Deodat Rai And Ors. vs State on 15 March, 1951

Equivalent citations: AIR1951ALL718, AIR 1951 ALLAHABAD 718

JUDGMENT

Desai, J.

1. Application No. 210 is under Sections 435 & 439, Criminal P. C. for revision of an order passed by the Ses. J. of Ballia ordering the applicant to give security under Section 3 (1) (a) (i), D. P. Prevention of Crimes (Special Powers) (Temporary) Act, No. 5 of 1949. On 24-8-1949, a First Class Magistrate issued a notice under Section 3 (1) (a) v(i) calling upon the applicant to show cause why he should not be bound down for being of good behaviour for two years. It was alleged that he is by repute a bad character & is a habitual burglar & dacoit. In the column of particulars are mentioned four suspicions in cases of burglary & dacoity. On the same date the Magistrate passed an order under S. 4 of the Act requiring the applicant to give security for being of good behaviour during the disposal of the proceedings & directing him to be arrested in default. On 28-8-1949, the applicant was arrested in pursuance of this order. He denied the allegations made against him by the police, The Magistrate forwarded the record of his case to the learned Ses. J. on 12-9-1949. Both the jurors were of the opinion that action should be taken against him, & the learned Ses. J. on 17-10 1949 passed the order under revision binding the applicant to be of good behaviour for two years.

2. There are seven connected applications by other persons against whom similar orders have been passed under the Act. As common questions of law are involved, it is convenient to dispose of all of them together.

3. Revision Application No. 211 of 1960 is by Ram Piari Rai. The Magistrate issued a notice on 24-8-1949 calling upon him to show cause why he should not be bound down for two years on account of his being by repute a bad character, habitual dacoit & burglar & so dangerous as to render his being at large without security hazardous to the community. In the column of the particulars is mentioned that he was suspected in a case of burglary in 1948 & that he bears the reputation of being a bad character, burglar & dacoit. On the same date the Magistrate ordered him to give security for being of good behaviour during the disposal of the proceedings & directed him to be arrested in default. On 4-9-1949 the applicant was arrested in pursuance of this order on his failure to give the security. He denied the allegations made against "him. The Magistrate referred his case to the Ses. J. of Ballia on 19-9-1949. Both the jurors were of the opinion that action should be taken against the applicant, & the learned Ses. J. pasted an order on 6-10-1949 binding him down to be of good behaviour for two years under Section 3 (1) (a) (i) & (c). He questions that order by an application under Sections 435 & 439, Cr. P. C.

4. Criminal Revision Application No. 212 of 1950 is by Komal Pandey. A notice under Section 3 was issued against him by a Magistrate on 24-8-1949, calling upon him to show cause why he should not

be bound down to be of good behaviour for two years on the ground of his being by repute a bad character, habitual burglar & dacoit & so dangerous as to render his remaining at large without security hazardous to the community. In the column of particulars & materials are mentioned his two previous convictions, the fact of his being suspected in a case of burglary of 1948 & his being reputed to be a bad character, habitual thief & dacoit. On the same date the Magistrate issued an order under Section 4 binding the applicant down to be of good behaviour for the duration of the proceedings & directing him to be taken in custody in default. On 4-9-1949 the applicant was arrested on his failure to give the security. The applicant denied the allegations made against him. The Magistrate referred his case to the Ses. J. of Ballia. Both the jurors were of the opinion that action should be taken against him, and the learned Ses. J. on 24-10-1949 passed an order binding him down to be of good behaviour for two years under Section 3 (1) (a) (i) & (c) of the Act. He questions the legality of that order through an application under Sections 435 & 439, Cr. P. C.

5. Miscellaneous Application No. 1361 of 1950 is by Bans Gopal & Babu Lal, father & son, under Article 226 of the Constitution for a writ of certiorari against an order of the Ses. J. of Fatehpur. The sub-divisional Magistrate of Khajuha issued a notice on 7-12-1949 calling upon the applicants to show cause why they should not be bound down to be of good behaviour & to keep the peace for three years on account of their being by repute bad characters & habitual offenders & committing offences. The notice also required the applicants to show cause why they should not be ordered to leave Fatehpur district. On the same date the Magistrate ordered that, as the applicants were too hazardous to the community to be left at large, they should be arrested. Accordingly he issued a warrant to the police directing them to take from the applicants security to be of good behaviour & keep the peace for the duration of the case & to arrest them in default. On 10-12-1949, in execution of this warrant, the police arrested the applicants & then released them after taking security from them. The security actually taken by the police, however, was not for being of good behaviour & keeping the peace but for attendance before the Magistrate on a certain date. The applicants denied the allegations made against them by the police. It appears that it was mentioned in the notice that twenty four reports were made against them at the police-station during the period 11-5-1949 to 16-9-1949. (The Act came into force on 23-4-1949). The applicants urged before the Magistrate that unless they were supplied with full copies of the reports mentioning the names of the persons who made them, they were not in a position to make a proper representation. On 28-12-1949, the Magistrate ordered the applicants to give security for being of good behaviour for throe years & to leave Khajuha subdivision. He then forwarded the record to the Ses. J. of Fatehpur. Both the jurors were of the opinion that action should be taken against the applicants under Section 3 of the Act, & accordingly the learned Ses. J. on 22-2-1950 ordered them to give security for being of good behaviour & keeping the peace for three years. He did not consider it necessary to order them to leave Khajuha sub-division & refrained from passing an order of externment.

6. Miscellaneous Application No. 1362 is by Ram Lal & Indrajit, father & son, under Article 226 of the Constitution for a writ of certiorari against an order passed by the Sessions Judge of Fatehpur. On 2-3-1960 the sub-divisional Magistrate of Khajuha issued a notice under Section 3 (1) (a) (i) & (iii) calling upon the applicants to show cause why they should not be bound down to be of good behaviour & keep the peace for three years on account of their being by repute bad characters & habitual offenders & committing crime. On the same day the Sub-divisional Magistrate ordered a

warrant of arrest to be issued against them because they keep a gambling den. Actually a warrant was issued directing the police to take from the applicants security for being of good behaviour & keeping the peace for the duration of the proceedings & to take them in custody on their default. On 3-3-1950 the station officer of the police station arrested the applicants & then released them after taking security from them. The security taken was, as is the previous case, not for being of good behaviour & keeping the peace but for appearance in the Court of the Subdivisional Magistrate on a certain date. In the column of particulars in the notice are mentioned reports made against them in July, August & September, 1949 & the previous convictions of Ram Lal under the Gambling Act, Sections 34 & 13, & Section 19 of the Arms Act. The applicants denied the allegations made against them. They contended that in the absence of the names of the persons who made reports against them, they could not explain why false reports were made. They also pleaded that the Act was against Articles 19 & 22(1) of the Constitution because it disallowed the person proceeded against to engage counsel in his defence, & that no action should be taken under it so long as they were not allowed to engage counsel in accordance with Article 22(1). The Sub-divisional Magistrate on 1-4-50 ordered the applicants to furnish security to be of good behaviour for three years & submitted the record to the learned Ses. J. On 9-6-1950, after the applicants' witnesses were examined before the learned Ses. J. they applied to be allowed to engage counsel to represent them, but their application was rejected; the learned Ses. J. remarked that the case was almost at an end & no useful purpose would be served by letting them engage counsel. Both the jurors were of the opinion that action should be taken against the applicants under the Act, & accordingly on 9-6-1950 the learned Ses. J. passed an order requiring them to give security for being of good behaviour & keeping the peace for two years.

7. Misc. Case No. 955 of 1950 is an application by Parmeshwar for a writ of certiorari against an order of the Ses. J. of Gorakhpur. A Subdivisional Magistrate issued a notice under Section 3 on 9-9-1949 calling upon the applicant to show cause why he should not be bound down to be of good behaviour & keep the peace for two years on account of his being by repute a bad character, habitual thief & burglar, member of a dangerous gang committing thefts & dacoities in police circle Captainganj & neighbouring police circles & being prosecuted under Sections 395 & 412 & under Section 454, I. P. C. There is nothing written in the column of particulars & materials. On the same date the Subdivisional Magistrate issued a warrant directing the police to take security for being of good behaviour & keeping the peace for the duration of the proceedings & to take him into custody in default. This was done on a report of the police to the effect that there was an apprehension of the applicant's absconding; in the warrant itself it is said that the Subdivisional Magistrate was satisfied that it was necessary to take immediate action. On 13-11-1949, the applicant was arrested in execution of the warrant. The applicant denied the allegations made against him. The Subdivisional Magistrate on November 23 gave his finding that security should be demanded from the applicant, & submitted the record to the learned Ses. J. Both the jurors were of the opinion that action under Section 3 should be taken against the applicant, & accordingly on 15-4-1950 the learned Ses. J. bound him down to be of good behaviour & keep the peace for two years. The applicant alleged that he was not allowed in the proceedings to engage counsel, but no request was made by him for this purpose.

