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relating to the contract and, therefore, covered by the arbitration agreement.

The learned counsel for the plaintiff did not urge any other circumstances for rejecting the application under section 34 of the Arbitration Act. Ordinarily when a dispute is covered by an arbitration agreement then the suit should be stayed and it is for the plaintiff to show why it should not be stayed. In the present case the nature of the dispute is such that the Superintending Engineer is in a better position to settle it than a Court of law which will ultimately have to rely on the evidence of rival's experts.

For all these reasons I accept this appeal and stay the suit of the plaintiff. There will be no order as to costs.

REVISIONAL CRIMINAL

Before Bhandari, C.J. and Tek Chand, J.

KISHORI LAL,—*Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 103 of 1954.

1957

April 16th

Cantonments Act (II of 1924)—Section 238—Whether violative of the Constitutional guarantees contained in Article 19(1)(d) and (e) of the Constitution of India—"general public"—Meaning of—Principles for declaring the provisions of any enactment void as violative of fundamental rights stated—Constitution of India—Article 19—Fundamental rights—Extent of—Reasonableness of restrictions—Test of—Jurisdiction of Court—Extent of, stated.

Held, that the provisions of section 238 of the Cantonments Act are not violative of the Constitutional liberties declared under Article 19(1) of the Constitution of India and the procedural and the substantive provisions of the Act do not overstep the limits of reasonableness and the said section is *intra vires* the Constitution.

Held, that section 238 of the Cantonments Act provides elaborate procedural safeguards, to enable the person whose liberty of locomotion is about to be curtailed, to examine, and then, meet and rebut, the allegations before the magistrate. If he is unsuccessful there, he can then get the validity of the order of externment passed reviewed in appeal before the District Magistrate under section 274 read with Schedule V. Even after this he can apply to the Officer Commanding the station to grant him permission to return to the Cantonment. Thus from the procedural point of view the law gives to such a person adequate opportunity, not only to present his case before the Magistrate but also to contest the validity of his order in appeal.

Held, that on the substantive side, it is true that the period of externment being unspecified, a person may conceivably remain externed for the remaining portion of his life, and this may impose a serious hardship. But, in so far as the order of the externment is reviewable by the Officer Commanding the station, as often as the person externed may apply for permission to return to the Cantonment, it cannot be said that, on that score, the impugned section infringes the bounds of reasonableness.

Held, that section 238 of the Cantonments Act is also not violative of the principle of natural justice *Audi alteram partem* (hear the other side) and it does not exclude judicial enquiry.

Held, that the expression "general public" is wide enough to include a section of the public. It is in the interests of the general public that the armed forces and those connected with them should be protected from the evil influences of disorderly, and other persons, who are liable to be externed under the provisions of section 238 of the Act. Interests of the general public cannot be deemed to be synonymous with interests of the public of the whole of the country. All that this phrase means is, that a legislation passed in the interests of limited class of persons, or for a territorially limited area, might well be a legislation in the public interest, despite the fact, that the public in other parts of the country might not be affected by such a legislation. A legislation meant for the benefit of a well-defined class will be deemed to be in the interests of general public regardless of the smallness of the number of persons primarily benefited by the legislation.

Held, that before condemning the provisions of a statute as violative of the constitutional liberties granted under part III of the Constitution, the Courts always start with an assumption in favour of the constitutionality of the enactment.

Held, that the validity or unconstitutionality of an Act cannot be assumed, because of the likelihood of a possible abuse of the provisions on the part of those, who may be called upon to give effect to its provisions. The vulnerability of a statute cannot depend upon likelihood of its abuse if the *verba legis* are otherwise unexceptionable. The fear that such reasonable safeguards, as have been provided, may be disregarded, or the power conferred upon the executive authority to administer the law, may be exceeded, is not a relevant consideration in determining the *ultra vires* or *intra vires* character of the statutory provisions. A law, otherwise wise and good, cannot be thrown out as unconstitutional, because of its harsh and reckless enforcement in a particular case. It is true, that the officers who are called upon to act under the law, should not as a result of any undue or harsh enforcement or because of narrow vision, wrongly trespass upon the fundamental rights of the citizens; but even if they do, and even if it may be that the officers have lost proper sense of relative value of rights and duties, the *vires* of the Act is not, thereby, jeopardised. Such a lapse on the part of the executive officers is not indicative of the infirmity of the law.

Held, that the powers conferred by Article 19, clauses (2) to (6) of the Constitution correspond to American concept of police powers. It is the fundamental duty which the State owes to its citizens to provide for their security and welfare. The retention of the police powers, or the reserve of such powers, is an essential safeguard for all orderly Governments and its position and exercise is founded on the duty of the State to protect its citizens. That being so, it becomes incumbent upon the Courts to enforce and give effect to the legislative enactments without questioning the policy, wisdom or expediency of such legislative measures, as that matter is within the legislative, and not judicial determination.

Held, that the fundamental rights enumerated in Article 19(1) of the Constitution, though inalienable, are

not absolute, and yield to the regulatory powers of the Government. These individual rights of a citizen, howsoever sacred and valuable, may become subject to invasion and encroachment on the part of the State, in the legitimate exercise of its police powers. The intention of the constitution makers was to preserve fundamental rights of the citizens, but while doing so, the paramount interests of society have been permitted to impinge upon the personal rights of the individuals, in those cases, where general interest of the community came into conflict, with the personal interest of the few.

Held, that the acts of the sovereign legislature, even if they appear to be impolitic, harsh or oppressive, cannot be annulled by judicial decrees, so long as the constitutional guarantees are not contravened by them. Such legislative inhibitions may be either in the nature of anticipatory preventive steps or they may be punitive provisions for punishing perpetrated offences. It, therefore, follows that a statute though violative of private rights of person or property, is itself inviolate, if it is passed in consonance with the regulatory powers of the Government. Merely because the State has enacted a law which restrains, curtails or even prohibits the enjoyment of rights of some individuals, it does not thereby become unconstitutional, so long as the impingement is in the interest of public welfare. Any loss which may result to the individuals, in consequence of an Act of the State, in legitimate exercise of its police power, is in the nature of *damnum absoue injuria,* for which there is no remedy. All orderly governments, very often, have to restrict individuals' rights with a view to promote the general welfare, public order, public safety, public morals or public health. During national emergency, individual rights may even be suspended altogether; and so long as conditions justifying the enactment last, the statute will not be invalidated.

Held, that whatever the nature of restrictions imposed by the statute, it is not within the province of the Courts of law to question the propriety of the measure, or the wisdom of those who made the law. *Jus dare* is not the function of the Courts, they must confine themselves to *jus dicere.*

Held, that where the legislative action is arbitrary, and has no reasonable relation to the purpose, which it

is competent for Government to effect, the legislature transgresses the limits of its power in interfering with the liberty of citizen; but if there is a reasonable relation to an object within the ambit of governmental authority, the exercise of the legislative discretion is not subject to judicial review. A Court, making a judicial enquiry may legitimately decide the question of power of the legislature, but the question of policy underlying the law, is a matter exclusively within legislative consideration.

Held, that while it is an imperative duty, from which no Court will shrink, to declare void any statute, the unconstitutionality of which is made apparent, but due regard to the boundary line between the legislatures and judicial functions requires that this prerogative of the Courts is exercised with the greatest caution, and only after every reasonable presumption has been drawn in favour of the validity of the Act. But when an Act of the legislature impairs or destroys any rights secured by the Constitution, the duty rests upon the Court, when its jurisdiction is properly invoked, to declare unconstitutional and void any such enactment. Except where Constitution so contemplates, it is not open to the Courts to determine the reasonableness of a legislative enactment even if it deals with fundamental rights.

