

(1960) 12 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No"s. 1371 and 1417 of 1959

Itty Kurian and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-12-1960

Acts Referred:

Banking Companies Act, 1949 — Section 49A
Constitution of India, 1950 — Article 14, 19(1), 19(6)

Citation : AIR 1962 Ker 267

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : K.K. Mathew, George Vadakkal, M.A. Joseph Varghese Kalliath, P.C. Abraham, T.S. Krishnamurthy Iyer and P.C. Chacko, for the Appellant; Govt. Pleader, C.M. Kuruvilla, K.V. Surianarayana Iyer, for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—In both these writ petitions, filed under Article 226 of the Constitution, the vires of Section 49-A of the Banking Companies Act, 1949 are challenged. Section 49-A which was added to the original Act by the Banking Companies (Amendment) Act, 1959 -- Act 33/1959 is as follows:

"Section 49-A: No person other than a banking company, the Reserve Bank, the State Bank of India, or any other banking institution notified by the Central Government in this behalf. shall accept from the public deposits of money withdrawable by cheque;

Provided that nothing contained in the section shall apply to any Savings Bank scheme run by the Government."

2. The petitioner in O. P. 1371/59 claims to be an individual, doing banking business, by receiving deposits from the public for the Purpose of lending to others and that the deposit is repayable by cheque or otherwise. The petitioner therein claims to have been doing this business from 1952.

3. The petitioner further alleges_ that by virtue of Section 49-A of the Banking Companies Act 1949 -- Act 10/1949, all persons, other than a banking company, the Reserve Bank, the State Bank of India and any other banking institution notified by the Central Government, have been prohibited from accepting, from the public, deposits of money withdrawable by cheque, and it is also alleged that Section 49-A of the Act is ultra vires and void.

4. The petitioner further claims that he is entitled to practise any profession and to carry on any occupation, trade or business and Section 49-A in so far as it totally and completely prohibits individuals from carrying on the business of banking, is ultra vires of the provisions of Article 19(g) of the Constitution.

5. It is also alleged that no rules have been framed under the Act as to how the Central Government is to be guided in the matter of exemption being granted from the operation of Section 49-A of the Act. According to the petitioner, "arbitrary and naked powers," have been conferred on the Central Government in respect of their right to exempt, by notification, persons, other than those mentioned in Section 49-A from receiving deposits repayable by cheque.

6. The petitioner further alleges that banking being a business consisting of the creation and transfer of credit, acceptance of deposits for purpose of lending or investments from the public, withdrawable by cheque, draft, order, or otherwise, the provisions of Section 49-A, inasmuch as they completely prohibit acceptance of deposits withdrawable by cheque, completely annihilates the right of individuals to carry on the business of banking.

7. The petitioner further alleges that Section 49-A, inasmuch as it allows banking companies to accept deposits repayable by cheque and prohibits individuals carrying on business of banking from accepting deposits repayable by cheque, is discriminatory and is hit by the provisions of Article 14 of the Constitution. Subsection (4) of Section 46 of the Act makes the contravention of any of the provisions of the Act punishable with heavy fine. According to the petitioner, the effect of Section 49-A, read with Sub-section (4) of Section 46 of the Act, is to totally prohibit the petitioner from carry-ing on the business of banking. Therefore, he prays that the provisions of Section 49-A may be struck down.

8. The petitioner in O. P. 1417/59 claims to be a partnership concern registered under the provisions of the Indian Partnership Act on 12-3-55 and carrying on business at Alleppey in the Kerala State. It is also stated that partners NOS. 2 to 7 are the sons of partner no. 1 and they are members of a Hindu Mithakshara Family.

9. The petitioners claim that the business of banking was their ancestral trade, started several years ago and that it has been also carried on by partner no. 1 for over 30 years. The said business was converted into a partnership business some time in 1954 and this partnership has been registered under the Indian partnership Act and the firm has also been continuing the business of banking.

10. It is further stated that in the business of banking carried on by the firm, the latter has been accepting deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, dratt, order or otherwise. The firm also claims to be taking deposits on current accounts and issuing and paying cheques and collecting cheques also, cross and. uncrossed, for its customers.

11. The petitioner then refers to the amendments brought about by the Hanking Companies (Amendment) Act, 1959 -- Act 33/59 and in particular, to the new provisions added namely, Sub-section (4) of Section 46 and Section 49-A. The petitioner alleges that private bankers and private banks, like the petitioner, receive deposits withdrawable by cheque and those cheques have been accepted by scheduled banks, the State Bank and also by other banks. After 1st October 1959, the petitioner alleges that acceptance of deposits, withdrawable by cheques has been made a criminal of-fencs and the petitioner's activities have been very much curtailed and restricted.

12. The petitioner further alleges that the Reserve Bank of India, has issued instructions to all the banking institutions in the State or Kerala not to negotiate the cheques either of the petitioner's firm or of other private bankers.

13. The petitioner further relers to acorespondence that has passed between one Sri Kuruvilla, Manager, Orient Bank (Registered), Quilon, and the Reserve Bank of India.

14. The petitioner alleges that in view of Sections 33 and 35 of the Banking Companies Amendment) Act, 1959, it has become impossible for private banks, like the petitioner, to carry on the business of banking and it is also alleged that by those provisions, the fundamental right guaranteed to the petitioner to practise any profession, or to carry On any occupation, trade or business under Article 19(1)(g) of the Constitution has been seriously hit and herefore, according to the petitioner, Sections 33 and 35 of the Amendment Act of 1959 are illegal and ultra vires of the provisions of the Constitution of India.

15. The petitioner also alleges that the exemption of the Banking companies, Reserve Bank of India, State Bank of India, and such other banking institutions as are notified by the Central Government, and co-operative banks registered under the Co-operative Societies Act, from the operation, of Section 35 of the Amendment Act and at the same time, the inclusion of private banks under the said provision, is discriminatory and offends Article 14 of the Constitution of India. The classification prohibit-ing the private banks from accepting deposits of money from the public withdrawable by cheques is also stated to be unreasonable.

16. The petitioner also alleges that Sec-tions 33 and 35 of the Amendment Act of 1959, encroach upon the rights of banking and as such, those provisions are void, as they overstep the limits of item 43 in List I, Seventh Schedule of the Constitution.

17. The petitioner further alleges that the power u/s 49-A of the Banking Companies Act, 1949 to exclude by notification, any other banking institution, from the operation of the said section is arbitrary and naked and as such ultra vires. No rules have been framed for giving a proper guidance to the Central Government in exercising its powers of notifying for exemption u/s 49-A of the Act.

18. Finally, the petitioner prays for the issue of a writ of mandamus or other appropriate writ or direction restraining the respondent from enforcing the provisions of Sections 33 and 35 of the Amendment Act, 1959. He also prays for directing the respondents to issue a circular to all the Banking companies to recognise the firm S. P. Sankara Iyer, Alleppey, as Bankers capable of receiving deposits after 1-10-1959, withdrawable by cheques.

19. The main counter-affidavit in these matters has been filed, on behalf of the Ke-serve Bank of India, in O. P. 1417/59 and it will be treated as its counter-affidavit in O. P. 1371/59 also.

20. The contentions raised by the Reserve Bank in its counter-affidavit filed in O. P. 1417/ 59, are substantially adopted by the Union of India also.

21. The Reserve Bank of India states that a circular dated 25th September 1959, Ext. R1 has been issued by the Central Office explaining the provisions of Section 49-A of the Banking Companies Act, 1949. The Reserve Bank has also filed the letter sent to the Manager of the Orient Bank Regd., Quilon, and his re- ply sent thereto as Exs. R2 and R3 respectively. The communication, Ext. R2 from the Reserve Bank of India to Sri P. K. Kuruvilla, finally asks for information as to whether the addressee has stopped accepting from the public deposits of money withdrawable by cheque in view of the provisions of Section 49-A of the Banking Companies Act, 1949.

22. Under Ext R3, Sri Kuruvilla sends a reply Ext. R2 to the effect that the Orient Bank Regd., Quilon, has already stopped accepting from the public deposits of money withdrawable by cheques.

23. The Reserve Bank contends that Section 49-A of the Banking Companies Act, 1949 is quite valid and it does not violate any of the provisions of the Constitution.

24. The Reserve Bank further states that the scope of Section 49-A is very limited inasmuch as it restricts only the acceptance of deposits from the public withdrawable by cheques alone and it does not affect, in any way, the carrying on of banking business in other respects. It is also stated that the said restriction is a very reasonable one imposed in the interests of the general public and there is no discrimination and as such the provisions do not violate the provisions of Article 14 either.

