CHAPTER VII.
CONTROL OF ECONOMY REGULATION AND SUPREME COURT:

A. GENERAL:

The Universal recognition for the control of economy:

The philosophy of absolute liberty of the individual and laissez faire in the economic sphere coupled with perfect competition are only myths in human history ever since human beings began to live in the society. The laissez faire doctrine of non interference by the State in the economic activities of the society grew in importance with the rise and growth of merchantilism in the west. This philosophy of laissez faire which apparently postulates absence of State control and regulation of economy contributed to the promotion of capitalism. But, on a closer examination possession of vast wealth and acquisition of large properties cannot be done without the interference of the State in the form of protection to the property by the naked coercive machinery of the State. As has already been quoted in chapter 2, Rashdall says that an infant of two years becomes an heir to a landed estate running perhaps to half of the country by not non-interference of the State but by the excessive interference of the State by preventing the naturally strong man from grabbing it. This holds true even in the case of urban and industrial properties, where the few rich employers are protected by the gun of the State against the masses of workers. Further, the champions of laissez faire, in theory as well as in practice, like the industrialist, factory owner, mine owner, banker, the business-man and the landlord preferred inactivity on the part of the State so long as it suited them to exploit the workers and amass large fortunes. For facilities and for external protection against imports and for controlling the workers they never hesitated to procure State participation. Explaining
the necessity for State intervention Wesley Clair Mitchell says:

"The rediscovery of man's irrationality helps us to understand why Adam Smith's "obvious and simple system of natural liberty" was never given a full trial. Perhaps a race evenly endowed with enlightened self interest might have made an earthly paradise of the sort they would have liked by practising laissez faire. Certainly, the very unevenly endowed men that populate this planet, short sighted, quarrelsome, sentimental, did not do so. When individual enterprise produced results they did not like they would not wait for the evils to correct themselves in the long run. Each generation has realised the force of Mr. Keynes' remark that in the long run we shall all be dead. Not do all economic evils tend to cure themselves."

Speaking about the British experience he observes:

"Just as individual enterprise had become a mass phenomenon in a nation that accepted mercantilism in principle, so governmental planning was becoming a mass phenomenon within a nation that accepted the principle of laissez faire." 2

The same is the story with America. Though originally "rugged individualism" flourished in American development, very soon, farmers wanted Governmental help like shipping for export, regulation of rail road rates, grants to improve roads, setting up of land banks, subsidisation of export produce and extension of protective duties to agricultural produce. 3 The secular trend towards more bolder varied economic planning which started at the end of the 19th century spread to all the countries in the West quickly including America, France,

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2. Ibid, p. 18.
England, Germany and Italy. Speaking about the measures for reduction of economic inequalities, he observes:

"Inheritance taxes, steeply-progressive income taxes, and anti trust legislation of numerous sorts were in large part efforts to check the inequalities in economic success which a system of individual enterprise breeds".

Speaking about the need for controls M. Hidayatulla stated "It would not be good for us to bring into existence a small body of rich persons while the rest of us remain poor. Therefore a certain measure of control of industry and private enterprise is absolutely necessary".

Morarji Desai observes: "It is, therefore, that the Government has to control development and see that things are regulated, but the purpose of all control is not restriction but it is development and advancement". He further observed "the laissez faire policy which went on in the world for a long time has created many evils in the world and the present day atmosphere will not tolerate that kind of things". Fakruddin Ali Ahmed said "The anti trust and other regulatory legislation in the United States and similar regulatory control over monopolies and mergers in the U.K. illustrate that a certain measure of regulation is inevitable in order to secure and promote larger interests." He further observed "the regulatory

1. Ibid, p. 21.
2. M. Hidayatullah, "Government Regulation of Private Enterprise-A conspectus", (Based on the welcome address delivered at the Seminar on Government regulation of Private Enterprise held in March 27-30, 1969) published in Government Regulation of Private Enterprise, Ed. by Dinesh C. Pandy 1971, p. 3 hereinafter referred to as "Government Regulation of Private Enterprise".
and control mechanism cannot be conceived of in static terms; it is essentially a dynamic process and has to be viewed against the environmental situation existing at a point of time.\(^1\)

Dr. S.N. Jain pointing out the importance of regulation of economy observed "in the context of the planned economic development and the establishment of democratic socialism in the country, the need for Government Regulation of Private Enterprise on proper lines cannot be overemphasized. The post-independent era has seen the emergence of a vast regulatory mechanism in the field of trade and industry.\(^2\) Referring to the objectives and limitation on State regulation he rightly observed:

"Its regulations is essential both in the interest of increasing its productive forces and lessening inequalities in the society aspiring to establish an egalitarian order. The primary objective of a regulation has to be that it does not lead to exploitation of people, waste and exhaustion of natural resources, lop-sided development and concentration of wealth. At the same time, the regulation has to be such that it does not hamper the development of the private enterprise but enables it to flourish, since the objective of the socialist pattern of society is not only to attain equality but also to increase the national wealth. The two objectives, however, do not meet on the same plane. Often the attempt to achieve one may disrupt the other. It requires drawing up nice lines, balancing of complex factors, so that both can co-exist.\(^3\)

Pointing out the radical change in British economic outlook Mitchell observes:

1. Ibid, p. 7.
2. S.N. Jain "The problems of Regulation" (Based on Vote of Thanks prepared at the inauguration of the Seminar). Ibid, p. 13.
"No other people had gone so far as the British toward accepting the doctrine of laissez-faire, and, to the best of my knowledge, in no other country was the reversal of the trend in the latter part of the nineteenth century so clear. But a change of the same type can be discerned in the economic speculation and the practical policy of other nations, among them the United States."

The Constitution of India gives vast legislative powers to regulate and control the economy both to the Parliament and the State legislatures.

B. JUDICIAL REVIEW OF REGULATORY LEGISLATION.

(1) TEMPORARY MANagements OF INDUSTRIES:

The pride of place in the post-independent judicial constitutional history of India dealing with right to property goes to Charanjit Lal, who moved the Supreme Court under Article 32 invoking Article 31 and 19(1)(f) of the Constitution for the first time.

In Charanjit Lal Chaudhari vs. Union of India, the Sholapur Spinning and Weaving Company (Emergency Provisions) Act had been impugned for violation of Articles 14, 19(1)(f). The mill was grossly mismanaged by the board of directors and managing agents who were guilty of certain acts and omissions which brought them under the purview of law. The country was facing an acute cloth shortage. The mismanagement of company has gravely affected the production of the company. Under the Act the Government took over the management of company and its

2. Schedule Seven, List I (Union List), Entries 7, 41-5, 47-8, 51-4; List II (State List) Entries 23-7, and 32; List III (Concurrent List) Entries 20-1, 32-5 and 38.
3. A.I.R. 1951 S.C, p. 41. The inter-relationship between clause (1) and (2) of Article 31 was first considered in this case. Das, J., held that these two clauses are different, the former dealing with police power and the latter with eminent domain.
property and assets by appointing their own directors. The Union Government delegated the powers required to Government of Bombay. The petitioner was an ordinary share-holder of the company. Kania C.J., Fazal Ali, Mukherjea and Das, JJ., held that the Act did not infringe the fundamental rights of the share-holder, conferred by Article 19(1)(f) and 31 as only some privileges incidental to the ownership were in abeyance temporarily and they were reasonable restrictions on the right to property in the interests of the general public under Article 19(5) to serve to supply the essential commodity and to prevent unemployment. It did not affect Article 14. According to Kania, C.J., Fazal Ali and Mukerjea, JJ., it did so. According to Patanjali Sastri and Das, JJ., it was not. It was held that the share-holder could not complain of a violation of company's fundamental rights. It was further held that the petitioner did not prove that there was discrimination between him and share-holders of the companies. Mukherjea, J., observed "we should bear in mind that a corporation, which is engaged in production of a commodity vitally essential to the community, has a social character of its own and it must not be regarded as the concern primarily or only of those who invest their money in it. If its possibilities are large and it had a prosperous and useful career for a long period of time and is about to collapse not for any economic reason but through such perversity of the controlling authority, one cannot say that the legislature has no authority to treat it as a class by itself and make special legislation applicable to it alone."
in the interest of the community at large.\(^1\)

But on the same facts and problem with respect to the validity of the same legislation the Supreme Court took a different view in Dwarakadas Shrinivas vs. Sholapur Spinning and Weaving Company Limited\(^2\), known as the famous second Sholapur Mill case. The validity of the same Act was impugned again by a regular suit before the High Court of Bombay from which the appeal was preferred to Supreme Court by the petitioner Dwarakadas Shrinivas who was a preferential share-holder on behalf of himself and in a representative capacity of other preference share-holders against the company. Both the ordinance and the Act which replaced it were impugned. The High Court dismissed the suit on the ground that the State had not taken the property and was only supervising the affairs of the company through a board of directors. In the first Sholapur Mills case, only the company was joined as a party. Whereas, in the second case the old directors of the company were also joined as supporting respondents in the Supreme Court. The new board of directors appointed by the Government of Bombay made a call of Rs. 50/- on each preference share. The share-holders decided not to pay. This case had been distinguished from the first case without any justification. Mahajan, J., considered that the order for call money amounts to an imminent danger to the preference share-holders causing a direct injury as a