Held, that by clauses (2) to (6) of Article 19, the law curtailing or impairing the fundamental rights mentioned in clause (1) is required to be reasonable, and the reasonableness of the legislative provisions is a matter expressly placed within the ambit of judicial determination. On the Courts is cast the sentinel duty of protecting the seven freedoms conferred upon the citizen. In the matter of the fundamental rights, the Supreme Court and the High Courts keep watch over and guard the rights guaranteed by the Constitution, and in the discharge of these duties, they have the power to strike down an Act of Legislature, which they consider to be violative of the freedoms guaranteed by the Constitution. If a proper balance is struck between the freedom guaranteed and social control imposed, legislative interference whether regulatory, restrictive or prohibitory will be deemed reasonable and will not be considered to be within the constitutional inhibitions.

Held, that in considering the reasonableness of a piece of legislation the Court should examine both the

procedural as well as the substantive aspects of the law, the constitutionality of which is being challenged.

Case law discussed.

Case referred under section 432(1) Criminal Procedure Code by Shri Yogeshwar Sahni, Cantonment Magistrate, Ferozepur, with his letter No. 101/G.A.2 dated 18/20th January, 1954.

It was heard by Hon'ble Mr. Justice Dulat, on the 2nd June, 1954 and referred to a Division Bench.

ORDER OF REFERENCE BY THE MAGISTRATE

These proceedings against the respondent Kishori Lal, a native of Ferozepur Cantt. where he has ancestral property, have arisen out of an application, preferred by the Cantonment Police, under section 238 of the Cantonments Act, with the intent of securing from me against the respondent an order externing him from the limits of the Cantonment and prohibiting his subsequent re-entry. The grounds on which this order is sought are not controverted inasmuch as the respondent admits that on the five occasions, detailed by the police in the summary of allegations of the case and vouched by the various prosecution witnesses, he was convicted under the Gambling Act. And the prosecution argue that convictions under the Gambling Act, constitute a disorderliness in an individual which renders him liable for externment from the limits of the Cantonment and being banned from re-entering therein as provided in section 238(1)(a) of the Cantonments Act; and hence their prayer for the order of externment.

2. The legality and propriety of such an order is seriously challenged by the respondent on the ground that it is in violation of a fundamental right, guaranteed to the Indian citizen under Art. 19(1), sub-clauses (d) and (e) inasmuch as the

order of externment from the limits of the Cantonment, in the first instance, and that of banning the re-entry later on, amount to restricting his fundamental twin rights of "moving freely throughout the territory of India" and "residing and settling in any part of the territory of India." The substantial contention of the respondent, therefore, is that the restrictive provisions of the contemplated order of externment—by virtue of which he would be required to remove himself from a particular area and would be prohibited from returning to it later for an indefinite period—are inconsistent with the fundamental right, enshrined in the sub-clauses (d) and (e) of Article 19. This right indeed is not absolute inasmuch as clause (5) of Article 19 curtails it to the extent of imposing reasonable restrictions on the exercise of this right either in the interests of general public or for the protection of the interests of any Scheduled Tribe. Thus posed the fundamental question in the present case which requires consideration is whether section 238 of the Cantonments Act (hereinafter called the impugned legislation), which apparently seems to be in conflict with the fundamental rights enunciated in Article 19(1)(d) and (e) of the Constitution of India, is saved by clause (5) of the said Article under which the legislation would be valid if it imposes reasonable restrictions on the exercise of the rights in the interests of the general public.

3. The task of interpreting Article 19 of the Constitution of India has been considerably lightened by the recent celebrated pronouncements of the Supreme Court of India in *Gopalan's case* (1), *Dr. Khare's case* (2), *Gurbachan Singh's case* (3), and *the Full Bench (Madras) decision, V. G. Row* v. *The State of Madras* (4), *confined by Supreme*

(1) (1950) 13 S.C.J. 174: A.I.R. (37) 1950 S.C. 27: 51 Cr. L.J. 1383.
(2) 52 Cr. L.J. 550: A.I.R. (37) 1950 S.C. 211.
(3) 1952 Cr. L.J. 1147:
(4) A.I.R. 1951 Madras 147 : 52 Cr. L.J. 515.

Court in *The State of Madras* v. *V. G. Row* (1). The authoritative exposition of the scheme of things which Article 19 embodies is to be had in *Gopalan's case* (*referred to above*). The real scope of the article, viewed especially in the light of the restrictions imposed thereupon has been clearly laid down by the learned Chief Justice of India. Nothing could be more appropriate than a detailed quotation therefrom. "In order to appreciate the true scope of Article 19, it is useful to read it by itself and then to consider how far the other Articles in Part 3 affect or control its meaning. It is the 1st Article under the Caption "Right to Freedom". It gives the rights mentioned in Article 19(1)(a) to 19(1)(g) to all citizens of India..... ..Having specified those rights each of them is separately considered from the point of view of a similar right in the other citizens, and also after taking into consideration the principle that individual liberty must give way, to the extent it is necessary, when the good or safety of the people generally is concerned..... Reading Article 19 in that way as a whole, the only concept appears to be that the specified rights of a free citizen are thus controlled by what the framers of the Constitution thought were necessary restrictions in the interests of the rest of the citizens." An exactly similar view is to be had in Das, J.'s words which are reproduced below:—

> "But a perusal of Article 19 makes it abundantly clear that none of the 7 rights enumerated in clause (1) is an absolute right for each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in several clauses (2) to (6) of that article. Those clauses save the

(1) A.I.R. 1952 S.C. 196 : 52 Cr. L.J. 966.

power of the State to make laws imposing specified restrictions on the several rights."

This was again precisely the view of all the Judges in *Dr. Khare's case* as well and that is the settled law on the subject and in view of these pronouncements of the highest court in the land and the final authority on the interpretation of the Indian Constitution, it is absolutely unnecessary for me or for any subordinate court to define the ambit of Article 19 of the Constitution and the only question as already observed earlier in the preceding paragraph by me for determination is: whether section 238 of the Cantonments Act has in fact transgressed the limits of permissible legislation in respect of which power is given to the State under clause (5) of Article 19 and since it is also the settled law that it is for the court to ascertain, after carefully analysing the nature of restrictions imposed by the law from all possible aspects—both from the substantive provisions of the legislation itself in respect of the extent, nature, duration, rigour, etc.; of the restrictions themselves and from the procedural part of the imposition of those restrictions, whether these restrictions are greater than those permitted by clause (5) or fall within the permissible limits imposed by the said clause. In case they are greater than the legislation imposing them, they shall have to be declared unconstitutional and, therefore, void under Article 13 and to this task I shall address myself in the ensuing paragraphs.

4. Happily section 238 of the Cantonments Act satisfies all the requirements of reasonableness as far as its procedural portion is concerned. The manner in which the restrictions are sought to be imposed gives an adequate opportunity to the accused person to cross-examine the witnesses and even provides for evidence being adduced on his

behalf and, therefore, the imposition of the restrictions from the point of view of the reasonableness of the procedure must be deemed to have provided adequate safeguards by laying down that a judicial inquiry by a judicial officer, i.e., Cantonment Magistrate, shall precede the passing of an order of externment. This would leave me to examine in detail the question of reasonableness of the restrictions imposed by the impugned law from the point of view of the substantive part of the law (section 238) only.

