
(1952) 07 AP CK 0014
In the Andhra Pradesh High Court

Mohamad Hydar and Others

APPELLANT

Vs

The State of Hyderabad

RESPONDENT

Date of Decision : 21-07-1952

Acts Referred:

Arms Act, 1959 — Section 10, 12, 19
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 13, 132, 14, 143, 227
Criminal Procedure Code, 1898 (CrPC) — Section 11, 2, 224, 3, 302
Government of India Act, 1935 — Section 10, 224, 244
Penal Code, 1860 (IPC) — Section 10, 267, 302, 307, 34

Citation : AIR 1953 AP 33 : (1953) CriLJ 454

Hon'ble Judges : Palnitkar, C.J.;Sreenivasachari, J;Mohd. Ahmed Ansari, J

Bench : Full Bench

Judgement

Palnitkar, C.J.

1. I have had the advantage of reading the judgments prepared by my learned colleagues, M.A. Ansari and Srinivasa Chari JJ., which they are about to deliver. After carefully going through both of them, I agree with the conclusion arrived at by Ansari J.

2. So far as the constitutional question is concerned, the three judgments of the Supreme Court, viz., - The State of West Bengal Vs. Anwar Ali Sarkar, , - Kathi Raning Rawat Vs. The State of Saurashtra, , and - Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, , declare the final word on the law as regards the validity of such special regulations. It is clear that Article 14 of the Constitution condemns discrimination not only by substantive law but also by law of procedure. The Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation No. X of 1359 Fasli, provides certain special procedure different from that laid down in the ordinary law of criminal procedure and it is to be decided how far that procedure is discriminatory.

3. Section 5 of that Regulation empowers the Chief Minister to make over such of

the cases as were pending before a Special Tribunal for trial to the Special Judge. The word "OFFENCES" in Section 5(1)(a) is a misnomer, for it is conceded that no specific offences were made over to the Special Tribunals for trial but only cases were made over and many of them were tried and decided by the various Special Tribunals & many more were pending before them on the date of the passing of the Special Judges Regulation. Thus, the position under the Special Judges Regulation was that a murder or dacoity charge against "A" was tried by the Special Tribunal while a similar murder or dacoity charge against "B" was tried by the ordinary criminal Court of the land. There was no understandable basis on which the cases against "A" were to be tried by the Special Tribunal and the cases against "B" to be tried by the ordinary Courts. In fact, there existed parallel Courts for trying cases arising out of the same or similar offences; one, the ordinary courts and the other, the Special Tribunals. In - *Kathi Raning Rawat Vs. The State of Saurashtra*, , the Special Courts were created because there existed extraordinary circumstances in a particular part of Saurashtra. There was a crime wave there and therefore, it was necessary to issue the Saurashtra State Public Safety Measures Ordinance, The Special Courts were to function in a particular area of the Saurashtra State and with regard to the particular offences mentioned in the notification, no other court except the Special Court could try the cases arising out of the offences. Thus, there were no parallel courts for trying similar offences. There was a clear recital of the definite objective in that Ordinance. That object provided a tangible and rational basis of classification or the State Government to apply the provisions of the Ordinance. It allowed the State Government to choose only such offences or cases as affected public safety, maintenance of public order and preservation of peace and tranquility. Moreover, while actually applying the provisions of the Ordinance, the State Government issued a notification making over only offences and not cases. It is evident that the making over of a particular case or cases will be discriminatory but not the making over of a particular offence or offences. There is no each objective defined under the Hyderabad Regulation. There is no preamble and if at all we read the opening words, they are:

Whereas it is expedient to provide for the termination of all save one of the Special Tribunals constituted under the Special Tribunals Regulation (No. V of 1358 F), and consequentially upon such termination to provide for the appointment, power and procedure of Special Judges:

Now, therefore, in exercise of the authority vested in me for the administration of the Hyderabad State and of all other powers enabling me in this behalf, I hereby make the following Regulation

From the above, it is clear that there is no object specified in it, for which the Regulation was made. There is no understandable basis as to why offences alleged to have been committed by certain persons should be tried under the Regulation by Special Judges and why persons charged under similar offences should be tried in the ordinary courts. The Hyderabad Regulation does not apply

to any particular territory of the State. Therefore, there is no basis of any territorial classification in it.

4. Again, looking to the Regulation itself, it lays down a procedure which is, in some respects, less advantageous to the accused. Section 6 of the Regulation provides that a Special Judge may take cognizance of offences without the accused being committed to him for trial. It is clear that no offences have been mentioned in the Regulation or in any other valid notification, which were to be tried by the Special Judge without the accused being committed to him for trial. In fact, only cases which were triable by a Court of Session were made over to the Special Judges without the accused being committed. It is a moot point whether "OFFENCES" means "CASES". As laid down in the case of - *The State of West Bengal Vs. Anwar Ali Sarkar*, when an accused is tried before Sessions Judge without his being committed, he loses the advantage of two minds being applied to his case and that is discriminatory and violative of Article 14.

5. Then there is the question of revision & transfer. The Regulation does not provide for the revision or for the right to apply for the transfer of the case, to the High Court. All that Section 7 of the Regulation provides is that

Subject to the provisions of Sections 4 and 5, a Special Judge shall have all the powers conferred by the Code on a Court of Session.

That does not empower or entitle the High Court to exercise its powers of revision or transfer which the High Court enjoys under the Code of Criminal Procedure. It is evident that the power of transfer will not generally be available to the High Court in the case of a Special Judge. As observed by His Lordship the Chief Justice of India in - *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, at page 239, "as regards transfer, it does not, as already pointed out, fit in with the scheme of trial before a Special Judge." But His Lordship was of the opinion that a prohibition of transfer cannot be regarded as falling within the inhibition of Article 14, while the majority of Their Lordships of the Supreme Court came to the conclusion that the right of the accused to apply for the transfer of his case is an important safeguard and if the same is denied, it would violate the provisions of Article 14. It was held in the case that these departures from the ordinary law acted prejudicially to the persons subjected to the procedure prescribed by the special Act and constituted a discrimination against the persons tried by the Special Judge.

6. I wanted to look at the Special Judges Regulation from a different point of view and see whether it could be saved from being hit by Article 14 of the Constitution. It was pointed out by the learned Advocate-General that the Special Judges were created as a new agency for disposing of cases left unfinished by the Special Tribunals, which were terminated under the Regulation and that the Special Judges' Courts should be regarded as additional Courts established under the ordinary criminal procedure. No doubt, these Special Judges were appointed in consultation with the High Court. But then they have been enjoined

to function under the Special Judges Regulation, Moreover, u/s 8 of the Regulation all the provisions of Section 7 of the Special Tribunals Regulation (No. V of 1358F) have been made applicable and are to have effect in relation to sentences passed by a Special Judge. The said Section 7(2) (of the Special Tribunals Regulation) runs thus:

(2) There shall be an appeal to the High Court from any sentence passed by a Special Tribunal which would have been appealable to the High Court under the Hyderabad Criminal Procedure Code if the sentence had been passed by a Court of Sessions. But notwithstanding the provisions of the Hyderabad Criminal Procedure Code or of any other law for the time being in force or of anything having the force of law by whatsoever authority made or done, there shall, save as hereinbefore provided, be no appeal from any order or sentence passed by a Special Tribunal and no Court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal or have any jurisdiction of any kind in respect of any proceedings before a Special Tribunal and no sentence of a Special Tribunal shall be subject to or submitted for confirmation by any authority whatsoever.

7. Section (2A)(ii) of the same Regulation provides that any sentence passed by a Special Tribunal and maintained by the High Court of an appeal shall be deemed to be a sentence of the Special Tribunal. Section (2A)(iii) provides that any sentence passed by the High Court on appeal so preferred in substitution for a sentence passed by a Special Tribunal shall be deemed to be a sentence passed by Special Tribunal. There seems to be some particular sanctity or extraordinary character assigned to the sentences passed by the Special Tribunals with the result that even the sentences passed by the High Court in its appellate jurisdiction are to be regarded as those passed by the Special Tribunals. Under Clause (3) of Section 7, the Military Governor has been given the power to suspend, remit, reduce or alter the nature of any sentence. Thus, it is clear that the right of transfer or revision has been denied to the accused under the provisions of the Special Judges Regulation read with Section 7 of the Special Tribunals Regulation. It is argued that the words in Section 8 of the Special Judges Regulation which provide that Section 7 of the Special Tribunals Regulation shall have effect in relation to sentences passed by a Special Judge, mean that the provisions of Section 7 of the Special Tribunals Regulation will apply only when the stage of passing a sentence is reached by a Special Judge. It is difficult to agree with this contention. The marginal note given to Section 8 of the Special Judges Regulation reads, "Section 7 of the said Regulation to apply." It clearly means that Section 7 of the Special Tribunals Regulation is to be applicable. The marginal note can be looked into when the provisions of a Section or enactment are ambiguous. Even supposing that the words in the section are ambiguous, that ambiguity is removed, when we read the marginal note which makes the whole of Section 7 of the Special Tribunals Regulation applicable. Thus however much one would like to regard the Special Judges as only additional Judges, it is difficult to regard them so in view of the Special

Judges Regulation. I hold that the Hyderabad Regulation is hit by Article 14 of the Constitution.

8. In the result, therefore, I agree with the order proposed by my learned brother M.A. Ansari, J.

9. Leave to appeal to the Supreme Court is granted.

Sreenivasachari, J.

10. These cases have been referred to the Full Bench because a point was raised in these cases that the trial that took place before the Special Judge under the Special Judge's Regulation was bad. It was sought to impeach the validity of the Special Judge's Regulation No. X of 1359 F on the ground that it flagrantly violated the provisions of Article 14 of the Constitution of India. We have before us the following cases of Mohamed Hyder:

(a) Ten appeals by the accused;

(b) Two appeals by the State against judgments acquitting the accused in certain cases, and

(c) Three Revision Petitions on behalf of the State for enhancement of sentences.

The same objection has been raised in a number of other cases where the accused underwent trial before the Special Judge. The cases in which Hyder is the accused came up before the Special Judge in pursuance of the Order passed by the Chief Civil Administrator of Osmanabad transferring these cases from the file of the District Magistrate, Osmanabad, to that of the Special Sessions Judge, The Chief Civil Administrator of Osmanabad purported to act under the powers delegated to him by the Chief Minister by virtue of Section 5(1)(b) of the Special Judge's Regulation. The accused In some of these cases has been sentenced to various terms of imprisonment while in other cases he has been acquitted, against which the State of Hyderabad has preferred an appeal which is pending in this Court. Therefore, the proceedings are complete and are over so far as the Special Judge's Court is concerned.

11. The idea underlying the principle of Article 14 of the Constitution of India is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. This principle of equality of rights is a principle of republicanism which says that no State shall deny any person, within its jurisdiction the equal protection of the laws. Equal protection in legal proceedings is secured: (a) when the Courts are open to every one on the same terms; (b) when it assures to every one the same rules of evidence and the identical modes of procedure. This general principle of equal protection of the laws and equality before the law has been circumscribed and hedged in by certain well established limitations. It has been well recognised that this principle does not prohibit the State from making classifications which rest upon reasonable grounds of distinction. Therefore, whenever reasonable, economic, political or social reasons

exist, the State may make a classification putting certain subjects or persons under one category. Obviously all persons within the jurisdiction of a State cannot be treated alike in matters of legislation. There ought to be variation in the administration of the law having regard to the objects for which a legislation is made. It was very artistically put by Mr. Justice Holmes:

The machinery of the Government would not work if it were not allowed a little play in its joints (28 US 499).