1. Ibid, p. 59.

Kania, C.J., Fazal Ali, Mukherjea and Das, J.J., held that the Act did not infringe Articles 19(1)(f) and 31. Kania, C.J., Fazal Ali, Mukherjea, J.J., held that the Act does not infringe Article 14. Patanjali Sastri and Das JJ., held it was plainly discriminatory in character and within the constitutional inhibitions of Article 14. Mukherjea and Das JJ., observed that "acquisition" meant the transfer of title to the State and "taking possession of" implies that the owner was not dispossessed by the State, but only the right of enjoyment of the property. Loss of minor ingredients of the proprietory rights does not amount to deprivation of the property. Followed interpretation of Australian High Court on placitum 31 of Section 51 of Australian Constitution in Minister of State vs. Dalziel. (1944. 68 CIR 261).

result of the enforcement of the ordinance. It is an ordinary matter in the operations of the company. It is not explained how it makes a difference between the action of the old directors and the new directors in this respect. All the judges namely, Patanjali Sastri, C.J., Mahajan, Das, Bose and Ghulam Hassan J.J., held the Act violated Article 31 (2) of the Constitution of India. With respect to the relationship between Article 31 and Article 19(1)(f) Mahajan, J., observed that the two Articles dealt with two different subjects. Article 31 dealt with the field of 'eminent domain' and the whole boundary of that field was demarcated by this article and State's power to take the property of a person was comprehensively delimited by this Article. S.R. Das, J., said that he stood by his interpretation of relationship between Article 31 and Article 19(1)(f). Bose, J., observed that Article 31(1) was a sort of corollary to Article 19(1)(f), because after the property has been acquired under Article 19(1)(f) it could not be taken away save by authority of law.

1. Patanjali Sastri C.J., said there was deprivation without compensation under Article 31 and was not covered by exception in clause (5) (b) (2).

2. Mahajan, J., said the Act overstepped the limits of legitimate social control legislation and in substance took over the undertaking itself under the guise of superintendence.

3. S.R. Das J., said the law was not an instance of the exercise of the State police power as an emergency measure as it had overstepped the limits of police power and in substance nothing short of expropriation as it has not provided compensation.
   Ibid, p. 139.

Gulam Hassan, J., said that Article 31 was wider than Article 19(1)(f). Article 31 was self-contained referring to deprivation of property in clause (1), acquisition in clause (2) and dealt with different modes of the deprivation and comprehensive enough to include all types of deprivation. Dealing with Article 31 (1) and (2) of the Constitution the majority dissented from the observations of Das, J., in Charanjitlal and Subhodh Gopal cases. Mahajan, J., said "Article 31 is a self contained provision delimiting the field of eminent domain and Article 31(1) and (2) deal with the same topic of compulsory acquisition of property. The words "acquisition" and "taking possession" used in Article 31 (2) have the same meaning as the word 'deprivation' in Article 31 (2) have the same meaning as the word 'deprivation' in Article 31 (1)." Bose, J., said "the possession and acquisition referred to in clause 2 mean the sort of 'possession' and 'acquisition' that amounts to deprivation within the meaning of clause (1). No hard and fast rule can be laid down."

Gulam Hassan, J., said "Article 31 (1) embodies a categorical declaration proclaiming the right of property and equally categorically prohibits the State from depriving the owner of that property by an executive act or without being backed by the authority of law. He expressed the view that

1. Ibid, p. 139.
4. A.I.R. 1954 S.C. p. 120.
5. Ibid, p. 120. In this, as well as Subodh Gopal's case the Supreme Court rejected the interpretation of Das, J., in Charanjitlal's case. 'Police Power' is found only in Article 19(2) to (6) and Article 31(5)(b)(ii) and not in Article 31(1). Article 31(1) and (2) deal with eminent domain. Thus the relationship between police power and eminent domain was clarified.
6. Ibid, p. 120. Neither the judges who saw police power in Article 31(1) nor those who saw it only in Article 19(2) to (6) and Article 31(5)(b)(ii) paid heed to the words of caution of Bose, J., against importing alien constitutional doctrines. While Das, J., referred to general police power, Patanjali Sastri, C.J., referred to Pern Coal Company vs. Mahor C.S. (1922) 260 U.S. 393.
both, part one and two of Article 31 should be read together so as to harmonise with that intention. Das, J., observed the mills, machineries, stocks and so on of the respondent company were property within the meaning of Articles19 and 31. The court held that the plaintiff as a preferential share-holder of the company as distinguished from an ordinary share-holder was entitled to challenge the constitutionality of the ordinance on the basis that it abridged the company's fundamental right under Article 31 (2) of the Constitution.

It is submitted that it appears that the Supreme Court on second thoughts changed its attitude towards its earlier decision in Charanjitlal's case making a distinction on grounds which are not germane to the ambit and scope of the right to property as envisaged in Article 19(1)(f) and 31. Of course, it made it plain that it need not take pains to distinguish as it was held that it did not follow 'state decisis'. Having all the facts regarding the situation, namely mismanagement, unemployment of the labour, acute scarcity of cloth in the country, inability to run the mills on the part of the management; actual closure of the mill, the court ought to have decided respecting the power of the State to deprive a person of the possession of his property temporarily in the public interest and for the sake of production and employment.

(2) WINDING UP OF COMPANIES:

The Supreme Court, in Palai Bank's case showed its appreciation of the need for imposing trust in expertise judgment of the executive in the interest of the public. In Vellukunnel vs. Reserve Bank of India, the Bank of India made an application in the High Court of Kerala under Section 38 of the Banking Companies Act, 1949 read with the Indian Companies

Act, 1956 for the winding up of the Palai Central Bank Limited. It was allowed by the High Court. An appeal had been filed against that order before the Supreme Court. The validity of Sections 38(1) and clause (3) (b) (iii) of the Banking Companies Act 1949 dealing with the winding up of companies was challenged as violative of Articles 14, 19(1)(f) and (g) and Article 301. These sections made the Reserve Bank the sole judge to decide whether the affairs of a banking company were being conducted as to prejudice the interest of the depositors. On an application by the Reserve Bank the court has no option except to wind up. Hidayatullah, J., delivering the judgment for the majority held, that the provisions of the Banking Companies Act were neither discriminatory nor unreasonable. They were manifestly in the public interest. They were not violative of Articles 14, 19 of the Constitution. As they were protected under Article 302 of the Constitution they were not ultravires of the Constitution. Wide differences exist between banking companies and non banking companies, hence the need for special laws for dealing with them. There was a valid classification. If the Reserve Bank acts malafide the Central Government can review it responding to public opinion. Ultimately the courts can interfere if necessary. The court rightly held "...that there may be occasions and situations in which the legislature may, with reason, think that determination of an issue may be left to an expert executive like the Reserve Bank rather than to Courts without incurring the penalty of having the law declared void. The law thus made is justified on the ground of expediency arising from the respective opportunities for action."

Kapur, J., in his dissenting judgment on behalf of

1. For B.P. Sinha, C.J., and J.R. Madholkar, J.
2. Ibid, p. 1388.
himself and Shah, J., held, Section 38 as an unreasonable restriction on the right of a banking company to carry on its business and hence unconstitutional. He did not express any opinion on the question of hostile discrimination by the adoption of special procedures prescribed for winding up banking companies compared to other companies. Kapur, J., considered that an autocratic power was conferred on the Reserve Bank. Even though Supreme Court's jurisdiction was not ousted he was sensitive to the exercise of judicial power. Even in the case of the existence of compelling circumstances for the exclusion of judicial power in the public interest Kapur, J., held that the statute should be examined in the light of its repercussions on the Fundamental Right of the citizen and should be held invalid if it was unreasonable. It is submitted that in the interest of public sometimes judicial power has to be excluded and it is well that the winding up of Palai Bank was such a case. Patanjali Sastry, C.J. held in P.D. Shandasani vs. Central Bank of India that violation of right by individuals does not fall within the purview of article 19 (1) (f). Article 19 (1) is intended to protect those freedoms against state action.

3. LABOUR REGULATIONS:

In, N.T.F. Mills Ltd. vs. The 2nd Punjab Tribunal, Section 10(1) of the Industrial Disputes Act 1947 was impugned which empowers the appropriate Government to refer any industrial dispute either to a board for promoting a settlement or to a Court of Enquiry or to a Tribunal for adjudication.

Bhagawati, J., delivering the judgment of the Court held that there was no warrant for the suggestion that such discretion would be exercised by the Government arbitrarily or capriciously or so as to prejudice the interests of any of the parties concerned and dismissed the petition.

In, Bombay Dyeing and Manufacturing Company Ltd. vs. the State of Bombay, Sections 3(1) 3(2)(b) of Bombay Labour

1. A.I.R. 1952 S.C. 5
3. Ibid. p. 336-337.
Welfare Fund Act were impugned as contravening Article 31 (1) and (2) of the Constitution of India. Under Section 3 of this Act Bombay Labour Welfare Fund has to be constituted consisting of all fines from the employees, all unpaid accumulations voluntary donations etc. It will be vested in a board of trustees which has to be utilised by the board of defray for the expenditure on a variety of welfare measures for the labour. The company having failed in the High Court preferred an appeal before Supreme Court. Venkatarama Aiyar, J., delivering the judgment of the court held that (1) in view of the decisions of the Supreme Court in the cases of Dwarkadas Shrinivas and Subodh Gopal Article 31 (1) and (2) of the Constitution should not be interpreted as mutually exclusive and hence deprivation of property and substantial abridgment of rights of owner falls under Article 31 (2) and satisfy the requirements therein.

