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THE STATE OF BOMBAY AND ANOTHER

v.

F. N. BALSARA

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v.

THE STATE OF BOMBAY AND ANOTHER

[SAIYID FAZL ALI, PATANJALI SASTRI, MUKHERJEA, S. R. DAS and VIVIAN BOSE *JJ.*]

Bombay Prohibition Act (XXV of 1949)—Constitutional validity —Applicability of Act to foreign liquors—To medicinal and toilet preparations containing alcohal—Validity of ss. 2(24) (*a*), 12, 13, 23, 24, 39, 40(1) (*b*), 46, 52, 53, 139 (*c*)—*Law of Province prohibiting possession and sale of foreign liquor within Province—Whether encroaches on power of Dominion to make laws as to "import and export" —Doctrine of original package —Applicability to India — Construction of Lists—Restriction on fundamental right "to acquire, hold and dispose of property" and to "equal protection of the laws" Government of India Act,* 1935, *s.* 297 (4), *Seventh Sched., List I entry* 19—*List II entry* 31—*Constitution of India, Arts.* 14, *19*(*1*), *19* (*2*).

Under entry 31 of List II of the Seventh Schedule to the Government of India Act, 1935, the Provincial Legislatures had the power to make laws in respect of "intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors" and under entry 19 of List I, the Dominion Legislature had the power to make laws with respect to "import and export across customs frontiers". The constitutional validity of the Bombay Prohibition Act, 1949, in so far as it restricted the possession and sale of foreign liquors was impugned on the ground that it was an encroachment on the field assigned to the Dominion Legislature under entry 19 of List I:

Held, (i) that the words "possession and sale" occurring in entry 31 of List II must be read without any qualification, and the word "import" in entry 19 of List I standing by itself will not include either sale or possession of the article imported into the country. There was thus no conflict between entry 31 of List II and entry 19 of List I and the Bombay Prohibition Act, in so far as it purported to restrict the possession and sale of foreign liquors, did not encroach upon the field of the Dominion Legislature; (*ii*) even assuming that the prohibition of purchase, use, possession, transport and sale of liquor will affect its import, the Bombay Prohibition Act was in pith and substance an Act fall-

ing within entry 31 of List II and the fact that the law incidentally encroached upon the powers of the Dominion Legislature under entry 19 of List I would not effect its validity.

The American doctrine of "original package" which laid down the importation was not over so long as the goods were still in that original package, has no application in India having regard to the scheme of legislation that has been outlined in the Government of India Act, 1935, and in the present Constitution in which the various entries in the Legislative Lists have been expressed in clear and precise language.

Bhola Prasad v. *The King Emperor* [1942] F.C.R. 17 and *Miss Kishori Sethi* v. *The King* [1949] F.C.R. 650 relied on. *In re the Central Provinces and Berar Act No. XIV of* 1838 [1939] *F.C.R.*, 18, *The United Provinces* v. *Atiqa Begum* [1940] *F.C.R.* 110, *Governor General in Council* v. *Province of Madras* [1945] *F.C.R.* 179, *Prafulla Kumar Mukkerjea and others* v. *Bank of Commerce, Khulna* [1947] *F.C.R. 28, Subramanyan Chettiar* v. *Muthuswami Goundan* [1948] *F.C.R.* 207 referred to: *Brown* v. Maryland (25 U.S. 419) and *Leisy* v. *Hardin* (135 U.S. 100) distinguished.

The Bombay Prohibition Act, 1949, does not in any way contravene the provisions of s. 297 (1) (a) of the Government of India Act, 1935, inasmuch as it is not a law made by virtue of the entry relating to "Trade and commerce within the Province" (entry 2 of List II) or the entry relating to "the production, supply and distribution of commodities" (entry 29 of List II).

Bhola Prasad v. *King Emperor* [1942] *F.C.R.* 17 followed.

The word "liquor" as understood in India at the time of the Government of India Act, 1935, covered not only those alcoholic liquids which are generally used as beverages and produce intoxication, but also all liquids containing alcohol; the definition of "liquor" contained in s. 2 (24) of the Bombay Prohibition Act, 1949, is not therefore *ultra vires*.

Section 39 of the Act which empowers the Provincial Government to permit the use or consumption of foreign liquor on cargo boats, warships and troopships and in military and naval messes and canteens does not contravene Art. 14 of the Constitution (which provides that the State shall not deny to any person equality before the law or the equal protection of the laws) inasmuch as the relaxation of the general law in respect of the persons contemplated by the section is not arbitrary or capricious but is based on a reasonable classification.

Rule 67 of the Bombay Foreign Liquor Rules which authorises the granting of a permit to "any foreigner on a tour of India who enters the State of Bombay and desires to possess, use and consume foreign liquor" is not void on the ground of discrimination, firstly because, thought it provides for the case of a foreign

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visitor, there is no prohibition against any other outsider being granted a permit, and secondly, because the policy underlying the rule is quite consistent with the policy underlying s. 40 of the Act which enables permits to be granted to foreigners under certain conditions.

Section 52, 53 and 139 (c) of the act do not constitute delegation of legislative power, and delegation of the character which these sections involve cannot in any view be held to be invalid.

In re Delhi Laws Act, 1912 *etc.*(1) relied on.

The restrictions impose by ss. 12 and 13 of the Act on the possession, sale, use and consumption of liquor are not reasonable restrictions on the fundamental right guaranteed by Art. 19 (1) (f) of the Constitution "to acquire, hold and dispose of property", so far as medicinal and toilet preparations containing alcohol are concerned and the said sections are invalid so far as they prohibit the possession, sale, use and consumption of these articles, but the sections are not wholly void on this ground as the earlier categories mentioned in the definition of liquor, namely, spirits of wine, methylated spirit, wine, beer and toddy are distinctly separable items which are easily severable from the last category, namely, all liquors containing alcohol, and the restrictions on the possession, sale, use and consumption of these earlier categories are not unreasonable restrictions.

Romesh Thappar v. *The State of Madras* [1950] *S.C.R.* 594 *and Chintaman Rao* v. *The State of Madhya Pradesh* [1950] *S.C.R.* 759 distinguished.

Sections 23 (a) and 24 (1) (a) of the act in so far as they refer to "commending" any intoxicant, conflict with the fundamental right of freedom of speech and expression guaranteed by Art. 19 (1) (a) of the Constitution and none of the conditions mentioned in cl. (2) of Art. 19 applies to the case and therefore these provisions are void. Section 23 (b) is also void, because the words "incite" and "encourage" are wide enough to include incitement and encouragement by words and speeches and also by acts and the words used in the section are so wide and vague that the clause must be held to be void in its entirety.

There is nothing unreasonable in a law relating to prohibition discriminating between Indian citizens against whom it is primarily to be enforced and foreigners who have no intention of permanently residing in India. A provision enabling a certain class of persons holding permits to offer drink to persons holding similar permits is also not unreasonable. Notifications No. 10484/45C and 2843/49(a) are not therefore invalid.

The requirement that an applicant for a permit on the ground of health under s. 40(1) (b) must get a medical certificate declaring that he is an "addict" is not warranted by the provisions of

(1) Reported infra.

the Act. The word "addict" in the form of the medical certificate should therefore be replaced by the words used in s. 40 (1) (b) of the Act or words corresponding to them.

The provisions of the Act which have been held to be invalid are not so inextricably bound up with the remaining provisions of the Act as to render the whole Act void.

[The decision of the High Court that ss. 136 (1), 136 (2) (b), 136 (2) (c) 136 (2) (e) and 136 (2) (f) were void inasmuch as they offended against Art. 19 of the Constitution was not assailed before the Supreme Court.]

CIVIL APPELLATE JURISDICTION: Appeal under Article 132(1) of the Constitution of India from the Judgment and Order dated the 22nd August, 1950, of the High Court of Judicature at Bombay in Miscellaneous Application No. 139 of 1950.

M. C. Setalvad and *C. K. Daphtary* (*M. M. Desai* and *H. M. Seervai* with them) for the appellants in Case No. 182 and respondents in Case No. 183.

N. P. Engineer (*G. N. Joshi, R. J. Kolah* and *N. A. Palkhiwala,* with him) for the respondent in Case No. 182 and appellant in Case No. 183.

195. May 25. The judgment of the court was delivered by

Fazl Ali J.