25. The circumstances under which Section 49-A came to be enacted are set out in paragraph 8 of the counter-affidavit filed by the Reserve Bank. It is stated that

individuals and firms do not come within the controlling provisions of the Banking Companies Act, 1949 and they are not subject to supervision or control by the Reserve Bank of India. The practice of private banks, giving their depositors facilities for issuing cheques, has led to certain abuses and has also created difficulties to the public. Cheques issued on private banks, pass into the hands of strangers by process of negotiation and they become holders in due course under the impression that the said private banks are under the control and supervision of the Reserve Bank. It is also stated that there is a general impression that cheques are generally issued on banks which can be depended upon for meeting the obligations, because of the supervision and control that is being exercised by the Reserve Bank of India. According to the Reserve Bank, there is considerable amount of risk involved in becoming holders in due course of cheques drawn on private banks and there is no knowing whether the private banks concerned are financially sound and able to meet the obligations under those cheques. The Reserve Bank further states that actually, there were complaints in this regard where the public have been duped in this process. Therefore, it became quite essential and necessary to eradicate this mischief, but at the same time leaving the private banks to carry on business in other respects.

26. It was under those_ circumstances that Section 49-A of the Banking Companies Act was enacted with a view to eradicate the mischief and the injury that may be caused to the public. Therefore, it is stated that the restriction imposed by Section 49-A of the Act is very reasonable and is in the interests of the general public under Article 19(1)(g) and is not violative of the provisions of Article 19(1)(g) of the Constitution.

27. The respondent further alleges that there has been no restriction whatsoever in the petitioner's carrying on the business in other respects, such as receiving deposits, lending monies etc.

28. It is further stated that co-operative Banks which are registered under the Co-operative Societies Act, are subject to the control and supervision of the authorities functioning under the Co-operative Societies Act and the position occupied by such banks is entirely different from that of private banks. There are authorities constituted under the Co-operative Societies Act to control the operations of such banks and therefore, the exemption of such banks from the operation of Section 35 of the Amendment Act of 1959 is not in any way discriminatory, nor violative of Article 14 of the Constitution.

29. It is also contended that in view of the several matters mentioned earlier in the counter-affidavit, the classification of "private banks" is a reasonable one and is based upon an intelligible differentia having rational relation to the object sought to be achieved.

30. The Reserve Bank also claims that Parliament has ample legislative competence to enact the particular legislation under attack and in this connection, it relies upon entries Nos. 43, 45, 46 and 97 of List 1 of the Seventh

Schedule of the Constitution.

31. The Reserve Bank also states that the power given to the Central Government to notify any other Banking institution u/s 49-A of the Act, can always be presumed to be exercised by the Central Government in accordance with the purpose and objects of the Statute itself. It is also mentioned that when the Amendment Act of 1959 was before the Legislature, it was realised that certain other Banking institutions, the setting up of which was under contemplation, should not be brought under the prohibition contained in the particular section. In fact, actually, the relevant statute, under which such Banking institutions were subsequently set up, is also evidenced by Central Act 38/1959. As the exact number and names of the banks had not been finalised when the Amendment Act was before Parliament, it was considered necessary to make provisions enabling the Central Government, to notify those banks as institutions which would not be hit by the prohibition in Section 49-A and such a power is neither arbitrary, nor naked.

32. Ultimately, the respondents contended that the petitioners are not entitled to the relief asked for in the writ petition.

33. Mr. T. S. Krishnamurthv Iyer, learned counsel for the petitioner in O. P. 1417/59, advanced the main con'tentions attacking the Pro-visions of Section 49-A of the Banking Companies Act and his contentions have been adopted by Mr. Joseph, learned counsel, who appeared for the petitioner in O. P. 1371/59.

34. Similarly, Mr. K. V. Surianarayana Iyer, learned counsel appearing for the Reserve Bank in both these applications, advanced the leading arguments regarding the vires of Section 49-A of the Act and his contentions have been adopted by the learned Government Pleader appearing for the Union Government.

35. The contentions of Mr, T. S. Krishna-murthy Iyer can be broadly grouped Under four heads;

(1) Legislative competence of Parliament to enact the section in question;

(2) The provisions of the Section are viola-tive of the right guaranteed under Article 19(1)(g) of the Constitution. Even assuming that a reasonable restriction on the exercise of the right conferred under Article 19(1)(g) can be imposed in the interests of the general public under Article 19(6) of the Constitution, this provision cannot even pass such tests laid down by various decisions;

(3) The private banks have been discriminated against by the provisions of Section 49-A of the Act and the exclusion of the institution mentioned therein, from the operation of the said section cannot be considered to be, in any way, to have a reasonable nexus to the objects sought to be achieved by the said legislation; and

(4) The power given to the Central Government u/s 49-A to notify any other banking institution as not coming within the bar of the said section, is a naked

and arbitrary power and the Legislature has not even laid down any guiding principles to be followed by the Central Government in such matters.

36. On all these grounds, Mr. T. S. Krish-namurthy Iyer urged that the provision in question namely, Section 49-A of the Banking Companies Act should be struck down.

37. On the other hand, Mr. K. V. Surya-narayana Iyer, learned counsel appearing for the Reserve Bank, contested every one of the position taken up on behalf of the petitioners. The learned counsel, by a reference to the various entries in the relevant list I in the Seventh Schedule urged that the Legislative competency of Parliament to enact the provision in question, cannot be challenged.

38. The learned counsel has also contended that the petitioners have no absolute and unqualified right to carry on the business of banking and that the Legislature is competent to enact laws imposing reasonable restrictions on the exercise of such a right in the interest of the general public. The learned counsel, in particular, drew my attention to the circumstances under which this measure was enacted and urged that the test of reasonable restriction in the interests of the general public under Article 19(6) of the Constitution is amply satisfied in this case. The restriction in this case, is a very limited one and that too has been imposed in the interests of the general body of depositors.

39. The definition of the expression "banking" u/s 5 (1) (b) of the Banking Companies ACT itself adverts to deposits of money repayable on demand or otherwise and withdrawable by cheque, draft, order, or otherwise. The restriction that has been imposed is only with regard to "accepting from the public deposits of money withdrawable by cheque" and the petitioner's activities in other respects have not been at all sought to be interfered with in any manner. In this connection Mr. K. V. Suryanarayana Iyer traced the several measures taken for providing adequate safeguards for the interests of the general public and to put the banking business on a stable basis. The learned counsel has adverted to the provisions of the Indian Companies Act, 1913 relating to banks and also the various subsequent enactments passed on the basis of the re-commendations contained in the Report of the Indian Central Banking Enquiry Committee 1931.

40. The learned counsel has also, with reference to the said report as well as to certain passages in leading Text Books, has adverted to the important position occupied by cheques in the national economy.

41. Regarding the attack based upon discrimination under Article 14 of the Constitution, Mr. K. V. Suryanarayana Iyer, here again pointed out that the attack is unfounded. The object of the Banking Companies Act, as will be seen from the various provisions contained therein, is essentially to safeguard the interests of the depositors. The private bankers, who are innumerable in number, do not come under the control and supervision of the Reserve Bank. Their accounts are not disclosed to the public and their financial position is not also made known to the public. As to whether the private banks in whose favour the cheques are

drawn, will be in a position to meet the obligation under the cheque is not always very clear. It may be that individual private banks may be financially sound. But the object of the legislation is to safeguard the interests of the general public as such who deposit their money and the Legislature, which should be considered to be aware of the position obtaining in the country, has considered it necessary to pass the measure in question.

42. The classification of the Institutions mentioned u/s 49A of the Act is quite reasonable as also the classification of the private banks forming one group or category and such classification is founded on an intelligible differentia and it has got a rational relation to the object sought to be achieved by the statute. Mr. K. V. Suryanarayana Iyer also contended that the exclusion of Co-operative Banks registered under the Co-operative Societies Act from the operation of the provisions of the Banking Companies Act u/s 3 of the Banking Companies Act is based upon the circumstance that there are authorities constituted under the Co-operative Societies Act, who control the operations of such banks, and that the exclusion of those banks from the operation of Section 49-A is not in any way, discriminatory or viola-tive of the provisions of Article 14 of the Constitution.

43. Regarding the attack that the Central Government have been given an arbitrary and naked power to exclude by notification any either banking institution from the operation of Section 49-A, Mr. K. V. Suryanarayana Iyer contended that discretionary power vested in high authorities, cannot always be characterised as discriminatory. He urged that the power has been given to a high authority as the Central Government, which can be certainly expected, when exercising its powers to have due regard to the purpose and object of the enac'tment. That question, in any event, Mr. K. V. Suryanarayana Iyer urges, does not at all arise for consideration in this case, because i; is not the case of the peti-tioners that they have been in any manner dis-criminated against in the matter of giving exemption by virtue of powers vested in the Central Government.

44. These various contentions advanced by the learned counsel on both sides, will be dealt with by me more elaborately.

45. Before I adver to those contentions in detail it is desirable to have a general idea of the various measures taken from time to time regarding the business of banking and also to advert to the important position that the cheque occupies in the national economy.