Article 31(2)(a) introduced by the Constitution (Fourth Amendment) Act 1955 was of no avail as it has been passed subsequent to the writ application filed in the High Court. The Amendment to the Constitution was not retrospective in operation and hence the rights of the parties must be decided in accordance with the law as on the date of writ application.

2) The employer who makes a payment of the accumulated funds due to the employees, to the board under section 33(1) does not get discharged from his obligation to the employees even when the enforcement action is barred by limitation. Hence taking away of the property from the employer violates Articles 9(1)(f) of 31 (2) of the Constitution. Unpaid time-barred accumulations due to the employees cannot be considered to be

'bona vacantia'. The impugned Act cannot be related to one abandoned property even though under Section 2 (10) of the Act a period of limitation is imposed on the employees right to claim the fund from the employer. (3) It was held that Section 2 and 3 (2) (a) of the impugned Act were not unconstitutional. They related to the creation of fund and that portion relating to employees was realised from the employees. It was held that the provisions of the impugned Act were unconstitutional in so far as they related to unpaid accumulation and valid as regard fines. (Section 3 (2) (b) deals with accumulations of funds).

It is submitted that the accumulated funds which were time-barred cannot be claimed from the employer by the employees excepting on the voluntary surrender of the employer. There is no subsisting legal liability on the part of the employer which can be enforced in a court of law. But the funds do not belong to the employer. They are in suspended indefinite animation. Hence, the court could have upheld Section 3 (2) (b) under which the unpaid accumulated funds in the hands of employer could be transferred to the board for the welfare of the employees. The effect of the decision is the employees lost the benefit of their own money, the State was prevented from helping the employees and the employer was benefitted at the cost of the employees. The principle of bona vacantia could be applied as the money belonged neither to the employer nor to the employees nor to any one practically. Because, the employees are the legal owners without legal remedy. The court could have applied the principle of 'bona vacantia' constructively.

In Ramdhandas vs. State of Punjab, the constitutional validity of the operative provisions of the Punjab Shops and Commercial Establishments Act, 1958, were challenged under

Article 32 of the Constitution, as the Act puts limitation as to hours of work of employees and specification of opening and closing hours for shops and establishments.

Ayyanger, J., held that in the context of the exception and the necessity for which provision is made to meet the imperative requirements of particular types of business, the provisions, contained in Sections 7 and 9 of the Punjab Shops and Commercial Establishments Act (15 of 1958) regarding the hours of employment of the employees and the opening and closing hours of the establishment, cannot be said to constitute an unreasonable restriction on the right to carry on trade or business protected under Article 19(1)(f) of the Constitution and as such are protected by Article 19(6) 1.

In, Jalan Trading Company Private Ltd., vs. Mill Mazdoor Sabha2, the validity of Section 10 of the payment of Bonus Act 1965 was challenged on the ground that it violated Articles 14 and 31 (1), by two public Limited companies, that they were not liable to pay bonus under the machinery prescribed by the Act. Shah, J., observed, for majority, "...bonus which was originally a voluntary payment out of profits to workmen to keep them contented, acquired the character, under the Bonus Formula, of right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the Payment of Bonus Act, liability to pay bonus has become a statutory obligation imposed upon employers covered by the Act" 3. It was contented that the Act was invalid as it amounted to fraud on the Constitution. It was attacked as a colourable exercise of legislative power. Shah, J., held that even though the legislation modified the principles declared by Supreme Court in Express News Papers Private Limited vs. Union of India4, it was not a fraud on the Constitution.

1. Ibid, p. 1563.
or a colourable exercise of legislative power. He observed "parliament has normally power within the framework of the Constitution to enact legislation which modifies principles enunciated by this Court as applicable to the determination of any dispute, and by exercising that power the Parliament does not perpetrate fraud on the Constitution. An enactment may be charged as colourable, and on that account void, only if it be found that the legislature has by enacting it trespassed upon a field outside its competence. K.C. Gajapati Narayan Deo vs. State of Orissa, 1954 S.C.R. 1 (A.I.R. 1953 S.C. 375)".¹

Under Section 10 of the impugned legislation the employer is bound to pay bonus even though there was loss. Shah, J., observed, "%the object of the Act is to make an equitable distribution of the surplus profits of the establishment with a view to maintain peace and harmony between the three agencies which contribute to the earning of profits. Distribution of profits which is not subject to great fluctuations year after year, would certainly conduce to maintenance of peace and harmony and would be regarded as equitable, and provision for payment of bonus at the statutory minimum rate, even if the establishment has not earned profit is clearly enacted to ensure the object of the Act".² It was held that Section 10 does not violate Article 14. He observed "equal treatment of unequal objects, transaction or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law".³ It was held "compelling an employer to pay bonus of money to his employers which he had not constructively rendered himself liable to pay bonus amount to deprivation of property, but the protection against depriving

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2. Ibid, p. 705.
a person of his property, under clause (1) of Article 31 was available only if the deprivation is not by authority of law.

In Mangalore Ganesh Beedi Works etc. vs. Union of India¹, the provisions of Beedi and Cigar Workers (Conditions of Employment) Act, 1966 were impeached as unconstitutional for the violation of Article 19(1)(f) and (g). Ray, C.J., delivering the majority judgment, held that the pit and substance of the Act was regulation of conditions of employment in the beedi and cigar industry to provide for the welfare of workers. The Parliament had the legislative competence in passing the Act in Entries 22, 23 and 24 of List III and it is not an act for industry but for welfare of labour and regulation of conditions of employment in industry and industrial relations between the employers and employee. It was held Sections 3 and 4 of the Act were not violative of Articles 19(1)(f) and 14 on account of procedural unreasonableness or for conferring unfettered powers on the licensing authority, as the power to grant or refuse licence was sufficiently controlled. Necessary prudence was provided. Safeguards for abuse of power were made. The right to appeal was given. They rule out any arbitrary act. There were provisions for refusal or grant of a licence on objective considerations. Sections 3 and 4 were neither unfair nor unreasonable.

Alagiriswamy, J., in his dissenting judgment concurred with most of the points in the majority judgment, but differed from the majority and agreed with High Court on the point that Sections 26, 27, 31 and 37(3) conferring various benefits and advantages on the workmen did not apply to home workers.

(4) LICENSING:

In Ananda Behera vs. State of Orissa², "the dispute is

about fisheries rights in the Chilka lake which is situated in what was once the estate of the Raja of Parikud. This estate vested in the State of Orissa under the Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952) ....". The petitioners carried on the business of catching and selling fish particularly from the fisheries within the said lake. They acquired licences before the estate was vested in the State of Orissa. The State of Orissa refused to recognise these licences and was about to re-auction the rights. The petitioners moved the court under Article 32 on the ground of violation of their fundamental rights under Article 19(1)(f) and 31(1). The petitioners claimed "that the transactions were sales of future goods, namely of the fish in those sections of the lake, and that as fish is movable property Orissa Act I of 1952 is not attracted as that Act is confined to immovable property".

Bose, J., held that the petitioners would not acquire any property in it, until any fish was actually caught. If the petitioners' rights are no more than the right to obtain future goods under the Sale of Goods Act, then that is a purely personal right arising out of a contract to which the State of Orissa is not a party and in any event a refusal to perform the contract that gives rise to that right may amount to a breach of contract but cannot be regarded as a breach of any fundamental right. He said that what was sold was right to catch and carry away fish in specific sections of the lake at a specified future period which amounted to a licence to enter into lands coupled with a grant to catch and carry away the fish. It is 'profit à prendre'. In England this was regarded as an interest in land. In India this is regarded as benefit that arises out of the land as such is immovable property.

1. Ibid, p. 18.
2. Ibid, p. 18.
Under Section 3 clause 26 as to General Clauses Act, the term immovable property includes the benefits that arises out of the land. As 'profit a prendre' is immovable property, for a sale it requires writing and registration under Section 54 of Transfer of Property Act, if the value is above Rs. 100/-. In this case the transaction was over and hence no interest in title was passed and no fundamental right to enforce. The court did not contravene directly the argument that contract was property within the meaning of Article 19(1)(f) and 31 clause (4). It held that the State of Orissa had not taken the petitioners' contract, the petitioners were free to sue on it or to assign it to others. Bose, J., held "if the State is wrong in its attitude, that may give rise to a suit against it for damages for breach of contract or possibly, (though we do not say it would), to a right to sue for specific performance; but no question under Articles 19(1)(f) and 31(1) can arise because, the State has not confiscated or acquired or taken possession of the contract as such". So the petition was rightly dismissed.

In Fedco (P) Ltd. vs. S.N. Bilrami, the petitioner was a company engaged in the business of dyes, chemicals, plastics and various other goods. The petitioner prayed for questioning an order made by the Chief Controller of Imports and Exports, Government of India, by which he cancelled, foreign import licences which had been granted to the petitioner by the Joint Chief Controller of Imports and Exports and it was also prayed that the Collector of Customs, Bombay should be directed to assess the goods of the petitioner Company which have been landed in Bombay having been imported on the strength of these licences and allow the petitioner company to clear them.

