

(1976) 02 BOM CK 0030

In the Bombay High Court

Case No : Appeal No. 204 of 1975, in Miscellaneous Petition No. 1162 of 1975

Binod Rao

APPELLANT

Vs

Minocher Rustom Masani

RESPONDENT

Date of Decision : 10-02-1976

Acts Referred:

Constitution of India, 1950 — Article 12, 13, 14, 186, 19
Income Tax Act, 1961 — Section 119
Industrial Disputes Act, 1947 — Section 10
Penal Code, 1860 (IPC) — Section 124A, 505

Citation : (1976) 78 BOMLR 125

Hon'ble Judges : Madon, J;Kania, J

Bench : Division Bench

Judgement

Madon, J.—In a petition under Article 226 of the Constitution filed on the Original Side of this High Court, Bhatt J., by his judgment and order dated November 25/26, 1975 set aside the orders dated July 15, 1975 passed by the appellant prohibiting publication of articles, reports, letters and quotations, aggregating in all to eleven in number, intended for publication in the August 1975 issue of the monthly journal the "Freedom First" edited by the respondent. Bhatt J., also issued a writ of mandamus directing the appellant, his officers, subordinates, servants, agents and successors-in-office to withdraw or cancel the said orders and further directing the appellant to permit the publication of the said articles, reports, letters and quotations and further directing the appellant, his officers, subordinates, servants and agents to forbear from acting in furtherance or implementation of the said orders. Bhatt J., further ordered the appellant to pay to the respondent the costs of the petition. It is against this judgment and order of Bhatt J., that this appeal has been filed.

2. For a fuller understanding of the facts which led to the filing of the said petition and a better appreciation of the arguments advanced in this appeal it is necessary first to trace the history of the relevant recent emergency legislation.

3. On December 3, 1971 in exercise of the powers conferred upon him by Clause (1) of Article 352 of the Constitution, the President of India made a Proclamation declaring that a grave emergency existed whereby the security of India was threatened by external aggression. As a result of this Proclamation of Emergency, under Article 358 of the Constitution the restrictions placed upon the Central and the State Governments in making laws or taking executive action imposing restrictions upon the exercise of rights conferred by Clause (1) of Article 19 of the Constitution became suspended during the period of the Emergency. In the wake of this Proclamation "of Emergency the Parliament passed on December 4, 1971 the Defence of India Act, 1971 (Act No. 2 of 1971). In pursuance of the powers conferred by Section 3 of that Act, the Central Government made the Defence of India Rules, 1971. On June 25, 1975 in exercise of the powers conferred upon him by the said Clause (1) of Article 352 of the Constitution, the President of India issued a Proclamation of Emergency declaring that a grave emergency existed whereby the security of India was threatened by internal disturbance. This Proclamation was notified in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated June 26, 1975. On the same day as the said Proclamation of Emergency was notified, namely, on June 26, 1975, the Central Government, in exercise of the powers conferred upon it by Sub-rule (1) of Rule 48 of the Defence of India Rules, 1971, made an Order No. S.O. 275(E) requiring all news, comments, rumours and other reports relating to the matters specified in the said order to be submitted for censorship to the authority appointed under the said order before being published in any newspaper, periodical or other document. For the sake of convenience we will hereinafter refer to the said Order No. S.O. 275(E) as "the Censorship Order". On the same day, namely, June 26, 1975, in exercise of the powers conferred upon it by the said Rule 48(1) of the Defence of India Rules, 1971, the Government of Maharashtra also made an Order, namely, Home Department (Special) No. SB. III/WBM. 2975, requiring all matters to be submitted for censorship to the authority specified in the said Order before being published in any newspaper, periodical, pamphlet or other document. For the sake of convenience we will hereinafter refer to the said Order No. SB. III/WBM. 2975 as "the State Censorship Order". Under the State Censorship Order the Chief Director (Information and Public Relations), Government of Maharashtra, was appointed as the authority to whom all matters intended to be published in newspapers, periodicals, pamphlets and other documents were to be submitted for scrutiny before publication, if any such documents were to be published in Greater Bombay. On June 27, 1975 the President of India, in exercise of the powers conferred upon him by Clause (1) of Article 359 of the Constitution made an order declaring that the right of any person (including a foreigner) to move any Court for the enforcement of the rights conferred by Articles 14, 21 and 22 of the Constitution and all proceedings pending in any Court for the enforcement of the said rights shall remain suspended for the period during which the aforesaid two Proclamations of Emergency are in force. By the Defence of India Ordinance, 1975 (Ordinance No. 5 of 1975) promulgated by the President on June 30, 1975,

the Defence of India Act, 1971, was amended. By the said Ordinance the title of the said Act was: changed to "The Defence and Internal Security of India Act, 1971", and certain sections of the said Act were amended. For the sake of convenience we will refer to this Act, whether in its amended or unamended form, as "the said, Act" indicating where necessary whether we are referring to this Act as originally enacted or as amended by the said Ordinance. In exercise of the powers conferred upon the Central Government by Section 3 of the said Act, the Central Government by Notification No. G.S.R. 394(E) dated July 1, 1975 made the Defence of India (Amendment) Rules, 1971. By these Amending Rules the title of the Defence of India Rules, 1971, was changed to "The Defence and Internal Security of India, Rules, 1971" and certain amendments were made in the said, Rules. For the sake of convenience we will also refer to these Rules as "the said Rules." indicating where necessary whether we are referring to these Rules prior to, their amendment by the Defence of India (Amendment) Rules, 1971, or subsequent thereto. On July 5, 1975 in exercise of the powers conferred upon it by Rule 4 of the said Rules, the Central Government issued an Order No. S.O. 315(E) inter alia directing that an order made under the said Rule 48 by a State Government or by any officer or authority authorized in that behalf by the State Government before July 15, 1975 should not continue on or after that date, except in accordance with such instructions as the Central Government might give to the State Government in that behalf. By Notification No. G.S.R. 398(E) dated July 6, 1975 made in exercise of the powers conferred by Section 3 of the said Act, the Central Government made the Defence and Internal Security of India (Amendment) Rules, 1975, whereby a new sub-rule was inserted in the said Rule 48. By Order No. S.O. 316 (E) made on July 6, 1975 made in exercise of the powers conferred by Sub-rule (1) of the said Rule 48, the Central Government made certain amendments in the Censorship Order. In view of the Central Government's aforesaid Order No. S.O. 315(E) dated July 5, 1975 by Order No. SB/III/WB 297/1-A dated July 14, 1975, the Government of Maharashtra, rescinded the State Censorship Order. By Order No. SB/III/WBM 2975-1B, also dated July 14, 1975, the Government of Maharashtra, in exercise of the powers conferred upon it by the Censorship Order, authorized certain officers to be authorized officers for the purposes of the Censorship Order in the areas specified against such officers. By the said order the Secretary (I) to the Government of Maharashtra, Home Department and State Press Adviser, was designated as the authorized officer for the whole of the State of Maharashtra and the Special Press Adviser as the authorized officer for Greater Bombay. By the said order the Government of Maharashtra directed that the State Press Adviser should be the principal authority, and the authorized officers should in the discharge of their functions under the Censorship Order follow such principles or guidelines as the principal authority or any officer of the Government of Maharashtra as might be authorized by the principal authority may from time to time require to be followed in that behalf.

4. On July 31, 1975 Parliament enacted the Defence of India (Amendment) Act,

1975 (Act 32 of 1975) repealing and re-enacting the Defence of India (Amendment) Ordinance, 1975.

5. On August 1, 1975 Parliament enacted the Constitution (Thirty-eighth Amendment) Act, 1975. Amongst the Articles of the Constitution amended by this Act were Articles 352 and 359.

6. By Notification No. G.S.R. 443(E) dated August 11, 1975 the Central Government made the Defence and Internal Security of India (Second Amendment) Rules, 1975, further amending the said Rule 48. By Notification No. G.S.R. 444(E) dated August 12, 1975 the Central Government made the Defence and Internal Security of India (Third Amendment) Rules, 1975, whereby the said Rule 48 of the said Rules was further amended. By Order No. S.O. 431(E), also dated August 12, 1975, the Central Government made further amendments in the Censorship Order.

7. While this appeal was being argued, on January 8, 1976 the President of India, in the exercise of the powers conferred upon him by Article 359(1) of the Constitution, made an order declaring that right of any person to move any Court for the enforcement of the rights conferred by Article 19 of the Constitution and all proceedings pending in any Court for the enforcement of the said rights shall remain suspended for the period during which the aforesaid two Proclamations of Emergency are in force.

8. With this background we now turn to the facts. The respondent, who is a citizen of India, is a Barrister-at-Law and an advocate (O.S.) of this High Court. He, however, does not practise law but is practising as a Management Consultant. In January 1972 the respondent took over the editorship of a monthly journal called the "Freedom First" which has been described by the respondent in the petition as a journal of liberal ideas. The said journal is being published at Bombay. The respondent has further stated in his petition that this journal has since September 1965 been the organ of the Democratic Research Service which was established in 1950 as a non-partisan research and information centre in order to spread the values of democracy and that during the relevant time the respondent was the Chairman of the said Democratic Research Service.

9. In view of the issuance of the State Censorship Order on June 27, 1975, the respondent as the editor of the said journal submitted for scrutiny to I. Mathur, the Chief Director (Information and Public Relations), Government of Maharashtra, Bombay, the entire issue of the said journal "Freedom First" which was to come out on July 1, 1975 inasmuch as the State Censorship Order required editors of all newspapers, periodicals, pamphlets and other documents to submit for scrutiny of the authorities specified in the said order all matters before being published. The said Mathur refused to give permission for the publication of certain articles, and approved for publication the rest of the materials submitted to him. The respondent decided to keep the space which

would have been occupied by the censored items blank and for the information of the readers to print the word "censored" across the blank spaces. The next morning, however, the respondent read in the English daily the "Times of India" a news report that the Chief Minister of Maharashtra had told newspapermen on June 27, 1975 that serious note would be taken of newspapers which sought to register their protest by leaving editorials and other columns blank. In view of this statement of the Chief Minister, the respondent did not bring out the July 1975 issue of the said journal. On July 14, 1975 the respondent submitted to the said Mathur for scrutiny the entire issue of the said journal which was to be published on August 1, 1975. The materials intended for publication in the said issue were those articles which had been previously allowed for publication in the intended July 1975 issue of "Freedom First" as also certain new materials. As on July 14, 1975 the State Censorship Order had been rescinded, and the appellant had been appointed by the State of Maharashtra under the Censorship Order as the authority for Greater Bombay, the appellant by his orders dated July 15, 1975, communicated to the respondent on the same day, prohibited publication of a part of the materials which had already been permitted for publication by the said Mathur as also a part of the new materials intended for publication in the August 1975 issue of "Freedom First". The materials of which publication was thus prohibited "by the appellant consisted of articles, reports, letters and quotations, aggregating in all to eleven in number. These materials of which the publication was so prohibited are hereinafter for the sake of convenience referred to as "the said items".

10. The respondent thereupon filed against the Union of India, the State of Maharashtra and the said Mathur in this High Court on its Original side a petition under Article 226 of the Constitution, being Miscellaneous Petition No. 812 of 1975, challenging the said orders, proceeding upon the basis that the said orders were passed by the said Mathur under the State Censorship Order. In the said petition both Mathur and the appellant filed their affidavits in reply inter alia pointing out by whom and under what statutory order the said impugned orders were passed. Accordingly, at the hearing of the said petition the respondent applied for leave to withdraw the said petition with liberty to file a fresh petition on the same cause of action and in respect of the same subject-matter. By his order dated October 2, 1975 Bhatt J., granted to the respondent the leave applied for. Thereafter the respondent filed against the appellant only, on the Original Side of this High Court, the petition under Article 226 of the Constitution out of which the present appeal arises. In his said petition the respondent prayed for setting aside the said orders of the appellant prohibiting publication of the said items and for a writ of mandamus or other appropriate writ, direction or order under Article 226 of the Constitution directing the appellant, his officers, subordinates, servants, agents and successors-in-office to withdraw or cancel the said orders and further directing the appellant to permit publication of the said items and also directing the appellant, his officers, subordinates, servants and agents to forbear from acting in furtherance or in implementation of the said

orders, and for costs. All the prayers asked for in the said petition were granted by Bhatt J.

11. A number of contentions were raised in the appellant's affidavit in reply to the said petition. At the hearing of the said petition some additional contentions were also raised on behalf of the appellant. All these contentions were negated by Bhatt J. It is unnecessary to set out what these contentions were as in this appeal Mr. Advani, learned Counsel for the appellant, has argued the following six points only:

(1) The Respondent's Petition was not maintainable as the only right of the respondent was under Article 19(1)(a) of the Constitution, which right along with the other rights conferred by Article 19(1) of the Constitution was suspended during the period of the Emergencies by reason of the provisions of Article 358 of the Constitution on the making of the Proclamations of Emergency by the President of India.

(2) The said items, the publication of which was prohibited by the appellant, were of such a nature as would adversely and prejudicially affect the internal security, the public safety and the maintenance of public order, and were, therefore, such that their publication was required to be prohibited under the Censorship Order.

(3) The Censorship Order conferred a permissive power upon the appellant, and the Court will not, therefore, issue a writ of mandamus against him directing him to exercise such power and to permit publication of the said items or any of them.

(4) The appellant was the sole judge whether the said items contained matters which would adversely affect the internal security, the public safety and the maintenance of public order; and the decision in this behalf was to be taken by the appellant purely on his subjective satisfaction and his decision so taken was not justiciable unless it was mala fide or perverse.

(5) The matters which would adversely affect the internal security, the public safety and the maintenance of public order are shown by the guidelines issued to the appellant under the Censorship Order, and the appellant, being a subordinate authority at Bombay, was bound to follow such guidelines in reaching his decision, and as he had followed these guidelines and had thus acted in pursuance of the lawful instructions given to him, his orders could not be set aside by the Court and no writ could issue against him.

(6) Assuming the Court came to the conclusion that the impugned orders of the appellant were bad in law, the Court could not issue a writ of mandamus to direct publication of the said items but should direct the appellant to reconsider the said items in the light of its judgment.

12. During the course of the hearing of this appeal Mr. Advani, learned Counsel for the appellant, also sought to urge that while dealing With the said items we should take into consideration the antecedents of the respondent. The so-called

antecedents upon which Mr. Advani wanted to rely were neither set out in the appellant's affidavit in reply nor was this point taken therein nor was it argued at the hearing of the petition. It was also not taken in the memorandum of appeal or in the additional memorandum of appeal. Mr. Advani, however, sought to spell out this point from the additional memorandum of appeal. We had given permission to the appellant to file an additional memorandum of appeal while giving directions for the hearing of this appeal. This permission was given by us to the appellant because both parties desired that the hearing of the appeal should be expedited and on the date on which we gave this direction though the appellant had filed the appeal, he had done so without receiving a copy of the judgment appealed against. "While granting this permission to the appellant we had, however, expressly provided that any ground taken in the additional memorandum of appeal should be such as arose out of the judgment appealed against. This point of the antecedents of the respondent not having been taken in the affidavit in reply and not having been urged at the hearing was naturally not dealt with in the judgment. Mr. Advani sought before us to base his arguments on this point on a passage from an extract from a speech made by the Prime Minister in the Lok Sabha on July 22, 1975, which extract was tendered by Mr. Advani at the hearing of the petition and marked exh. No. 2. As the minutes of that day show, this extract was tendered for the express purpose of showing the reasons for declaring the Emergency on June 25, 1975. After this point had been argued for some time, realizing that it would not be fair to rely upon this extract for any purpose other than for which it had been admitted in evidence, Mr. Advani gave up this point and stated that he did not wish to urge it.

13. Before we deal with the aforesaid six points canvassed before us it would be convenient at this stage to set out in one place the relevant provisions of the Constitution, the said Act and the said Rules and the texts of the Proclamation of Emergency made on June 25, 1975 and the Censorship Order.

14. The provisions of the Constitution relevant for the purposes of this appeal are as follows:

19. Protection of certain rights regarding freedom of speech, etc. (I) All citizens shall have the right-

(a) to freedom of speech and expression;....

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

352. Proclamation of Emergency. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory

thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect,....

(4) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or internal disturbance or imminent danger of war or external aggression or internal disturbance, whether or not there is a Proclamation already issued by the President under Clause (1) and such Proclamation is in operation.

(5) Notwithstanding anything in this Constitution,-

(a) the satisfaction of the President mentioned in Clause (1) and Clause (3) shall be final and conclusive and shall not be questioned in any court on any ground;

(b) subject to the provisions of Clause (2), neither the Supreme Court nor any other court shall have jurisdiction to entertain any question, on any ground, regarding the validity of-

(1) a declaration made by Proclamation by the President to the effect stated in Clause (1); or

(ii) the continued operation of such Proclamation.

358. Suspension of provisions of Article 19 during emergencies.

While a Proclamation of 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 executive action which 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 incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

359. Suspension of the enforcement of the rights conferred by Part III during emergencies.

(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(1A) While an order made under Clause (1) mentioning any of the rights conferred by Part III is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which 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 in-competency, cease to have effect as soon as the

order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect....

372. Continuance in force of existing laws and their adaptation.

(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority....

15. Clauses (4) and (5) were inserted in Article 352 and Clause (1A) was inserted in Article 359, all with retrospective effect, by the Constitution (Thirty-eighth) Amendment Act, 1975.

16. The text of the Proclamation of Emergency made by the President of India on June 25, 1975 is as follows:

"PROCLAMATION OF EMERGENCY"

In exercise of the powers conferred by Clause (1) of Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbance.

NEW DELHI;

The 25th June, 1975.

F.A. AHMED, President.

17. The provisions of the said Act which have been referred to in the course of the arguments before us are as follows:

3. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the internal security, the public safety, the maintenance of public order or the efficient conduct of military operations, 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 rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely;-..

(7)(a) prohibiting the printing or publishing of any newspaper, news-sheet, book or other document containing matters prejudicial to the defence of India and civil defence, the internal security, the public safety, the maintenance of public order, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community;

(b) demanding security from any press used for the purpose of printing or publishing, and forfeiting the copies" of, any newspaper, news-sheet, book or other document containing any of the matters referred to in Sub-clause (a);

(c) forfeiture of such security and the circumstances in which and the authority by whom such forfeiture may be ordered;

(d) closing down any press or any premises used for the purpose of printing or publishing any newspaper, news-sheet, book or other document containing any of the matters referred to in Sub-clause (a) in spite of the forfeiture of Such security;....

36. Jurisdiction of ordinary courts.-(1) Except as may be provided in this Act or in any rule made thereunder or in any order made under any such rule by the Central Government or the State Government or by any officer not below the rank of Collector empowered under Sub-section (1) or Sub-section (2) of Section 34 to make Such order, the ordinary criminal and civil courts shall continue to exercise jurisdiction....

38. Ordinary avocations of life to be interfered with as little as possible.-Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence and the internal security.

The words "the internal security" were inserted in Sub-section (1) and Sub-clause (a) of Clause (7) of Sub-section (2) of Section 3, and the words "and the internal security" inserted in Section 38 on June 30, 1975 by the Defence of India (Amendment) Ordinance, 1975.

18. By Rule 2 of the Defence of India (Amendment) Rules, 1975, which came into force on July 1, 1975, the title of the Defence of India Rules, 1971, was changed to "The Defence and Internal Security of India Rules, 1971", and a new rule, namely, Rule 1A, was inserted in the said Rules. The said Rule 1A is as follows:

1A. Rules to apply also in relation to internal security.-As from the commencement of the Defence of India (Amendment) Rules, 1975, the provisions of these rules shall, so far as may be, apply for the purpose of internal security as they apply for the other purposes of the Act and accordingly those provisions shall be construed, wherever necessary, as including also a reference to internal security.

19. Rule 36 occurs in Part V of the said Rules which is headed "Prevention of prejudicial acts and control of information". This Rule defines several terms. The relevant definitions are of the terms "prejudicial act" defined by Clause (6) of Rule 36 and "'prejudicial report" defined by Clause (7) of Rule 36. Under Clause (6) of Rule 36, nineteen acts are defined as being "prejudicial acts". It is unnecessary to set out all of them. Clause (6) in so far as it is relevant and

Clause (7) of Rule 36 provide as follows:

36. Definitions.-In this Part, unless the context otherwise requires,-....

(6) "prejudicial act" means any act which is intended or is likely-

(a) to prejudice India's relations with any foreign power, or the maintenance of peaceful conditions in any area;.