8. Miscellaneous Application No. 2347 of 1950 is made by Mai Mai Shah for a writ of certiorari against proceedings pending against him in the Court of the Ses. J. of Orai. On 14-4-1950 a notice under Sections 3 (1) (a) (i) & (c) was served upon the applicant calling upon him to show cause to a Subdivisional Magistrate why he should not be bound down to be of good behaviour & keep the peace for one year & should not be externed from the district of Jolaun or be ordered to report his presence & movements to the station officer of P. S. Oharkhi. It was alleged in the notice that he is by repute a bad character & habitual thief & burglar, maintains a party of goondas & is a terror to the community on account of which his remaining at large is hazardous to the community. He denied the allegations before the Subdivisional Magistrate who forwarded the record of the case to the Ses. J. The application was made before the learned Ses. J. could commence proceedings against the applicant.

9. Miscellaneous Application No. 2429 of 1960 is by Mohammad Faruq under Section 491, Criminal P. C. On a police report a Sub-Divisional Magistrate issued a notice under Sections 3 (1) (c) (i) & (c) of the Act on 11-11-1949, calling upon him to show cause why he should not be bound down for one year on account of his being by repute a bad character & habitual thief & dangerous. The column of particulars is left blank but on the back of the notice details of reports made against him & of his previous convictions are given. On the same date the Sub-Divisional Magistrate ordered that a warrant of arrest should be issued against the applicant because there was apprehension of his absconding or "doing any act against the public". The notice was served upon the applicant on 22-11-1949. The warrant that was actually issued was, as in other cases, for taking security for being of good behaviour & for keeping the peace & for arrest in default. The police on November 23 arrested him in execution of this warrant & took him in custody. He made no representation & on 10-12-1949, the Sub-Divisional Magistrate referred his case to the Ses. J. without any recommendation, any order & any reasons. The applicant offered no explanation before the learned Ses. J. Both the jurors gave their opinion that action should be taken against him. Accordingly on 11-1-1950, the learned Ses. J. ordered the applicant to give security for being of good behaviour & for keeping the peace for a period of two years.

10. In these applications the orders passed by the Ses. J. or the proceedings pending before them, are challenged on several grounds. Some of the grounds are common to all the applications. The common ground is that the Prevention of Crimes (Special Powers) Act ultra vires of the Provincial Legislature & runs foul of Articles 14, 19 & 22 of the constitution. Other important grounds are that the order binding down a person for three years is invalid, that where the notice was to show cause why the person should not be bound down for three years, the proceedings commenced after such a notice & the orders by which they were terminated are void, & that the same notices did not contain particulars sufficient to enable the persons concerned to make effective representation against their being called upon to give security.

11. The reply of Mr. Uniyal on behalf of the State was that the Act was intra vires of the Provincial Legislature & did not infringe any provision of the Constitution, that the mistake of putting down three years in some notices did not invalidate either the notices or the proceedings & the orders, that where the Ses. J. has passed an order binding down a person for three years it would be invalid, that the notices all contained sufficient particulars to enable the applicants to make effective

representation & that no application could lie under Section 439, Criminal P. C. for revision of an order passed by a Ses. J. under the Act because he does not act as a Court but as a persona designata.

12. The act was enacted "to provide far special powers to check the activities of bad characters & to take effective preventive action against them." It is to remain in force up to 31-12-1952. The main provision of the Act is Section 3 which lays down that "(1) If a Magistrate is, on a police report or otherwise, satisfied with respect to any person :

(a) that he is by repute a bad character, & is either :

(i) a habitual offender, or

(ii) a person who habitually manufactures, imports or Bells any intoxicant in contravention of the provisions of the United Provinces Excise Act, 1910, or

(iii) a keeper of gambling den, or

(iv) a person who has committed or is about to commit a non-bailable offence contained in Chap, XVI or XVII, Penal Code or

(b) that he is a person who habitually commits or attempts to commit or abets the commission of offences involving a breach of the peace or

(c) that he is a person who is so dangerous as to render his being at large, without security, hazardous to the community, he may cause to be served on such person a notice to appear & show cause why an order requiring him to enter into a bond with or without sureties, for his good behaviour or keeping the peace or both for a period not exceeding two years, be not passed against him.

(2) In addition to the order requiring the person to enter into a bond mentioned in Sub-section (1) the notice may at the discretion of the Magistrate further require such person to show cause why an order be not passed, against him :

(a) to leave the State, if he is not a resident of Uttar Pradesh, or

(b) to leave such area as may be specified or

(c) to report his presence & movements in such manner & to such authority, as may be specified."

If the Magistrate is satisfied that immediate action is necessary, he may under Section 4 issue a warrant requiring the person forthwith to enter into a bond with two sureties for good behaviour or keeping the peace or both, during the pendency of the proceedings. The officer executing the

warrant is empowered to arrest him if he does not forthwith enter into a bond in accordance with the warrant. The notice issued under Section 3 must describe the charges made against the person in the police report or any other information on the basis of which the notice was issued, "and such other particulars as may, in the opinion of the Magistrate be sufficient to enable the person to make a representation against the notice : (Section 5, Sub-section (1).)"

After considering the representation, the Magistrate is required under Section 6 to quash the proceedings if he finds that the action mentioned in the notice is not called for. If, on the other hand, he finds that the action should be taken, he is required to record an order to that effect & the order proposed by him & submit the same to the Judge. The Act was amended by Act 31 of 1950, which received assent of the Governor-General on 13-11-1950 & was published in the Gazette on 13-11-1950. The provision in Section 6 before the amendment was that the Magistrate was not bound to hear the person himself or any witness or counsel in support of his representation. The Act interprets 'Magistrate' to mean the District Magistrate or any other Magistrate of the First Class specially empowered by Govt. under the Act, & 'Judge' to mean the Ses. J of the Sessions Division specially appointed for the purpose of the Act by the Govt. When the Judge receives the record from the Magistrate, he has to fix a date for consideration of the case & give notice of it to the person proceeded against. The original Act required him to examine & consider the case in camera with the aid of two jurors; after the amendment the Judge is required to examine & hear the case himself without the aid of jurors & has been given the power to do so in camera. Under the original Act, the person was not entitled to be present either personally or through counsel at the examination of any witness by the Judge, but the Judge was required to communicate to him the substance of evidence recorded by him before he was called upon to give his explanation, & was given the power to permit the person to be personally present at any stage of the proceedings. The amended Act has done away with that provision contained in Section 9. The Judge is not bound by rules of evidence contained in the Evidence Act. The police report and every other information forwarded by the Magistrate or recorded by the Judge shall be evidence in the case. The Judge is bound to give the person an opportunity of appearing before him & offering his explanation in person. After the amendment the person can offer his explanation either in person or through counsel. Section 12 deals with the orders to be passed by the Judge. If upon the conclusion of the inquiry he is satisfied that no action under Section 3 should be taken, he is to quash the proceedings, & if he is of the opinion that action should be taken, he is to "pass an order stating the nature of the action to be taken." When before the amendment the examination & consideration of the case was done with the aid of two jurors, the Judge, if he agreed with the unanimous opinion of the jurors, would quash the proceedings or pass an order stating the nature of the action to be taken; & if he disagreed with their opinion, he was to submit the entire record of the case to the Chief Justice of the High Court. If the jurors were divided in their opinion, the Magistrate was free to pass any order as appeared to him to be just & proper; if he ordered action to be taken under Section 3, the person was given a right to make a

representation against it to the Chief Justice. Under the original act an order of the Judge passed in agreement with the unanimous opinion of the jurors was final & conclusive & could not be called in question in any criminal or civil proceeding. The amendment deleted that provision & gave the person a right of appeal to the High Court within a month. Section 16 lays down that the period of externment must not exceed one year. Section 17 applies the provisions of Sections 121, 122, 123, 124 & 126 (a), Criminal P. C. to an order passed under the Act binding down a person as if the order had been passed under Section 118 of the Code. Section 18 lays down that the Judge will have all such powers, rights & privileges as are vested in a Court of Sessions in respect of the enforcing of the attendence of witnesses & examining them, the compelling of production of documents, & the punishing of persons guilty of contempt. It also lays down that the proceedings before him shall be deemed to be judicial proceedings within the meaning of Sections 193 & 288, I. P. C. Contravention or evasion of an order mentioned in Section 3 (2) of the Act is made punishable with imprisonment for a term extending to one year. Finally, Section 23 saves the application of other laws; the provisions of the Act are to be in addition to, & not in derogation of, any other law in force.