1. Ibid, p. 19.
Das Gupta, J., held on behalf of majority, "that the provision that licence may be cancelled, if it is found, after giving a reasonable opportunity to the licensee to be heard, to have been obtained by fraud or misrepresentation is a reasonable restriction in the interests of the general public on the exercise of the fundamental right of a citizen guaranteed under Article 19(1)(f) and (g) of the Constitution. The cancellation being under a valid law there can be no question of any right under Article 31 of the Constitution having been infringed".  

It was held that the reasonable opportunity was given. K. Subba Rao, J., in his dissent, held that the order of cancellation was made arbitrarily and in utter disregard of principles of natural justice and expressed no opinion on the merits of the case. It is submitted that in view of the possible adverse effects on the economy by in the abuse of export-import licenses it is necessary for the state to have strong power.

In Glass Chatons Importers and Users Association vs. Union of India, the petitioners challenged the validity of Section 3 of Imports and Exports (Control) Act of 1947, which permits the Central Government to make an order as in para 6(4) of the Imports (Control) Order 1955, under which the Chief Controller of Imports and Exports may refuse to grant a licence or direct any other licensing authority not to grant a licence on the ground that such authority decided to canalise the imports and distribution thereof through special and specialised agencies or channels. The petitioners were importers of glass chatons which forms an important part of the raw materials for the manufacture of glass bangles and other similar articles of the wear. The Government prohibited the import of this

1. Ibid, p. 418.
except in accordance with the licence granted. The Government made a policy with regard to the import of glass chatten under which it prohibited totally its import from January 1957 to the end of March 1958. Subsequently, it was permitted only under export promotion scheme. After 1957 the petitioners were not given any licence and licences were issued in favour of State Trading Corporation. The petitioners urged for stopping the Government from giving preference to State Trading Corporation over the petitioners in the grant of permits and not to create a monopoly in favour of the State Trading Corporation and to cancel the import permit already granted to it.

Das Gupta, J., held that it was difficult for the court to have adequate materials to decide whether the policy regarding imports was in the general interest of the public or not. Even if materials were available, it was possible to take more than one view. The burden of proving that the Government was not right in its estimate of the effects of a policy as regards the imports in the general interest of the public is on the person who challenges it. The court assumes that the decision of the Government was proper and was in the interest of the general public unless the contrary was clearly shown. He held that the attack under Article 14 and 31 would fail. As the petitioners did not apply for licences under exports promotion scheme under which the State Trading Corporation had been given licence, the question of denial of equal protection of laws guaranteed by Article 14 of the Constitution does not arise. Article 31 does not apply even if it is assumed that the right to carry on trade is itself a property because there is no question of acquisition of right here under para 6(h). A refusal to grant licence will not enable the applicant to carry on that trade and granting licence by itself does not create a right to trade. The petition was rightly dismissed.
In *Corporation of Calcutta vs. Liberty Cinema*¹, the Liberty Cinema obtained a licence for its cinema house from the Corporation of Calcutta, as required under Section 443 of the Calcutta Municipal Act 1951 and had been paying a licence fee of Rs. 400/- per year levied by the Corporation under sub Section 2 of Section 548. The Corporation by a resolution changed the basis of assessment of licence fee with effect from April 1948. Under the new method the assessment of the fee would be done at rates prescribed per show according to the sanctioned seating capacity of the cinema houses. The Liberty Cinema on that basis was liable to pay a fee of Rs. 6,000/- per year. The Liberty Cinema challenged the resolution of the Corporation in the High Court under Article 226. The High Court allowed the petition. The Corporation appealed to Supreme Court. The levy was challenged on the ground that it amounted to expropriation and hence invalid for violating Article 19(1) (f) and (g). The High Court rejected this argument, but held 19(1)(f) and (g) were violated as arbitrary power of taxation was given under Section 548. In the Supreme Court Sarkar, J., held speaking for majority that no arbitrary power of taxation was conferred by Section 548. He observed "...a statute has to be read so as to make it valid and, if possible, an interpretation leading to a contrary position should be avoided"². The contention that it was not a tax but a fee and as no services were rendered by Corporation to cinema house it could not be levied was rejected.

Sarkar, J., observed "In the case of a self-governing body with taxing powers, a large amount of flexibility in the guidance to be provided for the exercise of that power must exist. It is hardly necessary to point out that, as in the cases under Essential Supplies (Temporary Powers) Act, 1946,

2. Ibid, p. 1113.
so in the case of a big municipality like that of Calcutta, its needs would depend on various and changing circumstances. There are epidemics, influx of refugees, labour strikes, new amenities to be provided for, such as hospitals, schools — and various other such things may be mentioned, which make it necessary for a colossal municipal Corporation like that of Calcutta to have a large amount of flexibility in its taxing powers. These considerations lead us to the view that Section 548 is valid legislation. There is sufficient guidance in the Act as to how the rate of the levy is to be fixed. He pointed out that Entry 62 of List II of Seventh Schedule to the Constitution gives power to the State legislatures to impose taxes on entertainment and amusement which include cinema shows. Hence it was wrong to say that the State legislature delegated a power which it itself did not possess.

Ayyāngar, J., for himself and Subba Rao, J., dissenting, observed that there was no enough guidance to municipal corporation in the Act to fix the rate of levy. He held that viewed as a tax, the delegation was unconstitutional as the essential legislative functions were parted with to the subordinate law making body.

In Uttar Pradesh State Electric Company vs. State of Uttar Pradesh, the Western U.P. Electric Power and Supply Company Limited, the appellant in this case, holds a licence under Section 3 (1) of the Indian Electricity Act IX of 1910 to supply electricity in certain areas in the State of Uttar Pradesh.

Messrs. Hind Lamps Private Limited which set up a factory for manufacturing electrical equipment within the area of supply of the company was receiving energy from the company. But the supply was interrupted and fluctuating and inadequate. In response to the request of the Hind Lamps Private Ltd., the

1. Ibid, p. 1119.
Government of Uttar Pradesh granted direct supply of electrical energy from the State Electricity Board in the exercise of the powers conferred by Section 3 (2), (e) (ii) of the Indian Electricity (Uttar Pradesh Sanshodhan) Adhiniyam, 1961. The Supply Company moved the High Court of Allahabad for a writ of certiorari for quashing the order unsuccessfully. On an appeal to the Supreme Court, Shah, J., held that the order was not hit by Article 14 of the Constitution as there was no evidence on record, that there were differences in rates charged for electrical energy supplied to the consumers by the company on the one hand and to Hind Lamps Private Ltd. by the State Electricity Board on the other hand. Further, there was no complaint from any consumer. Even if there were differences, Hind Lamps stood different from other consumers.

Referring to the contention of the violation of Article 31, he observed "By the order granting direct supply of electrical energy ownership of property or right to possession of property was not transferred to the State or to a corporation owned or controlled by the State, and on that limited ground it must be held that Article 31(2) has no application. The company may, it may be assumed, as a result of direct supply of electrical energy to Hind Lamps, suffer loss; but Article 31 (2) does not guarantee protection against that loss". The appeal was dismissed.

In State of Mysore and others vs. K. Chandrasekhar, the question involved was whether certain privileges conferred with respect to the Government lands for cutting trees on owners of land situated in close proximity by statutory rules can be taken away by executive action or not. Sarkaria, J., speaking for the Supreme Court held it in the negative and that it should be done according to law because such privilege

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2. A.I.R. 1976 S.C. 853
to cut timber was a right to property. It is submitted that the right for the timber in future which was dependent upon the grant of the Government was not a property because the privileges could be withdrawn by the Government at any time. It is also submitted that the privileges conferred by one executive order could be withdrawn by another executive order.

(5) CONTROL:

In *State of Rajasthan vs. Nath Mal*¹, the constitutional validity of clause (25) of the Rajasthan Food Grains Control Order 1949, was impugned by the respondents in this case who were grain merchants holding licences for dealing in food grains.

Ghulam Hassan, J., observed that the Bajra was an essential commodity within the meaning of the Essential Commodities Act of 1946. He observed "we are clear, therefore, that the freezing of stocks of food grains is reasonably related to the object, which the Act was intended to achieve, namely to secure the equitable distribution and availability at fair prices and to regulate transport, distribution, disposal and acquisition of an essential commodity such as food grains"². He held, differing from High Court, that the first portion of clause (25) of the impugned control order which authorises the Government Officers to freeze any stock of food grains was valid; and the last portion of clause (25) which authorises the requisition and disposal by the authority at the rate fixed for the purposes of Government procurement in its discretion vests an unrestrained authority to requisition the stocks of food grains at an arbitrary price. Hence, it infringes Article 19 clause (1) (g) and Article 31 clause (2) of the Constitution, as without fixing the amount of compensation or speaking the principles

2. Ibid, p. 308.
on which compensation is to be determined, it vests the power in the authority to acquire the stocks at any price. He observed, "the clause leaves it entirely to the discretion of the executive authority to fix any compensation it likes. The High Court rightly held that the clause offended against Article 31 clause (2)". The Court did not mention any price at which it should be sold. It is submitted that the question of compensation does not arise in this case as when the whole stock is taken, what is paid cannot be divided into price for the stock and compensation for not paying the fair price. The whole thing can be either compensation or price. It amounts to that the State should pay the market price or compensation equivalent to the market price, both mean the same. By the time of the judgment, Mrs. Bela Benarjee's case was decided by the Supreme Court giving the meaning market price to the word compensation. But, excepting the statement of the grain merchant that he has purchased it at Rs. 17-13 per maund, no other evidence either adduced or sought for. The Court ought to have gone into the question as to at what rate the merchant had purchased, to do justice. It is submitted that it is unreasonable to insist upon the State to pay the market price as such step would defeat the policy of procurement in the public interest as the State has to either sell the food grains to the people at a higher rate than the procured price, or subsidize the selling.

