences on this matter. We should have stated earlier of that this petition has been filed on the ordinal this side of the high court and has been referred to us.

(13) The first question of that arises is the constructions of S. 3 of the Act. Material part of s. 3 reads:

"The central Government may, by notification in the official gazette, make such rules as appears to it necessary or expedients for securing the defenses of India and civil defenses the public safety, the maintenance"s of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to e the life of the community.

(2) Without prejudice to the generality to the powers conferred by sub - section (1), the rules my provide for the and may empowers any authority to make orders providing for all or any of the following matter s namely:

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(23) the control of trade or industry for the purposes of regulating or increasing for the supply of the obtaining of information with the regard to articles or things or any description whatsoever which may be used in the connections with the conduct of the military operations or civil defense or for maintaining supplies and services essential to the life of the community;

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(33) controlling the possession use or disposal of or dealing in coin, bullion bank notes, currency notes securities or foreign exchange". Turning to sub - section (1) S 3, it authorizes the Central Government to make rules for securing the following purposes.

(1) The defense of India:

(2) Civil defense;

(3) Public safety;

(4) maintenance of public order;

(5) efficient conduct of military operations; and

(6) maintaining supplies and services essential to the life of the community.

For securing these purposes the Central Government is empowered to "Make such rules as appear to it necessary or expedient". It would thus be seen that the power conferred by sub - section (1) of S. 3 is conditioned by two circumstances: The first is that the power can be exercised only for securing one or more of the authorized only for securing one or more of the authorized purposes, and the other is that the central government on application of its mind may find or it may appears to the central Government on application of its mind may find or t may appears to the central Governments necessary or expedient to the exercise if for securing the prescribed purpose. This is obviously so because the rules and regulations made in times of emergency entrench on the rights and liberties of persons, and it is therefore that the parliament requires the central Government to apply it its mind and consider whether it is necessary in the circumstances of the case tome such rules. It follows that merely because the rules relate to the purposes mentioned in sub - section (1) of the S. 3, by the itself it not sufficient to sustain the rules. It has further to be established that not only, that the rules secure the authorized purposes but it has appeared to the central government that it is necessary or expedient to make those that rules, similarly, it is not sufficient to show that it appeared to the central government that it is necessary or expedient to make those rules, but the rules must for securing any of the authorized purposes. In other words there must be a connection between the rules framed and the authorized purposes mentioned in sub = section (1) oft S. 3. To the extent or nature of the connection, we will advert later.

(14) In my view, it is a well settled principle that the when a particular

legislature is impugned, the court has to see whether the legislature has acted within its powers, and the second thing it has to see whether in exerting its powers it has not transgressed any of the limits imposed on it by the constitution in Part III of the constitution. In other words, the court has to see whether in enacting a particular legislation the legislature has not violated any of the fundamental rights of the citizen. These principles, in my opinion, would equally apply when the courts are called upon to consider the validity or otherwise of the delegated legislation or a legislation made by an authority to which the legislature had delegated powers. I have already referred to removal of certain provisions imposed on the legislature by a part III of the constitution by reason of the declaration of emergency and the orders made by the presidents suspending the enforcement of UN fundamental rights in Articles 14, 21 and 22. In fact, it has been canvassed before us that the rules contravene any of the articles other than articles 25 and 26 of the constitution. I have therefore first to consider whether the rules made fall within the rule making power of the central government. The ambit or power extent of the powers of the central government under sub - section (1) I have already stated. The question which now arises is whether sub - section (2) and (3) confers any additional powers on the central government to make rules. It is the contention of Mr. Bhabha that sub - section (2) S. 3 confers additional independent power. I find it difficult to sustain this argument of Mr. Bhabha so broadly made. It may be noticed that the words "Rules" in sub - section (2) is preceded by the prefix "the". The prefix particularizes the rules, and when sub - section (1) , it appears to me that the rule mentioned in sub - section (2) are the rules which are referred to in sub - section (1) S. 3. The rule making power conferred by sub - section (2) therefore is subject to the same limitations as are imposed by sub - section (1) of S. 3. To hold otherwise would amount to conferral of unanalyzed control and powers on the central governments. Could it be said that the rules falling under any of the clauses of sub - section (2) are valid rules even though they have no relation whatsoever, with any of the purposes mentioned in the sub - section (1) of S. 3 of the act? I would illustrate clause (6) of sub - section (2) empowers the central Government to make rules "regulating the publications of news and the inflammations" it is open to the Government to require the newspapers to publish certain news which have no connection whatsoever with any of the purposes mentioned in sub - section (1) for instances, the births and marriages are place of the governments servant. When I put the question to Mr. Bhabha in this form, Mr. Bhabha replied that this entry being ambiguous, it may be open to the court to investigate the matter further. But it had been the arguments of Mr. Bhabha that clause (33) is specific and there is no ambiguity about it. Turning to clause (33) it inter alia, authorizes the central Government to make rules "Controlling the use..... of bullion" and according to Mr. Bhabha, bullion included gold ornaments. I asked Mr. Bhabha that if a rule is made by the central Government that no person shall wear on ornaments of his possession on any day including a festival day, would it be a valid rule? I did not receive a satisfactory answer. Obviously if clause (33) is interpreted as Mr.

Bhabha wants me to interpret, the assumed rule would fall under that the clause. It is obvious that such a rule can have no connection whatsoever with the purposes mentioned in sub - section (1) of S. 3. I therefore find it difficult to accept Mr. Bhabha contention as so broadly stated. It appears to me that the legislature having generally stated in sub - section (1) of S. 3 the power conferred on the central government have projected its mind into future envisaging certain subjects relating to which the central governments may have to frame rules for securing the purposes mentioned in sub - section (1) of S. 3 it appears to the central Governments necessary or expedient, to do so. In other words, the Legislature in enacting sub - section (2) has given a guidance to the central government in the matter of what it can do for securing the aforesaid purposes in exercise of the powers conferred on it by the sub - section (1) of the S. 3 of the act. Sub - section (2) does not in any manner restrict the powers conferred by sub - section (1), because sub - section (2) in its terms states that it is without prejudice to the generality of the powers conferred by the sub - section (1), nor does it confer any additional power on the central Governments in the matter affirming rules. It would, therefore follow that when it is shown that the rules framed fall in the any one or more of the clauses of sub - section (2), the court will presume that the rule would have a bearing on any one or more of the purposes mentioned in any one or more of the purposes, mentioned in sub - section (1) of S. 3. The burden of proving the contrary would lie, and would lie heavily on the party which challenges this position. I find it difficult to take the matter any further than this. Apart from the construction of the section, the decided cases relating to the provisions similar to then with which I am concerned here.

(15) The first is a decision of their Lordships of the Privy Council in AIR 1945 156 (Privy Council) *Sibnath Banerji and others* were detained pursuant to order made under rule 26 of the Defence of India Rules 1940. These orders were signed by the order of the governor. The said rule 26 was purported to have been made under S. 2(2) (x) of the Defense of India act 1939. It was held by the courts in India following the decision of the Federal court in AIR 1943 1 (Federal Court) that the rule was ultra vires of the rule making power of the government of India under S. 2(2) (x) and the detention, therefore and was bad. An appeal was taken the decision of their lordship, it would be convenient to reproduce the relevant provisions of the said S. 2 of the Defense of the India Act 1939.

"2 (1) The central Government may, by notification in the official gazette, make such rules as appear to it to be necessary or expedient for securing the defense of British India, the public safety, the maintenance of public order or the efficient prosecution of war or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub - section 1, the rule may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:-

If the aforesaid provisions of S. 2 of the defense of India act, 1939, of are placed in just a position with the provisions of S. 3 of the Defence of India Act, 1962, it would be seen that the provisions are identical except that the certain more purposes have been added in subsection (1) of S. 3 of the act. The preamble of sub - section (2) of S. 2 of the Defence of the India Act 1939, is identical with the preamble of sub - section (2) of the of S. 3 and of the present act. The Federal court in AIR 1943 1 (Federal Court) in construing rule 26, which had been framed under S. 2(2) (x), observed.

"The legislature having set out in the plain and unambiguous language in para (x) the scope of the rules which may be made providing the for apprehension, and detention in custody, it is not permissible to pray in aid the more general words in the S. 2, sub - section 1, in order to justify a rule which so plainly goes beyond the limits of part (x); though if the par (x) were not in the act at all..... We are compelled therefore to hold the rule making powers which the legislature has though fit to the confer upon the central government and is for that the reason invalid:"

The line for reasoning adopted by the Federal court was not the accepted by their lordships dealing with the aforesaid view their Lordships observed at p. 258 (of Ind app) (at p. 160 of AIR) of the reports;

"Their Lordships are unable to agree with the learned chief Justice of the Federal court on his Statement of the relative positions of the sub - section 1 and 2 of the Defense of India act and counsel for the respondents in the present appeal was unable to support that statement or to maintain R. 26 was invalid. In the opinion of the Lordships the function of the sub - section 2 is merely if an illustrative one, the rule - making power is conferred by sub =section 1, and "the rule" which are referred to intake opening sentence of sub -section 2, are the rules which are authorized by and made under sub -section 1, the authorized by and made under sub - section 2 are not restrictive of sub = section 1, as indeed in expressly stated b the words "with out prejudice to the generality of the power conferred to by sub section 1."

From the aforesaid observations of their lordship it is clears that the Lordships were considering the relative positions of sub -section (1) and sub -section (2) of s. 2 oft Defense of the India Act, 1939 and the relative positions are the rule making power is contained in that the sub -section (1) and the clauses of sub - section (2) of are merely illustrative of that powers. The illustrations given arrant exhaustive and do not restrict the scope of sub - section (1), do not restrict that scope of sub - section (1) but the position of the clauses is not any more than mere illustrations of the powers contained is sub - section (1).

(16) The next decisions of Santosh Kumar Jain Vs. The State Union Of India (Intervener), The provisions that were constructed by their lordships of the supreme court in this case are the orders made under sub - section (2) of S.3 of the Essential supplies (Temporary powers) Act 1946. Sub - section (1) of. 3

empowered the Central Government so far as it appears to it be necessary or expedient for maintain to increasing supplies of an Estonian commodity or for securing their equitable distribution and availability at fair prices by notified the order to the provide for regulating or prohibiting the production supply and distribution, thereof, and trade and commerce therein. Sub - section (2) provided that "Without prejudice that the generality of the powers conferred b y sub = section (2) provided that the prejudice the generality of the power conferred by the sub - section (1) an order made therefore under may provide.....". it would be seen that sub -section 92) of the S. 3 of the E.S.T.P. Act is an to in identical terms with sub - section (2) of S.3 of the Defense of the India Act .there is a variation. The expression used in the Defended of India Act is "the rules" while the expression used intake E.S.T.P. Act is an order a made under. Construing, these provisions Mr .justice patanjali sastri, delivering the judgment of the court at p. 310 (of SCR): (at p. 203 of AIR) of the report observed:

"It is manifest that sub - section (2) of S. 3 confers no further or other powers on the central Government than what are conferred under sub - section (1) for it is "an order made thereunder" that may provide for one or the other of the matters specifically, enumerated in sub -section (2) which are only illustrative, as generality of the powers conferred by sub - section (1)" Seizure of an article being thus shown to fall within the purview of sub - section (1) it must be competent for the central government of delegated the provincial governments to its delegate apart from and irrespective of the anticipated contravention of any others order as contemplated in clause (j) of sub - section (2)

The view we have expressed above receives support from the decision of the privy council in AIR 1945 156 (Privy Council) "

It would be seen that though there is a slight variation in the language used in S. 2(2) of the Defense of India Act, 1939, and S. 3(2) of the Essential supplies (T.P) Act, 1946, the principle governing both the decisions is the same, namely the relative position of the two sub - sections. On this aspect of the case of its also necessary to refer to the decision of the privy council in Attorney General for Canada v. Hallet & Agree Ltd., 1952 AC 427, a decision on which very strong reliance has been placed by Mr. Bhabha not only on this aspect, but from other aspects of the case with which I am concerned. It would therefore be convenient to deal with this case in with which I am concerned. It would therefore be convent to deal with this case in detail at this stage and then refer to the passages on which Mr. Bhabha has placed reline in support of the his arguments on different aspects of this case. Facts giving rise to the decision is brief were. This case went to the privy Council from the Canada. During the last war the Canadian Legislature enacted "War Measures act" On the termination of the war, and emergency, it was found that it was necessary to continue certain provisions of the Emergency Act as well Aston make certain other provisions for certain other purpose. The National Emergency Transitional Powers Act, 1945 was therefore enacted,. Section 2(1) of the Act provided: "The Governor - in - Council

may do and authorize such acts and the things and make from time to time such orders and regulations, as he may be reason of continued existence of the National emergency arising out of the war against Germany and Japan deem necessary or advisable for the purposes of the maintaining controlling and regulating use supplies and services, prices, transportation use and occupations of the property rentals employment's salaries and wages of the ensure economic stability and an orderly transaction to conditions of peace". In exercise of the aforesaid powers conferred by the exercise sub - section (1) of S. 2 an Order in Council was and made on 3rd April 1947. which by clause 22 provided that "all oats and barley in commercial positions in Canada with certain specified exceptions in the hereby vested intake Canadian Wheat Board". The respondent, who held a large stock and barely about 40,000 bushels was affected by the order. The validity of this order - in - council was challenged by the respondents. One of the arguments was that the Government expropriation was allowed was under sub - section (1) S. 2 of Act. The argument of behalf of the respondents was that expropriation was in items allowed by a clause of sub - section (2) of the war Measures Act. In express terms such powers was not conferred by S. 2 (1) on the Governor in council by the National Emergency Transitional powers by Act. In had, therefore been argued that the governor had no such powers. On the other hand ,the arguments advanced on behalf of the government was that there was no curtailments of the Governors powers under the National the Emergency Transactional powers Act. The powers were identical with the powers execrable under sub - section (1) of S. 2 of Transactional power act was limited to certain other purposes only. It may be noticed that between sub = section (1) of S. 3 of the war Measures Act and sub - Section (1) of S. 2, there was not only much material difference except as to the purposes. The contentions raised on behalf of the respondents which were based on the aforesaid difference in the two Act - the War Measures Act and the National Emergency Transitional powers Act - the were not accepted by the privy council. Dealing with the relative position of sub - section (2) and sub - section (1) of S. 3 of the war Measures Act, their Lordship at passages 448 - 449 observed.

"So the hold would threaten the very basis of the Act. Their lordships think that here is not by now any room for doubt as to the function performed by the list of permitted subjects in S. 3 of the War Measures Act. The form adopted is plainly borrowed from S. 91 of the Birth North America Act 1867. They do not extend the purpose already defined for they are directed to explaining what can be done, not the object for which thing may be done, they do not extend any more than they limit its powers for all that the they permit is already permitted by the general word that the precede them. What they do is to state explicitly certain things do its to state expel failing within the range of the general powers already conferred. In that sense alone they extend, because the amplify, those powers".

"What can be done" are to the be treated as falling within the range" , "they extend, because they amplify those powers and it is his arguments that this decision is an authority for the proposition that sub - section and (2) of S. 3 of

the Act confers ineptness and additional powers on the central Government. In my opinion, on the arguments is not well founded. It is true that the clauses are not on which emphasis has been laid by Mr. Bhabha if read in isolation of its context, may give of an impression that sub-section (2) confer power to make rules on subjects mentioned in its clauses in addition to and independently of the provisions of sub-section (1). But reading those clauses in isolation would and when so read it is abundantly clear that sub-section have (1). In these observations their Lordships have pointed out that the function performed by the list of permitted subject of the not the under sub-section (1). The rule making powers on the subjects mentioned in sub-section (2) has to be exercised only when it is required out for securing the purposes on mentioned in sub-section (1). Their lordships pointed out; "They do not extend the purposes already defined for the thing may be done. They do not extend any more than they limit its powers". It is in the context of this statement of the law that the other observations of their Lordships have to be understood.

(17) Mr. Bhabha also has referred us to a passage from the judgment of the supreme court in *Makhan Singh Vs. State of Punjab* (and connected appeals), . The observations on which he placed reliance are contained in paragraph 38 of their Lordships Judgment.

"In the present cases, one has merely to read S. 3(1) and the detailed provisions contained in several clauses of S. 3 (2) of the be satisfied that the attack against the validity of the said section on the ground of the excessive delegation is patently unsustainable. Not only is the legislative policy broadly indicated in the preamble to the act, but the relevant provisions of the impugned section itself give such detailed and specific guidance to the rule-making authority that it would be idle to contend that the act has delegated essentially legislative function to the rule-making authority".