(e) to bring into hatred or contempt, or to excite disaffection towards the Government established by law in India;.

(g) to promote feelings of enmity and hatred between different classes of persons in India;

(h) to cause fear or alarm to the public or to any section of the public;....

(I) to undermine public confidence in the national credit or in any Government loan or security or in any notes, coins or tokens which are legal tender in India or in any part thereof, or to prejudice the success of any financial measures taken or arrangements made by Government with a view to the efficient conduct of military operations;

(m) to encourage or incite any person or class of persons, or the public generally, to refuse or defer payment of any land revenue, tax, rate, cess or other dues or amount payable to Government or any local authority or payable under any law or custom having the force of law for any services rendered to the community or any rent of agricultural land or anything recoverable as arrears of, or along with, such rent;

(n) to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of India and civil defence or to the efficient conduct of military operations;

(o) to instigate directly or indirectly the use of criminal force against public servants generally or any class of public servants or any individual public servant;....

(s) otherwise to prejudice the efficient conduct of military operations, the defence of India and civil defence or the public safety or interest;

(7) "prejudicial report" means any report, statement or visible representation whether true or false, which, or the publishing of which, is, or is an incitement to the commission of, a prejudicial act;

20. The relevant provisions of Rule 43 which occurs in Part, V of the said Rules are as follows:

43. Prohibition of prejudicial acts, publications and communications.- (1) No person shall, without lawful authority or excuse,-

(a) do any prejudicial act; or

(b) obtain, collect, record, elicit, make, print or publish, or distribute or communicate by any means whatsoever, to any other person, any information likely to assist the enemy; or

(c) make, print, publish or distribute any document containing, or spread by any other means whatsoever, any prejudicial report; or

(d) make, print, produce, publish or distribute any publication containing, or communicate to any person by any means whatsoever, any confidential information.

(2) The author, editor, printer and publisher of, and any person who otherwise makes or produces, any information likely to assist the enemy, any confidential information or any prejudicial report, and any person who distributes or sells any information or report of that nature, knowing it to be of such nature, shall be deemed to have contravened this rule,....

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both:....

21. Rule 48 of the said Rules confers power upon the Central and the State Government to impose censorship. It also occurs in Part V of the said Rules. This Rule has been thrice amended, the first time on July 6, 1975 by the Defence and Internal Security of India (Amendment) Rules, 1975, the second time on August 31, 1975 by the Defence and Internal Security of India (Second Amendment) Rules, 1975, and the third time on August 12, 1975 by the Defence and Internal Security of India (Third Amendment) Rules, 1975. We will first set out the provisions of the said Rule 48 as so amended and then point out the amendments made therein at different times. Rule 48 as so amended is as follows:

48. Power to impose censorship.-(1) The Central Government or the State Government may for the purpose of securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, by order addressed to a printer, publisher or editor, or to printers, publishers and editors generally,-

(a) require that all matter, or any matter relating to a particular subject or class of subjects, shall, before being published in any document or class of documents, be submitted for scrutiny to an authority specified in the order;

(aa) direct that any matter required to be submitted for scrutiny to the authority aforesaid shall not be published in any document or class of documents except with the permission, in writing, of such authority and, where such authority deems it necessary to impose any conditions or restrictions in granting such permission, except in accordance with such conditions and restrictions (including conditions as to making of any modifications, whether by way of additions, omissions or otherwise in the matter) as such authority may impose;

(b) prohibit or regulate the making or publishing of any document or class of documents, or of any matter relating to a particular subject or class of subjects or the use of any press.

(1A) Where an order under Sub-rule (1) has been made, no person shall circulate or cause to be circulated copies of any document published or made in contravention of the order or any extract or translation thereof.

(1B) Where the Government making an order under Sub-rule (1) considers it necessary to specify in such order more than one authority for the purposes of that order, it may Specify in such order that one of such authorities shall be the principal authority and that the other authorities shall, in the discharge of their functions in pursuance of the order, follow such principles or guidelines as the principal authority or any such officer of that Government as may be authorised in this behalf by the principal authority may, from time to time, require to be followed in this behalf.

(2) If any person contravenes any order made under Sub-rule (1), then, without prejudice to any other proceedings which may be taken against such person, the Government making the order may declare to be forfeited to Government every copy of any document published or made in contravention of such order and any press used in the making of such document,

(3) If any person contravenes any provision of Sub-rule (1A) or any order made under this rule, he shall be punishable with imprisonment for a term which" may extend to five years, or with fine, or with both.

In the said Rule 48 Clause (aa) was inserted in Sub-rule (1) by the Defence and Internal Security of India (Third Amendment) Rules, 1975, made on August 12, 1975. Sub-rule (1A) was inserted in the said Rule 48 by the Defence and Internal Security of India (Second Amendment) Rules, 1975, made on August 11, 1975. Sub-rule (1B) was first inserted as Sub-rule (1A) by the Defence and Internal Security of India (Amendments) Rules, 1975, made on July 6, 1975 and re-numbered as Sub-rule (1B) by the said Defence and Internal Security of India (Second Amendment) Rules, 1975. The said Defence and Internal Security of India (Second Amendment) Rules, 1975, substituted the words, brackets, figure and letter "any provision of Sub-rule (1A) or any order" for the words "any order" in Sub-rule (3).

22. With effect from July 1, 1975, in view of Rule 1A inserted in the said Rules by the Defence of India (Amendment) Rules, 1975, the said Rules 36, 43 and 48 apply for the purpose of internal security as they apply for the other purposes of the said Act.

23. The Censorship Order which was issued by the Central Government on June 26, 1975 in exercise of the powers conferred upon it by Sub-rule (1) of the "said Rule 48 was issued prior to the amendment both of the said Act by the Defence of India (Amendment) Ordinance, 1975, on June 30, 1975 and of the said Rules

by the Defence of India (Amendment) Rules, 1975, on July 1, 1975. The Censorship Order was twice amended, the first time by the said Central Government Order No. S.O. 316 (E) dated July 6, 1975 and the second time by the said Central Government Order No. S.O. 431 (E) dated August 12, 1975. The amended Censorship Order provides as follows:

MINISTRY OF HOME AFFAIRS ORDER

NEW DELHI, the 26th June, 1975

SO. 275(E).-Whereas the Central Government is of opinion that for the purpose of securing the defence of India and civil defence, the public safety and maintenance of public order, it is necessary so to do;

Now, therefore, in exercise of the powers conferred by Sub-rule (1) of Rule 48 of the Defence of India Rules, 1971, the Central Government hereby makes the following Order, namely:-

(1) That no news, comments, rumour or other report, relating to-

(a) any contravention or alleged or purported contravention of any of the provisions of Part III, Rules 31 and 33 of Part IV, Rules 37, 38, 39, 43, 46, 47, 48, 50, 51 and 52 of Part V, Part VIII and Part IX of the said Rules including orders made thereunder, or

(b) any action taken in relation to such contravention, or

(c) any action taken under the provisions of the Maintenance of Internal Security Act, 1971 (26 of 1971), or

(d) the Proclamation of Emergency made by the President on the 25th day of June, 1975 under Article 352 of the Constitution, or

(e) the Order made by the President on the 27th day of June, 1975 under Article 359 of the Constitution, or

(f) any action taken under the provisions of the Defence of India Act, 1971 (42 of 1971) or under the provisions of that Act as amended by the Defence of India (Amendment) Act, 1975 (32 of 1975) or under the rules and orders made thereunder, or

(g) any "prejudicial report" as defined in Clause (7) of Rule 36 of the Defence and Internal Security of India Rules, 1971,

shall be published in any newspaper, periodical or other document unless such news, comments, rumour or other report has been submitted for scrutiny to an authorised officer and the publication thereof is authorised in writing by such officer.

(2) That no such publication shall be made except in accordance with such conditions or restrictions as such officer may impose.

Explanation,-In this order, "authorised officer" means the Chief Censor to the Government of India, Additional Chief Censor to the. Government of India, Director, Public Relations, or Deputy Principal Information Officer in the Press Information Bureau of the Government of India at New Delhi, or a Director of Information or a Director of Public Relations of a State Government or Union Territory Administration or such other officers as may be authorised in this behalf by the Central Government or the State Government or the administrator of a Union territory.

(3) that the Chief Censor to the Government of India referred to in the Explanation above shall be the principal authority and all the other authorities referred to in that Explanation shall, in the discharge of their functions in pursuance of this Order, follow such principles or guidelines as the said Chief Censor or any officer of the Central Government authorised in this behalf by the said Chief Censor may, from time to time, require to be followed in this behalf.

2. This order is hereby addressed to all printers, publishers and editors.

In Clause (1) of the Censorship Order the word "or" was inserted at the end of Sub-clause (c) and Sub-clause (d) and (g) inserted therein by the said Central Government Order No. S.O. 431 (E) dated August 12, 1975, and in the Explanation the words "means the Principal Information Officer" were substituted for the words "means the Chief Censor to the Government of India", and the words "authorised in this behalf by the Central Government or the State Government" were substituted for the words "authorised in this behalf by the State Government", and Clause (3) inserted after the Explanation, by the said Central Government Order No. S.O. 316(E) dated July 6, 1975. The. words "Additional Chief Censor to the Government of India" were inserted in the Explanation after the words "Chief Censor to the Government of India," by the said Central Government Order No. S.O. 431 (E) dated August 12, 19-75, It -is to be noted that Sub-clauses (d) to (g) had not been inserted in Clause (1) of the Censorship Order when the publication of the said items was prohibited by the appellant by his said orders dated July 15, 1975.

24. The first point canvassed before us on behalf of the appellant was a preliminary objection to the maintainability of the respondent's petition founded upon the provisions of Article 358 of the Constitution. The appellant's submissions on this point were that the respondent had no enforceable rights apart from those provided for in Sub-clause (a) of Clause (1) of Article 19 of the Constitution; that on the making of the Declaration of Emergency under Article 352 of the Constitution by the President of India on December 3, 1971, by reason of the provisions of Article 358 all rights under Article 19(1) of the Constitution were suspended and remain suspended so long as the two Proclamations of Emergency, namely, the one made on December 3, 1971 and the other made on June 25, 1975, or either of them are in operation; that the respondent, therefore, could not move the Court if his right under Article 19(1) (a) was prejudicially or adversely affected and could not make any grievance in

any Court against the executive action taken by the appellant, his remedy being merely to approach a higher executive authority to seek redress; that for these reasons his petition could not be filed and was not maintainable so long as the Emergencies lasted; and that Bhatt J. was in error in entertaining and deciding the respondent's petition on merits. The respondent's counter arguments on this point were that on a true construction of Article 358 of the Constitution, that Article did not suspend any of the rights under Article 19(1) but only removed the fetters placed by Clauses (2) to (6) of Article 19 on the power of the State to make laws inconsistent with or restricting those rights except to the extent permitted by the said clauses; that the respondent was not challenging the vires of the Censorship Order or the said Rule 48 or any other provisions of the said Rules or any provisions of the said Act nor was he making any grievance about any infringement or violation of any of his fundamental rights; that apart from Article 19(1)(a) of the Constitution, the respondent had a Common Law right recognized by the law of India to write or publish what he liked so long as he did not transgress any law; that in any event as the impugned orders of the appellant adversely and prejudicially affected the respondent, such orders were required to be supported by authority of law; that the appellant's orders were in contravention and beyond" the scope of the Censorship Order and even of the said Rule 48; and that the petition was, therefore, maintainable.

25. We will now examine these rival submissions. Article 19 occurs in Part III of the Constitution which is headed "FUNDAMENTAL RIGHTS". Clause (1) of Article 19 declares that all citizens shall have the rights set out in Sub-clauses (a) to (g) of that clause. Sub-clause (a) provides for the right to freedom of speech and expression; Sub-clause (b) for the right to assemble peaceably and without arms; Sub-clause (c) for the right to form associations or unions; Sub-clause (d) for the right to move freely throughout the territory of India; Sub-clause (e) for the right to reside and settle in any part of the territory of India; Sub-clause (f) for the right to acquire, hold and dispose of property; and Sub-clause (g) for the right to practice any profession, or to carry on any occupation, trade or business. Clause (2) of Article 19 confers power upon the State to make laws imposing reasonable restrictions on the exercise of the rights to freedom of speech and expression under Sub-clause (a) of Clause (1) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. Similarly, Clauses (3) to (6) confer powers upon the State to make laws imposing reasonable restrictions for the purposes set out in each of these clauses upon the rights under Sub-clauses (b) to (g) of Clause (1) to the extent mentioned in each of these clauses. Clauses (2) to (6) also save the operation of laws existing at the commencement of the Constitution so far as they impose restrictions on the rights mentioned in Article 19(1) of the Constitution to the extent provided for by these clauses. Article 12 defines the term "the State". That article provides as follows:

12. In this Part, unless the context otherwise requires, "the State" includes the

Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 13(2) provides, "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." Thus, the combined effect of Articles 19 and 13(2) is that any law made by the State which is in contravention of any of the rights mentioned in Article 19(1) of the Constitution is to that extent void unless it amounts to "reasonable restrictions" within the meaning of such of Clauses (2) to (6) of Article 19 as may be applicable. Articles 352, 358 and 359 are to be found in Part XVIII of the Constitution which is headed "EMERGENCY PROVISIONS". Article 352(1) confers power upon the President of India in certain circumstances to make a Proclamation declaring that a grave emergency exists whereby the security of India or any part of its territory is threatened. Article 358 provides for one of the consequences which flow from the making of such a Proclamation of Emergency. We have already reproduced above the provisions of Article 358. Though the marginal note to Article 358 is "Suspension of provisions of Article 19 during emergencies", a perusal of the provisions of Article 358, however, shows that the article does not speak of the suspension of the rights mentioned in Article 19(1) of the Constitution. What Article 358 does is to provide that so long as a Proclamation of Emergency is in operation, nothing in Article 19 is to "restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take". Under Article 358 the restrictions imposed by Article 19 are not removed for all times but only for so long as a Proclamation of Emergency operates, and any law, which but for the provisions of Article 358 would have been violative of any of the rights mentioned in Article 19(7), will on the Proclamation of Emergency ceasing to operate cease to have effect to the extent to which it is so inconsistent, except with respect to things done or omitted to be done before the law so ceased to have effect. In other words, though the law ceases to have effect on the Proclamation of Emergency ceasing to operate, legislative and executive actions taken during the period of the operation of the Proclamation of Emergency, even though they may be violative of Article 19(1) of the Constitution, are protected and cannot be challenged even after the emergency ceases on the ground that they infringe Article 19(1). Thus, what is suspended under Article 358 on the making of a Proclamation of Emergency are not the rights mentioned in Article 19(1) but the restrictions upon the power of the State to make laws or take executive action inconsistent with those rights. In other words, the making of the Proclamation of Emergency removes the fetters which were placed upon the State's power to make laws or take executive action restricting- or abridging the rights mentioned in Article 19(1).

26. Article 359 is couched in different terms, While Article 358 suspends the

restrictions or fetters placed upon the power of the State to make laws or take executive action inconsistent with the exercise of the rights mentioned in Article 19(1) for the entire period during which a Proclamation of Emergency is in operation, Article 359 confers power upon the President to make an order suspending the right of any person to move any Court for the enforcement of such of the fundamental rights conferred by Part III as may be mentioned in the Presidential Order as also all pending proceedings for the enforcement of such rights. The period of such suspension may be for the entire period during which the Proclamation of Emergency is in force or may be for such shorter period as may be specified in the Presidential Order. Thus, under Article 359(1) there is no automatic suspension of the right to move the Court for the enforcement of any fundamental right. It depends upon whether the President makes any order under Article 359(1) or not. Under Clause (1A) of Article 359, which was inserted with retrospective effect by the Constitution (Thirty-eighth Amendment) Act, 1975, once a Presidential Order is made under Clause (1) of Article 359, all restrictions and fetters, if any, upon the power of the State to make laws inconsistent with the exercise of the rights mentioned in the Presidential Order are suspended or removed so long as the presidential order continues in operation in the same manner as all fetters and restrictions on the making of laws inconsistent with the rights under Article 19(1) of the Constitution are removed or suspended by Article 358. As seen earlier, while this appeal was being argued, the President of India made an order under Article 359(1) on January 8, 1976 suspending the right of all persons to move any Court for the enforcement of the rights under Article 19(1) and also all pending proceedings for the enforcement of such rights for the period during which, the two Proclamations of Emergency continue in force. Though no arguments were advanced before us on the effect of the said Presidential Order on these proceedings, we must none the less consider the effect for ourselves. It may be mentioned that no arguments on this Presidential Order were advanced before us on behalf of the appellant because according to Mr. Advani, learned Counsel for the appellant, the issue of the said Presidential Order under Article 359(1) of the Constitution made no difference to the position because in his submission all the rights under Article 19(1) had become suspended by reason of the provisions of Article 358 and as a necessary corollary no one could move the Court for their enforcement.

27. The question of the effect of Article 358 and of a Presidential Order issued under Article 359(1) came up for consideration before the Supreme Court in *Makhan Singh Vs. State of Punjab* (and connected appeals), . This was a case of detention under the Defence of India Rules, 1962, made under the Defence of India Ordinance, 1962. This Ordinance was issued following upon a Proclamation of Emergency made by the President on October 26, 1962 declaring that a grave emergency existed whereby the security of India was threatened by external aggression. On November 3, 1962 by a Presidential Order under Article 359(1) of the Constitution the rights of citizens to move any Court for the enforcement of

the rights conferred by Articles 21 and 22 were suspended for the period during which the said Proclamation of Emergency was in force. Petitions filed by a number of persons detained under the said Defence of India Rules, 1962, were dismissed by different High Courts on the ground that their right to move the Court had been suspended by reason of the Presidential Order. While discussing the effect of a Presidential Order under Article 359 of the Constitution the Supreme Court compared and contrasted the provisions of Articles 358 and 359. Gajendragadkar J., who spoke for the majority of the Court, said (pp. 392-3):

...It would be noticed that as soon as a Proclamation of Emergency has been issued under Article 352 and so long as it lasts, Article 19 is suspended and the power of the legislatures as well as the executive is to that extent made wider. The suspension of Article 19 during the pendency of the proclamation of emergency removes the fetters created on the legislative and executive powers by Article 19 and if the legislatures make laws or the executive commits acts which are inconsistent with the rights guaranteed by Article 19, their validity is not open to challenge either during the continuance of the emergency or even thereafter. As soon as the Proclamation ceases to operate, the legislative enactments passed and the executive actions taken during the course of the Said emergency shall be inoperative to the extent to which they conflict with the rights guaranteed under Article 19 because as soon as the emergency is lifted, Article 19 which was suspended during the emergency is automatically revived and begins to operate. Article 358, however, makes it clear that things done or omitted to be done during the emergency cannot be challenged even after the emergency is over. In other words, the suspension of Article 19 is complete during the period in question and legislative and executive action which contravenes Article 19 cannot be questioned even after the emergency is over.

After discussing the effect of Article 359 of the Constitution, the Supreme Court held that what Article 359(1) did was to suspend the right of a citizen to move any Court for the enforcement of such of the rights in Part III of the Constitution as may be mentioned in the Presidential Order. The Supreme Court then observed (p. 399) :

...If in challenging the validity of his detention order, the detenu is pleading any right outside the rights specified in the Order, his right to move any court in that behalf is not suspended, because it is outside Article 359(1) and consequently outside the Presidential Order itself.