The question to be put when a particular law is impugned on the ground of its denying equal protection of the laws is the law palpably discriminatory? Having these broad principles in view we have to consider as to whether there has been a differentiation in the procedure to be adopted in the Courts of the Special Judges different from the established procedure in ordinary courts.

12. The general principle on which a classification of persons or objects is justifiable has - been laid down by the Supreme Court in the leading case of - State of Bombay v. F.N. Balsara AIR 1951 SC 318. The observations of Fazl Ali J. in the above case are important. His Lordship while analysing the principle underlying Article 14 of the Constitution of India observed:

(a) The Principle does not take away from the State the power of classifying persons for legitimate purposes.

(b) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons often require separate treatment.

(c) A law is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(d) While reasonable classification is permissible such classification must be based upon some real and substantial distinction being a reasonable and just relation, to the object sought to be obtained.

Before dealing with the question as to how far the impugned legislation, namely, the Special Judge's Regulation conforms to the principles enunciated in the case of - State of Bombay v. F.N. Balsara it would be desirable to allude to certain well accepted notions of law. There is always a presumption of the constitutionality of an enactment. This presumption is drawn on the basis of the principles enunciated in the case of - Middleton v. Texas Power & Light Co. (1919) 249 U S 152, which is as follows:

It must be presumed that a legislature understands and correctly appreciates the need of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.

Therefore, where any person impeaches the validity of any enactment as offending any principle of law or as being ultra vires the Legislatures or the

Constitution, the onus is upon him to establish that it is so. This has been well established by the decisions of the Supreme Court in the cases of - A.K. Gopalan Vs. The State of Madras, , and the case of - Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . The onus, therefore, is upon the accused - appellants before us to point out and establish how and in what respects the Special Judge's Regulation infringes any right conferred on them by the Constitution.

13. The power of the State to regulate criminal trials according to the needs of the different parts of its territory has been recognised as part of the police power of the State - Bowman v. Lewis (1880) 101 U S 22. Resort to special laws and recourse to extraordinary remedies would be justified in order to cope with and subdue a crime wave that may be prevailing in the State. The existence of another set of special Courts side by side with the ordinary courts, the right of the Executive to decide what offences or classes of offences shall be tried by the special Courts and not by the ordinary courts has never been looked upon as violating any principle of law or jurisprudence. In this regard the leading case of - Emperor v. Benoarilal decided by the Privy Council would be in point - 72 Ind App 57. With regard to the question that arises as to whether the relegating of particular cases to the special courts amounts to discrimination within the meaning of Article 14, it must be pointed out straight away that the mere circumstance of one offender being asked to take his trial in the ordinary Courts and subjecting another offender to take his trial in the special courts would not by itself amount to a discrimination. Discrimination means to distinguish unfavourably from others. There ought to be an element of unfavourable bias in order to constitute discrimination. One cannot bring a case within the ambit of Article 14 of the Constitution and contend that the equal protection of the laws and equality before the law is denied simply because a law seeks to differentiate between persons with regard to the forum. As was observed by Mukherjee J. in - the Saurashtra case 1952 SCJ 168 the party aggrieved would have to establish that there has been a palpable abuse of the power by the Executive in making the differentiation and that there has been a hostile discrimination.

14. The said Regulation has been attacked on the main ground that it offends Article 14 of the Constitution and the learned Counsel of the petitioners - appellants elaborated this point by pointing out to the various sections of the Regulation and arguing that the test laid down by the Supreme Court for regarding a classification as being reasonable has not been conformed to. He urged that this legislation was a piece of hostile legislation wherein a discrimination was made in so far as the trial of the case was concerned between themselves and other accused similarly placed who had committed like offences.

15. Although the general principles wherein a classification by a State would be justified have been laid down in the two leading cases referred to above but the actual question as to whether it would amount to a discrimination where a particular accused was tried under a special procedure by a Special Judge

constituted for the purpose under a Special Regulation came up for consideration before the Supreme Court in three cases and we have to be guided by the principles enunciated by the Supreme Court in these three cases. The first case was a case which went up to the Supreme Court from a Full Bench Judgment of the Calcutta High Court in what is known as "The Dum Dura Riot" case.

(a) Anwarali Sircar and 49 others are said to have made a raid on the factory of Messrs. Jessop & Co., Ltd., at Dum Dum in Calcutta, The accused were alleged to have attacked the officials, battered their, to death and thrown the corpses into blasting furnaces. They were charged for murder, conspiracy to murder, to commit grievous hurt with deadly weapons, etc. They were also charged under the Explosive Substances Act. The Government of Bengal passed an Ordinance known as "The West Bengal Special Courts Ordinance" in 1949. Later on, this Ordinance was superseded by the West Bengal Special Courts Act which received the assent of the President of India on March 15, 1950, The provisions of this Act were almost similar to those of the provisions of the original Ordinance. A Special Judge had been appointed to try cases under the original Ordinance. After the coming into force of the subsequent Act, a complaint was filed before the Special Judge appointed under the Ordinance. Anwarali Sircar and his co - accused were tried on the charges, convicted and sentenced.

(b) Proceedings were taken in the High Court to quash the conviction and sentences. While Anwarali Sircar and his 49 co - accused had been tried, convicted and sentenced, a set of other accused, Gajen Mali and others, were taking their trial, and proceedings were pending. These accused also invoked the Certiorari Jurisdiction of the High Court to quash the proceedings. These cases were heard together and disposed of by a common judgment. A Full Bench of the Calcutta High Court held that the provisions of Section 5(1) of the West Bengal Special Courts Act were discriminatory in that they empowered the State to direct trial of any case by a Special Judge. It was held that the principles of Article 14 of the Constitution of India were violated. In the result, the conviction and sentences were set aside - Anwar Ali Sarkar Vs. The State of West Bengal, .

(c) On appeal by the State of West Bengal, the Supreme Court confirmed the above judgment. The Supreme Court held that the West Bengal Special Courts Act was discriminatory on the face of it because the Act laid down a procedure which was less advantageous to the accused than the ordinary procedure and this fact was the root cause of the discrimination. The reason and motive assigned by the State for such different procedure was that these cases needed a "Speedier Trial". The Supreme Court held that the expression "speedier trial" was too indefinite to form the basis of a reasonable classification. Their Lordships held that the grouping of certain cases and offences, for the purpose of speedier trial was no good basis for a differential treatment - The State of West Bengal Vs. Anwar Ali Sarkar, .

16. Closely following upon the above cases, another case came up before the Supreme Court wherein the identical question of the validity of the constitution of

Special Courts was involved, and the case of - The State of West Bengal Vs. Anwar Ali Sarkar, referred to above, came to be reviewed by the Supreme Court. This was an appeal against the judgment of the High Court of Saurashtra which confirmed the sentences passed on certain accused who had been tried under the Saurashtra State Public Safety Measures (Third Amendment) Ordinance 1949 (No. 66 of 1949). Under this Ordinance, the State was empowered to constitute special courts for the trial of certain classes of offences in particular areas to be notified by the Government. The procedure in regard to the trial of such cases by the special courts varied from the usual procedure in two matters, viz, (a) there was not to be trial by jury or with the aid of assessors; (b) the preliminary enquiry before a Magistrate and the committal by him to the court of Sessions in Sessions Cases was done away with.

This Ordinance was attacked mainly on the ground that it allowed a discrimination being made between one accused and another, the one being tried by the ordinary courts under the established procedure while the other being subjected to a trial under the Special Procedure enjoined by the Ordinance. Here again the validity of the ordinance was impugned on the ground of its offending the fundamental right of the equal protection of the laws, conferred by the Constitution. This ordinance, it would appear, was promulgated with a view to put an end to the large scale nefarious activities of certain criminal gangs who were committing mass murders, and indulging in wholesale plunder looting and dacoity. It was found that the ordinary courts established in the land were not enough to cope with this surging wave of crimes in certain parts of Saurashtra. The state of affairs that existed was brought to the notice of Their Lordships of the Supreme Court by an affidavit filed in this regard by an Officer of the Home Department of the Saurashtra State.

In dealing with the above appeal, Their Lordships were impressed with the fact that the exigencies of the situation, and the arising of an extraordinary state of affairs justified the constitution of special courts, different from the established Courts, in order to bring under control the state of riotousness prevailing in some parts of the State. The deviation in certain respects from the normal procedure in the trial of cases was also justified. The classification of cases and offences for being tried by Special Courts was held to be valid and not offending Article 14 of the Constitution. The discrimination, if any was regarded as a discrimination with reason" and not one without reason - Kathi Raning Rawat Vs. The State of Saurashtra, decided on 27th February 1952.

17. Quite recently after we had heard the arguments "in extenso" in this case, another case was decided by the Supreme Court. In this case there were appeals against the judgment of the High Court at Bombay. These appeals were on behalf of persons who had been convicted and sentenced by the Special Judge, Ahmedabad, who was appointed under the Bombay Public Security Measures Act, Act VI of 1947. This Act was impugned as being invalid as it sought to lay down a procedure for the trial of cases different from the established procedure under

the Criminal Procedure Code.

(a) The accused in the above cases were charged for various offences under Sections 394, 397, 302 and 307 read with Section 34 of the Indian Penal Code and Section 10 of the Arms Act. The Police Department applied to the District Magistrate, Ahmedabad to move the Bombay Government, to constitute a special court for the trial of these cases, and on such a requisition, the Government of Bombay constituted a special court u/s 10 of the Bombay Public Security Measures Act. Simultaneously with this Order, the Government of Bombay in exercise of its powers u/s 12 of the aforesaid Act directed that Special Judge to try two particular cases, one of such cases being the case in which the appellants before the Supreme Court were charged. The cases were transferred from the file of the City Magistrate to that of the Special Judge. The prosecution evidence started on 10.1.1950 and it continued when the constitution came into force. The Special Judge convicted the accused (appellants before the Supreme Court) and sentenced them to death u/s 302/34 and to transportation for life u/s 302/34 and to varied terms of imprisonment for other offences for which they were charged. The appellants appealed to the Bombay High Court. The sentences of death were confirmed by appeal to the Supreme Court under Article 132(1).

(b) On appeal the Supreme Court by a majority (Patanjali Sastri C.J. dissenting) set aside the conviction and ordered a retrial of the accused. Their Lordships held that in important respects the special procedure prescribed by the Bombay Public Security Measures Act constituted a departure from the ordinary procedural law and that was detrimental to the interests of the accused. They further held that it was not shown why the cases of accused had to be subjected to a special procedure. Finally their Lordships came to the conclusion that inasmuch as a discriminatory procedure was adopted by the Special Judge after the coming into force of the Constitution, and inasmuch as such a procedure had become void after the Constitution, the Special Judge had no jurisdiction to try the cases according to the Special Procedure, therefore the trial subsequent to 26.1.1950 was vitiated and hence the conviction could not be sustained.

(c) The guiding principles as to in what circumstances an enactment would be regarded as invalid as violating the equal protection of the laws clause underlying Article 14 of the Constitution, could be deduced from the three decisions of the Supreme Court referred to above.

18. The learned Counsel for the petitioners drew our attention to those provisions in the Criminal Procedure Code which were absent and wanting in the Special Judges Regulation, and argued that depriving the accused of those privileges amounted to a discrimination being made in the trial. He submitted that (a) there was no provision for committal proceedings, (b) that there was no provision similar to the one in the Criminal Procedure Code for confirmation by the High Court in cases of sentences of death or transportation for life, (c) that no provision had been made for revision to the High Court, (d) and that there was no power of transfer vested in the High Court. Incidentally it was also

argued that there was no guarantee of a competent man being appointed as a Special Judge as the power of appointment was left with the Chief Minister.