5. The earliest authority giving the interpretation on the reasonableness of restrictions is Bombay's Full Bench ruling—*Jeshinghbhai Ishwarlal* v. *Emperor* (1), Chagla, C.J., observed in that case that in order to decide whether a restriction is reasonable or not a court must look at the nature of the restriction, the manner in which it is imposed, its extent both territorial and temporal. It was held that reasonable is an objective expression and its objectivity is to be determined judicially by the court of law. The Court must look upon the restrictions from every point of view as a duty cast upon the court is all the greater because of the obligation resting on it for safeguarding the fundamental rights. The Madras High Court in their Full Bench decision, *V. G. Row* v. *The State of Madras* (2), also opined to the same effect and held that in assessing the reasonablesness of the restrictions several circumstances must be taken into consideration, in particular the purpose of the impugned legislation, the conditions prevailing in the country at the time, the duration of the restriction, its extent and nature. When this case of the Madras High Court went up to the Supreme Court, their Lordships made it rest on a broader and a more fundamental ground whilst agreeing with the learned

(1) A.I.R. (37) 1950 Bomb. 363 : 52 Cr. L.J. 120.
(2) A.I.R. (38) 1951 Madras 147: 52 Cr. L.J. 515.

judges of the High Court. The Hon'ble Chief Justice, Patanjli Sastri, who delivered the judgment of the court observed that "both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the court should consider not only factors such as the duration and the extent of the restriction but also the circumstances under which and the manner in which their imposition is being authorized. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable, that the social philosophy and the scale of the value of the judges should play an important part." Thus the courts are required to give due weight to all the considerations indicated above by applying a highly composite 'intellectual yardstick'—to borrow a felicitous expression from Chief Justice Kania—to the restrictions sought to be imposed by law.

6. And having given my very careful consideration to the present facts of the case and the nature of the restrictions sought to be imposed by section 238 of the Cantonments Act, I am of the firm view that section 238 is void to the extent to which it permits the passing of an externment order on the category of persons in which the pre-

sent respondent falls; and is, therefore, void under Article 13(1) of the Constitution. The severity of the order of externment, which is provided is to be for an indefinite period and then the ban on the subsequent re-entry are excessively harsh and they certainly transgress the limits of the reasonable restrictions. If such restrictions are judged from the point of view of their effect on the affected individual, one is irresistibly driven to the conclusion that they are unjustifiably harsh and rigorous. Nor can there be adduced any plea of urgency or public security demanding the externment of a person who has been convicted on a few previous occasions under the Gambling Act. The fact that the order of externment-cum-prohibition of re-entry would tend to deprive the individual of all benefits of his landed and other immovable property in the Cantonment and would, thereby, deny to him the legitimate fruits of what is rightly his, has also to be properly evaluated in forming this opinion. In *Dr. Khare's case* the majority of judges did hold externment for three months to be reasonable but Kania, Chief Justice, who delivered this judgment of the majority judges also observed, though in an implied manner, while justifying the order of externment on Dr. Khare for a period of three months and holding that the Punjab Public Safety Act was valid, that great safeguard was provided under the East Punjab Public Safety Act inasmuch as it did not empower either the State Government or any of its District Magistrates to extern any person ordinarily residing within their respective territorial limits—i.e., that the State in respect of State Government and the district in respect of the District Magistrate. In the present case, a native of the Ferozepore Cantonment, who has been brought and bred up here with his family and ancestral moorings, is being pushed out for an indefinite period and for the simple reason that he had, in the past on a few occasions, indulged in a

vice like public gambling. This case, therefore, in my opinion is distinguishable in several important points from *Dr. Khare's case* as well as from *Gurbachan Singh's case* (1). In the latter case the order of externment was passed for a specific period of two years with a provision that the externee could enter the prohibited area even before the expiration of the full period. Further, the externee in that case was a native of Amritsar whereas the authority externing him was the Government of Bombay State. I purposely refrain from dilating any longer on this theme though it is capable of being analysed to any extent.

7. Nor is in my opinion the impugned legislation sustainable on the ground of being in general public interest. It would not be improper in this connection to mention that the Cantonments Act (1924), was passed at a time when Cantonments were primarily intended to be safe citadels for the troops of an alien Government. If this were borne in mind one could view properly the real motif behind the making of such an exceptionally rigorous and arbitrary provision in the Cantonments Act—the like of which is not to be had in the Municipal Act or any other Corporation Act though they embraced larger areas and more populous towns. Therefore, the particular limitations and restrictions on this right of freedom of movement imposed by the impugned Act in my opinion do not have a reasonable relation to the interests of general public. Nor is it specifically stated in the body of the section itself. The section provides the imposition of this restriction 'for the maintenance of good order in the Cantonment'—something hardly synonymous with general public interest. General public interest is an expression of a comprehensive connotation embracing

(1) 52 Cr. L.J. 1147.

very many things but can in no wise be interpreted as connoting maintenance of public order in Cantonments. The true character, object and effect of the impugned legislation, therefore, as has been said and as inferred from the Act as a whole and section 238 in particular is entirely different from that of safeguarding the public interest. If, for instance, the present accused were externed from the Cantonment, he would be at liberty to live across the road in the City of Ferozepore; and this would be a highly anomalous position that a person adjudged undesirable for the Cantonment and externed therefrom for that should continue to live just at a few yards' distance but be immune from the restriction only because of an arbitrary and invidious distinction existing between the Cantonments Act and the rest of the municipal legislation.

8. My opinion is that section 238 of the Cantonments Act is void under Article 13(1) of the Constitution inasmuch as it seeks to impose restrictions on the fundamental rights of the citizen guaranteed to him under Article 19(1)(d) and (e) when such restrictions are manifestly unreasonable restrictions and are not in general public interest. But since the issue involved calls in the validity of a provision in a statute, I refer it to the High Court of Judicature for the State of Punjab at Simla, as required by section 432(1) of the Criminal Procedure Code, as recently amended by the Codes of Civil and Criminal Procedure (Amendment) Act, 1951. The parties have been informed that they would be summoned by this Court as and when the records of the case are received back from the High Court.

Mr. C. L. AGGARWAL,—Advocate, for the Petitioner.

Shri S. M. Sikri, Advocate-General, for the Respondent.

Dulat, J.

DULAT, J.—The question in this case is whether section 238 of the Cantonments Act is unconstitutional, and it is largely agreed before me that in view of the importance of the question involved this case should be heard by a Division Bench. It also seems proper that notice should go to the Attorney-General as the impugned Act is a Central Act. Let this case be laid before my Lord the Chief Justice for sending it to a Division Bench.

ORDER OF THE DIVISION BENCH.

Tek Chand, J.

TEK CHAND, J.—These are two connected references made to the High Court by a Magistrate, 1st Class, Ferozepore, under section 432(1) of the Code of Criminal Procedure. In Criminal Revision No. 103 of 1954, Kishori Lal, petitioner is a resident of Ferozepore Cantonment where he possesses ancestral property. It is admitted that between the 25th of April, 1951, and the 3rd of March, 1952, Kishori Lal, petitioner was convicted under the Gambling Act on five occasions, and these five convictions resulted in imposition of fines varying from Rs 10 to Rs 50. Section 238 of the Cantonments Act (Act II of 1924) contemplates removal and exclusion from the cantonments of disorderly persons. For facility of reference section 238 of Act II of 1924 is reproduced below:—

"238(1) A Magistrate of the first class, having jurisdiction in a cantonment, on receiving information that any person residing in or frequenting the cantonment—

(a) is a disorderly person who has been convicted more than once of gaming

or who keeps or frequents a common gaming house, a disorderly drinking shop or a disorderly house of any other description, or

(b) has been convicted more than once, either within the cantonment or elsewhere, of an offence punishable under Chapter XVII of the Indian Penal Code, or

(c) has been convicted, either within the cantonment or elsewhere, of any offence punishable under section 156 of the Army Act, or

(d) has been ordered under Chapter VIII of the Code of Criminal Procedure, 1898, either within the cantonment or elsewhere, to execute a bond for his good behaviour,

may record in writing the substance of the information received, and may issue a summons to such person requiring such person to appear and show cause why he should not be required to remove from the cantonment and be prohibited from re-entering it.

(2) Every summons issued under subsection (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the summons on the person against whom the summons is issued.