Now these observations have been made in repelling the contention that S. 3 of the act, with which I am here concerned, suffered from the vice of excessive delegation of legislative powers. These observations of in my opinion do not assist the contention of Mr. Bhabha that the additional or independent rule making power has been conferred by sub-section (2) of S. 3 of the Act. There are all the authorities to which counsel for both parties have drawn our attention. In my opinion, therefore no additional or independent rule-making authority or power has been conferred in the central Government of any of the clauses of sub-section (2) of S. 3 of the Act. It therefore follows, that the limitation imposed in sub-section (1) of S. 3 would equally be applicable to and govern the rule making power of the central Government relating to the subjects mentioned in clauses 1 to 57 of sub-section (2) of S. 3 of the act. In other words, the powers of the central Government to make rules on any of those subjects is exercisable only for securing the purpose authorized by sub-section (1) of S. 3 in the event of the Central Government from an opinion that it was necessary or expedient for it to do so. A challenge to the validity of the rule made under any of the clauses of

sub - section (2) or under sub - section (1) on either or both these grounds would, in my opinion therefore be justifiable issue.

(18) I would, however, assume that sub - section (2) confer an independent and additional rule making power in central Government and proceed to examine whether the Gold Control Rules fall either under clause (23) or (33) of sub - section (2) of S.3 of the Act. I have already reproduced these clauses. The arguments of Mr. Bhabha relating to clause (23) is that this clauses authorizes the Central Government to control trade or industry in respect of the articles or things of any description. The expression "articles or things of any description" is wide enough to include gold. Gold control rule have been made for the Control of the trade in gold, these rules therefore fairly fall under clauses (23) of the sub - section (2), of S.3 of the Act. It is indeed true that clause (23) permits the central Government to make rules to control trade or industry in respect of articles or things of any description but on what powers, the clause itself has placed limitations. The limitation esthethe the rule could be made only for the purposes of regulating or increasing the supply of such articles which may be used in connection with the conduct of military operations or civil defense or for maintaining the supplies or services essential to the life of the community. The rule making power conferred under this clause is to enable the Government to obtain an adequate supply of articles required for securing the aforesaid purposes. I have already stated that the effect of the rule is that for all practical purposes dealings in gold of the azurite in excess of 14 carats have been brought to a standstill. New ornaments of gold purity in excess of 14 carats have been prohibited save and except converting old ornaments into new ones. In the circumstances I fail to see how these could be said to be made for the purpose of "Regulating or increasing supply of gold". In fact it is the case of the respondents in their return that the object of the rule is to stop smuggling of gold. If that be so, I again fail to see how it could be said that gold is an article which is required in connections with the conduct of military operations or civil defense or for maintaining supplies and services essential to the life of the community. I may also further state the rule made either fall under clause (23) of the Sub-section (2) of S. 3 of act or that the rules have been framed in exercise of the powers conferred by the said clause. In my opinion therefore the rules do not fall under the said clause. (23).

(19) Turning to clause (33), which confers power onto Central Government to make rules for controlling the possession, use or disposal of or dealing in the certain articles including bullion it is the contention of Mr. Bhabha that the words "Bullion" is wide enough to cover gold ornaments and articles of the gold, which is the subject - matter of gold control rules. On the other hand, Mr. Mehta contends that the words "Bullion" is not wide enough to include ornaments or articles of gold. The word only means mass of gold. The first question therefore that arises is what meaning is attributable to the words "Bullion" as contained in various dictionary. Mr. Bhabha referred to us the meaning of "Bullion" as given by Jowitt in the Dictionary, of English law, Webster's Dictionary, and in the new

Encyclopedia Britannic Volume 4 Mr. Mehta, on the other hand referred us to the meaning of the expression in Murray's dictionary. Jewitt defines "bullion" as "unchained gold and the silver in the mass. These metals are called so either when melted from the native are and not perfectly refined, or when they are and perfectly refined, but melted down into bars or ingots, or into any unwrought body of any degree of fineness.". Webster defines bullion as "gold or silver considered merely as so much metal without regard to any value imparted to the by it from.... uncoiled gold or silver in the shape of bars ingots, or comparable masses an ornamental metal boss used on harness jewelry or other object." In the Encyclopedia, the meaning given is "the name given to gold and silver considered solely as merchandise. When coin and specie are treated as bullion it is their weight and fineness which are reckoned, not their face value. Bullion thus means the gold and silver of the mines brought to a standard of purity". Murray gives that meaning as "Precious metal in the mass. Gold or silver in the lump, as distinguished from coin or manufactured gold or silver when considered or simply with reference to its value as raw material". It would be seen that in those books, "bullion has been described as mass of the gold not converted into any articles or ornaments. It would be clear that the rules which regulate the preparation of ornaments of and also regulate the borrowing of money on the hypothecation of the gold or gold ornaments and also regulate the borrowing of money on hypothecation of gold or gold ornaments can hardly be said to be falling under clauses (33) of sub - section (2) of S. 3 of the Act. It is however the arguments of Mr. Bhabha that clauses (33) empowers the Central Government to make rules controlling possession use or disposal ordering in bullion. It would necessarily follow that the central Government to make rules controlling possession use of bullion. It would necessarily follow that the central Government would also have implied powers to make rules in order to enable it to exercise power which is conferred on it. According to Mr. Bhabha rules relating to controlling possession use or disposal or dealing in ornaments as well as dealings in ornaments and gold by hypothecation would also have implied powers is well settled and the principle is that they are such power without the exercise of which the power expressly conferred cannot be exercised. The power expressly conferred to of "controlling the possession use or disposal of or dealing in ornaments. We do not find anything" is stated in the affidavit of the respondents showing how the exercise of the claimed implied power was necessary of the exercise of the power expressly granted of the Act. In absence of any material placed before us it is difficult to accept this contention of Mr. Bhabha. In *Bidi, Bidi Leave and Bidi, Bidi Leaves*" and *Tobacco Merchants Association Vs. The State of Bombay*, their Lordships of the supreme court after considering certain authorities and after they cited the observations of the police relating to the doctrine of implied power observed.

"In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged onto

authorities by duty cannot be discharged or the power cannot be discharged or the power cannot be exercised at all unless some to auxiliary or incidental power is assumed to exist. In such a case in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercises of powers is rendered impossible in all cases. It really means that the statutory provision would become a dead letter and cannot be enforced unless subsidiary powers is implied."

It has not been made out either in the affidavit filed by the respondents or in her course of the arguments of the such a position exists nor has it been shown that it was impossible for the Central Government to exercise the power under the said clauses(33) of sub -section (2) of S. 3 without making the rules relating to preparation and ornaments or hypothecation of the ornaments. I therefore find it difficult to accept this aspect of the arguments of the Mr. Bhabha . Mr. Bhabha has also referred us to the definitions of the has also referred us to the different act, "bullion" and "gold" given different acts viz.,. the foreign Exchanges Regulations Act the Reserve Bank of the India Act. Public Debts Act. I do not consider in necessary to deal in detail with these definitions as in my opinion, these with these definitions as my be of any useful assurances in constrain the meaning of the words "Bullion" in classes (33). I may also state the in the notification bringing in force the Gold Control Rules, it has not been mentioned that the rules have been made in the exercise of the power conferred on the Central Government powers conferred on the under S. 3(2) (33). On the other hand, it has been stated that the rules have been framed in exercises of the powers under S. 3 it is true that the omission to mention that the rules have been made under S. 3(2) (33) would not be fatal to the arguments advanced by Mr. Bhabha if it could to have been shown that the rules made were referable to the said clauses. I have layer stated that in my opinion, the rules framed do not squarely fall under the said clause (33).

(20) This brings me to the considerations of the question whether the rules framed fall within sub - section (1) of S.3 of the act. It is therefore necessary to see whether the rules have been made for securing any one or more of the authored purposes mentioned in sub section (1), and it has also to be ascertained whether opinion has been formed by the Government that the is necessary or expedient for securing the authorized purposes. As regards the first aspect., there has been considerable arguments as the car. On the question Aston what should be the nature do the connection between the object sought to the achieved by the rules and the purposes mentioned ins section (1) of S.3 of the Act the connection of Mr. Mehta had been that the connection must be real and proximate and not hypothetical and remote. On the other had the contention of Mr. Bhabha had been that if contention of Mr. Bhabha has been that it shown that the objects sought to be achieved by the rules are capable of being related to the purposes mentioned in sub = section (1) of S. 3 that is sufficient for the purposes of the sustaining the rules. A number of a authorities have been cited

by counsel on both the that sides. It has been cited the arguments of Mr.Mehta that the connection of the between the objects sought to the be achieved by these the rules and the purposes be too remote. Rules have been made with the object of changing the habits of the people of India of making gold a ornaments of boarding gold. It is expected that if these habits are changed, then the demands for gold would be reduced. If the demands for gold is reduced, prices of gold would fall and if prices of gold fall smudging will be reduced. It smuggling is reduced more foreign exchanges would be available to the central Governments. According to Mr. Mehta, the connection between the object of the rules and the securing of the purposes is very remote and the problematic. It has also been the arguments of Mr. Mehta that be these rules smuggling will never stop and people will never cease to buy or prepare gold or nationable number of the authorities in support of their respective at this state, in my view to refer to these authorities.

(21) Mr. Mehta has referred me to the decisions reported in *Rex v. Basudeva* AIR 1950 FC 67 ; *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, *Azim Khan v. Emperor* AIR 1945 Lah 154; *Lahore Electric supply Co.Ltd.* 41, *Chester v. Bateson* (1920) 1 KB 829, *attorney General v. De Keyser's Royal Hotal Ltd.* 1920 AC 508.

(22) Mr. Bhabha has referred me to certain observations in the decision in 1952 AC 427 and *Ross Clunis v. Papadopoulos*. [1958] 1 WLR 546.

AIR 1950 FC 67; Respondent, Basudeva was a dealer in kerosene oil, which was an essential commodity as defined in the U.P. Prevention of Black - Marketing [Temporeay powers] Act, On the allegation that the provincial Government was satisfied that the respondents habitually indulged in back - marketing he was arrested and order to be detained in exercise of the power conferred by S. 3(1) (I) of the Act. The contention raised on behalf of Basudeva was that this detention was unlawful as the provisions were void and inoperative as being ultra vires and the of the provincial legislature. The claim made on behalf of the provincial Government was that the legislature as competent was that the enact an act in exercises of its legislative powers conferred on the by Entry I List II Schedule VII of the Government of India Act, 1935, read together with S. 100 of the Act. The entry read: "Preventive detention for reasons connected with the maintenance"s of public orders." The questions that arose before their lordship was whether the preventive detention provided in S. 3 (1) (I) was the preventive detention for reasons connected with maintenance"s of public order. In other words the questions was whether the preventive detention onto ground of habitual indulgences in black - marking was a preventive detention connected with the maintenance"s of the public order. The matter was therefore taken to the Federal court at the instances of the Government. The Advocate General appearing for the Government contend before the Federal court that the habitual black -markings in essential commodity was bounds sooner or later to he causes dislocation of the machinery of the control and distribution which is turn might

lead to breach of prevent such black marketing was covered by the Entry. This arguments was repelled by their Lordships. Mr. Justice patanjali sastri, as he then as was, delivering the judgments of the court observed.

It is true that black - Marketing in essential commodities may at time lead to a disturbance of public order but so may for example the rash driving of an automobile or the sale of adulterated of an food stuffs. Activities such as of these are so remote of the in chain of relation to the maintenance"s of public order that the preventive detention o the account of them , cannot in our opinion, and fall within the purview of the Entry 1 of List II.... The connection contemplated must in view be real and proximate, nor far - fetched or problematical."

The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, The decision in Basudeva"s case, has has been approved by their lordships of the supreme court in The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, The question that arose there related to the validity of S. 3 of the U.P. Special Powers Act, 1932. That section provided:

"Whoever, by words, either spoken or written., or by signs or by visible representations or otherwise instigates expressly or by implications any person or class of persons not to pay or the to deter payments of the liability and whoever to does any act, with intent or knowing it be likely that any words signs or visible representations of containing such instigation of shall thereby person communicated directly or indirectly to any person or class of the persons in an yammer whatsoever., shall be punishable with the imprisonment"s of which may extent to six months or with fine extending to Rs. 250 or with both".

R.M. Lobia was prosecuted under this section for delivering certain speeches instigating cultivators not to be pay enhanced irrigation"s rates t the government. He applied to the High Court for await of Habeas Corpus, inter alia on the ground that the said section was inconsistent with article 19(1)(a) of the constitution which conferred onto citizen a fundamental rights of freedom of speech. The claim made on behalf of the state was that the restriction imposed fell within the permissible limits stated in clauses (2) of Art. 19 of the Constitution Clauses (2) of Art. 19 empowered the legislature to impose reasonable restrictions on the exercise of the fundamental right of freedom of speech in the interest eight security of the state, friendly relations with foreign states, public order decency morality or in relations to contempt or court defamation"s or incitement to an offense. The claim made on behalf of the an office. The claim made on behalf of the state of the that the restrictions imposed were I the interest of public order. The contentions was negative by the High Court and the matter went to the supreme court and the matter the state Government. Their lordships dismissed the appeal of the state and it was held that in the order to sustain the Act claiming to the impose restriction under clauses (2) of Art 19, it is necessary to establish that the connection between Act the and the public order sought to the maintained by the act is intimate. Their lordships apart form the aforesaid conclusion further considered another

limitation contained in the clauses itself viz., that the restriction must be reasonable at p. 835 [of SCR] [at op. 640 of AIR] of the report their lordship observed.:

"The restriction made "in the interests of the public order" and must also have reasonable relation to the object to be achieved i.e., the public order. If the restriction has no approximate relationship to the achievement of the public order, it cannot be said that the restriction is a reasonable restriction within the meaning of the said clauses".

Their Lordship also cited with approval the aforesaid decision in *Basudeva's case* AIR 1950 FC 67 and observed that the decision contained some observations which gave considerable assistance in constructions of the words.

(24) The decision in AIR 1945 Lah 154, does not relate to the consideration of the question of validity of the legislation in relation to its legislative powers but on other hands, only deals with the question as to whether a particular act fell within the provisions of the act. In other words the question considered was whether the particular conduct of the person constituted an offence within the meaning of the Act, It is therefore not necessary to consider this case.

(25) Similar also is the case in AIR 1943 La 41, which related to the validity of an administrative act done in the exercise of the power conferred on the government by the statute.

(26) The question that arose [1920] 1 KB 829, related to the validity of Regulations of No. 2A(2) of the Defenses of the Realm Regulations. That regulation provided that "no persons shall without the consent of the Ministers of Munitions take..... any proceedings for the purpose of obtaining an order or decree for the recovery of possession of or for the ejectment of the tenant of any dwelling house in which munitions worker is living of which is situated in an area declared by order of the Minister of Munitions to be a "special area". The regulation was framed in exercise of the power conferred on the Government by sub-section (1) of S. 1 of the Defense of the Realm consolidation Act, 1914, and on behalf of the executive government it was claimed that the regulation was valid because it has been framed for securing public safety and defense of the Realm and sub-section (1) of S.1 of the Defense of the Realm consolidation act 1914, that the regulation was ultra vires of the powers conferred to His Majesty in council by sub-section (1) of S. 1 of the Act. The questions posed by the *Darlings*, have been expressed in following terms at p. 833.

"And I ask myself whether it is a necessary or even reasonable way to aid in securing the public safety and the defense of the realm to give power to a Minister to forbid any person to institute any proceedings to recover possession of a house so long as a war worker is living in it."

And it was held that it cannot be said to be a reasonable way of aiding in

securing the public safety and the defense of the realm . Similar view has also been taken by other judges .

(27) The question considered in 1920 AC 508 , related to the validity of the regulation 2 of the Defense of the Realm Regulations , issued under the Defense of the Realm Consolidation Act 1914. Certain piece of land was sought to be acquired without paying any compensation in the manner provided by an earlier Act . The question arose relating to the validity of the power claimed under the regulation. As already stated the regulation was issued in exercise of the power conferred on His Majesty in Council under the Defense of the Realm Consolidation Act , which enabled His Majesty in Council to make regulations inter alia for the safety of the realm . It was held that the claim made for acquisition of property without payment of compensation under the regulation was invalid as much as though taking of the property may be a necessary for the defense of the realm , non-payment of compensation was not. These are all the cases which have been referred to by Mr. Mehta.

(28)Turning to the decisions on which reliance has been placed by Mr. Bhabha , I have already referred to the facts in 1952 AC 427 . the observations on which reliance has been placed by Mr. Bhabha are at p.450. They are :

" that does not allow him (Governor in Council) to do whatever he may feel inclined , for what he does must be capable of being related to one of the prescribed purposes , and the court is entitled to read the Act in this way ." I may as well reproduce the sentence immediately following the observations on which Mr. Bhabha has placed reliance :

" But then , expropriation is altogether capable of being so related ."