46. The earliest enactment that dealt with the business of banking is the Indian Companies Act 1913 -- Act VII of 1913. Section 4(1) was to the effect that no company, association or partnership consisting of more than 10 persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under the said Act. Therefore, it will be seen that the object of the Legislature was, that as far as possible, the carrying on of business of banking must be done by a company registered under the Act so that it will be subject to the various other provisions of the Act Section 136 of the Indian

Companies Act provided for certain statements to be published by banking and certain other companies referred to therein. Section 138 gave power to the Central Government to appoint competent inspectors to investigate the affairs of a company and to report thereon. This power was given to the Central Government in the case of a banking company, having a share-capital on an application made by members holding not less than 1/5 of the shares issued.

47. The Government of India appointed the Indian Central Banking Enquiry Committee on 22nd July 1929 and the terms of reference were:

"To investigate past records and existing conditions of banking in India including the organisation of the money market and to consider the steps, if any, that are feasible and desirable under the following main heads:--

(a) the development of banking with a view to the expansion of indigenous, co-operative and joint-stock banking with special reference to the needs of agriculture, commerce, and industry;

(b) the regulation of banking with a view to protecting the interests of the public; and

(c) banking education with a view to the provision of Indian Personnel in adequate numbers and with necessary qualifications to meet the increasing needs of the country for a sound and well-managed national system of banking". The Committee went very elaborately into the matter and submitted its report in 1931, making several suggestions and recommendations.

48. It will be seen from the Report that even as early as 1890, there has been a demand for banking enquiry in India and that even in 1914, the Royal Commission on Indian Finance and Currency urged the appointment of a committee to study certain questions connected with banking. The committee had opportunity to consider the position occupied by money-lenders and also the position occupied by persons dealing with the business of banking. In paragraph 113 of the Report, the committee observes that the money-lenders generally work with their own capital. In paragraph 126 of the Report it is stated that the acceptance of deposits is one of the features that distinguish a banker from a money-lender.

Under Chapter 25 dealing with Regulation of Banking, the Report states in paragraph 668 that the banking institutions of a country, serving as repositories of the cash resources of all classes of individuals and institutions exercise a very powerful influence on the economic life of its people. The report also states that banking business has come to be regarded as quasi-public in its nature warranting legislation for safeguarding the interests of depositors, on whose confidence rests the entire banking structure of a nation, and for ensuring and fostering the growth of banking on sound lines. The report also takes note of the fact that restrictions are imposed on banking operation in some form or other in various countries according to their requirements.

49. Under the same chapter 25, after dealing with the provisions of the Indian Companies Act 1913 in its relation to banking companies, the Report states in paragraph 670 that the general opinion is that the Indian Companies Act 1913 touches only the fringe of the problem of banking legislation and that

"there should be some legislative control over the operations of banking institutions which at present stand almost exclusively outside the purview of the Indian Companies Act. In fact, the question of legislation for the regulation of banking has engaged the attention of the Government of India and of the public for several years."

50. Again, in paragraph 671 the Report states:

".....We are Of opinion that the existing provisions in the Indian Companies Act governing banking companies, are inadequate." Several important matters haying a vital bearing on questions such as the intial organisation or banks, their efficient management and stability, provisions for supervision and examination and publication of accounts, the safety of shareholders and depositors and the development of bank generally on sound lines, remain to be provided for".

51. In paragraph 673, the Report states that in the opinion of the committee, the promulgation of a special Bank Act comprising necessary provisions governing all banking institutions, will be more convenient to the public as well as to the banks.

52. The committee again in paragraph 675 classifies its recommendations under various heads namely.

(1) Organisation; (2) Management; (3) Audit and inspection; and (4) Liquidation and Amal-gamation.

The Committee also deals with every one of these matters in somewhat great detail. Under the heading "Organisation", the Report states in paragraph 675 that the incorporation of a banking concern under an Act of the Legislature involves an obligation to comply with certain general requirements laid down therein and that those obligations will ensure a minimum stand-ard of efficiency and integrity in the conduct of business of the institution.

53. In this connection, the committee ad-verts in paragraph 678 of its report to the test laid down by Sir John Paget in his "Law of Banking" as to who can be considered to be a banker as follows :--

"No one and no body, corporate or otherwise, can be a banker who does not take deposit ac-counts, take current accounts, issue and pay cheques drawn on himself and collect cheques crossed and uncrossed for his customers."

54. The committee makes various recommendations for putting the banking business on a sound basis in the interests of the general body of depositors. The Report states in paragraph 694 under the heading "capital" that one of the advantages of incorporation of banks under an Act of Legislature is that it renders it possible for Government to prevent the growth of mushroom banks

with insufficient capital which in the nature of things, would have a less extensive distribution of risks and would be less able to withstand the shocks than banks of larger size.

55. After taking note of the statistics relating to banks in India, giving glaring instances of so-called banks, the report observes that 6 Out of 16 banks that failed or went into liquidations in 1927, had practically no paid-up capital and the paid-up capital of one of those banks was only a small amount of Rs. 800/-, and therefore, the committee recommends that the new Act should provide that a bank registered under the Act, should not commence business until its paid-up capital is at least Rs. 50,000/-. It is not necessary to advert in any great detail to the various other recommendations made in the report excepting to say that they are all with a view to put the banking business on a sound basis and with the further view of safeguarding the interests of the depositing general public.

56. Tannan on his book "Banking Law and practice in India" 9th Edition, at page 29 accepts the 4 functions of a banker as laid down by Sir John Paget already referred to, when dealing with the Central Banking Company Enquiry Committee's Report. The learned author states at page 30;

"There seems to be, no doubt, that according to English Law, a person claiming to be treated as a banker, should perform the functions as given by Sir John."

57. The learned author again states at page 30 that money-lenders are not bankers and observes:

"The problem of money-lenders in India is still a hard nut to crack. It has been estimated that there are more than 350000 money-lenders scattered all over India In spite of the development of banking in recent years, money-lending by the indigenous money-lenders still continues."

The learned author then adverts to legislation enacted to control money-lenders. He adverts to the English Money Lenders Act, 1900, the Indian Usurious Loans Act, 1918 -- Act X/1918, the Bombay Money Lenders Act which came into force in 1949, and the Bengal Money Lenders Act 1933.

58. Dealing with cheques, the learned author again observes at page 6:

"Greater attention began to be paid towards deposit banking, and cheque currency. (sic) was soon realised that cheque currency was almost as profitable as the issue of bank notes and thus gradually this activity grew more and more important, with the result that many new banks were started for this business during the second half of the last century."

Again, dealing with suggestions for popularising the cheque currency at page 144, the learned author states that banks should provide adequate facilities for the prompt enactment of cheques across the counter and also refers to the English practice.

59. In their book on Negotiable instruments Act, 1956) 10th Edition, the learned

authors Bhashyam and Adiga in the preface state:

"Great attention is being paid to the pro-blems of the currency of the country and measures calculated to popularise banking and en-couragement of banking and cheque habits among the public. A strong drive is being made for inducing the people to save as much as possible and put their savings either in Government Securities or banks".

60. Section 36(2) of the Banking Companies Act, 1949, makes provision for the Reserve Bank to make annual Report to the Central Government on the trend and progress of banking in the country with particular reference to its activities under Clause (2) of Section 17 of the Reserve Bank of India Act 1934, including in any such reports, its suggestions, if any, for the strengthening of banking business throughout the country. Accordingly, the Reserve Bank has sent a Report for the period 1949-1952 en-titled "Trend and Progress of Banking in India. 1949-1952." In that report in chapter 2 under the heading "History of Banking Legislation in India" it is stated:

"The question of enacting comprehensive banking legislation for protecting the interests of depositors and fostering the growth of banking in India on sound lines had engaged the attention of the Government and public in this country for many years."

The report then adverts to the appointment of the Indian Central Banking Inquiry Committee, the terms of reference of which included :

"the Regulation of banking with a view to protecting the interests of the public."

61. The report further states :

"Banks which serve as (sic) of the cash resources of the public and as Purveyor of finance for trade and industry, play a vital role in the economic and financial life of a country. Moreover, with the growth of the banking habit, the cheque has been replacing currency to an increasing extent as a medium of exchange, Unlike other joint-stock companies banks generally obtain a very large proportion of their working capital from the depositors rather than from the shareholders. The business of banking has, therefore, been generally regarded as a public service necessitating legislative safeguards in the national interest."

62. It is not necessary to advert to the various other matters mentioned in the Report of the Reserve Bank.

63. In 1934, the Reserve Bank of India Act-Act II/1934, was passed constituting the Reserve Bank of India. In the preamble it is stated that it has been found expedient to constitute a Reserve Bank in India to regulate the issue of bank notes and the keeping of reserves with a view to securing monetary stability and generally to operate the currency and credit system of the country to its advantage.