FAZL ALI J.—These appeals arise from the judgment and order of the High Court of Judicature at Bombay upon the application of one F. N. Balsara (hereinafter referred to as the petitioner), assailing the validity of certain specific provisions of the Bombay Prohibition Act, 1949 (Bombay Act No. XXV of 1949), as well as of the Act as whole. The petitioner, claiming to be an Indian citizen, prayed to the High Court *inter alia* for a writ of mandamus against the State of Bombay and the Prohibition Commissioner ordering them to forbear from enforcing against him the provisions of the Prohibition Act and for the issue of a writ of mandamus ordering them (1) to allow him to exercise his right to possess, consume and use certain articles, namely, whisky, brandy, wine, beer, medicated wine, eau-de-cologne, etc., and to import and export across the Customs frontier and to purchase, possess consume and use any stock of foreign

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liquor, eau-de-cologne, lavender water, medicated wines and medicinal preparations containing alcohol, and (2) to forbear from interfering with his right to possess these articles and to take no steps or proceedings against him, penal or otherwise, under the Act. The petitioner also prayed for a similar order under section 45 of the Specific Relief Act against the respondents. The High Court, agreeing with some of the petitioner's contentions and disagreeing with others, declared some of the provisions of the Act to be invalid and the rest to be valid. Both the State of Bombay and the petitioner, being dissatisfied with the judgment of the High Court, have appealed to this Court after obtaining a certificate from the High Court under article 132 (1) of the Constitution.

The Act in question was passed by the Legislature of the Province of Bombay as it was constituted in 1949, and was published in the Bombay Government Gazette on the 20th May, 1949, and came into force on the 16th June 1949. The Act consists of 148 sections with 2 schedules and is divided into 11 chapters. It is both an amending and consolidating Act and incorporates the provisions of the Bombay Abkari Act which it repeals and also those of the Bombay Opium and Molasses Acts and contains new provisions for putting into force the policy of prohibition which is one of the objects mentioned in the preamble of the Act. The most important provision in Chapter I his the definition of "Liquor" which has been vigorously assailed as being too wide and therefore beyond the powers of the Provincial Legislature. Chapter II relates to establishment and is not relevant to the present appeal. Chapter III, which contains a number of prohibitions in regard to liquor as defined in the Act, is said to enact sweeping provisions which are liable to be assailed. Sections 12 and 13 and the relevant provisions of sections 23 and 24 in this Chapter may be quoted :—

12. No person shall—

(a) manufacture liquor;

(b) construct or work any distillery or brewery;

(c) import, export, transport or possess liquor; or

(d) sell or buy liquor.

13. No person shall—

(a) bottle any liquor for sale;

(b) consume or use liquor; or

(c) use, keep or have in his possession any materials, still, utensils, implements or apparatus whatsoever for the manufacture of any liquor.

23. No person shall—

(a) commend, solicit the use of, offer any intoxicant or hemp, or

(b) incite or encourage any member of the public or any class of individuals of the public generally to commit any act, which frustrates or defeats the provisions of this Act, or any rule, regulation or order made thereunder, or.....

24 (1). No person shall print or publish in any newspaper news-sheet, book leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter—

(a) which commends, Solicits the use of, or offers any intoxicant or hemp,

(b) which is calculated to encourage or incite any individuals or the public generally to commit an offence under this Act, or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorisation granted thereunder.

Chapter IV relates to "control, regulation and exemptions", and contains *inter alia* sections 30 to 38 and section 44 which provide for cases in which, licenses for the manufacture, export, import, transport, sale or possession of liquor may be granted; section 39, which authorises the Government to permit the use or consumption of foreign liquor on cargo boats, warships, troopships and in military and naval messes and canteens; section 40, which provides for the grant of

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permits for the use or consumption of foreign liquor to persons whose health would be seriously and permanently affected if they were not permitted to use or consume such liquor and to foreigners who do not intend to stay permanently in India; section 41, which enables special permits to be granted to diplomats and foreign sovereigns; section 45, which authorises use of liquor for sacramental purposes; section 52, which empowers an authorised officer to grant licenses, permits, etc., in cases not specifically provided for; section 53, which deals with the form in which and the conditions under which licenses, etc., may be granted; and section 54 which provides for the cancellation or suspension of licenses and permits. The other material chapters of the Act are Chapter VII, which provides for offences and penalties, and Chapter IX which deals with "powers and duties of officers and procedure." Sections 118 and 119 of the Act declare the offences under the Act to be cognisable and some of them to be non-bailable. Under section 121, any authorised prohibition officer or any police officer may open any package and examine any goods and may stop any vessel, vehicle, or other means of conveyance and search for any intoxicant. Section 136(1) provides that if any of the officers mentioned therein is satisfied that any person is acting or is likely to act in a manner which amounts to preparation, attempt, abetment or commission of any of the offences punishable under section 65 or 68 of the Act, he may arrest such person without a warrant and direct that such person shall be committed to such custody as such officer may deem fit for a period not exceeding 15 days. By section 136(2), the State Government is given the extraordinary power of imposing restrictions on the right of free movement of any person if it is satisfied that such person is acting or is likely to act in the manner aforesaid. Chapter XI contains certain miscellaneous provisions and the only sections of this Chapter which need be referred to are section 139 (c), which states that the State Government may by general or special order exempt any person or class of persons or institution or class of institutions from the

observance of all or any of the provisions of the Act or any rule, regulation or order made thereunder, and section 147, which declares that nothing in the Act shall be deemed to apply to any intoxicant or other article in respect of its import or export across the customs frontier as defined by the Central Government.

The High Court accepted the contention of the petitioner that the definition of "liquor" in the Act was too wide and went beyond the power vested in the legislature to legislate with regard to intoxicating liquors under item 31 of List II. It also held the following section to be invalid :—

Sections 23 (a) and 24 (1) (a) so far as they refer to "commending"; section 23 (b); 24 (1) (b) so far as it refers to "evasion"; section 39; section 52; section 53 in part; section 136 (1); section 136 (2) (b), (c), (e), (f); and section 139 (c). The High Court also held Rule 67 of the Bombay Foreign Liquor Rules and Notifications Nos. 10484/45 (c) and 2843/49 (a), dated the 30th March, 1950, invalid. It further held that the word "addict" in the medical certificate was not warranted by the provisions of the Act.

The two important questions which this Court is called upon to decide in these appeals are :—

(1) whether there are sufficient grounds for declaring the whole Act to be invalid; and

(2) to what extent the judgment of the High Court can be upheld with regard to the specific provisions of the Act which have been declared by it to be void.

It seems to me that it will be convenient to deal in the first instance with the argument assailing the validity of the Act as a whole, which is based on three grounds, these being :—

(1) that the law is an encroachment on the field which has been assigned exclusively to the Central Legislature under entry 19 of List I;

(2) that some of the material provisions of the Act interfere with or are calculated to interfere with inter-State trade and commerce and as such transgress the

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provisions of section 297 of the Government of India Act, 1935; and

(3) that the High Court having held a number of material provisions to be void, should have declared the Act as a whole to be invalid, especially as the provisions found by the High Court to be void are not severable from the rest of the Act and it cannot be said that the legislature would have passed the Act in the truncated form in which it is left after the decision of the High Court.

It is obvious that the proper occasion to deal with the third ground will be after examining the specific provisions which have been declared by the High Court to be void, but the first two grounds may be dealt with at once.

The first question is whether the impugned law can be said to have made any encroachment upon the field of legislation assigned to the centre. In order to decide this point, it will be necessary to refer to entry No. 31 in List II, under which the law purports to have been made, and entry No. 19 of List I, which is said to have been transgressed. These entires run as follows :—

Entry 31, List II : Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

Entry 19, List I : Import and export across customs frontiers as defined by the Dominion Government.

Prima facie, it would seem that there is no real conflict between these two entries, because entry 31 of List II has no reference to import or export but merely deals with production, manufacture, possession, transport, purchase and sale. Dealing with this entry, Gwyer C. J. observed as follows in the case of *Bhola Prasad* v. *The King Emperor*(1) :—

(1)[1942] F.C.R. 17 at 25.

"A power to legislate 'with respect to intoxicating liquors' could not well be expressed in wider terms, and would, in our opinion, unless the meaning of the words used is restricted or controlled by the context or by other provisions in the Act, undoubtedly include the power to prohibit intoxicating liquors throughout the Province or in any specified part of the Province."

Thus, under entry 31, the Provincial Legislature can pass any law regarding production, manufacture, transport, purchase, possession and sale of intoxicating liquor. But the point that is pressed for our consideration is that "import" does not end with mere landing of the goods on the shore or their arrival in the customs house, but it implies that the imported goods must reach the hands of the importer and he should be able to possess them. On this basis, it is contended that there is no difference in effect between a power to prohibit the possession and sale of an article and a power to prohibit its import or introduction into the country, since the one would be a necessary consequence of the other. This contention is based upon some American cases to which I shall refer later, but it may be stated at once that the point which is raised in this case is precisely the point which was raised and negatived in *Miss Kishori Shetty* v. *The King*(1). In that case, the appellant had been convicted under section 14-B of the Bombay Abkari Act, 1878, as amended by the Bombay Abkari (Amendment) Act, 1947, for having in possession a certain quantity of foreign liquor in excess of the limit prescribed by a notification issued under the following provision of the Act :—

"14-B (2).....the Provincial Government may by notification in the Official Gazette prohibit the possession by any individual or a class or a body of individuals or the public generally, either throughout the whole Presidency or in any local area, of any intoxicant, either absolutely or subject to such conditions as it may prescribe."