These observations were made in considering the arguments advanced on the basis of the general principles that the statutes which encroached upon the right of the subject , whether as regards person or property , are subject to the strict construction . Their Lordships explained that the general principle means no more than that where the import of some enactment is inconclusive or ambiguous , the court may properly lean in favour of the interpretation that leaves private rights undisturbed . But this principle would have no application when a statute in express terms permits interference with those rights . It appears that an argument was advanced that Parliament had chosen to say explicitly that the Governor in Council shall do " whatever things he may deem necessary or advisable ." The expropriation therefore , was within the powers of the Governor . The claim so broadly made was not accepted by their Lordships , and it was pointed out that does not mean that the statute allowed the Governor -in -council to do what he may be inclined but, on the other hand , what he does must be capable of being related to one of the prescribed purposes . Their Lordships the examined the provisions relating to expropriation and came to the conclusion that expropriation was altogether capable of being related to the prescribed purposes . It would thus be seen that even on this authority , on

which reliance has been placed by Mr. Bhabha , it is open to the court to see whether there is a connection between the impugned rules and the prescribed purposes for securing which the rule making power has been conferred on the Central Government . The argument of Mr. Bhabha , however, is that the nature of connection which need to be established is not "proximate" or "real" one ,but it is sufficient to show that the rules made are "capable of being related" in some manner with the prescribed purposes.

(29) The other decision , on which reliance has been placed (1958) 1 WLR 546 , related to the validity of Regulation No. 3 made under sub-section (1) of S. 3 of the Emergency Powers Order in Council 1939, which empowered the Governor to make regulations as appear to him to be necessary or expedient for securing public safety , maintenance of public order , etc. . Regulation No. 3 empowered the Commissioner with the approval of the Governor to order that a fine be levied collectively on the assessable inhabitants of the area in circumstances mentioned in the said regulation No.3 . The circumstances mentioned were " where the Commissioner has reason to believe that all or any of the inhabitants of the certain area have .. failed to take reasonable steps to prevent the commission of the offense ; or to re under all the assistance in their power to discover the offe under or offenders. Offense had been defined in the Regulation as " an offense , commission of which were prejudicial to the internal security of the colony of maintenance of public order in the colony". The commissioner with the previous approval of the Governor had imposed a collective fine on the inhabitants in certain area on being satisfied that in his opinion offenses were committed by the inhabitants of a particular area commission of which was prejudicial to the internal security of the colony. The question arose about the validity of this order . It may be noticed that the power conferred to make those orders was for securing the public safety or maintenance of the public order . Their Lordships held the regulation authorizing imposing of collective fine to be valid regulation. Their Lordships after quoting the observations in 1952 AC 427 (which we have also reproduced) have held : " In their Lordships opinion . regulation 3 is clearly related to the purposes prescribed in S. 6(1) of the Order-in council. There can be no doubt as to the purpose of imposing a collective fine in a case where the crimes have been committed in a particular area , and some or all of the inhabitants of the area steps to prevent the commission of the offense". It would again be seen that here also the Privy Council has considered whether the regulation made by the Commissioner in Exercise of the power conferred by S.6 and they came to the conclusion that the regulation clearly related to the purposes mentioned in S.6.

(30) considering all these authorities together, 1 thing is clear that when valued also an act of rule, regulation or order made by an executive authority, to which the power has been delegated by the legislation, is challenged, then, it is open to the Court to see whether the act than by the delegated authority has any connection with securing or realization of the purposes for which the power has been conferred on the delegated attorney. The question next arises is as to what

is the degree of nature of connection that is required to be assembled in the instant case. Basudeva case, AIR 1950 FC 67 has expressed the connection to be reared and proximate and not far fetch or probable. The Supreme Court in The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, has Recorded its approval of the view taken in basudeva case AI R 1950 FC 67. the test is laid down at page 836 [of SCR] : at p. 640 of AIR of the report :

"the decision in basudeva case AIR 1950 FC 67 in our view, lays down the correct test. The limitation imposed in the interest of public order to be a reasonable restriction should be one which has a proximate connection or nexus bet public order, but not one far fetched, hypothetical or probable or to remote in the chain of its relation with the public order". There lordship of the Privy Council in the two appealed, 1 from Canada and the other from Cyprus have, in the context of the provision it was considering characterized the connection as capable of being related to the authorized purposes".

(31) The question to be considered is which of these two would be the appropriate one and that, in its turn raises a question whether there is any difference in principle in he tests laid down by the Federal court and the in supreme Court on the one hand and the privy council on the other. The other question that arises is whether the tests laid down in these different decisions are tests of general application. In my opinion, there is some difference in one of the positive tests laid down by the Federal court and approved by the supreme court on one hand and they by the privy council on one hand and that by the privy council on the other. from thing to a capable to the being related to another. The relation need not necessarily be proximate. A reasonable nexus or connection between the two would be sufficient to show that the one is capable of being related to another. That which serves to promote a particular purposes can beside to the and that is the test laid down the by the Privy council. Mr. Mehta however contends that there my some difference in the tests laid dawn by the supreme courts and the Federal court on one of t he hand and the privy council on the others but the tests which ought to govern the decision of these case is the test laid down by the Federal court in and the supreme court. That would indeed have been the position had I come to the had conclusion of the that laid down in those cases were to general application. But I find it difficult to take such a view. In my view, the tests laid down are in the contexts of the contents of the relevant legislative power which their Lordship were considering in each case. The legislative power in the context of which the Federal court had laid down the test inane contained in Entry No.1 of the List II of the schedule VII read with the section 100 of the Government of India Act, 1935, and that entry among other things related to "preventive detention for reason connected with maintenance"s to public order." Their Lordships were considering the connection that the is required to the established between the preventive detention and the maintenance"s of public order. It would be notice that there was no latitude in the matter left to the legislature, and it is in this context that the test has been laid down , similarly, the test laid down by the Supreme Court in The

Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, was in the context of the legislative power conferred by clause (2) of Article 19 to restrict exercise of certain fundamental rights conferred on the citizen under that Article. The clause considered by their Lordships was "Reasonable restriction of the exercise of right in this interest of public order", and it is in this context that the test had been laid down. It would be seen that there is also no latitude left to the legislature for exercise of this power; it is not sufficient to show that the legislative authority has thought it necessary to impose those restrictions in the interest of public order. The test laid down by the Privy Council is in the context of the legislative power contained in sub-section (1) S. 2 of the National Emergency Transitional powers Act, 1945. The power conferred is in following terms:

The Governor in Council may do and authorize such act and things and make from time to time such order and regulations, as he may be satisfied by reason of the continued existence of the national emergency arising out of the war with Germany and Japan, deem necessary or advisable for the purpose of....."

It is in the context of exercise of this power that the test has been laid down by the Privy Council in both these cases. It would be seen that the Council in both these cases the ambit of the power conferred is wider leaving in considerable latitude to the Governor in Council. The context in which we have to concede the scope and ambit of the legislative power in this case is contained in S. 3(1) of the Act. The power is similar to the one contained in this S. 3(1) of the Act. The power similar to the one contained in National Emergency Transitional powers Act. It is in express terms authorizes the central Government or expedient for securing the aforesaid six authorized purposes. That being the position, in my opinion, the aforesaid test laid down by the Privy Council the aforesaid by the laid down by the and not the test of the Supreme Court. The other positive test which has been laid down by the Federal court and approved by the Supreme Court is that the connection must be real. There is hardly any difference in respect of this aspect of the test. A connection which is one which is capable of being related. Similar also would be the position in relation to the negative test, which has been laid down by the Federal court and the Supreme Court. A connection which is far-fetched, problematical or hypothetical or too remote also can hardly be said to be one capable of being related. Thus, the connection that is required to be established between the rules framed and the purposes prescribed under S.3(1) of the Defense of India Act, must be one which is real and not far-fetched, , problematical hypothetical or too remote. It need not necessarily be proximate. In my opinion, therefore, Rule which would, if observed, serve to promote one or more of the purposes mentioned in sub-section (1) of S. 3 of the Act would be within the rule-making power conferred on the central Government thereunder.

(32) The question which arises is whether any such connection has been established between the object sought to be achieved by the rules framed and

the purpose authorized in sub -section (1) of S. 3 of the Act. I have already stated that the is has been the respondents case in the return that the rules were framed with a view to put restrictions on smuggling and on the use of gold already smuggled into India . according to the respondent smuggled to into was causing a drain on the foreign exchanges, and preventing smuggling which result in the increasing the foreign exchange receives of the central Governments, which was very necessary for the purpose of the defense of India as well as maintainers of the supplied of India civil services the purposes of conservation of foreign exchanges. It is the argument of Mr. Mehta that the rules ex facie nowhere say that they have been framed to secure the aforesaid purposes. There is no preamble to the rules stating that is has appeared to the central Government necessary or expedient to the frame these rules for the aforesaid purposes. According to Mr. Mehta the case now put forward is not the correct position and have been framed is to effect a socio - economic reform. The rule have been framed for the purpose of the curing the alleged habits of the people of India of the using gold ornaments and hoarding gold. Mr. Mehta in support of this connection has invited my the attention in the speeches of the then Finance Minister in the Lok Sabha made on the 6th March, 1963, when the Gold Control Rules were being discussed in the parliament. He also invited our attention to the statement made by the Finance Minister in Parliament on 21st September 1963 on the Gold Control. He also invited out attention of the speech in made by the Mr. Bhagat, Minister for planning, in the parliament on 4th June 1964 at the time of introduction of the Gold Control Bill, and the statement of objects and reasons. He also invited out attention to calluses (2) of Rule 126-J Mr. Bhabha on the other hand referred us to finance minister broadcast made on the eve of promulgating these rules, on 9th January 1963. A copy of the broadcast has been annexed to the return as Ex. 4 filed by the respondents in special civil application No. 830 a of 1963, in which also challenge to the Gold Control Rules has been raised. In the return filed in this case in paragraph 14, the respondents have placed reliance of in this broadcast in the support of their case. Mr. Bhabha argued that the only relevant material to the which I can refer is only the aforesaid material to which can refer is the evidence or the documents to which Mr. Mehta referred are not relevant and therefore inadmissible.

(33) In is indeed true that the is no preamble to there rules indicating that the Central Government has frame these rules because it was of the opinion that it was necessary or expedient to the frame that it was necessary for securing reading the rules by the themselves., it does not become clear that the rules are directed the of gold. It would, therefore be necessary to the refer to certain other material in order to the appreciate the case put forward by the respondents. I would state case put forward by the respondents in brief: The import of gold into India has been stopped from the year 1939. There is very little production of gold in India is gold which was has been brought from countries other than India. People of India have the habit of the preparing ornaments and articles of the gold as well of as of hoarding gold. The prices of the gold in India are therefore

necessarily very high and lucrative as compared with incentive and inducement of the people in smuggle gold. If is to be made available to people in sufficient quantify at prices prevailing in the countries to meet the people demands. , the central government would have to expend about 50 to 60 crores of the rupees per year. That would result in the purchase of gold. That would result the made purchase of gold. That various legislation"s made he be not been sufficiently effective on to check smuggling of gold. Smuggling of gold is adversely affecting to the great extent of India"s foreign exchanges reserves. For arresting these mischief"s, it was necessary to the control the intently market and business in the gold for the purpose of the conservation of the foreign exchanges which was very essential commodities and services for the and if it for the reason to the achieve these objects that the Gold Control Rues have been promulgated. In other words the said rule which is inter ali, drastically restrict dealing in gold have been framed to arrest the root causes that the has made gold smuggling such a lucrative business and thereby conserve foreign exchange which is so essential for the defense of India. It has been well settled has been passed is a relevant circumstances for which assistance of could be sought by the court. At page 119 (Fifth Edition) Crises on the statues Law, four circumstances from which a court can legitimately seek assistance, have been stated:

"(1) What was to the common Law before the making of the act?

(2) What was the mischief and defect for which the common law did not provide?

(3) What remedy the parliament health resoled and appointed to cure the disease of the commonwealth and .

(4) The true reason of the remedy" It is clear that it is permissible for the court to ascertain the conditions prevailing which caused the mischief to cure which the enactment was directed. The conditions prevailing relaying toe smuggling of gold have been noticed by Their Lordship of the Supreme court in the considering the Vires of S. 178 - A of the sea customs act. Their lordship referred to the factual position prevailing a the time of the amendment to that section and for the purpose, reproduced the following passage from the Taxation Enquiry commission"s Report 1953-54 which pointed out the factual position of the certain commodities including gold. The position has been a so state, The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, :

"Smuggling now constitutes not only a loophole for escaping duties a but also a threat to the effective fulfillment of the objects of the foreign the trade control. The existence of he foreign pockets in the country accentuates the danger the extent of the leakage of revenue of the at takes place the ought this powers, cannot be estimated even roughly but we understand, it is not unlikely that the is substantial. Apart from its deleterious effect on legitimate trade, its also entails the outlays of an appreciable amount of the public funds of the patrol vessels along of the land border and watch and wards along the land out scale. It is therefore necessary, both legal and administrative should be adopted with a view

to minimizing the scope of this evil."

After reproducing the aforesaid passage, the Lordship concurring with the opinion expressed by the Esquire commission, observed: "The deleterious effects of smuggling as pointed out in the extract from the Report, are real....." The position prevailing has also been similarly described in detail by Mr. Justice K.T. Desai in *Misc Petn. No. 21 of the 1957 (Bom)*, Now, gold is such a commodity that it is easy to smuggle and pass it on in the internal market in the country. The original identity of the smuggled gold can easily be effected, when it comes into the internal market, it passes on as genuine gold it is not possible for bona fide honest customers to ascertain or find out that it is smuggled gold. This facility and the high prices prevailing in India is a great inducement to people to smuggle gold into India. It can hardly be disputed that the problem is vast and real one. As pointed out by the Supreme Court it has deleterious effect on the national economy adversely affecting India's position relating to foreign exchanges. It is not in dispute that these circumstances were prevailing at the time of declaration of emergency. The question is as to remedy this mischief that the rules have been framed?

(34) And this brings me to the admissibility of the different pieces of material on which reliance has been placed by counsel. A Division Bench of this court in *Pukhraj Champalal Jain v. D.R. Kohli* 61 Bom LR 1230, has held that "Speech made in parliament by the sponsor of the bill may be referred to by the court for the limited purpose of ascertaining the conditions prevailing at the time which he sought to remedy". The speech of the Minister of Industry was also referred to by Mr. Justice Fazl Ali in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, . From the observations of Bhagwati J., at ap. 1237 in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, it is clear that such a course is permissible for the limited purpose of ascertaining the condition of the matter prevailing at the time which necessitated the making of the law. I am here concerned with the rules promulgated therefore by the Central Government. Necessarily, therefore there is no speech by the sponsor in the parliament at the time of the introduction as such but the broadcast of the Finance Minister on the eve of the promulgation of these rules can as well be equated with the speech of the sponsor at the introduction of the Bill, explaining the position prevailing which necessitated the Bill. Similar would also be the case of the speech made by the Finance Minister of the 6th March 1963. Section 41 of the Defence of the Government of India Act to be laid on the table to the parliament. These rules have been so laid before the parliament on 20th February 1963 and were discussed in the parliament on 5th and 6th March 1963. The Finance Minister made a speech in the debate on 6th March 1963 giving the reasons for this measure. This speech in my opinion would also have relevance to the explaining of the prevailing situation of the matter and the reasons that actuated the promulgation of the rules. As regard to other material to which our attention was drawn by Mr. Mehta the material is the not relevant and it would not be

permissible to refer to is. The statement the made by the Finance Minister on 21st September 1963 is not afar the purposes of giving reasons forearming rules but is the statement on the working of the scheme of gold control. That hardly, in my opinion has any relevance of the purpose of understandings the situation of the at the time of the brining these rules into force. Similar also of the position of the objects and reasons of the gold Control bill and the speech of the Mr. Bhagat. In my opinion the only material on which reliance could be placed it is the broadcast and the finance minister made on 9th January 1963 and the speech of the 6th March 1963. The very opening sentence of the broadcast indicates that the reasons for promulgation"s of the rules is to arrest smuggling which India are so urgently needed for the defense and development of India. This is what the Finance Minister stated in the opening paragraphs:

"Early in the November 1 spoke to you at some length on the subject of Gold. On that he occupation I tried to explain how the habit of the buying gold in out country has let to extensive smuggling of gold from abroad in recent years. This smuggling which we need so urgently for the our defense and development.

It was in this context that I announced that the Government proposed to take measures in the near future of the reduce smuggling and to bring abort of progressive reduction in the demands for gold. These measures have now been finished and will be brought into force tomorrow in the form of the Gold Rules under the Defense of India Act, and it is about these measures that I wish to speak to your tonight."

The Finance Minister has then in this broadest explained the position of which had brought into existence this evil and had shown how its has affected the of the economy of India and having deleterious effect on the economy of India. He also appealed that people should give up their attachment to gold. In this appeal he says.