64. Particular mention may be made of Section 42 of the Act under which every

bank included in the second schedule, was bound to maintain with the Reserve Bank of India a balance, the amount of which shall not, at the close of business, on any day be less than 5 per cent of the demand liabilities and 2 per cent of the time-liabilities of such bank.

65. The next stage is reached when in 1936, the Indian Companies (Amendment) Act, 1936 -- Act XXII/1936 was passed u/s 119 of the Amendment Act, Part X-A containing Sections 277-F to 277-N were incorporated in the main Act. Part X-A exclusively related to banking companies. u/s 277-F, a banking company means, a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft, or order, notwithstanding that it engages in any one or more of the forms of business referred to in Clauses 1 to 17 referred to therein. There were various other provisions regarding banking companies which were enacted more or less in accordance with the recommendations made by the Indian Central Banking Inquiry Committee 1931. But the underlying idea, in the amendment clearly reinforces the object of the Legislature that the business of banking should, as far as possible, be done by a company which will be subject to control and directions which were necessary in the interests of the general public who deposit their money.

66. The next stage to be noticed is the promulgation in 1946 of [the Banking Companies (inspection) Ordinance, 1946 -- Ordinance No IV/1946. The Preamble to the Ordinance is to the effect that an emergency has arisen which renders it necessary to make provision to inspect the affairs of banking companies in certain circumstances. In particular, Section 5 of the Ordinance gave power to the Central Government if it is of opinion after a consideration of the Report of the Reserve Bank u/s 8, that the affairs of a banking company are being conducted to the detriment of the interest of its depositors, to pass the Orders mentioned in Clauses (a) and (b) of Sub-section (1) of Section 5.

67. Then comes Act XXVII/1946 -- The Banking Companies (Restriction of Branches) Act, 1946. The preamble states that it was found expedient to restrict the indiscriminate opening and removal of branches by banking companies. Section 3(1) provided that no banking company shall open a new branch or change the location of an existing branch without obtaining prior permission in writing from the Reserve Bank.

68. Then comes the Banking Companies Act, 1949. -- Act X/1949. The preamble states that it is expedient to consolidate and amend the law relating to banking companies.

69. The passing of this enactment relating to banking companies is also in accordance with the recommendation of the committee already referred to.

70. Section 3 of the Act states that the Act shall not apply to Co-operative Banks registered under the Co-operative Societies Act, 1912 -- Act II/1912 -- or any other law for the time being in force in any province of India relating to Co-

operation Societies.

Section 5(1) (b) defines;

""Banking" means the accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order, or otherwise.""

Similarly, Section 5(1) (c) defines.---

" "Banking Company" means any company which transacts the business of banking in any province of India."" and Section 5(1) (d) defines:

" "Company" means any company which may be wound up under the Indian Companies Act 1913."

Section 6 provided for the Banking Company in addition to the business of banking, to engage in any one or more of the items of business referred to in Sub-clauses (a), to (o) therein. Section 7 places a restriction on the use of the words "Bank" "Banker", "Banking".

Section 8 prohibits a banking company to engage itself in trading.

Section 10 places certain prohibitions regarding the employment of Managing Agents and on certain forms of employment.

Section 11 deals with requirement as to minimum paid up capital and reserves.

Section 18 makes it obligatory on the part of a non-scheduled banking company to maintain certain cash reserves and also to send certain statements mentioned therein.

Section 20 places a restriction on the making of any loans or advances on the security of its own shares or the granting of unsecured loans or advances to any of its Directors etc.

Sub-section (2) of Section 20 casts a duty on a banking company to submit to the Reserve Bank a Return showing all unsecured loans and advances granted by it to companies in which the banking company or any of its Directors is interested as Director or Managing Agent or Guarantor.

Sub-section (3) of Section 20, empowers the Reserve Bank to take certain action if it appears to the Reserve Bank, after considering the return submitted under Sub-section (2) that any loans or advances stated therein are being granted to the detriment of the interests of the Depositors of the banking company.

Section 21(1) again gives power to the Reserve Bank to determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, when the Reserve Bank is satisfied that it is necessary or expedient in the public interest so to do.

Section 22 deals with licensing of banking companies by the Reserve Bank.

Section 23 places restrictions on opening of new, and transfer of existing places of business.

Section 24 makes it obligatory on every banking company after the expiry of the 2 years from the commencement of the Act to maintain any cash, gold, or unencumbered approved securities, an amount which shall not at the close of business on any day be less than 20 percent of the total of its time and demand liabilities.

Section 27(1) makes it obligatory on every banking company to submit Returns to the Reserve Bank showing its assets and liabilities for the period mentioned therein.

Section 28 again gives power to the Reserve Bank, if it considers it in the public interest so to do, to publish any information received by it u/s 27.

Section 29 makes it obligatory for every banking company at the expiration of each calendar year to prepare a balance-sheet and profit and loss account.

Section 30 provides for auditing the balance sheet and profit and loss account prepared u/s 29.

Section 31 provides for publication of the accounts and balance-sheet referred to in Section 29.

Section 35 gives power to the Reserve Bank either by itself, or on being directed so to do by the Central Government, to inspect the books and accounts of a banking company.

Sub-section (4) of Section 35 provides for a report being made by the Reserve Bank to the Central Government about the inspection made under the section and it also gives power to the Central Government if it is of opinion that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, to

- (a) prohibit the banking company from receiving fresh deposits; and
- (b) direct the Reserve Bank to apply u/s 38 for the winding up of the banking company.

Section 36 gives certain powers to the Reserve Bank mentioned in the said section.

Sub-section (2) of Section 36 casts a duty on the Reserve Bank to make an Annual Report to the Central Government on the trend and progress of banking in the country with particular reference to its activities under Clause (2) of Section 17 of the Reserve Bank of India Act: 1934, including its suggestions for the strengthening of banking business in the country.

Section 35-A which has also been included by a subsequent amendment in the main Act, gives power to the Reserve Bank to issue directions to banking

companies generally or to any banking company in particular, if it is satisfied that it is necessary to issue such directions:

(a) in the national interest; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the banking company;

(c) to secure the proper management of any banking company generally.

71. I have referred fairly elaborately to the various provisions of the Act as they clearly indicate that the Act is conceived in the paramount interests of the depositors and the whole object is to safeguard as much as possible their interests.

72. The particular provision under attack namely, Section 49-A was incorporated in the main Act by the Banking Companies (Amendment) Act 1959 -- Act XXXIII/1959.

Section 35 of the Amendment Act introduced three new sections, one of which is Section 49-A, which is being challenged. I have already extacted the provisions of Section 49-A at the beginning of the Judgment.

73. The only other provision that requires to be adverted to in this connection is the Sub-stitution of new Sub-section (4) to the original Sub-section (4) of Section 46.

Section 48 provides for penalties.

Sub-section (2) of Section 33 of the Amendment Act provided:

"For Sub-section (4) the following subsection shall be substituted namely, (4) If any other provision of this Act is contravened or if any default is made in complying with any requirement of this Act or any order, rule or direction made or condition imposed thereunder, every Director, Liquidator and other officer of the company and any other person who is knowingly a party to the contravention or default, shall be punishable with fines, which may extend to Rs. 2,000/-, and where a contravention or default is a continuing one, with a further fine which may extend to Rs. 100/-for every day during which such contravention or default continues."

74. No doubt, there was a penalty already provided in such matters under the original Sub-section (4) of Section 46. But the penalty for a contravention or default and for a continuing contravention or default is made more severe under the new Sub-section (4) Incorporated by the Amendment Act.

75. It is not necessary to advert to the other amendemnts effected by this Act. The amendment Act itself states that it was enacted to amend the Banking Companies Act, 1949.

76. I have referred to the Report of the Indian Central Banking Inquiry Committee 1931, to the views of Tannan, and the Report of the Reserve Bank, and other matters to show the importance of banking in national economy and also the prominent position occupied by cheques. I have also adverted to the various legislations undertaken from time to time to show that they were all enacted with a view to essentially safeguard the interests of the depositing public.

77. In my opinion, reference to the various aspects mentioned above was really necessary to appreciate the circumstance under which the particular section came to be enacted.

78. I may also state at this stage that none of the other provisions of the Banking Companies Act have been attacked Or challenged in these proceedings.

79. Having this background in mind, I will now advert to the various contentions raised by the learned counsel for the petitioners in these matters.

80. The first contention, I have already stated, relates to the legislative competency of Parliament to enact this measure. According to Mr. T. S. Krishnanimoorthy Iyer, learned counsel for the petitioner, the particular provision must have been enacted by Parliament by virtue of Entry No. 43 in List No. I of the Seventh Schedule. Entry 43 relates to

Incorporation, Regulation and winding up of trading corporations including banking, insurance and financial corporations but not including co-operative societies.