19. In the impugned Regulation what procedure has to be adopted by the Special Judges has been mentioned in Sections 6 - 9. Section 10 of the Regulation is an all - comprehensive section and is as follows:

Subject to the provisions of this Regulation, the Code shall apply in respect of and in relation to proceedings before a Special Judge and subject as aforesaid a Special Judge shall be deemed to be subordinate to the High Court.

It would therefore be clear that what is contemplated with regard to the procedure to be followed in the Special Judge's Court is that the procedure prescribed under the Criminal Procedure Code would be followed, subject however to such variations, modifications of the procedure as are mentioned in Sections 6 - 9 of the Regulation.

It Would be advisable to refer to the particular provisions of the Special Judges Regulation relating to the procedure to be followed in the cases triable by the Special Judge in order to determine how far those provisions are at variance with the established procedure under the Criminal Procedure Code.

Section 6 enacts that a Special Judge could take cognizance of offences without the case being committed to him for trial and that he shall follow the procedure prescribed for warrant cases. In this connection it has to be pointed out that the provisions in the Hyderabad Criminal Procedure Code relating to the committal of cases to be tried by the Sessions Judge are different from similar provisions in the Indian Criminal Procedure Code. Chapter 9 relates to the procedure to be adopted with regard to cases triable by Sessions Court and Section 267 therein states that in a case triable by a Sessions Court if any one of the accused or all the accused apply to the Magistrate before whom committal proceedings are pending, that the case may be committed to the Sessions without any enquiry, the Magistrate shall send the case to the Sessions Court after framing the charge. Again it is open to the Magistrate to commit the case to the Sessions without taking any evidence if he is satisfied that there are sufficient grounds to commit the case to the Sessions Court. There is no such provision in the corresponding section of the Indian Criminal Procedure Code. The existence of such a provision in the Hyderabad Cr.P.C. would imply that it is not necessary that there would be a two - fold enquiry, one before the Magistrate and the other before the Sessions Judge. Under the above circumstances, it could not be said that by reason of the absence or omission of the committal proceedings the accused has been deprived of any right or privilege for the accused could not claim any right or privilege. Further the absence of committal proceedings cannot be regarded as affecting the accused prejudicially in the fair trial of the case. This view is supported by the weighty pronouncements of the Chief Justice of India and Mukherjee J, in "the Saurashtra Ordinance case". His Lordship the Chief Justice observed:

Nor can the commitment proceeding in a Sessions Case be said to be an essential requirement of a fair and impartial trial though its dispensation may involve the deprivation of certain advantages which an accused person may otherwise enjoy. Thus the variations from the normal procedure are by no means calculated to imperil the chances of a fair and impartial trial." - Kathi Raning Rawat Vs. The State of Saurashtra, at p. 125.

Mukherjee J. in the same case while comparing the provisions of the Saurashtra Ordinance with those of the West Bengal Special Courts Act, observed:

The Ordinance lacks some of the objectionable features of the West Bengal Act. Thus it has not taken away the power of revision, nor does it expose the accused to his being convicted of a major offence" - Kathi Raning Rawat Vs. The State of Saurashtra, at p. 131.

It would, therefore, be clear from the above observations that the absence of committal procedure was not regarded as such a serious objectionable feature as those specifically enumerated.

20. Section 7 of the Special Judge's Regulation is innocuous for it reads as under:

Subject to the provisions of Sections 4 and 5 a Special Judge shall have all the powers conferred by the Code on a Court of Sessions exercising original jurisdiction and in particular may pass any sentence authorised by the law.

21. Section 8 is as follows:

All the provisions of Section 7 of the said Regulation shall have effect in relation to sentences passed by a Special Judge as if every reference in the said Regulation to a special Tribunal included a reference to a Special Judge.

The said Regulation referred to in this Section is the Special Tribunals Regulation V of 1358 Fasli. Section 7 of the Special Tribunals Regulation reads as follows:

7.(1) A Special Tribunal may pass any sentence authorised by law.

(2) There shall be an appeal to the High Court from any sentence passed by a Special Tribunal which would have been appealable to the High Court under the Hyderabad Criminal Procedure Code if the sentence had been passed by a Court of Session. But notwithstanding the provisions of the Hyderabad Cr.P.C. or of any other law for the time being in force or of anything having the force of law by whatsoever authority made or done, there shall, save as hereinbefore provided be no appeal from any order or sentence passed by a Special Tribunal and no court shall have authority to revise such order or sentence, or, to transfer any case from a Special Tribunal or have any jurisdiction of any kind in respect of any proceedings before a Special Tribunal and no sentence of a Special Tribunal shall be subject to or submitted for confirmation by any authority whatsoever.

(2.A) For the purpose of the provision in Sub-section (2) that no sentence of a Special Tribunal shall be subject to or submitted for confirmation by any

authority whatsoever the following sentences, shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be sentences of a Special Tribunal, namely -

(i) any sentence passed by a Special Tribunal from which no appeal is preferred to the High Court under Sub-section (2);

(ii) any sentence passed by a Special Tribunal and maintained by the High Court on an appeal so preferred;

(iii) any sentence passed by the High Court, on an appeal so preferred in substitution for a sentence passed by a Special Tribunal.

(2.B) Notwithstanding anything contained In any law for the time being in force -

(i) any sentence of death passed by a Special Tribunal shall be carried into execution by causing the person sentenced to be hanged by the neck until he be dead;

(ii) warrants of commitments under sentence of death, warrants of execution of a sentence of death and any other instruments issued by a Special Tribunal for which a form is provided in Schedule IV to the Hyderabad Criminal Procedure Code shall, subject to any direction which may be made by Government in this behalf, be issued in such form as the Special Tribunal thinks fit.

Section 8 of the Special Judges Regulation says that all the provisions embodied in Section 7 of the Special Tribunals Regulation would come into operation in so far as "sentences" passed by the Special Judge are concerned. Therefore immediately a sentence is passed by a Special Judge the provisions of Section 7 of the Special Tribunals Regulation would come into operation and further proceedings will be governed by the provisions contained therein. Section 7 of the Special Tribunals Regulation provides for appeals being filed in the High Court against such sentences passed by the Tribunal as could be passed by a Court of Session. Decidedly the Special Judge is invested with all the powers of a Sessions Judge under the Criminal Procedure Code. Therefore if the Special Judge passed any sentence exercising his powers as a Sessions Judge, such a sentence is appealable. While in the preceding portion of Section 7(2) of the Special Judges (Tribunals?) Regulation an appeal is allowed against any sentence of a Special Judge (Tribunal?) the latter portion says that no appeal would lie from any sentence or order passed by a Special Tribunal. It was urged that by this provision the right of appeal had been taken away. On the face of it, it does appear that the power of appeal had been taken away. How could it be that by the same section a right of appeal is conferred and in another portion of the same section the right is expressly barred? It is a well established rule of construction that an enactment should be construed in such a way that each and everyone of its parts should be given a meaning be as to lead to harmony and not to mutual conflict. We ought to make out a rational meaning which manes the words sensible. Reading Sub-section (2) of Section 7 of the Special Tribunals

Regulation as a whole, I would interpret the section as under: There is always a right of appeal to the High Court where the Special Judge (formerly Special Tribunal) passed a sentence which a Sessions Judge could pass from which an appeal was allowed under the Code. But in cases where the Special Judge (Special Tribunal) passed a less severe sentence such as a Magistrate could pass, although under the Criminal Procedure Code, an appeal or revision would lie to the Sessions Judge, such right of appeal had been taken away.

This cannot be a ground of complaint because all the cases are before the High Court. Probably it might be said that by the taking away of the right of appeal to a Sessions Judge, the accused had lost the right of an appeal and revision thereafter to the High Court. The fact that there is only one right of appeal cannot be a ground for holding the statute to be discriminatory.

22. Besides the provision relating to appeals to the High Court there is in Section 7 of the Special Tribunals Act a provision which bars a revision against any order or sentence, for the words therein are no court shall have authority to revise such order or sentence.

(a) It was argued that this particular provision clearly took away the right of revision, and the deprivation of the right of revision is a material differentiation in procedure which prejudicially affected the accused and as such was hit by the decision of the Supreme Court in the case of - *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, . There is much force in this argument for, while pointing out the departures from the normal procedure in the Bombay Public Security Measures Act, wherein there was no right of revision conferred, the majority of the Judges of the Supreme Court opined that depriving the accused of his right to apply for transfer or for revision caused prejudice to the accused. But reading the Special Judges Regulation as a whole, I am of opinion that the power of revision had not been taken away. Section 10 of the Regulation says that the Special Judge would be deemed to be subordinate to the High Court. When a Judge is subordinate to the High Court, his orders will always be subject to the revisional jurisdiction of the High Court. The provisions of Section 7(2) of the Special Tribunals Regulation would only come into operation when a sentence is passed by a Special Judge. The provisions of Section 7 of the Special Tribunals Regulation have been applied restrictively. I feel that there is no justification for holding that all the provisions of Section 7 of the Regulation have been brought in "en masse" in the Special Judges Regulation.

(b) It was urged that the right of the accused to move the High Court in revision against any adverse order passed by the Judge had been withheld. My answer to this objection is that the right to move the High Court in its Revisional Jurisdiction had never been taken away, for as already elaborated by me above, the provisions of Section 7(2) of the Regulation curtail the powers of appeal and revision if any, after a sentence is passed. No question of revision could arise against a sentence passed by the Special Judge under his powers as a Sessions Judge.

(c) Whatever might have been the position of the law before the Constitution, after the Constitution, the High Court has powers of superintendence over subordinate courts under Article 227 of the Constitution of India. u/s 107 of the Government of India Act of 1915, the High Court possessed revisional jurisdiction under its power of superintendence over subordinate courts. It did exercise the Revisional Powers where Section 115, CPC or Section 439, Criminal Procedure Code did not in terms apply. But u/s 224. Sub-section (2) of the Government of India Act, 1935 (the appellate and) revisional powers of the High Court had been negated. That the High Court's exercise of the powers of revision & exercising superintendence over subordinate courts had been negated by Sub-section (2) of Section 244 of the Govt. of India Act 1935 is well borne out by the Federal Court judgment in the case of - AIR 1938 1 (Federal Court) at P. 3. It would appear that under Article 227 of the Constitution, there is no provision corresponding to Sub-section (2) of Section 224 of the Government of India Act 1935, negating the right of superintendence and Revision. Therefore the powers which had been negated under the Government of India Act have been restored. This view of mine is also supported by the decision of the Calcutta High Court in the case of - Bimala Prasad v. State of West Bengal 55 Cal W N 86, u/s 10 of the Special Judges Regulation the Special Judge is subordinate to the High Court. If the Special Judge is subordinate to us we can always exercise our revisional powers in correcting his orders. In our appellate jurisdiction conferred by Section 7(2) of the Regulation is included the revisional jurisdiction as well.

23. Much was made of the fact that the accused could not move for transfer of the case. This argument, in my opinion, cannot have much force, for it is only when a Special Judge passes a sentence that Section 7(2) of the Special Tribunals Regulation would be invoked and not otherwise. An application for transfer would, I expect, be made when the proceedings are pending before a Judge, and after the sentence, has been passed no question of a transfer of the case would arise. My view is that the power given to the High Court to transfer cases under the Criminal Procedure Code is left intact and has not been taken away or curtailed.

