

**(1954) 03 AP CK 0015**  
**In the Andhra Pradesh High Court**

Pannalal Lahoti

APPELLANT

Vs

State of Hyderabad

RESPONDENT

**Date of Decision :** 22-03-1954

**Acts Referred:**

Constitution of India, 1950 — Article 13, 254, 372, 4  
Criminal Procedure Code, 1898 (CrPC) — Section 435, 439, 455  
Evidence Act, 1872 — Section 114  
Government of India Act, 1935 — Section 102, 72  
National Security Act, 1980 — Section 5

**Citation :** (1954) CriLJ 1093

**Hon'ble Judges :** Misra, C.J;Palnitkar, J;Mohammad Ahmed Ansari, J;Manohar Pershad, J;A. Srinivasachari, J

**Bench :** Full Bench

## Judgement

Misra, C.J.—The following four questions have been referred by a Full Bench of three judges to a Fuller Bench of five judges:

(1) Whether the Hyderabad Defence Regulation, having regard to its preamble, language, emergency and the constitutional set up at the State then existing was operative only during the period of emergency for which it was promulgated and should be deemed to have lapsed afterwards without any express repealment;

(2) whether the directions contained in the Cotton Cloth and Yarn Control Order of 1355-F. about the publication of a press-note explaining its provisions read with R. 110 at the Defence of Hyderabad Rules are man-datory;

(3) whether the directions by the Textile Commissioner about the markings on the bales having regard to the definition of "Cloth". "Yarn" and other provisions of the Order of 1352-P., under which it was framed as well as the later Order are not within the scope of his delegated authority and therefore ultra vires; and

(4) whether Sections 435 and 439 of the Indian Criminal Procedure Code authorise interference by this Court in a pending criminal case on grounds of illegality of procedure or harassment of the accused by such unjustified illegal

procedure.

These questions arise in a criminal case pending in the Court of the District Magistrate, Gulbarga against the petitioner Pannalal Lahoti for violation of Sub-clauses (d), (e) and (f) of Clause 7(1), Cotton Cloth and Yam Control Order, 1355-F. promulgated under R. 72(2) read with R, 72(4) of the Defence of Hyderabad Rules.

2. The petitioner was the managing agent of Messrs. M. S. K. Mills, Gulbarga and in that capacity he is alleged to have ordered his staff in May and June 1949 to alter the markings on the gunny coverings of bales of cloths from "May 1949 Tex Mark" to "June 1949 Tex Mark" and to have kept the bales with the changed markings in the Mills without informing the Textile Commissioner.

3. Section 2, Defence of Hyderabad Regulation authorised the President in Council to make such rules as appeared to him necessary or expedient for defence of the dominions, public safety, maintenance of public order or the efficient prosecution of war or for maintaining supplies and services essential to the life of the community. The Hyderabad Defence Rules followed immediately and they dealt with a variety of subjects which were arranged in 18 parts.

4. Rule 72(2) which occurred in Chapter 12 , headed "Essential Supplies and Work" empowered the President in Council, so far as it appeared to him necessary or expedient for securing the defence of the dominions or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community to prescribe by order for control of industries by regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal etc., of industrial articles and things for controlling the prices and rates of the commodities.

5. Under R. 72(4) any person who contravened any order made as aforesaid rendered himself liable for imprisonment for a term which might extend to 3 years or with fine or with both.

6. Rule 110(1) occurring in Part 17 containing miscellaneous provisions lays down the method of publication, affixation and defacement of notice. It enjoins that every authority, officer or person making an order in writing in pursuance of any of the rules shall, in the case of an order of a general nature or affecting class of persons publish notice of such order in such a "manner as may in the opinion of such authority, officer or person, be best adopted for informing the persons whom the order concerned and in the case of an order affecting an individual, serve or cause the order to be served on that person personally, by delivering or tendering to him the order, or by post or where the person cannot be found by leaving an authenticated copy of the order with some adult male member of his family or by affixing the copy to some conspicuous part of the premises in which he was known to have last resided or carried on business or personally worked for gain, and thereupon, the persons, or the person concerned was to be deemed to have been duly informed of the order.

7. In exercise of the powers conferred by Sub-rule (2) of R. 72, Defence of Hyderabad Rules, the Cotton Cloth and Yarn Control Order framed by the President in Council was published in the Hyderabad Gazette of 12-9-1946. By the Notification which immediately preceded the order in the same issue of the Gazette, the President in Council directed with respect to Sub-rule (1) of R. 110, Defence of Hyderabad Rules that notice of the order should be given by publication thereof in the Government Gazette and by issuing a press-note explaining its provisions.

8. Clause (3), Cotton Cloth and Yarn Control Order empowered the Textile Commissioner after consultation with the Hyderabad Mill Owners' Association from time to time, by notification to the Gazette, to specify "inter alia" the markings to be made by the manufacturers and dealers of any cloth or specification of cloth or yarn manufactured or sold by them and the time and manner of making those markings. In exercise of the powers conferred by this clause it was ruled that the cloth covering the bales should bear Tex marks showing the month in which the cloth was manufactured and baled.

9. Clause 7(1), Sub-clauses (d), (e) and (f) prescribed that where the markings to be made and the time and manner of making them in respect of any class or specification of cloth or yarn as contemplated by Clause (3) is enjoined:

(d) no person shall alter or deface or cause or permit to be altered or defaced the markings made on any such cloth or yarn held by him otherwise than for his bona fide personal requirements;

(e) no person shall mark on any cloth or yarn any other marking resembling the prescribed marking in a manner calculated to mislead; and

(f) no person shall have in his possession or under his control otherwise than for his bona fide personal requirements any cloth or yarn markings whereon were altered or defaced or were of the character specified in para (e).

10. The challan sent up by the Gulbarga Police against Pannalal Lahoti was duly registered by the District Magistrate and after the examination of 18 prosecution witnesses, the Court considered that a "prima facie" case was made out to warrant the framing of a charge. It was contended on behalf of the accused that even if the facts be assumed to have occurred as alleged by the prosecution he could not be deemed to have committed any offence in as much as

(1) the law under which the prosecution was launched was no longer in force on the date of the offence, viz., May and June 1949, as the Defence of Hyderabad Regulation under which the rules, orders and notification of which contravention was alleged was an emergency measure and it ceased to be operative as the emergency for which it was made had come to an end at the date of the alleged offence;

(2) the publication of the Cotton Cloth and Yarn Control Order made under rule. 72(2) of the Defence of Hyderabad Rules was not in accordance with the method

laid down in Notification No. 327 dated 12th September, 1946 read with R. 110 of the Hyderabad Defence Rules as the authorities failed to issue the requisite press note explaining its provisions and the Order was therefore invalid or at any rate ineffective for the purpose of saddling the accused with liability; and

(3) in any event if the facts be presumed to have occurred as alleged by the prosecution the directions of the Textile Commissioner about the markings on the bales which were said to be given under the provisions of the Cotton Cloth and Yarn Control Order were not within the scope of his delegated authority and being, therefore, void, the infringement thereof could not render the petitioner criminally liable under R, 72 (4) of the Defence of Hyderabad Rules.

11. The District Magistrate of Gulbarga recorded the above objections in his order, but did not give his decision thereon. He charged Panalal Lahoti with contraventions of paras (d), (e) and (f) of Rule 7(1) of the Cotton Cloth and Yarn Control Order of 1355-F., since in his opinion the prosecution had made out a "prima facie" case and so far as the points raised in the objections were concerned, he considered that it would be more satisfactory to leave them to be determined at the time of the final disposal of the case.

12. Dissatisfied with the aforesaid order, the accused came to this Court by way of revision. He challenged the propriety of the order before the Division Bench which initially heard the matter and as already stated the arguments of the parties led to a reference of the case being made to a Pull Bench of three judges and a subsequent reference to this Fuller Bench on the four points mentioned above.

13. I have carefully read the judgments of my learned brothers and I am in complete agreement with Manohar Pershad, J. whose opinion is substantially adopted by my brothers on the answers proposed to be given to the last three questions, I do not think it is necessary for me to add anything to the reasons given by him in connection with the points there involved.

14. On the first question, the conclusion of Manohar Pershad, J. with whom Srinivasachari, J. has agreed is at variance with the view to which Bhripath Rao and Ansari, JJ. have given expression. I have perused the judgments of my learned brothers with the great care and respect which they always command and in view of the novel character and the delicate nature of the points involved, I have also taken time to finalize my views. In the result, I regret I find myself unable to agree with the opinion of my brother Manohar Pershad J. I concur in the views to which expression is given by Shripath Rao, J. and Ansari, J. in their separate judgments regarding the emergency nature of the Defence of Hyderabad Regulation and its termination before the date of the alleged offence. The case law has been discussed at some length by my brother Ansari J. and I need scarcely cover the same ground again. I would however like to add to the discussion what I consider may further help in elucidating the point which is before us.

15. The question resolves itself into two parts:

(1) whether the Defence of Hyderabad Regulation was an emergency measure and was intended to be a temporary law for the duration only of that emergency; and

(2) If so, whether the Regulation had automatically lapsed at the date of the alleged offence on account of termination of the period of the emergency?

16. My answer to both parts of the question is in the affirmative.

17. So far as the emergent or temporary nature of the legislation is concerned it is to be noticed that the Regulations were simultaneously introduced on the declaration of the last war on 3-9-1939 both in England and in India, including what were then known as autonomous Indian States, as well as in other countries constituting the Commonwealth. The principal point to be regarded here is that all these measures were cast in the same mould and except for minor variations occasioned by the peculiar situation or circumstances of each country they covered the same ground. The British and the Indian legislation in this connection as also the legislations in most of the Indian States expressly called themselves emergency legislations and they expressly specified the time during which they were to have currency. The Defence of Hyderabad Regulation however omitted to specify any such period though it obviously followed the same pattern in all respects. I apprehend that the omission is of little consequence.

18. In times of peril when the life of nations is at stake the countries at war have to meet extra-ordinary stress and strain. They have naturally to guard against possible external and internal dangers which may arise from enemy machinations or internal rebellion. It is obvious that in such critical times the liberty of the individual which is the key note of all modern systems of Government has to yield place to a philosophy of war, and peace time machinery, whether executive, administrative or judicial, has to be geared up for offensive and defensive needs of the community besides creating protective barriers against espionage and sabotage which experience has repeatedly shown to be a serious menace in times of war. It is also imperative to conserve the country's man-power and its energies as well as the country's resources for the supreme wartime necessities of the people at home and those serving the colours in the battle zones. As observed by Lord Atkin in *"Rex v. Halliday"* (1917) AC 260 271:

However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment, namely, national success in the war or escape from national plunder or enslavement.

The laws made in this background and with this object are naturally circumscribed by the dangers which they are designed to meet. It hardly needs to be emphasized that they are essentially wartime measures and are

inappropriate in times of peace when the normal conditions are restored.

19. The normal peace time laws in the State of Hyderabad, in spite of the fact that the State was governed by an absolute monarch whose Firmans were given a binding legal force were in general accord with the modern notions of liberty of the subject. This is demonstrated by the fact that the Statute laws in force in India and Hyderabad in pre-war days and even now are but for minor differences the same. It is not easy, therefore, to imagine that suddenly on the declaration of the last war it was decided to throw over-board the entire policy of enlightened administration and to arm a few nominees of the ruler with arbitrary & absolute power of suppression of common liberties of the people for all time to come.

It may be due to my personal predilection in this matter but I cannot help remarking that I would be loath to accept any such argument unless I was forced to it by the necessities of the case. The nature, however, of the legislation with which we are concerned and the rules framed thereunder indicate with clearness that they were designed for prosecution of the war. They militate against the theory that it was a capricious legislation and that its extraordinary and abnormal provisions were intended to perpetuate a new system of governance in this part of the country.

20. For the purposes of finding out the objects of the Defence of Hyderabad Regulation I proceed to seek such aid from the permissible sources of guidance as may be provided by the surrounding circumstances, the language of the Regulation and the general object for which it was designed. The first remarkable thing which attracts notice in this connection is the intimate relationship between the Defence of Hyderabad Regulation and similar war time laws which were promulgated in England and elsewhere on the outbreak of the war. In England the Emergency Powers (Defence) Act of 1939 which was passed just before the commencement of the hostilities laid down by its Section 1 that:

His Majesty may by order in Council make such Regulations....as appear to him to be necessary and expedient for securing the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any war in which His Majesty may be engaged and for "maintaining supplies and services essential to the life of the community"

21. In British India, Section 2 of the Defence of India Act which closely followed the ordinances Nos. 5 & 7 of 1939 likewise enacted that:

The Central Government may, by notification in the official Gazette, make such rules as may appear to it necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war or "for maintaining supplies and services essential" to the life of the community.

22. The preamble of Hyderabad Regulation with which we are concerned is in

substantial agreement with the Indian Act. The two preambles declare:

Whereas an emergency has arisen which renders it necessary to provide for special measures to ensure public safety and interest and the defence of H. E. H. the Nizam's Dominions/British India" and for the trial of certain offences.

23. Both legislations were comprised of four chapters. In Hyderabad the first chapter with its two sections is headed as preliminary chapter, the only difference between the Indian and the State enactment being that Sub-section (iv) of Section 1 of the Defence of India Act which provided that the Act should be in force during the continuance of the present war and for a period of six months thereafter was omitted. The second chapter contains six sections. Section 3 (a) confers rule making power and like Section 1 of the British Statute and Section 2 of the Defence of India Act lays down that:

The President-in-Council may, by notification in the *jarida*, make such rules as are necessary or expedient for securing the defence of the Dominions, the public safety, the maintenance of public order and the efficient prosecution of the war "or for maintaining supplies and services essential to the life of the community".

24. It is impossible to read the underlined (here into " ") words in Section 2 in a sense divorced from the rest of the section as is contended for on behalf of the State. My view is strengthened by the fact that conservation of the resources of the State is one of the special needs of war time economy. It may also be pointed out that in the corresponding sections of the avowedly emergent legislations made in the United Kingdom as well as in India the rule making power in respect of maintenance of supplies and services essential to the life of the community is also incorporated.

25. The language of the Indian and the Hyderabad laws in the other chapters is almost word for word the same. The Rules framed under the two enactments were as similar as they could be. The Hyderabad Rules consisted of 18 parts and each part was not only headed similarly but provided for the same situations except that 7 rules were omitted in Hyderabad presumably because in the Hyderabad State situated as it was rules of navigation etc., were wholly redundant and out of place.

26. A careful perusal of the Hyderabad Regulation and Rules also reveals that they were intended to meet the extraordinary situation which was likely to arise during the war. In Chapter 3 of the Regulation which authorised the formation of Special Tribunals the ordinary procedural law in criminal cases as well as certain civil laws such as the Land Acquisition Act etc., were changed for the purposes of the Regulation and it was laid down that:

Save as otherwise expressly provided by or under this Regulation the ordinary criminal and civil courts shall continue to exercise jurisdiction.

By Section 15 the Regulation prescribed that:

Any authority or person acting in pursuance of this Regulation shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of the dominions.

Under Section 17 it lays down further that:

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Regulation or any rules thereunder, and

(2) Save as otherwise expressly provided under this Regulation no suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything done or intended to be done in pursuance of this Regulation or any rules made thereunder.

27. The extraordinary resemblance between the Hyderabad Regulation and the Defence of India Act and the fact that they were designed to meet the same emergency and promulgated at the same time, that is to say on the outbreak of the war, would seem to indicate a like scope and purpose and regard being had to the fact that the legislative authority in Hyderabad was moved by the common necessity and the common problems and was anxious to meet the common danger to which hostilities were likely to give rise it would be difficult to hold that basically their intentions were different and while one was made to serve as a temporary emergency legislation, the other was meant to be a perpetual law of what was then called the Dominion of Hyderabad.