81. According to Mr. T. S. Krishnamoorthy Ayyar, the whole trend of legislation will show that it is the banking Company, as defined in the various Acts, that is sought to be controlled and over whose activities restriction is also intended to be placed. By enacting Section 49-A, according to Mr. T. S. Krishnamurthy Ayyar, what Parliament has done is not to legislate with reference to a banking company, but to legislate by placing restrictions against the activities of private banks, who admittedly stand outside the provisions of the various enactments. The petitioners are in no sense banking corporations, the incorporation, regulation, and winding up of which can be the subject of legislation by Parliament under Entry No. 43 of List I, Union List. In short, Mr. T. S. Krishnamoorthy Ayyar's contention is that Section 49-A affects institutions which are completely outside the purview of the provisions of the Banking Companies Act, 1949.

82. Mr. T. S. Krishnamoorthy Ayyar also contended that the reason for the legislation has been given by the Reserve Bank in paragraph 8 of its counter-affidavit. That according to Mr. T. S. Krishnamoorthy Ayyar, will not bring the present legislation within the ambit of entry No. 43 of the Union List.

Mr. T. S. Krishnamoorthy Ayyar in this connection, urged that the matters mentioned in paragraph 8 of the counter-affidavit may justify, if at all, the State Legislature passing the necessary legislation controlling the activities of private

bankers under Entry 30 of List 2 State List. Entry 30 refers to "money-lending and money-lenders; relief of agricultural in-debtedness." Mr. Krishnamoorthy Ayyar also urged that actually, the Kerala Legislature has passed the Kerala Money-Lenders Act, 1958 -- Kerala Act XXXV of 1958. Sub-section (1) of Section 2 therein defines a "Bank" as a banking company as defined in Section 5(c) of the Banking Companies Act, 1949 -- Central Act X/1949 and includes the State Bank of India.

Again, Sub-section (7) of Section 2 defines "money-lender" as a person whose main or subsidiary occupation is the business of advancing and realising loans, but excludes a bank or a co-operative Society. Mr. T. S. Krishnamoorthy Ayyar further urged that various restrictions have been made to control money-lending business under this Act and therefore according to him "the proper method of legislating on such matters is by the State Legislature under the particular Entry 30 of List 2, State List.

83. Mr. T. S. Krishnamoorthy Ayyar also referred to the decision of their Lordships of the Supreme Court reported in *Deep Chand Vs. The State of Uttar Pradesh and Others*, to the effect that Parliament and the Legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant List in the Seventh Schedule, and that power to make laws is made subject to the limitations imposed by Part III of the Constitution.

84. Mr. T. S. Krishnamoorthy Ayyar next contended that the particular legislation cannot be brought even under Entry No. 43 of List I, Union List. The said Entry No. 43 is Banking. In this connection, Mr. T. S. Krishnamoorthy Ayyar referred me to Entry 38 Federal Legislative List, List I of the Eleventh Schedule of the Government of India Act 1935 to the effect:

"Banking, that is to say, the conduct of banking business by Corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State."

He also referred me to the decision of the Federal Court in AIR 1945 7 (Federal Court) where the learned Chief Justice, at page 8 in considering this Entry in relation "to certain sections of the Bengal Money Lenders Act -- Act X/1940 has observed as follows:

"It would be too much to say that every law which in its operation might affect the property or interests of a bank just as it affects the property or interest of other persons, would constitute an encroachment on Entry 38 of List I- On a reasonable construction, the entry must be limited to law which affects the conduct of the business of banks qua banks."

Therefore, it is the contention of Mr. T. S. Krishnamoorthy Ayyar that Entry No. 43 in List I, Union List of the Constitution relating to "Banking" must also be understood as relating to laws which affect the conduct of business of banks qua banks. Therefore, if this legislation is considered to relate to banking generally, it

cannot be Sustained, in view of the test laid down by the Federal Court in the decision referred to earlier.

85. On the other hand, Mr. K. V. Surya-narayana Ayyar, learned counsel for the Reserve Bank, has drawn my attention to the fact that the business of banking and the business of money-lending have been considered always separately, the one being entirely different from the other. He has also drawn my attention to the statements contained in the Indian Central Bank Inquiry Committee Report, 1931 and also to certain passages from Tannan on "Banking Law and Practice in India," wherein a sharp distinction has been "drawn between moneylenders and bankers. Those passages have already been adverted to by me earlier. According to Mr. K. V. Suryanarayana Ayyar, the various enactments mentioned above, will clearly show that the business of banking was sought to be controlled by the Central Legislature in different ways so as to safeguard the interests of the depositors and he has also drawn my attention to the enactments made by certain States including the Kerala State by passing Money-Lenders Act for regulating and exercising control over money-lenders.

86. Mr. K. V. Suryanarayana Ayyar has also drawn my attention to the circumstance that money-lenders in the main, do business with their own capital whereas bankers very largely do business with amounts received by way of deposits.

87. Mr. K. V. Suryanarayana Ayyar, in this connection, referred to the concept of "moneylending" and "Banking" being kept separate both under the Government of India Act, 1935 and under the Constitution.

88. He adverted to Entry No. 38 of List I, Federal Legislative List, Schedule 7 in the Government of India Act, 1935. I have already referred to that Entry earlier. Again, he has adverted to Entry No. 27 in List 2, Provincial Legislative List in the Government of India Act 1935 Schedule 7 to the effect.

"Trade and Commerce within the Province; markets and fares; money-lending and money. lenders."

He has also drawn my attention to the statement contained in paragraph 12 of the counter-affidavit filed by the Reserve Bank that support for this legislation is to be found in Entries 43, 45, 46 and 97 of List I, 7th Schedule of the Constitution. The learned Counsel contended that Section 5(1)(b) of the Banking Companies Act, 1949 defines "Banking" as accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise. According to the learned counsel, the Entry No. 45 which relates to "Banking- in List I, Union List, is wide enough to enable the Parliament to enact the measure in question. The learned counsel also placed reliance upon. Entry No. 46 of List I, Union List to the effect:

"Bills of Exchange, cheques, promissory-notes and other like instruments."

Therefore, according to Mr. K. V. Suryanarayana Ayyar, the enactment can come within the ambit of Entry No. 43. It will also come as relating to cheques under Entry 46 and in any event, it will certainly come under the very wide expression "Banking" being Entry 45 or List I, Union List. The learned counsel contended that the present Entry no. 45 as "Banking" is much wider than the corresponding Entry No. 38 in List I, Federal Legislative List of the Government of India Act and therefore, he contended that the decision of the Federal Court relied upon by Mr. T. S. Krishnamoorthy Ayyar, will not apply.

89. In my opinion, the definition of "Banking" u/s 5 (1) (b) of the Banking companies Act is in accordance with the opinion of the Indian Central Banking Inquiry Committee Report 1931, who have adopted the said definition also as given by Sir John Page which I have already adverted to the same. I have also adverted to the 4 functions of a Banker as enumerated by Tannum in his book "Banking Law and Practice in India." Therefore, the Parliament is fully competent to pass the legislation in question either under Entry 43, or Entry 46 or in any event, under Entry 45 which is quite general in its nature in List No. 1 of the Union List.

90. Mr. K. V. Suryanarayana Ayyar also adverted to the decision in AIR 1941 16 (Federal Court) The Federal Court had to construe Entry No. 21 of List II, Provincial Legislative List in Schedule 7 of the Government of India Act, 1935 to the effect:

"Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonisation; Courts of Wards encumbered and attached estates; treasure trove."

91. The question was as to whether the Provincial Legislature can legislate with respect to remission of rents under this Entry. The attack on that particular legislation was that the Entry 21 refers only to the collection of rents" and therefore, the legislation dealing with remission of rents does not come within the scope of Entry 21. The learned Chief Justice states at page 25 that the subjects dealt with in the three legislative lists are not always set out with scientific definition and that it would be practically impossible for example to define each item in the Provincial List in such a way as to make it exclusive of every other item in that list, and that Parliament was content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. The learned Chief Justice in particular, observes at p. 25:

"I think however that none of the items in the lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

The learned Chief Justice again observes at the same page:

""The general descriptive words in item 21 include "the collection of rents" and if a Provincial Legislature can legislate with respect to the collection of rents, it must also have power to legislate with respect to any limitation on the power of a landlord to collect rents, that is to say, with respect to the remission of rents as well as to their collectionI have no doubt that legislation with respect to the remission of rents is legislation with respect to a matter included in item 21."

92. Mr. K. V. Suryanarayana Ayyar also referred to the decision of their Lordships of the Supreme Court in *A.S. Krishna Vs. State of Madras*, where certain sections of the Madras Prohibition Act -- Act X/1937 were challenged, as being void inasmuch as they are repugnant to the provisions of the Indian laws with respect to the same matter namely, Indian Evidence Act -- Act 1/1872 and Criminal Procedure Code -- Act V/1898. Mr. Justice Venkatarama Ayyar observed at p. 301:

"It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was *intra vires*, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the Legislature, it should be held to be *intra vires*, even though, it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the *vires* of the law even as regards the area of encroachment At page 303 his Lordship sums up the position as follows:

"The position, then, might thus be summed up: When a law is impugned on the ground that it is *ultra vires* the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the Scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection, of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are *intra vires*, and what are not.""