(1) [1949] F.C.R. 650.

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The main argument advanced in that case was reproduced in the judgment in these words :—

"But counsel for the appellant drew attention to item 19 of List I which covers "Import and export across customs frontiers as defined by the Dominion Government", and argued that if "intoxicating liquors" in item 31 of List II were held to include also liquors imported from abroad, then the Provincial Legislature, by prohibiting possession of such liquors by all persons, whether private consumers, common carriers or warehousemen, could defeat the power of the Federal Legislature to regulate imports of foreign liquors across the sea or land frontiers of British India which are customs frontiers as defined by the Central Government and thus seriously jeopardise an important source of central customs revenue. As under section 100 of the Constitution Act the Provincial legislative powers under List II were subject to the exclusive powers of the Federal Legislature in List I, the Bombay Act to the extent to which it trenched upon the subject of item 19 of the latter List must, it was submitted, be regarded as a nullity."

It will be seen that the rationale of the argument there is the same as that of the argument advanced in the present case, but it was rejected for reasons which are clearly set out in the following passage :—

"There is, in our view, no irreconcilable conflict here such as would necessitate recourse to the principle of Federal supremacy laid down in section 100 of the Constitution Act. Section 14-B does not purport to restrict or prohibit dealings in liquor in respect of its importation or exportation across the sea or land frontiers of British India. It purports to deal with the *possession* of intoxicating liquors which, in the absence of limiting words, must include foreign liquors. It is far-fetched, in our opinion, to suggest that, in so far as the provision covers foreign liquors, it is legislation with respect to import of liquors into British India by sea or land".

Since the enactment of the Government of India Act, 1935, there have been several cases in which the principles which govern the interpretation of the Legislative Lists have been laid down. One of these principles is that none of the items in each List is to be read in a narrow or restricted sense(1). The second principle is that where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. This principle has been stressed in a number of cases by the Federal Court as well as by the Privy Council. *In re The Central Provinces and Berar Act No. XIV of* 1938(2), the question arose as to whether a tax on the sale of motor spirits was a tax on the sale of goods within entry 48 of the Provincial List or a duty of excise within entry 45 of the Federal list. Dealing with the difficulty which arose in that case, Gwyer C. J. observed as follows :—

"Only in the Indian Constitution Act can the particular problem arise which is now under consideration; and an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where neceessary, modifying, the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the *non-obstante* clause operate and the federal power prevail; for the clause ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship."

To the same effect are the following observations made by the Judicial Committee of the Privy Council in *Governor-General in Council* v. *Province of Madras*(3),

(1) Vide *United Provinces* v. *Atiqa Begum*, [1940] F. C. R. 110 at 134.

(2) [1939] F.C.R. 18. (3) [1935] F.C.R. 179 at 191.

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after referring to section 100 of the Government of India Act, 1935 :—

"Their Lordships do not doubt that the effect of these words is that, if the legislative powers of the Federal and Provincial Legislatures, which are enumerated in List I and List II of the Seventh Schedule, cannot fairly be reconciled, the latter must give way to the former. But it appears to them that it is right first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it, and equally giving to the language of the provincial Legislative List a meaning which it can properly bear." In the present case, as already pointed out, the words "possession and sale" occurring in entry 31 of List II are to be read without any qualification whatsoever, and it will not be doing any violence to the construction of that entry to hold that the Provincial Legislature has the power to prohibit the possession, use and sale of intoxicating liquor absolutely. If we forget for the time being the principles which have been laid down in some of the American cases, it would be difficult to hold that the word 'import' standing by itself will include either sale or possession of the article imported into the country by a person residing in the territory in which it is imported. There is thus no real conflict between entry 31 of List II and entry 19 of List I, and I find it difficult to hold that the Bombay Prohibition Act in so far as it purports to restrict possession, use and sale of foreign liquor, is an encroachment on the field assigned to the Federal Legislature under entry 19 of List I.

There is also another way of dealing with the contention raised before us. It is well settled that the validity of an Act is not affected if it incidentally trenches on matters outside the authorised field, and therefore, it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the

powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid, merely because it incidentally encroaches on matters which have been assigned to another legislature. This was emphasised very clearly in *Gallagher* v. *Lynn*(1) in these words :—

"It is well established that you are to look at the "true nature and character of the legislation: *Russell* v. *The Queen*(2) 'the pith and substance of the legislation'. If, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field".

In *Prafulla Kumar Mukherjee and Others* v. *Bank of Commerce, Ltd., Khulna*(3) the question arose before the Privy Council whether the Bengal Money-lenders Act, 1940, which provided that no borrower shall be liable to pay after the commencement of the Act more than a limited sum in respect of principal and interest, was *intra vires* the Provincial Legislature as dealing in pith and substance with money-lending and money-lenders, a subject-matter within the competence of the Provincial Legislature under entry 27 of List II, or whether it trenched on "promissory notes" and "banking", which were subjects reserved for the Federal Legislature under entries 28 and 38 respectively of List I. The Privy Council, notwithstanding the fact that loans on promissory notes would also have been subject to the provisions of the impugned Act, held that the Act was valid, and while rejecting the argument that it was beyond the legislative competence of the Provincial Legislature which had enacted it, their Lordships observed as follows :—

"As Sir Maurice Gwyer C. J. said in the *Subrahmanyam Chettiar* case: "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a

(1) [1937] A.C. 863 at 870.
(2) 7A.C. 829.
(3) [1947] F.C.R. 28.

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subject in another list, and the different provisions of the enactment may be so closely inter-twined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its 'pith and substance', or its 'true nature and character', for the purpose of determining whether it is legislation with respect to matters in this list or in that". Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation"(1).

The same principle was reiterated by the Federal Court in *Ralla Ram* v. *The Province of East Punjab*(2) and was also referred to in *Miss Kishori Shetty* v. *The King*(3) in the following passage :—

"It may be that a general adoption of the policy of prohibition by the Provinces will lead to a fall in the import of foreign liquors and to a consequential diminution of the Central customs revenue, but where the Constitution Act has given to the Provinces legislative power with respect to a certain matter in clear and unambiguous terms, the Court should not deny it to them or impose limitations on its exercise, on such extraneous consideration. It is now well settled that if an enactment according to its true nature, its pith and substance, clearly falls within one of the matters assigned to the Provincial Legislature, it is valid notwithstanding its incidental encroachment on a Federal subject."

The short question therefore to be asked is whether the impugned Act is in pith and substance a law relating to possession and sale etc. of intoxicating liquors or whether it relates to import and export of intoxicating liquors. If the true nature and character

(1) [1947] F.C.R. at p. 51. (3) [1949] F.C.R. 650 at 655.
(2) [1948] F.R.C. 207 at 225.

of the legislation or its pith and substance is not import and export of intoxicating liquor but its sale and possession etc., then it is very difficult to declare the Act to be invalid. It is said that the prohibition of purchase, use, possession, transport and sale of liquor will affect its import. Even assuming that such a result may follow, the encroachment, if any, is only incidental and cannot affect the competence of the Provincial Legislature to enact the law in question.

On these considerations, there is really nothing else to be said on the question before us, but in view of the very great stress laid upon the American doctrine of "original package", it seems necessary to deal with what that doctrine means and under what conditions it was evolved. The wide meaning of 'import' on which reliance was placed on behalf of the petitioner was adopted for the first time by Marshall C. J. in *Brown* v. *Maryland*(1), in which the facts were these. The State of Maryland had passed an Act prohibiting importers of foreign goods from selling their goods without taking a license for which a certain amount had to be paid. The question which was raised in that case was that the Act was repugnant to the provisions of the Constitution which provided that "no State shall without the consent of Congress allow any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws." In the course of his judgment, Marshall C. J. observed *inter alia* as follows :—

"There is no difference, in effect, between a power to prohibit the sale of an article and a power to prohibit its introduction into the country. The one would be a necessary consequence of the other. No goods would be imported if none could be sold. No object of any description can be accomplished by laying a duty on importation, which may not be accomplished with equal certainty by laying a duty on the thing imported in the hands of the importer."(2)

The learned Chief Justice further observed :—

(1) (1827) 25 U.S. 419. (2) (1827) 25 U.S. at p. 439.

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"Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorise importation, but to authorise the importer to sell."(1)

Upon principles so stated, what is known as the "original package" doctrine was evolved in America, which was applied not only to commodities imported from foreign countries but also to commodities which were the subject of inter-state commerce. This doctrine laid down that importation was not over so long as the goods were in the original package and hence a State had no power to tax imports until the original package was broken or there was one sale while the goods were still in the original package. The principle upon which this doctrine was founded is explained by Marshall C. J. in the case referred to in these words :—

"There must be a point of time when the prohibition ceases, and the power of the State to tax commences; we cannot admit that this point of time is the instant that the articles enter the country....It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form of package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution."(2)

The doctrine was reiterated in a number of cases, and in *Leisy* v. *Hardin*(3), it was laid down that "the importers had the right to sell in the original packages unopened and unbroken, articles brought into the

(1) (1827) 25 U.S. at p. 447.
(2) (1827) 25 U.S. at p. 441.
(3) 135 U.S. 100.