24. It was pointed out that the beneficial provisions in Section 302 of the Hyderabad Criminal Procedure Code relating to a further confirmation of sentences by other authorities had been expressly taken away by virtue of Section 8 of the Special Judges Regulation read with Section 7(2) of the Special Tribunals Regulation. Section 7(2) of the Special Tribunals Regulation says: "...no sentence of a Special Tribunal shall be subject to or submitted for confirmation by any authority whatsoever". Obviously, the state of confirmation of a sentence comes in only after a sentence is passed.

In the first place, the petitioners can have no grievance on this score for the question of confirmation of a sentence would arise only where the sentence passed is of imprisonment of more than 10 years or of transportation for life or of death. Section 20 of the Hyderabad Criminal Procedure Code enacts that

where the sentence passed is imprisonment of more than 10 years, such sentence shall not be executed until confirmation by the High Court. Likewise, where the sentence is one of transportation for life, the sentence shall not be executed until confirmed by the Government and where the sentence is one of death, the sentence can be executed only after H.E.H. the Nizam had given the sanction. In all cases where the sentences have been as mentioned above, the file should be submitted to the High Court u/s 302 of the Criminal Procedure Code. Undoubtedly there are safeguards provided for the matter being gone into by more than one authority. But those provisions cannot help the petitioners for in no case have the petitioners been sentenced to more than ten years imprisonment. It is well settled that no party who is not affected by any objectionable procedure can have any ground for complaint. The observations of Das J. in the case of - Ranning v. State of Saurashtra support this view. His Lordship observed: "In my opinion, the appellant can have no right to complain if he has not been aggrieved in any way by any unjust or arbitrary classification." - Kathi Raning Rawat Vs. The State of Saurashtra,

The cases are all before the High Court and they would be reviewed and the object of confirmation is very well fulfilled in these cases. Power of confirmation not having been provided for is therefore of no great consequence. I might herein refer to the observations of Brough J. in the case of - Jailal Sahu and Others Vs. Emperor,

By virtue of Sections 31(2) and 374 such a sentence so passed is of no effect until confirmed by the High Court. Section 3 make a no reference to confirmation, it might perhaps have been better if it had, but I do not think the omission is material. An appeal or application in revision does not follow automatically from a sentence, and, therefore, the right to appeal and the liability to review had to be expressly conferred. But under the Code what is generally known as "death reference" follows automatically on the passing of a death sentence by a Sessions Judge. I see no reason why the same consequence should not follow from the sentences which are to have effect as if they had been so passed by a Sessions Judge.

25. The next ground of attack as regards the validity of the Special Judges Regulation is that the selection of the cases to be tried by the Special Judge had been left to the unfettered discretion of the Chief Minister or by a person authorised by him in this behalf (vide Section 5 of the Regulation). It was, therefore, argued that this amounted to a delegation of the authority by the Legislature to the executive and such delegation was bad in law. A reading of Section 5 of the Regulation would make it clear that the Special Judge is empowered to try such offences of which the trial was pending before the Special Tribunal, as are made over to him for trial by the Chief Minister or by the Authority authorised by him, and secondly the Special Judge is also empowered to try such offences as may be made over to him by the Chief Minister after the commencement of this Regulation. This classification comes to this that all those

cases which were pending before the Special Tribunal, the Special Judge would be empowered to try, on their being transferred to him by the Chief Minister or one authorised by the Chief Minister in this behalf. In addition to the above class of cases the Special Judge is empowered to try such cases also which are sent to him by the Chief Minister or one authorised by him after the commencement of this Regulation.

The power given to the Government to send particular cases to a Special Court is not peculiar to the Special Judges Regulation now sought to be impugned but identical provisions are to be found in similar enactments, viz., the West Bengal Special Courts Act of 1950 and the Saurashtra State Public Safety Measures Ordinance of 1948 (as amended by the third amendment Ordinance of 1949). For a better elucidation and comparison of the particular provisions, I have put the relative sections in parallel columns:

West Bengal	Saurashtra	Ordinance	Hyderabad	Special Judge's
Regulation.	Courts Act.			

Section 5(1) A special Court shall try: such offences or shall try such offences or (a) such offences of which the trial was immediately before cases or classes of cases as 14th December 1949, pending as the State Government the Government may be general before a Special Tribunal deemed may, by general or special or special order in writing under Sub-section (2) of Section order in writing, direct. direct. 3 to have been dissolved on that date as are made over to him for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf; (b) such offences as are after the commencement of this Regulation made over to him by the for trial Chief Minister or by a person authorised by the Chief Minister in this behalf. A comparison of the relevant provisions in the akin enactments would show that the words used are identical. So far as the West Bengal Act and the Saurashtra Ordinance are concerned, the words are the same while, in the Hyderabad Special Judges Regulation, the words used are different, "The Chief Minister would transfer offences" and not particular cases. One cannot help remarking that the Regulation has been most inartistically drafted, why might say clumsily worded, but that would not by itself render the provisions of a statute invalid if it does not violate any established principle of law. It is not given to the Chief Minister or his nominee to pick out any individual case. The words of Section 5(1)(a) are "Such offences of which the trial was immediately before both December 1949 pending before a Special Tribunal". "Cases" are to be contradistinguished from "offences". If one is to go by the actual words used in the Regulation the Regulation cannot be regarded as discriminatory on the face of it. As observed by Das J. in - the Saurashtra Ordinance Case 1952 S C J 168 those words do not contemplate any particular offender or any particular accused in any particular case. "The Classification of offences by itself is not calculated to touch any individual as such 1952 S.C.J. 168. It therefore follows
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that in so far as Section 5(b) of the Hyd. Spl. Judges Regulation authorises the Chief Minister or his nominee to direct that certain offences be sent over to the Special Judge for being tried that provision cannot be regarded as being discriminatory and as such offending the principles underlying Article 14 of the Constitution.

26. The oft - advanced argument that the vesting of the authority in the executive by the legislature, in the matter as to what classes of offences were to be sent to the Special Judges was also bad, was also put forward by the learned Counsel for the petitioners. This argument, if at all it could be said to have had any force, cannot be sustained now in view of the decisions of the Privy Council and of the Supreme Court making it clear that it is no delegation of the power of the legislature but entrustment of the carrying out of the policy of the legislature. This question came up for decision before the Federal Court in connection with the Special Criminal Courts Ordinance 2 of 1942 and the Federal Court by a majority held that the Ordinance in so far it vested in the Executive, the power to send any case or group of cases to a Special Court, was open to the objection that there was in the executive an absolute and unfettered discretion without the policy or direction of the legislature as regards the way in which the power has to be exercised AIR 1943 36 (Federal Court) . This view did not find favour with their Lordships of the Privy Council when the case went up in appeal to the Privy Council and while negating the above objection their Lordships observed:

This is not delegated legislation at all. It is merely an example of the not uncommon legislative arrangement by which local application of the provision of a statute is determined by the judgment of a local body as to its necessity." AIR 1945 48 (Privy Council) at p. 51.

The practical position has been very well pointed out by Rowland J. in the case already referred to - AIR 1943 36 (Federal Court) although this view of the learned Judge was the minority view. The learned Judge expresses himself in these terms:

If indeed to pass that order u/s 5 of the Criminal Courts Ordinance is to legislate and if only the legislature can do it, then to validate such a trial as the trial of the respondents, the Governor - General ought to have passed a special ordinance enacting that Banwarilal Sharma and others be tried by the Special Magistrate for the offences with which they are charged. This is not the usual legislative practice in modern times. Where the legislature normally lays down the principle...which it is the duty of the executive authorities to carry out by passing the necessary orders.

The Supreme Court has laid down the principles relating to delegation of legislation in the President's reference made to the Supreme Court where their Lordships have held this would not amount to an illegal delegation of legislative power because the executive must be considered to be acting in a subordinate position, (Vide "In re Article 143 of the Constitution of India and Delhi Laws Act

1912, etc. AIR 1951 SC 332. This view has been further confirmed in a subsequent case of the Supreme Court, namely, the case of - Kathi Raning Rawat Vs. The State of Saurashtra, decided by the Supreme Court on Feb. 27, 1952 in which case Mukherjea J's, observations may be summarised as follows: The vesting of authority in the State Government by Ordinance to select offences for trial by Special Courts is not in any way unreasonable and does not offend against the equal protection clause in our Constitution " 1952 S.C.J. 168". I might herein quote the words of the Chief Justice of India in the case of the - The State of West Bengal Vs. Anwar Ali Sarkar, His Lordship said:

The discretion vested in the State Government in selecting cases for references to a special Court may not be subject to judicial review and may in that sense be absolute, but that is very different from saying that it was "intended" to be arbitrary.

27. I might straightaway say that it is settled law today that the fact that there is likelihood of sometimes the power given to the executive being abused would not make the law itself invalid. As I have already pointed out the Regulation, as it stands, does not empower the Chief Minister or his nominee to single out any particular individual and send his case to the special Judge for trial. The fact that there is a likelihood of the Executive misusing its powers cannot invalidate an enactment fair on the face of it. This proposition is further strengthened by the observations of the late Chief Justice of India (Kania C.J.), in the case of - Dr. N. B. Khare v. The State of Delhi. His Lordships' observations were to the following effect "abuse of the power given by law sometimes occurs but the validity of the law cannot be contested because of such apprehension" - Dr. N.E. Khare v. State of Delhi 1950 S.C.R. 519 at p. 520.

28. I have already indicated in the foregoing paragraph that the question of the procedure under the Special Judges Regulation being less advantageous than the one prescribed by the Criminal Procedure Code does not arise in these cases at all. It would be clear that none of the objectionable features which were pointed out by the counsel for the petitioners is such as to lead to a conclusion that the petitioners by reason of their having had to take the trial before the Special Judges were in a more disadvantageous position than other offenders who committed similar offences and were placed before the ordinary courts for trial. I would here quote Weaver from his Book on Constitutional Law. The learned author says:

Class Legislation is that which makes improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found." (Weaver's Constitutional Law page 397).

What is the particular privilege, I ask, which has been conferred on the individual

taking his trial before the ordinary court which these petitioners have been deprived of. Could it be said that there has been an intentional or purposeful discrimination?

29. In the view that I have taken, I hold that there has been no deviation from the established procedure in the trial of the case of the petitioners, and the trial cannot, therefore, be held to be invalid. These cases will now go before the Division Bench for hearing on the merits.

Mohd. Ahmed Ansari, J.

30. Ten appeals by the accused, two by the State against acquittals and three revision petitions for the enhancement of sentences, in all fifteen cases, have been referred to this Full Bench, because certain common and important legal issues are involved in their decisions. The main question is about the legality of the sentences by the Special Judges after the inauguration of the Constitution in case transferred to them for trials u/s & of the Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (No. 10 of 1359 Fasli), hereinafter referred to as "the Regulation", before January 25, 1950. The Regulation came into force from the date of its publication in the Jarida on Bahman 13, 1359 Fasli (December 13, 1949) and Section 3 terminates from" December 16, 1949, all Special Tribunals except the Fourth, which had earlier been constituted u/s 2 of the Special Tribunals Regulation (No. 5 of 1358 Fasli). Both these enactments provide special procedures for the trials of the offences or cases transferred to these special Courts and omit certain safeguards - allowed to the accused under the Hyderabad" Criminal Procedure Code. They also authorise delegation of the power of transfer to persons - other than the Chief Minister. The Notification (Home Department No. 10) relates to the - delegation u/ s 5 of the Regulation and was made on Bahman 17, 1359 Fasli (December 17, 1949), whereby all the Civil Administrators of the Districts were within their respective jurisdictions authorised to exercise the powers of the Chief Minister. Under it, the Civil Administrators of Karimnagar and Osmanabad Districts issued orders authorising the Special Judges appointed for the districts to try the cases before us. The relevant orders are not on the records of any of the appeals; nor were they published in the Jarida. The Advocate - General has, however, furnished us with a copy of the order by the Civil Administrator of Karimnagar in the Baquar Hussain's case and the Advocate of the accused has filed a certified copy of the order by the Civil Administrator of Osmanabad in Mohd. Hyder's and Quadri's appeals, which was given to Mohammad Hyder in the lower Court. They purport to have been made on January 20 and 23, 1950.