13. The provisions of the Act have to be compared with those of Section 110 of the Code. If a District Magistrate or Sub-divisional Magistrate or a specially empowered First Class Magistrate receives information that a person "(a) is by habit a robber, house breaker, thief .... or (b) is by habit a receiver of stolen property knowing the same to have been stolen. or * * * * *

(d) habitually commits or attempts to commit or abets the commission of the offence of kidnapping, abduction, extortion, cheating or mischief. ..... or

(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(f) is so desperate & dangerous as to render his being at large without security hazardous to the community."

he may require him to show cause why he should not be bound down to be of good behaviour for a period not exceeding three years. Thus persons who are so dangerous as to render their being at large without security hazardous to the community, or who habitually commit or attempt to commit or abet the commission of offences involving a breach of the peace, can be proceeded against under Section 110 of the Code or under Section 3 of the Act. Certain habitual offenders are liable to be proceeded against under Section 110 of the Code, but if in addition they have acquired a reputation of bad character, they are also liable to be proceeded against under the Act. The difference between the procedures under the Code & under the Act is enormous. A Judge proceeding under the Act is not bound by the Evidence Act at all & he can base his order even on a police report & other information received by him. Before the amendment the person had no right to be even present at the time of examination of witnesses against him; this means that he had no right to cross examine the witnesses. He had also no right to be represented by counsel. Further, the hearing of the case

was in camera. A person bound down under Section 110 has a right of appeal, but before the amendment the persons proceeded against under the Act had no right of appeal against a Judge's order passed in agreement with the jurors. Under the Act, the Judge can expel a person from the State or a specified area of it or order him to remain in a specified area of it or order him to remain in a specified area & report his presence & movements to a specified authority in a specified manner; no such order can be passed in a proceeding under Section 110 of the Code. Imprisonment for failure to give security under Section 110 Code will be rigorous or simple as the Court directs, but imprisonment, for failure to give security under the Act must be rigorous except for reason to be recorded by the Judge. A District Magistrate may cancel any bond for good behaviour executed under the Code by a Court not superior to his Court; there is no such provision in the Act & a bond for keeping the 'peace or good behavior executed under it, cannot be cancelled by the District Magistrate (the reason probably being that it is executed by an order of a Judge). The provisions of the Act are thus more drastic & more unfavourable to the person proceeded against than those of the Code. Any person would prefer to be proceeded against under the Code rather than under the Act.

14. The Act was passed when the Govt. of India, Act, 1935, was in force. The matters dealt with by it do not fall under any item of Federal Legislative List (1); on the other hand, they fall under item l of the Provincial Legislative List II & under Item 2 of the Concurrent List III, Part 1, or either of them. Item 1 of List II is "public order preventive detention for reasons connected with the maintenance of public order, persons subject to such detention." Taking measures to check the activities of bad characters comes under "public order," which is in the words of Mnkherjee J. Lakhi Narayan Das Y. Province of Bihar, A. I. R. (37) 1950 F. C. 59, at p. 63. "a most comprehensive term". The Act provides for demanding security for the maintenance of public order & for imprisonment for failure to give the security. This imprisonment is nothing but preventive detention for reasons connected with the maintenance of public order. An order of imprisonment for failure to give security does not cease to be an order of detention merely because an option is given to the person to escape it by offering security. As the detention is for preventive & not punitive purposes, it is preventive detention. It would be erroneous to call it punitive detention because it is inflicted in default or lieu of security. Under the Act a person is given a choice between being at large on security and undergoing detention. He has a right to choose between furnishing the security & going to jail and when he has this right it can not be said that sending him to jail is a punishment for his not furnishing the security. No question of punishment can arise when he is at liberty to furnish the security. Another way of looking at the matter is that it deals with detention on certain conditions, one of them being that the person does not offer the security demanded of him. The addition of the condition that the security has not been furnished would not convert what would have been detention into imprisonment or some other form of confinement not amounting to detention. I am aware of the view of my learned brother that imprisonment for failure of security under Section 123-A, Criminal P. C. is not preventive detention; he has treated it as a penalty in Har Pal Singh v. State A. I. R. (37) 1950 ALL. 562. The Supreme Court has interpreted the phrase in a number of cases lately. In the case of Gopalan v. State of Madras, A. I. R. (37) 1950 S. C. 27 Mukherjee J. observed at page 91:

> "The word 'preventive' 13 used in contradiction to the word 'punitive'. To quote the words of Lord Finlay in Rex v. Halliday, 1917 A. C. 260 'it is not a punitive but a

> precautionary measure'. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing it. No offence is proved, nor any charge formulated; & the justification of such detention ii suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence."

In the same case Das, J. referred at page 114 to a person's being lawfully detained "whether as a result of a conviction for an offence or as a result of preventive detention". According to this view of the Supreme Court the confinement of a person in default of security demanded under the Act is Clearly preventive detention. In Wong Wing v. United States, (1896) 163 U. S. 228: 41 Law Ed. 140 Justice Shiras observed at p. 235:

> "Detention is a usual feature of every case of arrest on a criminal charge, even when an innocent person is wrongfully accused; but it is not Imprisonment in a legal sense".

Just as the confinement of an undertrial amounts to detention & not imprisonment, so also the confinement of a person for failure to give security amounts to detention & not imprisonment. The mere fact that a detenu & a prisoner are confined in the same premises which are designated a prison or jail would not make the confinement of a detenu imprisonment.

15. Item 2 of List III, Part 1, is "criminal procedure, including all matters included in the Code of Criminal Procedure at" the 2-8-1935, Section 110 occurs in Part 4 of the Code styled "prevention of offences". The pith & substance of the Act also is prevention of offences by checking activities of bad characters. Taking security from a likely offender is not the only way of preventing the commission of an offence by him; detaining him in a prison, expelling him and ordering him to make reports about his movements are other ways. It does not matter if expulsion & the ordering to make reports of movements are not dealt with in the Code; they are intimately conected with the prevention of offences, a matter included in the Code, When the Act makes pro visions regarding them, it makes provisions regarding a matter included in the Code. Under the Act keepers of gambling dens & habitual manufacturers & smugglers of illicit liquor also can be proceeded against, though they cannot be under the Code. It was conceded by Mr. Chaturvedi that making a provision regarding them in the Act would be covered by Item 2 of List III but he tried to draw a distinction between including keepers of gambling dens & habitual illicit' distillers within the scope of the Act & including expulsion & the ordering to make reports or movements within its scope; he contended that while the former may be permissible, the latter is not. Just as the heading "Prevention of offences" will embrace not only habitual thieves & burglars but also keepers of gambling dens & habitual illicit distillers & smugglers, so also it will embrace not only the taking of security but also the expulsion & the ordering to make reports of movements. In one case you add to the categories of persons to be proceeded against, & in the other case you add to the measures to be taken against them, but there is no difference in principle between the two. There is no justification for saying that only the taking of security would come within the scope of prevention of offences & not the expulsion or the ordering to make reports. The pith & substance of the Act is prevention of offences, a matter expressly included in the Code at 2-8-1935; its enactment is therefore justified under Item

2 of List III.

16. While construing the Govt. of India Act one has to bear in mind the observation of Gwyer, C. J. that "none of the items in the lists is to be read in a narrow or restricted sense, & that each general word should be held to extend to all ancillary or subsidiary matters which can fairly & reasonably be said to be comprehended in it."

United Provinces v. Atiqa Begum, A. I. R. (28) 1941 F. C., 16. Every thing that is ancillary or subsidiary to the subject of maintenance of public order will be comprehended in it.

> "To ascertain the class to which a particular enactment really belongs, we are to look to the primary matter dealt with by it, its subject-matter & essential legislative feature";
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> so was laid down by Mukherjea, J. in the case Lakhi Narayan Das at p. 64. An expulsion order has been held to fall under Item 1 of List II as well as Item 2 of List III in Dalip Singh v. Governor of Bihar, A. I. R. (32) 1945 Pat 444. The word "including" is enlarging as held in Narayana Swami v. Inspector of Police Mayabaram, A. I. R. (36) 1949 Mad. 307.

17. Even if it be conceded that the provision in Section 3 (2) of the Act is not covered by item 2 of List III, the only effect of it would be that Sub-section (2) of Section 3, which is severable from Sub-section (1) would be held as ultra vires. The validity of Sub-section (1) would not be affected by the invalidity of Sub-section (2), & an order passed by a Judge under Sub-section (2) only would be set aside. So much was conceded by Mr. Chaturvedi. As it is, I find the whole Act intra vires of the Provincial Legislature.

18. Article 14 of the Constitution is :

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Any Act that infringed this fundamental right would become void from 26-1-1950; this is provided for in Article 13(1). It was contended by Mr. Chaturvedi that the Act is inconsistent with Article 14 because it discriminates without any basis between some goondas (i. e. those who habitually commit offences involving breach of the peace, or are so dangerous as to render their being at large without security hazardous to the community), & other goondas, & some notorious (i. e. who are by repute bad characters) habitual offenders & other notorious habitual offenders. The Act keeps the provisions of Section 110 of the Code intact. A notorious habitual thief, burglar, etc., or a goonda can be proceeded against under Section 110 of the Code as well as under Section 3 of the Act. The Act does not make it obligatory upon a Magistrate to proceed against him under one enactment & not under the other. The matter is left at his discretion. He may proceed against some notorious habitual thieves or goondas under Section 110 of the Code, & against others under Section 3 of the Act, thus discriminating between some & others. I have already dealt in detail with the differences in

the two enactments. These who are proceeded against under the Act will have a just cause for grievance when others are dealt with under the Code. Mr. Dwivedi, representing some other applicants, went a step further & contended that really there is no distinction between habitual offenders who have not acquired such a reputation & that the Act by making notorious habitual offenders subject to it makes an invidious distinction between some habitual offenders & others. There is much force in both the contentions, & Mr. Chaturvedi's contention, in particular, is impossible to be overruled.

19. Part of Article 14 seems to have been borrowed from the American Constitution. Section 1 of its fourteenth amendment reads as follows:

> "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

This provision has been interpreted by the Supreme Court of America in a number of cases. The object behind the amendment was to remedy the evil of making a discrimination against the Negroes as a class with gross injustice & hardship against them. The intention of the amendment was, in the language of Field J.