Even a cursory reading of the provisions of the Regulation would show that the ordinary law for safeguarding the liberty of the subject was as far as possible kept intact and inroads were made into it for ensuring success in war and protecting the State from all possible risks, internal and external, only in national interest which was deemed to be paramount and which had in times of war to be given preference over the liberty of the individual.

28. The intention underlying the Regulation having thus been determined, the next point that requires consideration is whether the fact that the sovereign law making authority in Hyderabad was the Ruler of the State would make any difference to the interpretation which must obviously be placed on what would otherwise be classed as an emergent law.

29. It is argued on behalf of the State that in Hyderabad the powers of H. E. H. the "Nizam as the law making authority were absolute, that he was entitled at his own free will to change his administrative policy and that the laws framed by him must in the absence of an express provision to that effect be deemed to have currency till they are repealed. The argument can hardly be deemed to be correct for it is not the form of the Government or the nature of the law making authority which governs the objects underlying its laws. In every form of Government the power to make laws vests in some authority or the other.

Whether that authority is given to a Federal or the Unitary Legislature or it is enjoyed by an absolute ruler is to my mind immaterial for determining the intention underlying a legislation. It may be that in some Constitution the power to make emergency legislation may as in Australia vest in a body other than the one which may pass what are known as perpetual laws, but we are not concerned with the powers of such a legislature in this case.

The enactment which has to be interpreted in this case was made by the sovereign law making authority, an authority who could make all kinds of laws perpetual as well as temporary.

The question whether the Regulations constitute a law of one kind or the other has to depend upon the intention with which it was framed. Such Intention may be an express intention as was the case with Defence of India Act or it may be deducible by necessary implications from its language and surrounding circumstances as in the Hyderabad Regulation. The considerations governing the interpretation of the latter have already been discussed they leave little room for doubt that the Hyderabad Regulations were intended by the sovereign authority of the State to be made for the period of emergency arising from the last war.

30. Coming to the second part of the question, Viz., whether the Regulation had automatically lapsed at the date of the alleged offence on account of termination of the emergency, it may be pointed out that a temporary legislation must terminate either on a specified date or on the happening of a specified event. But if the date or the event is not specified, it cannot be allowed to outlast the emergency which brought it forth. The Hyderabad Regulation having been made to meet the situation created by declaration of war against Germany must be deemed to have come to an end when the emergency ceased to exist. The law in this regard is stated in Vol. 31 paragraphs 664, 666 and 663 of Halsbury's Laws of England (Halstaury's Edition). The relevant passages are as follows:

Para 664:

Statutes, moreover, may be intended to be temporary as well as perpetual, and express words are not necessary to show whether Parliament intended a particular statute to be one or the other.

Para 666:

After the expiration of a statute, in the absence of provision to the contrary, no proceedings can be taken on it, and proceedings already commenced ipso facto determine.

Para 668:

A statute which is repealed differs from a temporary statute in that the former, except in so far as it relates to transactions already completed under it, becomes as if it had never existed while with respect to the latter the extent of the restrictions imposed and the duration of the provisions are matters of

construction.

31. The observations of Lord Haldane in - *Tort Frances Pulp and Power Co. Ltd. v. Manitoba Free Press Co. Ltd.*, 1923 AC 695 706, may also be reproduced here with advantage:

When war has broken out it may be requisite to make special provision to ensure the maintenance of law and order in a country even when it is in no immediate danger of invasion. Public opinion may become excitable, and one of the causes of this may conceivably be want of uninterrupted information in newspapers. Steps may have to be taken to ensure supplies of these and to avoid shortage, and the effect of the economic and other disturbance occasioned originally by the war may thus continue for some time after it is terminated....it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes ultra vires when it is no longer called for.

In such a case the law as laid down for distribution of powers in the ruling instrument would have to be invoked. But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of ultra vires which it had to decide, in overruling the decision of the Government that exceptional measures were still requisite. In saying what is almost obvious, their Lordships observe themselves to be in accord with the view taken under analogous circumstances by the Supreme Court of the United States, and expressed in such decisions as that in October, 1919, in - "*Hamilton v. Kentucky Distilleries Co.*" (1919) 251 US 146 (C).

And again:

....They desire to guard themselves from being regarded as accepting the suggestion made by that learned judge that "all the powers exercised by Minister, Controller and Tribunal were intra vires and valid, even in a state of profound peace.

32. My learned brother Ansari J. has fully discussed the case law on the point and it seems unnecessary to repeat what has been said in his Judgment. I recognize that normally the Courts of law should abstain from harsh and generous interpretation of facts done in good faith by those who bear the burden of governance especially in times of danger and crisis.

33. As stated, however, by Sir Maurice Gwyer in another connection:

we are not on that account relieved from the duty of seeing that the executive Government does not seek to exercise powers in excess of those which the Legislature has thought fit to confer on it, however drastic and far-reaching those powers may be, and however great the emergency which they are designed to meet.

It is the duty of the Court of law to interpret the legislation and to find the

intention underlying the laws whose enforcement is sought through judicial authority. If the legislation under which the Cotton Cloth and Yarn Control Order was made has lapsed, it is obvious that there can be no prosecution under it.

34. We know as a fact that the war which necessitated the Defence of India Regulation came to an end on 24-10-1945, and the war emergency was declared in India to have come to an end on 1-4-1946. The Defence of India Act as provided therein ceased to operate six months thereafter, that is to say, on 30-9-1946. It is impossible to say that the same war emergency continued to exist in the year 1949 and still continues in this part of India. As observed in - *Queensland Newspapers Pty. Ltd. v. McTavish*" 85 Conx-W L R (D), to prolong an emergency legislation would constitute an attempt to exercise powers incidental to the defence of the country after the conditions to which the Regulation was incidental have passed and since it is always open to a court to enquire whether the emergency by which a law was conditioned has ceased or whether the exigency still exists upon which the continued operation of the law depends, we think we can safely hold that the Defence of Hyderabad Act and the Rules framed thereunder were no longer law in 1949.

35. There is another reason which has impelled me to the view which I take of the matter. The position of the former Indian States in International Law was that they were protected States having no international status or membership of the family of nations. Prior to the declaration of the independence of India on 15-8-1947 there were many agreements, treaties and administrative arrangements which collectively went to make up the doctrine of paramountcy asserted by the British Crown in relation to the Indian States. This paramount supremacy presupposed and implied the supremacy of the British Crown and the subordination of the States under its protection. There were several ways in which this protecting power exercised control over the Indian States.

It exercised, for example, control over the foreign relations of the States. It assumed a general though limited responsibility for internal peace and a special responsibility for the safety and welfare of the British subjects residing in the State territories. Reciprocally it was entitled to require subordinate co-operation from them in the task of resisting foreign aggression and maintenance of internal order. Some of these matters were governed by formal treaties etc., entered into between the States and the Crown and ratified by Parliament. After the consolidation of the British position in India, however, the Crown gradually assumed as a matter of political expediency many functions which were not covered by treaties and agreements but by usage, sufferance and its superior position to interfere in the affairs of the States whenever its interests dictated that course. Sir Courtenay Ilbert in his book on the Government of India (Clarendon Press, Oxford, 1898 Edition) defines the position of the Indian States vis a vis the British Government at page 143 as follows:

It follows from the exclusive control exercised by the British Government over the foreign relations of Native States, that a native State has not any

international existence. It does not, as a separate unit, form a member of the family of nations. It cannot make war. It cannot enter into a treaty engagement or arrangement with any of its neighbours.... It cannot initiate or maintain diplomatic relations with any foreign power in Europe, Asia or elsewhere. It cannot send a diplomatic or consular officer to any foreign State.

36. It is as a result of the subordinate position of the rulers of Indian States in relation to the British Crown and the paramount supremacy of the latter to represent the whole of this country including the Indian States that the declaration of war in 1939 and the declaration of termination of hostilities in 1945 must be regarded and if this is done, it would irresistibly lead to the conclusion that such declarations would automatically constitute declarations of war or declarations of peace for the territories of Indian States. Looked at from this angle the simultaneous promulgation of legislation relating to the defence of the United Kingdom, defence of India and the defence of this dominion in almost identical terms to meet the emergency caused by the outbreak of war assumes a special significance and by a party of reasoning the emergency giving rise to the legislations must be deemed to have ceased with the declaration of the termination of the war and the cession of the emergency consequent thereon.

37. My answer therefore to the first question propounded by the Full Bench is that the Hyderabad Defence Regulation was promulgated for the purpose of meeting the emergency created by the last world war and that it was operative only during the continuance of that emergency and should be deemed to have lapsed on the termination thereof without any express repealment.

38. On the 2nd, 3rd and the 4th questions, my answers as already stated are the same as that proposed by my learned brother Manohar Pershad J.

Palnitkar, J.

39. Four questions have been referred to this Full Bench for decision. The first question is:

(1) Whether the Hyderabad Defence Regulation having regard to its preamble, language, the emergency and the constitutional set-up of the State then existing was operative only during the period of the emergency for which it was promulgated and should be deemed to have lapsed afterwards without express repealment.

At the outset it is better in view of the arguments of the Special Public Prosecutor Shri N.S. Raghavan, to discuss some fundamental points.

40. Enactments of statutes may be permanent or perpetual or they may be temporary. Ordinarily all statutes are of a permanent nature. But the Legislature may make temporary laws for the purpose of meeting an emergency in which case it may fix the period of expiration either expressly or it may fix no period and in such a case the temporary laws may expire otherwise. The power to make such temporary laws is a necessary adjunct of the powers of a legislature,

whether it be the legislature of a Federal or a Unitary or a monarchical state. There is no force in the argument that the legislature of a Unitary State has no power to pass temporary laws.

Great Britain is a Unitary State and the British Parliament has passed several temporary laws, So was the State of Hyderabad before its integration with the Union of India a Unitary State and it had passed several temporary laws. The Hyderabad Relief of Agricultural indebtedness and Prohibition of Usurious Interest Regulation, 1344F. is an instance of a law so enacted for a determinate period and a period of two years was specified during which it was to remain in force. It was clearly a temporary law. Therefore the argument that the then Hyderabad Government which was a Unitary form of Government could not have enacted a temporary law is incorrect. See also the Hyderabad Regulation relating to the Transfer of Agricultural Property, 1343P.

Section 1 of the said Regulation provides that the Regulation will be called the Regulation relating to Transfer of Agricultural Property and will remain in operation until such period that another suitable law is enacted in its place. This is an Instance of a Regulation which does not fix a date of its expiry but provides for its lapsing otherwise. It will therefore be the duty of the Courts in proper cases to decide whether the said Regulation had lapsed inter alia in view of the fact that some other law had been enacted in its place.

41. Where a law is enacted to provide for a particular emergency the general principle is that it will expire at the termination of the emergency; a reasonable period will, however, be allowed after the actual termination of the emergency for abnormal conditions to settle down, and during this period the temporary law will be in force; after which it will lapse. The Defence of Hyderabad Regulation, 1348P and the Defence of Hyderabad Rules of the same year were expressly made to meet the emergency of the war (of 1939). The then native States in India, including the State of Hyderabad were protected States and were protected by the British Government.

It is a matter of history, that the Governor General of India declared war on 3-9-1939. The Ordinance No. 5 of 1939 was promulgated for the defence of India and the successful prosecution of the war and on the basis of the Ordinance, the Hyderabad Government also promulgated the Defence of Hyderabad Regulation, 1348P. (1939 A.D.) which embodied provisions similar to those of the Defence of India Ordinance. Later on the Ordinance was replaced in British India by the Defence of India Act No. 35 of 1939. It embodied substantially the same provisions as those of the Ordinance. In Hyderabad an enactment by the Legislature was not felt necessary as H. E. H. the Nizam enjoyed the full sovereign powers of a Legislature and the Hyderabad Legislative Council enjoyed only limited legislative powers.

From the wording of the preamble of the Hyderabad Defence Regulation, it is clear that it was made to provide and meet an emergency which had arisen at

the time and it was felt that special measures were necessary to ensure public interest and safety and the defence of Hyderabad State. In view of that grave emergency, the ordinary measures embodied in the ordinary laws were felt insufficient and that is why special measures were provided for by the Regulation.

42. Keeping in mind the above background and reading Section 3 of the Regulation, it is further clear that it was for the efficient prosecution of the war and for the incidental purposes of securing the defence of the Dominion, the maintenance of public order, and the maintaining of supplies and services essential to the life of the community that the Regulation was made. It was to meet the special and extraordinary exigencies which the declaration of the war had created or was likely to create that the sovereign legislative authority, viz. H. E. H. the Nizam, felt that special measures may be necessary for the purposes mentioned in the section.

The maintenance of the Essential supplies and services for public safety and the maintenance of public order were felt necessary for the efficient prosecution of the war and rules made or to be made for that purpose were essential for the purposes of meeting the emergency created by the War and not for meeting any other emergency. This is further clear from the notification of the then President-in-Council which specially stated that the Regulation was being promulgated for the purpose of efficient prosecution of the war and in view of the emergency created by the declaration of war. It is therefore clear that the Defence of Hyderabad Regulation was an emergency legislation and it would expire when the emergency terminates.

That the emergency arising out of the declaration of the Second World War (War of 1939) has terminated cannot be denied. There was a declaration by the Government of India that the war had terminated on 24-10-1945. On 1-4-1946 that Government issued a proclamation declaring that the emergency created by the war had terminated. That war, for the purposes of the State of Hyderabad, protected by the British Government, must also be considered to have terminated on 24-10-1945 and the emergent conditions arising out of the war would also be deemed to have passed away after a reasonable time after that date. The Hyderabad Defence Regulation and the Rules promulgated thereunder must therefore be considered to have lapsed or expired after a reasonable date from the declaration ending the war.

In my view, therefore, the Defence of Hyderabad Regulation and the Rules were temporary in their nature and they must be deemed to have expired as above. They are no longer in force and have lapsed. That is also clear from the preamble and the language of the Regulation itself. The preamble states that an emergency has arisen which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of the H. E. H. the Nizam's Dominions and for the trial of certain offences. That emergency, as we have already stated, arose from the declaration of war and H. E. H. the Nizam had to provide for contingencies arising out of that declaration.

The language of Section 3, Clause (2) and its various sub-clauses show that the main purpose of these sub-clauses was to combat abnormal conditions created by the war prohibiting certain acts in that reference and providing measures ensuring the safety of the community and the property of the State. Provision was also made for the prevention and detention in custody of persons suspected of being hostile. There was provision for prohibiting or regulating matters relating to explosives, inflammable substances, vessels, air-craft, wireless telegraph etc. All this clearly proves that it was essentially a war measure. It gives precedence to Rules made under the Regulation over other enactments which were ordinarily the law of the land. It lays down that all laws inconsistent with the Rules promulgated under the Regulation will have no effect.

Such special power giving precedence to the extraordinary emergency rules over the ordinary permanent laws of the land cannot but be regarded as temporary in its nature. Whether the Government be Unitary, Monarchical or Republican, it will not derogate from or abrogate its ordinary laws, unless it be to meet an emergency which threatened the very existence of the State. Section 6 provides for enhanced penalties with respect to certain offences. Thus contravention of Rules made u/s 2 were made punishable with death. That is an abrogation of the ordinary penalty provided in the Hyderabad Penal Code. Such an extraordinary power for enhanced punishment can never be considered of a permanent nature.

Chapter 3 provides for the creation of special tribunals and such a tribunal has to have its special jurisdiction in preference to ordinary criminal Courts. The procedure was to be different; and public could be excluded. There was to be no appeal against the sentences of the special tribunals. All that goes to prove that these special tribunals were to be for a temporary period. If they were to be intended to be for a permanent period, then the Hyderabad Criminal Procedure Code could have been amended. Thus intrinsically there is ample evidence in the Regulation itself to show that it was an enactment of a temporary nature. The constitutional set-up in those days was monarchical and the H. E. H. the Nizam was the Totalitarian Ruler taut that has nothing to do in deciding the question whether the Regulation was a temporary enactment or a perpetual enactment.