In Hari Shankar Bagla vs. Madhya Pradesh State, the Supreme Court upheld the validity of Sections 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946 which empower the State, to regulate or prohibit the production, supply and distribution of essential commodities and trade and

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commerce therein for maintaining and increasing the supplies by giving powers to its officers to make suitable orders.

In Union of India vs. M/s. Bhanamal Gulzarimal Ltd., was a private Limited Company which had been registered as a stock holder by the Iron and Steel Controller under clause 3 (d) of the order. The Controller issued a satisfaction under clause (ii) (b) of Iron and Steel (Control of Production and Distribution) Order 1941, decreasing by Rs. 30/- per tonne, the prices already fixed for all categories of steel. Criminal proceedings were taken against the company on the allegation that they had sold the old stock of steel for the prices higher than the prescribed prices by notification of 1949.

M/s. Bhanamal Gulzarimal challenged the criminal proceedings and the order. The High Court held clause (ii)(b) of Iron and Steel (Control of Production and Distribution) Order 1941 as unconstitutional for violation of Article 19 (1)(f) and (g) of the constitution and the clause read with section 7 of the essential supplies (Temporary Powers) Act 1946 was quashed. The Government came in an appeal to the Supreme Court.

The impugned order was passed during the 2nd World War for securing the defence of British India the efficient prosecution of war and for maintaining supplies and services essential for the life of the country by controlling the prices of various commodities. An ordinance was passed in 1946 replaced by an Act. Clause 3(1) of the ordinance empowered the Central Government to regulate and to prohibit production and distribution and trade and commerce for maintaining or increasing the supply of the essential commodity or for securing for equitable distribution or for proper circulation. Though it was limited for a period the provision of the Defence India

Act and the rules framed thereunder continue after the war and the emergency created by the war continued to face the economic problems of the country.

The Iron and Steel Controller appointed by the Central Government was empowered with the sale of Iron and Steel, in cases specified in clauses (10)(b) and 19(c). Under clause 11 (a) the Controller has power to prohibit or require the production of the said commodity in the manner indicated to co-ordinate the production of iron and steel with the demand. Clause 11 (b) of the order of 1941 was issued by the Central Government in exercise of the powers conferred on it by Rule 81 clause (2) of the defence of India Rules corresponding to section 3 of the essential Commodities Act, which was permanently placed on the Statute Book in 1955. Under clause 11 (b) the controller was empowered to fix the maximum prices at which the Iron and Steel may be sold and selling beyond the prices was prohibited.

Gajendragadkar, J., observed that, "the control is required to take an over all view of the needs of national economy in respect of steel and iron and issue appropriate direction in order to effectuate the policy of the Act "the concept of fair prices which has been deliberately introduced by legislature in section 3 gives sufficient guidance to Central Government in prescribing the price structure for the commodities from time to time".

Gajendragadkar, J., negatived the plea that section 3 and 4 of the Act confer uncanalised or unbridled power to the delegate i.e., the Central Government or the sub-delegate, the Controller, as there is ample guidance to exercise the powers and as the legislature embodied the decision of the legislature and the legislative policy and the concept of fair prices was deliberately introduced by the legislature under Section 3

1: Ibid. p. 479.
which gives sufficient guidance to the Central Government in prescribing price structure for the commodities from time to time. He held that Sections 3 and 4 of the Act and clause (b) of the order which prescribed conditions for the exercise of delegated authority are not violative of Article 19 for imposition of unreasonable restriction.

Gajendragadkar, J., distinguished this case from Nathmal’s case¹ in which the Government was required to requisition the stock at a lower rate than the selling price causing loss to the stockholder which were frozen, while at the same time the Government was free to sell the same block at the higher price and make a profit. He observed referring to Nathmal’s case “the case of the respondent which illustrated this vicious tendencies of the impugned class must be treated as a typical case which showed how business of grain dealers would be penalised by the operation of the clause”². Thus it was struck down under 19(1)(g). He finally held that neither clause 11(b) of the order nor the impugned notification issued by the Controller on December 10, 1949, violates the respondents’ fundamental rights under Article 19(1)(f) and (g), and so their validity cannot be successfully challenged³.

Subba Rao, J., in a separate and concurrent judgment held that in view of the decision of the Supreme Court in Hari Shankar Bangla⁴ which was binding on the Court, clause 11(b) of the order was valid. He did not like to express his views on other questions.

In V.S. Rice and Oil Mills vs. State of Andhra Pradesh⁵, the appellants were supplied electricity by the State of Andhra Pradesh under agreements, under the terms stipulated. By two

notified orders issued by the State of Andhra Pradesh in 1955, the rate was increased. These notifications were impugned under Article 226 before the High Court, on the ground that the State had no authority to change the important terms of the agreement to their prejudice by taking recourse to Section 3 (1) of the Madras Essentials Articles Control and Requisitioning (Temporary powers Act) 1949. The single judge held that the impugned orders were not justified by the authority conferred on the State by Section (3) of the Act. On an appeal, Gajendragadkar, C.J., traced the origin of the impugned Act to the defence of India Act 1939 which came to an end in 1946 as the Central legislature thought it necessary to pass another Act to take its place.

With respect to the question whether the State was bound by a Statute or could claim benefit of provision in a statute, it was held that it was not bound by a statute unless, it was provided by express terms for necessary implication which has to be necessarily ascertained by the court from the intention of the legislature taking into consideration all the relevant provisions of the Statute together without merely concentrating on a particular provision which might be in dispute between the parties. In arriving to the conclusion, the effect of the conclusion in hampering the working of the State or leading to the anomalous provision of the Statute losing its efficacy should be taken into consideration. If the court is satisfied that by necessary implication the obligation imposed by the statute should be enforced against the State, it should do it accordingly. Even in the case of a statute being for the public good, the intention of the legislature has to be considered. Section 3 should not be read in isolation.

Gajendragadkar, C.J., held, "Section 3 clause (1) undoubtedly confers power on the State Government to vary and modify contractual terms in respect to the supply and distribution of the essential articles". The emphasis is not on

1. Ibid, p. 1786.
who produced and supplied but on continuance of the equitable distribution and supply of the essential articles at fair prices. If the object of Section 3(1) is equitable distribution and availability at fair prices of essential articles that object would still continue to attract the provisions of Section 3 clause (1) even though the essential articles may be produced by the State and may be supplied by the State and may be supplied it to the consumers.

He held that the words used in Section 3(1) were so clear, unambiguous and wide that it would be unreasonable to limit their scope artificially on the ground that by giving effect to the wide language of the Section, we might reach a result which was not completely harmonious or consistent with the assumed object and purpose of the Act. He held that "if the purpose of the Act was to secure the supply of essential articles at fair prices, it would be irrelevant as to who makes the supply; what is relevant is to regulate the supply at a fair price".

Rejecting the argument of Mr. Setalvad that the power to regulate conferred on the respondent by Section 3(1) can not include the power to reduce the rates, the court pointed out that it was entirely misconceived. Gajendragadkar, C.J., observed that the word 'Regulate' was wide enough to confer power on the respondent to regulate either by increasing the rate, or by decreasing the rate.

The concept of fair prices to which Section 3(1) expressly refers did not mean that the price once fixed must either remain stationary or must be reduced in order to attract the power to regulate. The court also mentioned that the right to receive the supply of electricity at the rates specified in the agreements was a right which fell within Article 19(1)(f) or (g). The respondents recognised its obligation to the public at large and though that supplying of electricity to the consumers who were using for profit making purpose at a loss to the public would not be reasonable and legitimate.
Therefore, the court having regard to all these circumstances, held that the change made in the tariff by the notified orders was reasonable in the interest of the general public.

In Badri Prasad v's. Collector of Central Excise and others¹, the petitioner, a businessmen carrying on money lending on the pledge of gold ornaments challenged the Gold Control Act, 1969 read with the rules made thereunder, in particular Sections 6, 8 and 10(1), under Article 19(1)(f) and (g) of the constitution, as unreasonable and not in the public interest. The petitioner's house was raided in between March 26, 1969 and 9th April 1969 under the authority of the Collector of Central Excise, and they seized ornaments and articles of gold from his premises. The vires of the Act was challenged on the ground that in as much as the time to furnish declarations under Section 18 and had been called since the commencement of the Act from time to time up to 30th April 1969 and the search which took place was unjustified.

It was contended that Sections 4, 6, 8(1) and 16 read with Sections 71, 74, 86 were outside the competence of the Parliament and that the Parliament could not encroach on the field of money lending, a State item of legislation. Among the other grounds of challenge, was that provision of Section 8(1) of the Act was violative of the petitioner's right to acquire, hold or dispose of property in the form of primary gold as it was not in the interests of the general public.