(3) The Magistrate shall, when the person so summoned appears before him, proceed to inquire into the truth of the information received and take such further evidence as he thinks fit, and if,

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upon such inquiry, it appears to him that such person is a person of any kind described in subsection (1) and that it is necessary for the maintenance of good order in the cantonment that such person should be required to remove therefrom and be prohibited from re-entering the cantonment, the Magistrate shall report the matter to the Officer Commanding the station, and, if the Officer Commanding the station so directs, shall cause to be served on such person an order in writing requiring him to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the Officer Commanding the station."

On receipt of information, that the petitioner Kishori Lal was a disorderly person, having been convicted more than once of gaming, the Magistrate at Ferozepore, instituted an inquiry and summoned Kishori Lal, to appear and show cause why he should not be removed from the cantonment and be prohibited from re-entering it. The inquiry did not proceed to its termination, as the petitioner raised an objection that the provisions of section 238 of Act II of 1924 were in derogation of the fundamental rights as bestowed upon the petitioner as a citizen of India by Article 19(1)(d) and (e) of the Constitution of India. The petitioner maintains that under Article 19(5), what is saved is the operation of any existing law, in so far as it imposes a reasonable restriction on the exercise of any of the fundamental rights conferred by Article 19(1), either in the interests of the general public, or, for the protection of the interests of any Scheduled Tribe. He maintains that section 238 of

the Cantonments Act transgresses the limits imposed by Article 19(5) of the Constitution. The Magistrate in his order of reference has expressed the view that section 238 of the Cantonments Act is void to the extent to which it permits the passing of an externment order on the category of persons in which the petitioner falls, and it is in contravention of Article 13(1) of the Constitution.

The question which we are called upon to decide is, whether section 238 of the Cantonments Act of 1924 is violative of the constitutional guarantee contained in Article 19(1)(d) and (e) and, therefore, deserves to be struck down.

Before analysing the arguments, and examining the authorities, cited by the learned counsel in this case, in support of their respective contentions, it is proper first to scrutinise the provisions of section 238 of the impugned Act. Before a citizen residing in any cantonment area can be removed or excluded, the following procedure has to be adopted:—

Firstly, it is necessary that an information is received by a Magistrate of the first class, to the effect, that any person residing in, or frequenting the cantonment, is a disorderly person, who has been convicted more than once of gaming or who keeps or frequents a common gaming house, etc., etc.,

secondly, the Magistrate, then, proceeds to record in writing the substance of the information he has received to the above effect;

thirdly, it is then for the Magistrate to decide to issue a summons to such a person,

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with respect to whom the information has been received, requiring him to appear and show cause why he should not be removed from the cantonment and be prohibited from re-entering it;

fourthly, along with the summons issued to such a person a copy of the record of the information received has also to be served on him;

fifthly, when such a person so summoned appears before the Magistrate, he proceeds to inquire into the truth of the information, and he takes such evidence, as he may think fit;

sixthly, the Magistrate has then to decide if such person falls within the definition of a disorderly person mentioned in subsection (1) of section 238;

seventhly, and if so, he has further to determine, whether it is necessary for the maintenance of good order in the cantonment, that such a person should be required to remove therefrom and be prohibited from re-entering the cantonment;

eighthly, if on both questions he is of the view that such a person deserves to be removed or excluded from cantonment area, he then submits a report to the Officer Commanding the station making his recommendation;

ninthly, it is then for the Officer Commanding the station to give directions on the report and if he so directs, then

tenthly, the Magistrate shall cause to be served on such person an order in writing requiring him to remove from the cantonment within such time as may be specified in the order, and further prohibiting him from re-entering the cantonment without the permission in writing of the Officer Commanding the station.

It is the last-mentioned provision to which Mr. Chiranjiva Lal Aggarwal, learned counsel for the petitioner has a serious objection, and it is really on account of this clause that he wants us to find that the provisions of section 238 are vitiated on the ground, that they transgress the fundamental right of locomotion and residence guaranteed by Article 19(1)(d) and (e) of the Constitution. He contends that the powers conferred upon the Officer Commanding the station travel far beyond the scope of clause (5) of Article 19. He argues that section 238 is violative of the constitutional guarantee for the following reasons:—

(a) Section 238 does not provide for a hearing before the Officer Commanding the station, when he decides to give directions as to externment after the perusal of the report of the Magistrate.

(b) There is no provision making the report of the Magistrate available to the person, proceeded against, and further, this section does not provide any machinery enabling such a person to make his submissions before the Officer Comanding the station.

(c) The section does not impose any limitation on the powers of the officer regarding the period during which such a

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person is to remain externed; in the abstract, it is conceivable, that he may not be permitted to return to his home for ever.

(d) It is true that it is open to such a person to seek permission in writing of the Commanding Officer, but this right confines itself to making an application, without an opportunity to be heard, with a view to convince him, either as to the invalidity of the order, or as to its severity in the matter of length of period of externment.

(e) The remedy by way of an appeal to the District Magistrate, provided by section 274 of the Act read with Schedule V, from Magistrate's notice directing disorderly person's removal is inadequate.

(f) It is lastly argued that the reasonableness is to be judged from the point of view of what is in the interests of the general public and not of any smaller group such as the armed forces or any other class of public living in a cantonment.

The last argument is obviously without merit. The expression "general public" is wide enough to include a section of the public. It is in the interests of the general public that the armed forces and those connected with them should be protected from the evil influences of disorderly, and other persons, who are liable to be externed under the provisions of section 238 of the Act. Interests of the general public cannot be deemed to be synonymous with interests of the public of the whole of the country. All that this phrase means is, that a

legislation passed in the interests of a limited class of persons, or for a territorially limited area, might well be a legislation in the public interests, despite the fact, that the public in other parts of the country might not be affected by such a legislation. There is no gainsaying the fact, that it is in the interests of the general public, that the armed forces of this country, which are a distinct class, or as a matter of that any other distinct class, should receive special protection against certain unsocial or undesirable impacts and influences. It is too late in the day to contend, that the expression "general public" means the entire public and not a section of it. There is a catena of authority to the effect that a legislation meant for the benefit of a well-defined class will be deemed to be in the interests of general public regardless of the smallness of the number of persons primarily benefited by the legislation [*vide Ishwari Prosad* v.*N. R. Sen* (1), *Bhaskar* v. *Mohammad Alimullakhan* (2), *Sashibhusan* v. *Mangala* (3), and *Ramhari* v. *Nilomoni Das* (4)].

At this stage I may also examine the argument of Mr. Jagan Nath Seth, who appeared for the petitioner Kanhiya Lal in the connected case. Mr. Seth argued, that the test of reasonableness of a legislation is furnished by the purpose of the Act, and by the conditions prevailing in the country at the time of its passing. On this premise Mr. Seth contended that in the earlier Cantonments Act, No. 13 of 1889, there was no provision similar to section 238 of the Cantonments Act of 1924. He wants us to presume that this provision was really intended for the British forces and not for the Indian personnel. There is no justification whatever for such a presumption. If one were inclined to lend

(1) A.I.R. 1953 Cal. 273. (F.B.).
(2) A.I.R. 1953 Nag. 40.
(3) A.I.R. 1953 Orissa 171.
(4) A.I.R. 1952 Cal. 184.

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countenance to this contention, it would lead to absurd and iniquitous results. At the time when this Act was passed, members of the armed forces in India, whether Indians or British, used to live in cantonments without discrimination as to their nationality. The provisions of section 238 relating to externment of disorderly and other persons did not make any distinction between Indian or British soldiers. If it was desirable in 1924, when the Act was passed, to protect British and Indian soldiers against bad influences, it is equally desirable that Indian soldiers now should also receive the benefit of the legislation. The argument of Mr. Seth borders on the fanciful and does not require further scrutiny to repel it.