31. It is argued on behalf of the accused - appellants, who are six in number, that as the charge - sheets in all the cases from the Osmanabad District were received by the Special Judge after the inauguration of the Constitution of India and the main proceedings in the case before the Special Judge at Karimnagar started after such a date, the Regulation being discriminatory is violative of Article 14 of the Constitution, and void under Clause (J) of Article 13, so that the

appellants have been deprived" of their liberties according to procedure not established by law. Secondly, it has been argued that Section 5 of the Regulation authorised delegation to persons; but the Notification (Home Department No. 10) authorises all Civil Administrators and such a delegation to officials cannot be regarded as one to persons, hence it is bad in law. The third argument is that the Chief Minister or the persons authorised by him can under Sub-section (1) of Section 5 of the Regulation vest the Special Judges with the jurisdiction to try offences whose trials were immediately before December 15, 1949, pending before the Special Tribunals dissolved by Section 3, or such offences as were after the commencement of the Regulation made over to them; but the orders transferred particular cases of the appellants to the Special Judges, who thereby acquired no jurisdiction and the convictions in these circumstances are bad. It is further urged that no question of exercise of power under Sub-section (2) of Section 5 of the Regulation arises as the cases were not transferred from the ordinary Courts to the Special Judges. If the word "offences" used in Sub-section (1) of Section 5 be construed to mean "cases", as has been urged by the learned Advocate General, the first and the third arguments referred to above become closely linked and together raise the important constitutional issue as to whether the Regulation is violative of Article 14 of our Constitution. In - *Abdur Rahim v. Pinto* AIR 1951 Hyd. 11, a Full Bench of this Court, of which two of us were members, dealing with Sections of the Special Tribunals Regulation, had come to the conclusion that some of them were violative of Article 14; but as they were severable from the valid provisions of the enactment and did not operate in a manner substantially different to the ordinary Criminal Procedure, the trial of the accused in the case could proceed before the Fourth Special Tribunal. Since then, the Supreme Court has made important pronouncements in cases challenging the constitutionality of enactments relating to the special criminal procedures similar to those contained in the Regulation. In - *The State of West Bengal v. Anwar Ali* AIR 1952 S.C. 55, certain words in Section 5(1) of the West Bengal Special Courts Act were held by the majority of the Supreme Court to be void as they infringed the guarantee given by Article 14 of the Constitution. Then in the case of - *Raning Rawat v. The State of Saurashtra* 1952 S.C.J. 168, similar provisions in Section 11 of the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, No. 66 of 1949 were considered by the majority not to be invalid or "ultra vires". In the light of these authorities, we have to examine afresh the constitutionality of the Regulation as well as the binding character of the decision in - *Rahim's case*". If the Regulation be held to be based on no classification or one with no rational relation to its object and discriminatory, the convictions and sentences of the appellants, as well as the acquittals in the cases will have to be set aside.

32. Before dealing with the legal issues, certain relevant facts in each case should be given. These appeals may be classified according to the accused, who have filed them, and on this basis they can be divided into three sets. The first consists of four appeals by Mohammad Hyder, who was the First Taluqdar

(Collector) of the Osmanabad District immediately before the Police Action. In this group can also be included the appeal by the State against his acquittal in what is called the Opla Murder Case, as well as the three revision petitions for the enhancement of his sentences in what is called the Killari Dacoity Cases. The group is thus divisible into two parts: one consisting of the two appeals in the Opla Murder Case and the other of the three appeals and equal number of revision petitions in the Killari Dacoity Cases.

33. The First Information Report in the Opla Murder Case, dated Isfandar 24, 1358 Fasli (January 24, 1949), was filed before the District Magistrate of Osmanabad and alleges that the accused on April 29, 1948, when he was returning from the village Gadhi, caused twelve persons, who were proceeding with three cart loads of groundnuts from the village Opla within the Barsi enclave to Sholapur District, through a road in the Hyderabad State territory, to be arrested by the Pathans, accompanying him, took them to Osmanabad town and in the following night had them shot dead. The order-sheet of the Magistrate of Mehir 22, 1358 Fasli (August 22, 1949) mentions that the case shall be heard by the Special Tribunal; but the record does not appear to have been sent there. However, Exhibit 18, which is dated August 1949, and is a copy of the order by the Civil Administrator of Osmanabad, shows that the Officer had, in exercise of the powers vested in him by the Government Notification No. 28 of 7th Ardebehest 1358 Fasli (March 7, 1949), u/s 3 of the Special Tribunals Regulation, directed a list of cases to be sent for trial to the Special Tribunal "A". The Opla Murder case is the last but one in the list accompanying the order. No records of the Special Tribunal are available to show whether it ever proceeded with the trial of the cases. There are some initials on the first paper of the record of the case, which gives a list of the documents accompanying the charge-sheet and bears the date of August 29, 1949. The Advocate-General says that they are of the President of the Tribunal "A". The Tribunal appears to have proceeded no further when the next order of the transfer was made. There is no order of the authority on the record transferring the case to the Special Judge under the Regulation; but Mr. Peerbhoy in the course of his argument gave us a copy of an order by the Civil Administrator of Osmanabad, which is dated January 23, 1950. and since then the Advocate of the appellant has filed the certified copy of the order which reads as follows:

In exercise of the powers vested in me under Government Notification No. 10.... I, Capoor, Civil Administrator, Osmanabad, hereby direct that the following cases on the file of the Special Tribunal "A", which have been withdrawn from that Tribunal, shall be sent to the Court of the Special Judge, Gulbarga and Osmanabad, for trial according to law.

34. A list of twenty - eight cases follows, the Opla Murder case being No. 15. The Special Judge's order - sheet, however, shows that the records were received by him on February 1, 1950. The offences in the charge-sheet alleged to have been committed are under Sections 66, 243 and 330 of the Hyderabad Penal Code, the

one u/s 243 being under the Hyderabad Criminal Procedure Code exclusively triable by the Court of Sessions though without jury or the aid of assessors; but on committal to him. The Special Judge, as authorised by Section 6 of the Regulation, took cognizance of the case without any committal proceeding, tried it as a warrant case, and finding the appellant guilty of abducting in order to murder u/s 301 of the Hyderabad Penal Code, which offence is also exclusively triable by Sessions Court under the Hyderabad Criminal Procedure Code, sentenced him to undergo rigorous imprisonment for ten years, as well as pay a fine of Rs. 5,000/- or in default a further period of two years. He disbelieved the evidence of Ramchander, P.W. 25, about the order of shooting and acquitted the accused of the charge of murder. The accused has u/s 8 of the Regulation, which preserves and incorporates in the Regulation Section 7 of the Special Tribunals Regulation, filed the appeal against the sentence and the State has u/s 9 of the Regulation appealed against the acquittal.

35. The Killari Dacoity Cases in which Mohammad Hyder has filed three appeals and the State revision petitions comprise of three main cases. The allegations against the appellant in them are that a Police Station having been burnt, the appellant along with several other police officials visited Killari, a village in Latur Taluqa, within the Osmanabad district, for the purposes of searching it; he posted police pickets round the village, and the party accompanying him entered several houses of the residents; during the search valuables from some of the houses were taken away; and when complaints were made to the appellant he connived. Nine First Information Reports for taking of such valuables were filed on March 10 and 11, 1949 before the District Magistrate of Osmanabad, whose order - sheets of Amardad 22, 1358 Fasli (June 23, 1949) in all the cases show that the Civil Administrator of Osmanabad has written to him about the trials of the cases by the Special Tribunal; but records were sent to the Tribunal. It appears from the records of the cases that on 5th/7th September, 1949, the Civil Administrator of Osmanabad, had, in exercise of powers under the Notification directed the cases to be sent to the Special Tribunal "A" for trials; but the records of the Tribunal in the cases also are not available, and on the first papers in each case which contain the lists of the documents accompanying the charge - sheets, there are the same initials dated September 12, 1949, which are said to be that of the President of the Tribunal, After the passing of the Regulation, the Civil Administrator of Osmanabad on January 23, 1950, passed the order, which has been already referred to in connection with the Opla Murder Cases, and the numbers of the nine Killari cases in the list accompanying the order are from 17 to 25, The order - sheets of the Special Judge in all the cases, however, show that the records were received by him on February 1, 1950, and he tried them in three main groups, each consisting of three cases. The offences against the appellant in all the charge - sheets are of abetment of dacoity u/s 66 read with Section 330 of the Hyderabad Penal Code, which were under the Hyderabad Criminal Procedure Code triable by the Sessions Courts, as well as by the Magistrates. The Special Judge tried them as warrant cases and having found the

appellant guilty of the abetment sentenced him to two years" rigorous imprisonment and a fine of Rs. 5,000/- in the one, a year and six months in the second, and two years in the third, all the sentences were to run concurrently. Against these, the accused has filed three appeals and the Government the revision petition. The appellant because of the trials by the Special Judge has lost one right of appeal; for had he been tried by ordinary Magistrates he would have u/s 336 of the Hyderabad Criminal Procedure Code a right of appeal to the Sessions Court, and from the Sessions Judgment, a second appeal u/s 338 of the Code to the High Court.

36. Now, I come to the second group of appeals, which arise from the Apsinga Dacoity cases. It consists of two appeals by one Syed Mohd. Quadri, an ex - Tahsildar of Tuljapur, and three by other persons Revayya, Deoba and Pooniah. The accused have been convicted in two cases of the offence u/s 383 of the Hyderabad Penal Code, which corresponds to Section 454 of the Indian Penal Code and sentenced. Quadri has filed appeals in both the cases; but the others have appealed only in one. Mohd. Hyder was also charged in both the cases; but has been acquitted. Only one appeal in one of the cases has been filed by the State against acquittals of the appellants, as well as of Mohd. Hyder of the offence of dacoity u/s 330 of the Hyderabad Penal Code. Thus this group consists of six appeals. The facts relating to these cases are that Apsinga is a village situated in Tuljapur Tahsil, within Osmanabad District, and on Amardad 20, 1357 Fasli (June 20, 1948), people from the then adjoining Indian territory came to take back their cattle which have been lifted by the Razaekars of the village. This caused fright among the residents of the village and about twelve persons fled from the place. The appellant Quadri with Mohd. Hyder and other Police Officers reached the village on June 22, 1948, and houses of some residents were looted on the plea that the properties left by the absent persons were to be removed to the Tahsil at Tuljapur for safe custody. On Farwardi 4, 1358 Fasli (February 4, 1949), six First Information Reports relating to the taking away of such things from the houses of six residents were filed before the District Magistrate of Osmanabad, On the record of each case, there are copies of the order of the Civil Administrator of Osmanabad, dated August 9, 1949, directing these cases to be tried by the Special Tribunal "A"; but like the earlier case, no records of the Tribunal are available; and on the first papers of each case which mention the charge - sheets and the list of the papers accompanying them are the initials with date of August 29, 1949. After the Regulation and according to the copy furnished to us by the Advocate for the accused, the Civil Administrator of Osmanabad on January 23, 1950, directed the Special Judge to try the cases and their numbers in the list of cases accompanying the order are the first six. The charge - sheets filed in these cases are for the offences u/s 66 read with Section 330 of the Hyderabad Penal Code and were received by the Special Judge on February 1, 1950, and are against seventeen accused, all of them except six being shown as absconding. The six cases were tried under the Regulation in two groups, each consisting of three charge - sheets and in both the Special Judge

acquitted all the accused of the offences of dacoity; but held the four accused, who have appealed, guilty of the offence u/s 383 of the Hyderabad Penal Code. He sentenced Quadri in each group to two years" rigorous imprisonment with a fine of Rs. 2000 and in default to a further period of six months imprisonment & directed the punishments in both the cases to run - concurrently. By their trials under the Regulation the appellants have lost one right of appeal. This ends all the cases from the Osmanabad District.