Mitter, J., held that for checking the smuggling of gold into the country and conversion of gold into ornaments the imposition of the obligation by the State on pawn brokers and persons who take pledges or hypothecation of ornaments to furnish declarations so that the administrator and gold control officer could keep an eye on the activities of such persons

was not an unreasonable restriction within the meaning of Article 19 (1) (f) and (g).

The preamble of the impugned Act shows that it was made to provide for the economic and financial interests of the community, for the control of the production, manufacture, supply, distribution, use and possession of and business in gold, ornaments and articles of gold etc.

Mitter, J., observed that it was submitted to the court that the object of series of legislation was with a view to prevent smuggling of gold into India which results in the loss of $1,000 crores of foreign exchange per annum.

However, he held that there was no justification for an order of confiscation of gold under Section 71 of the Act for the mere failure to comply with Section 16 relating to declaration and as such Section 71 places an unreasonable restriction on the right of a person to acquire, hold, and dispose of gold articles or gold ornaments as it might be applied indiscriminately and hence not saved by clause (5) (6) of Article 19 of the Constitution.

6. MARKETING:

Several notifications issued by the Uttar Pradesh Government under U.P. Sugar Cane (Regulation of supply and purchase) Act, 1953 declaring reserved and assigned areas and restrictions imposed upon cane growers with regard to sales were impugned by the petitioners in Tikaramji and others vs. State of Uttar Pradesh and others on the ground of violation of Articles 19 (1) (f) and 31. The court held that the power was well defined and was not unfettered, uncontrolled and unguided. There was no deprivation of property.

Kaur, J., amplified philosophy of review of legislation

1. A.I.R. 1956 S.C. 676,
by emphasising the history context of legislation, the presumption of wisdom of legislature in making a law and irrelevency of detailed comparison of an Indian Act with an English Act in Hamadard Dawakhana vs. Union of India, Hamadard Dawakhana (wakf) were doing business in drugs prepared in accordance with 'Unani System'. They impugned under Article 32, the constitutionality of The Drugs and Magic remedies (objectionable advertisements) Act 1954, and the actions taken thereof on the ground of discrimination under Article 14, excessive deligation and infringement of the right of the free speech under Article 19(1)(a) and their right to carry on trade and business under Article 19(1)(f) and (g) and Articles 21 and 31 of the Constitutions and the Act and the rules made thereunder held violative under part III of the constitution. The restrictions were imposed on the advertisement of the drugs and objections were taken by the drugs controller. The object of the Act was to prevent people from self medicating for several various serious diseases as they may have deleterious effect on the well being of the people. The State, argued, that the medicines had tendency to induce people to resort to self medications by reason of elated advertisements and in the interest of the public health a check has to be put on the puffing up of the advertisements.

Kapur, J., observed "...when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in part III of the constitutions the ascertainment of its true nature and character becomes necessary i.e., its subject matter, the area in which it is intended to operate its purport to intent have to be determined. In order to do so it is legitimate to take into consideration all the

factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it is intended to suppress, the remedy for the disease, which the legislature resolved to cure and true reason for the remedy.

Kapur, J., further observed "another principle which has to be borne in mind in examining the constitutionality of a statute that it must be assumed that the legislature understands and appreciates the needs of the people and the laws it enacts are directed to the problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is therefore in favour of the constitutionality of an enactment". Kapur, J., observed referring to the right to advertise "when it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas social political or economic or furtherance of literature or human thought; but as in the present case recommendation of efficacy, value and importance in treatment of particular diseases by certain drugs and medicines".

He observed "it is not a proper method of judging the reasonableness of restrictions to compare every section of the Act, with the corresponding English Act and then to hold it unreasonable merely because the corresponding sections of the two Acts are different. The evil may be the same, but the circumstances and conditions in the two countries, in regard to standards may be different and there are bound to be differences in the degrees of restrictions on the effective portions"

2. Ibid, p. 563.
It was contended that Section 8 of the Act violates Article 31 as it provides for the seizure of any advertisement or document or article which contravenes any provisions of the Act, under the directions of the court which tries the case, the Article or thing shall be forfeited to the Government under Section 8. It was contended that there was no limitation placed on, no rules and regulations made for and no safeguards provided in regards to the powers of a person, authorised in that behalf by the Government. The argument that having regard to the purpose and object of the Act, the Legislature, did not think it necessary to provide any safeguard and nobody would be prejudiced on that account was negatived. The court held that "this portion of the Section goes far beyond the purpose for which the Act was enacted and, the absence of the safeguards which legislature though it necessary and expedient in other statutes example the Indian Drugs Act, is an unreasonable restriction, on the fundamental rights of the petitioners, and therefore the first portion of the section i.e., any person authorised by any of the provisions of this Act is unconstitutional". As the section is not severable as it becomes unintelligible if done so, the whole section was struck down. The rest of the Act was held valid.

Iyengar, J., laid down a sound principle in judging the validity of law by cautioning against apriori approach unrelated to reality in Raghubar Dayal vs. Union of India. In this case under Article 32 of the Constitution Raghubar Dayal Jaiprakash Company which was carrying on business of purchase and sale of gur and other commodities at Meerut, which along with other companies, combined together to form a company,

1. Ibid, p. 565.
2. Ibid, p. 568.
registered under the Indian Companies Act, to regulate forward transactions, in the sale and purchase of gur and other commodities, challenged the constitutional validity of the operative provisions of the forward contracts "regulation" Act 1952 which was a central Act. The validity of a notification in 1959, issued under 15 of the Act, by which gur was brought with in the purview of enactment, with immediate effect and the notification of the central Government issued simultaneously fixing the price at which forward contracts were directed to be settled were also challenged. As a result of the application as section 19, the forward contracts entered into in Gur by the petitioner, became illegal and void, with some consequences. Iyyangar, J., observed, "out constitution makers while making provision against ex post fact laws in Article 20(1) and against titles" in Article 18(1) studiously refrained from including a guarantee, regarding the impairment of obligations of contracts. There is therefore no scope for the argument that a law which affects or varies rights under a contract is for that reason constitutionally invalid as an unreasonable restriction on the right either to property or to carry on trade on business1. He observed that the "reasonableness of the provisions of a statutes are not to be judged by a priori standards, unrelated to the facts and circumstances of a situation, which occasioned the legislation"2.

He held, that the restrictions imposed on trading was in the interest of general public. The public had a vital interest in the availability of an essential commodity like sugar, and gur at reasonable and relatively stable prices. As under Chapter II, a good machinery has been created, like an


expert body to furnish government with advice on such complex problem, the restrictions imposed, other than through a recognised association was a reasonable restriction.

In a succession of three cases dealt above the Supreme Court showed awareness of the need to understand the laws in the context of the problems to be solved and the social purposes to be served by the State.

The Supreme Court upheld the power of the legislature to retrospectively levy a tax in Muhammadabhai vs. State of Gujarat. The petitioners both wholesale and retail dealers filed a writ under Article 32, impugning the constitutionality of the Bombay agricultural produce Market Act,1939, as amended by the Bombay and Saurashtra Agricultural produce markets ordinance 1961 and the rules and bye-laws framed thereunder.

Wangchoo, J., held referring to the question that Section 29(b) of the Bombay Agricultural produce Act, 1939, under which refund of licence fee collected before ordinance of 1969 came into force was prevented, was not violative of Article 31 of the constitution even though when it was collected, the market committee has no power to collect it. He held that the legislature has power to legislate retrospectively even with respect to taxation and fees were also included within the taxing power of the legislature in the broadest sense. He said that Article 31(1) has no application in such cases and the relevant Article is Article 265 which says that "no tax shall be levied or collected except by authority of law". Hence, he said sub Section 3 of Section 29 (B) which validate the levy and collection of licence fee cannot be held to be invalid under Article 31 (1) of the constitution and the same applied to Section 11, under which fees was collected and validated by sub section 2 of section 29 (B).

FAIRS AND EXHIBITION.

Ganapatl Singhi vs. State of Ajmer, the appellant was an Intimardar of Kharwa who held a cattle fair on his estate every year for some twenty years. The Chief Commissioner of Ajmer framed certain rules for the regulation of cattle and other fairs in the state of Ajmer in 1951, purporting to be acting under Section 40, and 41 of the Ajmer laws Regulation of 1877. Under the rules persons desiring to hold fairs should obtain a permit from the District Magistrate. The application of the appellant for the permit was refused on the ground that permits would not be issued for private individuals any more. The appellant unsuccessfully moved the judicial commissioner's court at Ajmer for issuing a writ directing the authorities concerned to permit the appellant to hold his fair as usual. However, leave to appeal under Article 132 (1) of the constitution was granted. Bose, J., delivering the judgment of the majority of the court held that a right to hold a fair on one's own land was a fundamental right under Article 19(1)(f). It could only be restricted in the manner permitted by Article 19(5).