The Supreme Court then pointed out that a plea that an order of detention was in violation of the mandatory provisions of the Act under which it was purported to be made or was mala fide or that the operative provision of the law under which the detenu was detained suffered from the vice of excessive delegation and was, therefore, invalid were not pleas which was relatable to the fundamental rights under Articles 21 and 22 of the Constitution which were suspended by the said Presidential Order, but were independent of such rights, and a petition based on such plea was maintainable. Subba Rao J., who gave a

dissenting judgment, however, agreed with the opinion of the majority on the above points. In *N.P. Nathwani v. Commissioner of Police* (1957) 78 Bom. L.R. 1, the validity of certain orders made by the Commissioner of Police u/s 37(5) of the Bombay Police Act, 1951, and of an order dated October 14, 1975 made by the Government of Maharashtra under Rule 69 of the said Rules was challenged on the ground that these orders were ultra vires the said section and the said Rule, Contentions similar to those raised before us under Article 358 were urged in that petition on behalf of the respondents based on the provisions of Article 358 and on the Presidential Order made on June 27, 1975 suspending the rights of persons to move Courts for the enforcement inter alia of the rights under Article 21 of the Constitution. In that case a Division Bench of this High Court consisting of Kantawala C.J., and Tulzapurkar J., negatived these contentions holding that the petitioners were seeking to enforce rights de hors the rights conferred by Articles 19 and 21.

28. The position in law thus is that the respondent's petition must fail if the challenge made therein to the impugned orders of the appellant is founded upon a violation or infringement of the respondent's rights under Article 19(1) but not if the ground of challenge is de hors the infringement or violation of any such right.

29. In his petition the respondent has not challenged the vires of the Censorship Order or of the said Rule 48 or of any provision of any of the said Rules or any provision of the said Act. In the petition what the respondent has submitted is that the impugned orders are beyond the scope and ambit of the Censorship Order, completely irrational, arbitrary and made without any application of mind and that the said orders are, therefore, made without any authority of law. "We must first examine whether this challenge is de hors Article 19 of the Constitution. The right to freedom of speech and expression mentioned in Article 19(1)(a) is not a right created or conferred for the first time in, the laws of India by Article 19(1)(a). It is a right under the Common Law of England which has been recognized and enforced by the Courts in India prior to the coming into force of the Constitution, and it has been continued in force by the Constitution. In *Odgers on the Common Law of England* it is stated (Third edn., Vol. I, pp. 3-4) :

Rights are of two classes. Some are absolute rights, which every one within the realm possesses, be he prince or pauper, British subject or alien. These may be called public rights, as every member of the public possesses them. Others are rights enjoyed only by individuals, who happen to own certain property, to hold a certain office or to have entered into a special contract, &c. These are called private rights.

Chapter II of vol. I of that book discusses public rights. It is stated in that Chapter (p. 6) :

Every one has a right to comment on matters of public interest and general

concern, provided that he does so fairly and with an honest purpose. This right is in no way the special privilege of the Press; every citizen has full freedom to speak and to write on such matters. Such comments are not libellous, however severe in their terms, so long as the writer truly states his real opinion of the matter on which he comments, and does not assert as a fact that which is untrue. This right is a very wide one. Provided he keeps clear of treason, sedition, blasphemy or indecency, every man may discuss fully and fearlessly every matter of public concern in the State; he may comment on any proposed legislation and on the public conduct of any public man; he may criticise freely any published book, or poem, any play, picture or statute publicly performed or exhibited, or any public concert or entertainment.

The position under the Common Law is thus set out in Halsbuiy's Laws of England, third edn., vol. 7, Article 416 (pp. 195-6):

The so-called liberties of the subject are really implications drawn from the two principles that the subject may say or do what he pleases, provided he does not transgress the substantive law, or infringe the legal rights of others, whereas public authorities (including the Crown) may do nothing but what they are authorised to do by some rule of common law or statute. Where public authorities are not authorised to interfere with the subject, he has liberties.

In the same vol. of Halsbury's Laws of England the right to freedom of speech is thus explained (Article 418, p. 197):

The right to freedom of speech or discussion, which means that any person may write or say what he pleases, so long as he does not infringe the law relating to libel or slander, or to blasphemous, obscene, or seditious words or writings; this right is closely connected with and covers that of freedom of conscience.

30. This then is the position under the Common Law. The question is whether the same position prevailed in India prior to the coming into force of the Constitution. The rules of Common Law relating to substantive rights have been recognized and enforced by Courts in this country before the coming into force of the Constitution. Under Article 372(1) of the Constitution, which has been quoted earlier, all the law in force in the territory of India immediately before the commencement of the Constitution continue in force until altered or repealed or amended by a competent Legislature or other competent authority. The expression "law in force" occurring in Article 372(1) has been interpreted by the Supreme Court to mean the rules of Common Law relating to substantive rights which had been adopted by this country and enforced by judicial decisions before the coming into force of the Constitution (See *Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others*, , and *Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others*, . The law of defamation which the Courts in India have enforced and are enforcing is a part of the Common Law of England. That a man should not say or write what amounts to defamation is a

restriction recognized by the Common Law of England upon the right to freedom of speech and expression. The right to hold public meetings is another of the common law rights recognized by the Common Law of England, and is analogous to the right to freedom of speech and expression. In *Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another*, , the Supreme Court held that in India a citizen had before the Constitution a right to hold meetings on public streets subject to the control of appropriate authority regarding the time and place of the meeting and subject to considerations of public order.

31. It was submitted on behalf of the appellant that on the coming into force of the Constitution of India all rights which existed prior thereto and mentioned in Part III of the Constitution became merged in the rights so mentioned and did not exist independently thereof. Prima facie, we are unable to accept this submission. What Part III of the Constitution does is to declare certain rights to be fundamental rights, and guarantees under Article 32 the right to move the Supreme Court by appropriate proceedings for the enforcement of these rights, and further confers upon every High Court the power to issue writs, directions and orders for the enforcement of these rights. It is, however, not necessary to decide this question because the respondent's petition was not for the enforcement of any such right but one challenging the action of the appellant in making the impugned orders on the ground that it is an action not supported by authority of law and was contrary to law. In order to meet this submission it was urged by Mr. Advani, learned Counsel for the appellant, that under Article 358 of the Constitution not only the State could make any law restricting or taking away any of the fundamental rights mentioned in Article 19(1) of the Constitution but could also take any executive action restricting, abridging or taking away these rights, and in support of this submission Mr. Advani relied upon the fact that Article 358 refers not only to the power of the State to make any law which but for the provisions of Part III of the Constitution the State would have been competent to make but also "to take any executive action which the State would but for the provisions contained in that Part be competent... to take". Mr. Advani further submitted that so long as an executive officer passed an order which purported to be in the exercise of some executive power, such an order could not be challenged on any ground whatever, but the remedy was merely to make a plea for redress to some higher executive authority. We are unable to accept this submission. The words "executive action" in Article 358 can only mean executive action under the law. Article 358 does not authorize the State, during the period for which a Proclamation of Emergency is in force, to take any executive action it likes, but only such executive action as it would have been competent for the State to take but for the provisions of Part III of the Constitution. Thus, such executive action, though it can be contrary to the provisions of Part III of the Constitution, cannot be contrary to the provisions of all other law. Even before the enactment of the Constitution, all executive actions to the prejudice of any person were required to be supported by law, and in spite of the removal by Article 358 of the fetters under Article 19 on the State's power to take executive

action, executive action must, have the authority of law in order to be valid. Ours is a Government established by law, and its fundamental form is democratic. The Preamble to our Constitution in proud word? declares, "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC.... IN OUR CONSTITUENT ASSEMBLY... do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION." The structure of the machinery of our Government and the regulations of the powers and duties: which belong; to the different limbs of this structure, namely, the executive, the Legislature and the judiciary, are denned by the Constitution and the relevant law. The law is the sole source of governmental powers. In *Eshugbayi Eleko v. Government of Nigeria (Officer Administering)* [1931] A.C. 662 which was an appeal from the Supreme Court of Nigeria, Lord Atkin, delivering the judgment of the Judicial Committee of the Privy Council, said,

...In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice. And it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive.

The above Privy Council decision was referred to with approval and relied upon by the Supreme. Court in *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, . In *State of Bihar Vs. Kameshwar Prasad Verma*, after citing with approval the above passage from the judgment of the Privy Council, the Supreme Court held, "It is the same jurisprudence which has been adopted in this country on the basis of which the courts of this country exercise jurisdiction." The fun-dementia principles upon which the structure of our government established by the Constitution is founded were enunciated by the Supreme Court in *State of M.P. v. Bharat Singh* AIR [1967] S.C. 1170 as follows (pp. 1173-1174) :

...Our federal structure is founded on certain fundamental principles: (1) the sovereignty of the people with limited Government authority, i.e., the Government must be conducted in accordance with the will of the majority of the people. The people govern themselves through their representatives, whereas the official agencies of the executive Government possess only such powers as have been conferred upon them by the people; (2) there is distribution of powers between the three organs of the State- legislative, executive and judicial-each organ having some check direct or indirect on. the other; and (3) the rule of law which includes judicial review of arbitrary executive action,

After quoting with approval from Dicey's "Introduction to the Study of the Law of the Constitution", 10th edn., the Supreme Court observed (p. 1173).:

...We have adopted under our Constitution not the continental system but the British system under which the rule of law prevails. Every Act done by the Government or by its officers must, if it is to operate to the prejudice of any

person, be supported by some legislative authority.

In the above case of *State of M.P. v. Bharat Singh* an order passed by the State of Madhya Pradesh under the Madhya Pradesh Public Security Act, 1959, was challenged. This order was passed after the President had declared on October 26, 1962 a state of emergency by reason of external aggression. A contention was raised that the petition of the respondent in that case under Article 226 of the Constitution filed in the High Court of Madhya Pradesh was not maintainable by reason of the provisions of Article 358. Repelling that argument the Supreme Court observed "(p. 1173):

...In our judgment, this argument involves a grave fallacy. All executive action which operates to the prejudice of any person must have the authority of law to support it, and the terms of Article 358 do not detract from that rule, Article 358 expressly authorises the State to take legislative or executive action provided such action was competent for the State to make or take, but for the provisions contained in Part III of the Constitution. Article 358 does not purport to invest the State with arbitrary authority to take action to the prejudice of citizens and "others: it merely provides that so long as the proclamation of emergency subsists laws may be enacted, and executive action may be taken in pursuance of lawful authority, which if the provisions of Article 19 were operative would have been invalid.

32. Thus, in spite of the making of the Proclamations of Emergency on December 3, 1971 and June 25, 1975 and the issuance of the Presidential Orders under Article 359(1) of the Constitution suspending the right of all persons to move the Court for the enforcement of the rights conferred by Articles 14, 19, 21 and 22, the rule of law continues to prevail. The operation of the Proclamations of Emergency and of the said Presidential Orders do not confer upon the executive the power to take illegal or arbitrary action to the prejudice of citizens. In spite of the Proclamations of Emergency and the Presidential Orders a citizen is free to say, write and act as he likes so long as he does not transgress the law and so long as what he does is not prohibited or regulated by law. Whether before or after the Proclamations of Emergency and the making of the said Presidential Orders, a man does not need the permission of the executive authority to do or say or write what he likes, unless such permission was or is required to be taken by law. In the domain of private actions the law regulates or prohibits. It is in the domain of public actions that the mandate of the law is required. If, therefore, even after the Proclamations of Emergency and the issuance of the Presidential Orders under Article 359(1) of the Constitution a citizen is prejudiced by an executive action, he can challenge it on the ground that it lacked the authority of law, and if the authority taking such action were unable to support it in law, the Court would strike down that action. In *Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc.,* . Kamaswami J., speaking for the Court said (p. 36) :

...As observed by Jackson, J. in a recent American case-*Youngstown Sheet &*

Tube Co. v. Sawyer (1952) 343 U.S. 579. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The rule of law rejects conception of the Dual State in which governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional concept.

In Durgadas Shirali Vs. union of india (UOI) and Others., in which similar contentions with reference to Article 358 of the Constitution and the Presidential Orders issued under Article 359 were advanced, based on the Proclamation of Emergency made on October 26, 1962 and the Presidential Order under Article 359(1) issued thereafter, the Supreme Court held that the said Proclamation and the Presidential Order did not preclude a citizen from challenging the validity of a legislative measure or any rule or order made thereunder on a ground other than a contravention of the articles in question, namely, Articles 14, 19, 21 and 22. The same position in law was reiterated in Jaichand Lall Sethia Vs. State of West Bengal and Others, , and in Thus, The District Collector of Hyderabad and Others Vs. Ibrahim and Co., etc., . Thus, the interpretation we have placed upon the effect of Article 358 of the Constitution and the Presidential Orders under Article 359 is the very same interpretation that has been repeatedly placed by the Supreme Court upon Articles 358 and 359(1) with reference to Proclamations of Emergency issued previously and the Presidential Orders issued in pursuance thereof. We find that three different Division Benches of our High Court have also taken the same view as we have done. These decisions are Krishna Madhaorao Ghatate and Another Vs. The Union of India and Others, . Bhanudas Krishna v. Paranjpe (1975) 77 Bom. L.R. 599 and N.P. Nathwani v. Commissioner of Police.

33. Mr. Advani, learned Counsel for the appellant, however, placed considerable reliance upon the decision of a Division Bench of the Kerala High Court in Fathima Beebi Vs. M.K. Ravindranathan and Others, That was a case in which, a habeas corpus petition was filed challenging- the orders of detention passed u/s 3(1)(c) of the Maintenance of Internal Security Act, 1971. The Kerala High Court held that once a common law right was enshrined in the Constitution as a fundamental right, it became merged in the relevant article of the Constitution. It was on this part of the judgment that Mr. Advani relied. We have already expressed our prima, facie view on this aspect, but as we have said we are not really concerned with this question in this appeal and have not decided the same, because according to us what the respondent was doing by his petition was not to seek to enforce any of his common law rights or any right under Part III of the Constitution but to challenge the legality of the action taken by the appellant on

the ground that it was without the authority of law. In the very same decision the Kerala High Court has held that in spite of the Proclamation of Emergency it will always be open to the person detained to challenge the statute itself on grounds other than those relatable to the articles mentioned in the Presidential Order and also to contend that an order of detention was passed mala fide or that the authority which passed the order was not competent to exercise the power of detention conferred by the Act or that the power was exercised by such authority for purposes not sanctioned by the statute.

34. For the above reasons we, therefore, hold that the respondent's petition was maintainable and that Bhatt, J., was right in so holding and in proceeding to hear the petition on merits.

35. The second point canvassed before us by Mr. Advani, learned Counsel for the appellant, was that the said items of which the publication was prohibited by the appellant were of such a nature as would adversely or prejudicially affect the internal security, the public safety and the maintenance of public order, and, therefore, their publication was required to be prohibited under the Censorship Order. Before we examine the submissions on this point it is necessary to see the scope of the Censorship Order, the functions which the appellant is to discharge thereunder and the manner in which he is to discharge them. The parent source of the Censorship Order is the said Act. The long title of the said Act is "An Act to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and internal security and for the trial of certain offences and for matters connected therewith." The second recital in the Preamble states "AND WHEREAS it is necessary to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and internal security, and for the trial of certain offences and for matters connected therewith". Section 3, which confers upon the Central Government the power to make Rules, occurs in Chapter II of the said Act which is headed "EMERGENCY POWERS". u/s 3(1) the Central Government is conferred the power to "make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the internal security, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community." As we have seen, the words "the internal security" were added in Section 3(1) on June 30, 1975 by the Defence of India (Amendment) Ordinance, 1975, which also inserted the words "and internal security" in the long title and the second recital in the Preamble. Thus, the Rules to be made by the Central Government u/s 3 must be such as appear to it necessary or expedient for (1) securing the defence of India and civil defence, (2) the public safety, (3) the maintenance of public order, (4) the efficient conduct of military operations, (5) maintaining supplies and services essential to the life of the community, and (6) on and after June 30, 1975 the internal security. These are the purposes for which Rules can be made by the Central Government when it appears to it necessary or expedient so to do. The opening words of Rule 48, which confers upon the Central

Government and the State Governments the power to impose censorship, are "The Central Government or the State Government may for the purpose of securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, by order... ". By reason of Rule 1A inserted in the said Rules with effect from July 1, 1975 by the Defence of India (Amendment) Rules, 1975, Rule 48 along with other Rules is also to apply for the purpose of internal security, as it applies for the other purposes of the said Act. Thus, under Rule 48 prior to July 1, 1975 censorship could be imposed either by the Central Government or the State Government for all the purposes mentioned in Section 3(1) except internal security and for maintaining supplies and services essential to the life of the community, and on and after July 1, 1975 also for the purpose of internal security. There is, however, no obligation under Rule 48 either upon the Central Government or the State Government, when it makes an order imposing censorship, to impose it for each and every purpose mentioned in Rule 48. It may impose censorship for all the said purposes or some of them. The Censorship Order was made by the Central Government on June 26, 1975, that is, before the Defence of India Act was amended by the said Amending Ordinance of 1975 and before Rule 1A was inserted in the said Rules. The preamble to the Censorship Order sets out the purposes for which it was made. That preamble states "Whereas the Central Government is of opinion that for the purpose of securing the defence of India and civil defence, the public safety and maintenance of public order, it is necessary so to do". Thus, the purposes for which the Censorship Order was made were only three, namely, (1) securing the defence of India and civil defence, (2) the public safety and (3) maintenance of public order. Though at the date when the Censorship Order was made censorship could also have been, imposed for the efficient conduct of military operations, inasmuch as that purpose was also provided for in Rule 48, the Central Government did not think it fit to impose it for that purpose. After the said rules were made to apply for the purpose of internal security as they applied for the other purposes of the said Act, though the Censorship Order was twice amended the Central Government did not think it fit to amend it to make it apply for the purpose of internal security. It was submitted by Mr. Advani, learned Counsel for the appellant, that since under Rule 1A the said rules were to be so construed as if they applied for the purpose of internal security as they applied for the other purposes of the said Act, the Censorship Order must also be construed in the same manner so as to make it apply for the purpose of internal security. Section 20 of the General Clauses Act, 1897, provide as follows:

20. Construction of orders, etc., issued under enactments.-Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in. the Act or Regulation conferring the power.

The expressions used in the Censorship Order would, therefore, unless there was anything repugnant in the subject or context, bear the same meaning as those used in the said Act, and were this section to apply, it could be legitimately urged that the Censorship Order must be construed as also applying for the purpose of internal security. "We are, however, unable to construe the Censorship Order in this manner. It would have been possible to so construe it had there been an obligation upon the Central Government under Rule 48 to issue an order imposing censorship for all the purposes mentioned in the said Rule 48, but since it is left to the Government to make an order imposing censorship for all or any of the said purposes, it was the volition of the Central Government whether to impose censorship for the purpose of internal security or not. Just as the Central Government chose not to impose censorship for the purpose of the efficient conduct of military operations, it could well choose not to impose it for the purpose of internal security. We, therefore, do not find it possible to construe the Censorship Order as if the purpose of internal security was expressly included therein. This position, however, to our mind makes no difference, for, in our opinion, whatever affects internal security must necessarily affect public safety and public order. In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, . Hidayatullah J., said (p. 758) :

..One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

If, therefore, an act which affects law and order need not affect public order because public order is a smaller circle within the circle of law and order and an act which affects public order may not affect security of the State because it is a circle even smaller than the circle of public order and within it, it must follow conversely that an act which affects the security of the State must necessarily affect public order as also law and order. There are thus three circles, one within the other. The largest is law and order; within it is a smaller circle, that of public order; and within the smaller circle is yet a third one, the smallest, that of security of the State. This leaves an area in the circle of public order which does not include security of the State and an area in the circle of law and order which does not include public order. The result, therefore, is that an act which affects law and order may affect both public order and security of the State, or may not affect either or may affect public order but not the security of the State. Similarly, an act which affects public order, though it must necessarily affect law and order, may or may not affect the security of the State. Conversely, an act which affects the security of the State must necessarily affect both public order and law and order, since the circle of the security of the State is enclosed within the two larger circles of public order and law and order; and an act which affects public order must necessarily affect law and order, though it may or may not affect the security of the State. In *The Superintendent, Central prison, The*

Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, , it was held that public order is synonymous with public safety and tranquillity. Thus, an act which affects the security of the State must necessarily affect both public order and public safety. Security of the State is very much the same thing as internal security. The security of the State can be affected either by war, external aggression or internal disturbance. War and external aggression against a country involve a hostile attack on its territories. The object of war and external aggression is the defeat of the other side for the purpose of conquest, dominion, or obtaining territories or concessions. War and external aggression threaten and jeopardize the security of the State in very much the same manner as internal disturbance with this difference that in a case of internal disturbance the threat and jeopardy to the security of the State can at times be immediately much graver than in a case of war or external aggression, for in a case of internal disturbance the enemy is within the country and is thus threatening and jeopardizing the security of the State from within, while in a case of war and external aggression the threat and jeopardy are from without but there is the possibility of enemy forces being contained before or soon after they have crossed the frontier. Thus, whatever affects the internal security of the State affects the security of the State, public safety and public order. The omission of the words "the internal security" from the preamble of the Censorship Order does not, therefore, make any difference to the position, and the Censorship Order operates for the purpose of internal security, as it does for the purpose of securing the defence of India and civil defence, the public safety and the maintenance of public order.