"It is my earnest hopes that the every teacher in the country, every social worker and leader of public would make it his or her business to explain to the young it has or her business of the explain to the young and the old the rich and the poor and what the attachments of the gold and gold ornaments means I terms of the strain it puts on the resource we need for the defense and developments. Let all young boys and girlies growing up in the country be made to realize that they can be held build a safe and the prosperous India by insisting that no gold be bought at the item of their marriages:"

It his Broadcast, the Finance Minister has also brought to the drain in the country resources tune on the drain the country resources which smuggling has cussed. The broadcast hardly leaves any doubt wit the saving that the rules have been brought in to force with the a view to arrest smuggling and thereby saving foreign exchanges which was so essential for the purposes of defense of the as well as development. In this speech made on the 6th March 1963, for the purpose of expressing his views and the reasons for bringing into force these

gold Control rules, why the Finance Minister and has again pointed to why he has brought into force the rules. This is what he says:

"Let us examine why this has been done. That is question which has been asked of me. It is primarily brought into remove smuggling of gold which is hitting this country economically in very bad way and for several years past, and it is growing . as property grows, the lure of gold increase and more gold goes and its bring smuggled and more any more foreign exchanges is getting lost."

The Finance Minister then has in his speech explained the problem in detail, and has observed.

"Therefore this measures has been brought to remove this foreign exchanges drain and the can be done on if the gold disappears. If the lure of gold remains, it can go on happenings."

Reading the broadcast and the speech as a whole, I have little doubt and that the primary reason why these which control the initial market have been framed if the purposes of arresting smuggling which has been connoting of heavy drain in on the foreign exchanged, which at this particular time of the emergence. Was required for the purpose of defense of the India. Laying, emphasis of the certain paragraphs o the speech Mr. Mehta argued that that is not the real reason but the reason is to bring about asocial but reform. He referred to the following passage from the speech at column 2636:

"We are at the very critical stage in our country when we have to defend to out freedom when we have to defend our integrity. I do not say that if I get all the gold, I will do not defend my country better than without that. Even if he do not get and gold, I will certainly defend my country and with success. That is not the stake at the issue. What is issue is prevent therein on the economic life of this country the through therein of foreign exchange and the senseless sinking of all surplus and saving into gold which remains locked up the in their houses?

Laying emphasis on this part of the speech Mr. Mehta argues that the Finance Minister has clearly admitted that the does not require gold for defense. It is purely an economical measure. In my opinion reading this passage in isolation would not a permissible procedure for the understanding why really actuated the central Government to bring in to force these the rules. I have already point out the passages which clearly indicate that the reasons for bringing into force these rules the was to the exchanges for the purpose of defense as well development. It is indeed true that is in this passages the Finance Ministers says that the he does not want gold for the defense of India. But is must be understood that this speech was in replay to the debate, and one of the read was as whole for the purposes of understanding the reel reason for the promulgation of these rules. Mr. Mehta also referred as to certain other passages which refer to the habit of people purchasing gold and sinking their money of in purchase of gold affecting production. He also referred to us to certain paragraphs of the Finance Ministers speech where he has referred n to abolition of the sati., daughters from

inheriting their father's property, introductions of the law of monogamy and divorce, and has argued that by introducing these rules the Finance Minister of has also aimed at a similar social reform the breaking the people of their gold habits. Against in my opinion for the reasons already stated it will not be in permissible procedures for undertaking the real reason which was actual the finance Ministers intake introductions of this bill. Mr. Mehta is also referred to the observations of the Finance Ministers about his thinking of the introducing similar measures of about 8 months prior to the its promulgation's. It is his contention that at that time there was no emergency. The finance minister must have realized that if such a measure was passed it would not stand the test of the constitution validity. The Finance Minister has only taken advantage of the emergency of and suspension of the exercise of the certain fundamental of rights and has introduced these rules. It is true that the Finance Ministers has stated that had he come to the conclusion about 8 months prior to the date the introduction of these rules that the measure similar to the rules would be required to be introduced in parliament. But it is not to be noticed that he has and it is clear that since then he has been thinking and considering the problem in its various aspects in framing the rules. It can hardly be doubted that by reason of the emergencies the problem became more acute. Conservation of the problem that became of more acute foreign exchange, which in peace time was essential for the purpose of the development and of the national economy, which also became necessary for the purpose of the defense of India, and it is these reasons which have led Finance Ministers and to hold that the real reason for the bringing into force these rules is reason for the about on into force these real reason for bring have no concern whatsoever with the defense of India or maintenances of supplies and civil services essential to the life of the community. I have already discussed that the object sought to be achieved was to arrest smuggling by controlling of dealings in gold so as not to make it possible for people in India to legitimately buy or really dealing gold so as not to make it possible for people and India to legitimately but freely deal in to smuggling in not capable to bring related to the purpose namely the defense of the India. It also cannot be said that the rules if overused would not go to achieve the objective. I have already stated that the arresting the central Government would result of the conservation of according would resolute in which is so essential of the purpose of the view taken by the central government would reallyst deface of India. The object sought to be achieved by these rules, clearly seems to the promote and the purpose of defense. In my opinion, therefore, the connection between the rules and the between the rules and the prescribed purposes is a real one. considering the two speeches of the Finance Ministers, it is also equally and clear that the central government had brought into force these expedient of the bring them to the rules cannot be sustained on the ground that the rules framed are in the excess of the rule making power of the Central Government or that the rules is colorable exercise of the legislation I thence of the rule have been framed for some purposes of the other than the prescribed in sub - section (1) of S. 3 of the Act.

(35) Mr. Mehta in support of his aforesaid argument also has drawn of the attention of this connection of the provisions of clauses (2) sot rule 126-J, which imposes a duty that "it shall be the of the Administrators by such measures of the as he may think fit, (a) to discourage these and consumption of tending to reduce the demands for gold and (c) to advise the Central Government o all matters relating to gold" Relying on these provisions Mr. Mehta argues that the framing these rules was to bring abort this effected. The dissuasion above will show that the duty imposed on the Administrator is aimed at removal of the root clauses that has been a marking smuggling a lucrative business. The root case as would beset is the habit of the people using gold ornaments and hoarding gold which has induced the smuggling to smuggle gold in large quantities. It has also been argued that the object of sough could easily of the have been achieved by suitable amending the customs Act and the Foreign Exchanges Act. He brought to our notices that bills introducing then customs act as was introduced and the parliaments on 8th June 1962, introducing I the certain stringent measures. It was passed into the Act in December 1962 was passed brought into force on the notice certain portion therein which was has conferred on the official concerned very extensive powers and arrest, power of search provisions relating to ratings presumptions ,enchained punishments etc. According to Mr. Mehta these stringent provisions would have effectively controlled smuggling. Now in my opinion, in the will hardly the permissible for this court if embark as the esquire whether the objective sought to be esquire whether the rules could have been achieved by these rules could've been achieved by the rules could haven achieved by me the way as much as in sub - section (1) of the section 3 the legislature has left it to the exclusive dissertation of the central governments. By enact raised the rules as appears to the necessary or expedient for securing the authorized purposes. That benighted open to inquire whether the central government other mesa similar arguments was advanced before the supreme court when a challenges to the avidity of rules made under clauses (15) for sub - section (2) of S. 3 of the Defense of Indict was made. It was argued that since the preventive Detention act 4 of the 1950 was, necessary for the legislative of to have passed this aperitif the impugned Act. Repelling that the Lordships of obsessed in AIR 1964 SC 3811:

"It is hardly necessary to emphases that a plea that an act an passed by a legislature competent to pass it is colorable piece of legislation, cannot succeed on such flimsy grounds. Whether or not it was wise that this part of the which is wholly irrelevant I needling with plea that the act is colorable pieces o of legislation."

(36) Another argument was also advanced that if really the object was the arrest smuggling which affects foreign exchange the rules would have also provided for controlling the market and commodities and other than gold which affect the foreign exchanges of India. He brought to out notices provisions of S. 123. Sub =section (2) of the sea costumes act, 1962. It is not possible for me to the accept this arguments of Mr. Mehta also. It is true that sub - section (2) of the S.

123 of the sea customs act enacts that appears from gold, the true of evidence has been made applicable to diamonds and watches etc., but from that it does not follow that smuggling of gold does. The matter has been left to the central Government to decide and it is for the central government to decide what measures it would be taking sub-section (1) of S. 3. Therefore it is difficult to say that the diamonds and watches necessarily lead to the inference that the true objects of the central government of smuggling of gold.

(37) It is next to be seen whether the rules contravene the provisions of S. 44 of the Act. Section 44 reads.

"Any authority or person acting in the pursuance of the avocations of life and the enjoyments of the property as far as may be consonant with the purpose of the ensuring the public safety and interest and the defense of India and civil defenses."

It is the arguments of Mr. Mehta that these rules interfere with the ordinary avocation of life and enjoyments of property of the people beyond measure. They can hardly be said to be for securing the purposes mentioned in the section. Mr. Mehta also has argued that the provisions of this section are mandatory and in support of this contention has referred us to the decision of the courts in *Tan Bug Taim v. Collector of Bombay* 47 Bom LR 1010: AIR 1946 Bom 216. Mr. Bhabha, on the other hand, contends a fetter on the rule-making power of the Central Government. In the alternative, he argues that even assuming that is a fetter on the rule-making power of the central Government, the power of the provisions as their section not mandatory but directory, he referred to the full Bench decision in *Lahore, Electoral Supply Co Ltd v. Provenance of Punjab* AIR 9143 Lah 41. The first question to be considered is therefore, whether S. 44 is after on the rule-making power of the Central Government conferred on him by S. 3(1) of the act. No on plain reading of the section the restrictions imposed by the provisions of this section it is not the dispute that the central Government is not a person. Now the question is whether the expression "any authority" in S. 44 does not include that Central Government. Section 44 does not include S. 44 appears in chapter VII have to be read in the context to understand the true import of the expression "any authority" Section 40 deals with the powers of the central Government to delegate its powers or its duty of making certain order to any officer or authority subordinate to the central government and it is in this context that the directions have been given to the authority or person under S. 44 of the act. The act itself has used the expression "Central Government", "Authority" in contradistinction of with one another. In my opinion, therefore, the expression "Authority" does not include that central Government nor has S. 44 imposed any fetter on the rule-making power of the Central Government but is directive relating to administrative or executive acts performed by any person or authority in execution of the powers delegated to them by the Central Government. In this view of the matter, it is not necessary to consider whether the directions contained in S. 44 are mandatory or directory.

Suffice it say that that view taken by the Lahore High Court is the respect of the provisions of S. 15 of the earlier Defense of the India Act, 1939 is contrary to the view taken by Bhagwati J. In 47 Bom LR 1010: AIR 1946 Bom 216 of the same section. Mr Justice Bhagwati has held that S. 15 mandatory. The view taken by the full Bench of the Lahore High court is not the same. The provisions of S. 15 of the earlier act are smaller of S. 44 of the present act, but it is worth noticing that in both these cases, what was officer challenges was an administrative act of the offense in exercise of the power and duty conferred on them by the order of the Central Government. For the reasons stated above, the First contention is as regards proceedings on the next point, I may state that intake such decisions of which were in respect of the well established of the my opinion, were in respect of the well established repetitive of the principle of laid down by their Lordships supreme court Federal court and the Privy council.

(38) And this brings me to the second contention. As already stated that the second contention is that the rule violates exercise of the fundamental right to the exercise petitioners granted to them under article 25 and 26 and of the constitution. Material part of the Article 25 is to the followings effect.

"25 (1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of consciences of the right freely to profess practice and propagate religion"

It is not necessary to reproduce the provisions of Clause (2) or the Explanations to this article. It is the case the petitioners that they profess and practice the Jain religion and observe customs, tenets and practices of the Jain religion. According to them there is an ancient and well accepted religiousness belief. Custom and or practice of the Jain Community that persons belonging to the Jain community have to perform certain religious ceremonies like puja. Such puja ceremonies are performed inter alia on occasions like births, marriages and death. In the course, and of such puja ceremonies performed as fore said, of varakh badla and ornaments and the articles of pure and gold such as "Mugut" (holy gear for the idol) Kundale (ear ornaments for the idol) Necklace, armlets, etc. are offered to the deity. The petitioners further pleaded that they have been performing of the aforesaid ceremonies and have been offering the varakh (pure gold leaf) and badla [Silver officiating gill] and with pure gold] and other ornaments and articles of pure gold to the deity as an essential part of their religious belief, custom and/or practice. The petitioners have further pleaded that according to the religious belief, custom and/or practice of the petitioners it is derogatory to the deity if offered impure gold or ornaments and articles of impure gold in the performances and the aforesaid ceremonies and it is enjoined that the offerings to the deity should be in the purest form. According to the petitioners offering of gold ornaments varakh, or badla in the purest form has been their practice from time immemorial, and they have been granted this freedom to continue religious practice uninterrupted under

Article 25 of the constitution. It can hardly be said that this right freely to profess and practices religion if the anyway of the conformity an with the maintenance"s of public order morality and health. Gold control Rules prohibit with the purchase or preparation of ornaments or articles or purity in excess of 14 Carats, and therefore they are constitution and therefore unconstitutional. The respondents and in para 10 of the affidavit, have denied the existence of the alleged custom. The arguments of Mr. Mehta has been founded on the form of denial, and it is therefore necessary to reproduce the pavements made by the respondents in paragraphs 10 of their affidavit In the reply. The collectors central excise, Bombay the 5th respondents hereto has made this affidavit. In paragraph 10 he says.

"I do not know and am not in a position to admit whether the petitioners profess and parties, jain Religion and observe the customs, the petitioners to strict proof thereof. As regards the religions ceremonies and the performances therefore of alleged and referred to hi the said paragraph. , I do not admit the same and put the petitioners to the strict and the proof thereof. I however denote that the for the performance offset religious ceremonies as are referred to therein ornaments and articles of pure gold or other articles gilt with pure gold and ornaments as alleged, I deny that there is any religious sanction of the custom for offering articles only of pure gold and nothings else. I deny that according to the religious belief, custom and practice of the said community, if the derogatory to the deity to offer impure gold or ornaments or articles of impure and gold in the performances of the said ceremonies, and I deny that is is enjoined that the offerings to the deity should be in the purest form. In any event, and without in prejudice to the said convent, the and without prejudice and the said contentions I submit that it maybe said contentions, I submit that it may be at the most a practice or custom amongst the said community to offer article of pure gold but I submit that the such practices or custom is not part of the jain religion as such . I say that this pirate to the be triad in these proceedings and should not be tried as such in these proceedings"

It is the arguments of Mr. Mehta and in the first instance., it is not a denial at all, because the 5th respondents has stated that the he does not know and therefore is not in a position to admit, and into second instances, there is no admit and the second instances, there is no denial that there is custom of offering ornaments and articles of gold to the deity the denial and respect of the articles of purged. It is the arguments of he Mr. Mehta that if the custom of offering ornaments and articles of the gold to the denote is admit, it necessarily follow that the ornaments and articles of gold to the deity is admitted it necessarily follow that the ornament article offered to the deity accruing to the custom must be of pure gold. I am unable to agree with the submission, of Mr. Mehta relating to the advisements contained in paragraphs 10 of the respondents affidavit. It is indeed that the tour that 5th respondents has stated that he has n knowledge and he is not in position of the to admit. That the position is old limited to the allegation to the petitioners that the they practice jain religion and observer customs. As

regard the alleged custom the denial is not in any manner qualified. It is true that the denial is the alleged custom of making offerings or ornaments and articles of pure gold to the deity. But these denials have to be read in the context of the pleas raised by the petitioners in paragraph 4 of the petition. The denial is in respect of these pleas. The denial is in the form of the pleas which have been raised. I am unable to tread in the advertisements of the respondents an admonition as such of custom of offering gold ornaments to the deity. In view of the advertisements contained in paragraphs 10 of the affidavit in the reply several issues on these disputed questions of fact arise. A decision relates to the existence of custom. By its very nature it involves a detailed investigation of facts. It cannot, in my opinion, be satisfactorily done in these proceedings. There is also another difficulty in the way of the petitioners in the matter. The plea raised by the petitioners is a denial. But then there is a judicial pronouncement of the Lordships of the Supreme Court that in Jain religion of the Supreme Court The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiji of Sri Shirur Mutt., their Lordships observed.

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief".