> "that equal protection & security should be given to all under like circumstances in the enjoyment of their personal & civil rights; that all persons should be equally entitled to pursue their happiness & acquire & enjoy property; that no greater burdens should be laid upon one than are laid upon others in the same calling & condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences." Barbier v. Connolly, (1885) 113 U. S. .27: 28 Law. Ed. 923.
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> This statement has been described by Willough by in his Constitution of the United States, vol. 3, Edn. 2, p. 1929, as "one of the best general statements of the scope & intent of the provision for the equal protection of the laws."

Field J. later expressed himself thus:

> "The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances & conditions, both in the privileges conferred & in the liabilities imposed". Hayes v. State of Missouri, (1887) 120 U. S. 68: 30 Law. Ed., p. 578.
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> Matthews J. stated that, "the equal protection of the laws is a pledge of the protection of equal laws". Yick Wo v. Hopkins, (1886), 118 tr. Section 356 at p. 369 : 30 Law. Ed. 220 at p. 226. According to Stone, C. J. equal protection of the laws is something more than an abstract right;

> "it is a command which the State must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards "extend to all--the least deserving as well as the most virtuous." Hill v. Texas, 316 U. S. 400 at p. 406: 86 Law. Ed. 1559, at p. 1563.
>
> "The guarantee against denial of equal protection of the laws does not require that absolutely the same rules of law shall apply to all persons irrespective of differences of circumstance. Such a result would obviously be obstructive of reasonable & necessary legislation. What the constitutional provision has been interpreted to mean is that no person within the jurisdiction of a State shall be denied by that State the protection of reasonably equal laws." (Burdick's "The Law of the American Constitution," p. 593). "The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Diversities which are allowable in different States are allowable in different parts of the same State".

This was observed in Missouri v. Lewis, 101 U. S. 22. Equal protection requires similar but not the same or identical privileges or treatment; (see Willoughby p. 1942, and Willis on Constitutional law, p. 582). In Buck v. Bell, 274 tr. Section 200: 71 Law. Ed. 1000: Holmes J., referring to the argument that the impugned enactment was confined to a small number of persona who were in certain institutions & was not applied to the multitudes outside, observed:

> "It is the usual last resort of constitutional arguments to point out shortcomings of this sort. But the answer is that the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, & seeks to bring within the lines all similarly situated so far & so fast as its means allows,"

The necessity for different laws for different circumstances was recognised by Douglas J. in Skinner v. Oklahoma, 316 U. S. 535 at p. 540: 86 Law. Ed. 165.. at p. 1659, who observed:

> "We must remember that the machinery of government would not work if it were not allowed a little play in its joints. . . . 'The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the game',"

The amendment, broad & comprehensive as it is, was not "designed to interfere with the power of the State, sometimes termed its 'police power', to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to add to its wealth & prosperity. , . . . Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good. . . . . , Class legislation, discriminating against some & favouring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the Amendment." (This is what Field, J. laid down in Barrier's case at page 32).

20. As the requirement of protection of the laws applies to all persons similarly situated or circumstanced:

> "where there are rational grounds for so doing, persons or their properties may be grouped into classes to each of which specific legal rights or liabilities may be attached. This legislative discretionary right applies to the exercise of all the powers of the States,--to their taxing & police powers as well as to their other powers." (See Willoughby at p. 1937).
>
> The basis for classification must be natural or reasonable & rational & not arbitrary. According to Brewer 3. Gulf Colorado and Santa Fe Railway Co. v. Ellis, (1897) 165 U. S. 150 at p. 155: 41 Law Ed. 666 at p. 668 the classification:
>
> "must always rest upon some difference which bears a reasonable & just relation to the act in respect to which the classification is proposed, & can never be made arbitrarily & without any such basis."

Examples of valid & invalid classifications are given by Willoughby at p. 1937, etc., by Brewer J. in the above mentioned case at p. 156, etc., & by Cray J. in St. Louis & San Francisco Railway Co. v. Mathews, (1897) 165 U. S. at pp. 14, etc.: 41 Law Ed. 611 at pp. 616, etc. That degrees of evil can be recognised has been affirmed again & again; see the observation of Douglas J. in the case of Skinner at p. 540. So the classification of criminals into habitual & non-habitual criminals is valid; Willis at p. 584. The test for judging the validity or classification, laid down by Douglas J. MacDougall v. Green, 335 U. S. 281 at p. 289: 93 Law Ed. p. 3 at p. 10, is "whether it has some foundation in experience practicality or necessity". If the classification makes all members of the class equally liable it does not contravene the equal protection clause; Barbier v. Gonnolly, at p. 32, Gulf, Colorado & Santa Fe Railway Co. v. Ellis, at p. 155, St. Louis & San Francisco Railway Co. v. Mathews, at p. 25 & Lowe v. State of Kansas, (1896) 163 U. S. 81:41 Law Ed. 78, at p. 89. When a law requires that a person can do a certain act if be gets consent of a certain authority & cannot do it in the absence of the consent, it amounts to dividing people into two classes; one of those who obtain the consent & the other of those who do not obtain it. If the law does not lay down any criterion for the guidance of the authority in deciding whether to grant the consent or not, the classification is illegal; see Yick Wo v. Hopkins, Matthews J. observed in that case at p. 368:

> "It divides the owners or occupiers into two classes, not having respect to their personal character & qualifications for the business, nor the situation & nature & adapation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will & consent of the supervisors, & on the other those from whom that consent is withheld, at their mere will & pleasure."

Referring to the question whether such a classification is proper or not, Willis observes (at p. 586) that it is answered in the affirmative by some cases & in the negative by others, & that:

> "Perhaps the best view on this subject is that the process & equality are not violated by the mere conference of unguided power, but only by its arbitrary exercise by those upon whom conferred."

If his view is correct, he treats it as a. question of delegation of legislative power, & proceeds as follows:

> "If a statute declares a definite policy, there is a sufficiently definite standard for the rule against the delegation of legislative power, & also for equality if the standard is reasonable. If no standard is set up to avoid the violation of equality those exercising the power must act as though they were administering a valid standard. For this reason there is a need for judicial review to see whether or not power delegated has been exercised arbitrarily."

The law which gives naked power of discrimination to an authority, that is a power not discretionary or depending upon circumstances but depending upon the authority's whim, violates the equal protection clause. Matthews J. described this arbitrary power in the following words in Yick Wo's, case at p. 366:

> "The power giving to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, & acknowledges neither guidance nor restraint." Proceeding further he observed:

> "Though the law itself be fair on its face & impartial in appearance, yet, if it is applied & administered by public authority with an evil eye & an unequal hand, seas practically to make unjust & illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Gray J. delivering the majority opinion of the Court in the case of Lowe, said at p. 88:

> "As the statute is applicable to all persons under like circumstances, & does not subject to an the individual arbitrary exercise of power, it has not denied him the equal protection of the laws."

21. The prohibitions of the Fourteenth Amendment are directed against State action & not that of private individuals; they apply to the acts of State Officials & "its officials may exercise their public authority in such a discriminatory or arbitrary manner as to bring them within the scope of the prohibitions." (Willoughby, at p. 1932).

Willoughby writes at p. 1931 that:

> "no one is guaranteed that in fact, through the fortuitous operation of a law, which in itself is not discriminative, a special burden may not be imposed, or the enjoyment of

> a privilege taken away."

It is stated by Fairman in his "American Constitutional Decisions," p. 346:

> "The Court looks to what actually happens. The denial of equal protection may lurk in the actual administration of a statute even if not required by its words."

If from the face of the Ordinance deductions as to its necessary tendency & ultimate operation can be drawn, it can be concluded that the Ordinance makes an arbitrary discrimination between person and person & contravenes the equal protection clause. See the observation of Matthews J. in the case of Yick Wo, at p. 373; in that case he did not feel "obliged to reason from the probable to the actual and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal & unjust discrimination in their administration."

22. The onus of proving that the equal protection clause has been violated, is upon the person who assails the law; the Legislature is to be presumed to have acted from lawful motive. Burdick writes at p. 594:

> "The Supreme Court has very well summarized its position as follows:
>
> 'The rules by which this contention must be treated, as is shown by repeated decisions of this Court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the States the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, & avoids what is done only when it is without any reasonable basis & therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

The above quotation is taken by him from Linds ley v. Natural Carbonic Gas Co., (1911) 220 U. S. 61 at p. 78. See also Willis at p. 579, where he observed :

> "If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed."

In his dissenting judgment in the case of MacDoughall, Douglas J., said at p. 289 :

> "The effect of a State law may bring it under the condemnation of the Equal Protection Clause, however, innocent its purpose. It is invalid if discrimination is apparent in its operation."

That only one person is affected is no proof of arbitrary classification or discrimination;

> "a law applying only to one person or one class of persons is constitutional if there is sufficient basis or reason for it." (Willis, at p. 580).
>
> In the case of Gulf, G. & S. F. R Co., Gray J., in his dissenting judgment, said at p. 167 :
>
> "The legislature of a State must be presumed to have acted from lawful motives, unless the contrary appears upon the face of the statute."