State from another State or territory notwithstanding a statute of the State prohibiting the sale of such articles except for purposes mentioned therein and under a license from the State". The American writers have however pointed out the difficulty which arose from time to time in applying the "original package" doctrine, since sometimes very intricate questions arose before the courts, such as whether the doctrine applied to the larger cases only or to the smaller packages contained therein, or whether it applied to smaller paper packages of cigarettes taken from loose piles of packages at the factory and transported in baskets. The difficulty in applying the doctrine was particularly experienced in working prohibition schemes, and to combat its mischief and uncertainty, new legislative measures had to be passed by the Congress like the Wilson Act, Webb-Kenyon Act, etc. I do not wish to pursue the matter, but wish only to point out that the doctrine has no place in this country, having regard to the scheme of legislation that has been outlined in the Government of India Act, 1935, and in the present Constitution, in which the various entries in the Legislative Lists have been expressed in clear and precise language. In *The Province of Madras* v. *Boddu Paidanna and Sons*(1), Gwyer C.J., while expressing his profound respect for the views expressed by Marshall C.J. in *Brown* v. *Maryland*(2), mildly hinted that it was easier to follow the line of reasoning of Thompson J. in his dissenting judgment in that case and concluded with the following remarks :—

"Next, it is to be observed that the American Constitution also provides that Congress alone has power "to regulate commerce with foreign nations, among the several States and with the Indian tribes", and it was held that the Maryland tax was no less repugnant to this provision also. Marshal C. J. asked : "To what purposes should the power to allow importation be given, unaccompanied with the power to authorise the sale of the thing imported? Congress has a right, not only to authorise importation, but to

(1) [1942] F.C.R. 90. (2) (1827) 25 U.S. 419.

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authorize the importer to sell.... What does the importer purchase, if he does not purchase the privilege to sell?" On this view of the Commerce Clause, it would indeed be difficult to recognize the right of the State to impose a tax upon the first sale of the commodity, at any rate so long as it remained in the importer's hands. In the Indian Constitution Act no such question arises; and the right of the Provincial Legislature to levy a tax on sales can be considered without any reference to so formidable a power vested in the Central Government. Lastly, the prohibition in the American Constitution is against the laying of "any imposts or duties on imports or exports" the prohibition is not merely against the laying of duties of customs, but is expressed in what we conceive to be far wider terms; and it does not appear to us that it would necessarily follow from the principle of the Maryland decision that in India the payment of customs duty on goods imported from abroad or the payment of an excise duty on goods manufactured or produced in India can be regarded as conferring some kind of license or title on the importer or manufacturer to sell his goods to any purchaser without incurring a further liability to tax. That was the view which commended itself to the Court in the *Maryland Case*(1) and it was a view adopted and argued before us. The analogy with the American case is an attractive one, but for the reasons which we have given we are wholly unable to accept it."(2)

I find considerable force in the opinion thus expressed by Gwyer C.J. and agree that the "original package" doctrine has no application to this country. In the United States, the widest meaning could be given to the Commerce Clause, for there was not question of reconciling that Clause with another Clause containing the legislative power of the State. Under the provisions of the Government of India Act, a limited meaning must be given to the word "import" in entry 19 of List I in order to give effect to the very general words used in entry 31 of List II.

(1) (1827) 25 U. S. 419. (2) [1942] F.C.R. 90 at 106-7.

The second attack on the Act is founded upon the provision contained in section 297 (1) (*a*) of the Government of India Act, 1935, and it is contended that the prohibitions contained in the impugned Act in regard to the use, consumption, purchase, transport, possession and sale of intoxicating liquor will necessarily amount to prohibiting and restricting inter-provincial commerce, and inasmuch as they tend to stop and restrict entry into or export from the Province of Bombay of goods of a particular class or description, the Act contravenes section 297 (1) (*a*). This section runs as follows :—

"No Provincial Legislature or Government shall—

(*a*) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that List relating to the production, supply and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from the Province of goods of any class or description...."

It should be noticed that this provision refers to "trade and commerce within the Province", which is the subject of entry 27 of List II and to "production, supply and distribution of commodities", which is the subject of entry 29 of List II. The provision virtually means that import into or export from a Province of goods of any class or description cannot be prohibited or restricted on the ground that it will affect, trade and commerce within the Province or the production, supply and distribution of commodities. If therefore by any law framed by a Provincial Legislature relating to or based on the subjects of entry 27 or entry 29 of List II, the entry into or export from the Province of any goods is prohibited or restricted, such a law will be invalid. But, here, we are concerned not with a law which purports to be made and was made by virtue of entry 27 or entry 29 of List II, but a law which is claimed to have been made

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and was made by virtue of entry 31 of that List and certain other entries therein. Section 297(1) (a) therefore has no application to the present case. This was clearly pointed out in the case of *Bhola Prasad* v. *King Emperor*(1). In that case, the Bihar Excise (Amendment) Act, 1940, which amended the Bihar and Orissa Excise Act, 1915, was challenged as contravening section 297 (1) (a), but it was held to be a valid Act on grounds already stated, as will appear from the following observations of Gwyer C. J. :—

"The second point raised on behalf of the appellant was that s. 19 (4) of the Act of 1915, as amended by the Act of 1940, is invalid because repugnant to s. 297 (1) (a) of the Constitution Act. We confess that we have difficulty in appreciating this argument. Section 297 (1) (a) enacts that....It is plain beyond words that this provision only refers to legislation with respect to entry No. 27 and entry No. 29 in the Provincial Legislative List; it has no application to legislation with respect to anything in entry No. 31. A Provincial Legislaure, if it desires to pass a law prohibiting export from, or import into, the Province, must therefore seek for legislative authority to do so in entries other than entry No. 27 or entry No. 29. If it can point to legislative powers for the purpose derived from any other entry in the Provincial Legislative List, then its legislation cannot be challenged under section 297 (1) (a). There is no substance at all in the appellant's arguments on this point"(2).

Having dealt with and negatived the first two contentions upon which the validity of the entire Act was assailed, I now proceed to deal with certain sections of the Act, the validity of which also was brought into question. The provision which was most vigorously assailed and in regard to which the attack was successful in the High Court, is the definition of the word 'liquor' in section 2 (24) of the Act. The definition runs thus :—

"Liquor" includes—

(1) [1942] F.C.R. 17 at 27. (2) [1942] F.C.R. 17 at 27. 28.

(a) spirits of wine, methylated spirits, wine, beer, toddy and all liquids consisting of or containing alcohol; and

(b) any other intoxicating substance which the Provincial Government may, by notification in the Official Gazette, declare to be liquor for the purposes of this Act.

The High Court has held that the word "liquor" ordinarily means 'a strong drink as opposed to soft drink" but it must in any event be a beverage which is ordinarily drunk. Proceeding upon this view, the High Court has held that although the legislature may while legislating under entry 31 prevent the consumption of non-intoxicating beverages and also prevent the use as drinks of alcoholic liquids which are not normally consumed as drinks, it cannot prevent the legitimate use of alcoholic preparations which are not beverages nor the use of medicinal and toilet preparations containing alcohol. This view of the High Court was very strongly supported on the one hand and equally strongly challenged on the other before us, and I therefore proceed to deal with the question at some length.

In the Oxford English Dictionary, edited by James Murry, several meanings are given to the word "liquor", of which the following may be quoted :—

LIQUOR....1. A liquid; matter in a liquid state; in wider sense a fluid.

2. A liquid or a prepared solution used as a wash or bath, and in many processes in the industrial arts.

3. Liquid for drinking; beverage, drink. Now almost exclusively a drink produced by fermentation or distillation. Malt liquor, liquor brewed from malt; ale, beer, porter etc.

4. The water in which meat has been boiled; broth, sauce; the fat in which bacon, fish or the like has been fried; the liquid contained in oysters.

5. The liquid produced by infusion (in testing the quality of a tea). In liquor, in the state of an infusion.

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Thus, according to the Dictionary, the word 'liquor' may have a general meaning in the sense of a liquid, or it may have a special meaning, which is the third meaning assigned to it in the extract quoted above, *viz.*, a drink or beverage produced by fermentation or distillation. The latter is undoubtedly the popular and most widely accepted meaning, and the basic idea of beverage seems rather prominently to run through the main provisions of the various Acts of this country as well as of America and England relating to intoxicating liquor, to which our attention was drawn. But at the same time, on a reference to these very Acts, it is difficulty to hold that they deal exclusively....with beverages and are not applicable to certain articles which are strictly speaking not beverages. A few instances will make the point clear. In the National Prohibition Act, 1919, of America (also known as the Volstead Act), the words, liquor and intoxicating liquor, are used as having the same meaning and the definition states that these words shall be construed to "include alcohol, brandy, whisky, rum, gin, beer, ale, porter and wine, and in addition thereto any spirituous, vinous malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes." Having defined 'liquor' and 'intoxicating liquor' rather widely, the Volstead Act excepted denatured alcohol, medicinal preparations, toilet and antiseptic preparations, flavoring extracts and sirups, vinegar and preserved sweet cider (s. 4) which suggest that they were included in the definition. In some of these items, we have the qualifying words "unfit for use for beverage purposes", but the heading of section 4 of the Volstead Act, under which these exceptions are enumerated, is exempted liquors."