From these observations it is clear, that Jain religion, does not believe in God. If that be that position, there can hardly be custom of making offerings to deity as such. The issue that arises is a fundamental one. It is true that the issue in this form has not been raised by the respondents in their affidavit. But, I think, it would be permissible for me to take notice of this judicial pronouncement of their Lordship of the Supreme Court. These observations of their Lordships were brought to the notice of Mr. Mehta, and Mr. Mehta stated accordingly. The question again arises that if the alleged custom be in respect of making offerings to an idol then whose idol. The matter remains vague on the pleadings raised. The matter will have to be left to be decided on the facts of the case. I do not therefore proceed to decide this question. On account of the aforesaid view taken by me, Mr. Mehta has advanced no argument on behalf of the petitioners in respect of their contention that the rules are violative of Article 26 of the constitution. The petitioners would be free to agitate that matter in a suit if advised.

(39) For the reason stated above, in my opinion the petition is liable to be dismissed, and I would therefore discharge the rule.

(40) NAIK: J. I agree with the conclusion reached by my learned brother. Since, however, I am approaching some of the questions raised in this case from a slightly different angle of vision it would be meet and proper to indicate the line of my thinking. The Gold Control Rules, whose validity has been impugned in this

petition, have been framed by the central Control Rules, whose validity has been impugned in this petition, have been framed by the Central Government in exercise of the power delegated it under S. 3 of the Defense of India Act. These Rules are a species legal of the genus which is known, in the accepted legal parlance, as delegated legislation. The ground of attack against a delegated legislation have a tendency to get themselves mixed up and, as matter of fact, in this petition sometimes been blurred. It would not therefore be out of place to indicate in a general way, the broad categories under which delegated legislation is liable to be challenged. These categories are: (1) The Rules suffer from the vice of the excessive delegation. This attack the power are deluged than the Rules themselves. If the instruments under which the powers have been delegated does not lay down the legislative policy of the clear terms, or it does not afford a proper guidance for the framing of the Rules, then it is open to be challenged on the ground of excessive delegation. (2) That the delegated legislation is in excess with the power of the delegations. Side by side with the attack of exceeding the power delegated, the legislation may also be impugned on the ground of bad faith exercise of those powers, for no authority can be regarded as having been authorized to act in bad faith, and (3) What is known as colorable exercise of the powers of legislation. In substance, this charge is analogous to the charge of excess of powers, the only difference being that here, the excess as to amount to it is legitimate exercise of the power which an ordinary legislation as distinguished from delegated legislation is liable to be challenged. The first ground that may be raised for impugning an ordinary legislative act is that it is in violation of the fundamental rights of enshrined in part III that the legislative act offend. The second is that the legislature has transferred the limits of the legislative powers assigned to it under the constitution and the third is that the legislation is colorable.

(41) In this background, I will now proceed to analyse the grounds that have been urged in the present petition, and therefore I will indicate the ground which was pressed into service in the course of the arguments. The grounds have been summarized in paragraphs (10) of the petition. Clause (a) of the said paragraph relates to the main charges viz., excessive exercise of the power conferred by the parliaments under S. 3(1) of the Defense of the India Act. Clause (b) refers particularly to the S. 3 (2) (33) and says that the classes (33) would not empower the central Government to meet the rules which have prohibited and have also imposed other restrictions upon the use, disposal of or dealing in gold. At best, it would empower the Central Government to meet the Rules which have prohibited and have also imposed other restrictions upon the use, also disposal of the dealing in gold. At best, it would empower the Central Government to frame rules for the purpose of controlling the possession use or disposal of or dealing in "bullion" Clause (C) related to the operation of Art. 358 of the constitution and its effect upon the fundamental rights enshrined upon under article 19. This point has been given up in view of the decision of the supreme

court in *Makhan Singh Vs. State of Punjab* (and connected appeals), . Clause (d) asserts that although the avowed and oft publicized object of the Government in framing the Rules was to check smuggling and to discourage people of the Government in farming the Rules was to check smuggling and to discharges people from making uneconomic investment in gold. Regencies than made to the Sea Customs Act, of 1878 and also to the new customs Bills of the 1962, which has then the pointed out the object of both these legations was to prevent smuggling. It is therefore suggested that if the object to the Government was to prevent smuggling then that old se customs and act or by enacting the bill, which was no the anvil of the parliament at the time when the Government has enacted the Gold Control Rule deliberately under the Defense to India ac and with view to circumvent the constitutional prohibition imposed by Art. 14 and 19 (1) (f) and (g) of the constitution. It is finally asserted that the entree object, motive and intention of the Government in farming the said Rules was tote undue and improper and advantage its guise and cover frame the said rules and deprive the petitioners and other citizens of India of their fundamental rights under Arts. 14 and 9(1)(f) and (g) of the constitution. It son this ground that it was suggested that these Rules amount to colorable and fraudulent exercise of the deluged powers. Clause (e) of the same paragraph again refers mental rights and under Art. 19(1) (f) and (g) of the constitution and intuit connection explains the detailed previsions of the mental rights to the petitioners of offering and gifting the pure Gold and ornaments and the and 26 and of the constitution which according to them, have been seriously brought into the jeopardy.:

(42) It will be at once clear that the charge of expressive delegation has not been leveled, nor is t suggested that there has been any abuse of PO

was or mala fide exercise of the powers. All that it suggested it that the execrable in view of the that firstly the petitioned and the other citizens and have been deprived of the fact that the under the guise of promoting the purpose of defense., the Rules are really meant for promoting a socio - economic goal.

(43) Before proceedings further, it may be pointed out that the view of the proclamation of emergency made by the presidents of India and in view of the provision by the provision of Article 250 of the constitution one of the fetters imposed upon the parliaments not to legislate any law in the regard to the subjects and falling within List II of the seventh schedule of the constitution has been removed. The ground of attack, therefore viz., that the parliament of has transgressed the limits of the legislative powers is no longer open for consideration. In the same way, art 358 and of the constitution spend that notification under Art. 359 by which he had suspended that operation of Art. 14, 21 and 22 of the constitution. The result of the supplements of Art 14, 19, 21 and 22 and is that the Defense of India act as also the Rules framed thereunder have challenged is based under Art 14, 19, 21 and 22 of the constitution, during the period that proclamation of emergency is in operation.

(44) It will thus be clear that the ground of attack to the validity of Gold Control

Rules narrows down to a very small compass viz., whether these Rules are in excess of the powers vested in it.

(45) In support of his arguments that the Rules are in excess of the powers conferred upon the central Government by S. 3 of the Defense of India Act. Mr. Mehta contended that the provisions which conferred powers on the central Government are cottoned in sub - section (1) S. 3 of the Defense of India Act. According to him, the clauses which range from (1) to (57) under sub - section (2) of S. 3 do not and are not intended to confer any power as such upon the Central Government to frame the Rules. Accruing to his arguments, everyone of these clauses under sub section (2) must be examined and no examination it must be examined ad no examination is must be found to have relation to one of the five purposes mentioned in sub - section (1) of S. 3 of the defense of India act. On the other hand Mr. Bhabha contended that the Gold control Rules faille and squarely fall under the clauses (33) of sub- section (1) of S. 3. I may hasten to add that the Mr. Bhabha also contended in that if the Rules do not fall with the in the purview of the clauses (33), they would of course, he justified under the general purpose mentioned in sub - section 91) and (2) of S. 3 and inter se. If the arguments advanced by Mr. Mehta is correct mentioned that in smut follow that the various clauses mentioned in the sub = section (2) are the mere is[;is agamid appendages central Government each time we must fall back upon the general upon the purpose mentioned in sub - section (1) of S. 3 and Defense in the India Act. It must remembered that sub - section 92) also form part of. 3 and primate of the one sub - section is required to be tested on the touch - stone and the another sub - section of the same sanction. Mr. Mehta arguments appears to have been based on the certain observation made by the privy Council in AIR 1945 156 (Privy Council) and also those made by the supreme court in Santosh Kumar Jain Vs. The State Union Of India (Intervener), . I do not propose of deal with the fact of the those cases nor for that matter of these case have been set out by fact of most of these case his judgment. In AIR 1943 1 (Federal Court) the order detaining Talpade was made under clause (x) of the sub - section (2) of S. 2 of the Defenses of India act asset out the general purposes for which rules may be framed., and the purposes set out India act of the 1939 and sub - section (2) of S. 2 India of the Act of the 1939 set outs the various matters in respect of which the central Government of was authorities to make rules. Clause (x) in sub -stances provides that a person who is reasonably suspected of having committed or likely to commit prejudicial act could be kept detained. Rule 26, which purported to have been framed under clause (x) , however, stated that the Government could pass an under of detention against person indulging in prejudicial activities provided it was satisfied in that respect. The Federal court held that the order of detention was bad because (x) of sub - section (2) of S. 2 of the Defense of India act of 1939, and inasmuch assure 26 purported to have been framed under a definite items viz., to fall clauses (x), it was not open the government to fall back upon to the Government to fall bake upon the general purpose enumerated in sub - section (1) of S. 2 of the Act of 1939. If effect, the

Federal court held that the rule it if cloud not be sustained under which its purported to the framed, would not be a sustained at all under any of there other clauses of even under the general purpose mentioned cam in sub = section (1). An identical question camp to the before the privy conical in sibnath Banerji's case. The interpretation of the relative position of sub section (1) and (2) and of S. 2 of the Defense of India Act, of 1939 of camp up for consideration of the privy Council disapproving the view taken of the by the Federal court come to the conclusion of the that R. 26 could be justified on the general purposes mentioned in sub - section (1) of S. 2 of he Act. In pointed out that the purpose mentioned of in sub- section of (2) are illustrative and could note restrictive of the sub - section of (1). At p. 258 (of Ind app) : {at ap. 160 of AIR} the privy Council observed.

"Their Lordships are unable to agree with the learned chief justice of the Federal Court on this statement of the relative postition of the sub = section 1 and 2 of S. 2 of the Defence of the India Act, and counsel for the respondent in the present appeal was unable to support that the statement or to maintain that rule 26 was invlid. In the opinion of the their Lordship the function of sub = section 2 is merely in illustrative of alone the rule maing power is conferred by the sub - section 1, opening sentence of sub - section to the in the which was authorised of by and made under sub - section 1 the provisions 1,as indeed in expressly stated by the words "without prejudice to the generality of the power conferred by sub - section 1".

It would be once be evident that these observation of were made to repel the arguments that he powers conferred by sub - section 2 are restriction of the powers conferred by the sub - section (1) and that the if the rules purported to the have been made under any of the power specified and sub - section (2) could not be sustained under those powers, the les were automatically invalid. The observations made by the privy council and have been approved made the Supreme council the have been approved by the Santosh Kumar Jain Vs. The State Union Of India (Intervener), In that the case the validity on the an order of seizure which purported five thousands maunds under sugar which purported to have been made under clause (j) of sub section (2) of S. 3 of the Essential supplies (Temporary Powers) act, 1946 was called in question. Sub - section (1) of S. 3 of that Act mentioned the general purposes for which the central Government of authorised to make rules and in effect state.

"The Central Government so far as it appertains to it to be necessary or expedient for maintaining or increasing supplies or an esstial commodity, or for securing their equitable by notified order provide for regulation or prohibiting the production supply and distraction thereof, and trade and commerce therein."

Sub - section 2 opens with the words "without prejudice of the generality of the powers conferred by the sub - section (1) and order made there under may provided.....". Clause (j) was one of the clauses, which provided.

"For any incidental and supplementary matters.. the seizure and by a person authorised to make such search of any articles in respect to which such person has reason to believe that a contravention of the order has been or is being or is about to be committed"

It was in exercise of the powers conferred by the sub - section (2) (j) of S. 3 of that Act, that the order of seizure was made. Patanjali Sastri J (as he then was) examined the relative position of sub -section (1) and (2) of S. 3 and observed at p. 310 [of SCR] : [at p. 203 of AIR]

"It is manifest that sub - section (2) of S. 3 confers in no further or other powers on the central Government than what was conferred under sub - section (1) for it is an order made thereunder" that may provide for one of the other of the matter specifically enumerated in sub - section (2) which are only illustrative. Such enumeration is "without prejudice to the generality of the powers conferred by the sub - section (1)";

At page 311 [of SCR] [at p. 204 of AIR] his Lordship referred to the decision of the Privy Council in AIR 1945 156 (Privy Council) and stated.

"The view we have expressed above received support from the decision of the Privy Council in AIR 1945 156 (Privy Council). Section 2(1) of The Defence of India Act, 1939 as amended by S. 2 of the Defence of India [Amendment] Act 1940, empowered the central Government to make rules for securing the defences of the British India, the public safety, the maintenances of public order etc., and sub - section (1), the rules may provide for all or any of the following matters....." Among such matter was the detention of any person "reasonably suspected" of having acted etc in manner prejudicial to the public safety etc. (Clause (x)). Rule 26 of the Rules made under the section however, authorised the Government to detain him with the view to prevent him from going beyond the scope of clause (x) in that it left it to the satisfaction of the Government to decide whether or not it was necessary to detain a person. The decision was reversed and Lord Thankerton, delivering the judgment of the Board, observed.

" In the opinion of their Lordship, the function of sub - section (2) is merely an illustrative one, the rule - making powers are conferred by sub - section (1), and "the rules" which are referred to in the opening sentence of sub - section (2) are the rules which the authorities have made under sub - section (2) as indeed is expressly stated by the words "without prejudice to the generality of the power conferred by sub - section (1)". There can be no doubt - as the learned judge himself appears to have thought - that the general language of sub - section (1) amply justified the terms of Rule 26, and avoids and the and any of the criticism of which the learned judge's expression as to the relation to sub - section (2)."

This accords with our view of the effect of the sub - section (1) and (2) of S. 3 of the Act." It is necessary to note that the Lordship laid emphasis upon the

expression "an order made thereunder," which in clearly subordinates the matters enumerated in the sub - section (1) of the S. 3 of the that Act

(46) In 1952 AC 427, question of similar power Act, 1945, of Canada provided by S. 2(10): "The Governor in Council may do and authorises such acts and things and make from time to time such orders and regulations of as he may be respon of the continued existents has the national emergency arising out of the was..... for the purpose of (c) maintaining, controlling and regulating supplies and services, prices, and regulations existences of the national emergence y arising of the price,s rentals employments salaries and wages to ensure economic stability and an orderly transfixion t the conation of peace.....

In ostensible exercise of the powers conferred by S. 2(1) of the Act of 1945, an order, in council was mad on a April 3, 1947 which provided in S. 22 that "A oats and barley in the commercial positions and "Canada" with certain specified exceptions, are hereby and vested in the Canadian wheat Board. The respondents who held barely the strode various of the Canadian elevators challenged the validity of the compensatory of acquisition provision of the order in countril".

It may be noted tha the order of the expropriation was passed the virtue of the general power so conferred by the S. 2(1) of the siad Act. It was pointed ot that the in War Measures Act, 1914, there was a specific power conferred upon the governor General power for passing of the order for confiscation of the certain circumstances in the list of the subjects, enumerated in sub - section 92) of the S.3, sub - section (1) mentioned the general purpose which are similar to those mentioned ddi sub = section (1) of S.3 of the Defence of the India Act. It was contended that the since there is as no similar powers conferred upon the Governor General under S. 2(1) of he act the of 1945, it must be of the Governor Genera and it was nto not open his authority of the general powers vested by the sub = section (10. It was with reference to this arguments of the thier lordships of instituted a comparison of between of the provisions of sub - section (1) of the and (20 of S. 3 of the War Measures Act. At pp 448 449 their Lordships obserbed.

"..... This lordship of think that the there is not be now of any room for doubt of as to the function performed by the list of the permitted subject in S. 3 of the war Measures of act. The from adopted is plainly of be borrowed from S.91 of the British north Amercia act, 1867. They do nto extend the purpose already defined, for they are directed to explaining what can be doen, not the objects for which thinks may be done they do not the object for which things may be limit its power for all the at they permit is already permitted for all the that they permit is already permitted by the general who's that the precede them. ... What they do is to state explicitly with the certain things that the are to be treated as falling within the range of the general powers already conferred. In the that absences alone they extent because they amplify, those powers. But the Act of 1945 make no such declaration of offer no such list. It is levees the

general and power That it confer unexplained some new declaration and offered some new list the from the which might appropriately by compared and with the from adopted and by its predecessor. In such a case changes might indeed by the significant. But where has one them of the comparison of the lacking altogether there is no firm of ground of the inference of the have been drawn as the to the intentions of the later act.

In their Lordship view there is no better way for approaching the interpretation of this act than to endeavour to the appreciate of the general objects of the it serves and to give its words their natural meaning in lights of the that object...." In effect, their Lordship decided that although there was no specific item of the last under which the action of confiscations of the could be justified. Still that the action was referable to the general powers mentioned in sub - section (1) of S. 2 of the National Emergency Transitional power Act and the 1945. The specific question of the comparison of the power s under the sub - section (1) and (2) and of S.3 and War Measures Act 1914, had not arisen before the privy council. It arose by the comparison of the provisions of the war Measures act and the those of the National Emergency of the Transition of the powers act and it was in that the context that the their lordship pointed out that the after the all the object of enumeration in the sub - section (2) was to elaborate what was contained of the in sub - section (1) and that sub - section (2) did not extend the powers mentioned in sub = section (1) nor could it restrict those powers.