43. I have had the benefit of reading the judgments prepared by ray learned brothers Hon''ble Mohd. Ahmed Ansari and Hon''ble Manohar Per-shad, JJ. which they are about to pronounce. For the above reasoning I agree on this point with the opinion of Hon''ble Mohd. Ahmed Ansari, J. My answer to question No. 1 therefore is that the Hyderabad Defence Regulation was operative only during the period of the emergency and should be deemed to have lapsed afterwards without express repealment. It had, therefore, lapsed before the date of the alleged offence.

44. Question No, 2 : Whether directions contained in the Cotton Cloth and Yarn Control Order of 1355F about the publication of a Press Note explaining its provisions read with R. 110, Defence of Hyderabad Rules are mandatory? My answer to this question is that the directions about the publication of a Press

Note are not mandatory. The Control Order No. 327 of 1355P provides that the publication of the order in Govt. Jarida will be sufficient with reference to Sub-rule (1) of R. 110, Defence of Hyderabad Rules. That is my reading of the directions. It is admitted on all sides that the order has been published in the Govt. Jarida. Hence the Order becomes effective and operative so soon as it is published in the Govt. Jarida.

This point is further made clear by Part (1) of the Order which specifically states that it shall come into force in the whole of H. E. H. the Nizam's Dominions from the date of its publication in the Jarida. The further statement to the said Notification that a press note explaining its provisions will also be issued is only redundant. Rule 110 of the Defence of Hyderabad Rules lays down the manner in which an order passed by a competent authority under the Rules should be published in order that the knowledge of such Order may be fixed upon the persons concerned. It lays down that the officer or authority making the order shall in the case of an order affecting a class of persons, publish notice of such Order in such manner as may in his opinion be best adapted for informing the concerned persons.

The point for decision is whether the authority issuing the Notification (Hyderabad Cotton Cloth and Yarn Control Order) considered that publication of the order in a Press Note was the best manner adapted for informing the mill owners concerned. In my opinion he did not consider it so; on the contrary, he considered that the best manner of publication was its publication in the Govt. Jarida. Thus the non-publication of the Order in a Press Note is not fatal to the case; nor is it a mandatory provision for the purposes of R. 110. Having taken this view, it is not necessary for me to consider in detail the various cases cited on this subject by the learned advocates of the parties.

In the case of subordinate legislation the general rule is that the legislation must be published properly and in the manner considered best adapted for the purpose of Informing the persons concerned. On this point I may add that the Nagpur rulings, viz. - AIR 1944 40 (Nagpur) and - "Babulal Rajoolal v. Emperor" AIR 1945 Nag 218, in my opinion lay down the correct law. It is to be noted that the Nagpur decisions were approved by the Supreme Court in - Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery, . My answer to question No. 2 is in the negative.

45. My answer to question No. 3 is that the directions by the Textile Commissioner referred to are not within the scope of his delegated authority and therefore ultra vires. I need not here repeat the observations in this respect of my learned Brother Hon"ble Manohar Pershad, J.

46. My answer to question No. 4 is that the High Court has ample powers if interference be felt necessary at the stage at which the case is and that the High Court can do so on the ground of illegality of the procedure or harassment of the accused.

Manohar Pershad, J.

47-53. (His Lordship stated the facts and proceeded : ) With regard to question NO. 1 Shri Pathak, the learned advocate for the petitioner, urges that the Defence of Hyderabad Regulation was a war measure; that from its very nature it is a temporary law and cannot outlive the emergency; and that therefore it could not be deemed to have continued till the date when the offences are alleged to have been committed, and should terminate the moment the emergency ends. Reliance was placed on - "71 Com WLR 161 (H)"; - "79 Com WLR 43 (I)"; - "85 Com WLR 30 (D)"; - "Chastleton Corporation v. Sinclair" (1924) 68 Law Ed 841; - "(1919) 64 Law Ed 194 (C)" and - "Home Building & Loan Association v. H Elaisdell" (1934) 78 Law Ed 413 (K).

54. He also urged that temporary laws are temporary in nature even if no time has been fixed. In this connection he drew our attention to Halsbury's Laws of England Vol. 31, paras 664, 666 and 668.

55. With regard to question 2, he contended that R. 110, Defence of Hyderabad Regulation made it a condition precedent that any Control Order promulgated had to be published by the competent authority in the manner prescribed, and that though the discretion to decide about the mode of publication was left to the said authority, yet if that condition! was not satisfied it would not amount to a law. As R. 110, Defence Regulation, he contended, required two kinds of publication- (1) publication in the Gazette and (2) the issue of a Press-note explaining its provisions, and as admittedly no press-note of any kind was issued, the Control Order became inoperative. Reliance was placed on Halsbury's Laws of England Vol. 31, paras 467, 574, - AIR 1944 40 (Nagpur) "; - "Emperor v. Mangulal Tekumal" AIR 1944 Bind 142; - Jagarnath Sah Vs. Emperor, - Mahadeo Prasad Jayaswal Vs. Emperor, (N); - Harla Vs. The State of Rajasthan, ; - Krishan Chandra Vs. Emperor, and - Girdhari and Another Vs. Emperor, and Maxwell's Interpretation of Statutes, 9th Edn. 374. Following up the contention he urged that the law made by the legislature and the law made by a subordinate authority to whom the power has been delegated were governed by different principles. The law made by the delegated authority must be exercised strictly in accordance with the power delegated to it. Reliance was placed on - "Parmat Enti Kasia v. State of Hyderabad", 6 Nazaire Osmania 159 (R) and - "State of Hyderabad v. C. Sattlah" AIR 1952 Hyd 149.

56. It is further contended that the provisions of R. 110, Defence of Hyderabad Regulations are mandatory, that if such mandatory provisions have not been conformed to, the law cannot be said to have any force, and that therefore the alleged infringement of the Textile Commissioner's directions in this case does not constitute any infringement of a duly promulgated notification. With regard to the question of knowledge it is urged that the law does not require knowledge as a substantial question.

57. Shri Pathak's contentions with regard to the third question are that the

Commissioner's order prescribing tile mark on the outer cover is in excess of the power delegated to him, that interference with the marking on the outer covering does not mean interference with the markings on the cloth as defined in the said Control Order, that the notification of the Textile Commissioner under the earlier Cotton Cloth & Yarn Control Order of 1352 F., directing the fixing of marks on bales of cloth was ultra vires, inasmuch as the order related to cloth or yarn which could not include directions about the outer covering of the bales.

58. His argument relating to question 4 is that the powers of the High Court under Sections 435 and 439, Cr. P. C. are very wide and can be exercised in proper cases, and that nowhere has it been held that its powers are restricted. Reliance was placed on - "AIR 1925 Mad 839"; - "AIR 1947 Mad 772"; - In Re: Shripad G. Chandavarkar, - Gulabrao Laxmanrao Chandgude Vs. Emperor, - "Nandram v. Emperor" AIR 1947 All 348 and - Buddhu Vs. Municipal Board and Others, .

59. Shri Raghavan on behalf of the State contended that at the time, the Defence of Hyderabad Regulation was passed, Hyderabad had a unitary system of Government and as such the Legislature alone could declare whether a law was valid or not, while in the Federal Form of Government such as that of America, Australia and Canada, it is the Court which had this power, and that in view of these differences in the constitutional set up, the authorities cited by the learned Counsel for the petitioner were neither relevant nor helpful. He further contended that the Nizam as the sovereign authority had promulgated the regulation, and that it was he alone who could declare that the emergency had ceased.

Following up this contention he urged that as far as Hyderabad was concerned, there was no difference between an emergency law and a perpetual law; and that every enactment of the legislature was good law as long as it stood on the Statute Book. He further submitted that the Defence of Hyderabad Regulation was not exclusively a war measure, and that therefore it could not be said to have become inoperative on the termination of the war.

60. With regard to question No. 2 his submissions are that the whole point of R. 110 is to saddle a person with knowledge, direct or constructive, in order that that person may be liable to punishment if he commits a breach of the order; that the information or communication really serves no other purpose, and that according to R. 110 a legal fiction is created that the person should be deemed to have been duly informed of the order without any further obligation on the prosecution to prove knowledge.

Following up this contention he urges that the validity of an act is different from its enforceability, and that an order becomes valid the moment it is signed. In the present case, he contends, the Cloth & Yarn Control Order came into force-the moment it was published in the Jarida, and, R. 110 which is directory and not mandatory, refers to the mode of publication to raise a presumption of

knowledge which it is always open to the prosecution to prove. In support of this contention he placed reliance on - Ajab Lal Dubey and Another Vs. Hari Charan Tewari @ Hari Tewari and Others, ; "Debi Prasad v. Emperor" AIR 1947 All 191 and - "Rayangouda Lingangouda v. Emperor" AIR 1944 Bom 259.

61. His argument relating to question 3 is that the Commissioner's order prescribing the mark on the outer covering is within his powers and the word "cloth" includes outer covering also.

62. With regard to the revisional powers of the High Court Shri Raghavan concedes that the High Court has wide powers, but contends that inference will only be justified when there is an impropriety which is flagrant.

63. In order to appreciate the arguments of the learned advocates a reference to the constitutional set up of Australia, America, Canada and Hyderabad and to the relevant provisions of the Defence of Hyderabad Regulation and Rules is necessary,

64. The dominant note of the Australian Constitution is federalism. Federalism connotes among other things, the supremacy of a written Constitution, setting up a Central Government, clothed with legislative, executive and judicial powers, which are exercised within the limits of authority prescribed by the Constitution. This limitation of authority is in contrast to the supremacy of the legislature under a unitary form of Government There are no practical limits to the authority of a Supreme Legislature, such as the Imperial Parliament of Great Britain, except the lack of executive power to enforce its enactments. But in a federation neither the legislature of the Central Government nor the legislature of any component entity is supreme. Each such legislature can only assert its supremacy within the limits assigned by the Constitution.

64A. The American Constitution is identical with the Constitution of Australia, but in details there are many dissimilarities. It is, however, a doctrine of the United States Constitutional law that it is the peculiar function of the Supreme Court of the United States to watch over and guard the Constitution of the United States, and in exercising this function it has the power to set aside an act of Congress, or of the President, or of a State Legislature, or of a Governor, or of any other Officers of Government, if in violation of the guarantees of personal liberty against social control.

65. Hamilton (in the 78th number of the Federal List) writing of the United States Constitution, pointed out that in a Constitution which contains specified limitations and exceptions to the legislative authority, such limitations can be preserved in no other way than through the medium of the Court on whom, in the federal system, is cast the duty of declaring void all legislative acts contrary to the Constitution.

66. The exercise of the power to determine whether an Act of the Commonwealth Legislature be constitutional or not, is the ultimate and supreme

function of the High Court.

67. The functions of the judiciary in Canada follow closely those of the judiciary in the United States, for in both countries the courts not only interpret the terms of the written Constitution, but also set aside such enactments from all sources as are repugnant to its provisions. Questions of this nature of course do not arise either in Great Britain, where any act of the legally omnipotent British Parliament is constitutionally valid, or in Hyderabad, where there was a unitary system of Government, and where it was the legislature which had supreme powers in regard to legislation, subject to the prerogatives of H. E. H., who was the Head of the Government in all its three branches- Legislative, Executive and Judicial. In the light of the then constitutional set-up of the State of Hyderabad, therefore, I shall consider the arguments of the learned Counsel for the petitioner.

68. The first point that deserves consideration is whether the Defence of Hyderabad Regulation is purely a war measure. In order to understand this point a reference to the Firman of H. E. H. the Nizam dated 29th Meher 49F., is necessary which rendered into English is as follows:

Whereas a situation has arisen (Aise Halath runuma huvey hain) which renders it necessary to provide for special measures to ensure public safety and the defence of H. E. H. the Nizam's Dominions and for the trial of certain offences, now, therefore, H. E. H. the Nizam is pleased to make and promulgate the following Regulation.

69. In view of this Firman, the Hyderabad Defence Regulation came into force and under R. 3 of the said Regulation the President in Council was authorised to make rules for the following purposes:

- (a) the defence of the Dominions, public safety,
- (b) the maintenance of public order, the efficient prosecution of war, and
- (c) the maintenance of supplies, and services essential to the life of the community,

70. Now the mere fact that the regulation was passed just after the declaration of the war or that it was passed at about the same time as the declaration by the Government of India, would not, in my opinion, make it purely a war measure. It may well be that the efficient prosecution of war was the primary consideration but the other purposes stated above in the Firman and the Regulation cannot be ignored.

71. The counsel for the petitioner drew our attention to the declaration made by the President-in-Council and to the Rules 3 to 18 of the said Regulation, and urged that from these it would appear that the said Regulation was purely a war measure. So far as the declaration by the President-in-Council is concerned, it is not part of the Regulation, and, therefore, cannot govern its construction. Of course, the rules relied upon do, to a certain extent, support the argument of the

learned Counsel, but, as stated above, we cannot ignore the other purposes specified in the Firman and the Defence Regulation. I am therefore of the opinion that this Regulation cannot be said to be purely a war measure.

72. Now, even if it be assumed for the sake of argument that this Regulation is only a war measure and nothing else, the question that falls for consideration is as to whether it would automatically cease to operate immediately the war was over, or is it necessary that it should be repealed by a competent authority. The learned Counsel for the petitioner relying upon - "71 Com-W L R 161 (H)"; - "79 Com-W L R 43 (I)"; - "85 Com-W L R 30 (D)"; - "64 Law Ed 194 (C)"; - "68 Law Ed 841 (J)" and - "78 Law Ed 413 (K)", urged that the courts in the above cases have declared such emergency laws as war measures, and not to be operative after the emergency or the war had ceased, and that the Defence of Hyderabad Regulation being also a war measure, and war having terminated in 1945, it lapsed, and the Control Order which was passed in 1955, became ultra vires, with the result that the violation of its provisions would not constitute an offence. He further urged that under the provisions of Article 372 of the Constitution of India this temporary law could not survive, because of explanation 3 to Article 372, which is as follows:

Nothing in this Article shall be construed as having any temporary law in force beyond the date fixed for its expiration or the date on which it would expire if this Constitution had not come into force.

73. This contention of the learned Counsel presupposes that the Defence Regulation was a temporary measure, but whether or not it was so has to be ascertained not from Article 372 of our Constitution, but from the Act itself. In certain countries, Emergency Laws derive their strength from the Constitution. In America for example, Article 4 of the Constitution reads as follows:

The United States shall guarantee to every State in this Union a Republican form of Government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

74. In Australia Section 119 of the Constitution is in the following words:

The Commonwealth shall protect every State against invasion and on the application of the executive Government of the State, against domestic violence.

75. The same is the position in Canada with regard to the exercise of the emergency powers by the Centre.

76. Thus it is clear that in America, Australia and Canada, the executive Government seeks the protection of the Commonwealth whose duty it is to protect every State against invasion and domestic violence, and it is only then that the Commonwealth declares an emergency and acquires emergency powers. From a perusal of Article 4 of the American Constitution and Section 119 of the Australian Constitution, it would appear that there the period of emergency is not

fixed and the retention of the emergency power by the Centre can only last as long as the emergency lasts.

77. In England, where there is no written constitution, the position is different. The executive there has no legislative powers and the emergency power there is derived from an Act of Parliament. A perusal of Section 11(1), Emergency Powers Defence Act, 1939 (England) would show that the Act continues in force only for a period of one year beginning with the date of the passing of the Act, and then it expires unless an address is presented to His Majesty by each House of Parliament praying that the Act should continue to be in force for a further period of one year from the time it would otherwise expire.