In Amritsar Municipality vs. State of Punjab, the validity of the Punjab Cattle Fairs (Regulation) Act 1867 was challenged successfully before the High Court of Punjab on the ground that the provisions of the Act were vague and ambiguous as there was a distinction between cattle fair and cattle market and the cattle fair was not defined in the Act, resulting in leaving to the executive authority to determine what a cattle fair was. Subsequently the Punjab Cattle Fairs (Regulation)

Amendment Act 1968 introduced in Section 2 (bb) a definition of the expression "Cattle Fair". Again the Act was challenged before the High Court which upheld the validity of the Act. It was appealed before the Supreme Court. Some others filed writ petition directly challenging the validity of the Act. Shah, J., observed "But the rule that an act of competent legislature may be struck down by the courts on the ground of vagueness is alien to our Constitutional system." He observed "A law may be declared invalid by the superior Courts in India if the legislature has no power to enact law or that the law violates any of the fundamental rights guaranteed in Part III of the Constitution or is inconsistent with any constitutional provision, but not on the ground that it is vague." Shah, J., observed by imposing restrictions upon the right to hold a fair, the citizens are not deprived of their property and freedom guaranteed by Article 19(1)(f). The primary object of the Act is to give a monopoly to the state to hold cattle fairs. As a necessary concomitant of the monopoly, holding of cattle fairs by local authorities and individuals is prohibited. The prohibition flows directly from the assumption of monopoly by the state and falls within the terms of Article 19(6) of the Constitution. It is a provision of the Law creating monopoly 'basically and essentially necessary' for creating the State monopoly to prevent other persons from conducting the same

2. Referring to the contrary view taken by the U.S. Courts included C. Connally vs. General Construction Company (1926) 70 Law Ed. 322, Shah, J., said that "the rule enunciated by American Courts has no application under our Constitutional set up. The rule is regarded as an essential of the "Due process clause" incorporated in American Constitution by the 5th and 14th Amendments. The Courts in India have no authority to declare a statute invalid on the ground that it violates the "due process of Law". A.I.R. (1969) S.C. p. 1103. Referred to A.K. Gopalan vs. the State of Madras. (A.I.R. 1950 S.C. 27).
business\(^1\). The State was not given power by the Act to declare private property of an individual or of a local authority, a fair area. Section 4 (2) really enables a Fair Officer to define a fair area to reserve sites or places for certain facilities and to make some arrangements.

Shah, J., held that the imposition of restrictions on the right to carry on occupation, trade or business or to practice any profession on the ground that the right to carry on the business was property must be adjudged only in the light of Article 19 (6). But he held that "Section 15 which authorises that State to call upon a Panchayat Samithi or a Municipal Committee, within whose jurisdiction the fair is to be held to deposit in the cattle Fair Fund the prescribed amount not exceeding one thousand rupees to cover the initial expenses of the fair and compelling the local authority to abide by the directions, is invalid. It is clearly a provision for deprivation of property"\(^2\). Such a provision is unreasonable and invalid

(8) SOIL PRESERVATIONS.

In State of Madhya Pradesh vs. Champalal\(^3\), Sections 4 (1), 6 (1) (b) of Bhopal Reclamation and Development of Lands (eradication of Kans) Act (XIII of 1954) was impugned.

*Kans* was a pesticidal weed. By research it was concluded that it could be eradicated by deep ploughing of the land with the tractors would reach sufficient depth where from the roots of the weed could be pulled out, exposed and thus destroyed.

Iyyangar, J., held that: (1) Section 4(1) which empowered the Government to declare the area was not unconstitutional.

(2) Section 4 (1) coupled with Section 4(4) under which the reclamation Officer was empowered to enter upon any land

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so declared under Section 4 (1) and commence and complete eradication of 'Kans' operations, including those lands which were once been cleared without giving opportunity to farmers that their lands were not 'Kans' infested was arbitrary and imposed an unreasonable restriction or right to hold and enjoy property within Article 19(1)(f).

(3) The possession of reclamation officer of lands was exclusive amounting to 'taking possession' within Article 31(2) Section 2 bans the owner using the land notified under Section 4(1) until it was denotified and restored to owner by the reclamation officer.

(4) "If the period during which the owner is deprived of possession be short the compensation payable to him might be less, but that does not, in any manner effect the legality of 'dispossession or rather the taking of possession by the state within the meaning of Article 31(2)'. Hence, there had been a taking possession of the property of the owner within the Article.

(5) Under Section 9 of the Act compensation was provided for the injury suffered by the owner. It was also provided that the owner need not pay any land revenue under Section 6 (2) during the period when the land was in possession of the Government. But it was held that it was not a compensation. It only alleviates the loss.

(6) Section 4 (1) read with Section 6(1)(b) was unconstitutional as violative of Article 31 (2). Notices of demand for payment of Rs. 10/- were illegal and liable to be quashed because the board did not compute the total expenditure and as well as the proper allocation of the sum among the several land owners.

It is submitted that there is no transfer of ownership and it is only a case of temporary deprivation covered by Article 31(1) and hence the judgment is not correct.

1. Ibid, p. 130.
MANAGEMENT OF PROPERTY.

In *Sikinder Jahan vs. Andhra Pradesh State Government*¹, the validity of Section 13 (2) of the Hyderabad Atiyat Enquiries Act X of 1952, was impugned. It was meant to validate the orders of the authorities therein specified passed between September 18, 1948 and March 14, 1952 i.e., the date of police action and commencement of the operation of the Act. This was meant to avoid litigation in civil courts. The enquiries were with regard to question of succession to jagirs which were not heritable and resumed and were granted by the State.

Gajendragadkar, J., held "In view of the special character of the property in question it is obvious, that the petitioners can't challenge the validity of Section 13 (2) on the ground that it contravenes Article 19(1) (f)."² There was no violation of Article 14. Ameerunnisa Begum's case was distinguished as there was no right to succession and property was not heritable and not governed by personal laws.

REGULATION OF LEASES:

The Supreme Court considered the effect of fundamental rights on a transaction completed under a preconstitutional law before the constitution came into force in *Guru Datta Sharma vs. State of Bihar*³. The Validity of Bihar Private Forests Act (1948) was impugned by a lease holder Guru Datta Sharma who held a lease from certain persons who in turn took lease of the estate from the Raja of Ranka in Bihar. Ayyangar, J., held that the impugned Act was a compliment of the Indian Forests Act (1927) and covered by the Entry "Forests" in item 22 of the State Legislative List II of schedule 7 of Government of India.

2. Ibid, p. 1002.
Act (1935). As the legislation in pith and substance was on the subject of forests, the Act was within the legislative competence. He observed (citing several cases) that the word property connotes many tangible and intangible rights and restriction or denial of anyone of the rights does not amount to acquisition of the property itself. Each right out of the totality was itself not a property. He observed "so understood, there is no scope for the contention that the imposition, so to speak of compulsory Government Agency for the purpose of managing the forest with liability imposed to account for the income as laid down by the statute is an "acquisition" of the property itself within Section 299(2) of the Government of India Act 1935". As the right of the lease holder was put an end to by payment of compensation before Constitution of India came into force the question of violation of Article 31 of the Constitution did not arise.

In M/s. Hassanji & Sons vs. State of Madhya Pradesh¹, the appellants took an assignment of lease of coal bearing areas from one Hazi Syed Zahiruddin of Bhopal. They were anxious to acquire the adjacent collieries from their respective owners for which the sanction of the State Government was necessary. Under an agreement with the Government in 1949, rising the rate of royalty payable to Government from Rs. 5/- to Rs. 10/- per ton, the sanction was obtained. In 1960, they paid the enhanced royalty under protest. From 1951 onwards they began to challenge the terms of the agreement, and ultimately reached the Supreme Court. Sinha, C.J., delivering the judgment of the Court observed "they, with their eyes open and after thoroughly discussing the matter between themselves and the Government, had entered into those terms of agreement. Those terms may be more onerous than any other leases granted to other lessees, but that would not vitiate the contract between them"². The

contention of the appellants that the terms imposed would amount to deprivation of property, without the authority of Law was negatived by the Court, as the State did not deprive them of the property. The amount paid was only a sum realisable by the Government under the terms of the contract. Sinha, C.J., held "under the Agreement which we hold to be enforceable, the defendant may have struck a hard bargain but that cannot be brought under the prohibition of Article 31 (1) of the Constitution, even assuming that the Constitution applied to the transaction in question".

In Bihar Mines Ltd., vs. Union of India, the appellants were the sub lease holders with respect to certain area of an estate of Raja Ran Rahadur Singh of Palganj. The purpose was mining operations in the said area for soap stone etc. In 1952 the Government of Bihar issued a notification under sub section (1) of Section 3 of the Bihar Land Reforms Act 1950 declaring that the estate of Palgunj passed to and became vested in the State. In 1955 it issued another notification under the Section 3A of the Act declaring that the intermediaries in the whole estate had passed to and become vested in the State. The Mines and Minerals (Regulation and Development) Act 1957 repealed the 1943 Act.

Raghubar Dayal, J., delivering majority judgment held that the order of the controller modifying the lease under the 1965 Act and 1966 rules was without jurisdiction as the lease was granted by the State Government to the head lessee and as the head lease could not be modified. It being an adjusting mining lease, the sub lease could also not be modified, as the estate was vested in the state and original lease ceased and a new lease was deemed to have been obtained by the State.

Bachawat, J., on behalf of himself and Hidayatullah, J., delivering a dissenting judgment held that a law providing for the premature termination of a lease was protected by Article 31A (1)(e), and could not be attacked on the ground that it contravened Articles 14, 19 or 31. It is submitted that the view of the minority is correct as the State has power under the constitution to modify or terminate a lease.