Mr. S. M. Sikri, the learned Advocate-General, has drawn our attention to the procedural and substantive safeguards provided by section 238 and section 274, read with Schedule V of the Act. He contends that the person to be externed is given an ample opportunity, under the Act to make his submissions before a Magistrate, in order to convince him that he is not a "disorderly person" or, that he is not guilty of offences mentioned in the section, or, that though guilty, his act is not of such gravity that he should be externed. Even if such a person be of a kind described in subsection (1), the Magistrate may still be pursuaded to believe that it is not really necessary for the maintenance of good order in the Cantonment, to direct his removal from the Cantonment. If, after having availed himself of the opportunity of putting his case before the Magistrate, the latter still orders removal and prohibits his re-entry without obtaining the permission of the Officer Commanding the station, such a person has a right to present an appeal to the District Magistrate under section 274 read with Schedule V. The order of removal from a Cantonment, and of prohibition from re-entry

without permission, can be questioned in appeal to the District Magistrate.

The Advocate-General, then, argues that the order of removal is made conditionally and such a person can always re-enter the Cantonment on obtaining the permission of the Officer Commanding the station. Assuming that the permission to re-enter has been unreasonably withheld, it is open to such a person to invoke the jurisdiction of this Court under Article 226 of the Constitution, but this argument of the learned Advocate-General does not appear to be sound. According to this argument, no Act of the Union or of State Legislature can be impugned on the ground of its being violative of the Constitution, simply because a remedy is provided by Article 226, whereby the High Court can afford relief in the exercise of its powers under Article 226 to persons whose fundamental rights have been wrongly interfered with. In advancing his earlier arguments, however, Mr. Sikri is on a firm ground.

The real controversy centres round the question whether the power relating to the imposition of an indefinite period of externment under the provisions of this Act falls within the ambit of "reasonable restrictions" as contemplated in Article 19(5) of the Constitution.

Mr. Charanjiva Lal Aggarwal has drawn our attention to a number of decided cases, some of which hardly apply to the facts and circumstances of this case. He has first cited decision of the Supreme Court in *Dr. N. B. Khare* v. *The State of Delhi* (1). The contention in that case was, whether section 4 of the East Punjab Public Safety Act, 1949, which gave the power to make an

(1) A.I.R. 1950 S.C. 211.

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order of externment to the District Magistrate, whose satisfaction was final, and not open to review by the Court, contained an unreasonable restriction on the exercise of the citizens' right within the meaning of Article 19(5) of the Constitution, and was, therefore invalid. It was held there, that the desirability of passing an individual order of externment against a citizen was to be left to an officer as no such provision could be made in the Act itself. The subjective satisfaction of the officer did not impose an unreasonable restriction on the exercise of the citizens' right. The majority view, in that case, was that the period of three months for which an order of externment might be passed by a District Magistrate was not *prima facie* unreasonable even though the externee had no remedy during that time. It was also held in that case, that the legality of an Act cannot be decided on the basis of the possibility of the abuse of its provisions. It was observed that the reasonableness of the restrictions had to be considered both from the point of view of the procedural part as well as of the substantive part of the law. Neither the facts nor the provisions of the impugned Act in that case offer any reliable guidance. The provisions are not in *pari materia*. The facts of that case do not admit of any comparison. No order fixing any period of externment has been fixed in this case, and, therefore, section 238 of the Cantonments Act cannot be held void on the ground of there being a possibility on the part of a particular officer abusing the provision in the matter of imposing an indefinite or an unduly long period of externment. As has already been noticed, section 238 and section 274 afford reasonable opportunity to a person accused of being a disorderly person, to show cause against his removal. There are sufficient safeguards provided in the sections and he can persuade the Magistrate, and failing him, the District Magistrate in appeal,

against his removal, and also as to length of time, during which he is forbidden to re-enter a Cantonment.

The next authority quoted by the learned counsel for the petitioner is a Full Bench decision of the Bombay High Court in *Jeshingbhai Ishwarilal* v. *Emperor* (1), in which it was held per Chagla, C.J., and Bavdekar, J. (Shah, J., contra), that section 2(1)(b) of the Bombay Public Security Measures Act (VI of 1947) was void under Article 13(1) of the Constitution, to the extent that it empowered the Government to issue an externment order under section 2(1)(b) of that Act and it imposed unreasonable restrictions on the fundamental rights of the citizens under Article 19(1)(d) and (e) of the Constitution. Shah, J., however, was of the view that the provisions were not inconsistent with the provisions of Part III of the Constitution of India. The chief feature of the Bombay Act, which was fatal, to the validity of the restrictions placed by the legislature, according to the majority view, was the fact that the person, against whom an order of externment was to be made, had no right whatever to be heard in his defence, before he was asked to leave his home and hearth and to go and reside in some other place. Under that Act, there was no obligation upon the authority to tell him what he was charged with or what were the grounds against him, which had made it incumbent upon the Government to ask him to leave his home town. Moreover, there was no obligation upon the authority to hear the person against whom the order was intended to be made in his defence before the order was made. The reasons which weighed with the Hon'ble Judges expressing the majority view in the Bombay High Court, are absent in this case. Section 238 does not

(1) A.I.R. 1950 Bom. 363.

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suffer from the defects and lacunae, which were noticed in the Bombay Public Security Measures Act. This authority is distinguishable and, therefore, does not help the point of view, which is being canvassed by Shri Chiranjiva Lal Aggarwal.

In *Abdul Rahiman Shamsooddin* v. *Emperor* (1), the same Bench which decided *Jeshingbhai's case* (2), considered the validity of section 46(3) of the Bombay District Police Act, 1890, and gave unanimous decision that that provision did not contravene any fundamental right of the subject under Article 19 to move freely throughout the territory of India and to reside and settle in any part of the territory of India. The undernoted observations in the judgment of Chagla, C. J., not only bring out the distinction between *Jeshinghbhai's case* (2), but also support the view, by analogy, which I am taking as to the validity of the Cantonments Act. Chagla, C. J., said:—

> "We have had to consider a similar question in *Emperor* v. *Jeshinghbhai Ishwar Lal* (2), and we held that the provision of law under the Bombay Public Security Measures Act for externment was void, inasmuch as there was no provision made for the externee being heard by the authority externing him. Now when we consider the provisions of the Bombay District Police Act, we find that under section 46A, a person against whom an order is intended to be made has a right to be heard, and what is more, he has also been given a right of appeal to the Provincial Government under section 46A, sub-clause (3). Therefore, the reasons which led me

(1) A.I.R. 1950 Bom. 374.
(2) A.I.R. 1950 Bom. 363.

and my learned brother Bavdekar to come to that conclusion in the other case, do not apply to the facts of this case."

In *Brajnandan Sharma* v.*The State of Bihar* (1), in which section 2(1)(b) of the Bihar Maintenance of Public Order Act, 1949 (Bihar Act III of 1950), was impugned, an order was passed by the Government of Bihar restricting the petitioner's movements by forbidding him from going to any place in the districts of Singhbhum and Manbhum. The validity of this order was challenged under Article 13(1) of the Constitution, read with Article 19(1)(d) and 19(5). This Act involved the satisfaction of some unknown individual officials purporting to represent the Government. Moreover, the Act did not provide any opportunity to the petitioner to vindicate himself or challenge the order or even to learn the reasons for the order. It provided no remedy for an unreasonable order, and did not even provide for the service upon him of the grounds for the order, as is usually done in the case of detenus. It was held that the impugned provision did not impose reasonable restrictions. The power restricting the liberty of the subject rested not on any reasonable ground but upon the satisfaction of some individual who, in the words of Meredith, C.J., "was completely amorphous." It was also observed that—

"the provision is in such terms that it is not open to the Court to examine the reasonableness or otherwise of orders passed. Upon the terms of the Act, all that the Courts can inquire into is the existence of the satisfaction * * * * a law which enables such things to be

(1) A.I.R. 1950 Pat. 322.