He also held that whether the facts which would justify classification existed or not, was to be determined by the Legislature. The Court is not in a position to gainsay the belief of the Legislature which necessitates the classification. If it is entertainable, the Legislature has not violated its duty to afford equal protection of its laws. The Court cannot cross-examine either actually or argumentatively the mind of the legislators, nor question their motives. This was laid down by Frankfurter J., in Goesaert v. Clearly, 335 U. S. 464 at p. 456 : 93 Law. Ed. 163 at p. 166. Reasonable grounds for the classification or discrimination were assumed by the Supreme Court in a number of cases cited by Willoughby at pages 1939-1941. As regards classification for the police power, it is stated by Willis at p. 580 that there is no rule for determining which classification is reasonable.

> "It is a matter for judicial determination, but in determining the question of reasonableness the Courts must find some economic, political, or other social interest to be secured, and some relation of the classification to the objects sought to be accomplished."

23. The above interpretation of the Fourteenth Amendment by the Supreme Court of America is illustrated by the following cases: Barbier v. Gonnolly & Soon Hing v. Crowley, (1885) 113 U. S. p. 703 : 28 Law Ed. p. 1145, dealt with an Ordinance issued by a Board of Supervisors of San Francisco containing a provision that no person owning or employed in a public laundry shall wash clothes between 10 p. m. & 6 a. m. & on any Sunday, & that no laundry shall be established by anyone without having first obtained a certificate of the Health Officer & a certificate of the Board of Fire Wardens regarding suitability & safety of the premises. This Ordinance was declared to be valid by the Supreme Court as being merely a police regulation which a Federal Tribunal cannot undertake to supervise. The justification for the Ordinance lay in the fact that San Francisco was composed largely of wooden buildings. As all persons employed in the laundry business were treated alike, there was no question of inequality of the protection of laws. In the case of Soon Hing, it was contended that the Ordinance made an arbitrary discrimination between the laundry business & other businesses; that contention was repelled because no special risk attended the other businesses. It was then pleaded that the Ordinance was aimed at the Chinese against whom the Board of Supervisors had a feeling of hostility; the Supreme Court's reply was :

> "The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which, follows as the natural &

reasonable effect of their enactments." (p. 710).

These two cases may be contrasted with that of Tick Wo where the Board of Supervisors of San Francisco issued an Ordinance prohibiting the establishment of a laundry, without their consent, except in a brick or stone building; that Ordinance was declared invalid as granting naked or arbitrary discretion to the Board. The Supreme Court distinguished it from the Ordinances dealt with in the cases of Barbier; & Soon Hing & relied upon the evidence produced by Yick Wo to the effect that the Board of Supervisors had discriminated arbitrarily against the Chines. The discrimination was admitted by the Board itself & it could give no reason for it. No reason could even be suggested in the argument. Hayes v. Missouri, maintained the validity of a Missouri statute laying down that in capital cases, in cities having a population of less than one lac the State would be allowed eight peremptory challenges to jurors & in other cities, fifteen. Hayes was convicted on a charge of murder in the city of Louis having a population of more than a lac. He challenged his conviction on the ground that the division of the cities into two classes was arbitrary. The Supreme Court held otherwise. Peremptory challenges were necessary in order to secure impartial jurora. Special care was needed in larger towns to have independent jurors & so a larger number of challenges was allowed to the State. The accused could not demand anything more than an impartial jury & this right was not in any way affected by the classification. A Kansas law provided that if a prosecution was launched without probable cause & maliciously, the prosecutor could be ordered to pay costs of the other party & to go to jail in default. Lowe was made to pay costs of his adversary under this law & he challenged the law on the ground that it made invidious discrimination. The Supreme Court rejected his plea on the ground that the law was applicable to all persons under like circumstances & did not subject an individual to arbitrary exercise of power; see Lowe v Kansas. A Missouri statute making railway corporations liable for property destroyed by fires from its locomotives & giving them an insurable interest in property situated along their routes was held valid in St. Louis & San Francisco Railway Co. v. Mathews. As there was no discrimination against any particular railway corporation and they all were subject to the same liability, the statute did not deny the equal protection of laws to the railway corporations. There was justification for singling out the railway corporations to be made the subject-matter of a special law. In Lisenba, v. California 314 U. S. 219 : 86 Law. Ed. 166, Lisenba, who was convicted of murder on the basis of a confession alleged by him to have been extorted from him, complained of denial of the equal protection of laws. His argument was that the officers of the State treated some accused as they treated him & others as required by law & discrimination resulted thereby. The argument was dismissed as frivolous by the Supreme Court. As Illinois statute required that a petition to form & nominate a new political party should be signed by at least twenty-five thousand voters, provided that they include at least 200 voters from each of 50 counties out of 101 counties in the State; it was contended to be discriminatory. The contention was repelled (Douglas J. dissenting). The Court held that it is allowable state policy to require that candidates for

State-wide office should have support not limited to a concentrated locality; MacDougall v. Green. A Michigan statute forbade women from being licensed as bar tenders & made an exception in favour of wives & daughters of owners of liquor establishments. It was held to be not discriminating between women & men or wives & daughters of owners & other women. It was observed that the State could forbid all women from being licensed as bar tenders, though it could not "play favourites among women without rhyme or reason". Bar-tending by women might in the allowable legislative judgment give rise to moral & social problems against which the State might devise preventive measures. But the State need not go to the full length if it believed that as to a defined group of females other factors might operate to eliminate or reduce the problems. This might have been the belief of the Michigan Legislature, justifying the distinction between the wives & daughters & other females. See Goesaert v. deary. A New York City Regulation prohibited advertising vehicles in streets but permitted putting of business notices upon business delivery or regular work vehicles of the business owners. The object of the Regulation was to reduce the traffic problem; it was thought that the advertisements caused distraction. The Regulation was assailed on the ground that it discriminated arbitrarily between advertising vehicles & vehicles belonging to owners of businesses. The Supreme Court held the Regulation to be valid because the local authority might have thought that advertisement of own wares on own vehicles might not present the same problem as that presented by vehicles hired only to carry advertisements and it was an allowable judgment. See Railway Express Agency Inc. v. New York, 336 U. S. 106 : 93 Law. Ed. 533. Cohen v. Beneficial Industrial Loan Corporation, 337 U. S. 641 : 93 Law Ed, 1528, ruled the validity of a classification based on a percentage or an amount, the Court observing that such classification is necessarily somewhat arbitrary. Buck v. Bell established the constitutionality of a Sterilisation Act passed by the State of Virginia. The Act mentioned that experience shows that heredity plays an important part in the transmission of insanity, imbecility, etc. and that the Commonwealth was supporting in various institutions many defective persons who, on discharge, would become a menace, but rendered incapable of procreating might be discharged with safety and provided that superintendents of certain institutions had the power to perform the sterilisation operation upon inmates under their care. The Act provided safeguards in respect of those inmates whose health did not permit the operation. On behalf of Buck, an inmate of one of the prescribed institutions and ordered to be sterilised, it was contended that the Act made an illegal discrimination between the insane and the imbecile lodged in certain institutions and the other insane and imbecile persons. Holmes J. dismissed the objection as "the usual last resort of constitutional arguments". He gave, what has been described by Fairman, as "the stock response to that sort of contention", that the law does all that is needed when it does all that it can.

24. One of the early statutes to be declared as unconstitutional is a Texas Statute which allowed a pltf. the fee paid by him to his attorney in a suit for damages against a railway if it had not satisfied his demand in a certain time. The Supreme Court held that the statute singled out the railways out

of all persons & corporations & gave them no like or corresponding benefits & that no other debtor was dealt with similarly. The discrimination between railways & other pltfs. & that between railways as pltfs & defts. were obvious from a mere inspection of the statute. The division of pltfs. into railways & the rest was as arbitrary as that between white men & black. See Gulf, C. S. F. R. Company. Gray J. in his dissent note, was inclined to the view that the statute was valid because the legislature must be presumed to have acted from lawful motive & to have been satisfied, from observation & experience, that railways were accustomed, beyond other corporations or persons, to resist unconscionably the payment of petty claims with the object of exhausting the patience & the means of the claimants. In Hill v. Texas, the conviction of a Negro, Hill, was quashed on the ground that Negros had been systematically excluded for years on the ground of rape from the Grand Jury which returned the indictment. The Criminal Procedure Code of Texas provided for a jury of citizens of the State, qualified to vote, of sound & good moral character & literate. There were 66,000 tax-payers out of whom 8,000 were Negros. But not one Negro was ever called upon to serve as a Juror. The Supreme Court held that when the objection laid bare a discrimination in the selection of grand jurors, the conviction cannot stand because the constitution prohibits the procedure by which it was obtained.

> "No State is at liberty to impose upon one charged with crime a discrimination in its trial procedure which the constitution ..... forbid" (per Justice Stone C. J. at page 406).
>
> Skinner v. Oklahoma, decided that another sterilisation statute enacted by Oklahoma' was unconstitutional. It provided for the sterilisation; of habitual criminals defined as persons convicted one or more times for crimes amounting to felonies involving moral turpitude. It applied to persons convicted of larceny by fraud but expressly exempted from sterilisation persons convicted of embezzelments. This discrimination between persons convicted of larceny & those convicted of embezzelment was declared to be unreasonable, having absolutely nothing to do with eugenics. There was no reason to think "that the inheritability of criminal traits follows the neat legal distinction which the law has marked between those two offences" (p. 542 per Douglas J.)