78. In India before the advent of the Constitution it was u/s 102, Government of India Act of 1935 that the Governor-General could declare an emergency, and under Clause 4 a period of six months was fixed.

79. In Hyderabad the position was quite different. Here the Nizam as stated earlier, was the sovereign authority having legislative, executive and judicial powers, so that the principle applicable to the interpretation of the Emergency Acts in countries with different Constitution provide us with no guidance for the decision of the point under consideration. Our attention was drawn to Halsbury's Laws of England (Halsham Edn.) Vol. 31, para 664. But it clearly states the duration of a Statute to be prima facie perpetual, though of course, it also states that a statute may be intended to be temporary as well as perpetual, and express words are not necessary to show whether Parliament intended a particular statute to be the one or the other.

80. I am therefore of opinion that the principle that an emergency measure expires automatically after the particular emergency which called it forth has terminated, does not apply to the Defence of Hyderabad Regulation inasmuch as it was passed by H. E. H. the Nizam and no law so passed could be regarded as having ceased to operate unless it was repealed by H. E. H. the Nizam or the legislature.

81. Holding this opinion as I do, I am unable to adopt the line of reasoning in the Australian and American cases cited to us by the learned Advocate for the petitioner.

82. "71 Com W L B 161" is a case where the plaintiff had claimed

(a) a declaration that the amendments (Statutory Rules 1945 No. 139) to the National Security (Female Minimum Rates) Regulations and each of them are beyond the powers conferred upon the Governor-General by the National Security Act 1939-1943 and are void and of no effect;

(b) a declaration that the said Act to the extent, if at all, to which it purports to authorise the making of the said amendments to the said regulation is beyond the powers of the Commonwealth Parliament and is void and of no effect and that the said amendments to the said regulations are void and of no effect

accordingly; and

(c) a declaration that the said amendments to the said regulations and the said specifications have no present or future validity, effect or operation.

83. The defendants demurred to the statement of claim. It was held by Latham C. J., Rich, Dixon, McTiernan and Williams JJ. (Starke J. dissenting) that the Regulations were valid and effectual as an exercise of the power conferred by Section 5 of the National Security Act, notwithstanding the cessation of hostilities.

84. Shri Pathak drew our attention to the following observations of his Lordship Dixon J. at page 180:

There remains, however, a difficulty arising from the necessarily temporary character of the Regulation. On its face it is directed to meeting a situation which may not last through the remaining life of the National Security Act and yet there is nothing in the Regulation itself to restrain its operation, either by reference to a fixed period, or to any event or condition. The American doctrine is that a law which nothing but transient circumstances Justify is valid from its inception only in its operation in or upon those circumstances and never is or becomes capable of operating further. It is not that it is invalidated by changing circumstances, but rather it never had a valid application except to or in existing conditions.

His Lordship further observed:

If a power applies to authorise measures only to meet facts, the measure cannot outlast the facts as an operative law.

85. "79 ComW L R 43 (I)" is a case where the Rural Bank of New South Wales, a Corporation carrying on the business of banking as a State Bank and incorporated under the Govt. Savings Bank Act 1906 (N.S.W.), as amended, and the Rural Bank of New South Wales Act 1932 (N.S.W.), as amended, applied to the High Court for a writ of prohibition directed to the United Bank Officers' Association of New South Wales, the United Bank Officers' Association of Queensland, the Bank Officials' Association of Western Australia, Union of Workers, Perth, and His Honour Judge Porter. Commonwealth Court of Conciliation and Arbitration, restraining them and each of them from taking any further proceedings upon or in respect of two several decisions made by his Honour on 4-6-1947 and 14-12-1948 respectively, upon the grounds, inter alia.

(i) that the Women's Employment Act 1942 together with all regulations thereunder is and was on 14th Dec., 1948 in excess of the Constitutional powers of the Parliament of the Commonwealth and void and of no legal effect;

(ii) alternatively, that regulations purporting to derive their force from the said Act were on the 14th December, 1943 in excess of the said constitutional powers and invalid....

The learned Judge observed:

The continued existence of a formal state of war, after the enemy has surrendered, is not enough in itself to bring or retain within the Commott-wealth legislative power over defence the same wide field of civil regulation and control as fell within it while the country was engaged in a conflict with powerful enemies.

It was further observed:

It may be incidental to defence to continue the control and regulation of a particular subject matter for a time after the cessation of hostilities and also to maintain such control while legislative provision is being made for the necessary re-adjustment; but, unless the court can see with reasonable clearness how it is incidental to the defence power to prolong the operation Of a war measure dealing with a subject otherwise falling within the exclusive province of the States, it is the duty of the court to pronounce the enactment beyond the legislative power of the Commonwealth.

86. "85 Com-W L R 30 (D)" is a case where Queensland News-papers Pty., Ltd, as landlord gave notice to Archibald Gordon Mctavish, to quit and deliver possession of certain premises being part of Victory Chambers, Adelaide Street, Brisbane and of which he was the tenant. This notice was given u/s 41(1)(5)(8) (ii) of the Landlord and Tenant Act of 1948 (Q). As the tenant failed to comply with the notice to quit an information was exhibited by the landlord, so that proceedings might be instituted for ejectment. After hearing evidence the Magistrate found that the tenant was protected tenant within the meaning of this regulation and that reasonably suitable alternative accommodation was not available. Accordingly he dismissed the information. On appeal it was held by Dixon, Mctiernan, Williams, Webb, Fullagar and Kitto, JJ. that-

on their true construction the purpose of the regulations was not to confer on members or former members of the armed forces some recompense or reward for war service but was to deal with conditions arising out of and in the course of the war and existing in the transition from war to peace. Accordingly the Defence (Transitional Powers) Act 1946-49, to the extent to which it purported to continue the regulations in force until 31st December, 1950, is not authorised by the defence power and is invalid.

Their Lordships further observed;

What provided the constitutional justification for the regulation at the beginning was the expansion of the practical application of the defence power resulting from conditions of war. To prolong a regulation made in and framed for such conditions arising from war is an attempt to exercise a power incidental to defence after the conditions to which the regulation was incident have passed.

87. "64 Law Ed 194 (C)" is a case of appeal from the District Court of the United States for the Western District of Kentucky to review a decree enjoining the enforcement of the war-time Prohibition Act, and also an appeal from the District Court of the United States for the Southern Dist. of New York to review a decree

dismissing the bill in a suit to enjoin the enforcement of the war-time Prohibition Act. It was held that-

Assuming that the implied power of Congress to enact such a measure as the war-time Prohibition Act of Nov. 21, 1918, must depend not upon the existence of a technical state of war, terminable only with the ratification of a treaty of peace or proclamation of peace, but upon some actual emergency or necessity arising out of the war or incident to it, the power is not limited to " victories in the field and the dispersion of the hostile forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress.

It was further observed:

The Federal Supreme Court may not in passing upon the validity of a Federal Statute, inquire into the motives of Congress, nor may it inquire into the wisdom of the legislation, nor may it pass upon the necessity for the exercise of a power possessed. It requires a clear case to justify a court in declaring that a Federal Statute adopted to increase war efficiency has ceased to be valid, on the theory that the war emergency has passed and that the power of Congress no longer continues....the War-time Prohibition Act of Nov. 21, 1918 cannot be said to have ceased to be valid prior to the limitation therein fixed, viz., "the conclusion of the present war and thereafter until the termination of demobilisation".

88. "68 Law Ed 841 (J)" was a case of appeal by the complainants from a Judgment of the Court of Appeals of the District of Columbia affirming a judgment of the Supreme Court, dismissing a bill filed to enjoin enforcement of an order of the Rent Commission. It was held that:

When the emergency as to housing conditions, created by the calling of help to the national capital for war purposes, has been relieved by the termination of the war and the building of additional houses, a statute providing for the fixing of rents for the use of private buildings can no longer be upheld and that a law depending upon the existence of emergency or other certain states of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed.

89. 78 Law Ed. 413 (K) is a case of an appeal by defendant from a judgment of the Supreme Court of the State of Minnesota which reversed an order of the District Court for Hennepin County denying a motion for a new trial in a proceeding for an order extending the period of redemption from mortgage foreclosure. It was held:

Whether the exigency still exists upon which. depends the continued operation of a law designed to relieve an economic emergency is always open to judicial inquiry.

90. It is true that from the authorities cited above it would appear that the Courts in Australia and the United States have declared an emergency statute to

be valid or otherwise after the termination of the particular emergency for which it was enacted but these alone do not help the contention of the learned Counsel for the petitioner, inasmuch as according to the Constitutional set-up of America and Australia, the Courts there have the power to declare that a particular law has ceased to exist. Such a power is a special feature of the federal system of Govt. which cannot be exercised by the judiciary in a Unitary system of Government, such as the one we had in Hyderabad.

Further, the Courts in America and Australia have to interpret a statute with reference to the provisions of a written Constitution which prescribes legislative limits, whereas in Hyderabad the courts had to accept the law declared by the Nizam, their only function being to interpret it. There was no provision of law by which the courts here had the power to decide whether or not an emergency did exist or continued. This was exclusively within the prerogative of H. E. H. the Nizam, as the Supreme head of the State. Therefore, in my opinion, the cases decided by the Australian Courts and the Supreme Court of America are not applicable to the present case.

91. It is admitted that the defence of Hyderabad Regulation has not been repealed so far either by a Firman of H. E. H. the Nizam or by the legislature, and I have already stated my reasons for holding that this Court has no power to declare that the Regulation has ceased to be operative so long as it remains on the Statute Book.

92. Therefore, my answer to question No. 1 is that having regard to the preamble, language and the constitutional set-up of the State then existing the Defence of Hyderabad Regulation has not lapsed and is still good law, and will continue to be so, until it is repealed by a competent authority.

93. Turning now to the second question a reference to the relevant provisions of the Defence of Hyderabad Regulation is necessary. Section 3 of the said Regulation provides that the President-in-Council may by notification in the Jarida (Gazette) make such rules as appear to him to be necessary or expedient for securing the defence of the Dominions, public safety, the maintenance of public order, the efficient prosecution of war or the maintenance of supplies-and services essential to the life of the community. Sub-section 2 of this Section contains a very long list of items for which the rules may empower any authority to make provision by means of orders. Under the provisions of Section 3 of the Regulation, the Defence of Hyderabad Rules were made by the President-in-Council. Among the rules enacted is rule 72, Sub-rule 2 which reads as follows:

In exercise of the powers conferred by this rule the Government of Hyderabad purported to issue the order called the Cotton Cloth and Yarn Control Order in the year 1352.

which was later repealed by another Control Order of 1355 P. Under the latter Control Order of 1355F., a Notification (No. 327 dated 12th Sept., 1948) was issued by the Commissioner, which reads as follows:

In exercise of the powers conferred by Sub-rule 2 of rule 72 of the Defence of Hyderabad Rules, H. E. the President-in-Council is pleased to make the following order, and to direct with reference to Sub-rule (1) of R. 110 of the said rules that notice of the Order shall be given by the publication of the same in the Government Jarida and by the issue of a Press-note explaining its provisions.

94. At this stage it is necessary to refer to R. 110 which corresponds to R. 119, Defence of India Rules. Rule 110 runs as follows:

110(1) Save as otherwise expressly provided in these rules, every authority, officer or person who makes any order in writing in pursuance of any of these rules shall, in the case of an order of a general nature or affecting a class of persons, publish, notice of such order in such manner as may, in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concerns and in the case of an order affecting an individual, serve or cause the order to be served on that person-

(i) personally, by delivering or tendering to him the order,

(ii) by post, or

(iii) where the person cannot be found by leaving an authenticated copy of the order with some adult, male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain,

and thereupon, the persons, corporation, firm or person concerned, shall be deemed to have been duly informed of the order.

(2) Any Police Officer, and any other person authorised by President-in-Council in this behalf may, for any purpose connected with defence of the Dominions, the public safety, the maintenance of public order, the efficient prosecution of the war, the maintenance of supplies and services essential to the life of the community or the administration of these rules, affix any notice to, or cause any notice to be displayed on, any premises, vehicle or vessel, and may for the purposes of exercising the power conferred by this rule enter any premises, vehicle or vessel at any time.

(3) Any person authorised by the President-in-Council in this behalf may, for any purpose mentioned in Sub-rule (2) by order direct the owner or other person in possession or control of any premises, vehicle or vessel in such manner as may be specified in the order.

(4) If any person without lawful authority removes, alters, defaces, obliterates or in any way tampers with any notice affixed or displayed in pursuance of these rules, or contravenes any order under Sub-rule (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

95. This R. 110 of the Defence of Hyderabad Rules has undergone a number of

amendments. The rule provides something in the nature of an exception to the general rule "ignorantia legis non excusat"; but only to this extent that it provides in effect that unless and until there has been publication of notice of an order, no one can be punished for a breach of the order. It does not, however, require that any given person should have actually been informed of the order and should have actual knowledge of it. On the contrary, after publication of the order, the persons concerned, that is, those affected by it, shall be "deemed" to have been duly informed of the order. In the case of an order affecting an individual person (not being a corporation or firm, for which there is a separate provision) the rule lays down that if service is affected in the manner prescribed the person concerned shall be deemed to have been duly informed of the order,

96. Rule 110 is a composite rule providing for the publication of the order if it is of a general nature or if it concerns a class of persons, and for personal service or some kind of substituted service if it only concerns an individual. The rule clearly aims at securing that all persons affected by an order shall get either direct or constructive notice of the order.

97. There has been a great divergence of opinion among the former British Indian High Courts with regard to the nature and effect of the provisions of R. 119 of the Defence of India Regulation, which is similar to R. 110 of the Hyderabad Regulation. Some courts have held that the rule is mandatory, while others that it is merely procedural. The learned Counsel for the petitioner contends that R. 110 is mandatory and that an order unless and until there has been a publication of it is required by R. 110 is not binding on any one, and indeed is not law at all.

98. Reliance was placed on AIR 1944 40 (Nagpur); Jagarnath Sah Vs. Emperor, ; Mahadeo Prasad Jayaswal Vs. Emperor, ; Krishan Chandra Vs. Emperor, and Harla Vs. The State of Rajasthan, .

99. The first of these AIR 1944 40 (Nagpur) was a case of conviction. The applicant filed an application to revise the judgment of the Sessions Judge, Nagpur, in Cr. Appeal No. 110 of 1943. The contention of the petitioner was that in the absence of due publication of the District Magistrate's order the petitioner was not affected by the order and that consequently his conviction was wrong,

100. Niyogi J, held:

Rule 119 lays an obligation on the Officer making the order to publish notice of such order. The manner in which such notice is to be published no doubt is left to the discretion of that officer. If he adopts a mode of publication, however inadequate or unreasonable it is not liable to be questioned in any Court of law. But the burden of proving publication of the notice of that order in the manner contemplated by the officer making the order, lies on the prosecution. In other words, it must be shown that the officer making the order himself prescribed the manner of its publication and that the publication was made in that manner.

The obligation laid on the officer passing the order is a statutory obligation and it is incumbent on the prosecution to prove that the statutory obligation was duly discharged. The prosecution cannot in such a case merely rely on the presumption of Section 114(e), Evidence Act, for the only reason that the making of the order and the direction to publish notice of it were official acts. If it is imperative to publish notice of the order and the order comes into operation only on such publication, the prosecution must in the first instance show that all requirements of law have been carried out.

101. His Lordship further observed that : "Rule 119 embodies a legal fiction in that it says that the persons concerned shall be deemed to have been duly informed of the order. The expression "deemed to be" means that whereas A is not in reality B, the law requires A to be treated as if it were B. This legal fiction can be applied only when it is proved that everything that was required to be done by the authority or officer was actually done. While the District Magistrate thought that wide publicity to his order should be given by the notice being published in all the named papers, in fact and in truth, it came to be published only in one paper and that only on one day."