36. The concepts of law and order, public order, public safety and security of the State have been judicially interpreted, their boundaries defined and their areas mapped by several decisions of the Supreme Court. The expressions "public order", "public safety" and "security of the State" came up for consideration for the first time before the Supreme Court in Romesh Thappar Vs. The State of Madras, , better known as the Cross Roads Case. In that case the challenge was to an order imposing a ban upon the entry and circulation of the journal "Cross Roads" in the State of Madras by an order made under the Madras Maintenance of Public Order Act, 1949. Patanjali Sastri J., who delivered the majority judgment, explained the terms "public order", "public safety" and "security of the State" in the following- words (at p. 127) :

..."public order" is an expression of wide connotation and signifies that state of tranquillity prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted.

"Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context.

After referring to Section 57 of the Government of India Act, 1935, and Article

352 of the Constitution of India, the learned Judge observed (at p. 128) :

...These provisions recognise that disturbance of public peace or tranquillity may assume such grave proportions as to threaten the security of the State.

37. In *The Superintendent, Central Prison, Fatehgarh v. Bam Manohar Lohia, Subba Rao J.*, speaking for the Court, after referring to earlier rulings, thus summed up the position (p. 839).

..."Public order" is synonymous with public safety and tranquillity: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, War, affecting the security of the State;....

38. In *Ram Manohar v. State of Bihar*, Hidayatullah J., after quoting with approval the above observations of Subba Rao J., said (at p. 758) ;

...Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within "which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

39. The distinction between "public order" and "law and order" again fell to be pointed out in *Arun Ghosh Vs. State of West Bengal*, Hidayatullah C.J., who

delivered the judgment of the Court, said (p. 1229) :

...Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different.... the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.

40. In *Sri Nagen Murmu Vs. The State of West Bengal*, Dua J., speaking for the Court, said (p. 845) :

...Public order has repeatedly been described by this Court to be the even tempo of the life of the community taking within its fold even a specified locality and a substantial section of the society as a whole.

41. The above decisions show that the maintenance of public order would require the taking of such measures as would preserve undisturbed the even tempo of the life of the community. For the even tempo of the life of the community to be affected it is not necessary that the disturbance of this tempo should be on an all India scale. It is sufficient if the even tempo of the life of the community in a specified locality is affected or the even tempo of the life of a substantial section of the society is affected.

42. As we have seen, the purposes for which the Censorship Order operates, and the objects sought to be achieved by it on and after July 1, 1975 are:

(1) securing the defence of India and civil defence,

- (2) the public safety,
- (3) the internal security, and
- (4) the maintenance of public order.

The Censorship Order requires all news, comments, rumours and reports relating to any of the matters set out in Sub-clauses (a) to (c) of Clause (1) upto August 11, 1975, and in Sub-clause (a) to (g) of Clause (1) of that Order on and after August 12, 1975, to be submitted to the specified authority acting as the censor under that Order for his scrutiny. It does not require the censor to prohibit all such materials. Censorship does not mean prohibiting the publication of all materials submitted to the censor for his scrutiny. It means the official licensing or suppressing on certain grounds authorized by law of books, plays, letters news, or military intelligence; and "to censor" means "to exercise such control over, make excisions or changes in" (See The Concise Oxford Dictionary, under word "censor"). Under the Censorship Order the censor has to scrutinize such materials, apply his mind to them and come to a decision whether the material submitted to him is of such a nature as would affect securing the defence of India and civil defence, the public safety, the internal security and the maintenance of public order. In this appeal we are not concerned with the first of these four purposes, namely, securing the defence of India and civil defence. Therefore, when the said items were submitted by the respondent for the appellant's scrutiny, the appellant had to consider and arrive at a decision whether they or any of them in any manner prejudicially or adversely affected the public safety, the internal security and the maintenance of public order. The manner in which the appellant had to arrive at his decision was, however, a matter of controversy. In this connection, Mr. Advani raised three contentions which are points 3 to 5 of the said six points canvassed before us on behalf of the appellant which we have set out earlier. The first of these contentions was that the Censorship Order conferred a permissive power upon the appellant, and the Court will not, therefore, issue a writ of mandamus against him directing him to exercise such power and to permit publication of the said items or any of them. The second contention was that the appellant was the sole judge whether the said items contained matters which would adversely or prejudicially affect the internal security, the public safety and the maintenance of public order, and the decision in this behalf was to be taken by the appellant purely on his subjective satisfaction. According to Mr. Advani, such a decision was not justiciable by the Court unless it was arrived at mala fide or was perverse. The third contention was that the matters which would adversely or prejudicially affect the internal security, the public safety and the maintenance of public order are shown by the guidelines issued to the appellant under the Censorship Order, and the appellant, being a subordinate authority at Bombay, was bound to follow such guidelines and that as he had followed these guidelines and had thus acted in pursuance of lawful instructions given to him, his orders could not be set aside by the Court and no writ could issue against him. These three contentions are

really contradictory of one another because if the Censorship Order left it to the appellant whether to take any decision or not, it cannot be said that the decision which he had to take was to be taken by him on his subjective satisfaction or was to be only in accordance with the guidelines issued to him. Similarly, if the appellant was bound by the guidelines issued to him, the question of his exercising his discretion cannot arise nor could there be a question of it being left to his volition whether to exercise his powers under the Censorship Order or not.

43. So far as the first of these contentions is concerned, namely, that the Censorship Order conferred a permissive power upon the appellant, Mr. Advani submitted that the Censorship Order prohibited the publication of news, comments, rumours and other reports relating to the matters specified in Clause (1) of that Order in any newspaper, periodical or other document unless such news, comments, rumours and reports had been submitted for scrutiny to an authorized officer and the publication thereof was authorized in writing by such officer. According to Mr. Advani, the Censorship Order did not cast any obligation upon such authority to give any decision refusing to authorize publication nor was there any obligation upon him to authorize publication, and the appellant could, therefore, not take any decision, and such written materials then could not be published. Mr. Advani further submitted that the power conferred upon the appellant under the Censorship Order being thus a permissive power, if the appellant failed to take any decision the Court cannot issue a writ directing him to do so. In support of this submission Mr. Advani relied upon the following sentence from Halsbury's Laws of England, Third edn., Vol. 11, Article 192, (p. 103):

The Court will not compel any authority to exercise a power which is merely permissive, and which does not impose an obligation.

44. In each case the question whether a statute confers a power which is merely permissive or one which imposes an obligation is one of construction. As held by the House of Lords in *Julius v. Lord Bishop of Oxford* (1880) 5 A.C. 214, (one of the cases cited in the foot-note in Halsbury in support of the above proposition), even where the words used in a statute confer merely a permissive and enabling power, there may be circumstances which may couple the power with a duty to exercise it. In that case Earl Cairns L.C. said (p. 222) :

...But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under, which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. Whether the power is one coupled with a duty such as I have described is a question which, according to our system of law, speaking generally, it falls to the Court of Queen's Bench to decide, on an application for a mandamus.

Another case cited in the said foot-note in support of the above proposition from Halsbury is *Rex v. Marshland Smeeth and Fen District Commissioners*. [1920] 1 K.B. 155. McCardie J. said in that case (p. 165):

...The validity of this contention must, I think, depend in every case upon the "true construction of the enactment in the question. If, for example, a jurisdiction be given to an inferior Court all that that Court can be called upon by the High Court to do, save in special circumstances, is to hear and determine the matters brought before it in a regular and proper manner. Hence a mandamus is granted, if jurisdiction has been declined by the inferior Court, to hear and determine only. If the inferior Court has a discretion as to the decision it may give, then if that discretion be exercised bona fide and not arbitrarily or illegally and without reference to extraneous considerations the Court will not control the exercise of that discretion.

The mistake lies in reading merely the above sentence from Halsbury's Laws of England and not the entire passage in which it occurs. That passage is as follows (p. 103) :

The Court will not compel any authority to exercise a power which is merely permissive, and which does not impose an obligation. Where, however, a statute has been interpreted and action taken in the light of matters which ought not to have been taken into account, that is to say, which the Court considers not to be proper for the guidance of the discretion entrusted to the persons concerned, the latter will be considered not to have exercised their discretion according to law, and a mandamus will issue commanding them to exercise the powers given them under the statute in question.

45. We are unable to accept the construction sought to be placed on the Censorship Order by Mr. Advani. Though Clause (1) of the Censorship Order, which prohibits written materials of a particular type from being published unless they are submitted for scrutiny to the authorized officer and he has authorized the publication thereof in writing, is couched in a negative form, it does not confer any power upon the authorized officer to pass or not to pass an order with respect to such materials. Censorship is too important a matter for the exercise of it to be left to the volition of an officer appointed under the Censorship Order. Censorship is not and cannot be optional to the censor. The Censorship Order casts upon every censor appointed thereunder a duty to consider the written material submitted to him for his scrutiny, to apply his mind to it and either to give his authorization to its publication or refuse to give such authorization or to give it subject to such conditions and restrictions as he thinks necessary. Even assuming for the sake of argument that the Censorship Order confers a permissive power upon the censors appointed thereunder, in the present case the appellant has in fact interpreted the Censorship Order and taken action thereunder, and this brings him squarely within the rule set out in the latter part of the above-quoted passage from Halsbury's Laws of England, and it is now not open to him to say that though the Censorship Order conferred a power upon

him which he need not have exercised, even though he has exercised it, the validity of his action should not be examined by the Court.

46. We will now consider the second contention of Mr. Advani, namely, that under the Censorship Order the decision was to be taken by the appellant on his subjective satisfaction and that his decision, therefore, was not justiciable unless it was mala fide or perverse. In support of this contention Mr. Advani relied upon the decision of the Supreme Court in *Virendra Vs. The State of Punjab and Another*, . In that case a notification was issued u/s 2(1)(a) of the Punjab Special Powers (Press) Act, 1956, prohibiting the petitioner, who was the editor, printer and publisher of a daily newspaper called the "Pratap", published from Jullundur, from printing and publishing any article, report, news-item, letter or any other material of any character whatsoever relating to or connected with the "Save Hindi Agitation" for a period of two months from the date of the said notification. The petitioner thereupon filed in the Supreme Court a petition under Article 32 of the Constitution against the State of Punjab for a writ directing the State to withdraw the said notification. This petition was heard along with another petition filed by one Narendra, who was the printer, publisher and editor of two daily newspapers, namely the "Pratap" and the "Vir Arjun", both published from New Delhi, who had been directed by two notifications u/s 3(1) of the Punjab Act from bringing into Punjab the said newspapers from the date of publication of the said notifications. It was contended by both these petitioners that both Sections 2 and 3 of the Punjab Act were ultra vires because they infringed the fundamental rights of the said petitioners guaranteed by Sub-clauses (a) and (g) of Article 19(1) of the Constitution and were not saved by the protecting provisions either of Article 19(2) or 19(6). The challenge to Section 2 was repelled, but the challenge to Section 3 of the Punjab Act was upheld. On behalf of the appellant reliance was placed upon the following passage from the said judgment (pp. 900 and 901) :

The Court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of materials which are available only to the executive Government. Therefore, the determination of the time when and the extent to which restrictions should be imposed on the Press must of necessity be left to the judgment and discretion of the State Government and that is exactly what the Legislature did by passing the statute....

Quick decision and swift and effective action must be of the essence of those powers and the exercise of it must, therefore, be left to the subjective satisfaction of the Government charged with the duty of maintaining law and order. To make the exercise of these powers justiciable and subject to the judicial scrutiny will defeat the very purpose of the enactment.

The above observations were made in the context of the challenge to the vires of the sections in question. The Court was not concerned in that case with the question whether the subjective satisfaction of the Government had been exercised on grounds which made it subject to review by the Court. It is

pertinent to bear in mind that in the present case the respondent has not challenged the validity of Rule 48 of the said rules which confers power upon the Central Government and State Governments to issue an order imposing censorship nor has he challenged the validity of the Censorship Order. What he has done is to challenge the exercise by the appellant of the power conferred upon him by the Censorship Order inter alia on the ground that such power has been exercised for purposes other than those provided for by the Censorship Order. In this context, two passages from the judgment in the case of *Virendra v. The State of Punjab*, which occur later, are relevant. These passages are (p. 901) :

The two sections before us lay down the principle that the State Government or the delegated authority can exercise the power only if it is satisfied that its exercise is necessary for the purposes mentioned in the sections. It cannot be exercised for any other purpose. In this view of the matter neither of these sections can be questioned on the ground that they give unfettered and uncontrolled discretion to the State Government or one executive officer in the exercise of discretionary powers given by the section....

No assumption ought to be made that the State Government or the authority will abuse its power. To make the exercise of the power justiciable will defeat the very purpose for which the power is given. Further, even if the officer may conceivably abuse the power, what will be struck down is not the statute but the abuse of power (*italics supplied by us*).

The above passages, therefore, make it clear that if the power conferred by a statute is exercised for a purpose other than that provided for in the statute or if an authority to whom power is delegated under a statute abuses that power, the Court will interfere and strike down the purported exercise of such power. This case, therefore, far from being against the respondent, is in support of the respondent's contention that if the said orders were made by the appellant for purposes other than, those provided for by the Censorship Order or if the said orders amount to an abuse of the statutory power conferred upon the appellant, the said orders could be set aside by the Court. In the case of *Virendra v. The State of Punjab* the Supreme Court was not concerned with defining the scope of Court's power of review in cases of subjective satisfaction. That topic has formed the subject-matter of several decisions, including those of the Supreme Court. It is unnecessary to refer to all the decisions on the point. We will, therefore, confine ourselves to the most recent decisions of the Supreme Court.

47. This question was exhaustively considered by the Supreme Court in the light of the earlier decision in *Khudiram Das Vs. The State of West Bengal and Others*, . That was a case of detention under the Maintenance of Internal Security Act, 1971. In that case Bhagwati J., speaking for the Court, said (p. 557) :

But that does not mean that the subjective satisfaction of the detaining authority

is wholly immune from judicial reviewability. The Courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the eruptive, the Court can always examine whether the requisite satisfaction is arrived at by the authority: if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by Judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all: in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. *Emperor v. Sibnath Banerjee* AIR [1943] F.C. 75 is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose; such a case would also negative the existence of satisfaction on the part of the authority. The existence of "improper purpose", that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, , and the officer of the Ministry of Labour and National Service did in *Simms Motor Units v. Minister of Labour* [1946] All E.R. 201, the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded "on materials which are of rationally probative value." *Machindar Shivaji v. The King* AIR [1950] F.C. 129 . The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. *S. Pratap Singh Vs. The State of Punjab*, . If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.

There is also one other ground on which the subjective satisfaction reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of Lord Halsbury in *Sharp v. Wakefield* [1891] A.C. 173:

...when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion... according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular."

So far as this ground is concerned, the courts in the United States have gone much further than the courts in England or in this country. The United States courts are prepared to review administrative findings which are not supported by substantial evidence, that is by "such relevant findings as a reasonable man may accept adequate to support a conclusion." But in England and in India, the courts stop short at merely inquiring whether the grounds on which the authority has reached its subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction. "If, to use the words of Lord Greene, M.R., in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223 -words which have found approval of the House of Lords in *Smith v. East Elloe Rural District Council* [1956] A.C. 736, and *Fawcett Properties Ltd. v. Buckingham County Council* [1961] A.C. 636-"the authority has come to a conclusion so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere". In such a case, a legitimate inference may fairly be drawn either that the authority "did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts. *Ross-Clunis v. Papadopoulos* [1958] 1 W.L.R. 546. The power of the Court to interfere in such a case is not as an appellate authority to override a decision taken by the statutory authority, but as a judicial authority which is concerned, and concerned only, to see whether the statutory authority has contravened the law by acting in excess of the power which the legislature has confided in it....

This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion, "Law has reached its finest moments", said Justice Douglas, "when it has freed man from the unlimited discretion of some ruler, some official," some "bureaucrat. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions." *United States v. Wunderlich*. (1951) 342 U.S. 98.

And this is much more so in a case where personal liberty is involved. That is why the Courts have devised various methods of judicial control so that power in the hands of an individual officer or authority is not misused or abused or exercised arbitrarily or without any justifiable grounds.

In *Hochtiel Gammon Vs. State of Orissa and Others*, , the Supreme Court considered its earlier decisions on the subject and also cited with approval the

decision of the House of Lords in *Padfield v. Minister of Agriculture, Fisheries and Food*. [1968] A.C. 997. After considering these decisions, Alagiriswami J., who delivered the judgment of the Court, said (p. 659) :

The principles deducible from the decisions of this Court and the above decision of the House of Lords which, though not binding on us, appeals to us on principle may be set out as follows.

The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration, They cannot avoid scrutiny by courts by failing to give reasons, If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.

48. In *Sadhu v. State of W.B.* AIR [1975] S.C. 919, it was held that the subjective satisfaction of the executive authority must be real and rational and not a random divination nor must it merely be a mock recital or mechanical chant of statutorily sanctified phrases but should be related to the relevant factors and the Court should see whether the grounds were "too groundless to induce credence in Any reasonable man or too frivolous".

49. In *Ram Bahadur Rai Vs. The State of Bihar and Others*, , it was held that where an order passed on subjective satisfaction is based on distinct and separate grounds, if one of the grounds is vague or irrelevant the entire order must fall because the satisfaction being subjective, it would be impossible to predicate whether the order would have been passed in the absence of such vague or irrelevant data.

50. In *Tulshi Rabidas Vs. The State of West Bengal*, , it was held by the Supreme Court (p. 640):

The price that subjective satisfaction, as validating an order and excluding judicial scrutiny, has to pay in a court, is that if one of many grounds relied on by the authority goes, undeniably the whole order falls, even though if it were a case of objective satisfaction the court might have attempted to sustain the order on the surviving grounds.

51. Relying upon the above decision of the Supreme Court in *Hochtief Gammon v. State of Orissa*, it was submitted on behalf of the appellant that even if the Court found that the reasons given by the appellant were not good reasons, the

Court Could have only directed the appellant to reconsider the matter in the light of relevant facts but could not have issued a writ directing publication of the said items. In *Hochtief Gammon's* case an industrial dispute had been referred to the Industrial Tribunal by the Government of Orissa u/s 10(1)(d) of the Industrial Disputes Act, 1947. Thereafter the appellants made an application to the Government to add another party to the said dispute as also to refer an additional issue to the tribunal for adjudication. The Government rejected the said application, but did not give any reasons for doing so. The Supreme Court set aside the order of the Government of Orissa and directed it to reconsider the matter and to take decision in the matter of the said reference in the light of the relevant facts. In that case the Supreme Court, therefore, had to consider what would be the position where the Government refused to disclose its reasons. It was in this context that the Supreme Court referred with approval to the decision of the House of Lords in *Padfield v. Minister of Agriculture, Fisheries and Food*. Where, however, all the reasons that can possibly be given in support of the impugned order have been urged before the Court, and the Court has rejected all of them, it would be an exercise in futility to direct the authority to reconsider the matter because it could only make an order on one or the other of the reasons which have already been found by the Court to be bad, and thus it would be tantamount to driving a citizen from pillar to post. We are fortified in this view by a decision of the Gujarat High Court in *Krishna Cinema and Others Vs. The State of Gujarat and Another*, . In that case an order of the District Magistrate, Rajkot, refusing to grant a No Objection Certificate to the petitioners under Rule 5 of the Bombay Cinema Rules, 1954, was challenged. The Court found all the reasons urged in support of the impugned order to be bad. On the question of the relief to which the petitioners were entitled, the Court observed (p. 115) :

...Any way, we feel that the No Objection Certificate could not have been refused on the ground it was refused and there are no other grounds that exist which the authority in its wide discretion even could take into account and this is on their own showing. We therefore feel that this is a fit case where we should exercise our jurisdiction to issue a writ of mandamus.