93. Mr. K. V. Surayanarayana Ayyar also referred me to the decision of the Supreme Court in *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, to show the liberal interpretation that has been placed in interpreting the particular entries in the Legislative List. In that case, the Ajmer Legislative Assembly enacted the Ajmer (Sound Amplifiers Control) Act 1952 -- Ajmer Act III/1952 and the said Act was challenged on the ground that the State Legislature has no

power to enact the particular piece of legislation. Ultimately, their Lordships of the Supreme Court held that the legislation was perfectly valid under Entry No. 6 of the State List to the effect "Public Health and Sanitation; Hospitals and Dispensaries." The test in such circumstances, has been laid down by His Lordship Hidayatullah, who delivered the leading judgment on behalf of the Bench, on pages 545 and 546:

"After the dictum of Lord Selborne in *Queen-Empress v. Burah*, (1878) 3 AC 889, off-quoted and applied, it must be held as settled that the legislatures in our Country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the List conferring respectively powers on them.

These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive are sometimes not really so. They occasionally overlap, and are to be regarded as *en-materia simplex* of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance "fails substantially within an Entry or Entries concerning legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding. This was laid down by Gwyer C. J. in AIR 1941 47 (Federal Court) at p. 5.1 in the following words:

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

This dictum was expressly approved and applied by the Judicial Committee in *Prafulla Kumar v. Bank of Commerce, Ltd., Khulna*, 74 Ind App 23 : AIR 1947 PC 60) and the same view has been expressed by this Court on more than one occasion. It is equally well settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given.

94. Respectfully adopting the various tests and principles laid down in the above judgments, in my opinion, the particular legislation is perfectly within the competence of Parliament under Entries 43, 45 and 46 of List no. I, Union List.

95. The various sections of the Banking Companies Act to which I have already adverted to, clearly show that the "pith and substance" or its "true nature and

character" is to control the business of Banking and safeguard the interests of depositors. In my opinion, the power to legislate on the topic of legislation relating to "banking" carries with it also the power to legislate on an ancillary matter namely, to prohibit private banks from accepting deposits from the public withdrawable by cheque and, in my opinion, that will only be legislating on an ancillary matter which can be said to be reasonably included in the power given.

96. As to whether the laid provision in any way infringes the fundamental rights of the petitioners, is a totally different point which will be considered by me later. Therefore, the contention of the learned counsel for the petitioners questioning the competency of Parliament to enact the measure in question, has to be negated.

97. The next contention of the learned counsel for the petitioners is one based upon Article 19(1)(g) of the Constitution.

98. Mr. T. S. Krishnamoorthy Ayyar, learned counsel contended that the petitioners are guaranteed a right under Article 19(1)(g) of the Constitution "to practise any profession or (sic) carry on any occupation, trade or business." The petitioners in this case, are carrying on the business of banking as private bankers. They have been carrying on the business receiving deposits from the public of money withdrawable by cheque. There cannot be any dispute that one of the essential elements of carrying on the business of banking, is the acceptance of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise.

99. Section 49-A read with Sub-section (4) of Section 46 of the Banking Companies Act, 1949 totally prohibits the petitioners from carrying on their business of banking.

100. The learned counsel for the petitioners did not go to the extent of contending that they have got always an absolute and Unqualified right to carry on their profession without even any reasonable restriction being placed on their activities in the interests of the general public. I am mentioning this because, Mr. K. V. Suryanarayana Ayyar, learned counsel for the Reserve Bank, drew my attention to the decisions of the Supreme Court in *State of Bombay v R. M. D. Chamarbaugwala* AIR 1957 SC 690 and *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, as also to certain decisions of the Patna & Madras High courts reported in *Naurang Rai Chirangi Lal Vs. The State of Bihar and Another*, ; *S. Ananthakrishnan Vs. The State of Madras*, ; *A.N. Rangaswami and Another Vs. The Industrial Tribunal, Fort St. George, Madras and Others*, : confirmed on appeal to *A.N. Rangaswami and Another Vs. The Industrial Tribunal, Fort. St. George, Madras and Others*, to show that a party has no such absolute right to carry on any Occupation, trade, or business or to practise any profession.

101. It is not necessary for me to advert to these decisions, because the petitioners have not taken up the stand that they have got any such absolute

rights. That is why the petitioners had to fall back on Article 19(6) to contend that the restrictions imposed cannot be considered reasonable restrictions in the interest of the general public.

102. I may also point out that in *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, Mr. Justice Subba Rao, has, in considering the reasonableness of restriction under Article 19(6) of the Constitution, very exhaustively goes into the historical back-ground, as well as the history of the legislation in question namely, the Madras Commercial Crops Markets Act--Act XX/1933 as well as the reports of the Committee constituted for that purpose.

103. Mr. T. S. Krishnamoorthy Ayyar contended that the effect of the legislation is practically to prohibit the private bankers from carrying on their banking activities. He also pressed before me the decision of the Supreme Court in *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, that when the restriction in this case has almost according to him amounted to a prohibition, special care has to be taken by this Court to see that the test of reasonableness is satisfied. As observed by their Lordships, at page 436:

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

Their Lordships also observed at the same page: "In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public."

104. Mr. K. V. Suryanarayana Ayyar learned counsel for the Reserve Bank of India, has drawn my attention to the various matters mentioned in paragraph 8 of the counter-affidavit to show the purpose for which the legislation was undertaken and also to further establish that the restriction imposed is very reasonable and limited, conceived in the interests of the general public.

105. It is stated in paragraph 8 of the counter-affidavit that individuals and firms carrying on business of banking namely, private banks, do not come within the

controlling provisions of the Banking Companies Act. There is no supervision or control by the Reserve Bank and than the practice of private banks giving their depositors facilities for issuing cheques has calculated to lead to certain abuses and has also created difficulties to the public. Cheques issued by private banks, pass by process of negotiation to strangers, who become holders in due course, under the impression, that ,the private banks are under the control and supervision of the Reserve Bank.

106. It is also stated that there is no know-ing whether private banks concerned are financially sound and are able to meet the obligations under such cheques. It is also stated that there were complaints in this regard where the unwary public have been duped in the process and that it became necessary to remedy this mischief and at the same time leave the private banks to carry on business in other respects.

107. It is also stated that the only restric-tion that has been placed is to prohibit private banks from accepting deposits, withdrawable by cheques, and the other forms of receiving deposits namely, withdrawable by draft, order or otherwise and other forms of doing banking business have not at all been interfered with by the legislation.

108. Mr. K. V. Suryanarayana Ayyar, learned counsel, also drew my attention to the important position that cheque occupies in the national economy as well as the report of the Reserve Bank referred to earlier to the effect that with the growth of the banking habit, cheque has been replacing the currency to an increasing extent as a medium of exchange and that banks as repositories of the cash resources of the public, play a vital role in the economic and financial life of the country.

109. Having due regard to the object of the enactment, which is predominantly to control the business of banking, in the interests of the depositing public, and in view of the further fact that there has been a restriction ol only the right to receive deposits withdrawable by cheques alone, Mr. K. V. Suryanarayana Ayyjar contended that the provision under challenge, amply satisfies the test of reasonableness in the interest of the general public as laid down by the various decisions.

110. Mr. K. V. Suryanarayana Ayyar relief upon the decision of the Supreme Court in State of Madras Vs. V.G. Row, where the test of reasonableness has bean laid down by his Lordship Patanjall Sastri, C. J, at pages 199 and 200:

"This Court had occasion in Dr. N.B. Khare Vs. The State of Delhi, to define the scope of the judicial review under Clause (5) of Article 19 where the phrase imposing reasonable restrictions on the exercise of the right" also occurs and four out of the five Judges participating in the decision expressed the view (the other Judge leaving the question open) that both the substantive and procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors

such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised.

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

After quoting the above observations with approval, his Lordship Mr. Justice Subba Rao, in the decision reported in *Mineral Development Ltd. Vs. The State of Bihar and Another*, observes at page 470:

"These observations, if we may say so with great respect, lay down the correct principle. It follows that it is the duty of this Court to decide, having regard to the aforesaid considerations and such others, whether a particular statute satisfied the objective test of "reasonableness."