The Licensing (Consolidating) Act, 1910, of England was an Act relating to licenses for the sale of intoxicating liquor, etc. The definition of "intoxicating liquor" in this Act was as follows :—

"'Intoxicating liquor' means (unless inconsistent with the context) spirits, wine, bear, porter, cider, perry and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without an excise licence."

The word "spirits" has been defined in the Spirits Act, 1880, as meaning spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits." It was contended before us that the definition of the word "spirits" in the Spirits Act should not be imported in the Act of 1910, but in our view for the purpose of understanding the definition of 'intoxicating liquor', the two Acts should be read together. I do not suggest that the definition of "liquor" in the present Act was borrowed from those Acts, but I am only trying to show that the word 'liquor' is capable of being used in a wide sense.

Coming now to the various definitions given in the Indian Acts, I may refer in the first instance to the Bombay Abkari Act of 1878 as amended by subsequent Acts, where the definition is substantially the same as in the Act with which we are concerned. In the Bengal Excise Act, 1909, "liquor" is said to mean 'liquid consisting of or containing alcohol' and includes spirits of wine, spirit, wine, tari pachwai, beer, and any substance which the Provincial Government may ....declare to be liquor for the purposes of the Act." In several other Provincial Acts, *e.g.,* the Punjab Excise Act, 1914, the U.P. Excise Act, 1910, "liquor" is used as meaning intoxicating liquor and as including all liquids consisting of or containing alcohol. The definition of "liquor" in the Madras Abkari Act, 1886, is the same as in the Bombay Act of 1878. Even if we exclude the American and English Acts from our consideration, we find that all the Provincial Acts of this country have consistently included liquids containing alcohol in the definition of 'liquor' and 'intoxicating liquor'. The framers of the Government of India Act, 1935, could not have been entirely

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ignorant of the accepted sense in which the word 'liquor' has been used in the various excise Acts of this country and, accordingly I consider the appropriate conclusion to be that the word "liquor" covers not only those alcoholic liquids which are generally used for beverage purposes and produce intoxication, but also all liquids containing alcohol. It may be that the latter meaning is not the meaning which is attributed to the word "liquor" in common parlance especially when that word is prefixed by the qualifying word "intoxicating", but in my opinion having regard to the numerous statutory definitions of that word, such a meaning could not have been intended to be excluded from the scope of the term "intoxicating liquor" as used in entry 31 of List II.

There is in my opinion another method of approaching the question which also deserves consideration. Remembering that the object of the Prohibition Act was not merely to levy excise duties but also to prohibit use, consumption, possession and sale of intoxicating liquor, the legislature had the power to legislate upon the subjects included in the Act not only under entry 31 of List II, but also under entry 14, which refers *inter alia* to public health. Article 47 of the Constitution, which contains one of the directive principles of State policy, provides that "the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health". This article has no direct bearing on the Act which was passed in 1949, but a reference to it supports to some extent the conclusion that the idea of prohibition is connected with public health, and to enforce prohibition effectively the wider definition of the word "liquor" would have to be adopted so as to include all alcoholic liquids which may be used as substitutes for intoxicating drinks, to

the detriment of health. On the whole, I am unable to agree with the High Court's finding, and hold that the definition of "liquor" in the Bombay Prohibition Act is not *ultra vires*.

The learned Attorney-General also relied upon entry 1 of List II which relates among other items to "public order", and though at first sight it may appear to be far-fetched to bring the subject of intoxicating liquor under "public order", yet it should be noted that there has been a tendency in Europe and America to regard alcoholism as a menace to public order. In *Russel* v. *The Queen*(1), Sir Montague Smith held that the Canada Temperance Act, 1878, the object and scope of which was to promote temperance by means of a uniform law throughout the Dominion, was a law relating to the "peace, order, and good government" of Canada, and in so deciding said as follows :—

"*Laws of this nature designed for the promotion of public order,* safety, or morals and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which falls within the general authority of Parliament to make laws for the order and good government of Canada...."(2)

Again, referring to liquor laws and liquor control, a learned British author(3) says as follows :—

"The dominant motive everywhere, however, has been a social one, to combat a menace to public order and the increasing evils of alcoholism in the interests of health and social welfare. The evils vary greatly from one country to another according to differences in climate, diet, economic conditions and even within the same country according to differences in habits, social customs and standards of public morality. A new factor of growing importance since the middle of the 19th

(1) 7 A. C. 829.

(2) 7 A. C. 829 at p. 839.

(3) The Encyclopaedia Britannica, 14th Edition, Volume 14, page 191.

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century has been the rapid urbanisation, industrialization and mechanization of our modern every day life in the leading nations of the world, and the consequent wider recognition of the advantages of sobriety in safeguarding public order and physical efficiency."

These passages may lend some support to the contention of the learned Attorney-General that the Act comes also within the subject of "public order", but I prefer to leave out of account this entry, which has a remote bearing, if any, on the object and scope of the present Act.

I now come to section 39 of the Act which has been impugned on the ground that it offends against article 14 of the Constitution which states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". The meaning and scope of this article has been fully discussed in the case of *Chiranjit Lal Chowdhury* v. *The Union of India and others*(1), and the principles laid down in that case may be summarized as follows :

(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

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

(1) [1950] S.C.R. 869.

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

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

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

Similarly, Professor Willis, dealing with the Fourteenth Amendment of the Constitution of the United States, which guarantees equal protection of the laws, sums up the law as prevailing in that country in these words :

"The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. 'It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed'. 'The inhibition of the amendment....was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.' It does not take from the states the power to classify either in the adoption of police laws or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of

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treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis."(1)

With these principles in view, I have to decide whether article 14 of the Constitution has been violated by the provisions contained in section 39 of the Act before us. That section runs as follows :—

"The Provincial Government may, on such conditions as may be specified in the notification published in the Official Gazette, permit the use or consumption of foreign liquor on cargo boats, warships and troopships and in military and naval messes and canteens."

What is contended is that the concession shown to the warships, troopship, and military and naval messes and canteens is a violation of the principle of equality and the legislature has acted arbitrarily and capriciously in selecting certain bodies or groups of people for favoured treatment, while subjecting the petitioner and other citizens to the general provisions of the Act. It is said that the law should have been enforced alike against the civil population and military personnel, between whom no distinction can be made at all on any rational ground in the enforcement of the policy of prohibition.

The scheme of Chapter IV of the Prohibition Act, in which the impugned provision finds a place, seems *inter alia* to relax the law in favour of certain persons or groups of persons or institutions by introducing the system of passes, licences, permits and authorizations. A few examples will show that the legislature did not proceed without making any classification. For instance, section 35 deals with licences to hotels, section 37 with licences to dining cars and coastal steamers, section 38 with licences to shipping companies, section 40 with permits to foreigners and persons who need liquor on grounds of health, section 41 with permits to foreign sovereigns and diplomats, section 44

(1) Constitutional Law, by Prof. Willis, (1st Edition) p. 578.

with licences to clubs, section 45 with authorisations for sacramental purposes, section 46 with visitors' permits, and so on. These sections were not challenged before us, and it may be assumed that the classification made by the legislature has been accepted so far as they are concerned. The question is whether in relaxing the rule in favour of warships, troopships, and military and naval messes and canteens, the legislature has acted arbitrarily and capriciously or it has proceeded here also on the basis of reasonable classification. The learned Attorney-General referred us to several statutes, army regulations and certain provisions of the Constitution, in order to show that the military force has been regarded in this country as a class by itself, and there are many special provisions with regard to it. But it is contended that this is not enough and that no classification can be held to be valid unless it is shown to bear a just and reasonable relation to the objects of the particular legislation before us. The argument, in other words, is this: Assuming that the armed forces may be treated as a class for certain purposes, can it be treated as a class for the purpose of enforcing prohibition? This argument found favour with the High Court, and section 39 was declared to be void. In my opinion, the judgment of the High Court cannot be supported because I think that there is an understandable basis for the exemptions granted to the military canteens, etc. by the Act. The armed forces have their own traditions and mode of life, conditioned and regulated by rules and regulations which are the product of long experience and which aim at maintaining at a high level their morale and those qualities which enable them to face dangers and perform unusual tasks of endurance and hardship when called upon to do so—qualities such as dash and courage, unbreakable tenacity and energy ready for any sacrifice which should be unfaltering for long days together. By these rules and regulations, drinking among the forces is not prohibited, but it is properly and carefully regulated.