52. An appeal filed in the Supreme Court against the judgment of the Gujarat High Court was dismissed (See *State of Gujarat Vs. Krishna Cinema and Others*,

53. The principles deductible from the above decisions are:

(1) The Court's scrutiny and review are not totally barred in a case where in the exercise of statutory powers an authority is empowered to make an order in its discretion on its subjective satisfaction.

(2) An order made by an authority on its subjective satisfaction can be set aside by the Court on the following grounds:

(a) where the authority has not applied its mind,

(b) where the power is exercised dishonestly,

- (c) where the power is exercised mala fide,
- (d) where the power is exercised for a purpose not contemplated by the statute, that is to say, where it is exercised for a collateral purpose,
- (e) where the authority has acted under the dictate of another body or authority,
- (f) where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in other manner,
- (g) where the satisfaction of the authority is based on the application of a wrong test,
- (h) where the satisfaction of the authority is based on the misconstruction of a statute,
- (i) where the grounds on which the satisfaction is based are irrelevant to the subject-matter of the inquiry and extraneous to the scope and purpose of the statute,
- (j) where the authority has failed to have regard to matters which the statute expressly or by implication requires it to take into consideration, and
- (k) where the decision based on subjective satisfaction is such that no reasonable person could possibly arrive at it, that is to say, the satisfaction of the authority is not real and rational.

(3) If one of the several grounds relied upon by the authority to support an order passed on subjective satisfaction is vague or irrelevant or bad, the whole order must fall because it would not be possible for the Court to say whether the impugned order would have been passed in the absence of such ground, though if it were a case of an order passed on objective satisfaction the Court might endeavour to uphold the order on surviving grounds.

(4) The authority cannot avoid the scrutiny of the Court by failing to give reasons. In such a case the Court can compel the authority to state its reasons.

(5) Where the reasons given are bad and the authority has not taken into consideration the relevant matters or real grounds on which the order could have been passed, the Court can direct the authority to reconsider the matter in the light of such relevant matters,

(6) Where, however, all the reasons which can be given for upholding the validity of the order have been found by the Court to be bad and unsustainable, the Court will not direct the authority, to reconsider the matter, for then there is nothing for the authority to reconsider, but the Court will direct the authority to carry out what it has by the impugned order refused to do.

54. The last contention advanced by the appellant on this aspect of the case was that the appellant had no discretion in the matter because under the Censorship Order he was bound to follow the guidelines issued to him by his superior officer,

namely, the Chief Censor, and that so far as the appellant was concerned, these guidelines showed what were the matters which would adversely or prejudicially affect the internal security, the public safety and the maintenance of the public order. The relevant statutory provision relied upon by Mr. Advani in this connection was Clause (3) of the Censorship Order under which all authorities in the discharge of their functions in pursuance of the Censorship Order are required to follow such principles or guidelines as the principal authority, namely, the Chief Censor, or any officer of the Central Government authorized in this behalf by the Chief Censor, may from time to time require to be followed in that behalf. This clause was first inserted in the Censorship Order on July 6, 1975 by the said Central Government Order No, S.O. 316(E). The amendment made in the Censorship Order by the insertion of this clause was in pursuance of the power in that behalf conferred upon a Government making an order imposing censorship by Sub-rule (1B) of Rule 48 of the said rules. The said Sub-rule (1B) was inserted in the Rule 48 on July 6, 1975 as Clause (1A) by the Defence and Internal Security of India (Amendment) Rules, 1975 and renumbered on August 11, 1975 as Clause (1B) by the Defence and Internal Security of India (Second Amendment) Rules, 1975.

55. According to Mr. Advani, learned Counsel for the appellant, three guidelines were issued by the Chief Censor to all authorities under him, namely, the guidelines dated June 26, 1975, the guidelines dated July 13, 1975 and the guidelines dated August 5, 1975. The first and third guidelines, namely, the guidelines dated June 26, 1975 and August 5, 1975, were tendered by Mr. Advani at the hearing of the petition and have been marked exh. No. 1 (colly.). The guidelines dated July 13, 1975. have not been tendered and are not on the record. So far as the guidelines dated June 26, 1975 are concerned, they could never have been issued in the exercise of the aforesaid statutory power, because on that date neither Sub-rule (1B) of Rule 48 of the said rules nor Clause (3) of the Censorship Order was in existence. Assuming the said guidelines dated June 26, 1975 were in fact issued by the Chief Censor to the other censors, including the appellant, they could at the highest be administrative instructions and cannot be said to be issued in exercise of statutory power. So far as the guidelines dated August 5, 1975 are concerned, the impugned orders were passed on July 15, 1975, and the appellant could not have possibly taken into consideration the said guidelines issued almost three weeks later. As mentioned above, though the appellant tendered in evidence in Court the guidelines dated June 26, 1975 and August 5, 1975, he did not tender in evidence the guidelines dated July 13, 1975, and they are not on the record. It was, however, stated by Mr, Advani that he had read out to Bhatt J. at the hearing of the petition an extract from the said guidelines, and that Bhatt J. has referred to the said extract in the course of his judgment. A copy of the said extract has been included by the appellant in the appeal paper book. It was further stated that the guidelines dated July 13, 1975 were confidential, and the appellant was not bound to produce them, but the Court could none the less see the said guidelines and base its decision on them.

So far as the reference to these guidelines dated July 13, 1975 in the judgment of Bhatt J. is concerned, while referring to the arguments of Mr. Advani with respect to one of the items of which the publication was prohibited, Bhatt J, has mentioned that Mr. Advani placed reliance upon a confidential guideline issued on July 13, 1975. The said passage from the judgment is as follows:

In regard to this article, reliance is placed upon a confidential guideline issued on 13th July 1975, whereby any publication of news or reports likely to convey protest or disapproval of the "governmental way" should be prohibited. It is argued that the publication of such a resolution is likely to convey an impression of a protest or a disapproval of governmental measures.

There is no other reference to these guidelines thereafter in the judgment. It is, therefore, clear that this is merely a passing mention in the judgment of these guidelines, and Bhatt J. has neither based his decision upon them nor decided the effect of the said guidelines. It may also be mentioned that while in the above passage Bhatt J, quotes the words "governmental way", presumably from the extract read out to him or shown to him, a copy of the said extract included in the appeal paper book does not contain these words but has the words "governmental measures". So far as Mr. Advani's contention that these guidelines dated July 13, 1975 were confidential and, therefore, were not produced in evidence is concerned, we are unable to find anything on the record to show that they were confidential, except the mention of the word "confidential" in the above passage in the judgment. It is apparent that Bhatt J. applied this adjective to the said guidelines by reason of the description given to them by Mr. Advani in the course of his arguments. Mr. Advani submitted that the question of stating that these guidelines were confidential or of claiming any privilege in respect of them could have only arisen had the other side called upon the appellant to produce these guidelines or had asked for inspection thereof. This is undoubtedly true, but it is not the respondent who is relying upon these guidelines--it is the appellant. If the appellant wanted to rely upon a document, it was for him to produce it in evidence. Not having done so, he cannot ask the Court to look into it and base its findings upon it when the other side had no opportunity to see the document or to lead any evidence in rebuttal of it or to advance its submission with respect thereto. Our jurisprudence is founded upon the adversary system and not upon the inquisitorial system, and to adopt the course canvassed by Mr. Advani would be for a Court of law to turn itself into the Court of Star Chamber or a Court of Inquisition. Mr. Advani next submitted that all these guidelines, including the said guidelines dated July 13, 1975, were relied upon by the respondent himself in his petition. In support of this submission Mr. Advani relied upon the respondent's statement in paragraph 13 of his petition to the effect that the materials submitted for the appellant's scrutiny included certain new materials which the respondent felt did not contravene "any of the guidelines published for the guidance of editors of journals." It is clear that what the respondent was doing in this paragraph was to refer not to any guidelines issued by the Chief Censor to his subordinates but to

guidelines published for the guidance of editors of journals, for any such publication of guidelines would run counter to the claim of confidential nature made for the guidelines dated July 13, 1975 by Mr. Advani. Mr. Advani then next submitted that the appellant had referred to these guidelines dated July 13, 1975 in his affidavit in reply and he was, therefore, entitled to rely upon them at the hearing without tendering them in evidence. In the respondent's affidavit in reply the guidelines are mentioned at two places, the first time in paragraph 12 and the second time in paragraph 23. In paragraph 12 of the affidavit in reply it is stated that necessary guidelines have been furnished to all authorized officers for the purpose of considering whether or not the particular written material was such as could not be allowed to be published. Paragraph 23 of the said affidavit in reply states that the said items of which the publication was prohibited by the appellant were such as would transgress the guidelines issued to the press, The statement in the said paragraph 23 does not help Mr. Advani. So far as the statement in paragraph 12 of the respondent's affidavit in reply is concerned, the guidelines said to hg furnished to the authorized officers were not particularized in the said affidavit nor were copies; of such guidelines annexed thereto. Mr. Advani, however, did produce at the hearing the guidelines dated June 26, 1975 and August 5, 1975 as being the guidelines issued to the authorized officers. If there were other guidelines upon which also the appellant wanted to rely, it was for him to have produced them, and not having done so he cannot now be permitted to rely upon them. We accordingly hold that the appellant is not entitled to rely upon the guidelines dated July 13, 1975.

56. In support of his submission that no writ could issue against the appellant as he had merely followed lawful instructions issued to him by his superior officer Mr. Advani relied upon the following statement of law in Halsbury's Laws of England, Third edn., Vol. 11, Article 186 (p. 100) :

The order of mandamus will not be granted against one who is an inferior or ministerial officer, bound to obey the orders of a competent authority, to compel him to do something which is part of his duty in that capacity.

57. Executive directions issued under a statutory order for the purpose of implementing that order cannot travel beyond the scope and ambit of such statutory order nor of the parent Act or the parent rules under which such statutory order was made. This position in law is too well-settled to need the citation of a number of authorities to support it, and we will content ourselves with referring only to *Mixnam's Properties Ltd. v. Chertsey Urban District Council*. [1964] 1 Q.B. 214. In that case the Court of Appeal in England had to consider the validity of conditions contained in a licence issued by the licensing authority under the Caravan Sites and Control of Development Act, 1960. The relevant section of that Act conferred upon the licensing authority, in very wide and general terms, the power to impose conditions. After reviewing the authorities Willmer L.J. thus enunciated the position in law (p. 226) :

...a statutory power to impose conditions, even though expressed in the widest

terms, must be held to be subject to limitation in four well-defined respects. (1) The conditions must not be such as to effect a fundamental alteration in the general law relating to the rights of the person on whom they are imposed, unless the power to effect such an alteration is expressed in the clearest possible terms....

(2) The power to impose conditions must be limited by reference to the subject-matter of the statute-that is, the conditions must be such as fairly fall within the ambit of the statute..

(3) The conditions must not be unreasonable, that is, such as Parliament clearly cannot have intended should be imposed....

(4)... a condition may be held void for uncertainty, and consequently unenforceable, if it is ambiguous or uncertain in its application.

58. Mr. Advani, however, submitted that the appellant was bound to follow the guidelines issued by the Chief Censor even though they might travel beyond the scope of the Censorship Order. In support of this submission Mr. Advani relied upon a decision of the Supreme Court in *Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta*, . We find this reliance misplaced. That was a case under the Indian Income Tax Act, 1922. Section 5(8) of that Act provided that all officers and persons employed in the execution of that Act should observe and follow the orders, instructions and directions of the Central Board of Revenue. In exercise of the powers conferred by the said Section 5(8) the Central Board of Revenue issued instructions laying down the principles to be applied by assessing authorities in assessing foreign shipping- companies. These instructions were not followed by the Income Tax Officer, and in making the assessment he did not allow certain allowances to the assessee. The Supreme Court held that under the said Section 5(8) the instructions issued by the Central Board of Revenue were binding upon the Income Tax Officer and he was bound to follow them, even though the directions deviated from the provisions of the Act. In reaching this decision the Supreme Court relied upon its previous ruling in *Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay*, . The true ratio of these two judgments of the Supreme Court was pointed out by our High Court in *Tata Iron & Steel Co. Ltd. v. N.C. Tjpadhyaya*. (1947) 96 ITR 1. The case before this High Court was under the Income Tax Act, 1961, Section 119(1) of which conferred power upon the Board to issue orders, instructions and directions binding upon other Income Tax authorities, similar to the one conferred by Section 5(8) of the Indian Income Tax Act, 1922. The High Court pointed out that the binding nature of circulars issued by the Central Board of Revenue must be confined to tax laws and that also for the purpose of giving administrative relief to the taxpayer, and not for the purpose of imposing a burden on him. We fail to see how the ease of *Ellerman Lines*, relied upon by Mr. Advani, is any way germane to the question before us or helpful to the appellant.

59. A case in point is, however, *Raman and Raman Ltd. Vs. The State of Madras and Others*, . In that case the Supreme Court had to consider the construction to be placed upon Section 43A which was inserted in the Motor Vehicles Act, 1939, by the Motor Vehicles (Madras Amendment) Act, 1948. The said Section 43A provided:

The State Government may issue such orders and directions of a general character as it may consider necessary, in respect of any matter relating to road transport to the State Transport Authority or a Regional Transport Authority; and such Transport Authority shall give effect to all such orders and directions.

The Supreme Court held that the meaning of the words "orders and directions" used in the said Section 43A was more appropriate to administrative control rather than to rules of law affecting the rights of parties and that the declaration in the said section that such orders and directions, should be binding on the authorities concerned was indicative of the fact that they were not laws, for if they were laws, no such declaration was necessary. It was further held that the fact that such directions were issued under a statutory power did not make them laws because the source of the power did not affect the character of the things done in the exercise of that power and that whether such orders and directions would be a law or an administrative direction depended upon the character or nature of the orders or directions authorized to be issued in the exercise of the power conferred.

60. Both on principle and authorities we do not find it possible to hold that under the Censorship Order the Chief Censor can issue instructions in the guise of directions containing principles and guidelines travelling beyond the scope of the Censorship Order. To hold that this can be done would be tantamount to placing the Chief Censor and other authorities upon whom such power is conferred on a higher pedestal than Parliament which passed the said Act or the Central Government which made the said Rule 48 and the Censorship Order. If the Chief Censor and the other officers authorized by him in that behalf were to possess the power canvassed for by them, they could, by purporting to issue directions containing principles and guidelines under Clause (3) of the Censorship Order, apply that Order to purposes not intended by Parliament when it passed the said Act or by the Central Government when it made Rule 48 of the said rules and the Censorship Order. We are equally unable to hold that the subordinate authorities under the Censorship Order are bound to follow the directions and guidelines issued by the Chief Censor and officers authorized by him in that behalf, however plainly and obviously these directions and guidelines may be beyond the scope of the Censorship Order. For instance, can anyone be found to contend with reason that if the Chief Censor issued a guideline to the effect that the publication of all written materials in a particular language should be prohibited by all authorities subordinate to him, the subordinate authorities are bound to follow this guideline? "We find it equally not possible to hold that even where the appellant followed any such unwarranted guidelines, none the less no writ could issue

against him. Such a proposition runs counter to the decision of the Supreme Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, in which a similar question arose in a writ Petition filed in the High Court of Travancore Cochin under Article 226 of the Constitution prior to the insertion of Clause (1A) therein by the Constitution (Fifteenth Amendment) Act, 1963. In that case the authorized official appointed u/s 6 of the Travancore Taxation on Income (Investigation Commission) Act (14 of 1124 M.E.) issued a notice to the petitioner intimating to him that an investigation against him proposed earlier would not be confined to the years originally intimated but would also extend to earlier periods. The assessee thereupon filed a writ petition in the High Court of Travancore Cochin for a writ of prohibition against the authorized official prohibiting him from holding any inquiry in respect of any of the said periods. A preliminary objection was raised that no writ could lie against the authorized official who was merely carrying out the orders of the Income Tax Investigation Commission, and as the High Court had no jurisdiction under the unamended Article 226 of the Constitution against the Commission, the petition was not maintainable. Rejecting this contention the Supreme Court held that there can be no agency in the matter of the commission of a wrong and that a wrong-doer would certainly be liable to be dealt with as the party directly responsible for his wrongful action. Rejecting the further contention that by issuing a writ against the authorized official the High Court would be putting him in a position whereby he would be compelled to disobey the directions of the Commission, the Supreme Court held that the authorized official was bound to obey all lawful directions given to him by the Commission and not directions which the High Court holds to be unlawful or not justified in law.

61. In our opinion, the guidelines issued under Clause (3) of the Censorship Order do not have statutory force, though they may be issued in pursuance of statutory authority. They are not statutory provisions in the sense in which statutory rules or statutory orders, are. They are not published in the Official Gazette and may never become known to the public. In fact, before us the contention of Mr. Advani on behalf of the appellant was that the so-called guidelines dated July 13, 1975 were confidential guidelines and that even the other side should not be allowed to look at them. A "guideline" is defined in Webster's Third New International Dictionary, p. 1009, as "an indication or outline of future policy or conduct (as of a government)". Clause (3) of the Censorship Order requires all subordinate authorities to follow "in the discharge of their functions in pursuance of" the Censorship Order "such principles or guidelines" as the Chief Censor or any officer of the Central Government authorized in this behalf by the Chief Censor "may, from time to time, require to be followed in this behalf." These principles and guidelines are thus outlines of policy to be borne by the subordinate authorities in mind, and the subordinate authorities cannot run counter to them, for Clause (3) requires them to follow the principles and guidelines issued by the Chief Censor or an officer authorized by him in that behalf. Clause (3), however, does not authorize or justify the

subordinate authorities in following such principles or guidelines in a case where they travel beyond the scope and ambit of the Censorship Order, for as expressly provided in the said Clause (3) these principles and guidelines are to be followed by the subordinate authorities "in the discharge of their functions in pursuance of" the Censorship Order. The discharge of their functions in pursuance of the Censorship Order can only be within the scope and ambit of that Order and not beyond or outside it, and if any directions containing principles or guidelines are issued under that clause which travel beyond the scope or ambit of the Censorship Order and a subordinate authority acting in pursuance of them passes an order to the prejudice of any person, such order would be bad, and the Court could strike it down and issue a mandamus against such subordinate authority to permit publication where there are no other valid reasons for not permitting it.

62. We, however, find that a greater part of the controversy relating to these guidelines is unnecessary-the result of arguing law without any relation to the facts of the case. In the first place there is no contention before us that any of the guidelines relied upon by the appellant are beyond the scope or ambit of the Censorship Order. As stated earlier, the appellant had referred in paragraph 12 of his affidavit in reply to the guidelines furnished to him as an authorized officer acting under the Censorship Order. Had the respondent wanted to dispute or challenge these guidelines, he should have asked for inspection of these guidelines and if thereafter he wanted to challenge the said guidelines or any of them, he should have done so by asking for leave to amend his petition or by filing an affidavit in rejoinder. The respondent has, however, not done any of these things. Secondly, we do not find the portions of the said guidelines dated June 26, 1975 or August 5, 1975 (both of which guidelines are on the record as exh. No. 1 (colly.)) referred to in the course of the arguments to be beyond the scope or ambit of the Censorship Order, and the same applies to the extract from the so-called guidelines of July 13, 1975 which is not on the record. Thirdly, the guidelines issued under Clause (3) of the Censorship Order must be read in conjunction with the purposes for which the said order was made, and any provision thereof which may at the first blush appear to be too wide must be interpreted in the light of the purposes and objects of the Censorship Order; and so read and interpreted, we do not find any portions of the said guidelines dated June 26, 1975 or of August 5, 1975 referred to in the course of the arguments or even the extract from the so-called guidelines dated July 13, 1975 as being outside the scope and ambit of the Censorship Order. In fact, the greater part of the Portions of the said guidelines dated June 26, 1975 and August 5, 1975 relied upon in the course of the arguments before us were either reproductions of some of the sub-clauses of Clause (6) of Rule 36 of the said Rules which defines "prejudicial act" or a paraphrase of some of the other sub-clauses of the said Clause (6). Fourthly, we find that the said guidelines dated June 26, 1975 and August 5, 1975 are issued to the Press and not to the appellant. The heading of the guidelines dated June 26, 1975 is "Guidelines for the Press in the present

Emergency" and of the guidelines dated August 5, 1975 "CENSORSHIP GUIDELINES FOR THE PRESS". The contents of both these guidelines also make the position abundantly clear. So far as the guidelines dated June 26, 1975 are concerned, in the first paragraph it is stated:

The Press requires to be advised to guard against publication of unauthorised, irresponsible or demoralising news, items, conjectures and rumours and yet the Press should be enabled to fulfil its obligation to the public.