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done is not, in my judgment, a reasonable law. There can be no presumption that an executive official will always act reasonably. There may be presumption that he will act *bona fide*, but that is a different thing. The test is, in my opinion, not what is actually done under the law, but what the law enables to be done. If the law enables orders to be passed which are unreasonable, and yet are consistent with its terms, then that cannot be called a law operating to impose only reasonable restrictions. I use the word 'only' advisedly because it appears to me that if the law enables unreasonable action in any case, then it cannot be saved by Article 19(5). In my opinion, a law to satisfy the criterion imposed by Article 19(5) must be so framed as to leave it open to the Courts to apply the objective test of reasonableness to its operation. This law is not so framed."

The above observations may very well be applicable to the facts of that case, in view of the provisions of the Bihar Maintenance of Public Order Act III of 1950, but the lacunae that the learned Judges of the Patna High Court noticed in the Bihar Act are not to be found in section 238 of the Cantonments Act.

The next authority cited by Mr. Charanjiva Lal Aggarwal is the case of *Gurbachan Singh* v. *State of Bombay* (1). From the judgment of that case, it is not possible for Mr. Charanjiva Lal Aggarwal to borrow any observation or argument which he can use in this case. In that case an externment order directed the petitioner Gurbachan Singh to remove himself out of Greater Bombay and

(1) A.I.R. 1952 S.C. 221.

to go to his native place at Amritsar. Under section 27(1) of the City of Bombay Police Act, two kinds of externment orders were contemplated. A person could be externed from Greater Bombay to a specified place where the externee is to remove himself and it also must indicate the route by which he is to reach the place of externment. The second kind of externment provided in that section is, when a person is to be externed from the State of Bombay, and in the latter case no place of residence can or need be mentioned. The error no doubt was in directing the petitioner to go to his native place at Amritsar, but it was detected and rectified. The petitioner himself sought permission, which was granted by the Commissioner of Police, to stay at Kalyan within the State of Bombay. It was held that the order in mentioning the place of residence to be Amritsar was not regular, but the irregularity was removed subsequently, and the externment order was construed to be an order of externment from Greater Bombay to Kalyan which was the place of residence chosen by the petitioner himself. On examination of section 27 of the Bombay Act, it was found to have been made in the interest of the general public, and to protect them against dangerous and bad characters, whose presence in a particular locality might jeopardize the peace and safety of the citizens. Such restrictions as the law imposed on the rights of free movement of citizens were held to be reasonable coming within the purview of clause (5) of Article 19 of the Constitution. It is true that the maximum duration of the externment, which can be ordered under section 27(1) of the Bombay Act, is a period of two years, whereas there is no maximum period at all so far as externment from the Cantonment precincts under section 238 of the Cantonments Act is concerned. But *Gurbachan Singh's case* (1) is no authority for

(1) A.I.R. 1952 S.C. 221.

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holding that a provision of law becomes void under Article 13 of the Constitution, if such a period remains unspecified.

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The next authority to which our attention was drawn, was the case of *Bakhshi Inderjit Singh* v. *The State of Delhi and others* (1). In that case a Division Bench of this Court held, that the United Provinces Goondas Act (I of 1932), as modified and extended to the State of Delhi, was *ultra vires* of the Constitution, in so far as it provided for an exceptional procedure, whereby a person, who was proceeded with under the Act, could be deprived of being defended by a Pleader. The Division Bench held that such a procedure could not be justified on grounds of reasonableness. The matters arising in that ruling cannot be deemed to throw any light on the matter in dispute before us. Section 238 of the Cantonments Act imposed no such disability upon the person against whom proceedings as to removal or exclusion were being taken.

Our attention has next been drawn to a decision of the Calcutta High Court in *Janab Tazammal Khundel Sahaji* v. *Joint Secretary to the Government of West Bengal* (2). A perusal of this authority, in the light of its facts, makes it inapplicable to the subject-matter of enquiry in this case. It was held in that case that sections 21 and 22 of the West Bengal Security Act, 1950, impose unreasonable restrictions on the exercise of fundamental rights of a citizen of India as mentioned in Article 19(1)(d) and (e) of the Constitution of India. These two sections were held to be *ultra vires* the Constitution of India. The basis for the above conclusion was, that these sections made provision for an extension of the period of externment without any provision for (1) intimation to

(1) 1952 P.L.R. 312.
(2) A.I.R. 1951 Cal. 322.

the externee of the grounds of such detention, (2) an opportunity to the externee to make a representation against the order of externment, or (3) laying down any procedure, or (4) appointing any tribunal for considering the representation, if any, that may be made for the review of the order of externment so passed. So far as the facts of this case are concerned the right of hearing before condemnation has not been taken away and no rule of natural justice has been violated.

In *Kaka Ramji Laxman* v. *The State of Kutch and another* (1), section 46 of Bombay District Police Act was held to be unconstitutional as there was no provision in it for giving the applicant a list of grounds on which action was proposed to be taken against him, and of hearing him before a decision to issue order for his removal out of the limits of the State of Kutch was made. Under the impugned section of the Cantonments Act in this case the person who is proposed to be removed has an ample opportunity to show cause against his expulsion.

In re Shantabai Rani Benoor (2) a Division Bench of Bombay High Court held that section 9(1) of Bombay Prevention of Prostitution Act, in so far as it imposed unreasonable restrictions upon the fundamental right of the petitioner under Article 19(1)(d) and (e) was void, because it failed to provide for a reasonable opportunity being given to the person affected to be heard in her defence. In this case the petitioner was directed to remove herself from Poona City to a place beyond the radius of five miles from Poona City, without giving her any opportunity of being heard in her defence.

It will be proper, after having examined the authorities cited at the Bar, to turn to the basic

(1) A.I.R. 1954 Kutch 15.
(2) A.I.R. 1951 Bom. 337.

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principles that should be borne in mind, when examining the conflicting claims of fundamental rights of locomotion on one side, and the State's regulatory powers in imposing reasonable restrictions, on the other. Before condemning the provisions of a statute as violative of the constitutional liberties granted under Part III of the Constitution, the Courts always start with an assumption in favour of the constitutionality of an enactment.

The invalidity or unconstitutionality of an Act cannot be assumed, because of the likelihood of a possible abuse of the provisions on the part of those, who may be called upon to give effect to its provisions. It is no argument that because there is a possibility of some officials acting in an arbitrary, capricious or high-handed manner, therefore, the provision of law should be struck down. The vulnerability of a statute cannot depend upon likelihood of its abuse if the *verba legis* are otherwise unexceptionable. The fear that such reasonable safeguards, as have been provided, may be disregarded, or the power, conferred upon the executive authority to administer the law, may be exceeded, is not a relevant consideration in determining the *ultra vires* or *intra vires* character of the statutory provisions. A law, otherwise wise and good, cannot be thrown out as unconstitutional, because of its harsh and reckless enforcement in a particular case. It is true that the officers who are called upon to act under the law, should not, as a result of any undue or harsh enforcement or because of narrow vision, wrongly trespass upon the fundamental rights of the citizens; but even if they do, and even if it may be, that the officers have lost proper sense of relative value of rights and duties, the *vires* of the Act is not, thereby, jeopardised. Such a lapse on the part of the executive officers is not indicative of the infirmity of the law.

It is also appropriate to consider the general principles which have been formulated, as to where the line of demarcation, between the functions of legislature and judiciary, should be drawn, especially in matters pertaining to the preservation of fundamental rights under the Constitution.