(47) The case which we are considering is somewhat different from all the three cases referred to above. In the present case, the Rules do not purport to have been framed under any of the items mentioned in sub - section (2) of S. 3 of the Defence of India Act, 1962. The Rules purport to have been framed generally in exercise of the powers under S. 3 of the Defence of India Act. The specific problems, therefore which arose for consideration in the above cases, does not arise in the present case. At the same time, it is not worthy that the privy council the in the Canada case has characterised the entire listed in sub = section (2) as "so many statutory definitions". In my view, in the present case, there is no and there cannot be any conflict between sub section (1) and (2) of S. 3 of the Defence of India Act. These clauses make explicit what is implicit in the sub = section (1). If the clauses in sub - section (2) are statutory definitions" evidently, the clauses would stand by themselves, unless there is any ambiguity about any to them. It is not correct would stand by themselves is clauses though Explicitly and unambiguously worded can stand on their own and must always relate to the general purposes. Mr. Mehta's arguments pushed to be it logical corollary amounts to this that it must be demonstrably established that the clauses, which are pressed in service are related to or referable to one or more the general purposes mentioned in sub - section (1) of S. 3. It is clear that the parliaments while enacting those clauses fall within the ambit of the general powers. The expression of parliamentary intents is clear and cannot be called into question by inviting the court to embark upon the inquiry for as to whether there is clear connection of the between the clauses mentioned in sub

section (2) and the one of the purposes mentioned in sub = section (1). Of course if it open control Rules must be referable to one of the items, that it is open to the petitioners to contend that the clauses in sub- section (2) should themselves be put to the test laid down in sub - section (1). The rule of harmonious construction must be adopted and if that the adopted there can conflict between sub -section (1) and (2) of S. 3 of the Defence of India Act of 1962. The arguments advanced by Mr. Mehta was mainly based on the clauses (6) of sub = section (2) of S. 3 which runs thus:

"requiring the publication of news and information"

Mr. Mehta contended that the clause is very widely worded, and therefore unless the publication of news and information of the in shown to be connected with any of the purposes mentioned in sub - section (1) an order requiring the publication of the information would be invalid. The argument is correct, because the clause to which reference is made is vague and ambiguous. When the wording is open to the court vague and ambiguous it would be necessary for the court to make of the inquiry as to whether an order purporting to have been passed thereunder could be justifiable on the basis of the existence of any of the general power mentioned in sub - section (1). But to argue that even when there is no ambiguity about the wording of the clause the connection of between the clause with any of the general purposes must still be established of the satisfaction of the court, would in the opinion, be to pit one part of the section against the other - a procedure which is not permissible on any of construction.

(48) It may be pointed out that the clauses enumerated in sub = section (2) of the Act serve and are intended to serve yet another useful purpose and it is this that, in the absence of such an enumeration the delegating legislation may become liable to be charged with the vice of the excessive delegation. Enumeration of the varnishes form part of the general purposes or follow from part of the according to the parliaments to the general purposes gives guidance to the delegated to frame rules and once that is done, the rules cannot be attacked on the observations made by the supreme court in *Makhan Singh Vs. State of Punjab* (and connected appeals), may be usefully cited in this connection. In discussing the arguments of behalf of the detenu that the Rule (80A) authorising detention of which was framed under S. 3(2) of (15) (f) of the Defence of India Act, 1962, suffered from the vice of the excessive delegation, Gajendragadkar, J (as he then was) referred to the sub - section (1) of the S. 3 of the Defence of India Act, and the specific clauses viz., (15) (I) of sub - section (2) of S. 3 thereof and observed.

"Section 3(2) provides that without prejudice to the generality of the powers conferred by sub- section (1) the rules may provide for, any may empower any authority to make orders providing for all the or any of the following matters, then follow clauses (1) to the (37), including several sub - clauses which provide for the matter that may be covered by the Rules. Amongst them is clauses 15

(I)....."

His Lordship then sets out the clauses and proceeds to observe:

"The arguments is that is the conferring powers on the Central Government of the make rules, the legislation of has abdicated its essentially legislative function in favour of the central Goernment. In our opinion, this argument of the is wholly untenable..... In the present cases , one has merely to read S. 3(1) andth detailed provides contained in serval clauses of the S. 3(2) to the satisfied that the attack against the validity of the sid section on the ground of excessive delegation of the patently unsutatinabe. Not only is legislative policy broadly indicated in the provisions of the impurged section itself give such the detailed to the specific guidance of the rule - making that authority that it would be idle to contend that the Act has delegated essentially legislative function to the rule = making authority....." [p. 401]

In Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, their Lordships were considering the questions as the whether S. (3) (d) of the considering the question as to whether the Druges and Magic Remedies (objectionable Advertisement) Act, 1954, gave uncanalised un and uncontrolled power to the executive section 3 provided: (at p. 567]

"Subject to the provides of this act, no person shall take the any part of the publication of the any advertisement referring to the any drug in the terms which suggest or are calculated to lead to the use of the that drug for

(d) the diagnosis, cure, mitigation, treatment of or prevention of any venereal disease of any other disease or condition which may be specified in rules made under this Act. Power to the make rules in laid down in S. 16 which is as follows:

"S. 16 (1). The Central Government may be notification in the official gazette make rules for carrying out the purposes of this Act."

"In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) specify any disease or condition to which the provisions of S. 3 shall apply."

The first part of S. 16 of the that Act, authorised to making of the rules to carry out the purposes of the act and clauses (a) of sub - section (2) provided that the rules may specify any disease or condition to which the provisions of S. 3 shall apply. Their lordship of observed (at p. 567):-"

"..... It is the first sub - section of S. 16 which confers the general rule marking power i.e., it delegates to the administrative authority the power to the frame rules and regulations to the subscribe the objective and purpose of the act. Clause (a) of the second sub- section is merely illustrative of the powers given under the first sub - section AIR 1945 156 (Privy Council) . Therefore sub -

section 2(a) also has same object as sub - section (1) i.e., to carryout the purposes of the Act. Consequently when the ules making authority specifies condition and disease authority as it does when it exercises powers under sub - section (1) and make other rules question for decision of the then is is the delegation constitutional I that the administrative authority has been supplied with proper guidance. In our view the words impugned are vague. Parliaments has established to criteria, no standards in the has not schedule. It is not stated what fact or circumstances are to be taken into the or disease. The powers of specifying diseases and conditions as given in S. 3(D) must therefore be held to the going beyond permissible boundaries of valid delegations....."

My object in referring to the above decision of is to point out that the enumeration contained in sub - section (2) of S. 3 of the Defence of the India Act 1962 in not just an act of the super - arrogation but serves a necessary any useful purpose. In my view, if the Gold control Rules could be justified by clauses (33) of the sub - section (2) of the S. 3 of the defence of India Act, 1962 since the wording of that the clause it is unambiguous it is not necessary still to Gold Control Rules and one of the general purpose mentioned in sub - section (1) therefore for to do so would be to question the "statutory definition" made by the parliament itself:

(49) That take me to the consideration of the principal arguments advanced by Mr. Mehta viz., that the Rules would become ultra vires unless a direct, proximate or intimate connection is established between the Rules framed and the general purposes stated in the sub - section (1) of the S. 3 of the Defence of India Act 1962. It was also pointed out that the gold Control Rules contained no preamble and no recital to the effect that it appeared to the central Government that the necessary or expedient to the ofr securing the purposes set out in the S. 3 of the Act of the 1962. In was contended by Mr. Mehta that the effect of the ab absences of the recites as above would be to leave the question of he about the connection would be large. I will consider this aspect of the matter at the subsequent stage of the discussion. For the time being I will concentrate, my attention upon the principal argument viz., whether it in necessary to establish a direct, proximate or the intimate connection of the between the Rules framed and the general purposes set out in the S. 3(1) of the Defence of India Act, 1962. The elicited regarded on Mr. Mehta arguments of the int this respect of is in AIR 1950 FC 67, and the other in The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, . In AIR 1950 FC 67 the respondents (Basudeva) was a dealer in kerosene oil and the charge was that the he habitually indulged in black - marketing. He he was arrested by an order of dentition of th passed in exercises by an order fo detention of powers conferred by the S. 3(1) (I) of te U.P. Prevention of Black - Marketing (Temporary Powers) Act, 1947. That the ture by the of virtue of the S. 100 read with the Entry 1 of the List, II Schedule VII of the Government of India Act, 1935. S. 100 of the Government of India Act, 1935 in effect provided that the dominion, legislature had powers to make laws List I of the seventh Schedule and th provincial

legislature had powers to legislate in respect of the any matter enumerated in List II of the seventh sehudule. Entry I of the List II of Seventh Schedule read: [relevant portion quoted].

".....Preventive detention for reasons connected with the maintenance of public orders."

The question for consideration before the Federal Court was whether the legislation viz., The U.P. prevention o f Black - Marketing [Temporary powers] Act, 1947, could be validity passed by the U.P. Legislature in exercise of the legislative powers conferred upon it unders entry 1 of List II of schedule VII. It was contended for the detent that the detention was unlawful as the provision aforesaid was void and the inoperative as being the ultra vires the provincial Legislative. patanjali Sastri j. (As he then was) who delivered that judgment of the court possed the question whether the court possed the question whether the impugned provision fall within the ambit of the legislative by S. 100 of read with Entry 1 of List II, Schedule VII of the Government of the India Act, 1935. It was contended g by the learned Advocate General in that case of that habitual black - marketing n essential commodities was bound sooner or later or controlled distributions of which in turn, might lead to the breaches of the peace of and that therefore detention of with a view to prevent such black - marketing was covered by the entry. His Lordships in repelling this arguments referred to the possibility to the rash driving of an automobile of the sal of adulterated food stuffs leading to the disturbance of public order. At the some time the consequence was so remote as not be connected with the "mainteance of public order". At p. 69, this Lordship observed;

"Preventive detention is a serious invasion of personal liberty, and the powers to make laws with the respect, to it is in the case of provincial Legislature strictly limited by the condition that such detention must be of the for reasons of connected with the maintenance of must in our view, be real and proximate not far - fetched or problematical:

In appreciating the decision of the Federal court it is, necessary to note that in a federal constitution of there is a meticulous division of the powers between the deferral union and the federal states. The line of demarcation between the field of legislative body could not transgress or trespass upon the certified allocated to the other. It is also necessary to note that it is for the judiciary to decide to asto whether the legislature has exceeded the limits of its legislative respect and it is for the to jealously safeguard the delicate is balance the two legislative organs. The principles enunciated in Basudeva;s case AIR 1950 FC 67 was followed by the supreme court in The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, . In that case, S. 3 of the U.P. Special powers Act, 1932, made instigation of not to pay or deter payment of the any liability not offence punishable with imprisonments which may extend to six months., or with fine, extending to Rs. 250, or with both. Ram Manohar Lohia was prosecuted under the said section for delivering speeches with instigating cultivators for the nto to

pay the enhanced irrigations of the rate to the government. He applied to the High court for the writ of habeas corpus of the ground, amongst others, that the said section was inconsistent with art. 19(1)(a) of the Constitution and as such void. The High Court decided in favour of the appellant (Lohia) and he was released. The state appealed to the supreme court and the question for determination was whether the impugned section embodied of reasonable restriction in this interests of public order and was thus protected by Art. 19(2) of the constitution. Subbarao, J., who delivered that judgment of the court, put the issue neatly the constitutional validity of this section" [at p. 828] [of SCR] [at p. 637 of AIR]. His Lordship pointed out that of the sustain any law made by the state under clauses (2) of the Art. 19 of the constitution two conditions must be complied with viz., (1) the restrictions imposed must be reasonable and (2) they should be in the interests of the public order. His Lordships observed [at p. 835] [of Scr] [at p. 640 of AIR].

"..... The restriction of the made "in the interest of public order" must also have reasonable relation of the object to be achieved..... If the restriction of has no proximate relationship to the achievement of the public order, it cannot be said that restriction of the is a reasonable restriction within the meaning of the said clauses....." Reference was then made to the decision of the Federal court in the Basudeva's AIR 1950 FC 67 and the relevant passage at p. 69 of that the judgment of was cited with approval. His Lordship and then proceeded to add.

"The decision, in our view, lays down the correct test. The limitation imposed in the interest of public order to be a reasonable restriction of should be one which has a proximate connection of nexus with the public order, but not one far-fetched hypothetical or problematical or too remote in the claim of its relation with the public orders".

Just as in AIR 1950 FC 67 the point involved was whether the Provincial Legislature had transgressed the limits of its powers in The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, the question was whether the legislature had passed a legislation in violation of the fundamental rights. Subbarao J. Emphasised on hypothetical or problematical considerations.

(50) The question for consideration is whether the principle of proximate or intimate connection can be extended in determining the validity of delegated legislation framed under the Defence of India Act, where large powers have been conferred by the parliaments of the delegate coupled with the wide discretion for the selecting the topics for legislation. I have already pointed out that the God Control Rules have not been challenged on the ground of excessive delegation. I have also pointed out that there is no powers challenged and there could not be an attack on the powers of the parliaments to frame law. For the purposes mentioned in S. 3 of the Defence of the India Act, either on the ground of violation of the fundamental rights under the 19 which had been suspended under Art. 358 or of the fundamental rights under Art. 21 and 22, which have been suspended by a

presidential proclamation. Nor could there be a challenge to the powers of the parliament on the ground that the parliament has transferred on the limit of the legislative of its functions because of the relevant fetters and in that regard have been removed by Art. 250 of the constitution. In other words, there is no inherent want of jurisdiction in the parliament in making have mentioned in S. 3(1) at any time during the period of emergency. There is such an inherent want of jurisdiction in a legislature with limited powers because of the existence of fundamental rights. The only question therefore the parliament which has plenary powers in making a legislation, has in fact delegated these powers which would sustain the Gold Control Rules. In other words, the question is only of the extent of the delegation. Evidently, the delegation is of an extensive character, not merely because of the general purposes mentioned in sub-section (1) of S. 3 of the Defence of India Act, but also because discretion has been given to the Central Government to choose the topics. The words the Central Government may make such rules as appear to it necessary or expedient for securing..... etc" in S. 3(1) of the Defence of India Act, are extremely important. In this connection, it may be pointed out that when we are considering the question of legislative powers the choice made by the legislature is neither here nor there. It is clear that when the legislature proceeds to legislate on the topics, it proceeds on the footing that the topic falls within the purview of its jurisdiction. In this connection, I may refer to a very significant sentence of the judgment of Basudeva's case at p. 69 AIR 1950 FC 67. It was urged before the Federal court that if the legislature of thought the prevention of the particular activity was expedient in the interest of maintenance of the public order, it was not for the court to canvass the degree of connection between the two, as that was a matter of policy of and not of law. In repelling this argument, their Lordships observed.

"We cannot accept this wide proposition. Whilst a statement in the preamble of a statute as to its ultimate objects may be useful as throwing light on the nature of the matter legislated upon and must undoubtedly be taken into consideration, it cannot be conclusive on a question of law, where the legislature concerned has powers to legislate on certain specified matters only. The court must still see in such a case, whether the subject-matter of the impugned legislation is really within those powers."

The effect of the observations of the Supreme Court at p. 836 [of SCR] [at p. 640 of AIR] in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, is identical:

"..... We can only say that the fundamental rights cannot be controlled on such hypothetical and imaginary considerations....."

As pointed out above, under S. 3 of the Defence of India Act, 1962, it is the Central Government, of India Act, 1962, it is the which has been constituted the authority to decide upon the topics on which it could legislate in the

capacity as a delegate of the parliaments in its capacity as a delegate of the parliaments. I may usefully under refer to a passage in the judgment of the High Court of Australia in *Reid v. Sinderberry*. 68 CLR 504 for the reinforcing the argument of advanced above j will be referring to this case and also some on the other Australian cases cited before using the the course of the arguments on both sides of the the course of judgment. At this stage, it is sufficient to note that the the question for consideration of Reid's that case 68 CLR 504 was whether the in making regulation providing for conscription the Governor General was over stepping the limits of the legislative powers of the commonwealth parliament of conferred under S. 15 [vi] on the common wealth constitution to make law with respect to naval and military defence Latham C.J. observed at p. 511:

"..... When the powers of a legislative authority are limited by law the opinion of the authority that the particular exercise of its powers in within the law cannot be decisive of the question of the validity of provision enacted by the authority unless indeed the powers was conferred by the law creating the powers (in this case the constitution of the Common wealth)in terms which provided thatthe opinion of the authority should be so decisive. But there is no such provision relating to deface in the constitution. The power of commonwealth parliaments is powers to make law with respect to naval and military defence - seeconstitution. S. 51 [vi] - not a power to the make laws with respect to any matte which in the opinion of the partliament., or of an authority to which parliaments may confide a power of subordinate legislation., is naval or military defence."