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It is easy to understand that the legislature chose not to interfere with the mode of life to which the forces have been accustomed, lest such interference should affect their morale and lead to subterfuges which may prove unwholesome for their discipline and good behaviour. Besides, when drinking is regulated among a class of persons by specific rules and regulations and drunkenness is made an offence, the relaxation of the law of prohibition in their case is not likely to produce the same evil results as it may produce under other circumstances. I find therefore nothing wrong *prima facie* in the legislature according special treatment to persons who form a class by themselves in many respects and who have been treated as such in various enactments and statutory provisions. In my opinion, therefore, section 39, in so far as it affects the military and naval messes and canteens, warships and troopships, cannot be held to be invalid. So far as the cargoboats are concerned, it was contended on behalf of the petitioner that no rational differentiation could be made between them and the passenger boats, and there was no conceivable ground for granting exemption or concession of any kind to the former. Here again, we cannot assume that the legislature has proceeded arbitrarily. The cargoboats being slower boats have to be on the sea for long periods, the number of persons affected by the exemption is comparatively small, and they are mostly sojourners who stay at the port for a short time and then go away. These cosiderations may well have induced the legislature to show some concession to them, and we cannot say that these are irrelevant considerations. The provision relating to exemption of cargoboats should therefore be held to be valid.

I have already referred to section 46 which deals with visitors' permits. That section provides that the Provincial Government may authorize an officer to grant visitors' permits to consume, use and buy foreign liquor to persons who visit the Province for a period of not more than a week. The High Court held this provision to be valid, but it considered rule 67 of the

Bombay Foreign Liquor Rules, framed under section 143 of the Act, to be invalid. That rule provides that any foreigner on a tour of India who enters the State of Bombay and desires to possess, use and consume foreign liquor shall apply to certain officers for obtaining a permit, which may be granted for a period not exceeding one month subject to subsequent renewal. The High Court declared this rule to be invalid on the ground that it discriminated between foreign visitors and Indian visitors who visit Bombay from neighbouring Provinces. It seems to me that this is hardly a matter which should have been gone into on the petitioner's application, since he claims to be neither a foreigner nor an Indian visitor from another Province. But in any event, the rule cannot be assailed on the ground of discrimination, firstly because though it provides for the case of a foreign visitor there is no prohibition against any other outsider being granted a permit, and secondly, because the policy underlying the rule is quite consistent with the policy underlying section 40 of the Act which enables permits to be granted to foreigners under certain conditions.

The High Court has also declared sections 52, 53 and 139(c) of the Act invalid on the ground that they constitute "delegation of legislative power". The reasons given by the High Court for arriving at this conclusion are stated in its judgment as follows :—

"Under section 52 power is given to the Government to grant licences in cases other than those specifically provided under any of the provisions of the Act. Under section 53 Government is *inter alia* empowered to vary or substitute any of the conditions of the licence laid down in the Act, and under section 139 (c) power is given to Government to exempt any person or institution of any class of persons or institutions from the observance of all or any of the provisions of the Act or any rule or regulation or order made thereunder. The policy of legislation has been clearly laid down by the legislature in the Act itself. As pointed out by us before, the legislature intended

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to grant permits ordinarily only on grounds of health and certain exceptions were made in the case of certain classes. It is always open to the legislature to leave it to the Government to work out the policy in details. It would be impossible for the legislature to provide for all circumstances and all eventualities that may arise in the actual working of the Act. But it is not open to the legislature to permit Government to alter the policy itself. In our opinion, in leaving it to Government to issue permits in cases other than those provided for by the Act, in permitting Government to vary or substitute conditions of the licence, and in permitting Government to exempt persons or classes from the provisions of the Act, the legislature was clearly delegating to Government its own power of legislation. This it can clearly not do."

This Court had to consider quite recently the question as to how far "delegated legislation" is permissible, and a reference to its final conclusion will show that delegation of the character which these sections involve cannot on any view be held to be invalid. (See *Special Reference No.* 1 *of* 1951 : *In re The Delhi Laws Act,* 1912, etc. ([1])). A legislature while legislating cannot foresee and provide for all future contingencies, and section 52 does no more than enable the duly authorized officer to meet contingencies and deal with various situations as they arise. The same considerations will apply to sections 53 and 139 (c). The matter however need not be pursued further, as it has already been dealt with elaborately in the case referred to.

I now proceed to deal with a group of sections in regard to which I find myself in agreement up to a point with the views expressed by the High Court. Section 12 of the Act provides *inter alia* that no person shall possess or sell or buy liquor and section 13 provides *inter alia* that no person shall consume or use liquor. Substituting for the word "liquor" occurring in these two sections the definition of that word as given in clause (a) of section 2 (24) of the Act, the effect of these two sections is that no person shall

([1]) Reported infra.

possess, or sell or buy or consume or use "spirits of wine, methylated spirit, wine, beer, toddy and all liquids consisting of or containing alcohol." I have already held that under entry 51 of List II, the Bombay Legislature was quite competent to make a law with respect to "liquor" even as broadly defined. It is however contended that the power of making laws has to be exercised subject to the other provisions of the Constitution and in particular to those relating to the fundamental rights guaranteed under Part III of the Constitution. The provisions to which I have referred have been assailed on the ground that they are in conflict with article 19 (1) (f) of the Constitution which guarantees that all the citizens shall have the right "to acquire, hold and dispose of property". This clause is wide enough to include movable as well as immovable property. The provisions in question undoubtedly prevent a citizen from possessing, selling, buying, consuming or using "liquor" as defined, and therefore they *prima facie* infringe the fundamental right of the Indian citizens to acquire, hold and dispose of a kind of property, namely, "liquor" as defined in section 2 (24) of the Act, and as such would be void under article 13. The question to be considered is whether they can be saved by clause (5) of article 19, which runs as follows :—

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any scheduled tribe."

The question boils down to ascertaining whether the restrictions imposed by the provisions to which reference has been made are reasonable. In judging the reasonableness of the restrictions imposed by the Act, one has to bear in mind the directive principles of State policy set forth in article 47 of the Constitution, "The State is charged with the duty of bringing about

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prohibition of the consumption, except for medical purposes, of intoxicating drinks and of drugs which are injurious to health." That the restrictions imposed by the sections on the right of a citizen to possess, or sell or buy or consume or use spirits of wine, methylated spirits, wine, beer, toddy are in view of the aforesaid directive principles of State policy quite reasonable, has not been disputed before us. The controversy has centred round the words "and all liquids consisting of or containing alcohol." It is said that those words include "all liquids, toilet or medicinal preparations containing alcohol" and the restrictions imposed upon the ordinary use of such toilet or medicinal preparations are unreasonable and therefore void. So far as these preparations are concerned, the High Court has dealt with the matter as follows :—

"To put it in a simple form, the question to which we have to address ourselves is whether the legislature can prohibit the legitimate use of an article which ordinarily is not drunk, merely because its use may be perverted for the possible purpose of defeating or frustrating the objects and purposes of the Prohibition Act. Let us take the concrete case of eau-de-cologne or lavender water. Their legitimate use is only for the purpose of toilet. They contain spirit and it may be that an addict deprived of his drink may drink it in order to satisfy his thirst. Is it permissible to the legislature under such circumstances to deprive the general public of the legitimate use of eau-de-cologne or lavender water as articles of toilet? The legislature may prevent the abuse of these articles, but can it prevent their legitimate use? It is difficult to understand how any restriction on the legitimate use of these articles can be in the interests of the general public so as to make these restrictions reasonable within the meaning of article 19(5). If a citizen uses eau-de-cologne or lavender water for the purpose of toilet, he is not doing anything against public interest. It is only when he is preverting their use that it may be said that he is acting against public interest. Therefore, in our opinion, while it was open

to the legislature to provide against the abuse of these articles, it was not open to it to prevent its legitimate use. But the legislature has totally prohibited the use of possession of all liquids containing alcohol except under permits to be granted by Government. It is contended by the Advocate-General that a citizen may possess eau-de-cologne or lavender water under a permit. But that is a restriction upon the right of the citizen to acquire, hold and dispose of property, and, in our opinion, that restriction is not reasonable. The same argument applies to medicinal and toilet preparations containing alcohol. Therefore we hold that to the extent to which the Prohibition Act prevents the possession, use and consumption of non-beverages and medicinal and toilet preparations containing alcohol for legitimate purposes the provisions are void as offending against article 19 (1) (f) of the Constitution even if they may be within the legislative competence of the Provincial Legislature."

The next step in the argument is that as the law purports to authorise the imposition of a restriction on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. This line of reasoning, no doubt, seeks to find support from the observations made in the majority decisions of this Court in *Romesh Thappar* v. *The State of Madras*(1) and in *Chintaman Rao* v. *The State of Madhya Pradesh*(2), but in my opinion those observations do not apply to the case before us. It will be noticed that the legislature has defined the term "liquor" as including several distinct categories of things followed by a general category. There can be no doubt whatever that the earlier categories of liquor, namely, spirits of wine, methylated spirit, wine, beer, toddy are distinctly separable items which are easily severable from the last category, namely, all liquids consisting of or containing alcohol. These

(1) [1950] S.C.R. 594. (2) [1950] S.C.R. 759.