In the second paragraph it is stated:

In a democratic country in which citizens are fully conscious of their duties and responsibilities to the nation, the aim of the Government is not so much to rely in every case on the wide and extra-ordinary powers conferred on it, but as far as may be to enlist the voluntary cooperation of all sections of the population in maintaining an atmosphere conducive to the fulfilment of the primary task of ridding the nation of the causes of emergency.

After this follows a section headed "GENERAL GUIDANCE". Then comes another section headed "General Guidelines for The Press" and then comes the last section headed "SUPPLEMENTARY GUIDELINES". So far as the guidelines dated August 5, 1975 are concerned, the first paragraph thereof states as follows:

The purpose of censorship is to guide and advise the Press to guard against publication of unauthorised, irresponsible or demoralising news items, reports, conjectures or rumours. To this end, these guidelines are intended to enlist the voluntary cooperation of all sections of the Press in maintaining an atmosphere conducive to the maintenance of public order, stability and economic growth in the country.

The paragraphs which follow make it abundantly clear that they contain matters which are to be kept in view by editors and publishers in publishing different types of matter and the type of matter they should not publish. The last paragraph states:

In case of any doubt about the advisability or otherwise of publishing any news, report or comment, the Chief Censor should be consulted.

So far as the extract from the so-called guidelines dated July 13, 1975 is concerned, apart from the fact that these guidelines are not on the record, there is nothing to show that the document from which the extract is taken was in fact dated July 13, 1975 or to whom these guidelines have been issued.

63. The question then is in what manner an authority appointed under the Censorship Order-the censor-is to discharge his functions thereunder. The Censorship Order does not require that the censor should prohibit publication of all written materials of the nature specified in Clause (1) of that Order. It requires that these materials are to be submitted for the censor's scrutiny and that the censor must apply his mind thereto, and, in the light of the objects and

purposes for which the Censorship Order was passed, decide whether any writing is of such a nature that its publication should be prohibited. If it is of such a nature, he may either prohibit its publication or allow it to be published subject to such conditions and restrictions as he thinks necessary. If it is of not such a nature, he must give authorization in writing for its publication. If there are any principles or guidelines issued to him under Clause (3) of the Censorship Order, he must, so far as they do not travel beyond the scope and ambit of the Censorship Order, be guided by them. He must, however, read them in the light of the purposes and objects of the Censorship Order and interpret them accordingly. If he misinterprets them, his decision is liable to be set aside by the Court. Whether authorization for publication is to be given to a particular piece of writing or not is a matter to be decided by the censor in his: discretion and on his subjective satisfaction, bearing in mind the manner in which such discretion is to be exercised and satisfaction to be arrived at, and also the grounds on which his decision can be successfully challenged in a Court.

64. The first thing to which, therefore, the censor must address his mind is whether the particular writing is of such a nature as would adversely or prejudicially affect securing the defence of India and civil defence, the public safety, the maintenance of public order and the internal security. While the concepts of public order, public safety and security of the State are well-defined and their whereabouts marked out, what would affect these matters must necessarily depend upon the situation prevailing from time to time not only in the whole country but in any part of it and even in specified localities. So far as the question of public safety, internal security and the maintenance of public order is concerned, the censor must judge the effect of a particular writing on them in the light of the Proclamation of Emergency made on June 25, 1975. He must bear in mind that the said proclamation declared that the security of India was threatened by internal disturbance and that the threat "was so great that as a result thereof a grave emergency has come into being. The measures which would be required for maintaining public order and securing public safety and internal security must necessarily be different when there are or have been internal disturbances than they would be in cases where there has been no internal disturbance. Where there are internal disturbances, the question is of containing or putting them down and of ensuring that they do not break out again. Where there has been no internal disturbance, the question is of seeing that the situation does not so deteriorate as to lead to any internal disturbance. These matters must, therefore, be judged by the censor bearing in mind the prevailing situation, In *Bowman v. Secular Society, Limited* [1917] A.C. 407. Lord Sumner said (p. 466):

...The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault.

As observed by Sir Maurice Gwyer in *Niharendu Dutt Majumdar v. The King*

Emperor [1942] F.C.R. 38. "The right of every organized society to protect itself against attempts to overthrow it cannot be denied; but the attempts which have seemed grave to one age may be the subject of ridicule in another." In *Arun Ghosh v. State of W.B.*, at p. 1230, Hidayatullah C.J. pointed out that "This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from, another." In this context it will be useful to bear in mind the words of Sarkar J. in *Bam Manohar v. State of Bihar* (p. 745) :

It is commonplace that words in a statutory provision take their meaning from the context in which they are used. The context in the present case is the emergent situation created by external aggression. It would, therefore, be legitimate to hold that by maintenance of public order what was meant was prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation.

In this connection, Mr. Advani wanted to invite our attention to two exhibits on the record, namely, exhs. Nos. 2 and 3, to show the nature of the internal disturbances "which created the grave emergency in the country. Exhibit No. 2 is an extract from a speech made by the Prime Minister in Lok Sabha on July 22, 1975 and exh. No. 3 is a publication by the Ministry of Home Affairs in the form of a booklet entitled "WHY EMERGENCY" of a paper laid before both Houses of Parliament on July 21, 1975. The respondent's counsel had objected before Bhatt J. to these two documents being admitted in evidence. These objections were overruled. Before, us it was submitted on behalf of the respondent that these documents were wrongly admitted in evidence and that assuming they were properly admitted, all that was proved in the case of exh. No. 2 was: that such a speech was. in fact made by the Prime Minister in Lok Sabha on July 22, 1975 and not the truth of the contents of the said speech and in the case of exh. No. 3 that this paper was in fact laid before both Houses of Parliament on July 21, 1975 and not the truth of its contents. We find it unnecessary to decide these points, for in our opinion this appeal is easily capable of being disposed of without any reference to either of these two exhibits. By reason of the provisions of Article 358(5) of the Constitution the Proclamation of Emergency made by the President on June 25, 1975 is binding upon us and equally binding upon us is the necessity for its continued operation. We, therefore, must take it that on the date when the said Proclamation of Emergency was made, there was internal disturbance threatening the security of India of such a nature that a grave emergency had arisen and that such emergency still continues. The matters which would affect the public safety, the internal security and the maintenance of public order and the measures which would be necessary or expedient for securing public safety and internal security and maintaining public order must, therefore, be judged in the light of these facts made conclusive and binding upon the Court by Article 358(5) of the Constitution.

65. There is another important factor which the censor must also bear in mind. The press is not only an instrument of disseminating information but it is also a

powerful medium of moulding public opinion by propaganda. True democracy can only thrive in a free clearing-house of competing ideologies and philosophies-political, economic and social-and in this the press has an important role to play. The day this clearing-house closes down would toll the death-knell of democracy. It is not the function of the censor acting under the Censorship Order to make all newspapers and periodicals trim their sails to one wind or to tow along in a single file or to speak in chorus with one voice. It is not for him to exercise his statutory powers to force public opinion in a single mould or to turn the Press into an instrument of brain-washing the public. Under the Censorship Order the censor is appointed the nurse-maid of democracy and not its grave-digger. Dissent from the opinions and views held by the majority and criticism and disapproval of measures initiated by a party in power make for a healthy political climate, and it is not for the censor to inject into this the lifelessness of forced conformity. Merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication, for as Sir Maurice Gwyer said in *Nihwrendu Dutt Majumdar v. The King Emperor*, at p. 51, "hard words break no bones... and there are certain words and phrases which have so long become the stock in trade of the demagogue as almost to have lost all real meaning." But there are permissible limits to dissent and disapproval. The voice of dissent cannot take the form of incitement to revolutionary or subversive activities, for then instead of serving democracy it would subvert it. It is here that the censor's real role begins; for, though it is not for him to stifle all dissent and protest, it is certainly his duty to see that dissent and protest do not overstep the Permissible limits. The role which the censor is called upon to play is a delicate and important one. On his shoulders rests a great responsibility. Though his work must bring him public disfavour, he has not to compensate himself for this by seeking to win governmental favour by a display of excessive zeal. He has to preserve a fine balance. On the one hand he should not stifle all free expression of opinion by imagining lurking dangers in every corner and discovering sharp curves and hairpin bends when all that exists is a straight road, on the other hand he must be vigilant to detect all attempts at breeding violence and creating public disorder. A mischievous rumour, a false report or a passionate exhortation with this potentiality, open or covert, gains wider currency when circulated in print than when spread by word of mouth; and it is the censor's duty and responsibility to see that such writings are not published.

66. Yet another thing which the censor must bear in mind is Section 38 of the said Act. Under that section every authority or person acting in pursuance of the said Act is to "interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence and the internal security." In *Vimlabai D&shpande v. Emperor A.I.R [1945] Nag. 8*, a case under the old Defence of India Act, 1939, after quoting Sections 14 and 15 of that Act, which corresponded to Sections 36(1) and 38 respectively of the present Act, the Nagpur High Court stated (p. 16):

Now these are two important and fundamental positions. Nothing is to be altered, no rights or liberties to be interfered with, no privileges withdrawn or curtailed, except as expressly provided by or under the Act. The ordinary laws are to continue to function except and in so far as they are expressly altered by or under the Act. More, even when they are altered the special powers conferred are to be used sparingly, and the ordinary lives and avocations of those proceeded against under the Act and its rules are to be interfered with as little as possible, and only to the extent consonant with the public safety and interest and the defence of British India. These conditions are express and restrictive. They are fundamental. The Act and the rules must be construed in the light of them.

There was an appeal against the decision of the Nagpur High Court to the Judicial Committee of the Privy Council, which appeal was dismissed (See *King Emperor Vs. Vimlabai Deshpande*, Section 44 of the Defence of India Act, 1962, was in terms similar to Section 15 of the Defence of India Act, 1939 and to Section 38 of the said Act. In *Mahendra Kumar Bhagwandas Rendheria Vs. State*, , a Division Bench of this High Court held that the provisions of Section 44 of the Defence of India Act, 1962, were mandatory in the restricted or limited sense that these provisions must always be borne in mind by the authority. Thus, the position in law is that a censor must exercise his authority having regard to the purposes and objects set out in the Censorship Order and in such a manner as to interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with these purposes.

67. The next question is in what manner any written material is to be read by the censor for the purpose of making up his mind whether he should authorize its publication or prohibit it or authorize its publication subject to certain conditions and restrictions. *Anant Jmardkan v. M.A. Deshmukh* (1965) 68 Bom. L.R. 256, was a case in which the petitioner was detained by the District Magistrate, Poona, under Rule 30(1)(b) of the Defence of India Rules, 1962, on the ground that his detention was necessary to prevent him from acting in a manner prejudicial to the public safety and the maintenance of public order. It was clear from the return filed by the District Magistrate that he took the action of detaining the petitioner because of three articles contributed by him to a Marathi magazine the "Painjan". The question before the Court was whether the said articles were of such a nature as would justify the detention of the petitioner under the Defence of India Rules, 1962. It was held that the authority must in the first instance try to understand the contents of the articles, and in the process of understanding such contents he must inevitably interpret them. He must first consider the effect that the articles would produce upon his own mind by the views expressed therein. He must also consider what effect the articles would produce on the mind of the average reader. This postulates that he has to take into account the reputation and importance of the newspaper or magazine in which the articles appear, the circle of readers, etc, The article must be read as a whole and in its proper context. Stray sentences and isolated passages here and there are not to be taken as a guide to the intent of the writer. Merely

because in some passages strong language has been used or in others the writer has had recourse to sarcasm or satire or that opinions are expressed in the article which are unpopular or distasteful or the fact that the Court does not agree with what is said in the article, are not sufficient reasons for detaining the writer. The authority must consider whether the consequences which he apprehends have a reasonable proximate nexus with the views expressed in the article or whether those consequences are Pro blematical and far-fetched.

68. Though the question before the Court in the case of Anant Janardhan v. M.A. Deshmukh, was whether the articles were such as would justify the detention of the petitioner under the Defence of India Rules, 1962, in our opinion written materials submitted under the Censorship Order for the scrutiny of the censor must be read and interpreted in the same manner as laid down in that case. If having kept in mind the relevant factors and acting on the principles indicated by us earlier in ;the course of this judgment, a censor, after reading and interpreting a piece of writing in the above manner, takes the view that it is of such a nature as would affect prejudicially or adversely the defence of India and civil defence or the public safety or the internal security or the maintenance of public order and refuses to permit publication of such writing or authorizes its publication subject to conditions and restrictions, the Court will not interfere with his decision even though the Court does not agree with his view. Even where more than one view on the effect of a piece of writing is possible and the censor acting as aforesaid takes one of these views and prohibits the publication of the writing or authorizes its publication subject to conditions and restrictions, the Court will not interfere, provided the view atken by the censor is such that a person can reasonably take, even though according to the Court some other view was the more reasonable one to take.

69. Bearing these principles in mind we will now examine the said items. The appellant had not given any reasons for passing his impugned orders. In the affidavit in reply filed by him the appellant has, however, set out his reasons generally with respect to all items and also specific reasons with respect to some of them. At the hearing of the petition further reasons for prohibiting the publication of the said items were advanced by Mr. Advani, learned Counsel for the appellant, who also appeared at the hearing of the petition. Most of them were based on the said guidelines dated August 5, 1975. Further reasons were also advanced before us in the course of the arguments by Mr. Advani. Bhatt J. refused to consider the reasons advanced on the basis of the said guidelines dated August 5, 1975 on the ground that these guidelines, having been issued after the date of the impugned orders, could not have in any manner operated on the appellant's mind while passing the said orders. Mr. Advani, however, submitted that the learned Judge was in error in not taking the said guidelines into consideration. In support of this submission Mr. Advani did not contest the position that the question whether the impugned orders should be set aside or not must be judged without regard to the said guidelines. What he submitted was that in addition to the prayer that these impugned orders should be set

aside the respondent had also prayed for a writ of mandamus or other writ, direction or order under Article 226 of the Constitution directing the appellant to permit publication of the said items. In Mr. Advani's submission a Court cannot issue a mandamus or any order or direction under Article 226 of the Constitution directing an authority to do an unlawful act, and if there were grounds other than those advanced in support of the impugned orders which would render the publication of the said items contrary to law, the Court will not direct publication of the said items. In this connection, we may mention that the preater part of the said guidelines dated August 5, 1975 relied upon by Mr. Advani is in fact a reproduction or a paraphrase of some of the sub-clauses of Clause (6) of Rule 36 of the said rules, which clause defines the term "prejudicial act". Rule 43 of the said rules makes it an offence for any person, without lawful authority or excuse, to do any prejudicial act or make, print, publish or distribute any document containing any prejudicial report. As we have seen, under Clause (7) of Rule 36 "prejudicial report" means "any report, statement or visible representation, whether true or false, which, or the Publishing of which, is, or is an incitement to the commission of, a prejudicial act". If, therefore, any of the said items was a "prejudicial act" or a "prejudicial report" as defined by the said Clauses (6) and (7) of Rule 36, the Court would not direct its publication nor issue a writ against the appellant to permit its publication. This position was not controverted by Mr. Sorabjee, learned Counsel for the respondent. Mr. Advani further submitted that if the Court took the view that any of the said items might constitute a "prejudicial act" or a "prejudicial report", the Court should direct the appellant to reconsider the question in this light and either authorize publication of such items or prohibit it, Mr. Sorabjee on behalf of the respondent, however, made a statement before us that the respondent had no objection to the appellant urging before us any ground of objection to any of the said items based on a provisions of the said Act or the said Rules or the said guidelines different from the grounds based thereon taken in the appellant's affidavit in reply, at the hearing before Bhatt J. in the memorandum of appeal and in the additional memorandum of appeal, subject in the case of the said guidelines to the objection of the respondent that any ground based on any of the guidelines which travelled beyond the scope and ambit of the Censorship Order could not constitute a valid reason for prohibiting publication. Accordingly, Mr. Advani urged before us all grounds of objection which the appellant had to the publication of the said items.

70. A general ground of objection to all the items in question was that they constituted a "prejudicial act" within the meaning of Sub-clause (e) of Clause (6) of the said Rule 36 or were a "prejudicial report", the publication of which would be a "prejudicial act" within the meaning of the said sub-clause, or an incitement to the commission of such prejudicial act. Before we examine each of the said items it will be convenient to deal first with this general ground of objection and to ascertain the true interpretation to be placed upon the said Sub-clause (e). Rule 36(6)(e) provides:

(6) "prejudicial act" means any act which is intended or is likely-

(e) to bring into hatred or contempt, or to excite disaffection towards the Government established by law in India:.

Section 124A of the Indian Penal Code provides as follows:

124A. Sedition. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.-The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.-Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.-Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

It will be thus seen that sub-Clause (e) of Clause (6) of Rule 36 is couched in the same language as the substantive part of Section 124A, except that the three Explanations to Section 124A are not to be found in the said Sub-clause (e), and while the offence of prejudicial act under Rule 43(7)(a) of the said Rules would be committed by doing any act "which is intended or is likely" to bring about the consequences mentioned in Rule 36(6)(e), an offence u/s 124A of the Indian Penal Code would be committed by doing an act which "brings or attempts to bring" about the same result. Rule 34(6)(a) of the Defence of India Rules made under the Defence of India Act, 1939, was in identical terms with Rule 36(6)(e) of the, said Rules. In *Niharendu Dutt Majumdw v. The King Emperor*, which was an appeal from a conviction of the appellant under the said Rule 34(6)(e) of the 1939 Rules, the Federal Court pointed out that the said Sub-clause (e) of Rule 34(6) was in precisely the same language as was used to describe the offence of sedition in Section 124A of the Indian Penal Code. In that case the Federal Court rejected the argument that an offence described merely as "prejudicial act" in the Defence of India Rules ought to be regarded differently from an offence described as "sedition" in the Indian Penal Code. Delivering the judgment of the Court, Sir Maurice Gwyer C.J., while dealing with this point, said (pp. 48, 49-50) :

Sedition is none the less sedition because it is described by a less offensive name; and in our opinion the law relating to the offence of sedition as defined in the Code is equally applicable to the prejudicial act defined in the Defence of India Rules. We do not think that the omission in the Rules of the three "Explanations" appended to the section of the Code affect the matter. These are

added to remove any doubt as to the true meaning of the Legislature; they do not add to or subtract from the section itself; and the words used in the Rules ought to be interpreted as if they had been explained in the same way....

The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilization and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of government that in our opinion, the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Governments, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.

(Italics supplied).

In *Emperor v. Sadashiv Naraym, Bhalerao* (1947) 49 Bom. L.R. 526, p.c. while allowing an appeal against an order of acquittal of the respondent for having published a prejudicial report as defined in the said Rule 34(6)(e) of the Defence of India Rules made under the 1939 Act, the Privy Council, while it agreed with the Federal Court that there was no material distinction between Rule 34(6)(e) and Section 124A and that the omission of the said three Explanations did not lead to any difference in construction, did not agree with the Federal Court that the "acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency." The Privy Council held that the incitement to violence was not a necessary ingredient of the offence of sedition under the said Section 124A or of a prejudicial act as defined in the said Rule 34(6)(e). In *Kedwr Nath Singh v. State of Bihar* [1962] Supp. 2 S.C.R. 769, which was an appeal against the conviction of the appellant under Sections 124A and 505 of the Indian Penal Code, the Supreme Court upheld the view taken by the Federal Court and held that peeping in mind the reasons for introduction of Section 124A and the history of sedition, Section 124A must be so construed as to limit its application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. Rule 36(6)(e) of the said Rules is in identical terms with the said Rule 34(6)(e), and must, therefore, bear the same construction as that placed by the Supreme

Court on Section 124A of the Indian Penal Code, and, therefore, an act which can amount to a prejudicial act within the meaning of the said Rule 36(6)(e) must be an act involving an intention or tendency to create disorder or disturbance of law and order or incitement to violence.