On these general considerations, therefore I am inclined to the view that the test laid down in the two cases relied upon the by Mr. Mehta, vz., that the power of the legislation must be proximate, direct and intimate cannot possibly he extended to the case of delegated legislation, which is framed by the virtue of the wide powers conferred by S. 3 of the Defence of India Act. The test in judging the validity of the Gold Control Rules in the case like this would have be to more flexible than the rigid test of real, proximate and intimate connection, such a test attorney General for the Canada's Case, 1952 AC 427. In that cases, their Lordship were discussing the effect of an order of confiscation, which ws made by virtue of the general powers invested in th Governor in Council of by S. 2 of the National Emergency of Transitional powers act 1945. After referring to the general arguments relating to the real purpose of the powers their Lordship of observed at page 445;

"If then, the expropriation of which the order in council prescribes is to be held invalid in law it must be attacked by showing that the act of 1945, truly interpreted., did not give the Governor the powers to carry out the what he has purported to achieve. No other line of the attack is open....."

A little later, their Lordships observed.

"Plainly, within the scope and if wide range of purposes, the act is conceived in the most fluid and general terms conferring deliberately the most extensive discretion. To import into such a measure a precise limitation [if so vague a phrase can itself be said to be precise] that no action can be taken that "extend" a particular control of particular commodity is in their Lordships' view a radical misunderstanding to the true nature of the legislation."

Again at p. 499 their Lordships remarked.

"In their Lordship's view there is no better way of approaching the interpretation of this act than to endeavour to appreciate the general object that it serves and to give to its words their natural meaning in the light of the object. There are many so-called rules of construction that the courts always have resorted to in their interpretation of statutes, but the paramount rule remains that every statute is to be expounded according to its manifest or expressed intention. If the act of 1945 is approached in this way, it is very difficult to see what warrant there is for introducing into it by way of the interpretation an implied exclusion of any powers in any circumstances to acquire compulsorily acquisition is absolutely excluded from the range of things that the Governor may do any particular exercise of the power is a matter for his discretion and cannot come into the control of the court."

Again the observations at p. 450 have an important bearing on the question under discussion;

"..... And the power to the Executive to pursue these purposes, while the national emergency continues, is conferred by a Parliament without express reservation and in the amplest terms that statutory language can employ....."

Most statutes can be shown to achieve such an encroachment (upon the rights of the subjects) in some form or another and the general principle means of the more than that where the import of the enactments is inconclusive or ambiguous, the court may properly lean in the favour of an interpretation that leaves private rights undisturbed. But in the case such as the present the weight the principle is too slight to counterbalance the considerations that have already been noticed. For there the words that invest the Governor, with the powers are neither vague nor ambiguous. Parliament has chosen to say explicitly that he shall do whatever things he may deem necessary or advisable. That does not allow him to do whatever he may feel inclined, for what he does not must be prescribed purposes and the court is entitled to read the act in this way. But then expropriation if altogether capable, of the being so read."

(51) In my opinion, the principle that should be applied in testing the validity of the Rules framed on the authority of a section which is as widely worded as S. 3 of the Defence of India Act, 1962, is the principle enunciated by the Privy Council in *Attorney General for Canada v. Attorney General for Ontario* [1952] AC 427. When general powers have been conferred upon the central Government and when the central

Governor has been given the right to choose the topic in respect to which legislation is to be framed. , the principle that would be to hold good would be the principle whether the Rules framed are capable of being connected with the purposes from which they are intended. In other words, it is not the direct, proximate and anti words connection which could corrected the Rule with the purposes mentioned I sub = section (1) of the with the matter enumerated in the sub - section (2) of S. 3 of the Defence of the India act 1962. It may also be pointed out that the principle laid down by the same authority in Attorney General for Canada's case, 1952 AC 427 has been followed by the same authority in the subsequent case in (1958) 21 WLR 546. It is that case S. 6 of the Emergency powers order in council, 1939, empowers the Governor to make such regulations as appeared to him to be necessary or expedient of public order etc. By virtue of this power the Governor issued by the Cyprus Emergency powers (Collective Punishment) Regulations, 1955. The commissioners passed an order under the said regulations levying a collective fine of the 35,000 pound after holding an inquiry into the matter as stipulated by the Regulation. In upholding the inquiry into the matter as stipulated by the Regulation referred to the Attorney - General for Canada's case 1952 AC 427 and stated that the test laid down there was the correct one to apply. Mr. Mehta tried to distinguish this case by word "offence" to mean an offence of the commission of which is in the opinion of the commission prejudicial to the internal security of the Colony or to the maintenances of public order in the Colony or to the maintenances of public order the colony. He contended that in view of this definition, the court has no other alternative but to hold that the act levying ignores the circumstances that is was the Regulations which defined the that is was words "offence" and not the original Emergency, powers order in Council 1939. Mr Mehta tried to distinguish this case also by suggesting that as the matter of the fact, the privy council in *RossCluni's* case [1958] 1 WLR 546 did come to the related to the purpose described in S. 6 of the order of the 1939. It is necessary to note that this observation was made after citing with approval the passage in Attorney - General for Canada's case 1952 AC 427. That means that, according to their Lordships the regulations were clearly related to the purposes described in S. 6 of the Order of the aforesaid case.

(52) According to me, there are two rival tests, one for testing the validity of a legislative passed by the legislature whose powers have been defined and limited under the constitution as also be legislation which makes an encroachments or an invasion upon the fundamental rights of the citizens. In judging the validity of the legislation of which makes an encroachment upon the legislative function of another legislative body of the which invades upon the fundamental rights of the citizens the test which must be followed is the test of direct, proximate and intimate nexus between the exercise of the powers and the authority conferred upon the legislature. In a matter of this nature, in the court is the sole judge to decide as to whether the powers have been exceeded. Another, in the case of delegated legislation where there is no inherent lack of jurisdiction on the part of the

parent body which the delegate legislation where there is which delegate has been given wide discretion in the choosing the topic. In the latter case, the test that will have to be invoked or is whether the exercise of the legislative authority is wholly unrelated to the purposes or is not capable of being connected to the purposes for which it is meant to be exercised.

(53) Mr. Mehta contended that the decision given in the case of *Attorney General for Canada* 1952 AC 427 is of no avail to the Central Government in the present case because there is no recital in the rules to show that it appeared to the Central Government of either necessary or expedient to proclaim these rules for securing the various purposes mentioned in S. 3(1) of the Defence of India Act, 1962. He emphasized that some of the passages in the judgment of the Privy Council in *Attorney General for Canada* case, 1952 AC 427 indicate that the decision proceeded on the basis of the presence of the recital to the effect that the Governor in Council deemed it necessary or expedient or both to pass the order in effect that the Central Government deemed it necessary or expedient to frame the Gold Control Rules for any the purposes mentioned in S. 3(1) of the Defence of India Act, 1962. In this connection of reference may be made to a passage at page 74 of the Halsbury's Laws of England, 3rd Edition, Volume 39, which runs thus:

"It is not open to the court to investigate the necessity or expediency of the any defence regulation and it is bound to assume that an order made under a defence regulation of the was necessary..."

One of the cases cited in support of the above proposition is *Rex v. Comptroller General of Patent* (1941) 2 KB 306. In that case, certain order were passed by the comptroller general of Patents regulating the rights of using an enemy-owned patent. Regulations 60E of the Defence (General) Regulations, 1930, was framed under sub-section (1) of S. 1 of the Emergency powers (Defence) act, 1939, which set out the purposes for which His Majesty may make regulations. The purposes were:

"..... Securing the public safety, the defence of the realm, the maintenance of the public order and the efficient prosecution of any war in which His Majesty may be engaged and for the maintaining supplies and services essential to the life of the community."

The validity of Regulation 60E was impugned on the ground that it has no relation whatsoever with the object of prosecuting the war. After observing "..... we might have been entitled to say that the purposes stated in the sub-section were wide enough to include the framing of this regulation." Scott, L.J. proceeded to say: [p 311]

"Be that as it may in my opinion the effect of the words "As appear to him to be necessary or expedient" is to give to the His Majesty in the Council a complete discretion to decide what regulations are necessary for the purposes named in the sub-section. That being so it is open to His Majesty's court to the

investigate the question whether or not the making of the any particular regulation was in fact necessary or expedient for the specified purposes. The principle on which delegated legislation must rest under our constitution is that the legislation must rest under the which is left in plain languages by parliament is to be final and not subject to control by the court. In my view, the sub section clearly conferred on His Majesty in council that ultimate discretion....."

In repelling the arguments based on the absence of express recital, his Lordship observed on the same p. (312) as follows.

"..... The order is council introducing Reg. 60E of necessity records by implication the fact the His Majesty in council thought it either necessary or expedient, or both, to extend the powers of the Comptroller under the Patents (Emergency) act, 1939, S. 3, in the manner stated in the regulation....."

Clauson in L.J. has dealt with this question in some detail at p. 314:

"..... The order in council does not contain an express recital that it appears to His Majesty to be necessary or expedient for the purposes mentioned to make this particular regulation, but as a matter of construction of the order I am clear (and I do not think anyone in the course of these proceedings has thrown any doubt on the proposition) that it shows plainly that it did appear to His Majesty to be necessary or expedient to make this regulation."

Again at p. 315 his Lordship observed:

"..... This application for prohibition can succeed only if it is within the powers of this court to investigate the exercise of powers of His Majesty when he stated as I conceive that His Majesty did not make an order in council, that this regulation appeared to him to be necessary or expedient for the named purpose. In my view, this court has no jurisdiction to investigate the reason of the advice which moved His Majesty and this court has left the matter to His Majesty and this court has no control over it. I know of no questioning the decision which His Majesty must be taken to have stated that he has come to namely that for the specified purposes. If His Majesty once reaches that conclusion with regard to the regulation that regulations when made in the law of the land, subject to the provisions in the act that if either House of the parliaments takes a view different from that on which His Majesty has acted, the order can be annulled."

Again a little later his Lordship stated:

"..... His Majesty formed the view that it was necessary or expedient for the purposes mentioned, to make the regulation, and so far as the this court is concerned, there is an end of the matter....."

It would thus be clear that no importance can be attached to the absence of a specific recital as a preamble to the Rules framed.

(54) I should not be supposed to hold that the case is open to the court to

hold a judicial scrutiny in the matters on which the Rules have been framed. The Privy Council in *An Attorney-General for Canada's case*, 1952 AC 427 has indicated that when the instrument impugned is ambiguous, it will make room for judicial inquiry. Their Lordships have observed at p. 450 as follows:

"It is fair to say that there is a well known general principle that the statutes which encroach upon the rights of the subject, whether as regards persons or property, are subject to a strict construction. Most statutes can be shown to achieve such encroachments in some form or another, and the general principle means no more than that where the import of some enactment is conclusive or ambiguous the court may properly lean in favour of the interpretation that leaves private rights undisturbed. But in cases such as the present the weight of that principle is too slight to counterbalance the considerations that have already been noticed. For here the words that invest the ambiguous Parliament with power to say explicitly that he shall do whatever things he may deem necessary or advisable. That does not allow him to do whatever he may feel inclined for what he does must be capable of being related to one of the prescribed purposes, and the court is entitled to read the Act in this way."

It is however, necessary to consider the scope of the judicial scrutiny in the matter like this, because this will also throw light upon the question of the proper test to be applied in judging the validity of a delegated piece of legislation. It has been conferred on the Central Government to make a choice of the topics in respect of which it is considered necessary or expedient to make Rules for the stated purposes. I have also laid emphasis upon the wide range of the purposes mentioned in S. 3(1) of the Defence of India Act, 1962. I have also pointed out that when such discretion has been given to the central Government and when such wide powers have been conferred upon it the test would be of the validity of the Rules framed would be of the flexible character viz., to consider whether the Rules are wholly unrelated or are not capable of being related to the purposes mentioned in sub-section (1) of S. 3 of the Defence of India Act, 1962. If the court comes to the conclusion that the measure is wholly unrelated or was not capable of being connected with any of the purposes mentioned in sub-section (1) of S. 3, the court has jurisdiction to strike it down as invalid. But the court cannot strike it down merely because it thinks that the measure is not directly connected with the purposes as interpreted by it. It would, therefore, be interesting to review some of the cases that were cited by Mr. Mehta as also by Mr. Bhabha which will give us a fairly clear idea about the limits of the scope of the inquiry and also incidentally throw light upon the question of the proper test to be applied. In [1920] 1 KB 829 regulation 2A (2) of the Defence of the Realm Regulations which was consolidated, Act 1914, in effect provided that no proceedings for the recovery of possession of the dwelling house in which a munitions worker is living and which is situated in a declared area, could be taken without the consent of the Minister of Munitions. The case came up before the Kings Bench Division as a

case stated by the Justices for Lancashire. It was held that the action taken could not possibly have any connection for securing the public safety. It was also pointed out that the shutting out all the access or approach to the court was a grave invasion and so grave an invasion of could not be delegated legislation. Darling J raised the question at p. 833;

"..... and I ask myself whether it is a necessary or even reasonable way to aid in the securing the public safety and the defence of the realm to give powers to Ministers to forbid any person to institute any proceedings to recover possession of a house so long as a war at p. 835, Avory, J. Observed."

At p. 835, Avory, J. observed:

"..... This depends upon whether it can be said, on any reasonable construction of the statutes, to be a regulations for securing the public safety and the defence of the realm, and particularly under S. 1, sub - section 1(e), whether it can be said to be a regulations to prevent the successful prosecution of the war being endangered;....."

He further indicated that a regulation providing that no order for the ejection should be made except under the conditions prescribed would probably be held *intra vires* the statutes but the objections which was made to the regulations was that it deprived to king's subjects of their right of access to the Courts of the Justice. In 1920 AC 508, the Crown took possession of hotel for the purposes of the housing the headquarters personal of the Royal flying corps., and denied the legal. The only question was whether the denied or the conducive to any of the purposes mentioned is S. 1(2) of the Defences of Realm Consolidation Act, 1914. Lord Dunedin at p. 523 posed the question in the following way:

"..... The question in the case in there fore narrowed to one point and one point only: the Crown having legally taken is it bound to the pay compensation *ex lege*, or is that offer to the pay compensation *ex gratia*, as that compensation may be fixed by the Losses Commission, a sufficient offer and an answer to all demanded?

Lord Dunedin held: [at p. 529]

"..... It is clear that under the these sub section the taking possession of De Key users Hotel was warranted, but there was no necessity for the public safety or the defence of the realm that payments should not be made, such above expressed payment being on the hypothesis that the view above expressed as to the Act, 1842 were sound, a necessary concomitant to taking....."

it was on that the short ground that the action of eviction of the was held to be *ultra vires*. Both but, in my opinion, instead upon of supporting the point of the which he was advancing, these case show that it is only cases where the court feels that the action taken has no connection whatsoever to the purposes of the defence of the safety of the realm that the action can be declared as *ultra vires*.

Mr. Mehta also referred to a decision in the king v. Commonwealth court of Conciliation and Arbitration 66 CLR 488. In that case sub regulation 8, 9 and 10 of regulation 29 of the National Security (Supplementary) Regulations, purported to control the holidays and remuneration of member of the public service of the state of Victoria, although they were not engaged in work associated with the prosecution of the war. It was held that the sub regulations were not within the ambit of the defence powers of the commonwealth. In the leading case Farey, v. Burvett 21 CLR 433, to which reference will be made hereafter, the High Court of Australia had held that the S. 51 [vi] of the constitution which related to naval and military defence of the commonwealth must be more liberal in the time of war than during times of the peace. The question that arose in the 66 CLR 488 was whether the sub-regulations were justified on the basis of the extended definition of defence. At p. 506, Latham C. J. observed.

"..... But the most complete recognition of the power and responsibility of parliament and the government in relation of the defence does not involve the conclusion of that the defence powers it without any limits whatever. The existence of the defence power in the commonwealth parliament and the exercise of that power do not mean that all government power in Australia may be the action of the commonwealth authorities. The constitution cannot be made to disappear because a particular power conferred to by the constitution upon the commonwealth parliament is exercised by that parliament....." The learned chief Justice then proceeded to observe. [At p. 507]

"But such a result cannot follow if the defence power is regarded as enabling the commonwealth parliament to make such laws only as have a real connection with defences....." After citing the passage from the judgment of the Isaacs, J in Farey's case, 21 CLR 433 where the learned Judge used such words as "conceivable" and incidentally Latham C.J. observed at p. 507;

"..... In spite of the use of the words "conceivable" I do not regard the statement of the Isaacs, J which I have quoted as meaning more than this, except that, recognizing that great scope and profound national importance of the defence power, it emphasizes the necessity for care and caution before the deciding that a particular measure put forward as appertaining to defence, in truth and in substance has nothing to do with defence....."