102. This ruling does not help the contention of the petitioner inasmuch as the decision as I understand it, turned mainly on the question whether there was wide publicity as contemplated by the District Magistrate and it was held that wide publicity was given and that the applicant had in point of law notice of the District Magistrate's Order. Besides, it would seem that in this case the point that the accused had knowledge was not raised at all.

103. The ruling in AIR 1945 Nag 218 pertains to a revision filed by the accused against his conviction under R. 81(4), Defence of India Rules read with Government of India's Food Grains Control Order of 1942 for selling Masoor without a licence. The question that arose there was whether it was necessary to serve the applicant with notice of the Notification of 20-12-1942 or whether it was enough to show that it was published in the Gazette.

104. Bose J. held:

Rule 119 assumes that publication is necessary and that Rule leaves the mode of publication to the authority making the order to decide. The courts cannot go behind the mode he prescribes. Publication is a condition precedent. If some law prescribes the mode of publication, then all that the Crown need to do is to show that mode was observed. If, on the other hand, the matter is left to the authority making the order, then it is imperative that he should prescribe the mode, and then the Crown must prove, both that he prescribed a particular mode and that publication was strictly in accord with what was prescribed. Until that is done, the order will not be accepted as law. It will not be enough to say that because the matter is published in Mode A (Govt. Gazette) therefore it must be presumed that the authority in question thought that that was the best mode of publication.

105. This ruling of course supports the contention of the petitioner, but the

learned Judge has relied upon some English cases reported in (1918) 1 KB 101; (1918) 1 KB 673 (Z3) and (1930) 2 KB 98. In (1918) 1 KB 101 a distinction was drawn between an ordinary law enacted by Parliament after due publicity and the Defence of Realm Regulations, and it was pointed out that there was about statutes a publicity even before they come into operation, which was absent in the case of many orders such as that with which the Court was then dealing and, indeed, if certain orders were to be effective at all, it was essential that they should not be known until they are actually published.

106. Similar observations have been made in the other cases. We may point out that we have to interpret our own rules and cannot get much help from rules which were differently framed and in respect of which so far as it appears there was no such provision as R. 110. With the greatest respect therefore, I am unable to accept the view expressed by Bose J.

107. The next case Mahadeo Prasad Jayaswal Vs. Emperor, was a case of breach of certain provisions of the Cotton Cloth & Yarn Control Order. In this case Mahadeo Prasad was convicted under R. 81 (4) of Defence of India Rules for the said breach. The contention in appeal was that the conviction was invalid as the prosecution had failed to prove that the Order was published in accordance with the provisions of R. 119(1), Defence of India Rules.

108. Pazl Ali C. J., Shearer and Sinha JJ. held

the "Cotton Cloth & Yarn Control Order which was published in the Government Gazette was duly published according to the law so as to affect the persons concerned with notice of the order.

This ruling does not help the contention of the learned Counsel for the petitioner. On the contrary it helps the case of the prosecution, for it has been observed that if there is some evidence as to the publication of an order, though the publication may be seemingly inadequate, and if it is also proved that the accused had knowledge of the order then the courts will not, as a rule, insist on strict proof of the other ingredients of the rule, viz., that the authority or the officer making the order had exercised his mind to determine that the order was to be published in the manner best adapted for Informing the persons concerned of its contents. In the present case whether or not the petitioner had knowledge of the order is a matter of evidence.

109. The other case which is also of the Patna High Court viz., - "Madanlal Dalmia v. Emperor" AIR 1945 Pat 113, is a case where the petitioner was convicted for an offence under R. 81(4), Defence of India Rules. Here also the argument advanced was that the publication was not in accordance with the provisions.

110. Agarwal and Imam JJ. held:

The legal fiction under R. 119 that when a notice has been published the persons concerned shall be deemed to have been duly informed of the order is applicable

only when it has been proved that everything that was required to be done by the authorities or officer was actually done. Accordingly, where the order under R. 81 fixing the price of sugar was issued on 21-1-1943 but the order was not notified and the public not generally apprised thereof in the manner required by R. 119 until 23-1-1943 the sale of sugar on 22-1-1943 at a price in excess of the controlled rate cannot be regarded as an offence. The order becomes effective only when the public is apprised of the same in the manner laid down in R, 119.

In this case their Lordships have also observed that:

there is no direct evidence as to the opinion of the Sub-Divisional Officer relating to the manner best adapted for informing the persons concerned of its order or its contents and that the order only recites that for the information of the public it was being printed. Whether it was printed or not, we do not know and if it was printed how it was distributed, is not disclosed.

The points on which their Lordships' decision is based namely, that the offence was committed before publication has no bearing on the facts of the present case. In view of these facts their Lordships were justified in holding that the publication was not in accordance with the provisions.

111. *Harla Vs. The State of Rajasthan*, was a case of conviction u/s 7 of Jaipur Opium Act. The question that arose for consideration was whether the passing of the resolution purporting to enact the Jaipur Opium Act without promulgation of the publication in the Gazette or other means to make it known to the public was sufficient to make it a law. It was held by Mahajan J. (at present the Chief Justice of India) and Bose J. that:

in the absence of any special law or custom, it would be against the principles of natural justice to permit the subject of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognizable way so that all men may know that it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. In the absence therefore of any law, rule, regulation or custom, a law cannot come into being by merely passing a resolution without promulgation or publication in the Gazette or other means. Promulgation or publication of some reasonable sort is essential.

In my opinion this ruling also is of no help to the petitioner, for it was a case in which there was no publication at all, and no evidence that the accused had any knowledge of the order.

112. The case reported in AIR 1944 Sind 142, (L) arose out of an appeal by the Government of Sind against the acquittal by the Resident Magistrate of Tando Adam of one Mangul Tekumal, a Hindu shopkeeper of Tando Adam, who was

charged with an offence under R. 81, Defence of India Rules, 1939, for selling charcoal above the control price. The contention on behalf of the accused was that he knew nothing of the new rates and that as far as he was concerned there was no publication as the law required. Davis C. J. and O'Sullivan J. held : "Before a person can be punished for an offence under the Defence of India Rules, notice as required by R. 119 should be given. Consequently before an accused can be convicted of any breach of Control Order by the Collector under R. 81 fixing the price of charcoal it must be shown that notice of the order was given in such manner as the Collector in his opinion thought best adapted for the purpose as required by R. 119. This does not mean that the Court can substitute for the opinion of the Collector its own opinion, but it does mean that the court should be satisfied that the Collector has decided on the manner in which the notice of the order should be given and that notice has been given in accordance with the manner the Collector had decided on.

Ignorance of law is no excuse for any breach thereof and once the order by the Collector has been duly promulgated and duly brought into force all subjects of the State are bound by it and their ignorance cannot be pleaded as good defence. The fact that in the circumstances of a particular case there is some reasonable explanation for ignorance of law is a matter which can be considered with the question of sentence, but it does not affect the principle that once a law is duly passed and promulgated a subject commits the breach of it at his own peril. There is no principle that before persons are affected by the orders of Government published in accordance with law in a notification, they must be given a locus penitentiae, opportunity for repentance, or time within which they may inform themselves of what it is to be presumed, they knew as soon as the publication took place."

Their Lordships further observed that:

there was publication of the Control Order in Tando Adam within the requirements of R. 119 and the Magistrate was wrong in acquitting the accused on the ground that the accused was ignorant of the Control Order.

113. In "Mhatarji Bhau v. Emperor" AIR 1945 Bom 389 the question was which was the best course besides publishing the notice in the Government Gazette. Their Lordships observed:

There the notification was published in the Government Gazette and the illiterate mahar who was asked to announce the notification by beat of drum in the village did not announce all the material particulars of the notification, the notification cannot be said to have been published as required by law so as to charge a person in the village with liability for breach of the same.

This ruling also does not help the petitioner inasmuch as it turns on the fact that the material particulars of the notification had not been published as required by law.

114. AIR 1952 Hyd 149 was also a case of conviction and in this case the main contention was that the publication of the notification was not made in the prescribed form, and that the provisions of R. 110, Defence of Hyderabad Rules were mandatory. It was held that:

there is ample authority for the proposition that in the absence of evidence that the requirements of R. 90 were complied with, the prosecution should fail. Here there is no proof of the promulgation of the order; as such the conviction cannot stand, there being no evidence justifying the knowledge of the accused of the issue of a press-note or any notice. The contention that the promulgation of the notification is enough to sustain a conviction cannot be accepted.

It was further observed:

No doubt, the mode of publication, however, inadequate or unsatisfactory it might be, could not be canvassed in a court. That is a matter left to the discretion of the authority concerned. There must doubtless be clear proof of the mode making it known to the public. The provisions relating to the publicity being mandatory, failure to conform to the requirement of the law would not justify a charge being fastened on a person of violating any order or provisions of the law.

This ruling also does not help the contention of the learned Counsel for the petitioner, for, in this case also what has been laid down is that In the absence of proof of knowledge on the part of the accused he cannot be convicted and that the inadequacy or unsatisfactory mode of publication would not be questioned in a court of law.

115. With regard to the case of - "Permitenti Kasia v. State of Hyderabad", 6 Nazair-e-Osmania 156 (Z7), the observations made by Abdul Hamid Khan and Shripat Rao JJ. to the effect that if no publication has been made according to the prescribed mode, no offence can be made out, are obiter, inasmuch as such a question was not before their Lordships for consideration.

116. Against these cases there are the rulings in AIR 1944 Bom 259 and AIR 1947 All 191. The ruling in AIR 1944 Bom 259 relates to a case of an order under R. 26(5) (B), Defence of India Rules. The contention put forward was that the procedure prescribed by R. 119 was not followed.

117. Macklin and Sen JJ. held:

Where in fact the individual concerned knows perfectly well that an order has been passed against him and acquired his knowledge by other means, it cannot be said that he had not received notice of the order merely because notice is not given to him in the form prescribed by R. 119.

It was further observed that:

the consequence of failure to carry out the provisions of R. 119 is practical rather than legal. The result would be that the prosecution would lose a simple method

of establishing beyond controversy that the person affected had received notice of the order affecting him, and that the person affected would find it easier to establish the fact that he had not received notice, assuming that in any particular case the burden of proof were upon him to prove affirmatively that he had not received notice.

118. In AIR 1947 All 191, Verma C. J., Xorke, Waliullah, Mootham and Mathur JJ. held that:

Rule 119 is procedural and the only object of the rule is to secure either direct or constructive notice of the order to the person or persons concerned and the validity of the order is not affected at all by the rule. What is affected by Rule 119 is the operation of the original order in the sense that in the absence of communication, direct or constructive, breach of the order cannot be made punishable.

119. Thus after giving a careful consideration to the arguments and the authorities cited by the learned Counsel, I am of the opinion that R. 110, Defence of Hyderabad Regulation, corresponding to R. 119, Defence of India Regulation is not mandatory but only procedural. The only object of the rule is to secure either direct or constructive notice of the order to the person or persons concerned, and that the validity of the order is not affected at all by the rule. The order itself, once it is signed, is a perfectly good and valid order. But no one can be convicted for a breach of the order unless and until there has been a communication either direct or constructive by publication in accordance with the terms of Sub-rule 1. What is affected by R. 110 is the operation of the original order in the sense that in the absence of communication, direct or constructive, a breach of the order cannot be made punishable.

The whole point of Rule 110 is to saddle a person with knowledge direct or constructive in order that that person may be liable for punishment if he commits a breach of the order. The information or communication serves no other purpose. Rule 110 refers to the mode of publication and its object is to relieve the prosecution from the burden of proving knowledge on part of the accused. If there is some evidence of the publication of the order, though the publication may be seemingly inadequate, and if it is further proved that the person had knowledge of the order, it will be sufficient compliance with the requirements of R. 110. The court need not take into consideration the other ingredients of the rule.

120. My answer, therefore, to the second question is that the directions contained in the Cotton Cloth & Yarn Control Order of 1355 F., about the publication of a press-note explaining its provisions read with R. 110 of the Defence of Hyderabad Rules are not mandatory, but only procedural.

121. The contention on behalf of the petitioner relating to question No. 3 referred to us by the Full Bench is that the Commissioner's Order prescribing the marks on the outer covering is in excess of the power delegated to him.

122. Our attention was drawn to the definition of Cloth & Yarn in Section 2 of the Cotton Cloth & Yarn Control Order of 1355 F., and to Section 3, Clause (c), Section 4, Clause 3 and Section 7, Clauses (d), (e) and (f). It was urged that the word "cloth" does not mean the outer covering and further that the law made by the delegated authority must be exercised strictly in accordance with the powers creating it,

123. Shri Raghavan on behalf of the State contends that the Commissioner's order prescribing the marks on the outer covering is within his powers and that the word "cloth" includes outer covering also. He drew our attention to the dictionary meaning of the word "on".

In order to appreciate this point a reference to the relevant provisions of the Cotton Cloth & Yarn Control Order of 1355 P., is necessary.

124. Section 2(a) defines "cloth & yarn" as follows:

Cloth and yarn mean respectively any type of cloth or yarn manufactured either wholly from cotton or partly from cotton and partly from any other material and containing not less than ten per cent of cotton by weight but cloth does not include:

- (i) Hosiery;
- (ii) Leather cloth;
- (iii) Cloth ordinarily used in Book-binding;
- (iv) Tracing paper;
- (v) Cloth manufactured partly from cotton and partly from wool and containing 40 per cent, or less of cotton by weight, etc., etc.

Section 3 of the said Order provides:

The Textile Commissioner may, after consultation with the Hyderabad Mill Owners' Association, from time to time by notification in the Jarida specify;

- (a) the maximum quantity of handloom cloth which may be stocked by any dealer and the maximum period for which he may hold such stocks;
- (b) the maximum price ex-factory wholesale and retail, at which any class of specification of cloth or yarn may be sold;
- (c) the markings may be made by the manufacturers and dealers of any class or specification of cloth or yarn manufactured or sold by them and the time and manner of making those markings.

Section 4, 01. 3 reads thus : "Notwithstanding anything contained in Clause 3 of Section 4 the Government or an officer authorised by the Government in this behalf may fix-

(a) the ex-factory maximum price for the purposes of the special markings under Clause 9 in respect of any type of cloth for which price has not been specified by the Textile Commissioner under Clause 3.

(b) the maximum price ex-factory wholesale and retail at which cloth produced by a manufacturer or other person referred to in the explanation to Sub-clause (1) of Clause 7 may be sold and may further specify the marking to be made on such cloth and the time and manner of making them.

Rule 7 is as follows:

(1) "Where the marking to be made and the time and manner of making them in respect of any class or specification of cloth or yarn have been specified under Clause 3 or 4(3) (b);

(a) the manufacturer of or as the case may be the dealer in such cloth or yarn shall cause the marking to be made thereon at the time and in the manner specified;

(b) No person other than such manufacturer or dealer shall cause the markings to be made on any such cloth or yarn;

(c) no person other than the manufacturer thereof shall have in his possession or under his control any such cloth or yarn which is not so marked, unless it be for bona fide personal requirements;

(d) no person shall alter or deface or cause or permit to be altered or defaced the markings made on any such cloth or yarn held by him otherwise than for his bona fide personal requirements;

(e) no person shall mark on any cloth or yarn any other markings resembling the prescribed markings in a manner calculated to mislead; and

(f) no person shall have in his possession or under his control otherwise than for his bona fide personal requirements any cloth or yarn the markings whereon are altered or defaced or are of the character specified in para (e).

The act of the accused is said to have come with the ambit of paragraphs (d), (e) and (f) of c. 7 of the said Order read with the Notification issued by the Textile Commissioner. Notification No. 3 of the Textile Commissioner dated 22nd Shehrewar 1355 F., reads as follows:

under the powers conferred on me by the Cotton Cloth & Yarn Control Order, 1352 P., Clause 1 hereby prescribes the following markings and the manner of marking which shall be Observed by all manufacturers of Cotton Cloth & Yarn in respect of goods packed after 24-10-52 p. (31-7-43) excepting cotton cloth and yarn purchased under a direct contract by H. E. H. the Nizam's Govt. or the Govt. of India."