111. In view of this latest pronouncement of the Supreme Court reiterating the principles laid down in the earlier decisions in AIR 1952 SC 196, it is not necessary for me to advert to the other decision referred to by Mr. T. S. Krishnamoorthy Ayyar. In my opinion, the provisions of the Banking Companies Act clearly indicate that the object of the Legislature was to control the business of banking. The statements mentioned in the counter-affidavit of the Reserve Bank referred to earlier, have not been controverted by the petitioners. Therefore, it was essential that certain restrictions had to be imposed. Even the restrictions imposed by Section 49-A do not, in any way, interfere with the petitioners' activity as private bankers to carry on their banking business in other respects. The only restriction that has been placed is to prohibit the receipt of deposit of money withdrawable by cheque. The business of banking includes also receipt of deposits withdrawable by draft, order or otherwise. No restriction or prohibition has been placed by Section 49-A in respect of receipt of deposits of money repayable by draft order or otherwise.

112. In this connection, I may usefully refer to the observations of Mr. Justice

Rama-chandra Ayyar in the decision reported in Sajjan Bank (Private) Ltd., Alandur Vs. Reserve Bank of India, Madras, The provisions or Section 22 of the Banking Companies Act relating to licensing of Banking Companies were challenged before the learned Judge as being opposed to Article 19(1) of the Constitution, The learned Judge rejected the attack made on Section 22. The effect of a refusal of license u/s 22 has been stated by the learned Judge on page 461 as follows:--

"It follows that the refusal of a license would only entail a loss of that type of business, and it would be perfectly open to the petitioner to carry on business as money-lenders the only disability or restriction being that it cannot have transactions under which the constituent could draw cheques on him."

Therefore, in this case, having regard to the object of the Act, as well as in view of the evil referred to in paragraph 8 of the counter-affidavit of the Reserve Bank, the importance of cheque in national economy, and having regard to the limited prohibition or restriction in the matter of receiving deposits withdrawable by cheques only, in my opinion, the legislation in question, amply satisfies the test of reasonable restrictions in the interests of the general public under Article 19(6) of the Constitution as laid down by the decisions referred to above.

113. Therefore, it follows that the attack based upon Article 19 of the Constitution has also to be rejected.

114. The third ground of attack is based upon the section being discriminatory under Article 14 of the Constitution. According to Mr. T. S. Krishnamoorthy Ayyar, the Co-operative Banks, banking companies, the Reserve Bank, and the State Bank of India have been given a special privilege and all other persons doing banking business, have been discriminated against.

115. According to Mr. T. S. Krishnamoorthy Ayyar, there is no nexus between the persons discriminated against and the objects of the enactment in question. The only reason given by the Reserve Bank is that there is no elective control or check over the activities of the private banks and that Mr. T. S. Krishnamoorthy Ayyar contends, is not a sufficient ground for discriminating the private bankers.

116. On the other hand, Mr. K. V. Surya-narayana Iyer, learned counsel for the respondent, has drawn my attention to the provisions of Section 8 of the Banking Companies Act whereby it is stated that the Act shall not apply to Co-operative Bank registered under the Cooperative Societies Act, 1912 or any other law for the time being in force relating to Co-operative Societies.

117. Mr. K. V. Suryanarayana Ayyar also contended that the Co-operative Banks are functioning under the provisions of the Co-operative Societies Act and they have been always treated separately by the Legislature. Similarly, the Reserve Bank also is an institution which functions under the Reserve Bank of India Act 1934. Again, the State Bank of India, which really is a successor to the original Imperial Bank of India, is functioning under a similar statute namely, Central ACT

XXXII/1955. Banking Companies referred to in Section 49-A, are all subject to the provisions of the Indian Companies Act as well as the Banking Companies Act, 1949. Therefore, Mr. K. V. Suryanarayana Iyer contended that there is a legislative purpose in grouping a banking company, the Reserve Bank, and the State Bank of India u/s 49-A of the Banking Companies Act & treat them quite apart from the large body of private bankers, who are not subject to any control, whose accounts are not made public and over whom, there is no legislative control whatsoever. Therefore, Mr. K. V. Suryanarayana Ayyar contended that there is no question of any circumstances under the provisions of Article 14 of the Constitution.

118. No doubt, Mr. T. S. Krishnamoorthy Ayyar referred to the decisions of the Supreme Court in *Kedar Nath Bajoria Vs. The State of West Bengal*, and *V.M. Syed Mohammad and Company Vs. The State of Andhra*, where a particular piece of legislation has been upheld and also to the decisions in *Ameerunnissa Begum and Others Vs. Mahboob Begum and Others*, and *Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others*, where the particular legislation in question was not upheld. It is not necessary for me to advert to these decisions, because the position, if I may say so with respect, has been reviewed exhaustively by the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and *Kangshari Haldar and Another Vs. The State of West Bengal*, I may also state at this stage, that these decisions have been very exhaustively adverted to by me, sitting with Mr. Justice S. Velu Pillai, in the decision reported in *In re Travancore Devaswom Board* ILR (1960) Ker 1306.

119. In *Budhan Choudhry and Others Vs. The State of Bihar*, His Lordship Das, J. Observes at page 193:

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order however to pass the test of permissible classification two conditions must be fulfilled namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases namely, geographical, or according to objects or occupations of the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law, but also by a law of procedure."

The above observations have also been quoted in AIR 1959 SC 538 by His Lordship the Chief Justice, who sets out the principles to be applied at page 547 as follows:

"The principle enunciated above has been consistently adopted and applied in

subsequent cases. The decisions of this court further establish--

(a) that a Law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be read as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that is laws are directed to problems made manifest by experience and that its discrimination are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm, and may confine its restriction to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality, the court may take into consideration makers of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceded existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legisla-ture are to be presumed, if there is nothing on the face of the law or the surrounding circum-stances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting ertain individuals or corporations to hostile or discriminating legislation."

The learned Chief justice emphasises that the principles extracted above will have to ba constantly borne in mind by the court when it has to adjudge the constitutionality of a particular law, which is attacked as discriminatory and violative of the equal protection of laws.

120. The learned Chief Justice further sets out 5 classes under one cr other of which, a particular statute, may come up for consideration on a question of its validity under Article 14 of the Constitution. Those classes are set out by the learned Chief Justice as follows at page 518:

"(i) A statute may itself indicate the person or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court, in determining the validity or otherwise of such a statute, the court his to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object

sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, ; *Kedar Nath Bajoria Vs. The State of West Bengal*, ; *V.M. Syed Mohammad and Company Vs. The State of Andhra*, ; and *(S) Budhan Choudhry and Others Vs. The State of Bihar*,

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no rea-senable basis of classification may appear on the face of it or is deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnissa Begum and Others Vs. Mahboob Begum and Others*, ; and *Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others*,

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions, but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of validity or otherwise of such a statute, the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion js given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy lor the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute, if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable is to discriminate between persons or things similarly situate and that, therefore, the discrimination is Inherent in the statute itself. In such a case the Court will strike down Both the law as well as the executive action taken under such law as it did in *The State of West Bengal Vs. Anwar Ali Sarkar*, ; *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, ; and *Dhirandra Kumar v. Sup-erintenden and Remembrancer of Legal Affairs, West Bengal AIR 1954 SC 424*.

(iv) A statute may not make a classification oi the persons or things for the purpose of ap-plying is provisions and may leave it to the dicretion of the Government to select and classify tine persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification the Court will unheld the law as constitutional as it Aid in *Kathi Raning Rawat Vs. The State of Saurashtra*, .

(v) A statute may not make a classification of the persons or things to whom

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

121. In *In re Kerala Education Bill* AIR 1958 SC 956 at page 972 the learned Chief Justice again observes:

"The true meaning, scope and effect of Article 14 of our Constitution have been the subject-matter of discussion and decision by this Court in a number of cases beginning with the case of *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI)* and *Others*, (S) *Budhan Choudhry and Others Vs. The State of Bihar*, a Constitution Bench of seven Judges of this Court explained the true meaning and scope of that article. Recently in the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the position was reviewed at length by this Court by its judgment delivered on March 28, 1958 and the several principles firmly established by the decisions of this Court were set out seriatim in that judgment. The position was again summarised in the still more recent case of *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, in the following words:--

"The meaning, scope and effect of Article 14 which is the equal protection clause in our Constitution has been explained by this Court in a series of decisions in cases beginning with *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI)* and *Others*, and ending with the recent case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification to conditions must be fulfilled, namely (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him who attacks it, to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its

discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. In the judgment of this Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the statute that came up for consideration before this Court were classified into five several categories as enumerated therein. No useful purpose will be served by re-opening the discussion."

122. Reference may also be made to the recent decision of the Supreme Court in *Kangshari Haldar and Another Vs. The State of West Bengal*, where their Lordships have reiterated the same views.