The American jurists have given a compendious name of Police Powers to the exercise of the sovereign rights of Governments to promote order, security, health, morals and general welfare of society within the constitutional limits. This police power which is of an inherent and imperative nature, at one time, used to be construed narrowly in America. Later on, with the general expansion of governmental activities and control in the field of public welfare, the term Police Power acquired an extended meaning. In the words of Justice Wanamaker:—

> "The dimensions of the Government's police powers are identical with the dimensions of the Government's duty to promote and protect public welfare. The measure of police powers must square with the measure of public necessity. The public need is the pole star of the enactment, interpretation and application of the law. If there appears, in the phrasing of the law and the practical operation of the law a reasonable relation to the public need, its comfort, health, safety and protection, then such act is constitutional. * * * * *."
> (See Cooley's Constitutional Limitation, 8th Edition, page 1226).

The powers conferred by Article 19, clauses (2) to (6) of our Constitution correspond to American concept of police powers. It is the fundamental

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duty which the State owes to its citizens to provide for their security and welfare. The retention of the police powers, or the reserve of such powers, is an essential safeguard for all orderly Governments and its position and exercise is founded on the duty of the State to protect its citizens. That being so, it becomes incumbent upon the Courts to enforce and give effect to the legislative enactments without questioning the policy, wisdom or expediency of such legislative measures, as that matter is within the legislative, and not judicial determination.

The fundamental rights enumerated in Article 19(1) of the Constitution, though inalienable, are not absolute, and yield to the regulatory powers of the Government. These individual rights of a citizen, howsoever sacred and valuable, may become subject to invasion and encroachment on the part of the State, in the legitimate exercise of its police powers. The intention of our constitution makers was to preserve fundamental rights of the citizens, but while doing so, the paramount interests of society have been permitted to impinge upon the personal rights of the individuals, in those cases, where general interests of the community came into conflict with the personal interest of the few.

The acts of the sovereign legislature, even if they appear to be impolitic, harsh or oppressive, cannot be annulled by judicial decrees, so long as the constitutional guarantees are not contravened by them. Such legislative inhibitions may be either in the nature of anticipatory preventive steps, or, they may be punitive provisions for punishing perpetrated offences. It, therefore, follows that a statute though violative of private rights of person or property, is itself inviolate, if it is passed in consonance with the regulatory powers of the Government. Merely because the

State has enacted a law which restrains, curtails or even prohibits the enjoyment of rights of some individuals, it does not thereby become unconstitutional, so long as the impingement is in the interest of public welfare. Any loss which may result to the individuals, in consequence of an Act of the State, in legitimate exercise of its police power, is in the nature of *damnum absque injuria,* for which there is no remedy. All orderly governments, very often, have to restrict individuals' rights with a view to promote the general welfare, public order, public safety, public morals or public health. During national emergency, individual rights may even be suspended altogether; and so long as conditions justifying the enactment last, the statute will not be invalidated.

Whatever the nature of restrictions imposed by the statute, it is not within the province of the Courts of law to question the propriety of the measures, or the wisdom of those who made the law. *Jus dare* is not the function of the Courts, they must confine themselves to *jus dicere.* In *Chicago, Burlington and Quincy Railroad Company* v. *Charles L. McGuire* (1), the Supreme Court of America cited with approval a passage from *McLean* v. *Arkansas* (2), which ran as follows:—

> "The legislature being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or, that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act

(1) 55 Law. Ed. 328 (339).
(2) 53 Law Ed. 315 (319/320).

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in question is unmistakably and palpably in excess of legislative power * * * *. If there existed a condition of affairs concerning which the legislature of the state, exercising its conceded right to enact laws for the protection of the health, safety, or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference * * * * and having no just relation to the protection of the public within the scope of legislative power, the act must fail."

There are a large number of decisions supporting the principle, that where the legislative action is arbitrary, and has no reasonable relation to the purpose, which it is competent for Government to effect, the legislature transgresses the limits of its power in interfering with the liberty of citizen; but if there is a reasonable relation to an object within the ambit of governmental authority, the exercise of the legislative discretion is not subject to judicial review. *Vide Chicago, Burlington and Quincy Railroad Company* v. *Charles L. McGuire* (1). A Court, making a judicial enquiry, may legitimately decide the question of power of the legislature, but the question of policy underlying the law is a matter exclusively within legislative consideration. "Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion, within its prescribed limits, should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." (*ibid*).

(1) 55 Law Ed. 328 at p. 339.

In *Parkes* v. *Bartlett* (1), MacDonald, J., of the Supreme Court of Michigan at page 495 stated the American Law, which in this respect is not dissimilar from ours, in the following words:—

> "The arguments go to the wisdom and expediency of the legislature. With that we are not concerned. In respect to that matter the legislature is constitutionally supreme. It is true that the legislature is not exclusively the judge of what is necessary to protect the health, morals, and welfare of the citizens. But concerning those matters, it inherently must have a very large discretion. If the matter is a proper subject of legislation and the measures adopted are appropriately related to the object and have some obvious tendency to accomplish it, the courts will not interfere. Its wisdom may be open to question, but its enactment cannot be said to be beyond the constitutional authority of the Legislature; and that is the only question which this Court may determine."

While it is an imperative duty, from which no Court will shrink, to declare void, any statute the unconstitutionality of which is made apparent, but due regard to the boundary line, between the legislatures and judicial functions, requires, that this prerogative of the Courts, is exercised with the greatest caution, and only after every reasonable presumption has been drawn in favour of the validity of the Act.

But when an act of the legislature impairs or destroys any rights secured by the Constitution,

(1) 210 N.W.R. p. 492.

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the duty rests upon this Court, when its jurisdiction is properly invoked, to declare unconstitutional and void any such enactment. Except where Constitution so comtemplates, it is not open to the Courts to determine the reasonableness of a legislative enactment even if it deals with fundamental rights. In the words of Kania, C. J., in *Gopalan* v. *State of Madras* (1), para 26,—

> "There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the constitution but not expressed in words. Where the fundamental law not limited, either in terms or by necessary implication, the general powers conferred upon the legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written constitution give that authority. It is also stated, if the words be positive and without ambiguity, there is no authority for a Court to vacate or repeal a statute on that ground alone. But it is only in express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can find a safe and solid ground for the authority of Courts of justice to

(1) A.I.R. 1950 S.C. 27.

declare void any legislative enactment. Any assumption of authority beyond this would be to place in the hands of the judiciary powers too great and too indefinite either for its own security or the protection of private rights."

It has to be borne in mind that by clauses (2) to (6) of Art. 19, the law, curtailing or impairing the fundamental rights, mentioned in clause (1) is required to be reasonable, and the reasonableness of the legislative provisions is a matter expressly placed within the ambit of judicial determination. On the courts is cast the sentinel duty of protecting the seven freedoms conferred upon the citizen. In the matter of the fundamental rights, the Supreme Court and the High Courts keep watch over and guard the rights guaranteed by the Constitution, and in the discharge of these duties, they have the power to strike down an Act of Legislature, which they consider to be violative of the freedoms guaranteed by the Constitution. In the words of Patanjali Shastri, C. J., in the *State of Madras* v. *V. G. Row* (1), *para* 13:—

"Our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted due process clause in the Fifth and Fourteenth Amendments. If, then, the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the

(1) A.I.R. 1952 S.C. 196 (199) para 13.

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Constitution. This is especially true as regards the "Fundamental Rights", as to which this Court has been assigned the role of a sentinel on the *qui vive*. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of any impugned statute."

In *Jeshingbhai* v. *Emperor* (1), Chagla, C. J., observes:—

> "It is not for the Legislature to determine whether the restrictions are reasonable or not. It is for the Court of law to consider the reasonableness of the restrictions imposed upon the rights. 'Reasonable' is an objective expression and its objectivity is to be determined judicially by the Court to consider the nature of the restrictions. The Court must look upon the restrictions from every point of view. It being the duty of the Court to safeguard Fundamental Rights, the greater is the obligation upon the Court to scrutinise the restrictions placed by the Legislature as carefully as possible."