71. We will now consider each of the said items individually. The eleven items with which we are concerned fall into two distinct groups. The first group consists of the first six items which were the new materials submitted by the respondent which were intended for publication in the August 1975 issue of the "Freedom First", and the second group consists: of the remaining five items which were the materials intended for publication in the July 1975 issue of the "Freedom First", and authorized for publication by the said Mathur and resubmitted as being intended for publication in the August 1975 issue of that journal and of which the publication was prohibited by the appellant. The first item is an article headed "SCOPE OF THE PRE-CENSORSHIP ORDER" by Mr. V.M. Tarkunde,, a retired Judge of this High Court and now practising as a senior advocate in the Supreme Court. This article is preceded by an editorial note stating that it was an erudite study by Mr. V.M. Tarkunde on the scope of the Censorship Order in force in Delhi in which Mr. Tarkunde had criticized the failure of newspapers in Delhi to discharge their democratic duty to their readers. The said editorial note further stated that the Censorship Order in the State of Maharashtra was more drastic and far-reaching. The said article begins by stating that the principal English dailies did not come out in New Delhi on June 26 and 27, 1975 and that when they appeared on June 28, 1975 they did not express any views on the justification or otherwise of either the Proclamation of Emergency or the imposition of pre-censorship, and did not even refer to the reason why their issues for the previous two days were not available to the public. It was further stated that the newspapers had been submitting their entire issues for pre-censorship and were publishing these issues subject to the conditions and restrictions imposed by the concerned authority. Then follow these two paragraphs:

It appears to me that in refraining from the expression of their views on the above topics and in submitting the whole of their issues to pre-censorship, the dailies have grossly exaggerated the scope of the pre-censorship order and underestimated their legitimate powers of presenting news and views to the public. Since this misunderstanding is bound to preclude the daily press from discharging its democratic duties, it is necessary to examine the rights and obligations of the press in the context of the pre-censorship order and the relevant Defence of India Rules.

By the way, I am not submitting this article to pre-censorship as I am satisfied that its subject-matter does not fall within the scope of the pre-censorship order.

After that comes a summary of the provisions of the Censorship Order. Thereafter occurs the following passage:

Having examined the pre-censorship order, let us consider whether the daily newspapers in Delhi were precluded by this order from commenting on the three topics mentioned at the commencement of this article. The proclamation of emergency by the President had obviously no connection with the matters which have been specified in the pre-censorship order. Comment on the justification or otherwise of the proclamation of emergency could not by any stretch be regarded as comment on any contravention of the Defence of India Rules or of any action taken in relation to such contravention. Comment on whether the Government was or was not justified in imposing pre-censorship in the present situation did not also require to be submitted to pre-censorship. The subject of such comment would be the pre-censorship order itself, and not the contravention of any of the Defence of India Rules or action taken in relation to the contravention of these rules.

A little later the author points out the position that under the Censorship Order entire issues of the periodicals were not required to be submitted for the censor's scrutiny, but what was required was the submission of only matters which consisted of news or comments relating to the three topics mentioned in the Censorship Order, namely, the topics mentioned in Sub-clauses (a) to (c) of Clause (1). The article then points out in what cases a prosecution can be launched for a contravention of the Censorship Order and what are the ingredients necessary for the prosecution to prove, and concludes with an exhortation to the Press that they should not fail in their democratic duty to create an independent public opinion nor fail to discharge this democratic duty by yielding to an exaggerated and mistaken notion of the limitations imposed upon the Press by the Censorship Order or by the other provisions of the said rules. It is unnecessary to refer to these portions of the said article in detail.

72. At the hearing of this appeal Mr. Sorabjee, learned Counsel for the respondent, stated that the respondent would rest content with the Court's decision on the validity of the appellant's order prohibiting publication of the said article and that he did not desire any writ directing its publication to issue because he did not intend to re-publish the said article for the reason that the statement of law contained in it was with reference to the Censorship Order prior to its amendment on August 12, 1975 and was, therefore, not a correct statement of law after that date. By reason of this statement made on behalf of the respondent, we are not concerned with any grounds other than those mentioned in the appellant's affidavit in reply for passing the impugned order in respect of the said article. In the affidavit in reply the specific ground alleged in respect of this article was that it was objectionable as it was capable of inciting newspapers directly or indirectly not to submit objectionable materials for pre-censorship. Bhatt J. came to the conclusion that he did not find anything in the said article which could be said to be such as directed or incited the public at large either to rebel against the Government or to break any prohibitory order or laws of the Government and that there was nothing in the said article which could be said to affect prejudicially or even have a tendency or likelihood to lead

to public disorder or to affect public safety. He further held that prohibiting the publication of the said article could not in any way be said to be connected with or related to the objects enumerated in the Censorship Order.

73. We are unable to agree with the view taken by Bhatt J. We find that the author has misunderstood and misconstrued the provisions of the Censorship Order as it stood prior to August 12, 1975. Under Clause (1)(a) of the Censorship Order the materials required to be submitted for the censor's scrutiny are "news, comments, rumour or other report, relating to any contravention or alleged or purported contravention of any of the provisions" of the particular Rules mentioned therein, including orders made under those Rules. Amongst the Rules mentioned in the said Clause (1)(a) are Rules 43 and 48. As we have seen Rule 43 inter alia makes it a penal offence for any person without lawful authority or excuse to do any prejudicial act or to make, print, publish or distribute any document containing any prejudicial report, and Rule 48 confers power upon the Central Government and State Governments to issue orders imposing censorship. The important words in this connection in Clause (1) of the Censorship Order are the words "relating to". The Shorter Oxford Dictionary, vol. 2, at pp. 1694 and 1695, inter alia defines the verb "to relate" as "to have reference to; to be related, have relation, stand in some relation to another thing (person or place)". Webster's Third New International Dictionary, vol. II, p. 1916, inter alia defines the verb "to relate" as "to be in relationship : have reference". The expression "relating to" would be thus one of wide import and not limited in its operation. In *State Wakf Board, Madras Vs. Abdul Azeez Sahib and Others*, a Division Bench of the Madras High Court observed (p. 81) :

...There is ample judicial authority for the view that such words as "relating to" or "in relation to" are words of comprehensiveness which might both have a direct significance as well as an indirect significance, depending on the context. They are not words of restrictive content and ought not to be so construed.

In the said article the author has expressed his views on what would constitute a contravention of Rule 48. He has further so construed Clause (1) of the Censorship Order as to restrict it to only an actual, alleged or purported contravention of the particular rules mentioned in Sub-clause (a) of Clause (1) and of the statutory orders issued under such rules and to action taken by the Government in relation to such contravention or under the provisions of the Maintenance of Internal Security Act, 1971. The expression "relating to any contravention or alleged or purported contravention", however, cannot be construed as referring only to an act which is either a contravention or is alleged to be a contravention or which purports to be a contravention of the rules mentioned in the said Sub-clause (a). To so construe this expression would be to limit the wide import of the words "relating- to". Thus, under Clause (1)(a) any comments about what would constitute a contravention of the rules set out in Sub-clause (a) and of the statutory orders made thereunder are also required to be submitted for the censor's scrutiny. The opinion expressed in the said article

would make persons believe that they were not bound to submit such comments for censorship. This view which they might take would be fortified by the statement in the said article that the author was not submitting it for censorship as he was satisfied that its subject-matter did not fall within the scope of the Censorship Order. It was submitted on behalf of the respondent that this would not matter because the said article had in fact been submitted to the censor's scrutiny by the respondent. We do not agree because it was admitted that when published this article would not show or indicate that it had in fact been submitted for censorship contrary to the statement made therein. With respect to the opinion expressed in the said article that comments on the justification or otherwise of the Proclamation of Emergency made on June 25, 1975 or on the imposition of censorship are not required to be submitted for the censor's scrutiny, we find that this opinion also cannot be supported. It is true that Sub-clauses (d) and (g) of Clause (1) of the Censorship Order were not in existence on the date when the said article was written and its publication prohibited, and accordingly it may at first sight appear that on that date any news, comments, rumour or other report relating to the Proclamation of Emergency made on June 25, 1975 or any prejudicial report as defined in Rule 36(7) of the said Rules were not required to be submitted for the censor's scrutiny. A closer look at the provisions of Sub-clause (a) would, however, show that this is not correct. Amongst the rules mentioned in that sub-clause are, as we have seen, Rules 43 and 48. Comments on the justification of the Proclamation of Emergency or the Censorship Order made under Rule 48 may be of such a nature as would be perfectly legal, but may on the other hand be of such a nature that they might constitute a "prejudicial act" as defined in Rule 36(5) or a "prejudicial report" as defined in Rule 36(7), and might thus constitute a contravention of Rule 43. Comments on these matters were, therefore, equally required to be submitted for the censor's scrutiny under Sub-clause (a). The whole purpose of censorship would be nullified if any author, editor, printer or publisher were left free to decide whether a particular piece of writing, which under the Censorship Order was required to be submitted for the censor's scrutiny, was of such a nature that its publication cannot be banned and thus to publish it without submitting it for prior scrutiny. This could easily lead to publication of writings affecting the internal security, the public safety and the maintenance of public order. Sub-clauses (d) and (g) were inserted in Clause (1) of the Censorship Order to make the position expressly clear and not to supply a lacuna or to extend the scope of the Censorship Order. No attempt was made before us on behalf of the respondent to support the construction placed in the said article upon the Censorship Order and which we have found to be erroneous. What was, however, argued was that as the respondent did not now desire to publish the said article, the matter was, therefore, academic interest. We are unable to agree with this submission because the respondent has in his petition expressly asked the Court to pronounce upon the validity of the appellant's order prohibiting publication of the said article. In our opinion, if it is reasonably possible to take the view that the publication of this article would constitute a prejudicial act or the publication

of a prejudicial report and even though it may be equally possible to hold other views, the censor's decision cannot be interfered with by the Court. We find that it is reasonably possible to take the view which the appellant has taken about this article. It was next submitted that in any event the appellant's order prohibiting the publication of the entire article was unjustified, and the article should have been allowed to be published after directing deletion of the paragraph which stated that the author was not submitting this article for censorship as according to him its subject-matter did not fall within the scope of the Censorship Order, We are unable to accept this submission. This is not the only paragraph of the said article about which a possible view can reasonably be taken that it constitutes an objectionable matter. The theme of the entire article is what type of matter is not required to be submitted for censorship. We have found the construction placed by the author, however bona fide and honestly it might have been arrived at, to be wrong in law, and merely deleting one paragraph as suggested on behalf of the respondent would not have removed the objectionable nature of the article. We, therefore, find that Bhatt J. was in error in setting aside the appellant's order with respect to this article and in issuing a writ against the appellant to permit its publication.

74. The second item is a reproduction of a report which appeared in July 5, 1975 issue of the daily the "Financial Express". It is headed "MADRAS COURT ADMITS WRIT". This item contains a report of the admission of a writ petition filed by the publisher of the weekly the "Swarajya" challenging the validity of an order of the Deputy Secretary to the Government, Public Department, deleting a passage from an article intended for publication in one of the issues of the said weekly. It states who the respondents to the said writ petition were, the fact that a rule was issued and that an interim injunction was granted restraining the respondents from enforcing the impugned order or from taking any further steps in pursuance thereof pending the hearing and final disposal of the said petition. It also states that the said interim injunction was issued without prejudice to the rights of the respondents to proceed against the petitioner for contravention of the said rules. The article then sets out the submissions of the petitioner made in the said petition. The only argument advanced before us to support the appellant's order prohibiting publication of the said item was that its publication was required to be prohibited under paragraph 3(b) of the said guidelines dated August 5, 1975. The said paragraph 3(b) provides as follows:

3.... The following should be kept in view for the publication of the proceeding of:

(b) Courts of Law:

(i) The names of the judges and the counsel may be mentioned.

(ii) The operative part of the order of the Court may be published but in appropriate language.

(iii) Nothing should be published which infringes Censorship.

Relying upon the said paragraph 3(b) it was submitted that the paragraphs in the said item which set out the submissions made in the said petition were not couched in appropriate language and infringed censorship and this, therefore, made the whole item objectionable. The paragraphs complained of merely reproduce in moderate and appropriate language the legal submissions of the petitioner in the said petition, and in no way encourage or incite people to violate the Censorship Order. The aforesaid portion of the said guidelines dated August 5, 1975 must be read in the context of the Censorship Order. A censor would have the right to prohibit publication of a report of a case in a newspaper or journal in circumstances where such publication would itself constitute a prejudicial act or a prejudicial report. If, for instance, a report of a successful prosecution for publishing a seditious article, in the guise of giving a news report of that case reproduced the said article or the seditious part thereof, such news report might itself be considered as a prejudicial act or the making or publishing of a prejudicial report. This is, however, not an article of this type. We find that no reasonable man can ever possibly take the view that in the context of the Censorship Order this item or any part thereof is couched in inappropriate language or in a manner which infringes the Censorship Order. We feel that in prohibiting the publication of this item the appellant was really actuated by an esprit die corps to prohibit publication of a report which might show that a Court had passed an interim injunction against one of the censors. We must strongly deprecate this practice of prohibiting publication in newspapers and journals of reports of cases decided by Courts merely because the decision in such cases would be unpalatable to the concerned officer or authority or to the Government.

75. The third item is also a news report taken from July 1, 1975 issue of the daily the "Indian Express". It features in the section of the said journal called "WORLD NEWS" and is headed "AIDES BRAND NASSER "DICTATOR & COMMUNIST" ". This report states that in a trial taking place in Cairo two colleagues of the late President Nasser of the United Arab Republic, who were members of the Revolutionary Council which overthrew the Egyptian monarchy, told the Court that most of the decisions taken by President Nasser were unilateral, that he ruled alone without consulting any of the members of the command, that they resigned protesting against President Nasser's dictatorship, and that President Nasser had been slowly changing the society into a Communist one. The said item also reproduces a statement, said to be made by former President Mohamed Naguib of Egypt in the course of an interview, that the revolution of President Nasser had offended the Egyptian people more than it had benefited them. The said item concludes by stating "President Anwar Sadat is now exerting a legendary effort to save the public. Had it not been for him, Egypt would have been lost for ever." It was submitted by Mr. Advani, learned Counsel for the appellant, that the publication of this item was rightly banned as it affected India's relations with foreign countries and that under paragraph 4(i) (i) of the said guidelines dated August 5, 1975 nothing should be published which is likely to affect India's relations with foreign countries. Sub-clause (a) of

Rule 36(6) of the said Rules makes an act which is intended or is likely to prejudice India's relations with any foreign power a prejudicial act. We are wholly unable to see how what is stated in this item can in any manner prejudice India's relations with the United Arab Republic. If Mr. Advani's submission were to be accepted, the result would be that no one would be able to publish any foreign news. The late President Nasser made his mark in contemporary history. No man who has played an important role in history can ever hope or expect to be praised by all. No policy or course of action of a ruler or Government can ever meet with the approval and concurrence of every single person. The said item is after all a report of a trial which was taking place in Cairo itself, and as the said item shows, this was a news report which originated from Cairo. The report of a trial which took place in Cairo, the capital of the United Arab Republic, and of which the report was sent from Cairo, cannot in any manner affect the relations of the United Arab Republic with our country. How it can affect such relations is something which neither we have been able to fathom nor has learned Counsel for the appellant succeeded in enabling us to do so. In fact, a significant thing to note about this article which the appellant seems to have wholly overlooked is the concluding portion thereof, which we have quoted above, praising the present President of the United Arab Republic. We, therefore, see no substance in the objection raised against the publication of this item.

76. The fourth item is again a part of the "WORLD NEWS" section of the said journal and is headed "POLICEMAN'S DUTY TO DISOBEY SADISTIC ORDERS". This item is taken from a news report published in June 22, 1975 issue of the daily the "Times of India", originating from a report received from the Hague. The opening paragraph of the said item is as follows:

Amnesty International has said that police officers have a duty to disobey orders to torture people in their custody. Draft principles of an international code of police ethics approved at a private two-day meeting convened by Amnesty International, which is campaigning for the abolition of torture, have called on police officers to disobey orders contrary to fundamental human rights.

The said item then states that the meeting of Amnesty International was attended by representatives of police forces and the police authorities from Austria, Belgium, Luxembourg, France, Britain, Ireland, Norway and Holland and that a statement issued after the said meeting by the Amnesty International said that the police code of ethics should apply to all people or organizations, including secret services, military police, armed forces or militia action in policing capacities and that that organization's representative in the Netherlands had made a statement that the draft principles adopted at the said meeting were to be discussed in the U.N.O. in September 1975. Mr. Advani's submission with respect to this item was that though there was nothing objectionable in the said item as written, what was objectionable was the idea behind it, namely, that not only the police force but the secret services, the military police, the armed forces and the militia should disobey all orders. We are amazed that anyone can

imagine that such was the motive or idea behind this item. This item refers to a meeting of an international organization, the Amnesty International, at which a resolution was passed and certain draft Principles adopted for the purpose of being brought before and discussed by the United Nations. The object was to bring about the abolition of torture, a reprehensible activity which no one can condone. Mr. Advani stated that the reference to fundamental human rights in the said item would confuse any police or military officer reading this report and mislead them into disobeying all orders. We are unable to say whether the reference to fundamental human rights in the said item confused the appellant, but we are sure that it is not likely to confuse any police or military officer or any other educated person. The reference is clearly to the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948 to which India is a party. We find the appellant's objections to the publication of this item without any substance.

77. The fifth item is headed "REVOKE THE EMERGENCY". The sub-heading is "Maharashtra Bar Council's Appeal to the President". This item reproduces a resolution passed by the Bar Council of Maharashtra. The said resolution states that the said Bar Council viewed with deep sense of regret the Proclamation of Emergency issued by the President. It characterizes the Proclamation of Emergency as one issued in the colourable exercise of the President's power under Article 352 of the Constitution and not for reasons germane to the said article, but for reasons obviously extraneous which according to the said resolution clearly amounted to a violent inroad on the constitutional guarantees of every citizen of India. By the said resolution the said Bar Council expressed strong disapproval of the said Proclamation, with a request to the President to revoke the Proclamation forthwith. Mr. Advani, learned Counsel for the appellant, submitted that the publication of the said resolution would be a contravention of Rule 43 of the said rules inasmuch as it would amount to either doing a prejudicial act or publishing a prejudicial report which would incite the commission of a prejudicial act. In support of this submission Mr. Advani relied upon Sub-clauses (e), (h) and (n) of Rule 36(6), and stated that the publication of the said resolution would bring the Government into hatred and contempt and would excite disaffection towards it, that it would cause fear and alarm to the public and that it would influence the conduct and attitude of the public or at least a section of it in a manner likely to be prejudicial to internal security. Mr. Advani also took strong exception to the use of the words "colourable exercise" in the said resolution. We are unable to read the said resolution in the manner canvassed for by Mr. Advani. Mr. Advani also submitted that the said item was required to be prohibited under the so-called guidelines dated July 13, 1975 under which the subordinate authorities were required not to allow to be printed anything "which is likely to convey the impression of a protest or disapproval of the governmental measures". As mentioned earlier, the said guidelines are not on the record, and we cannot refer to them. Assuming we are wrong in this view which we have taken, we do not read the said guidelines as banning all protest

or disapproval of a governmental measure. These guidelines must be so interpreted as to refer not to every protest or disapproval but only to such a protest or disapproval as would affect the internal security or the public safety or the maintenance of public order. The protest and disapproval contained in the said resolution is an exercise of the right of dissent. The law recognizes the right of dissent within permissible limits. This right has been judicially recognized by the Federal Court in *Niharendv, Butt Majumdar v. The King Emperor*, at pp. 48-51; by the Supreme Court in *Kedw Naih Singh v. State of Bihar*, at pp. 805-8; and by Division Bench judgments of our High Court in *Anmt Janardhm v. M.A. Deshmuhh*, at p. 273; and in *JV.P. Nathwawi v. Commissioner of Police*. It is also not the policy of the Government to stifle all dissent. The Government's policy in this behalf is shown by the opening paragraphs of the said guidelines dated June 26, 1975 and August 5, 1975 issued to the Press. It is also indicated by the fact that under the Prevention of Publication of Objectionable Matter Ordinance, 1975, which prohibits the publication of "any objectionable matter" as defined by Section 3 of that Ordinance, by Explanation I to the said Section 3 "comments expressing disapprobation or criticism of any law or of any policy or administrative action of the Government with a view to obtain its alteration or redress by lawful means" are not to be deemed to be objectionable. The expression "colourable exercise" is one well understood in law. It really means purported exercise. It is true that by the said resolution oblique motives have been attributed to the President, but as pointed out by the Supreme Court in *Kedar Nath Singh v. State of Bihar*, at page 805, "the expression Government established by law has to be distinguished from the persons for the time being engaged in carrying on the administration." "We are unable to find any intention or likelihood in the said resolution of bringing the Government established by law in India into hatred or contempt or to excite disaffection towards it or to cause fear or alarm to the public or to any section of the public. We also cannot read the said item as in any manner likely to influence the conduct or attitude of the public or any section of the public in a manner likely to be prejudicial to internal security. It must be borne in mind that what the said resolution seeks to achieve is the revocation of the said Proclamation, but it seeks to achieve it by means of a request to the President. It is one thing to impute motives for a particular action and to request the head of the State to reverse that action and an altogether different thing to impute motives for an action and to seek its revocation by inciting people to violence or to acts of public disorder or by civil disturbances. We accordingly do not find any substance in any of the objections raised by the appellant to the publication of the said item.