123. Mr. Justice Gajendragadkar delivering the majority judgment observes at page 459 as follows:

"The challenge to the vires of the impugned provisions is based on the ground that they violate the fundamental right guaranteed by Article 14 of the Constitution. The scope and effect of the provisions of Article 14 have been considered by this Court on several occasions, and the matter has been clarified beyond all doubt. The equality before law which is guaranteed by Article 14 no doubt prohibits class legislation but it does not prohibit the legislature from legislating on the basis of a reasonable classification. If the classification is reasonable and is founded on intelligible differentia and the said differentia have a rational relation to the object sought to be achieved by the statute based on such reasonable classification the validity of the statute cannot be successfully challenged under Article 14. These propositions have been repeated so many times during the past few years that they now sound almost platitudinous. Thus the enunciation of the principles which flow from the fundamental rights enshrined in Article 14 now presents no difficulty. It is, however, in the application of the said principles that difficulties often arise. In applying the said principles to the different sets of facts presented by different cases emphasis may shift and the approach may not always be identical but it is inevitable that the final decision about the vires of any impugned provision must depend upon the decision which the court reaches having regard to the facts and circumstances of each case, the general scheme of the impugned Act and the nature and effect of the provisions the vires of which are under examination"

Again, at page 464, His Lordship summarises the result of the various decisions adverted to by the learned Judge as follows;

"The result of these decisions appears to be this. In considering the validity of the impugned statute on the ground that it violates Article 14 it would first be necessary to ascertain the policy underlying the statute and the object intended

to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act the Court should apply the dual test in examining its validity: Is the classification rational and based on intelligible differentia; and, has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied the statute must be struck down as violative of Article 14."

124. The observation immediately extracted above is a sufficient answer to an objection raised by Mr. T. S. Krishnamoorthi Iyer, learned counsel for the petitioners that if the object of the Legislature is to control the activities of private bankers like the petitioners, it is open to adopt other measures, but it need not be done under the provisions of the Banking Companies Act, 1949 the object of which is only to control the institution coming within its purview. As His Lordship Mr. Justice Gajendragadkar observes:

"If the two tests laid down are satisfied. In such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry."

In my opinion, the decisions of the Supreme Court adverted to above, conclude the case against the petitioners regarding their attack based upon Article 14 of the Constitution. In my opinion, the contentions of Mr. K. V. Suriya-narayana Iyer, learned counsel for the Reserve Bank, have to be accepted in this regard also.

125. The object of the Banking Companies Act, as I have repeatedly stated earlier in the judgment, is to control the business of banking in the paramount interests of the deposits and the various provisions of the Act, to which I have already adverted, are all enacted with that purpose in view. I have also indicated the importance of cheque in national economy. The policy underlying the statute and the object intended to be achieved by it is, as I have mentioned earlier, the control of the business of banking by providing adequate safeguards for the investing public. It may be that in individual cases notwithstanding all these stringent provisions, the intended object may not be fully achieved. But that is not a criterion to test the essential policy underlying the statute and the object intended to be achieved by it.

126. No doubt, in the preamble to the Banking Companies Act it is only stated:

"It is expedient to consolidate and amend the law relating to Banking Companies."

But the absence of any other matter in the pre-amble does not really affect the question, as will be seen by the decision of their Lordships of the Supreme Court

in Pannalal Binjraj Vs. Union of India (UOI), No doubt, the preamble to the Income Tax Act did not give much of an assistance, but their Lordships gathered the object and purpose of the Act from the various provisions contained in the Act,

127. Again, the observation of Mr. Justice Gajendragadkar, that I have extracted earlier, will also clearly show that in considering the validity of the impugned statute on the ground that it violates Article 14, it would be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it and in this process, the preamble to the Act and its material provisions can and must be considered. Therefore, to find out the policy underlying the statute and the object intended to be achieved by it, the provisions of the Banking Companies Act in this case, can and must be considered, I have already, after such a consideration, come to the conclusion about the policy underlying the statute and the object intended to be achieved by it.

128. In my opinion, the classification of a banking company, the Reserve Bank of India, the State Bank of India and the Co-operative Banks also functioning under another Act, as not coming within the bar of Section 49A is perfectly rational and is based on an intelligible differentia. The banking company referred to therein will be subject to the provisions of the Indian Companies Act and also the provisions of the Banking Companies Act. Therefore, those banking companies will be subject to control under the various provisions of the Act designed to safeguard the interests of the depositing public. Again, the Reserve Bank functions under an independent statute as also the State Bank of India and the Co-operative Banks. Therefore, in my opinion, the Legislature has also been treating those institutions referred to in Section 49-A as a class by themselves and have been dealing with them as such. Therefore, the classification of those institutions is rational and based on intelligible differentia.

129. Similarly, the classification of the private banks and private bankers will also form a separate class by themselves. They are not amenable to any control. Their transactions are not made public and there is no supervision over their activities. Their finances or ability to honour cheques at the proper time are not also known. There is no control or supervision over their dealings. Business of banking, I have already indicated is one affecting the credit of the country and as such, it affects the public and the State has got a legitimate duty to perform to the vast number of members of the public who make their deposit in banks. Therefore, the basis of differentiation indicated in Section 49A and referred to earlier by me, has got a rational nexus with the avowed policy and object of the Act.

130. Therefore, the tests laid down by their Lordships of the Supreme Court are amply satisfied in this case and therefore, the section does not suffer from any infirmity under Article 14 of the Constitution.

131. Therefore, the contention based upon Article 14 of the Constitution has also to fail.

132. The last contention of Mr. T. S. Kri-shnamurthi Iyer is that naked and arbitrary powers have been conferred on the Central Government u/s 49A to exempt any other banking institution by issuing a notification. The attack that is made is that the powers vested in the Central Government are naked and arbitrary without the Legislature furnishing any principle's to guide in what manner and under what circumstances the discretion is to be exercised.

133. As rightly pointed out by Mr. K. V. Sur.vanarayana Iyer learned counsel for the Re-serve Bank, this question does not really arise. The learned counsel contended that it is not the case of the petitioners that they have applied for exemption to the Central Government and that the Central Government have arbitrarily refused the exemption while they have granted exemption in other cases. Mr. K. V. Suryana-rayana Iyer also contended that the power that is given to the Central Government is the policy underlying the enactment and the purpose for which the Banking Companies Act has been passed has been sufficiently indicated in its various provisions. Therefore, the Central Government, when exercising its powers u/s 49A by notifying other banking institutions can very well be trusted to have due regard to the objects and purposes of the enactment.

134. Mr. K. V. Suryanarayana Iyer also pointed out that this particular provision giving a right to the Central Government was enacted because that at the time when the bill to amend the Banking Companies Act was before the Parliament, there were other banking institutions the set up of which was then under contemplation and therefore, it was considered desirable that they should not be brought under the prohibition contained in the relevant provision of the amending bill. He also pointed out the relevant statute under which such banking institutions were subsequently set up under Central Government Act XXXVIII/1959 -- The State Bank of India Subsidiary Banks" Act.

135. In my opinion, the contentions of Mr. T. S. Krishnamurthi Iyer cannot also be accepl-ed. It should not be missed that power is vested not in minor officials but in the central Government itself. There is clear indication given in the Act itself regarding its object and the Central Government, in my opinion can very well be trusted to have due regard to the object of the Act in notifying any banking institution for exemption under Sec-ion 49-A of the Act.

136. As observed by their Lordships of the Supreme Court in the decision reported in (S) Pannalal Binjraj Vs. Union of india (UOI), an page 408:

"It may also be remembered that this power is vested not to minor officials but into top-ranking authorises like the Commissioner of Income Tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the

discretion is vested in such high officials. (Vide Matajog Dobey Vs. H.C. Bhari, There is, moreover, a presumption that public officials will discharge their duties honestly and in accordance with the rules of law....."

137. Again, the Supreme Court observes in AIR 1958 SC 956 at page 976 as follows:

"In this connection we must bear in mind what has been laid down by this Court in more decisions than one, namely, that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed."

138. Therefore, it follows that the power vested in the Central Government u/s 49A of the Act, though a discretionary power, cannot be considered to be necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed.

139. The principle to be borne in mind when a constitutionality of an enactment is challenged on the ground of violation of any of the Articles in Part III of the Constitution have been laid down by Mr. Justice Kapur in the decision reported in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, At page 569, his Lordship observes:

"Therefore when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i. e, its subject-matter, the era in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy; The Bengal Immunity Company Limited Vs. The State of Bihar and Others, at page 674; R. M. D. R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), at page 631, Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others,

Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by ex-perience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, at page 326; Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others,

140. If I may say so with respect, I have considered the history behind the

impugned legislation and the material available before Parliament before the later set out to enact the impugned provision.

141. I have applied the various tests laid down by their Lordships of the Supreme Court in considering the vires of the enactment in question. Applying those principles and the tests laid down by the various decisions referred to above, in my opinion, the attack made by the petitioners on Section 49-A of the Banking Companies Act 1949 cannot be sustained, and all the contentions raised before me have to be rejected. In my opinion, the section in question does not suffer from any of the infirmities alleged by the petitioners.

142. In the result, both the applications are dismissed and the respective petitioners will pay one set of costs each to the respondent therein.