25. The above decisions of the Supreme Court of United States interpreting the fourteenth amendment have been followed by Indian Courts in interpreting Article 14 of the Constitution.

26. In Fram Nusserwanji Balsam v. State of Bombay, 52 Bom. L. R. 799, certain provisions of the Bombay Prohibition Act were declared unconstitutional as offending against Article 14. The offending provisions made illegal discrimination between foreign visitors & visitors from other parts of India. It was reasonable for the legislature to exempt certain persons from the Act on the ground of health. It was also reasonable to exempt visitors who visit the province for not more than a week. But the rules made by the Govt. provided for the issue of tourists' permits to foreigners only & not to Indian visitors from other provinces. For this there was no justification. The Act allowed drinking on all cargo boats, warships, troop ships & military & naval messes & canteens. There was nothing in common between cargo boats on the one side & warships, troop ships, etc. on the other side, & it

was not easy to say why cargo boats should be treated differently from coasting steamers or passenger ships. There was also no justification for discriminating between military messes & civilian clubs. The Pull Bench relied upon the cases of Barbier, & Lindsley. It observed that if you create a class by reason of a particular qualification, you must include in that class all those who satisfy that qualification & that the guarantee of equality before the law extends not only to legislation but also to rules & executive orders. In Charanjit Lal v. The Union of India, A. I. R. (38) 1951 S. C. 41, the Supreme Court held that the Sholapur Spinning & Weaving Company (Emergency Provisions) Act was a valid Act even though it dealt with only Sholapur Spinning & Weaving Co., Ltd. The Supreme Court quoted from Willis & relied upon Gulf C. S. F. R. G. v. Ellis. It laid down that the presumption is always in favour of the constitutionality of an enactment, that classification which is arbitrary & made without any basis is no classification, that a proper classification must always rest upon some difference & must bear a reasonable & just relation to the needs in respect of which it is proposed, & that it is no objection to a: classification, that a class consists, of only one individual or corporation. In Champakan Dorai Bajan v. The State of Madras, (1950) 2 M. L. J. 404, (F. B.) the Madras Communal Govt. Order regarding admissions of students to colleges was held to discriminate against students on the ground of caste or religion. The Fall Bench followed the cases of Yick Wo, Gulf C. S. F. R. Co.; Hayes etc. A note of caution was sounded by the Supreme Court against placing implict reliance on American precedents without due regard to the fact that our Constitution runs into details & considerably narrows the scope of judicial interpretation & to the difference in language between the Articles of the two Constitutions: A.K. Gopalan v. State of Madras, (1950) 2 M. L. J. 42 : A. I. R. (37) 1950 S. C. 27. But Article 14 of our Constitution does not run into details & has borrowed the language of American Fourteenth Amendment; the Constituent Assembly, when it borrowed the language, must have known how it was interpreted by the Supreme Court of America & when it used the same language in our Constitution, it must be presumed to have accepted the interpretation placed upon it in America. That is why I have made liberal use of the American authorities in interpreting Article 14; & I am supported in this by what Kapur J. said in Amar Nath Bali v. The State, 52 Cr. L. J. 261 at p. 269

27. The law that I gather from the above authorities is this. It is absurd to speak of one law for all circumstances; it is a sheer impossibility because there must be different laws to deal with different circumstances. What the equal protection clause means is simply this that the same law should govern those similarly circumstanced; it cannot & does not prohibit different laws for those differently circumstanced. The Legislature has full freedom to classify people according to circumstances & enact different laws for different lasses; but it must treat equally all similarly circumstanced or falling in one class & the difference in treatment must have some intelligible or rational connection with the differences in circumstances & not be arbitrary. Discrimination among persons in one class or similarly circumstanced, whether apparent on the face of the Statute or resulting in practice, is all that is prohibited under the clause. It is competent for the Legislature to leave it to the discretion of an authority to apply different laws to people in different circumstances but always provided that t lays down a rational standard to guide its discretion or such a standard can be presumed to exist; it cannot leave it to its arbitrary or naked discretion. A statute is presumed to be within the power of the Legislature & the onus of showing that it is not, lies on the assailant. But a Statute enacted before the Constitution cannot be presumed to be constitutional under it.

28. It was open to the Legislature of Uttar Pradesh to make a special law regarding habitual criminals or offenders. Making one law for habitual criminals & another law for other criminals would not, by itself, contravene Article 14. Habitual criminals would, of necessity, require a different treatment; so long as the treatment meted out to them has some reasonable connection with their being habitual criminals, they cannot complain on the ground of inequality of laws. But the law regarding habitual criminals must apply to all habitual criminals alike & should not discriminate between some & others. The impugned Act, how ever, discriminates between habitual criminals who have acquired a bad reputation & others who have not & the difference in the treatment meted out to them has no intelligible connection with the acquisition, or non-acquisition, of a reputation as bad character. There is no reason why habitual criminals who have not acquired a bad reputation should be dealt with under Section 110 of the Code while those who have acquired a bad reputation may be dealt with under the Act. The special procedure prescribed for those who have acquired a bad reputation & the orders that may be passed against them under the Act have nothing to do with the acquisition by them of a bad reputation. There is no reason why a habitual criminal who is sly & sleek & succeeds in concealing his criminality from the general public should be dealt with differently from another habitual criminal who is a blunder-head & cannot commit a crime without being detected. I agree with Mr. Duvedi that if either of them is more dangerous to the public, it is the former, but the Act prescribes a drastic treatment for the latter only. Even within the class of habitual criminals who have acquired a bad reputation, the Act makes an unconstitutional discrimination between some & others. This discrimination is obvious on the face of the Act itself & no proof is required. The discrimination lies in the fact that some are. left to be prosecuted under Section 110 of the Code while the others are prosecuted under the Act. A notorious habitual criminal is liable to be run in under the Code or under the Act, whether he is run in under one or the other has been left by the Act to the fancy or whim of the Magistrate & the police who move him. The Act has laid down no standard to guide the Magistrate's choice of one of the two procedures & no standard can even be imagined by the Court. The discretion (if it at all is a discretion) that is conferred upon the Magistrate is naked & arbitrary; there is absolute ly nothing to guide him. It is Section 3 (1) (a) (i), (b) & (G) which makes this irrational & arbitrary dis crimination & it must be held to be a piece of legislative despotism. I am, therefore, of the opinion that Section 3 (1) (a) (i), (b) & (c) is unconstitutional. The provision in Section 3 (1) (a) (iii) is, on the other hand, not unconstitutional; it applies equally to all keepers of gambling dens who are by repute bad characters. They are all liable to be proceeded against under the Act & under no other provision.

29. When Section 3 (1)(a)(i), (b) & (c) is found to be unconstitutional, Section 3 (2) also must be held to be unconstitutional along with it. An order under Section 3(2) is to be passed in addition to the order under Section 3 (1); if no order under Sub-section (1) is passed, no order under Sub-section (2) can be passed. The order under Sub-section (2) is in addition to that under Sub-section (1) & not in addition to it or in lieu of it according to the discretion of the Judge. That an order under Sub-section (1) must be passed in every case is clear from Section 14 which lays down that an order under Section 3 must state the amount of 'the bond, the term & the number etc., of sureties.

30. It is laid down in Article 22(1) :

> "No person who is arrested shall be detained in custody without being informed ..... of the grounds for such arrest nor shall he be denied the right ..... to be defended by a legal practitioner of his choice."

This provision does not apply to "any person who is arrested or detained under any law providing for preventive detention." The original Act did not allow a person proceeded against under it to be defended by a legal practitioner; since the amendment he can be. The question of the light to be defended by a legal practitioner has been raised in applications Nos. 1361 & 1362. On behalf of the State it was contended that the applicants were arrested or detained under the Act which provides for preventive detention & consequently had no right to be defended by a legal practitioner. It was next contended that the right of being defended by a legal practitioner rests in a person who is not only arrested but also detained in custody. I will dispose of the second contention first. The Article lays down that a person who is arrested must not be detained without being informed of the grounds of his arrest & must not be denied the right of defence by a legal practitioner. The only condition necessary for a person to have the right of defence by legal practitioner is that he must have been arrested; it is not at all obligatory that after arrest he should have been detained. If after arrest he was released on security, his right of defence by a legal practitioner which accrued at the moment of his arrest would continue, because the right to be defended is a continuing right. The third contention of the State counsel is that the Article has no retrospective effect & does not apply to a person who was arrested before 26-1-1950. This is correct. The words used are "who is arrested" & not "who has been arrested." The words "shall be detained" & "shall... be denied," suggest futurity. The provision that the arrested person must be informed of the grounds of arrest as soon as possible can be applied only to a person arrested in future; it cannot be applied to a person who was arrested in the past because it would be impossible to comply with it. Constitution is always prospective & never retrospective. I do not agree with Mr. Duvedi that Article 22(1), applies to all persons regardless of whether they are arrested or not & that consequently it is irrelevant to consider whether they were arrested after or before 26-1-1950. He wants the Court to read the provision as "No person who is arrested shall be detained etc. & no person shall be denied the right to, etc." This construction is not permitted by the construction of the sentence. The word "he" necessarily refers to "person who is arrested" & those words mean a person arrested after 26-1-1950. It is that person who cannot be detained without being informed of the grounds of his arrest, who has been given the right of being defended by a legal practitioner. In application no. 1361 the applicants were arrested before 26-1-1950: they are therefore, not entitled to the benefit of Article 22, On the other application, they were arrested on 3-3-1950. Their arrest, however, was illegal because the warrant that was issued to the police directed them to take security from the applicants & to take them in custody only on their default. But the police took them into custody first & then released them on security. The police did not care to real the warrant. They thought that it was a warrant for arrest & that the security to be taken from the applicants was for their appearance before the Magistrate on a certain date & not for being of good behaviour & keeping the peace. As the applicants were not required to give security in the beginning & did not fail to give it, they could not have been arrested at all. Their arrest being illegal & against the very words of the warrant issued under the Act, cannot be said to be under the Act. I have found that the Act provides for preventive detention; still as the arrest was not under it, Article 22(3) does not apply to rob them of the right of defence by a legal practitioner. The Judge was wrong in refusing to let them be defended by a legal practitioner. All the