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items being thus treated separately by the legislature itself and being severable, and it not being contended, in view of the directive principles of State policy regarding prohibition, that the restrictions imposed upon the right to possess or sell or buy or consume or use those categories of properties are unreasonable, the impugned sections must be held valid so far as these categories are concerned. The next question is whether those sections are void in so far as they purport to impose restrictions on the 'citizens' right to acquire, hold or dispose of all liquids consisting of or containing alcohol. It is said that this is one general item and it cannot be split up into different sub-categories and therefore the sections in so far as they relate to this general item must be held to be void. This argument at first appears to have some force but a close scrutiny will reveal that it is not in the circumstances of this case sound. Section 139 of the Act authorises the Provincial Government, by general or special order, to exempt any intoxicants or class of intoxicants from all or any of the provisions of the Act. An order made by the Provincial Government in exercise of the power conferred by this section owes its legal efficacy to this section and therefore in the eye of the law the notification has the force of law as if made by the legislature itself. In exercise of powers vested in it by section 139(d) the Provincial Government issued an order No. 10484/45(e) exempting intoxicants specified in column 1 of the Schedule thereto annexed from the provisions of the Act specified against them in column 2 of that Schedule. Turning to the Schedule, we find that in item (1) duty-paid prefumed spirits (except eau-de-cologne), in item (3) duty-paid spirituous toilet preparations (except lavender water) and in item (4) duty-paid spirituous medicinal preparations other than 123 specified liquids, are exempted from the operation of sections 12(c) and (d) and 13(b) to the extent specified therein. This notification was superseded on the 1st April, 1950, by another notification which is more liberal in certain respects, and these notifications, being made in exercise of the power given by the Act itself

have undoubtedly the force of law and must be read along with the Act. So read, it is quite clear that "all liquids consisting of or containing alcohol" are capable of being split up into and have in fact been split up into several distinctly separate sub-items including liquid toilet and medicinal preparations containing alcohol. The legislature itself contemplated this sub-division, for by section 139 it authorised the Provincial Government to exempt any intoxicant or class of intoxicants from the operation of the Act. This circumstance takes the case out of the principles laid down in the two cases mentioned above and the item being thus severable I am free to consider whether the restrictions imposed on a sub-item, namely, liquid toilet and medicinal preparations containing alcohol, are reasonable or not. I am substantially in agreement with the line of reasoning adopted by the High Court and I consider that the Act is not a law impoing reasonable restrictions so far as medicinal and toilet preparations containing alcohol are concerned. The National Prohibition Act or the Volstead Act of America, to which I have referred, was also an Act relating to prohibition; but toilet and medicinal preparations containing alcohol were expressly excluded from the scope of that Act. I refer to that Act simply to show that a complete scheme of prohibition can be worked without including such articles among those prohibited. Again, article 47 of the Constitution also takes note of the fact that medicinal preparations should be excluded in the enforcement of prohibition. I do not consider that it is reasonable that the possession, sale, purchase, consumption or use of medicinal and toilet preparations should be prohibited merely because there is a mere possibility of their being misused by some perverted addicts.

It was contended that there was no meaning in declaring the provisions relating to purchase, sale, possession, use and consumption of medicinal and toilet preparations containing alcohol to be invalid, since in the Notification No. 10484/45, issued by the Provincial

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Government on the 1st April, which is no part of the Act, the Government have exempted duty-paid perfumed spirits (including eau-de-cologne), duty-paid spirituous toilet preparations and certain classes of duty-paid spirituous medicinal preparations from the following provisions of the Act :—

(i) Section 12 (c);

(ii) Section 12 (d), in so for as it relates to buying of such preparations;

(iii) Section 13 (b), in so far as it relates to use of such preparations.

But it is to be noted that the *sale* of these articles is not covered by the above notification, but is regulated by two other notifications, namely, Notification No. 2843/49, dated the 6th April, 1950, and Notification No. 2843/49, dated the 11th April, 1950. In these two Notifications, there are provisions imposing limits on sales. For example, in the first notification issued on the 6th April, rule 10(1) provides as follows :—

"The licensee shall not sell to any person on any one day any kind of perfumed spirits, spirituous toilet preparations or essences in excess of such quantity as may be prescribed by the Commissioner under the Act."

Similarly, in the second notification of the 11th April, rules 9 and 10 run as follows :—

"9. The licensee shall not sell medicated tonics or medicated wines containing more than 10 per cent. of alcohol (or containing alcohol in strength more than 17.5 per cent. of proof spirit) except those which are classified as spirituous medicinal preparations and regulated as such under the Drugs Act, 1940.

10. Subject to the provisions of rule 9 the licensee shall not sell the following spirituous medicinal preparations to any person unless he produces a medical prescription in that behalf, namely :—

(*a*) medicated tonics and medicated wines;

(*b*) asaves and arishtas specified in the schedule hereto annexed;

(*c*) any other spirituous medicinal preparations containing more than 10 per cent of alcohol (or containing alcohol in strength more than 17.5 per cent of proof spirit) which are intended for internal use :

Provided that the following spirituous medicinal preparations may be sold to any person without the production by such person of any medical prescription; namely...."

In view of the restrictions imposed on the sale of these preparations, it is pertinent to enquire whether those restrictions will not also affect their purchase possession, use and consumption, and whether the so-called exemptions contained in the notification of the 1st April really go as far as they purport to go : (*vide* in this connection conditions in col. 7 of Notification No. 10484/45 (a) of the 1st April, 1950). Again, in the Notification No. 10484/45 of the 1st April, only 8 medicinal preparations are totally exempted as regards their purchase, possession, and use, and so far as medicinal preparations for internal consumption are concerned, only those containing not more than 10% of alcohol or 17.5% of proof spirit are exempted. This notification has to be read along with another notification No. 10484/45(a) of the same date, which was to remain in force till 31st March, 1951, only. In the latter notification, for the purpose of possession, purchase, consumption and use, the quantity of medicinal preparations containing not more than 10% of alcohol, etc., is restricted to such quantity as may be prescribed by a registered medical practitioner. Even these notifications may be withdrawn, superseded or amended at any moment by the Provincial Government, as was done in the case of the notifications issued on the 16th June, 1949, which have been referred to. An ordinary citizen may find it a perplexing task to attempt to extract information out of the long series of complicated regulations, as to the true nature and extent of the right which the law confers upon him. Indeed it was only with the help of the learned counsel appearing for the parties that we were able to know what the position was up to the 31st March, 1950, and

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what changes were made on the 1st April, 1950. But in the bundle of notifications which have been placed before us, there is no notification stating what step has been taken after the 31st March, 1951, and none was brought to our notice in the course of the arguments. Having given my careful consideration to the matter, I am of the opinion, that the restrictions imposed by the Act even when read with the above notifications are not reasonable, and I would affirm the conclusion arrived at by the High Court.

The next group of sections which the High Court has held to be invalid, are sections 23(a) and 24(1)(a) in so far as they refer to "commending" any intoxicant, section 23(b) in its entirety, and section 24(1)(b) in so far as it refers to "inciting or encouraging" any individual or class of individuals or the public generally "to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, etc." These provisions run as follows :—

23. No person shall—

(*a*) commend, solicit the use of, or offer any intoxicant or hemp, or

(b) incite or encourage any member of the public or any class of individuals or the public generally to commit any act which frustrates or defeats the provisions of this Act, or any rule, regulation or order made thereunder, or....

24. (1) No person shall print or publish in any news paper, news-sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter,—

(*a*) which commends, solicits the use of or offers any intoxicant or hemp, or

(b) which is calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act, or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorization granted thereunder."

Sections 23(a) and 24(1)(a) in so far as they refer to "commending" any intoxicant are said to conflict with the fundamental right guaranteed by article 19(1)(a), namely, the right to freedom of speech and expression, and there can be no doubt that the prohibition against "commending" any intoxicant is a curtailment of the right guaranteed and it can be supported only if it is saved by clause (2) of article 19 which, as it stands at present, provides that "nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State." It seems to me that none of the conditions mentioned in clause (2) applies to the present case, and therefore the provisions in question must be held to be void. Section 23 (b) must also be held to be void, because the words "incite" and "encourage" are wide enough to include incitement or encouragement by words and speeches and also by acts. The words "which frustrates or defeats the provisions of the Act or any rule, regulation or order made thereunder" are so wide and vague that it is difficult to define or limit their scope. I am therefore in agreement with the view of the High Court that this provision is invalid in its entirety. So far as article 24(1)(b) is concerned the judgment of the High Court in regard to it cannot be upheld. The learned counsel for the petitioner also conceded before us that he was not going to assail this provision.