At p. 509, the learned chief justice observed:

"..... The defence power should be in my opinion, be constructed as an unlimited legislative power. It should be interpreted upon the same principles as that which is applied to other constitutional powers. If the alleged connection between a particular power of legislation and the subject of defence is either non-existent or so attenuated as to be practically non-existent, the legislation cannot be supported under that power...."

Although Mr. Mehta relied upon this case the observations set out above do not

support the proposition he was trying to establish before us viz., that the connection must be proximate and direct. In *Victorian Chamber of Manufactures v. The Commonwealth* 67 CLR 413 regulations known as the National Security [Industrial lights] Regulations were passed by the virtue of the powers conferred by the National Security Act 1939 - 40 under which the minister was given complete control of the interior was given artificial lighting standards in the industrial premises. It was argued that good lighting was conducive to industrial that the efficiently and industrial efficiently was important for the effective prosecution to the war therefore the regulations were valid, in repelling this argument, were valid Latham C.J. observed at p. 417.

"..... But the same thing might be said of any prescription of standards in factory condition or in almost any others conditions affected the human of the and life and well bring. For example, the provision of food, clothings, housing and recreation for workers is require for full induceness of effiecieny. But in my opinion the exist to the common wealth general control fo these subjects. The existence of war enable to the commonwealth and in my opinion to deal was with war problems and with war - created problems it does not produce the result that the commonwelath parliament is empowers to legislate upon all subjects whatever."

Starke, J. At p. 421 stated:

"..... The question does not depend up on the vividness of the imaginations or conception but open the law of the regulations being in substances a law or the regulation with respect to the public safety and the defence of the commonwealth....."

At page 422 the learned judge remarked.

"In the present case the Regulations are wholly unrelated to the unconnected with the public safety and the defence of th common wealth..... The Regulations in terms go far beyond any purposes of defences and necessarily operate as a general regulations of Industrial lighting conditions beyond the powers to the commonwealth."

William j. At p. 428 stated:

"I an unable to conceive, that the Regulations are required even incidentlly the for the defence of the commonwealth. Their whole substance and purposes is to legislate upon a social subject which does not present any features in time of war not present in normal times....."

In 68 CLR 504, the respondents were convicted of an offence under the National Security act 1939 - 1943 in that they failed to the comply with a direction given under regulation 15 of the with a direction give under regulations 15 of the National security (Man Powers) Regulations - Statutory Rules 1942, No. 34 as amended. The validity of the Regulaton was challenged. I have already cited a passage at p. 511 in another connection. At p. 514 Rich J referred to this own

observation made in an earlier case to the own observation made earlier regulations are capable of being used for necessary purposes incidental to the defence of the commonwealth at p. 515, Starker J. Stated:

"..... It must have some real connection with defence, afford, some reasonable and substantial basis for the conclusion that the law in one with respect to defence....."

In *Wertheim v. The Commonwealth* 59 CLR 601, the Fly and Insect Sprays Order, which purported to be made under Regulation 59 of the national Security (General) Regulations, declared that the objections of the order were "by regulating the manufacture the putting up of fly and insect, in sprays, to ensure the essential material, in particular kerosene and thanite, are not wasted through being used in the production of ineffective fly and insect spray." It provided that the "a person shall not manufacture or put up and fly spray except under the authority of an in accordance with a licence granted" pursuant to the order, and fly spray manufactured disposal or acquisition of" any fly spray manufactured or put up in contravention of this order". It was held that the order was not authorised by the regulation 59 of the national security (general) Regulations, and was invalid. Williams J at p. 611 stated:

"..... That is not a purpose which on the face appears to me to have any connection with the defence of the commonwealth or the effectual prosecution of the war or the maintenance of supplies and services essential to the life of the community....."

Again, at a later stage on same page, the learned judge observed.

"..... Legislation upon a special subject which does not present any feature in time of war not present in normal times is legislation that lies within the legislative province of the states and cannot be enacted by the commonwealth under the defence power or any delegation of that power."

It may again be pointed out that these cases were relied upon by Mr. Mehta, but none of them assists him in the theory, of proximate and direct connection between for which the powers have been conferred on the delegate. Before concluding the review of the Australian cases, reference may be made to a decision in *Miller v. The Commonwealth* 73 CLR 187, which was relied upon by Mr. Bhabha, in support of this proposition that the nexus need not be direct or proximate that it is sufficient if the legislation is capable of being related to general purposes. In *Miller's* case 73 CLR 187, Regulation 7(7) of the National Security (Economic Organization) Regulations provided that "the Treasurer may, after consultation with the committee of the Associated stock Exchanges of Australia, by the order determine the maximum and minimum prices at which any shares stock or debentures of company may be sold."

It was held:

sub - regulation when made, was within the defence power (S 15 [vi] of the constitution] as having as direct relation to the organization of the community for the prosecution of modern war, and that it was still within that powers war, even after the termination of hostilities."

It was argued that the purposes for which the Regulation was passed could never have had any sufficient bearing on the prosecution of the war or the defence of the commonwealth. In repelling these contentions, Dixon J. Observed: [at p. 202]

"I am unable to accept these contentions. In my opinion, at the time when these regulation were adopted a rigid control of dealing in marketable securities might reasonable have been considered essential to the financial and economic organization of the country to sustain its parts in the war. It is not for us to pronounce upon matter of finance and economics. When the connection between a challenged provisions and the defence power is financial or economic in character, our province is to say whether the Executive government in which the responsibility is reposed of adopting by regulation measures required for the prosecution of the war, might reasonable consider that the conduct of the war would be likely to suffer if the challenged provisions were not made.

I do not see how we can say that it might not reasonable be considered that in the financial or economic exigencies of the war, it was necessary to avoid the inflation or deflation of the marketable securities and to control transaction, dealing or operations which might lead to booms and slumps, or which might form a factor in absorbing funds otherwise available for government loans or other purposes.

On a question of ultra vires, when the end is found to be relevant to the powers and the means not inappropriate to achieve it, the inquiry stops. Whether less than was done might have been enough whether more drastic provisions were made than the occasion demanded whether the financial and economic conceptions inspiring the measures were theoretically sound, these are questions that are not in point. They are matters going to the manner of the exercise of the powers not to its ambit or extent....."

The principles deducible from a review of the cases referred to above are the scope of the judicial inquiry is limited and that the court can set aside the Rules if on the facts of the case, the Rules appear to be wholly unrealistic or if it is found on examination that they are not capable of being related to any of the purposes mentioned in S. 3 (1) of the Defence of India Act, 1962.

(55) That then take me to the question as to whether the Gold Control Rules would fall either firstly under clause (33) of sub section (2) of S. 3 of the Defence of India Act, 1962 or secondly under the general purposes mentioned in sub section (1) of S. 3 of the said Act. The first purpose of sub section (1) of the S. 3 of the Act is "securing the defence of India and civil defence" Entry No. 1 of List I seventh Schedule of the constitution of India, is in the following terms:

"Defence of India and every part thereof including preparation for defence and all such acts as maybe conducive in items of war to its prosecution after the termination to the effective demobilisations."

It may be interesting to refer to sub section [vi] of S. 51 of the Australian Constitution which relates to the powers of the commonwealth parliament to legislate on matter of defence.

"[Vi] The naval and military defence of the commonwealth and of the several states and the control and of the forces to execute, and maintain the law of the commonwealth."

The scope and ambit of this sub - section came up for consideration in 21 CLR 433 wherein the validity of the War precaution act No. 10 of 1914 as amended by act III of the 1916 was impeached. The Act No. III of 1916 purported to authorise the Governor General to make such regulations as he thinks desirable for the more effectual prosecution of the war, or the more effectual defence of the commonwealth more etc. It dealing with the question as to whether the expression "defence powers" has the same meaning at all times whether in peace or in war, Barton at all time whether in peace or in war, Barton J. Observed as follows : [p. 449]

"..... Subjects which before that battle seemed by only indirectly which before remotely connected with war may after the battle be seen quite clearly to be within. It may be, as Sir William Irvine urged, that the powers does not change. If that is so it is because of the perspective of the affairs, he causes the powers looks narrower in the peace when it is not the foreground of our view than it does as means of present war when bring us into clause contract with the it when it exercise becomes the most vital of our activities. It may be that the powers does not become enlarged in war but that when seen closely we know how large it is in the relation to existing war. Then at least we are able to envisage the reach of the its long arm. If the thing be capable during war of adding our arm as by land as sea here or elsewhere we are to say so but we say no more. It may be wholly beside the mark in the peace, and if that be so, was are to say so upon the due occasion. But the necessity is not for us, when fact of the which we take judicial notice established that the thing is capable of aiding directly the execution of the powers. If it is thus capable, then the question of the necessity or the wisdom or expediency, of invoking such aid is for parliament or its duly delegated authority."

It is significant to note that the action fixing the highest toll for price bread within the limits of a certain locality was held to be intra vires the powers of the commonwealth parliaments conferred by S. 51 [vi] of the Australian Parliament conferred interpreted by the learned judges. Now, Entry No. 1 in list I of the Seventh Schedule of our constitution is more widely worded. Not only it related to the defence of the India but also included "preparation for defence and all such as acts may be conducive for times of the war of its prosecution

and after the termination of effective demobilisation." We have to examine the Gold Control Rules in the light of the wider language of the entry relating to the defence of India. The observations of the High court of Australia in 21 of CLR 433 will apply with greater force in interpreting the words "the defence of India" in view of the wider definition of that expression in Entry No. 1 of List, I of the seventh schedule.

(56) In my view, the Gold Control Rules are clearly referable to clause (33) of the sub-section (2) of the S. 3 of the Defence of India Act, 1962. Clause (33) runs thus:

"Controlling the possession use or disposal of, or deal in the coin, bullion bank notes, currency notes, securities of foreign exchange." reference was made to the dictionary meaning of the words "bullion" as that word has not been defined in Defence of the India Act, 1962. In general in the bullions is meant "gold or silver in mass or in lump". Mr. Mehta's argument was that, since the clause speaks of "bullion" it would not be logical to hold that the Gold Control Rules which argument for imposing prohibitions and restrictions upon the making of ornaments and also on the sale and exchanges of ornaments, and would fall within the ambit of the clause (33). In the first place, it is necessary to remember that several matters have been brought together under clause (33). These are coin, bullion, bank notes, currency notes, securities and foreign exchange. The object appears to be that the central Government should have powers to make rules relating to all matters which affect the economic and financial stability of the country during the period of emergency. Clause (32) of sub-section (2) of S. 3 of the Act said prohibits and any description including coin, bullion, bank notes, currency notes, securities and foreign exchange. It is thus clear the object of the matter mentioned in clause (33) was to regulate the possession use or disposal of in coin bullion etc. In the free market of the country. Although the expression "gold bullion" by itself may not include gold ornaments, still it is necessary to note that the words "bullion" if preceded by such disposal of or dealing in the bullion not merely the disposal of or dealing in the bullion not merely the disposal dealing in the bullion in respect to which rule may be framed, but it is also in respect of the rule of the bullion. Mr. Mehta suggested that the objects of underlying clause (33) transfer or possession of bullion from one hand to the other. If that were the only object of clause (33), it was wholly unnecessary to add the words "use in the that clause. To my mind, the use of gold bullion would include the turning of the gold bullion would include the ornaments. In the absence of powers to control the use of bullion by placing restrictions in respect of the power conferred by clause (33) would have been wholly inconsequential and would not the expression controlling the possession, use or disposal of or dealing in the coin, bullion, etc. So framing adequate rules in respect thereof. Financial or economic stability is one of the important considerations so far as defence of the country is concerned and without adequate control on the use of the bullion. It would be difficult to maintain such stability, because gold is a commodity of international exchange

and importances.

(57) Assuming that the Gold Control Rules do not fall within the purview of clause (33) of sub - section (2) of S. 3, then they can fall within the general purposes mentioned in sub - section (1) of S. 3 of the said Act, and I am entirely in agreement with the view expressed by me learned brother in that respect. There is no substance in the arguments advanced by Mr. Mehta to the effect that under the guise of advancing the purposes of the defence of the country, what is attempted is to introduce of a socio - economic measure. It is undisputed that the smuggling of gold involves a heavy drain in the foreign exchanges resources of India.. smuggling, therefore of gold has to be checked. The measures undertaken under the Sea Customs and and the Foreign Exchanges Regulations have not achieved the purposes of checking smuggling. Once gold is successfully smuggled into this country, it is easy for the same to find a place the shape of hte at ornaments it is impossible to recognise that the ornaments it is impossible thus prepared can easily pass off as having been made out of the existing stock or out of the indigenous gold. This capacity of the quick transformation into ornaments is the principal difficulty in the way of the preventing smuggling. Smuggling will continue notwithstanding the enactments of stringent measures so long as it is profitable to smuggle. The trade of smuggling will continue to be profitable as long as people have hand carrying or the lure for gold. The best method of preventing smuggling therefore is to bring about a shrinkage in the demand of for gold. It is for that purpose that hte control and restriction on the manufacture and sale of the gold ornaments appears to have been devised. It is true that the fonders for gold, or to use the words often used by Moraji, Desai, the then Finances Ministers, the lure is for gold, it deep - seated of the in habit of the Indian people and would not be removed, overnight or within the a short period. I nthat, sence, it is undoubtedly long term measures i.e. making people to change their age old habits. In the same, sence it can be styled as a measures of social reform . but the perfect that it is further also as measures of social terms measures to nto by the themselves turn trying to co - relate the Gold Control Rules to one to the purposes viz., defence of India, we have to take recourse to a claim of the long and circuitous causation. He argued to the the if one link in the chain snaps then the entire chain breaks down. According to him the success of the measures is also the measure has failed to achieve the desired effect. He then went on to suggest alternative measures if the object was to the permits the defence of the country. According to him, instead of imposing restriction upon the manufacture and sale of golds gold has been expropriated by the Government and utilised for war purposes. I do not think that the chain of causations is in any way circuitous or tortuous as is suggested by Mr. Mehta. There is a direct link between the objective viz., to prevent smuggling and thus reducing the drain to foreign exchanges, and imposing the restrictions that have been imposed under the Gold Central Rules. Nor was we concerned with the question of the alternative ways of the achieving the desired effect. We are not concerned with the effects of

the gold control policy, nor with the soundness of that policy, be caused with the soundness of the policy decide. Incidentally I may refer to the provisions of S. 41 of the Defence of India Act 1962 which required that the rule made by the Central Government must be placed on the table. Section 41 empowers the parliament either to cancel or modify the rules. As a matter of fact, the Gold Control Rules were placed before the parliament and they have been neither been cancelled nor in any way been rejected by the parliament. That means that the arguments viz., that the framing of the Gold Control Rules amounts to a colourable exercise of the powers be caused there were already other measures which could have been pressed into service of the preventing smuggling or be caused the new customs bill was on the anvil of the parliament is without substance. It was contended before the supreme court in *Makhan Singh Vs. State of Punjab* (and connected appeals), that in view of the existence of the preventive Detention act under which orders of detention could be made, rule 30 made by virtue of the powers conferred upon the central Government of under S. 3 of the Defence of India. The argument relating to the colourable exercise of the powers of the legislature is essentially an argument about the competency of the legislature. The supreme court in rejecting the arguments observed. [At p. 401]

"..... If the legislature thought that having regard to the grave threat to the security of the India posed by the Chinese aggression. It was necessary to pass the impugned act notwithstanding the fact that the another Act had already been passed in the behalf, it would be difficult to hold that the legislature had acted mala fide and that the act must, therefore be struck and down as the colourable exercise of legislative powers. It is hardly necessary to say that the Legislature competent to pass the act passed by a valid piece of legislation cannot succeed on such flimsy grounds....."

I agree with my learned brother in the ruling that the has given viz., that the two speeches of Mr. J. B. Desai, the then Finance Minister, one of the All - India Radio on the eve of the proclamation of the Gold Control Rules and the other made in the parliament when the gold control rules were placed on the Table under S 41 of the Defence of the India Act, are relevant I also agree with the view taken by him that neither the speech made by the deputy minister on the floor of the parliament while introducing the new customs bill nor the speech made by T.T. Krishnamachari, and the present Finance Minister while discussing the working of the Gold Control Rules has any relevance to the question of the under consideration I also agree with the view taken by my learned brother viz, that the petitioners cannot impugn gold control Rules as violative and the fundamental rights under articles 25 of and 26 of the constitution on the state of the averments of the contained in the petition.

(58) The rule is therefore, discharged. Having regard to that fact that a large number of dealers, small and big, have been affected by the Gold Control Rules and having regard to the importance of the matter, there is will be no order as to costs.

(59) Petition dismissed.