witnesses might have been examined; but the arguments were to be heard. Even if the arguments had been concluded, the applicants had a right to be defended so long as the final order was not passed. It was not for the Judge to find whether any useful purpose would be served by their being defended by a legal practitioner, it was a question of a right guaranteed to them under the Constitution. In order to show that the Constitution has been infringed, it was not necessary for the applicants to show that they were denied the right of defence by a legal practitioner by the Judge; they need not have made any application to the Judge & the Judge need not have dismissed it. It is sufficient that the Act itself denied them the right. As the applicants in application No. 1362 were denied the constitutional right of defence by a legal practitioner during the proceedings, the proceedings are null & void.

31. The next attack on the Act is on the ground that it infringes Article 19 of the Constitution which reads as follows:

> "(1) All citizens shall hare the right .....
>
> (d) to move freely throughout the territory of India;
>
> (e) to reside & settle in any part of the territory of India. .....
>
> (5) Nothing in Sub-clauses, (d), (e) & (f) of the said clause shall affect the operation of any existing law in so far as it imposes, . . . reasonable restrictions on the exercise of any of the rights conferred by the said sub-cls. ... in the interests of the general public."

32. The question of reasonable restrictions has been discussed in Charanjit Lal v. Union of India A.I.R.(38) 1951 S. C. 41, Dr. N.B. Share v. State of Delhi, 1950 S. C. J. 328, Chintaman Rao v. State of Madhya Pradesh, A.I.R. (38) 1951 S. C. 118, Braj Nandan Sharma v. State of Bihar, A. I. R. (37) 1960 Pat. 322, Jeshingbhai Ishwar Lal v. Emperor, A.I.R. (37) 1950 Bom. 363 & A.K. Gopalan v. State of Madras:

> "While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Court the question of unreasonableness of the procedural part of the law"; (per Kania C. J, in the case of Dr. N. B. Khare at p. 330)."

Mukberjea J said in the same case at page 335 :

> "The question of reasonableness of the restriction imposed by a law may arise as much from the substantive part of the law as from its procedural portion.
>
> In the case of Jeshingbhai, Chagla C. J. observed at page 367:

> "The Court must loot at the nature of the restriction, the manner in which it is imposed, its extent both territorial & temporal, & if, after considering all this the Court comes to the conclusion that the restriction is unreasonable, then the restriction is not justifled."

The phrase "reasonable restrictions" connotes that the limits imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature & go beyond what is required in the interests of the public. The word "reasonable" implies intelligence, care & deliberation i. e. choice of course which reason dictates. This is what Mahajan J. observed in Chintaman Rao's ease at p. 573. The restriction is unreasonable if it depends on satisfaction of a completely amorphous body or is not open to examination by Chart; Brajnandai Sharma v. State. According to Chagla C. J a restriction is unreasonable if no right to be heard is allowed & if no period of detention is fixed It is the law & not an order passed under it, that should impose a reasonable restriction; if the law itself permits unreasonable action by an authority, it is not saved. The legislature's idea of reasonableness of a restriction is subject to the Court's supervision; this has been established in the cases of Chintaman Bao, Brajnandan Sharma & Jeshingbhai. It is also established that the test to be applied by the Court is an objective test.

33. It was argued that the Act imposes unreasonable restrictions inasmuch as it allows expulsion from the home town or home district, makes the order of expulsion irrevocable & fixes no limits to the amount of bond though it fixes amounts of the interim bond taken under Section 4. I do not consider that the restrictions imposed under the Act on free movement & the right to reside & settle anywhere in India are unreasonable. I do not find anything unreasonable either in the procedural law or in the substantive law The final order is to be passed either in accordance with the unanimous opinion of the jurors or by the Chief Justice of the High Court or is made subject to an appeal. A right to be heard before the order is passed is given to the person concerned & he is also allowed the right to produce witnesses in defence. The facts that the Evidence Act does not apply & that the person has no right to be present during the proceedings or be defended by a legal practitioner would not make the restrictions unreasonable. The order of expulsion may be irrevocable but the period of expulsion is limited to one year, vide Section 15. I do not see anything unreasonable in ordering a notorious bad character & habitual criminal or keeper of a gambling den to leave the Uttar Pradesh to which he does not belong or to leave a specific area. Externment in the interests of the State & pub lie order is resorted to by. all Governments. The only provision that may be said to be offensive is that a person may be ordered to leave his home town or district; so, at the most the provision of Section 3 (2) (b) can be said to impose an unreasonable restriction, but I am not sure that it does. The irrevocableness of the order of expulsion has no importance. If the Govt. withdraw the notification from any district before the period of expulsion expires, I think it would be open to the person to return to the place because he would not be liable to be prosecuted after the withdrawal of the notification. The withdrawal would operate as revocation of all orders passed while it was in force. When Section 14 lays down that the amount of every bond shall be fixed with due regard to the circumstances of the case & shall not be excessive, it was not necessary for the legislature to fix limits to the amount. The provision is similar to Section 118, Criminal P C. The Indian Penal Code does not fix limits to the amount of fine that is to be imposed for most of the offences & the general prevision that it should not be excessive is considered sufficient My finding is

that the Act is not obnoxious to Article 19 of the Constitution. Even if it is obnoxious, only that part of Section 3 (2) that is obnoxious would be invalid because it is admittedly severable from the rest of the Act.

34 There are three applications which have been filed under Sections 435/439, Criminal P. C. & it was vehemently argued on behalf of the State that the Judge, who passed the orders under question, was not an inferior criminal Court within the meaning of Section 435 & that the orders are not revisable by us. The word "Court" is not defined in the Code, but Section 6 states that there are five classes of criminal Courts in India, namely, Courts of Session Presidency Magistrates, & Magistrates of the First, the Second & the Third Class, besides the High Courts & the Courts constituted under any law other than the Code. The Judge who disposed of the three applications, though he presides over a Court of Session while trying other cases, did not preside over any Court of session while disposing of the applications. Special jurisdiction has been conferred under the Act upon some District & Ses. Judges to make an enquiry under the Act; when they make an enquiry they do so on account of the special power conferred upon them under the Act & not as presiding officers of Courts of Session nor by virtue of any jurisdiction conferred upon District & Ses. Judges under the Code. A Court of Session has limited jurisdiction under the Code; it takes cognizance of a case only when it is committed to it by a Magistrate. The applications were disposed of by the Judge not by virtue of any provision in the Code. The Code does not bar a Ses. J.'s having dual capacity, one as a Ses. J. & the other as an officer exercising administrative or non-judicial powers. He is an inferior criminal Court only when he does something in the former capacity, if he does something in the latter capacity, this Court would have no revisional jurisdiction over it simply because it was done by a person who had also the status of an inferior criminal Court. The Act lays down that the enquiry would be done before a Judge; it does not say that it would be done before a Ses. J. or a Sessions Court. It creates a new office, namely that of a Judge, but instead of appointing a new person to it, appoints a District & Ses. J. to it. If a new person were appointed to the office of Judge & he would not have thereby become an inferior criminal Court, a District & Ses. J. appointed to that post would also not become an inferior criminal Court. Therefore the mere fact that a Judge is also District & Ses J. would not make him an inferior criminal Court when acting under the Act. He can be an inferior criminal Court but that would depend upon whether it is a Court of a Judge created by the Act. There are certain provisions in the Act which suggest that a Judge acts as a Court. If he acts as a Court there would be no difficulty in saying that he acts as a criminal Court. Since that criminal Court would not be superior to, or have the same status as that of, the High Court there would be no difficulty in saying that he is an inferior criminal Court.

35. I find that the Judge has all the paraphernalia of a Court. There is a special procedure provided for the proceedings before him He has to record evidence & maintain a record of the proceedings. He has to take an explanation from the person proceeded against. He has to pass a just & proper order with the aid of two jurors. He has got the power of summoning witnesses & documents. But for the express provisions in Sections 8 (1) & 10, it appears, he would have been bound to observe the procedure of the Code of Criminal Procedure & the Indian Evidence Act. If he disagrees with the unanimous verdict of the jurors; he has to submit the proceedings with the reasons for the disagreement to the Chief Justice. The person proceeded against has a right of representation, which is nothing but a right of appeal, against an order passed by the Judge agreeing with one juror &

disagreeing with the other. It cannot be disputed that the proceedings before the Chief Justice under Section 13 are judicial proceedings & that the Chief Justice acts as a Court. The jurors are administered the oath of secrecy. Finally the proceedings before the Judge are declared to be judicial proceedings within the meaning of Sections 193 & 228, I.P.C. & he has the power to punish persons guilty of contempt of Court. It seems to me that it is a Court of a Judge created by the Act.