Clause (1) : "Every manufacturer shall obtain a distinguishing number for us as prescribed by application to the Textile Commissioner. The term "Manufacturer"

shall be deemed to include a dyer, bleacher, printer or finisher Of cotton yarn and cotton cloth.

Clause (2) : Cotton doth Marking:

(a) At a distance not exceeding one yard from each end of a piece or uncut unit, every manufacturer shall impress or stamp the mark illustrated below:

(b) The over-all diameter of the mark shall not be less than 14".

(c) The figures of mark shall not be less than 1/4" in height and the letters not less than 1/8" in height.

(d) Within the mark and in position shown at XXX in the above diagram the manufacturers" distinguishing number shall be stamped.

(e) The month and year of packing shall also be stamped or impressed in letters or figures not less than 1/2" in height immediately below the mark.

Clause (3) (a) : A paper label reproducing the mark described in Clause (2) but having a diameter of not less than 4" shall be inserted by the manufacturer in the centre of every bundle of yard packed by him.

(b) Letters and figures of the label shall not be less than 1/2" height.

(c) Within the mark and in position shown at XXX in the diagram in CL (2) the manufacturers distinguishing number shall be reproduced.

(d) The month and year of packing shall be stamped or impressed on the label in letters and figures not less than 1/2" in length immediately below the mark illustrated in Clause (2).

Clause (4) : The month and year of packing and the manufacturers" distinguishing number shall be stamped or impressed on the outside of every bale or other package of cotton yarn and/or cotton cloth in letters and figures not less than 14" in height.

Clause (5) : It shall be an offence under the Cotton Cloth & Yarn Control Order:

(a) for any person other than a manufacturer to use or apply the markings prescribed in this order to any cotton cloth or cotton yarn or to any bale or other container in which it is packed, and

(b) for any manufacturer to use the markings prescribed in this Order in a manner other than that prescribed.

Clause (6) : For the purposes of marking cloth and yarn and bales or other containers under this Order, the following abbreviations only may be used for the month of packing:

Abbreviations). January ... .. Jany. February ... .. Feby. August ... .. Augt.  
September ... .. Sept. October ... .. Octr. November ... .. Novr.

December ... .. Decr.

125. From the definition of Cloth & Yarn in Section 2 of the said Cotton Cloth & Yarn Control Order it is clear that it means any type of cloth or yarn manufactured wholly or partly from cotton or partly from cotton and partly from any other material. The word "cloth" or "yarn" as used in the Cotton Cloth & Yarn Control Order does not include the outer covering as for instance the gunny bag. The Textile Commissioner through the Notification referred to above directed that markings be made on the outer covering of every bale or package of cotton yarn or cotton cloth. I may point out that nowhere in the Order is there anything to show that the outer covering of a bale or package had to be marked. Clause (d) of Section 7 refers to the alteration or defacement of markings on any cloth or yarn. Clause (e) refers to the markings on any cloth or yarn resembling the prescribed form. Clause (f) refers to keeping in possession of such defaced or altered cloth or yarn.

126. The learned advocate for the State very rightly conceded before us that in the said Order there is no specific provision for marking on the outer covering of the bale, but contended that the word "on" used in Clauses (d), (e) and (f) of Section 7 includes the outer covering inasmuch as the dictionary meaning of the word "on" applies to covering or enclosure attached to the outer covering. To accept this contention would be to read something into the said Order which is not there.

127. I am, therefore, of the view that the outer covering cannot come within the meaning of cloth and yarn as defined in the Cotton Cloth & Yarn Control Order. There is no provision in the said Order for the marking to be made on the outer covering. This direction by the Textile Commissioner in my opinion is in excess of the power delegated to him. I accept the contention of Shri Pathak that the delegated authority has to be exercised strictly in accordance with the powers creating it.

128. My answer, therefore, to question No. 3 is that the directions by the Textile Commissioner about the markings on the bales are not within the scope of his delegated authority and are, therefore, ultra vires.

129. With regard to the 4th question, the contention of the advocate for the petitioner is that the Court has got very wide powers under Sections 455 and 439 of the Cr. P. C. and that nowhere has it been held that the discretion given is restricted. Reliance was placed on a number of authorities.

130. Shri Raghavan on behalf of the State very rightly concedes that the Court has got Wide powers under Sees. 435 and 439, Cr. P. C. but contends that interference is justified only when there is an impropriety which is flagrant.

131. I do not wish to enter into a detailed discussion of the authorities cited. Suffice it to point out that the object of the revisional Jurisdiction is to confer upon the Criminal Courts a kind of paternal or supervisory jurisdiction in order to

correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect of proper precautions, or apparent harshness of treatment which has on the one hand, resulted in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals.

132. Within the said limits, however, the High Court has a wide discretion which will be exercised in each case according to the view which the court may take of the requirements of justice. The generality of its powers cannot be cut down by any decisions. Nor can it be curtailed by any rules. At the same time it is necessary in practice to recognise certain principles of interference so that the whole time of the High Court may not be consumed in dealing with applications for revision. Thus the High Courts have, as a matter of practice, recognised a rule that ordinarily a finding of fact or an order of acquittal should not be interfered with in revision though there is no doubt about its jurisdiction to interfere in proper cases. The Jurisdiction of a superior court cannot be taken away except by express words or by necessary implication. The powers of revision, however, should not be so exercised as to make one portion of the Code conflict with another as would be the case, were the High Court to permit the practice of interference in revision so as to give a right of appeal where such right is definitely excluded by other provisions of the Code.

133. The power to interfere with an interlocutory order passed by the lower court or in proceedings pending before the lower court cannot obviously be exercised by a court of appeal, inasmuch as it is only when a final order or judgment is passed by the trial court that the matter comes up in appeal. A court of revision, however, which is entitled u/s 435 to send for the records of any proceeding of the inferior court for the purpose of satisfying itself as to its regularity, must necessarily have the power to interfere and quash the proceedings where it finds that such proceedings are seriously irregular. The powers of the High Court in revision u/s 439 are not exhaustive. The section only enacts that among the powers possessed by the High Court are the powers of a court of appeal, and not that the High Court shall exercise only those powers which are conferred on a court of appeal. (See AIR Commentaries on Criminal P. C., Section 439 N. 1 Pts. 1, 7 to 10, 14 and 15 and N. 26 Pt. 1)

134. My answer, therefore, to question No. 4 is that Sections 435 and 439, Criminal P. C. authorise interference by this Court in pending criminal cases only on the grounds stated above.

M.A. Ansari, J.

135-138. (His Lordship stated the facts and proceeded : )

I have had the advantage of reading the draft judgment of my learned brother Mr. Justice Manohar Pershad, and while I agree with his answers to questions Nos. 2, 3, and 4, I differ with great respect as regards his conclusions on question No. 1. The answers to the last three questions in this case would not serve the purpose for which the case was referred to the larger Bench; for in one

form or another, the first question has arisen in a large number of pending cases in this Court and it was with a view to facilitate adjudication in such cases in the light of the pronouncement by a larger Bench that the question was referred. In these circumstances, I am bound to assign my reasons in detail for reaching conclusions different to those arrived at by my learned brother so far as the first question is concerned.

139. It is true that judiciary in written federal constitutions generally interpret and construe the constitutions, but this is the inevitable consequence of all written ruling instruments, be they federal or unitary, or something of lesser importance. - "Secy. of State v. Moment", 40 Ind App 48, it was held that Section 41(b) of Burma Act, 4 of 1898, which barred civil Courts from determining a claim to any right over land as against the Government was ultra vires, as it was in contravention of Section 85, Govt. of India Act, 1858. So in - "Purbho Das v. Sarkar-E-Ali", 35 Deccan LR 228 (Z9), a Pull Bench of this Court held that the punishment contained in paragraph 7 of Notification No. 3 of Azur 29, 1352F (November 3, 1942) which was published under R. 75, Sub-rule (2) of the Hyderabad Defence Rules, was ultra vires.

140. Then the principles applied in the interpretation and construction of the written Constitutions are not different to those used in construing laws enacted by legislatures where the Constitutions have not been reduced into writing, In - "Attorney General for Ontario v. Attorney General For Canada" (1912) AC 571 (Z10), the Privy Council at p. 583 observed:

In the interpretation of a completely self-governing Constitution, founded upon a written organic instrument such as the British North America Act, & the Constitution of the Commonwealth of Australia if the text is explicit, it is conclusive alike in what it directs and what it forbids

So also in - "South Australia v. Commonwealth", 65 Com-WLR 373, it is said at page 408:

The controversy before the Court is a legal controversy-The Court is not authorised to consider whether the acts are fair and just as between States - whether some states are being forced, by a political combination against them, to pay an undue share of commonwealth expenditure or to provide money which other states ought fairly to provide. These are arguments to be used in Parliament and before the people. They raise questions of policy which is not for the Court to determine or even to consider.

141. In our country, in - A.K. Gopalan Vs. The State of Madras, , Mr. Justice Mahajan, as he then was, declared:

It is quite obvious that the Court cannot declare a statute unconstitutional and void simply on the ground of unjust and oppressive provisions or it is supposed to violate natural, social or political rights of citizen, unless it can be shown that such injustice is prohibited or such rights are guaranteed or protected by the

Constitution. It may also be observed that an Act cannot be declared to be void because in the opinion of the Court it is opposed to the spirit supposed to pervade the Constitution but not so expressed in words. It is difficult on any general principle to limit the omnipotence of the Sovereign Legislation by judicial interposition except in so far as the expressed words of a written Constitution give that authority.

142. The aforesaid quotations support my view that a written Constitution is generally interpreted like any other statute by reference to its terms, and without any consideration of policy or the possibility of abuse of power. I am further strengthened in the view that the judicial functions in countries with written constitutions are not essentially different to those where the constitutions have not been reduced into writing by the fact that Writs of "certiorari, prohibition, mandamus and habeas corpus" are resorted to for purposes of challenging the legality of administrative pronouncements, orders or enforcement of a statutory duty. That Writs of this nature were issued by this Court even in the pre-constitution days cannot be denied.

I need refer only to the case of - "Raja Pratapgir v. State", 35 Deccan LR 157 (Z13), where an executive order under R. 66-A, Hyderabad Defence Regulation was challenged by asking for a Writ of certiorari and where six of the seven Judges took the view that the exercise of power by the Executive under the aforesaid rule can be quashed by this Court on certain grounds. Therefore, authorities of Courts in countries with written federal Constitutions relating to emergency legislations should not be ruled out on the only ground that the particular legislation before us was by an authority whose power was not reduced to writing.

143. It is also true that in a country with unwritten unitary Constitution as opposed to those with federal Constitutions with division of powers between the legislatures of the states and the Centre, the question of any particular enactment being ultra vires of the legislature does not arise. But even legislatures under written federal Constitutions are sovereign enacting authorities as regards the subjects assigned to them by their Constitutions. I need cite only the case of - "Bhola Persad v. Emperor" AIR 1942 PC 17 (Z14), where it was laid down that Indian Legislatures within their own sphere have plenary powers of legislation as large and of the same nature as those of English Parliament itself. Therefore, authorities holding war measures to be temporary without deciding their constitutionality are relevant for the purposes of this case, even though they be of countries with written Constitutions.

144. I have thought it necessary to mention these preliminary points because the argument advanced before us is not that the Hyderabad Defence Regulation was beyond the competence of the then enacting authority; but that having regard to the state of things when it was promulgated and the language used in it, it was a temporary war measure, authorising the Executive Council of this State to use certain extra-ordinary powers during the war emergency and no further. In other

words, the argument urged before us does not challenge the competency of the enacting authority, but asks us to interpret and construe the particular Regulation to be a temporary one, which the enacting authority did not intend to extend beyond the conditions necessitating its enactment. References to the Australian, Canadian and American cases were made with a view to show that where special powers within the competence of the conferring authority are given for the purposes of emergency, they cannot be continued beyond the emergency, and time limitation need not be expressly mentioned.

145. I shall first deal with the Australian cases. In - 71 Com W LR 161 (H)", the plaintiff claimed a declaration that the amendments to the National Security Female Minimum Rates Regulation were beyond the powers conferred upon the Governor-General by the National Security Act, 1939-43; that the Act was void of the Commonwealth Parliament and that the amendments had no present or future validity. It was held by the learned Judges of the Court that the Regulations were valid and effectual as an exercise of the power conferred by Section 7 of the National Security Act notwithstanding the cessation of hostilities. It will be thus seen that the Act itself was held not to be ultra vires. Dixon J. at page 180 says:

There remains, however, a difficulty arising from the necessarily temporary character of the Regulation, On its face it is directed to meeting the situation which may not last through the remaining life of the National Security Act and yet there is nothing in the Regulation itself to restrain its operation either by reference to a fixed period or to any event or condition...If a power applies to authorise measures only to meet facts the measure cannot outlast the facts as an operative law.

146. The aforesaid observations do not rely on any constitutional provisions of Australia, but recognise the general legal proposition that enactments may be temporary even though no time limit be fixed in them, and their temporary nature may be gathered from the circumstances under which they were enacted. The next Australian case cited in - "79 Com W LR 43 (I)", where a Banking Corporation incorporated under the Government Savings Bank Act of 1906 applied to the High Court for a Writ of "Prohibition" and challenged the scope of the defence powers after the actual fighting in the war had ceased as well as the operation of the Women's Employment Regulations and the National Security Regulations. The learned Judges at page 83 say:

The effects of the past war will continue for centuries. The war has produced or contributed changes in nearly every circumstance which affects the lives of civilised people. If it were held that the defence power would justify any legislation at any time which dealt with any matter the character of which had been changed by the war, or with any problem which had been created or aggravated by the war, then the result would be that the Commonwealth Parliament would have a general power of making laws for the peace, order and good government of Australia with respect to almost every subject. Nearly all the

limitations imposed upon the Commonwealth power by the carefully framed Constitution would disappear.

147. These observations show that even the constitutional authority of the Centre for purposes of defence must be read with other provisions of the Constitution, and does not authorise continuance of measures which relate to matters not closely and reasonably connected with war. The authority has been cited before us for the purpose of showing that powers for purposes of defence under an enactment cannot be used to control consequences arising out of the war if they extend to years after the hostilities have ceased.

The third Australian case cited is - 85 Com W LR 30". Here certain Regulations under the National Security Regulations, that imposed restrictions upon the ejectment of a class of persons, which included members and discharged members of the Army Forces, women and parents depending or recently depending upon such members, were held on their true constructions as not conferring on members or former members of the Army Forces some recompense for their services, but dealing with conditions arising out of the war. Accordingly, the Defence Transitional Provisions Act to the extent to which it purported to continue the Regulation in force until 31-12-1950, was found not authorised by the Defence Power, and therefore invalid. The learned Judges deciding the case, say:

To prolong a regulation made in and framed for such conditions arising from the war is an attempt to exercise the power incidental to defence after the conditions to which the Regulation was incident have passed.

Though the aforesaid authority relates to the Commonwealth incidental powers of defence, yet it is relevant for purposes of this case as establishing that continuance of power to meet certain circumstances cannot be justified when the conditions necessitating the particular power, have passed. In my opinion, all the three Australian cases are relevant in so far as they lay down that authorisation to regulate conditions in a war emergency, though constitutional when granted, cannot be extended beyond the period of the war for which the authorisation was given. If we construe the Hyderabad Defence Regulations to be an enactment authorising the executive of this State to frame rules and delegate framing of such rules for purposes of controlling conditions arising out of the declaration of the war, then the aforesaid Australian authorities are certainly relevant as establishing that such powers cannot be continued to any period after the war has terminated.