37. The last main group consists of only one appeal by Baquer Hussain, who is an ex - Tahluqdar of Karimnagar district. The First Information Report in his case is dated Thir 16, 1358 Fasli (May 16, 1949) and alleges that on September 10, 1947, he along with a party o? police visited a village in Sircilla Taluq, Karimnagar District, where he compelled the Mali-patel to take down the National Flag from a tree and on his expressing inability to climb caused him to be beaten by persons accompanying him, he further ordered the police to enter several houses in the village for purposes of search, whereupon considerable properties were taken away. The Information was filed before, the District Magistrate; but on the record of the case is a copy of an order by the Civil Administrator of Karimnagar, directing the case to be tried in the Court of the Special Tribunal "A". There is nothing to show how far the Tribunal proceeded with the case, or by what order the case was transferred to the Special Tribunal IX; for on the charge-sheet in the case, which is for the offences under Sections 270 and 288 of the Hyderabad Penal Code corresponding to Sections 330 and 348 of the Penal Code, there is an endorsement of November 1949, by one Shabbir, who was a Member of the Special Tribunal No. IX, directing the case to be taken on file and posted for November 29, 1949, Again, there is nothing further on the record to show how far this Tribunal proceeded with the case. The next important date is of January 15, 1950, when the order-sheet of the Special Judge for Karimnagar directs the case to be taken on record and posted for January 31, 1950. This date cannot be taken as having begun the proceeding, for according to the copy of the letter of the Civil Administrator of Karimnagar. which the Advocate-General has filed before us and which is dated January 20, 1950, the case along with others was sent from the Special Tribunal IX to the District Magistrate for trials by the Special Judge for Karimnagar and Warangal districts, The order-sheet of the Special Judge for January 31, 1950, says that the list of witnesses is long and the Government Prosecutor is to scrutinise and file a list on February 18, 1950. This date, in my opinion, should be deemed to have begun the proceeding against the accused and it is after the inauguration of the Constitution. The Special Judge convicted the appellant of offences under Sections 270, and 288 read with Section 71 of the Hyderabad Penal Code and sentenced him to rigorous imprisonment for four years and two years. He also found him guilty u/s 430 of the Hyderabad Penal Code and passed a sentence of three years, all these sentences were to run concurrently. The accused has filed the appeal against the aforesaid sentences. I may mention here that the offence under. Section 270 of the Hyderabad Penal Code was under the Hyderabad Criminal Procedure Code

exclusively triable by the Sessions Court; but the trial under the Regulation has been without any committal.

38. I will now summarise the Important "facts which emerge from the above narration:

1. The Civil Administrators of Osmanabad, and Karimnagar Districts directed specific cases to be tried by the Special Tribunal "A".
2. There is no order of any competent authority vesting the Special Tribunal IX with jurisdiction to try the case of Baquer Hussain.
3. The orders of the Civil Administrators of Karimnagar and Osmanabad of January 20, and 23, 1950, transferred specific cases - from the Special Tribunals to the Special Judges without indicating under which, Sub-sections of Section 5 of the Regulation they were making the orders.
4. The list in the order of January 23, 1950, by the Civil Administrator of Osmanabad contains cases against other accused also whose numbers in the list are 16, 26, 27 and 28 and the grounds for this inclusion with the appellant's cases are not clear.
5. Although, the particular orders are of dates prior to the coming of the Constitution, the proceedings in ail the cases began and ended after the inauguration.
6. There is no affidavit by any responsible person showing the circumstances in, which the Regulation was passed or the particular orders were made.

39. Before dealing with the main legal issue, I would consider the argument of the learned Advocate-General that the orders of the Civil Administrators having been made - before the coming into force of the Constitution, the proceedings initiated thereupon are not affected by the inauguration, In support of this argument, he relies on the case of - Keshavan Madhava Menon Vs. The State of Bombay, , where the majority of the Judges of the Supreme Court have held that a prosecution started against a person in respect of a pamphlet published in September, 1949, for an offence u/s 18(1) of the Indian Press (Emergency Powers) Act was not void under Article 13(1) of the Constitution after the 26th January 1950, and the Article has no retrospective - operation. The case in my opinion decides the effect of the Article on the substantive liability of a person; but does not obliterate the demarcation of the statutes that deal with substantive rights from those dealing with procedural matters. It does not reverse the authorities which hold that retrospective construction has no application to the enactments which deal with procedure and practice of the Courts. If the enforcement of a new procedural statute affects pending criminal proceedings, much more should the inauguration of the guarantee safeguarding against discriminatory treatment. I will now cite two passages from the judgments of the Supreme Court in the case to show that their Lordships were dealing with questions of substantive law alone.

40. Das J. dealing with the prospective, operation of the Article observes at page 186:

There is no fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts are concerned, the law exists notwithstanding that it does not exist with respect to the future exercise of fundamental rights....

Then Mahajan J. at page 194 says:

Besides the rule of construction which applies to repealed statutes or to temporary statutes our attention was not drawn to any other rule of construction under which a person who commits an offence against an Act during its existence as a law becomes unpunishable on its termination. Both on considerations of convenience and also on grounds of justice and reason, I am inclined to think that penalties incurred, under a law in force at the time when the act was committed would survive its extinction so that persons who violate its provisions might afterwards be punished.

41. These observations do not over - rule the general proposition of there being no vested right in procedural matter or establish a right in the State of depriving a person of his liberty according to procedure repealed by the Constitution as discriminatory. Before the Special Judge took cognizance of the cases or started proceeding in. the one from Karimnager, the Constitution had come into force with the guarantee of equal protection of the laws and the appellants before us on those dates could well urge that they have acquired the fundamental rights of not being subjected to discriminatory treatments. I am fortified in this view by the fact that the Notification by the West Bengal State in the - The State of West Bengal Vs. Anwar Ali Sarkar, was on January 25, 1950, yet no argument was raised either before the Calcutta High Court or in the Supreme Court about the proceedings in that case being unaffected by the guarantee contained in Article 14.

42. It is true that in the majority judgment of - Keshavan Madhava Menon Vs. The State of Bombay, it is said that such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution, The learned Advocate-General relying on the above passage has argued that proceedings commenced before the Constitution came into force are in no way affected by the inauguration. But then the Supreme Court in the recent case of - Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, have held that further criminal proceedings under the Bombay Public Security Measures Act started prior to the coming into force of the Constitution were bad after the inauguration of the Constitution as they were discriminatory. In the case, charge - sheets for offences under Sections 392, 394, 397, 302 and 307 read with Section 34 of the Indian Penal Code along with Section 19(e) of the Arms Act and Section 68(1) of the Bombay District Police Act were tried by the Special Court under a Notification of August 6. 1949, which was made in exercise of the

powers conferred on the Government of Bombay by Section 12 of the Act. On January 13, 1950, the Special Judge consolidated the two cases and recorded evidence of seventeen witnesses upto January 25, 1950. Thereafter the hearings of the cases proceeded before the Special Judge and after the conclusion of the arguments, the judgments were on March 13, 1950, delivered holding the appellants in the cases guilty of murders and sentencing them to death. The Bombay High Court rejected their appeals and the cases came to the Supreme Court on the constitutional question of how far the trial was violative of the equal guarantee article and therefore void. Mr. Justice Das delivering the majority judgment of the Supreme Court has held firstly that the provisions of the Act being discriminatory were violative of the guarantee; secondly that the parts of the proceedings under the Act which were after January 26, 1950, were void as they infringed the guarantee and consequently the trials were bad. At page 243 of the report, he rejects the argument about Article 13 not affecting discriminatory proceedings after the Constitution:

As the act was valid in its entirety before the date of the Constitution, that part of the proceedings before the Special Judge, which, upto that date, had been regulated by this special procedure cannot be questioned, however discriminatory it may have been, but if the discriminatory proceeding is continued after the date of the Constitution surely the accused person may legitimately ask: "Why am I today being treated differently from other persons accused of similar offences in respect of procedure?"

43. It is stated in Maxwell's Interpretation of Statutes, 9th Edition, page 232:

No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode.

If in the absence of any such provision to the contrary no person has a vested right in procedure, it must follow as a corollary that nobody has a vested liability in matters of procedure in the absence of any such provision to the contrary. If this is the position when the lower Court's procedure is altered by a Statute, then how the position could be different when the Act prescribing the discriminatory procedure becomes void by reason of its repugnancy to the equal protection Clause of the Constitution? Although the substantive rights and liabilities secured or accrued before the date of the Constitution remained enforceable as held in - Keshavan Madhava Menon Vs. The State of Bombay, nobody can claim after that date that those rights and liabilities must be enforced under that particular procedure although it has since that day come into conflict with the fundamental rights of equal protection of laws guaranteed by Article 14. Then, the learned Judge at page 244 says:

It is, therefore, clear that in this case the discrimination continued after the Constitution came into force and such continuation of the application of the

discriminatory procedure to their cases after the date of the Constitution constituted a breach of their fundamental right guaranteed by Article 14 and being inconsistent with the provisions of that Article the special procedure became void under Article 13 and as there is no vested right or liability in matters of procedure the appellants are entitled to be tried according to the ordinary procedure after the date of the Constitution.

44. In view of this authoritative pronouncement by the Supreme Court, the argument of the learned Advocate-General that the inauguration of the Constitution does not aspect pending criminal proceedings fails, and I shall now proceed to deal with the provisions of the Regulation in order to see how far they are violative of the guarantee contained in Article 14.

45. The guarantee contained in Article 14 means that persons in like circumstances must have equal rights and be under similar liabilities; the privileges of some so situated must not be greater; nor the burden of others heavier. The emphasis is on persons in similar situation, for the guarantee does not mean Identical laws for all persons however different their circumstances may be. The Article does not exclude classification of persons and things In substantially different circumstances, provided the relation between the classification and the object of the particular enactment be reasonable and just. Whenever any enactment is challenged as infringing the fundamental right of the equality before the laws, a test generally applied to ascertain whether the enactment is constitutional is to find out whether it is based on some rational classification. Judicial opinions have differed on the correctness of applying this test to every enactment or about its being sound. In the two pronouncements of the Supreme Court referred to above, His Lordship the Chief Justice of India has held that the test of reasonableness of classification comes into question only where a special legislation affecting a class of persons is challenged, that an enactment based on discretion for the speedier trial of cases is constitutional and such discretion the State is expected to exercise honestly and reasonably. Mr. Justice Bose has also rejected this test of rational classification for determining whether a particular enactment is violative of the guarantee, and has in both the cases applied the test of differentiation proving unsatisfactory to the social conscience of a sovereign democratic republic. In the case of - State of West Bengal v. Anwar Ali 1952 S.C.J 55, he has at page 98 observed as follows:

What I am concerned to see is not whether there is absolute equality in any academical sense of the term but whether the collective conscience of a sovereign democratic republic can regard the impugned law, contrasted with the ordinary law of the land, as the sort of substantially equal treatment which men of resolute minds and unbiassed views can regard as right and proper in a democracy of the kind we have proclaimed ourselves to be. What I have to determine is whether the differentiation made offends what I may call the social conscience of a sovereign democratic republic.