36. When a District Magistrate disposes of an application under Section 8, Criminal Tribes Act, he does not act as an inferior criminal Court & so his order is not liable to revision by this Court; see Hasan Ali v. Emperor, 47 Cal. 843 When he appoints a mukhia under Section 45(3) of the Code, he does not act as a Court; see In re Damma, 29 ALL 563. But it does not follow that the Judge does not act as a Court. In Banwari Gope v. Emperor, A. I. R. (30) 1943 Pat. 18, Courts of Special Magistrates were created under an ordinance with special powers to try certain offences under the Penal Code. Existing Magistrates were given the powers of Special Magistrates. Fazl Ali J. (now of the Supreme Court) with whom Harreis C. J. & Varma J. agreed, held that the High Court had no power of revision over their judgments because "as the Special Magistrates derived their jurisdiction from the Ordinance, they cannot be properly described as inferior criminal Courts". With great respect, I am unable to understand why the mere fact that they derived jurisdiction from the Ordinanae would prevent their being Courts. The Bench did not refer to Section 6 of the Code which recognises criminal Courts constituted under any law other than the Code Criminal Courts can certainly be constituted under an Ordinance. A panchayat established under the Bihar & Orissa Village Administration Act was treated as an inferior criminal Court in Goni Mahton v. Emperor, A. I. R. (28) 1941 Pat. 169. Knox C. J. said in The King v. Mac Farlane, 32 C. L. R. 518 at p. 527:

> "In R. v. Local Government Board, (1902) 2 Ir. R. at p. 373, Palles, C. B. laid down that to erect a tribunal into a Court of jurisdiction so as to make its determinations judicial, the essential element is that it should have power by its determination within jurisdiction to impose liability or affect rights."

The Judge, by his order, has imposed liabilities on the applicants & affected their rights. The Industrial Tribunal set up under Section 7, Industrial Disputes Act, has all the necessary trappings of a Court of justice as held in Bharat Bank Ltd. v Employees of the Bharat Bank Ltd., A. I. R. (37) 1950 S. C. 188. Sir Ivor Jennings writes in 'The Law & the Constitution' at p. 219:

> "The judicial function & the administrative function do not differ in essence though in the one the meaning of the law may be the primary question, while in the other the exercise of a discretion is materially to be the more important."

Here the Judge had to deal more with the law than with discretion; he had to see whether the person proceeded against came within the scope of Section 3 of the Act. He had no discretion in the matter unless he was satisfied that he came. The judicial function involves a dispute between two or more parties & the Act itself contemplates that there would be a dispute before the Judge between the Provincial Govt. & the person. The Magistrate is moved under the Act by the police reporting against the person. The Provincial Govt. represented by the police & the person are the two parties before him; they are also the two parties before the Judge & even the Chief Justice. It is laid down in

Section 13 (2):

> "The person proceeded against of the Provincial Government shall not have a right to be present.... before the Chief Justice."

This means that the Provincial Govt. are treated as one party to the dispute. I, therefore, hold that the Judge was an inferior criminal Court & we have jurisdiction to revise his orders under Sections 435 & 439 of the Code. The statutory provision regarding finality of the orders does not exclude the exercise of revisional powers.

37. It was certainly a mistake that in two cases the Magistrate gave a notice to the applicants calling upon them to show cause why they should not be bound down for three years instead of two years. Bat this mistake in the notice certainly would not make the proceedings & the Judge's orders invalid. It was only an order to the applicants to show cause; it was not a statement of facts which went to the root of the jurisdiction of the Magistrate. It is not a case of his assuming jurisdiction on the assumption of existence of a fact which later on turns out to be not a fact. The provision that the notice should mention the period is directory & not mandatory. The notice would not become invalid because it fixes the period at three years instead of two years. Even though the period of three years was mentioned, the Judge was not bound by it & it was open to him to bind down the applicants for any period less than that given in the notice. Had it been that the Judge had no option bat to make an order for the period specified in the notice, it could be contended that the notice was invalid. It would not have been sufficient for the applicants simply to say in reply to the notice that they could not legally be bound down for three years. If they did not show cause why they should not be bound down at all, they would render themselves liable to be bound down for a period that would be legal It 13 not true to say that on their saying that they could not be bound down for three years the Judge would have no right to bind them down for ,two years or less without giving them another notice. There is nothing in the Act to suggest that an illegal demand in notice would vitiate all the proceedings before the Magistrate & the Judge.

38. The order of the Judge binding down the applicants in Misc. Application No. 1361 is certainly illegal. The whole order must be set aside; it cannot be corrected & made legal on a writ of certiorari.

39. In Misc. Application No. 2429 of 1950 the Judge illegally passed an order binding the applicant down for two years when the notice was given to him for furnishing security for one year. It is obvious from the language of Section 3(1) that the exact period for which the person is to be bound down should be specified in the notice. The period should not exceed two years but it must be specified; it would not suffice to say in the notice "for a period not exceeding two years". In any case the period of one year was actually specified in the notice. The third proviso to Section 14 is to the effect that "no action other than the action mentioned in the notice under Section 3 ..... shall be ordered to be taken against him."

If the action mentioned in the notice was an order demanding security for one year, this proviso debarred the Judge from demanding security for more than one year. We are not called upon to decide whether it debarred him from demanding security for a period less than one year, though as I

said earlier in my judgment it did not debar him; but lam certain that it debarred him from demanding security for more than a year. Therefore the whole order of the Judge is vitiated; in these proceedings under Section 491, Cr. P. C., we cannot reduce the period to one year. We have to maintain the order or quash it; we have no power to amend it.

40. In Misc. Application No. 955 of 1950 the Magistrate passed an order under Section 4 because the police reported that the applicant was likely to abscond. This was not a ground on which the order could be passed. The immediate action that was necessary was of maintaining public order & peace & not keeping the applicant within the jurisdiction of the Magistrate. But the illegal issue of the order had no bearing on the validity of the proceedings before him & the Judge. In some cases the Magistrate did not record the reasons for his satisfaction that immediate action was necessary; this was also only an irregularity which did not vitiate the proceedings & the orders. Similarly, the mistakes on the part of some police officers of arresting the applicants before demanding the security from them & of taking security from: them not for being of good behaviour & for keeping the peace but for attending the Court of the Magistrate on a certain date are not fatal.

41. In Misc. Application No. 955 the column of particulars in the notice was left blank. This was undoubtedly a fatal defect because unless some particulars were given the applicant would not have been in a position to make a representation to the Magistrate. He had no right to appear before the Magistrate & if he could not make a proper representation to him, his case would go in default. Therefore, the failure to mention particulars caused a serious prejudice to him & the proceedings before the Magistrate & the Judge must be held to be null & void.

42. In this Application No. 210, I find that they Act was intra vires of the legislature. The order was passed before the Constitution & therefore there arises no question of the Act being against the provisions of the Constitution. The application must, therefore be dismissed,

43. Similarly Applications Nos. 211 & 212 also must be dismissed. Misc. Application No. 1361 should be allowed on the ground that Section 3(1) is unconstitutional & the final order is illegal. Misc. Application No. 1362 should be allowed on the ground that Section 3(1)(a) (i) & (b) is unconstitutional. Misc. Application No. 955 should be allowed on the same ground & also on the ground that the notice did not contain necessary particulars. Miss. Application No. 2347 should be allowed on the ground that Section 3 (1) (a) (i) & (o) is unconstitutional, & Section 3(2) also as it cannot be severed from it. Misc. Application No. 2423 should be allowed on the grounds that Section 3 (1) (a) (i) & (c) is unconstitutional & that the order demanding security for a longer period than what was mentioned in the notice is invalid.

Dayal J.

44.I agree with the orders proposed by brother Desai in each of these cases.

45. I may make it clear that I do not commit myself to the view that the orders passed by the Judge under the U. P. Prevention of Crimes (Special Powers) (Temporary) Act No. 5 of 1949 ace orders of an inferior criminal Court & thus liable to being revised by the High Court in the exercise of its

revisional powers under Section 435, Cr. P. C. I am inclined to the view that they are not so revisable by the Court. In that view also the applications in Criminal Revisions Nos. 210, 211 & 212 of 1950 deserve to be dismissed.

46. I agree that the provisions of Section 3 (1) (a) (i), 3 (1) (b) & (c) of Act 5 of 1949 are void, they being against the provisions of Article 14 of the Constitution. The orders pissed in Criminal Misc. NOS. 1361, 1362 & 955 of 1950 after the coming into force of the Constitution deserve to be set aside on this ground.

47. The order in criminal Misc. No. 2429 deserves to be set aside as the Judge passed the order for a period longer than what was mentioned in the notice issued by the Magistrate.

48. The proceedings in Criminal Misc. No. 2347 are to be set aside as they are under the provision of Section 3 (1) (a) (i) and (o), U. P. Prevention of Crimes (Special Powers) (Temporary) Act, which has been held to be void.

49. We reject the application.