148. The next case I would refer to is - "1923 AC 695 (B)", where it was held that the Canadian War Measures Act 1914, and orders in Council made thereunder, during the war for controlling throughout Canada the supply of Newsprint paper by manufacturers and its price and also the Dominions Act passed after the cessation of hostilities for continuing the control, were intra vires of the Dominion Parliament under Sections 91 and 92 of the British North

American Act, 1867. At page 705, it is stated:

Their Lordships therefore entertain no doubt that however the wordings of Sections 91 and 92 may have laid down a framework under which, as a general principle, the Dominion Parliament is to be excluded from trenching on property and civil rights in the Provinces of Canada, yet in a sufficiently great emergency such as that arising out of war, there is implied the power to deal adequately with that emergency for the safety of the Dominions as a whole....It may be that it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes ultra vires when it is no longer called for. In such a case the law as laid down for distribution of powers in the ruling instrument would have to be invoked. But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of ultra vires which it has to decide, in overruling the decision of the Government that exceptional measures were still requisite.

149. This case is an authority for the proposition that an emergency power impliedly given to the Centre lasts during the emergency or during the continuance of its immediate effects and it cannot be continued for an indefinite period.

150. I now come to the American case of - "(1924) 68 Law Ed 841 (J)", cited before us, where Mr. Justice Holmes at page 843, says:

A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed. In our opinion it is open to inquire whether the exigency still existed upon which the continued operation of the law depend.

151. To my mind, the aforesaid authorities to establish the broad proposition that authorisations by law for doing acts in periods of emergency are limited by the durations of emergency and therefore the fixation of a particular date for their terminations by the enacting authority is not essential. Indeed, where the act gives such a date it is nothing but a declaration of law as has been Interpreted by the law Courts. Therefore, the fact that the English Act or the Indian Defence Act fixed a period for the operation of the Acts is not to my mind very material. Nor its absence will affect the temporary nature of the Hyderabad Defence Regulation, if I come to the conclusion that it was promulgated for the purposes of the war. No authority is needed for this conclusion, but the Advocate of the applicant has referred us to paragraph 664, Vol. 31, of Halsbury's Laws of England, which is as follows:

The duration of a statute is prima facie perpetual. It is, however, possible that statutes may escape repeal by inadvertence; hence non-user and inconsistency with more modern legislation may affect the construction put upon them. Statutes, moreover, may be Intended to be temporary as well as perpetual, and

express words are not necessary to show whether Parliament intended a particular statute to be one or the other....

I do not think that in the period preceding the inauguration of the Constitution, the enacting authority of H. E. H. the Nizam was higher than that of the English Parliament; and if a parliamentary statute can be held without express words to be temporary, I do not see why the Hyderabad Defence Regulation should be excluded from the application of the aforesaid legal proposition.

152. I would now proceed to consider how far the Hyderabad Defence Regulation, which was enacted by a Firman of H. E. H. the Nizam, is a war emergency measure. It is clear that if the enacting authority intended the powers given by it to be availed of during the emergency it would be availed of only in the emergency. The Court cannot question the conclusion of the authority about an emergency having arisen, but the intention as to how long the powers are to be used is a matter of interpretation and construction of the enactment.

153. Now, in the extra-ordinary Jarida (Gazette) publishing the Regulation there is a short-note under the signature of the Home Secretary that in view of the delicate conditions which have arisen due to the declaration of war, the Regulation that has received the consent of H. E. H. the Nizam is being published. We take this short Notification to be the statement of objects and reasons for the Regulation which though not admissible as an aid to its construction can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the enacting authority to pass the law and the urgency of the evil it sought to remedy. That it is admissible for this limited purpose is supported by the authority of - *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, and also by the observations of Mr. Justice Das in - *The State of West Bengal Vs. Subodh Gopal Bose and Others*, .

Thus the urgency of the evil which the Regulation sought to remedy, was the war conditions and nothing more. Then the entire provisions contained in the Regulation together with its Rules are almost identical with the Defence of India Act, and may be called the Urdu version Of the Defence of India Act and its Rules with modifications necessitated by the then State's constitutional set-up, Section 3 of the Regulation with necessary modifications is identical to Section 2 of the British India Act. Sub-section (1) of Section 3 says that the President-in-Council may by Notification in the Jarida make such rules as appear to be necessary or expedient for securing the defence of the Dominion, the public safety, the maintenance of public order or the efficient prosecution of war or for maintaining the supplies and services essential to the life of the community.

Then in the various clauses of Sub-section (2), which enumerates specific heads on which rules can be framed, a large number relate to army, defence and war efforts. Sub-clause (4) refers to enemy and authorises framing of rules against acts likely to assist the enemy or prejudice the successful conduct of the war. Sub-clause (10) relates to arrest of person suspected of dealing with the enemy.

Sub-section (4) of Section 2 authorises delegation of the rule making powers and Section 4 provides that the rules framed u/s 3 are to prevail over all other conflicting laws. Section 6 makes infringement of Rules with intention to wage war against King Emperor or to assist enemy punishable with death or transportation for life, which may extend for ten and other infringements with five years' imprisonment. Then Sub-rule (2) of R. 72, which is similar to Sub-rule (2) of R. 81 of the Indian Defence Rules, and under which the Textile Commissioner was authorised to issue Notification whose infringement the applicant is charged against, says:

The President-in-Council so far as appears to him to be necessary or expedient for securing the defence of the dominion or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community may by order provide.

I need not cite other provisions; for it appears to me that on its face the Regulation and its Rules were meant for war emergency and the question for adjudication is whether the enacting authority intended the powers, on lines of the Defence of India Act and almost identical to it, to be continued indefinitely until all the after-effects of war which may be for years, were to subside. It is true that there are several things mentioned both u/s 3 of the Regulation as well as in Sub-rule (2) of R. 72. But they are incidental to the war and are not so many emergencies otherwise incidentally arising at the same time. The authorisation to the Executive Council to frame rules for maintaining the supplies and services essential to the life of the community is but a subsidiary power to control one of the possible evils during the war.

At any rate, it is clear that the part of the Regulation directly dealing with the war conditions was not meant to last beyond the period of the war and required no express repealing. The legal position of the rest cannot be different. The other parts of the Regulation are so inextricably interwoven with that dealing with war conditions that an intention to continue the rest till all the effects of the war were over, cannot be attributed to the enacting authority. The words in Sub-rule (2) of R. 72 referred to above having regard to the context in which they are used, the circumstances under which the Regulation was promulgated and nature of the powers given by the Regulation and the rules framed thereunder, appear to mean that the authorities were to use the powers during the emergency created by the war.

There appears to be no authorisation for the use of the Regulation subsequent to the emergency, for the effect of the war may not disappear altogether in the lifetime of the generation that has seen the war and possibly for a longer period thereafter. I have, therefore, no hesitation in reaching the conclusion that this Regulation like the parent Act of the Defence of India Act was not a permanent measure and was to continue for a reasonable time after the termination of the hostilities. The war terminated on 24-10-1945, and the infringements for which the accused has been charged against are alleged to have been in May and June

1949. That means more than three years after the termination of the war.

In the rest of India, the emergency was declared to have ended on 30-9-1946. The Regulation cannot be held to be operative in 1949, nor the Notifications or orders which were issued under it. Therefore, my answer to question No. 1 is that the Hyderabad Defence Regulation was an emergency measure, that it was operative only during the emergency which gave rise to it, that the emergency ended before the date of the alleged offence and the Regulation and the Cotton Cloth and Yarn Control Order have already lapsed in spite of the fact that there was no express repealment.

154. As I agree with the answers of my learned brother Mr. Justice Manohar Pershad regarding the other three questions, it is not necessary for me to discuss in detail his reasons with which I agree.

155. These answers be sent to the Pull Bench which has referred the questions.

A. Srinivasa Chaki, J.

156-158. (His Lordship stated the facts & proceeded;) The learned Counsel for the petitioner argued with regard to question No. 1 that the Defence of Hyderabad Regulation was a war measure & from the very nature of the law it was a temporary law &, therefore, it could not outlive the emergency which called it forth and could never continue after the emergency had ceased. He, therefore, urged that since this Regulation had ceased to be operative after the termination of the war, the Cotton Cloth & Yam Control Order passed under the Defence of Hyderabad Rules could not be regarded as extant law and inasmuch as it was not a law in force any violation or breach of its provisions would not constitute an offence.

159. With regard to question No. 2 the argument of the learned Counsel was that admittedly there was no press note issued of this order; R. 110, Defence of Hyderabad Rules enacted that any notification published under the Defence of Hyderabad Rules might be published & made known in such manner as in the opinion of the authority appeared to be the best form of publication. It was urged that in this case the notification issued by the Govt. stated that it would be published in the Gazette & that a press note also would be issued but no press note was issued as contemplated in the notification. The absence of this issue of a press note in this case, it was contended, was vital and inasmuch the provisions relating to the publication were mandatory, any non-conformity to the provisions, made the law inoperative.

160. The contention with regard to the third question was that the Commissioner's order prescribing the mark on the outer covering was in excess of the power delegated to him. It was also urged that the markings on the cloth had not been tampered with; even assuming that there was a defacement or re-marking it was on the outer cover and an outer cover could not come within the definition of "Cloth" as defined in the said Control Order.

161. With regard to the last question the argument was that the High Court could always exercise its powers in proper cases on the ground of illegality of the procedure and the consequent harassment of the accused by such illegality of procedure.

162. The learned advocate for the respondent, Shri N. S. Raghavan, met the argument with regard to question No, 1 by urging that the Defence of Hyderabad Regulation was not a war measure and even it were regarded as a temporary measure it would not expire after the cessation of war. It would be still good law until repealed by a firman of H. E. H. the Nizam.

163. As regards question No. 2 Shri Raghavan urged that directions about the publication of a press note explaining the provisions of the Notification were only directory and not mandatory and the non-issue of a press note would not affect the validity of the law.

164. With regard to question No. 3 Shri Raghavan argued that "cloth" included an outer covering as well and as such any defacement or re-marking on the outer covering was an offence under the provisions of the Cotton Cloth & Yarn Control Order.

165. AS regards question 4 it was very rightly conceded by the learned advocate for the respondent that the High Court could exercise its powers under Sections 435 & 439, Criminal P. C. in a proper case, in a pending proceeding.

166. The most important of the questions is question No. 1. The learned Counsel for the petitioner invited our attention to the fact that laws are either perpetual or temporary and in support of his argument that where a law has been enacted for a particular emergency, it would automatically expire after the emergency had lapsed, he cited before us some decisions of the American and Australian High Courts.

167. It would seem that according to the Australian, American and Canadian Constitutions, Emergency Laws get their strength only when the Executive Government seeks protection of the Commonwealth whose duty it is to protect every state against invasion and domestic violence, and it is only then that the Commonwealth declares an emergency and acquires emergency powers. It may be noted that under Article 4 of the American Constitution and Section 119 of the Australian Constitution the period of emergency is not fixed. Although the period during which the emergency enactment would operate is not fixed inasmuch as the Centre takes over the powers of the States for the purposes of meeting an emergency, the emergency measure would cease to operate on the cession of the emergency.

According to the Federal Constitution certain enumerated powers alone were conferred on the Central Government, the States retaining the residuum of the powers, and each is supreme in its sphere. The grant of powers to the Central Govt. in cases of emergency was regarded as a surrender by the component

Governments of certain powers to the National Government. It, therefore, happened that immediately the emergency was over the Central Government was bound to give up the extraordinary powers surrendered to it temporarily by the States.

Inasmuch as "emergency powers" could be exercised by the Centre only for and during the period of emergency it always had to be decided as to whether the operation of the emergency legislation was justified or not. There used to be invariably a clash of the respective powers of the Centre and the States. In order that the terms of the Federal Pact may be enforced the Courts in America, Canada and Australia assumed the right of acting as interpreters of the Constitution and in the event of legislation running counter to the fundamental law, to refuse to enforce such legislation. To quote Mac Gregor Dawson,

There was a never failing demand for the services of an austere and impartial arbiter to decide questions of jurisdiction.

168. The cases cited by the learned Counsel are cases where the Courts in Australia and the United States stepped in to prevent clash of the powers. Vide - "(1919) 64 Law Eu 194 (C)", - "(1924) 68 Law Ed 841 (J)", - "71 Com-W LR 161 (H)". Latham C. J. observed in this case;

A stage might be reached when it would be beyond reason to allege that the continuance of a particular war control not within the Commonwealth powers in times of peace was necessary for defence purposes. It would then be the duty of the Court to hold that the legislation was invalid or had ceased to be operative.

Again in - "79 Cow-W LR 43 (I)", it was observed;

In order to determine whether any given attempt to continue laws or regulations in force for an extended period after the end of hostilities is valid, it is necessary to consider in detail the nature and application of the particular measure.

169. These observations would indicate that where the Court considered a particular legislation as being pre-eminently an emergency measure it would not allow its enforcement where the emergency had ended.

170. The aforesaid decisions in my opinion cannot apply to the case now under consideration, for, in so far as any law passed by Firman of H. E. H. is concerned it continues to be operative & remains on the Statute Book until it is repealed. According to the Constitution the Qanuncha Mubarak of 1310 H. and the subsequent Firman of 1338 H. (16th November 1919) the Nizam was the sole legislating authority and his firman which had the force of law could only be repealed by another firman. It is admitted that the Defence of Hyderabad Regulation has not been repealed by H. E. H. the Nizam.

171. It was argued that the Defence of Hydera-bad Regulation was more or less a verbatim translation of the Defence of India Act. In India a period of six months was considered as a reasonable time for liquidating war conditions and

consequently after the expiry of six months after the date of the proclamation of the Revocation of emergency, the Defence of India Act ceased to be operative. On the same analogy it was urged that so far as Hyderabad was concerned the same period should be considered as a reasonable time for liquidating the effects of war, and therefore in any event the Defence of Hyderabad Regulation must be deemed to have become extinct on 30-9-1946.

172. In this connection, it has to be observed that by virtue of Section 102, Government of India Act, the Governor-General is empowered to issue a proclamation of emergency and special laws are enacted by the Centre to meet the emergency. Section 102(4) states that a law made by a Federal Legislature which that Legislature would not but for the issue of a proclamation of the emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the proclamation has ceased to operate. It was a characteristic peculiar to an Emergency Legislation such as the one passed u/s 72, Government of India Act, that it would not survive after the lapse of 6 months after the revocation of the emergency. In so far as Legislation by firman was concerned whether it was an emergency legislation or otherwise it possessed the same characteristics. It continued to be law until repealed.

173. At this stage it may not be out of place to refer to the observations of their Lordships of the Federal Court about Ordinances. When considering about the validity of Ordinances passed u/s 72, Sch. 9, Constipation Act. as amended by the "India & Burma (Emergency Provisions) Act, 1940, their Lordships observed:

In our opinion the emergency on the happening of which an ordinance can be promulgated is separate and distinct from and must not be confused with the emergency which occasioned the passing of the Act and the clear effect of the words of the Act on Section 12 is that Ordinances promulgated under that subsection during the period specified in Section 3 of the Act are subject to no time limit as regards their existence and validity unless imposed by the Ordinances themselves or other amending or repealing legislation whether by ordinance or otherwise.

"J. K. Gas Plant" Manufacturing Co. v. Emperor" AIR 1947 FC 38 (Z17).

174. It would appear, therefore, that where no time limit had been fixed in the Emergency Legislation it is not subject to any time limit. Admittedly there is no time limit fixed in the Defence of Hyderabad Regulation and it was passed by Firman just as any other enactment was passed.

175. Another aspect of the question also requires consideration and that is this. If the Defence of Hyderabad Regulation were regarded as a war measure simpliciter then on the principle that a war measure is always a temporary measure, it would cease to be effective after the war, and the principles enunciated in the American and Australian cases referred to may apply.