The High Court has also declared sections 136(1), 136(2)(b), 136(2)(c), 136(2)(e), 136(2)(f) to be void as offending against various provisions of article 19 of the Constitution, but no argument was addressed to us on behalf of the Government of Bombay assailing the judgment of the High Court with regard to these provisions. The judgment of the High Court in regard to them will therefore stand.

I will now deal with two Notifications Nos. 10484/45 (c) and 2843/49(a), dated the 30th March, 1950, which

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the High Court has held to be invalid. As regards the first notification, the High Court has stated that section 139 (c) having been held to be *ultra vires* the legislature, this notification, which was issued under that section is *ultra vires* the Bombay Government. But, since this Court has taken a different view in regard to the validity of section 139(c), the decision of the High Court as regards the above notification cannot stand. It appears from certain observations in the judgment under appeal, firstly that the High Court upheld section 40(1) (c) (*i*) *and* (*ii*), which deals with the grant of permits to foreigners who do not intend to stay permanently in India, merely because the Explanation to that section provided that "a person shall be deemed to be residing or intending to reside in India temporarily, if the period of his residence does not exceed six months"; and secondly, that the High Court would have found it difficult to uphold the classification on which section 40(1) (c) is based if the restriction regarding six months' residence was not there, as would be the result of reading the section subject to the above notification. I am however unable to see how the notification will turn a classification which is otherwise a good classification into a bad one. There is nothing unreasonable in a law relating to prohibition discriminating between Indian citizens against whom it is primarily to be enforced, and foreigners who have no intention of permanently residing in this country. The condition of six months' residence which is laid down in the Explanation to section 40 is somewhat arbitrary, and the mere fact that the Government by notification withdrew this condition cannot in principle alter the basis of the classification.

The High Court has declared the other notification issued by the Government on the 30th March, 1950, to be invalid on grounds which are stated in these words :—

"That notification exempts persons holding permits under clause (c) of sub-section (1) of section 40, special permits under section 41, or interim permits under section 47, from the provisions of section 23 (a)

in so far as it relates to the offering of foreign liquor to persons holding similar permits. This is clearly not justified. Having created a class, having given to that class the right of obtaining a permit on grounds other than those of health, it will be totally wrong to permit that class not to abide by the same provisions with regard to permits as others to whom permits have been given. The restrictions placed by the legislature itself on a permit-holder regarding the use and consumption of his stock of liquor is to be found in section 43 under which the permit-holder shall not allow the use and consumption by any person who is not a permit-holder. That restriction must apply equally to permits issued under section 40 to Indian citizens as well as foreigners, and in our opinion it is improper to allow a foreigner permit-holder to stand drinks to other permit-holders and to deny that privilege to Indian permit-holders. The guarantee of equality before the law extends under our Constitution not only to legislation but also to rules and notifications made under statutory authority and even to executive orders and as the notification offends against the principle of equality it is, therefore, void."

In order to understand these remarks, it will be necessary to state that persons holding permits under clause (c) of sub-section (1) of section 40 are foreigners as described in sub-clauses (i) and (ii) of clause (c), that persons holding special permits under section 41 are foreign sovereigns, ambassadors, etc., and that persons holding interim permits under section 47 are persons applying for permits under either section 40, or section 41. The last class will include not only foreigners but also Indian citizens applying for permits on the ground that their health will be seriously and permanently affected if they are not permitted to use or consume liquor. Thus, the assumption on which the conclusion of the High Court is based, does not appear to be correct. Besides, I do not find anything in this notification which violates the principle of equality. It simply enables a certain class of persons holding permits to offer drinks to persons holding similar permits.

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This is in accord with the principle underlying the provisions of section 43 which has not been assailed before us and which provides that "no holder of a permit granted under section 40 or 41 shall allow the use or consumption of any part of the stock held by him under the permit to any person who is not the holder of such a permit". In my opinion, there is no substantial ground for holding the notification to be invalid. The points relating to the notifications are extremely small, and the subtle distinctions upon which they are based, are hardly worth the attention which the High Court has bestowed on them.

There is another point which arises on the judgment of the High Court which may also be noticed. The point is set out in that judgment in these words :—

"When a person applies for a permit on the ground of health, he has to forward with it a certificate from the medical board and when we turn to the form of this certificate, it requires the medical board to declare the applicant an addict. Therefore the position is that it is only on the applicant being found an addict by the medical board that he would be entitled to a permit if his health would be seriously and permanently affected if he was not permitted to use or consume liquor. It is not only in the case of addicts that such a contingency would arise. Even persons who are not addicts may have been accustomed to drink for a long period of time and a sudden discontinuance of drink may seriously and permanently affect their health. It may also happen that without being accustomed to drink at all a person may contract an illness which may require the use by him of alcoholic drink under medical opinion. To be an addict, in our opinion, means something more than being merely accustomed to drink. We must give to it its plain natural meaning. It is certainly not a term of art, and giving to it its plain natural meaning, the expression "addict" does carry with it a sense of moral obloquy. The intention of the Government seems to be that only persons who confess that they are deviating from standards of morality should be given permits. Now

insistence upon a medical certificate in this form is not at all warranted by the provisions of the Act."

The point is a small one but it seems to me that there is some substance in it. In my opinion, the word "addict" in the medical certificate should be replaced by the words used in section 40 (1) (b) of the Act or words corresponding to them.

The only other point which remains to be decided is whether as a result of some of the sections of the Act having been declared to be invalid, what is left of the Act should survive or whether the whole Act should be declared to be invalid. This argument was raised before the High Court also, but it was rejected and it was held that it was not possible on a fair review of the whole matter to assume that the legislature would not have enacted the part which remained without enacting the part that was held to be bad. It is to be noted that upon the findings of the High Court, the question should have assumed a more serious aspect than it presents now, because the High Court has declared several important sections of the Act including the definition of "liquor" to be *ultra vires* the legislature. I have now examined those sections and have held many of them to be valid. The provisions which are in my view invalid cannot affect the validity of the Act as a whole. The test to be applied when an argument like the one addressed in this case is raised, has been very correctly summed up by the Privy Council in *Attorney-General for Alberta* v. *Attorney-General for Canada*(1) in these words :—

"The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted what survives without enacting the part that is *ultra vires* at all."

It is quite clear that the provisions held by me to be invalid are not inextricably bound up with the

(1) [1947] A.C. 505 at 518.

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remaining provisions of the Act, and it is difficult to hold that the legislature would not have enacted the Act at all without including that part which is found to be *ultra vires*. The Act still remains substantially the Act as it was passed, *i.e.*, an Act amending and consolidating the law relating to the promotion and enforcement of the policy of prohibition and also the Abkari law in the Province of Bombay.

In the result, I declare the following provisions of the Act only to be invalid :—

(1) Clause (c) of section 12, so far as it affects the possession of liquid medicinal and toilet preparations containing alcohol.

(2) Clause (d) of section 12, so far as it affects the selling or buying of such medicinal and toilet preparations containing alcohol.

(3) Clause (b) of section 13, so far as it affects the consumption or use of such medicinal and toilet preparations containing alcohol.

(4) Clause (a) of section 23, so far as it prohibits the commendation of any intoxicant or hemp.

(5) Clause (b) of section 23, in entirety.

(6) Clause (a) of sub-section (1) of section 24, so far as it prohibits commendation of any intoxicant or hemp.

(7) Sub-section (1) of section 36, in entirety.

(8) Clauses (b), (c), (e), and (f) of sub-section (2) of section 136, in their entirety.

I hold that the rest of the provisions of the Act are valid, and I also hold that my decision declaring some of the provisions of the Act to be invalid does not affect the validity of the Act as it remains. Appeal No. 182, preferred by the State of Bombay, is therefore substantially allowed and Appeal No. 183 preferred by the petitioner is dismissed.

On the question of costs I am disposed to make the same order as the High Court has made, not only because some of the provisions of the Act are still found to be invalid, but also because the present case

appears to have been instituted to test the validity of a controversial measure and to secure a final decision on it to set at rest the doubts and uncertainties which may have clouded the minds of a section of the public as to how far the provisions of the Act conform to law and to the Chapter on Fundamental Rights in the present Constitution.

Patanjali Sastri J.

PATANJALI SASTRI J.—I agree and have nothing more to add.

Mukherjea J.

MUKHERJEA J.—I have read the judgment of my learned brother Mr. Justice Fazl Ali and I am in entire agreement with his conclusions and reasons. There is nothing further which I can usefully add.

S. R. Das J.

S. R. DAS J.—I agree and I have nothing further to add.

Vivian Bose J.

VIVIAN BOSE J.—I also agree.

Appeal No. 182 *allowed.*

Appeal No. 183 *dismissed.*

Agent for the appellants in Case No. 182 and respondents in Case No. 183 : *P. A. Mehta.*

Agent for the respondent in Case No. 182 and appellant in Case No. 183 : *Rajinder Narain* for *R. A. Gagrat.*