The same view he has maintained in the other case of - Raning Rawat v. The

State of Baurashtra 1952 S.C.J 168, where he repeats at page 191:

As I explained in my judgment in the - State of West Bengal v. Anwar Ali I prefer not to base my decision on the classification test. For the reasons given there I am of opinion that the differentiation here travels beyond bounds which are legitimate. It is true the points of differentiation are not as numerous here as in the other case but the ones which remain are, in my judgment, of a substantial character and cut deep enough to attract the equality clauses in Article 14....

46. The majority of the other learned Judges in both the cases from Bengal and Saurashtra are, however, of the opinion that the test of rational classification is a satisfactory one and should be applied for ascertaining constitutionality of any impugned legislation, I shall now cite passages from their judgments referring to the pages of the Supreme Court Journal. Mr. Justice Fazl Ali in the - West Bengal case 1952 SCJ 55 at page 66 says:

...One of these principles is that Article 14 is designed to protect all persons placed in similar circumstances against legislative, discrimination, and if the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a well denned class, it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons.

5. There is nothing sacred or sacrosanct about the test of reasonable classification, but it has undoubtedly proved to be a useful basis for meeting attacks on laws and official acts on the ground of infringement of the equality principle.

6. It follows from the two foregoing paragraphs that one of the ways in which the impugned Act can be saved is to show that it is based on a reasonable classification of the persons to whom or the offences in respect of which the procedure laid down in it is to apply, and hence it is necessary to ascertain whether it is actually based on such a classification.

In the case from Saurashtra he observes at page 175:

I think that a distinction should be drawn between "discrimination without reason" & "discrimination with reason". The whole doctrine of classification is based on this discrimination and on the well - known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects so that the question of unequal treatment does not really arise as between persons governed by different conditions and different set of circumstances....

In "the Bengal case", Mr. Justice Mahajan deals with the test at page 70:

By the process of classification the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to

produce some inequality; but if a law deals with the liberties of a number of well - defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. The classification permissible, however, must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification thus means segregation, in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis & does not mean herding together of certain persons and classes arbitrarily....

...The mere fact of classification is not sufficient to relieve a Statute from the reach of the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection.

In the Saurashtra case 1952 SCJ 168 he says at p. 177:

Section 11 of the Ordinance, like Section 5(1) of the West Bengal Act, suggests no reasonable basis or classification either in respect of offences or in respect of cases.

Then, Mr. Justice Mukherjea in the earlier case has held at page 74:

...This brings in the question of classification. As there is no infringement of the equal protection rule, if the law deals alike with all of a certain class, the Legislature has the undoubted right of classifying persons and placing those whose conditions are substantially similar under the same rule of law, while applying different rules to persons differently situated. It is said that the entire problem under the equal protection clause is one of classification or of drawing lines. In making the classification the Legislature cannot - certainly be expected to provide "abstract symmetry". It can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even "degrees of evil" but the classification should never be arbitrary, artificial or evasive. It must rest always upon real and substantial distinction bearing a reasonable and just relation to the thing in respect to which the classification is made; and classification made without any reasonable basis should be regarded as invalid.

In the later case, he says at page 183:

...The question is, on what basis is the classification to be made? If it depends entirely upon the pleasure of the State Government to make any classification it likes, without any guiding principle at all, it cannot certainly be a proper classification, which requires that a reasonable relation must exist between the classification and the objective that the legislation has in view. On the other hand, if the Legislature indicates a definite objective and the discretion has been vested in the State Government as a means of achieving that object, the law

itself, as I have said above, cannot be held to be discriminatory, though the action of the State Government may be condemned if it offends against the equal protection clause, by making an arbitrary selection....

In - The State of West Bengal Vs. Anwar Ali Sarkar, Mr. Justice Das at page 82 deals more elaborately with the test:

All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment, and, therefore, of the protecting clause has been construed as a guarantee against the discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different basis. It may be geographical or according to the objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.

In the other case, he, at page 188, reiterates the necessity of these conditions:

It is now well - established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) 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 (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act.

Mr. Justice Chandrasekhara Aiyar in the Bengal case approves the propositions laid down by Mr. Justice Fazl Ali in the earlier case of the - State of Bombay v. F.N. Balsara for at page 90 of the Journal he observes:

The seven principles formulated by Fazl Ali J. are as follows:

...(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis....

Later in this judgment, he says at page 91:

...Whether the classification, if any, is reasonable or arbitrary, or is substantial or unreal, has to be adjudicated upon by the Courts and the decision must turn more on one's commonsense than on over - refined legal distinctions or subtleties....

In the other case, he holds at page 191:

...This by itself indicates no classification, as the object is a general one, which has to be kept in view by every enlightened Government or system of administration 4....

47. From the above citations, it is clear that the majority of the learned Judges in both the cases adhere to the test of reasonable classification as a good one for ascertaining whether an impugned Act is obnoxious to the guarantee of the equality before the laws and that the test covers three things: a reasonable differentia between the persons and things governed by the impugned Act and those not covered, a definite objective for enacting the law and a nexus between the two which must be just and reasonable. There is no difference in these judgments of the two cases about the classification being real, or the distinction bearing a reasonable relation to the object sought to be attained. There is also no difference about the object being definite. Opinions may have differed as to the sources from which the objects of an enactment are to be gathered & in the case from Saurashtra, it has been held by the majority that the preamble, the whole Act and the surrounding circumstances can be looked into for the purpose of ascertaining the object. Thus in the case, Mr. Justice Fazl Ali at page 175 of the Supreme Court Journal observes:

...It was not disputed before us that the preamble of the original ordinance would govern the amending Ordinance also, and the object of the promulgating the subsequent Ordinance was the same as the object of promulgating the original Ordinance. Once this is appreciated, it is easy to see that there is something in the Ordinance itself to guide the State Government to apply the special procedure not to any and every case but only to those cases or offences which have a rational relation to or connection with the main object and purpose of the Ordinance and which for that reason become a class by themselves requiring to be dealt with on a special footing. The clear recital of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purposes of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquility....

In the same case, Mr. Justice Mukherjea at page 182 observes:

In my opinion, if the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the Statute upon a body of administrators or officers to make selective application of the law to

certain classes or groups of persons, the Statute itself cannot be condemned.... On the other hand, if the Statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the Statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied....

Again he observes at page 183:

...Ordinance is identically the same for which the earlier Ordinance was passed, and the preamble to the later, taken along with the surrounding circumstances, discloses a definite legislative policy which has been sought to be effectuated by the different provisions contained in the enactment....

Also Mr. Justice Das at page 189 says:

I have no doubt in my mind that the surrounding circumstances and the special features mentioned in the affidavit referred to above furnish a very cogent and reasonable basis of classification, for they do clearly distinguish these offences from similar or even same species of offences committed elsewhere & under ordinary circumstances.

It is obvious that enactments with similar provisions may be constitutional or otherwise, as the object of the legislation is definite or vague. The Bengal Act was held bad because the object of the speedier trial was considered to be a vague one.

Mr. Justice Fazl Ali explaining the decision in the latter case at page 175 observes:

The mere mention of speedier trial as the object of the Act did not cure the defect because the expression "speedier trial" standing by itself provided no rational basis of classification.

So also Mr. Justice Mukherjea at page 182 observes:

I would be inclined to think that the West Bengal case, which we have decided already, comes within the purview of this principle, as the desirability of "speedier trials", which is hinted at in the preamble to the West Bengal Act, is too vague, elusive and uncertain a thing to amount to an enunciation of a definite policy or objective on the basis of which any proper classification could be made.

Mr. Justice Mahajan also held in the Bengal case the "speedier trial" as too vague a ground for classification and so did Mr. Justice Chandrasekhara Aiyer, for at page 91, he observes:

The Attorney - General argued that if the principle of classification has to be applied as a necessary test, there is a classification in the impugned Act as it says that it is intended to provide for the speedier trial of certain offences; and in the opinion of the Legislature certain offences may require more expeditious trial than other offences and this was a good enough classification. But as speedy administration of justice, especially in the field of the law of crimes, is a

necessary characteristic of every civilised Government, there is not much point in stating that there is a class of offences that requires such speedy trial. Of course, there may be certain offences whose trial requires priority over the rest and quick progress, owing to their frequent occurrence, grave danger to public peace or tranquility, and any other special features that may be prevalent at a particular time in a specified area. And when it is intended to provide that they should be tried more speedily than other offences, requiring in certain respects a departure from the procedure prescribed for the general class of offences, it is but reasonable to expect the legislature to indicate the basis for any such classification. If the Act does not state what exactly are the offences which in its opinion need a speedier trial and why it is so considered, a mere statement in general words of the object sought to be achieved, as we find in this case, is of no avail because the classification, if any, is elusive or evasive.

48. I am therefore of opinion that speedier trial by itself cannot be a ground for classification, and it has to be ascertained from the provisions of the Regulation as well as the other circumstances what was the object of passing the Regulation and the nexus between the differentia and the object, i.e., whether the nexus is just and reasonable.

49. At the time of the passing of the Regulation, there existed a general procedure for the trials of criminal cases under the Hyderabad Criminal Procedure Code and a special one for the Special Courts under the Special Tribunals Regulation of 1358 Fasli (1948 - 1949). According to the former, the trials of offences were grouped like the parent Indian Criminal Procedure Code, into four classes. One set at provisions related to summary trials, another to summons cases, a third to warrant and a fourth to trial by a Court of Sessions; but without jury except in trials before the High Court or without assessors. The classification was based according to the gravity of the offences. Then the Special Tribunals Regulation (which was passed after the Police Action) authorised constitution of Tribunals consisting of three Members and vested them with jurisdiction of trying offences or class of offences which the Military Governor by general or special order directed. It also vested jurisdiction in them to try any case transferred to them by the Military Governor or persons authorised on his behalf. These Tribunals were authorised to take cognizance of the offence without committal, record only a memorandum of the substance of the deposition of each witness, to follow the procedure for summary trials; but for recorded reasons to adopt that for the trial of warrant cases. Appeals lay against sentences or acquittals to the High Court; but the powers of revision and transfer of the High Court were excluded. The object of passing the Special Tribunals Regulation is not clear, for its preamble just says; Whereas it is expedient to constitute Special Tribunals it is hereby enacted as follows". It may have been to provide for the speedier trials of offences or it may have been for the trials of offences involving the maintenance of public order. There is to my mind no clear indication in the Special Tribunals Regulation itself for what purposes it was enacted. The Advocate General has referred us to the Notification No. 80 of 1358 Fasli, which

specified the offences that were made triable by the Tribunal and also to another Notification No. 86 of 1358 Fasli, which modified the offences so triable; but both were cancelled by another Notification No. 27 of 1358 Fasli, so that there were no offences or class of offences triable by the Special Tribunals to the exclusion of the ordinary Courts on the date of the termination of the Special Tribunals. They were, however, cases which had been directed to be tried by the Special Tribunals, and it may be argued that they formed a class when the Regulation was passed.

50. But the preamble of the Regulation is extremely unsatisfactory. It reads as follows:

Whereas it is expedient to provide for the termination of all save one of the Special Tribunals constituted under the Special Tribunals Regulation (No. V of 1358 Fasli) and consequently upon such termination to provide for the appointment, power and procedure of Special Judges.