The constitutional liberties which clause (1) of Art. 19 declares consist in the power of locomotion, or removing one's person to whatsoever place one's inclination may direct, and cover the right of a citizen to earn his livelihood in any lawful calling, trade or profession, and also include the freedom of speech, expression, and of association, and the right of security of property. But these liberties are susceptible of legislative infringement, but within the bounds of reasonableness.

(1) A.I.R. 1950 Bom. 363 (366) (F.B.).

In the language of Mahajan, J., in *Chintamani Rao* v. *State of Madhya Pradesh* (1):—

> "The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness..."

If a proper balance is struck between the freedom guaranteed and the social control imposed, legislative interference whether regulatory, restrictive or prohibitory will be deemed reasonable, and will not be considered to be within the constitutional inhibitions.

The next question that requires determination is, whether applying the generally accepted tests of reasonableness, the impugned legislation transgresses those bounds. In the first place in considering the reasonableness of a piece of legislation the Court should examine both the procedural as well as the substantive aspects of the law, the constitutionality of which is being challenged. As already noticed in the earlier part of this judgment, section 238 of the Cantonments Act provides elaborate procedural safeguards to enable the person whose liberty of locomotion is about to be curtailed, to examine, and then, meet and rebut, the allegations before the magistrate. If he is unsuccessful there, he can then get the validity of the order of externment passed, reviewed in appeal,

(1) A.I.R. 1951 S.C. 118 para 7.

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before the District Magistrate, under section 274 read with Schedule V. Even after this he can apply to the Officer Commanding the station to grant him permission to return to the Cantonment. Thus from the procedural point of view the law gives to such a person adequate opportunity, not only to present his case before the Magistrate but also to contest the validity of his order in appeal.

On the substantive side, it is true that the period of externment being unspecified, a person may conceivably remain externed for the remaining portion of his life, and this may impose a serious hardship. But, in so far as, the order of the externment is reviewable by the Officer Commanding the station, as often as the person externed may apply for permission to return to the Cantonment, it cannot be said that, on that score, the impugned section infringes the bounds of reasonableness.

The next test of reasonableness, in such cases, is whether the principles of natural justice in particular the principle of *Audi alteram partem* (hear the other side) has been violated. The bare reading of the impugned section negatives such a contention. Not only the person, who is proceeded against, is to be given notice of the inquiry, but he is also to be furnished with the information and the record. This section is obviously not violative of the principles of natural justice and it does not exclude judicial inquiry. As already mentioned, the mere possibility of an abuse of provision enacted in the interest of the security of the State, or, the interests of the general public, cannot be a ground for holding the provision void [*vide Jeshinghbhai* v. *Emperor* (1)].

In *Hari Khemu Gawali* v. *The Deputy Commissioner of Police, Bombay and another* (2), the

(1) A.I.R. 1950 Bom. 363 (paras 7 and 21.
(2) 1956 S.C.R. 506.

validity of section 57 of the Bombay Police Act, 1951, was unsuccessfully impugned on the ground that it contravened clauses (d) and (e) of Article 19(1) of the Constitution as the provisions of the said section imposed unreasonable restrictions on the petitioner's fundamental rights of free movement and residence. Section 57 of the Bombay Police Act reads:—

> "*Removal of persons convicted of certain offences.*—If a person has been convicted:—
>
> (a) of an offence under Chapter XII, XVI or XVII of the Indian Penal Code; or
>
> (b) twice of an offence under section 9 of the Bombay Beggars Act, 1945, or under the Bombay Prevention of Prostitution Act, 1923; or
>
> (c) thrice of an offence within a period of three years under section 4 or 12 A of the Bombay Prevention of Gambling Act, 1887, or under the Bombay Prohibition Act, 1949;
>
> the Commissioner, the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction, by such route and within such time as the said officer may prescribe and not to enter or return to the area from which he was directed to remove himself.

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"*Explanation*:—For the purpose of this section 'an offence similar to that for which a person was convicted' shall mean:—

(i) in the case of a person convicted of an offence mentioned in clause (a), an offence falling under any of the Chapters of the Indian Penal Code, mentioned in that clause; and

(ii) in the case of a person convicted of an offence mentioned in clauses (b) and (c), an offence falling under the provisions of the Acts mentioned, respectively, in the said clauses."

The general principles governing the considerations underlying the constitutional liberties under clause (1) of Article 19 and their limitations under clauses (2) to (6) were considered by the Supreme Court and Sinha, J., at P. 517, observed:—

"The section is plainly meant to prevent a person who has been proved to be a criminal from acting in a way which may be a repetition of his criminal propensities. In doing so the State may have to curb an individual's activities and put fetters on his complete freedom of movement and residence in order that the greatest good of the greatest number may be conserved. The law is based on the principle that it is desirable in the larger interests of society, that the freedom of movement and residence of a comparatively fewer number of people should be restrained so that the majority of the community may move and live in peace and harmony and carry on their peaceful avocations untrammelled by any fear or threat of violence to their

person or property. The individual's right to reside in and move freely in any part of the territory of India has to yield to the larger interest of the community. That the Act is based on sound principle cannot be gainsaid."

The argument that was advanced on behalf of the petitioner, and was repelled by the Supreme Court, was, that the person dealt with under section 57 could be directed to remove himself altogether outside the limits of the State of Bombay because the Act extended to whole of the State. It was contended, that a situation might be envisaged, where a person might be called upon to remove himself out of the limits of the entire State of Bombay. Apart from the remote likelihood of such an eventuality, it was considered, that a person who made himself so obnoxious as to render his presence in every part of the State a menace to public interest including peace and safety, such a person; had no reason to complain. An objection was raised, that the passing of the order of externment, upon the subjective satisfaction of a police officer, was unsatisfactory. This argument was repelled on the ground, that the intention of the framers of the Act was to provide a machinery, whereby commission of offences by persons with previous records of convictions or with criminal propensities might be prevented. As observed by Pantanjali Shastri, C. J., in the case of *State of Madras* v. *V. J. Row* (1)—

> "externment of individuals, like preventive detention, is largely precautionary and based on suspicion",

and, therefore, in the words of Lord Finlay in *Rex* v. *Halliday* (2)—

> "The Court was the least appropriate tribunal to investigate into circumstances

(1) 1952 S.C.R. 597 (609).
(2) 1917 A.C. 260 (269).

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of suspicion on which such anticipatory action must be largely based."

The next argument which was advanced on behalf of the petitioner in that case was, that the right of appeal granted under section 60 of that Act to the State Government was illusory. This contention also did not find favour with their Lordships of the Supreme Court, for the reason, that it was expected that the State Government, which has been charged with the duty of examining the material with a view to being satisfied that circumstances existed justifying a preventive order of that nature, would discharge its functions with due care and caution. (*Vide, ibid,* p. 523).

The provisions of section 238 of the Cantonments Act compare favourably with the provisions of section 57 of the Bombay Police Act. The terms of section 238, when examined from the point of view of standard of reasonableness, and in the background of the principles, which have been enunciated in the several decisions referred to above, fall within the permissible limits laid down by the Constitution in clause (5) of Article 19.

I am, therefore, of the view that the provisior of section 238 of the Cantonments Act are n violative of the constitutional liberties declare under Article 19(1), and the procedural and th substantive provisions of the Act do not overstep the limits of reasonableness. My view, on the point under reference, is that section 238 of the Cantonments Act is *intra vires* the Constitution, and that being so, the Magistrate I Class, Ferozepore, is directed to dispose of the case conformably to this order.

There will be no order as to the costs of thi reference.

Bhandari, C. J. BHANDARI, C. J.—I agree.

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