In *Gujarat Pottery Works vs. B.P. Sood*, the appellant was a sublease holder for excavating white clay. In 1960 the Controller of Mines modified the terms of the lease after following procedure laid down for modifying the lease under the 1956 rules which continued to be in force in view of Section 29 of the Mines and Minerals (Regulation and Development) Act 1957 reducing the period of the lease and subjecting it to the rules made. Raghubar Dayal, J., on behalf of the majority of the court held that "the expression "winning" in Article 31A (1)(e) be construed to mean "getting or extracting" minerals from the mines and other incidental purposes". He held "that the lease in suit is a lease for the purpose of winning coal and comes within Article 31A(1)(e) of the constitution and that, therefore, the rules for the modification of any rights acquiring under the lease cannot be deemed to be void on the ground that they take away the rights conferred by Articles 14, 19 or 31 of the Constitution".

He held that the modifications were made in the public interests, and not for the benefit of the lessors. He held that the Controller was in error in limiting the period of the lease for 25 years from 1939. It could be limited to a period of 20 years commencing from June 1, 1958, the date notified as the date which the 1957 Act came into force. Accordingly, the appeal was allowed modifying the order of central Government of the Controller for a period of 20 years as mentioned above.

above and other modifications of lease were sustained.

Bachawat, J., for himself and Hidayatulla, J., in dissenting judgment held that its period could be cut down to 20 years from December 2, 1939 in order to bring it in conformity with the Act and the rules.

The Court held "the society and sammelan were different. The Sammelan was a new separate and distinct legal entity from the society. The society was deprived of all its properties by the Act. It was not a reasonable restriction in the public interest. The property under Section 5 of the societies Registration Act 1860 vested in the governing body of the society which had the right to hold the property under Article 19(1) (f). It was assumed by the Court that the society still existed as well as the governing body.

Bhargava, J., observed "the Act has deprived the members of the governing body of the property which still continue to vest in them inspite of the passing of the Act. This total deprivation of property, instead of regulating the management of the affairs of the society or its properties cannot clearly by justified as a reasonable restriction in the public interest". If the law was only for proper management and administration of the property it could be saved. But the total deprivation of the persons of the property vested in them violates the right to hold the property and cannot be justified as a reasonable restriction under Article 19(5). It is submitted that the judgment was erroneous in its assumption of the society being different from the Sammelan of the continuance of old society even after the establishment of the Sammelan under the 1962 act; that the governing body was owning the property and that the act deprived them of their property. The Act merely created a new managing committee. The institution continues, properties continue under the institution and the property of the institution was promoted.

The court surprisingly showing awareness of the litigation and troubles in the society came to a conclusion contrary to public interest.

In *Praj Ice and Oil Mills vs. Union of India*¹, Mustard Oil (Price Control) Order 1977, issued under Section 3 of essential commodities Act 1953, was challenged under Article 31B, 14, and 19(1)(f).

Chandrachud, J., (as he then was) delivering the judgment for himself and on behalf of Bhagawati, Fazil Ali, Shinglal and Jēswant Singh JJ., held that though the original Act receives protection under Article 31B, as it was included in IXth schedule, the order framed under it did not receive protection under Article 31B and it was to be tested Articles 14, 19(1) (f)(g). However, it was held basing upon the order that it was not violative of Articles 14 and 19 (1) (f) (g).

A contrary view was expressed by Beg, C.J., who held that the protection given to Section 3 of the Act was a 'derivative' protection and if the order made under that did not exceed the limits of the section and satisfy all the tests provided under it, the order gets protection. He distinguished the case of Godavari Sugar Mills vs. S.B. Kamble².

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C. CONCLUSION:

The revised decisions of the Supreme Court in the second Sholapur Mills case is not helpful in rectifying the defects of the private economy as it did not permit State Regulation and Management temporarily by taking possession of the property. Consequently Parliament amended Article 31(2) by the Constitution (Fourth Amendment) Act, 1954, permitting the Government to take possession of private property temporarily for better management in the interest of the public. No compensation need to be paid in such cases as it would not be deemed to be acquisition. Out of the two cases decided by the Supreme Court both of which were based on the same facts dealing with temporary management of Industries in which the same law was impugned it was upheld in the first instance and was held invalid in second case on unconvincing superficial technical grounds. With respect to the problem of winding up of the companies in the single case decided by the Supreme Court, the court upheld the Reserve Bank's action in winding up the Palai Bank in the public interest. In the case of Banking only one case was decided in which the court held that Article 19 was not intended to protect right against individuals. With respect to the problem of labour Regulations Court decided 5 cases. The court did not interfere with the State's interference: in this matter, excepting in T.F. Mills case in which it invalidated Section 3 (2) (b) of Bombay labour welfare fund Act. The Court could have saved the Act by a broad interpretation of bona vacantia which includes properties which cannot be claimed by any in view of almost impossibility of identification of employees. In such cases as in the case of a finder the profit should not got to a private individual but to society and hence the state can appropriate the unclaimed and unclaimable property extinguishing the liability of the employer.
Six cases have been decided by the court in the matter of licensing, out of which one has been decided against an executive order in Chandrasekhar's case withdrawing certain privileges conferred by one executive order for cutting trees. It is almost in the nature of a license. It is submitted that so far as exercise of privilege in future is concerned it cannot be treated as property and such privileges granted by one executive order can be withdrawn by another executive order.

Five cases have been decided relating to imposition of controls out of which in two cases the laws were held partially invalid. It is submitted that the court in Nathmal's case wrongly decided that the Government had to pay market price or compensation for compulsory procurement of foodgrains for equitable distribution. Payment of compensation for the difference between the procurement and market price or payment of market price mean the same. Precisely the Government's policy was to control the price, procure foodgrains and sell them to all people at reasonable price. This laudable policy is defeated by the Court's attitude.

For effective control of the economy strict prevention of unlawful activities like smuggling is necessary. In Badriprasad's case it is submitted that the court wrongly struck down Section 71 which empowers the government to confiscate gold from a person who fails to comply with Section 16 requiring declaration of stock with him. This is not an unreasonable restriction viewed from the point of the health of the economy.

In the matter of marketing five cases have been decided out of which only in one the court voted for partial invalidity of the impugned law. It is in the case of Hamdard Dawakhana in which more than one fundamental right was involved. The court struck down Section 8 of the impugned
Act on the ground that it permitted seizure of any harmful advertisement etc. without much safeguards. It is submitted that even though seizure is permitted by the executive as forfeiture would take place under the directions of the court, it is not unreasonable.

In the matter of fairs and exhibitions only two judgments delivered by the Court and one went in favour of the State and another in favour of the individual. In Gajapathi Singhji's case the court protected the right of an individual to hold a fair on his own land which cannot be interfered with excepting by the permitted restrictions in Article 19 (5). But, in the next Amritsar Municipality's case the court upheld the validity of a law creating monopoly in favour of the state to conduct fairs and the restrictions imposed on private individuals excluding them was necessary and reasonable for creating state monopoly.

With respect to the problem of soil preservation only one case was decided and it was decided in favour of the individual in Champalal's case in which the court conceded the law empowering the State to declare an area as Kans area was constitutional, but, the powers given to officers to enter the land and start kansas operations without giving opportunity to owners was unreasonable restriction.

In the matter of regulation of leases 6 cases have been decided by the Court. Only one went in favour of the state in Bihar mines' case. It is submitted that the dissenting judgment holding that a law providing for premature termination of a lease protected by Article 31A (1) (a) is sound.

Out of a total of 34 cases decided with reference to regulation and control 5 judgments went against the impugned laws or state action and in 4 cases partial invalidity was

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1. See Appendix IV.
the result. In all in 9 cases the individual succeeded, in 27.7% of the cases the court voted against the impugned law. The maximum participation was by Sinha, J., in 11 cases and he voted only in one case against State action. Shah, J., and Wanchoo participated in 9 cases each and voted in favour of the individual each in 2 cases. On the other hand Das, J., who was reputed to favour State regulation participated in 9 cases and voted against the State in more than 50% of the cases i.e. in as many as 5 cases. Whereas Gajendragadkar, J., participated in 8 cases and voted in favour of the State in all the cases. N.H. Bhagwati, Rajagooal Ayyargar and Das Gupta participated in 7 cases each. The first two voted against the state in 2 case each, whereas Das Gupta like Gajendragadkar voted in favour of the impugned law in all the cases. Subba Rao and Sikri participated each in 4 cases and the percentage of invalidity of each is very high 75%, they voted against the state each in three cases. Whereas Hidayatullah participated in the same number of cases and voted in all in favour of the impugned laws. Pose, J., participating in 6 cases voted in favour of the individual in 4. If figures give any guidance, they show that Gajendragadkar, Sinha and Das Gupta favoured State control of the economy and Das, Subba Rao, Sikri favoured more freedom for the individual.

Compared to the enormity of State control and regulation of the economy by many regulatory laws, the number of cases are less. It may be because laws are not so harsh or not unreasonable or the aggrieved property owners adjusted to that and also perhaps, found ways and means to mitigate and made the hardship of laws by administrative backdoors.

1. See Appendix IX.