78. The sixth item occurs in the column headed, "WITH MANY VOICES". That column consists of quotations of statements by various persons, including the Shah of Iran, the late President Truman and Mrs. Clare Boothe Luce. The item in question is as follows:

Ours is not a wicked country, and we cannot abide a wicked government.

-Senator Church quoted in Time, June 16.

The objection to this item was based upon paragraph 4(f) of the said guidelines dated August 5, 1975 which states, "Quotations, if torn out of context and intended to mislead or convey a distorted or wrong impression, should not be published." Relying upon this provision it was submitted by Mr. Advani that this statement of Senator Church was torn out of context and intended to mislead people and convey to them a wrong impression that the said statement referred to our country. To us this seemed an astonishing proposition. There could have been substance in this submission had the source of this quotation not been mentioned, but it is mentioned as Senator Church. It is further mentioned as being a statement made by him to the well-known American news weekly, the "Time". Nobody on reading this could think that Senator Church was speaking about India when he referred to a country as "our country". No attempt was made to point out in what manner this quotation was torn out of the context. In fact, what the context was, was not stated by the appellant. In this connection, it is pertinent to note that no specific reason for Prohibiting the publication of this item was mentioned in the appellant's affidavit in reply nor even in the memorandum of appeal or the supplemental memorandum of appeal. We, therefore, find no substance in the appellant's objection to this item.

79. The seventh item is headed "CALLING A SPADE A SPADE". It is the reproduction of what was stated in the Swiss Press Review and News Report, It is stated in this report that a stay in India was probably the best way for Americans to rid themselves of their guilt complex and that there was in India a mode of criticizing Americans which was so widespread and so unfair, in view of India's own aggressive record over the years, that it made even the anti-American stand up and look for things to justify his own country. The opinion so expressed is stated to be based upon what was said by Mr. Moynihan, the former United States" Ambassador to India, in an article written by him in the American monthly, the "Commentary", In the said article, an extract from which is reproduced in the said item, Mr. Moynihan has stated that the problems of many newly independent countries were very largely of their own making and that among the developing countries one could identify those which had made a good job of trying to solve their problems and those which seemed to have made no such attempts. He then cites Brazil, Nigeria and Singapore as examples of those countries which have made a serious effort/and then draws the conclusion that the failings of other countries had little or nothing to do with the failings of Americans. The said item concludes by quoting Mr. Moynihan as saying, "It is time we grew out of our initial-not a little condescending-supersensitivity about the feelings of other nations" This item along with the remaining four items was one which had been previously authorized for publication by the said Mathur, Mr. Advani relied upon para, graph 4(b) of the said guidelines dated August 5, 1975 in order to justify the appellant's action in prohibiting publication of these five items. The said paragraph 4(b) states "Reproduction of any objectionable matter already published is not permissible." Even apart from the said guidelines, it is

clear that if any objectionable matter had been published prior to the Censorship Order, it cannot be allowed to be republished or reproduced thereafter. Similarly, after the coming into force of the Censorship Order if an objectionable matter had been permitted by the censor to be published, it does not follow that its republication or reproduction cannot be prohibited, because the earlier authorization to publish might have been given under mi error. It was submitted by Mr. Advani that the publication of this item would affect India's foreign relations with the United States and that describing India as having an aggressive record would excite disaffection amongst the people of India against their Government. We are unable to see how these consequences can follow upon the publication of the said item. It is salutary for every country to know what others think of it and who are and who are not its friends and well-wishers. Countries do not frame their foreign policies in the light of statements made by individuals, even though these individuals might have once held official positions. They formulate their policies on various considerations, usually of political expediency. We are also unable to see how the reproduction of an article published in a foreign journal which characterized India's record as aggressive would excite disaffection amongst the people of India against their own Government. It was also submitted that the part of the said item which referred to several developing countries not making any effort to solve their problems, if published, would affect the economic stability of India, and in support of this submission reliance was placed upon paragraph 4(i)(iv) of the said guidelines dated August 5, 1975 under which nothing is to be published which is likely to threaten the economic stability. On behalf of the respondent it was submitted that the maintenance of the economic stability of India was not one of the purposes of the Censorship Order. We are unable to accept this submission. Where economic stability is threatened, it may result in economic instability, and history shows all too plainly that economic instability has been the breeding-ground of many a revolution. We, however, find the description of the said item as an attempt to threaten the economic stability of India to be so fanciful and far-fetched as to border on the farcical. Mr. Advani also submitted that the publication of this item would undermine the public confidence in the national credit and in Government loans and that such writings are prohibited from being published by paragraph 4(i)(ix) of the said guidelines dated August 5, 1975. The said paragraph 4(i)(ix) is a reproduction of a part of Sub-clause (1) of Rule 36(6) of the said rules under which an act intended or likely to undermine public confidence in the national credit or in any Government loan is a prejudicial act. We can only reject this objection with the same comment which we have applied to the objection based on the ground of threat to India's economic stability.

80. The eighth item is an article headed "Jai Jayawardene". It refers to Mr. J.R. Jayawardene, the leader of the opposition in Sri Lanka, resigning his seat in the National Assembly as from May 27, 1975 as part of his campaign to force the Prime Minister of that country to hold parliamentary elections which had become due. It quotes Mr. Jayawardene as saying that the life of the Parliament should

not be extended beyond the prescribed period, except in times of war or grave national emergency, and then only after a full consultation with all sectors of the opposition and with their general support. It is further stated in the said item that Mr. Jayawardene had defied the move of the Prime Minister of that country to amend the Constitution in order, to ensure that seats voluntarily vacated would not be filled by a by-election and that those who so resigned would be disqualified from standing for elections for several years. The last two paragraphs of the said item are as follows:

Mr. Jayawardene, who has a record of undeviating devotion to democracy behind him, has threatened, like Jayaprakash Narayan in India, to organise satyagraha, civil disobedience and boycott of taxes, if necessary, courting jail.

The ball is now in Prime Minister Bandarnaike's court and it is to be hoped by friends of the beautiful little island of Lanka that she may yet draw back from carrying out her threat.

The objection to the publication of this item was that it constituted a prejudicial act within the meaning of Sub-clauses (e), (m) and (n) of Rule 36(6). The prejudicial act defined in Sub-clause (e) is the same as the offence of sedition u/s 124A of the Indian Penal Code. Under Sub-clause (m) an act intended or likely to encourage or incite any person or class of persons or the public generally to refuse or defer payment of tax etc. payable to the Government or local authority is a prejudicial act. Under Sub-clause (n) an act intended or likely to influence the conduct or attitude of the public or a section of the public in a manner likely to be prejudicial inter aim to the internal security is a prejudicial act. In our opinion, the penultimate paragraph of the said item which refers to Mr. Jayawardene's threat to organize "satyagraha", civil disobedience, boycott of taxes, and giving the reference that this threat was similar to that of Mr. Jayaprakash Narayan in India, coupled with the heading of the said item, namely, "Jai Jayawardene", which means "Bravo Jayawardene", could reasonably be construed to mean an approval of these acts. If so, a reasonable view which can possibly be taken is that the publication of this item would be likely to incite acts of violence and public disorder, to influence the conduct or attitude of the public or a section of the public in a manner likely to be prejudicial to the internal security, and to encourage and incite persons and the public generally not to pay their taxes, and would be likely thus to constitute a prejudicial act within the meaning of the said Sub-clauses (e), (m) and (n). The appellant's order prohibiting publication of the said item cannot, therefore, be said to be wrong in law. It was, however, submitted that in prohibiting publication of the whole of the said item the appellant did not apply his mind to Clause (2) of the Censorship Order under which he had the power to permit publication subject to conditions and restrictions and that he should have permitted publication after directing deletion of the penultimate paragraph. We are unable to agree with this submission. It cannot be said that the appellant was not aware of his powers under the said Clause (2). In fact, in respect of the very next item he has

permitted its publication after directing deletion of one paragraph. It was further submitted on behalf of the respondent that the appellant has ignored the fact that the main theme of the said article was to congratulate Mr, Jayawardene on acting in conformity with the highest tradition of parliamentary democracy by resigning his seat in protest against a measure which he considered illegal and undemocratic. It can, however, be equally well argued that the main purpose of the said article was to congratulate Mr. Jayawardene on his threat to launch a movement of "satyagraha", civil disobedience and boycott of taxes. If two views are, therefore, possible and the appellant has taken time of them which cannot be characterized as an irrational view, it is not open to the Court to say that the appellant should have permitted publication of this article with the deletion suggested on behalf of the respondent. We, therefore, find that Bhatt J. was in error in setting aside the appellant's order with respect to this item and in directing its publication.

81. The ninth item is an extract from a letter to the editor written by one P. Kodanda Rao to be published under the heading "Swiss Constitution for India". It refers to the late Mr. L. S. Amery's recommendation, when he was the Secretary of State for India, that the Swiss constitutional system should be adopted in India. The letter then sets out the advantages of the Swiss system. It then refers to the reaction of the late Lord Linlithgow and the late Lord Wavell to this recommendation, and continues again with the writer's comments on the Swiss Constitution. The passage relating to what Lord Linlithgow and Lord Wavell said was directed to be deleted by the appellant. The said passage is as follows:

Linlithgow was however doubtful of ballot secrecy in India and was quite certain that no Oriental would accept defeat in a ballot as final and would rather start at once to recover by intrigue, blackmail and corruption what he lost in the fair fight. Wavell said that Muslims regarded the Swiss system as a sign of grace, while the Hindus rejected it entirely.

Mr. Advani submitted that the part of the said letter reproducing the opinion expressed by Lord Linlithgow amounted to a denigration of all Orientals and that as an Oriental he felt indignant at reading it. So do we, but we cannot let our indignation colour our judgment and betray us into giving a wrong decision. Denigration of Orientals cannot in any manner be construed as a prejudicial act as defined by Rule 36(6) of the said Rules nor would it in any manner affect the internal security or the public safety or the maintenance of public order. So far as the part of the said letter relating to the statement of Lord Wavell is concerned, it was said that its publication would constitute a prejudicial act within the meaning of Sub-clause (g) of Rule 36(6) or would amount to publication of a prejudicial report relating to such prejudicial act. The said Sub-clause (g) makes an act which is intended or is likely to promote feeling of enmity and hatred between different classes of persons in India a prejudicial act. It was said that the publication of this part of the said letter would promote feeling of enmity and hatred between Hindus and Muslims and would aggravate the communal tension

and the communal situation in the country. We find nothing in this statement of Lord Wavell which could in any way excite communal feelings. It is a statement of the opposite stands taken by the Congress and the Muslim League during the Freedom Movement. The appellant's said objection was a startling one, and were it to prevail, the consequences would be even more startling, because then no book or article could be published about the Freedom Movement since any such book or article must involve the mention of the differences of opinion between the Congress and the Muslim League and their opposite stands, nor could any mention be ever made of Pakistan because it would remind the people of Partition and the reasons which brought it about and the atrocities and massacres which attended upon it. We find the objections to this item to be far-fetched and wholly unrealistic.

The tenth item is again a letter to the editor. It is headed "OPEN LETTER TO U.S. AMBASSADOR" and is from one S. Gopalakrishnan to Mr. William Saxbe, the American Ambassador to India. This letter relates to a news item in the "Hindu" with respect to the anger shown by Mr. Saxbe against the anti-U.S. comments made by Indian leaders. It admires what is characterized in the said letter as Mr. Saxbe's frankness and outspokenness, and states that this admiration is shared by thousands of ordinary Indian citizens. It further states that a number of distinguished American Ambassadors to India, such as Mr. Galbraith and Mr. Moynihan, were frustrated by the time they left India, though most of the time they were on the side of India to the extent of finding faults with their own Government, It then refers to the U.S. aid to various countries, and states that it was strange that uniformly this had not earned the U.S. any gratitude but instead had earned the American people hatred in most places. Then come the following four paragraphs:

No country has had as much aid as India from the USA. Still the help has resulted only in bolstering up the Congress, which now in alignment with Russia, Is trying to bite the hands that fed.

Rajaji said, years back, that the USA should stop all aid so that people will cease to depend on outside largesse and depend on themselves and work. This will also enable us to stand on our own feet and will not make available to people in power easy money to play with. The stranglehold of a corrupt government could be avoided.

I hope that at least you will change the tide and utilise the present US Congress mood to stop the unending "AIDS", which will do no good either to you or to the people of India.

Instead it would be worthwhile to make a study of the three articles presented by Mr. Garry Jacob, an American citizen, in The Hindu of 24, 25 and 26th April as regards the way in which silent work could be done to bring closer the American and Indian people, leaving alone the Indian Government and leaders to cry themselves hoarse with imaginary sea invasions and CIA subversions.

The letter concludes by wishing Mr. Saxbe well for calling a spade a spade. The reason for prohibiting publication of this letter given in the appellant's affidavit in reply was that the said letter was in bad taste and would result in creating disaffection towards the Government. At the hearing of the petition it was also urged that it would affect India's foreign relations. Before us Mr. Advani repeated the same grounds and also contended that it would affect India's economic stability. With respect to this objection based on the threat to India's economic stability Mr. Advani relied upon paragraph 4(i)(iv) of the said guidelines dated August 5, 1975 under which nothing is to be published which is likely to threaten economic stability. Relying upon the paragraphs of the said letter reproduced above it was submitted that they suggested that the people at the helm of our Government were corrupt and that this was likely to incite people against the Government and to make them indulge in acts of violence and disorder. We really fail to see how a letter written by some reader of a journal to the editor of that journal and published in that journal would have that effect. This is an expression of opinion held by the writer of that letter, and one may not agree with it, but it certainly does not have the tendency of inciting violence or disorder. It was further said that it would affect India's relations both with the United States and the U.S.S.R. It is too much to be expected to believe this. The opinion expressed by the writer of that letter can in not the slightest degree influence or affect the relations of any foreign country with ours nor our relations with any other country. It was lastly said that if this letter were allowed to be published, the United States would stop all aid to India and thus India's economic stability would be jeopardized and affected. This is crediting the writer of the said letter with too much importance which even he in his wildest dreams must not have attributed to himself. Surely, American aid is not given or reduced or withdrawn in proportion to what is written in letters to newspapers and journals. We find all these objections too fanciful and far-fetched.

82. The last item is a reproduction of a quotation of Mr. J.L. Nain, the Chairman of the Monopolies and Restrictive Trade Practices Commission and a retired Judge of this High Court, which was printed in May 6, 1975 issue of the "Times of India". The said quotation is as follows:

Public-sector commercial corporations are resorting to unfair trade practices without any hindrance.

-Mr. Justice J.L. Nain quoted in the Times of India, May 6.

It was submitted by Mr. Advani that this item, if published, would undermine public confidence in the national credit and in Government loans and would, therefore, constitute a prejudicial act within the meaning of Sub-clause (1) of Rule 36(6) of the said Rules. It was urged that this item would convey a wrong impression of all public undertakings and that it was a quotation torn from the context, and the entire speech or article or judgment from which this quotation has been taken should have been reproduced. We are unable to agree with these submissions. We fail to see how the publication of this quotation would in any

manner undermine public confidence in the national credit or in Government loans or in any manner deter people from subscribing to any Government loans. This item is the reproduction of a criticism by a highly responsible person-the Chairman of the Monopolies and Restrictive Trade Practices Commission. It is not only the public but also the Government who are interested in the working of the public-sectors commercial corporations, and it is but right that the views of the person who is best able to judge the working of these corporations should be published, and thus brought also to the notice of the Government. It is not shown by the appellant in what manner this quotation is torn from the context nor what the context was. In fact, neither the appellant's affidavit in reply nor any of the grounds of appeal or additional grounds of appeal raised any specific ground of objection to this item. We, therefore, find that there is no substance in these objections.

83. It now remains only to deal with the general objection to all the said items, namely, that each of the said items is a prejudicial act within the meaning of Rule 36(6)(e) of the said rules inasmuch as it is intended or is likely to bring into hatred or contempt the Government established by law in India or to excite disaffection towards it. We have already mentioned our reasons for upholding the appellant's orders with respect to the first and the eighth items, namely, the said article by Mr. Tarkunde and the article headed "Jai Jayawardene". So far as the remaining items are concerned, we are unable to find any intention or likelihood in any of the said items or in any portion of any of them to create any disorder or disturbance of law and order or incitement to violence, which is the gist of an offence under Sub-clause (e) of Clause (6) of Rule 36.

84. We find that, except in the case of the items other than the said article by Mr. Tarkunde and the said article headed "Jai Jayawardene", the objections urged are unrelated to any of the purposes or objects of the Censorship Order, most of the consequences contemplated fanciful and far-fetched and the view taken such as no person acting rationally can ever possibly take. Logic rebels and reason revolts at inferences so devoid of any foundation in reality or basis in common sense.

85. It was lastly submitted by Mr. Advani that even in "the case of those articles with respect to which we have found all the objections urged before us to be groundless, we should not uphold the order of Bhatt J. directing Publication but should ask the appellant to reconsider the said items in the light of our observations in this judgment. In support of this submission reliance was placed upon *Hochtief Gammon v. State of Orissa*, We have already discussed this case above and have pointed out that that was a case where the Government had not given any reasons for passing its order. As held in *Krishna Cinema v. State, where*" all the grounds which can be urged have been urged and rejected, it is a fit case for issuing a writ of mandamus. To do otherwise would be an exercise in futility, driving a citizen from pillar to post. We accordingly hold that except with respect to the said article by Mr. Tarkunde and the said article headed "Jai

Jayawardene", Bhatt J. was right in setting aside the orders of the appellant and in issuing the writ, orders and directions which he did with respect to their publication.

86. The result is that we partly allow this appeal and set aside the order appealed against with respect to the said article "SCOPE OF THE PRE-CENSORSHIP ORDER" by Mr. V.M. Tarkunde and the said article headed "Jai Jayawardene", and dismiss the rest of the appeal.

87. In view of the fact that the appellant has partially succeeded in this appeal, the appellant will pay to the respondent two-third costs of this appeal and of the petition, and we quantify these costs at Rs. 2,000.

88. Before we part with this appeal we must express our indebtedness to learned Counsel on both sides for the able assistance they have rendered to us and the fair and restrained manner in which they have presented their respective cases.