176. The Defence of Hyderabad Regulation in my opinion cannot be regarded as

a purely war measure. It is a regulation intended to provide for securing among other things (a) the defence of the Dominions, (b) public safety, (c) maintenance of public order, (d) the efficient prosecution of the war and (e) maintaining supplies and service essential to the life of the community. It may be that the efficient prosecution of war and the defence of the Dominions was the dominant factor. The words of the Firman which brought forth this legislation are:

Whereas a situation has arisen (AISE HALATH RUHNUMA HUVE HAIN) rendering it necessary to provide for special measures to ensure.... public safety, the public welfare....

It would appear therefore that it was passed not merely for the purposes of the defence of the state but also for other purposes mentioned in the preamble. The fact that the preamble says that it is a legislation intended for the defence of Hyderabad would not restrict its scope, for, the provisions of the Regulation extend far beyond the scope of merely the defence of the State.

177. The title of the Regulation being "The Defence of Hyderabad Regulation" would not affect the question. The title of an Act is not conclusive of the intent of the legislature but constitutes only one of the numerous sources from which assistance might be obtained. I might in this connection quote the words of Lord Tenterdon in - "Doe v. Broading" (1843) 4 QB 439 which are as follows:

If on a review of the whole Act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it, notwithstanding the less extensive import of the preamble.

Coming nearer home, the same principle was applied by the Supreme Court. The Supreme Court had to consider the scope of "The Sholapur Weaving and Spinning Company" (Emergency Provisions) Ordinance 2 of 1950. Mahajan J., as he then was, who delivered the judgment of the Supreme Court observed:

In order to decide these issues it is necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature has really done; the Court when such questions arise is not over-persuaded by the mere appearance of the legislation....Therefore, in all such cases the Court has to look behind the names, forms and appearances to discover the true character and nature of the legislation. Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, .

178. In my view the Defence of Hyderabad Regulation is a compendium of various subjects of legislation and cannot be regarded as an exclusively war measure. If it is not an exclusively war measure those provisions in the Rules which relate to matters other than war would not cease to operate on the termination of the war. This view of mine receives support from the judgment of Braund J. in - Meer Singh Vs. Emperor, .

179. Our attention was invited to Explanation III to Article 372 of the Constitution and sought to be urged that even if the Regulation be regarded as a

"Law in force" in the territory of India, inasmuch as it cannot but be a temporary law, under Explan. III to Article 372 it could not continue. The principle of law is that the termination of a temporary legislation would depend upon the happening of an event or the coming into force of a condition in cases where there is no definite date for such termination. No criterion has been shown for determining when such event is deemed to have happened or such condition is deemed to have come into existence in so far as the impugned order is concerned. In the absence of any such criterion the decision would vary as the Lord Chancellor's foot.

180. The question of the extent to which provision for such circumstances should be made and maintained is not a matter for the Courts of law to canvass. The question would arise "has not the control of cloth trade become a part of the ordinary, social, economic and industrial complex of the community?" As was observed by Viscount Haldane in the case of - "Fort Frances Pulp & Power Co., Ltd. v. Manitoba Free Press Co., Ltd., (B)" very clear evidence that the crisis has wholly passed away would be required to justify the judiciary, even when the question raised was one of ultra vires which it had to decide in overruling the decisions of the Government that exceptional measures were still requisite. In this case their Lordships of the Privy Council were considering the validity of the continuance of the paper Control Tribunal. Their Lordships go on to say:

When then in the present instance can it be said that the necessity altogether ceased for maintaining the exceptional measure of control over the newspaper print industry introduced while the war was at its height....It is enough to say that there is no clear and unmistakable evidence that the Government was in error in thinking that the necessity was still in existence at the dates on which the action in question was taken by the Paper Control Tribunal - "1923 AC 695 (B)".

I would safely follow the dictum of their Lordships of the Privy Council and say that in this case also there is no clear and unmistakable evidence that the necessity for exercising control over production of cotton cloth and yarn has ceased to exist.

181. The result is, that in my judgment the Defence of Hyderabad Regulation cannot be regarded as an exclusively war measure, and on account of the fact that there is no period fixed on the happening of which the legislation relating to Cotton Cloth & Yarn Control would expire, it cannot be regarded as having terminated.

182. I may mention that its provisions as the provisions of any other subject of legislation under the Defence of Hyderabad Regulation could be tested in the light of their being in conformity with or repugnant to the provisions of the Constitution and if they are repugnant or if they affect fundamental rights then they would be struck down by virtue of Article 254 of the Constitution or Article 13 of the Constitution.

183. My answer, therefore, to question No. 1 is that the Cotton Cloth & Yarn Control Order passed under the Defence of Hyderabad Regulation was operative not only during the period of the war but continued to be operative in 1949, and did not lapse.

184. The second question centres round R. 110, Defence of Hyderabad Rules which reads as follows:

save as otherwise expressly provided in these rules, every authority, officer or person who makes any order in writing in pursuance of any of these rules shall, in the case of an order of a general nature or affecting a class of persons, publish, notice of such order in such a manner as may in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concerns....

This rule provides for something in the nature of an exception to the general rule "ignorantia legis non excusat". What it seeks to provide in effect is that unless and until there is the publication of the notice of an order in the manner decided upon by the authority concerned no one could be punished for the breach of the order. Rule 110 is thus a composite Rule providing for publication in the case of an order of a general nature or affecting a class of persons. Thus its aim is to secure that persons concerned with the order shall get either direct or constructive notice of the order. There has been a conflict of opinion in regard to this question as to whether the provision relating to the publication is a mandatory provision or otherwise. It would be advisable to refer to the rulings relied upon by the learned Counsel for the petitioner in support of his contention that the provision was mandatory.

The first case in this connection is a case reported in - AIR 1944 40 (Nagpur) ". In this case, as would appear from the Judgment the District Magistrate thought that wide publicity had been given to his order by the notice being published in all the named papers while in fact it turned out that it was published in only one paper and on only one day. Under those circumstances the learned Judges observed that the obligation laid on the officer passing the order was a statutory obligation and it was incumbent on the prosecution to prove that the statutory obligation was discharged. They said : "The prosecution cannot in such a case merely rely on the presumption of Section 114(E) of Evidence Act." The next case which requires mention is the case of - "AIR 1945 Nag 218". This was a case decided by Bose, J. who observed:

Now I can see no point in this rule (referring to rule 119) unless the intention was to introduce a fiction to meet a class of case which will not be covered by ordinary law.

He held that R. 119 could not be regarded as directory; until that is done the order will not be accepted as law. It would appear that this case came before the High Court in revision after the accused had been convicted under the Foodgrains Control Order of 1942 and in that case the prosecution was not able to show that

there was a publication as determined by the authority or that the accused had knowledge of the order. It would be clear from the judgment of Bose, J. that what the learned Judge purported to lay down was that the Crown must prove both that he prescribed a particular mode for publication and that publication was strictly in accord with what was prescribed and it would not be enough to say that because the order was published in the official gazette no further publication was necessary.

The most important case in this regard among the cases cited by the learned Counsel for the petitioner is the case decided by the Supreme Court in *Harla Vs. The State of Rajasthan*, . This was a case which related to the Jaipur Opium Act. His Lordship Base, J. who decided the case in - " AIR 1945 Nag 213", delivered the judgment of the Court. It would appear from this case also that the case came before the Supreme Court on a special leave being granted by the High Court of Rajasthan which dismissed an appeal on behalf of the accused against his conviction. The facts that have been mentioned in the judgment make it clear that the Jaipur Opium Act was never published in the Gazette and it was contended that that was not necessary. Under those circumstances, their Lordships of the Supreme Court held that it violated the ordinary principles of natural justice Which required that before a law became operative it must be promulgated or published and it must be broadcast in some recognised way so that all men may know what it is.

In that case there was only the passing of a resolution by the Council of Ministers which was not a sovereign body (purporting to enact the Jaipur Opium Act) and there was no promulgation or publication in the Gazette. It was under those circumstances that their Lordships held that the conviction could not be sustained. The learned advocate for the petitioner relied upon two decisions of this Court, one in - "6 Nazair Osmania 156 (Z7)" and the other AIR 1952 Hyd 149". In the first case it would appear that the observations relating to this question viz., with regard to publication according to the prescribed mode were only obiter and that question was not before their Lordships for consideration.

In the second case viz., AIR 1952 Hyd 149 (S)", to which judgment I was a party, there was a Revision filed on behalf of the State praying for the enhancement of the sentence awarded by the Munsif at Secunderabad. The counsel for the accused brought it to our notice that the charge itself could not stand because of a legal flaw viz., that the notification was not brought to the notice of the public by means of a press note and the Public Prosecutor was called upon to satisfy the court as to whether any press note was issued and he was not able to do so. There was no evidence of the knowledge of the accused of the notification. Under those circumstances it was held that failure to conform to the requirements of the law relating to the publicity would not justify a charge being fastened on a person of violating any order or provision of law and that the Court could not invoke the presumption arising in Section 114(e), Indian Evidence Act.

185. As against the view held by the Nagpur High Court and in - "AIR 1945 Nag 218 (F)", the Bombay, Patna and the Allahabad High Courts have held that the consequence of the failure to carry out the provisions of R. 119 is practical rather than legal. They only go to say that before a person could be convicted under the Defence of India Rules of the violation of any of the Orders passed thereunder it must be proved that notice was published as prescribed. The Patna High Court in the case of - Mahadeo Prasad Jayaswal Vs. Emperor, , stated that the rule (R. 119) laid an obligation upon an authority making an order of a general nature under the Defence of India Rules to publish it in such a manner as to the authority appears to be best adapted for informing the persons whom the order concerns. They say that it is only when this is done that the fiction of constructive notice which the latter part of R. 119 embodies would come into play and the person concerned shall be deemed to have been duly informed of the order.

The Allahabad High Court in the case of - Devi Pershad v. Emperor" AIR 1947 All 191 (Z)", held that R. 119 was only procedural and the object of the rule was to secure direct or constructive notice of the order. It would be advisable to refer to a case reported in - "AIR 1944 Bom. 259 (ZI)", where the learned Judges held that where in fact the individual concerned knows perfectly well that an order has been passed against him and acquires his knowledge by other means It cannot be said that he had not received notice of the order merely because notice is not given to him in the form prescribed by R. 119. The result of this discussion is this that the publicity which attaches to statutes even before they come into operation is absent in the case of Subordinate legislation such as the "Order" now sought to be impugned and it is, therefore, necessary that these Orders should be published and made known to the public at large.

If, therefore, the order has been published in a manner which according to the authority is the best mode of publication, then according to a legal fiction everybody would be deemed to have been informed about the law. To quote the words of their Lordships of the Privy Council, "When a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were." - Vide "Commissioner of Income Tax, Bombay Presidency v. Bombay Trust Corporation, Ltd." AIR 1930 PC 54 (Z21).

Where, therefore, there is evidence that the accused knew that an Order had been promulgated the fact that the order was not published would not matter,

186. My answer, therefore, to question No. 2 is-that the directions contained in the Cotton Cloth & Yarn Control Order of 1355F about the publication of a press note explaining its provisions are only directory. The non-conforming to the directions would only make it obligatory upon the prosecution to prove that the accused had knowledge.

187. With regard to question No. 3, the whole dispute is as to whether it was

within the competence of the Textile Commissioner to direct the prescribing of marks on the outer coverings. Section 7 of the Cotton Cloth & Yarn Control Order is to the following effect:

Where the marking to be made and the time and manner of making them in respect of class or specification of cloth or Yarn has been specified under Clause 3 or 4,

(a)....

(b)....

(c) ....

(d) No person shall alter or deface or. cause or permit to deface the markings made on any such cloth or yarn held by him otherwise than for his personal requirements;

e) No person shall mark on any cloth or yarn any other markings resembling the prescribed marks in the manner calculated to mislead; and

f) No person shall have in his possession or under his control otherwise than for his personal requirements any cloth or yarn of the marking altered or defaced or of the character specified in para, (e).

188. The act of the accused is said to fall with-in the ambit of paragraphs d, e and f of the R. 7 of the said Order read with the notification issued by the Textile Commissioner. Notification No. 3 of the Textile Commissioner dated 22nd Shehrewar 1355F is to the following effect:

Under the powers conferred on me by the Cotton Cloth & Yarn Control Order 1352F Clause 4, I hereby prescribe the following markings and the manner of making it shall be observed by all manufacturers of cotton cloth and yarn in respect of goods packed after 21-10-1352 F (24-1-43) excepting cloth and yarn purchased by direct contract from H. E. H. the Nizam's Government or the Government of India.

189. Clauses 1, 2 and 3 - we are not concerned with now. Clause 4 relates to bale marking and runs thus:

The month and year of packing and the manufacture, describing the number shall be stamped or impressed on the outside of every bale or other package of cotton yarn and/or cotton cloth in letters and figures not less than 1 1/2" in height.

190. Clause 4 of the notification runs thus:

It shall be an offence under the Cotton Cloth & Yarn Control Order for

(a) any person other than a manufacturer to use or apply the marking, to prescribe to any cotton cloth or cotton yarn or any bale or other container in

which it is packed;

(b) for any person other than a manufacturer to use the prescribed marking in a manner other than prescribed.

Cloth and yarn have been defined in Section 2 of the Order. By cloth and Yarn is meant any type of cloth or yarn manufactured partly from cotton and partly from other material. This being the definition of cloth and yarn as used in the Cotton Cloth & Yarn Control Order the outer covering such as the gunny bag could never be considered to fall within the definition of cloth or yarn. Clause (d) of Section 7 only refers to an alteration or defacement of the marking on the cloth or yarn while Clause (e) relates to the form of mark on any cloth or yarn.

There is no provision for marking the outer covering and by no stretch of imagination could it be said that the word "on" used in Clauses d, e and of Section 7 meant the outer covering over the cloth or yarn. It was sought to be argued by Shri Raghavan, though feebly, that the word "on" included the covering or enclosure. This argument cannot be sustained for a moment. To accept this interpretation would amount to reading into the order something which is not there. Therefore the direction of the Textile Commissioner for markings on the outer covering must be regarded as one in excess of the powers delegated to him.

191. The answer to question 3 would be that the direction by the Textile Commissioner about the markings on the bales do not fall within the scope of his delegated authority and must, therefore, be held to be ultra vires.

192. The fourth and the last question does not need any discussion for Shri Raghavan appearing on behalf of the respondent has very rightly conceded that the High Court has wide powers under Sections 435 and 439 to interfere in pending proceedings on grounds of illegality of procedure and where there is a flagrant abuse of the process of court.

BY THE COURT:

193. The answer of the Pull Bench to the questions propounded is as follows:

Q. 1 : -The Hyderabad Defence Regulation was promulgated for the purpose of meeting the emergency created by the last world war. It was operative only during the continuance of that emergency and should be deemed to have lapsed on the termination thereof without any express repealment.

Q. 2 : - The directions contained in Cotton Cloth and Yarn Control Order of 13S5P. about the publication of a press note explaining its provision read with Rule 110, Defence of Hyderabad Rules, are not mandatory taut procedural.

Q. 3 : -The directions of the Textile Commissioner regarding the markings on the bales were not within the scope of his delegated authority and were therefore ultra vires.

Q.4 : - Sections 435 and 439, Cr. P. C. authorise interference by the High Court even in a pending criminal case on the ground of illegality of procedure or harassment of the accused by an unjustified application of illegal procedure, but the power in that behalf is exercised sparingly and in cases of exceptional character.

194. Let the above answers be sent to the Pull Bench which made the reference.

On receipt of the answers by the Full Bench, the Full Bench allowed the revision petition and quashed the proceedings instituted against the petitioner.)