From this preamble the object of the Regulation cannot be construed to be one for the trials of cases pending before the abolished Tribunals, for that would not be consistent with the provisions contained in Section 5(1)(b) and (2) of the Regulation, nor with the discretion given "to the Chief Minister or persons authorised by him by the use of words "such...as" in Section 5(1)(a). The entire Section reads as follows:

5. (1) Every Special Judge shall try -

(a) such offences of which the trial was immediately before the 15th December, 1949, pending before a Special Tribunal deemed under Sub-section (2) of Section 3 to have been dissolved on that date as are made over to him for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf.

(b) such offences as are after the commencement of this Regulation made over to him for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf.

(2) The Chief Minister or a person authorised by him in this behalf may transfer any case from one Special Judge to another Special Judge or from a Special Judge to a court constituted under the Code or from such court to a Special Judge.

51. Although Section 5(1)(a) relates to the offences whose trials were pending before the Tribunals prior to their dissolutions, the fact is that after March 7, 1949, there was no general Notification indicating the offences exclusively triable by the Tribunals. In these circumstances* there existed no distinction between the offences triable by the Tribunals and those by the ordinary Courts. Assuming that offences in this Sub-section mean particular offences indicated in the particular orders, still all of them would not be triable by the Special Judges; but only those whose trials were pending before the Tribunals when they were terminated. On what basis has this distinction been made? Not on the ground of

the special circumstances which caused the orders for trials by Special Tribunals, for that would include all offences so triable irrespective of whether the trials had begun before the Tribunal. If it be said that offences whose trials had begun before the Special Tribunals formed a class, then the words "such...as are made by the Chief Minister" etc., would still exclude some of them and the exclusion would be at the uncontrolled discretion of the authority concerned, there being no clear word in the Sub-section to guide the exercise of the discretion. The selection may be made for the purposes of speedier trial. Assuming the word "offences" in this Sub-section 5(1)(a) means cases, as contended by the Advocate - General, and the object to provide for the Special Judges to try the cases whose trials were pending before the Special Tribunals such cases forming a class by themselves, still the words "such...as are made over to the Special Judges" in the Sub-section vest discretion in the Chief Minister or his delegate to select some of them without any indication of the principle on which he was to select them.

52. Section 5(1)(b) provides for the trial of offences after the commencement of the Regulation as are made over to the Special Judges. If the offences, or cases before the Special Tribunals formed a class by themselves and the object was to provide for their trial, what is the relation of this Sub-section to the object of the Regulation? This classification relates to the offences or cases after the commencement of the Regulation and would be without any rational relation to the object of the Regulation providing for pending cases. If the objective of the Regulation be one for speedier trial that would be of no avail, for that is a vague basis of classification according to the decision of the Supreme Court in - *The State of West Bengal Vs. Anwar Ali Sarkar*, On what basis would the Civil Administrators exercise the discretion, which is vested in them by the use of the words "such...as are made over?" Not on the correspondence between the High Court and the Government at the time when the Regulation was being prepared, for there are no indications of any directive being issued according to them. Indeed, the Regulation before me is of the type of legislation to which Mr. Justice Mukherjea refers in - *the Saurashtra case* 1952 SCJ 168 at page 182:

...On the other hand, if the statute it - sell does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on. the face of it to be discriminatory irrespective of the way in which it is applied.

53. Reading Sub-section (1) of Section 5 along with the preamble and other sections, I am afraid it is open to the criticism of vesting power of selection of offences or cases in the executive at its pleasure without indication of guiding principle in the Regulation itself. The accused whose cases are transferred to the Special Judges in these circumstances can complain, if the procedure for their trials under the Regulation be substantially different to the ordinary one.

54. The procedure for trials by the Special Judges are contained in Sections 6, 7, 8 and 10. Section 6 authorises taking of cognizance of offences without the

accused being committed for trial and following of the procedure for warrant cases in such trials. The Judge u/s 7 has all the powers of a Sessions Court and then by Section 8, the provisions of Section 7 of the Special Tribunals Regulation which related to the appeal from the Special Tribunals are made part of the Regulation. It is obvious that the procedure under the Regulation is discriminatory. To begin with committal proceedings necessary for every offence triable by Sessions Court under the Hyderabad Criminal Procedure Code are excluded. It was argued before us that the case of - Abur Rahim v. Pinto AIR 1951 Hyd. 11 is an authority against the view I am now taking, for, in that case, I came to the conclusion that the absence of committal proceedings under the Hyderabad Code did not amount to any substantial variation, and that the sections of the Bengal Special Courts Act are contrasted with the provisions of the Indian Criminal Procedure Code, which are different to the Hyderabad Code. Now - Rahim's case" is still a good authority, so far as it lays that in order to make an enactment obnoxious to Article 14, it must create substantial inequality; but the meaning of substantial inequality has since then been explained in two judgments of - the The State of West Bengal Vs. Anwar Ali Sarkar, Mr. Justice Mukherjea in his judgment of the case observes at page 77:

The first difference is that made in Section 6 of the Act which lays down that the Special Court may take cognizance of an offence without the accused being committed to it for trial, and that in trying the accused it has to follow the procedure for trial of warrant cases by Magistrates. It is urged by the Attorney - General that the elimination of the committal proceedings is a matter of no importance and that the warrant procedure, which the Special Court has got to follow, affords a scope for a preliminary examination of the evidence against the accused before a charge is framed. It cannot be denied that there is a difference between the two proceedings. In a warrant case the entire proceeding is before the same Magistrate and the - same Officer who frames the charge hears, the case finally. In a Sessions case, on the other hand, the trial is actually before another Judge, who was not connected with, the earlier proceedings. It is also clear that after the committal and before the Sessions Judge actually hears the case, there is generally a large interval of time which gives the accused ample opportunity of preparing his defence, he being" acquainted beforehand with the entire evidence that the prosecution wants to adduce against him. He cannot have the same advantage in a warrant case even if an adjournment is granted by the - Magistrate after the charge is framed.

Then Mr. Justice Das at page 84 says:

The far - reaching effect of the elimination of the committal proceedings cannot possibly be ignored merely by stating that the warrant procedure under the Code in a way also involves a committal by the trial Magistrate namely to himself, for the warrant procedure minimises the chances of the prosecution - being thrown out at the preliminary stage, as may be done by the Committing Magistrate, deprives the accused person of the opportunity of knowing well in advance of the

actual trial before the Sessions Court, the ease sought to be made against him and the evidence in support of it and, what is of the utmost importance of the benefit of a trial before and the decision of a different and independent mind.

55. I admit that when I held committal proceedings under the Hyderabad Code unimportant, all the reasonings given above were not present to my mind and in view of the observations referred to above, I am now of the opinion that committal proceedings even under the Hyderabad Code are of importance. Indeed, Mr. Justice Das in his judgment of the - *The State of West Bengal Vs. Anwar Ali Sarkar*, lays down a general test, about what must be regarded; as not amounting to material difference. At page 83 he says:

The difference brought about by a statute may be of such a trivial, unsubstantial and illusory nature that that circumstance alone may be regarded as cogent ground for holding that the statute has not discriminated at all and that no inequality has in fact been created.

Judged by this test, the taking of cognizance of offences without committal proceedings u/s 6 of the Regulation or exclusion of one right of appeal u/s 8 cannot be regarded as trivial or innocuous. The authorities to the contrary cannot now be held as laying down correct law on these points.

56. Then it was urged that the trial in the Opla Murder Case would not be bad as the subsequent inauguration of the Constitution does not affect the earlier vesting order u/s 6 and the other provisions of the Regulation relating to the procedure are not discriminatory. It was argued that the case of - *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, is distinguishable, as the accused were under the Bombay Act deprived of the right of moving for transfer, of revision, of securing the attendance of witnesses, of evidence being recorded in the ordinary manner, none of which have been taken away by the Regulation. I hold that this argument should not be accepted. The broad proposition laid down by the aforesaid case is that the continuation after the Constitution of any substantial discriminatory procedure without rational classification is obnoxious to the guarantee of the equality before the laws. The absence of the particular provisions in a given case is not of so much importance as the presence of some substantial discriminatory provisions is. The proceeding before the Special Judge in the case began on February 1, 1950, and the warrant procedure has deprived the accused of the benefit of trial and decision by a different and independent mind. Then the chances of the prosecution being thrown out at the preliminary stages have been minimised. Both of these distinctions have been held by the Supreme Court to be important. Again the power of transfer is by Sub-section (2) of Section 5 of the Regulation reserved to the Chief Minister or to persons authorised by him, which means that the right to move for transfer under the Hyderabad Criminal Procedure Code has been taken away, especially when that Code has been made subject to the provisions of the Regulation by Section 10. These are substantial discriminatory provisions which render the continuation of the trial in the Opla Murder Case or in the Baquer

Hussain's case after the inauguration of the Constitution obnoxious to the guarantee of equality before the laws.

Apart from these, there are cases before us where the accused have lost one right of appeal, because of Section 8 of the Regulation, which incorporates Section 7 of the Special Tribunals Regulation and so excludes the operations of the Section of the Hyderabad Criminal Procedure Code which gives a right of appeal from sentences of Magistrates to the Sessions Courts. This loss of one appeal cannot be regarded as innocuous or trivial. The part of Section 8, which becomes void, is so inextricably woven with the general right of appeal to the accused that it is not severable from the rest and consequently the whole of Section 8 becomes void. Then it cannot be said that the legislator intended the sentences of Special Judges to be appealable to two Courts, or that after its deletion the operation of the Regulation is the same. Therefore, the entire Regulation becomes void. Same is the position when Section 6 which relates to committal is deleted.

57. The clear preamble and Notification about the offences in the case of - Kathi Raning Rawat Vs. The State of Saurashtra, make the case distinguishable from those before me. Here neither the preamble is clear, nor there is any general Notification relating to offences or class of cases, nor any affidavit has been filed, nor any indication of the principle according to which the discretion vested in the authorities is to be exercised. Consequently the Regulation is violative of the guarantee" given by Article 14 and the trials of the accused cannot be considered to be one according to the procedure established by law and must be set aside.

58. Had I been of the opinion that the Notification (Home Department No. 10) authorising the Civil Administrators of all the Districts within the area to exercise the powers of the Chief Minister is bad, as it authorised officials instead of persons to exercise the powers, I would not have dealt with the constitutional issue. I am of opinion, however, that the Civil Administrators are, as denned by the Hyderabad General Clauses Act, persons, and I fail to understand why the mere putting of such designations should render the Notification bad as insufficiently complying with the provisions of the Regulation.

59. I am aware that a large number of cases have been decided by the Special Judges and appeals against such sentences are pending in the High Court. But the guarantee of the equality before the laws is a fundamental one under our Constitution, and is one of the cardinal principles of republicanism. It has to be guarded against becoming a mere rope of sand. More so perhaps in the State where notions of complete legislative supremacy and even of absolute monarchy have prevailed in the not very remote past. Its being upheld cannot, therefore, be subordinated to consideration of inconvenience that may result to a large number of persons. I would, therefore, allow the appeals of the accused and dismiss the revision petitions. The Regulation being void, any judgment of acquittal by the Special Judges would also be unlawful and must be set aside. Consequently the State appeals are also allowed. The fact that several acquittals

are set aside has caused considerable difficulty in making the final orders in the cases. The appellants, Baquer Hussain, Mohd. Hyder and Quadri, have been let out on bails after they have been in Jail for considerable time and the other appellants have already served their short sentences. In the circumstances, the proceedings, convictions, sentences and orders of acquittals are set aside. The accused persons are entitled to be tried in accordance with law, they be continued to be bound over pending such further proceedings as the State Government may be advised to pursue. This judgment will govern all the cases.

60. Leave to appeal to the Supreme Court is granted.