Sambhu Nath Sarkar

Vs

The State of West Bengal and Others

Writ Petition No. 226 of 1972

(CJI J.M. Shelat, K.S. Hegde, A.N. Ray, P. Jagmohan Reddy, H.R. Khanna, A.K. Mukherjea, Y.V. Chandrachud JJ)

19.04.1973

JUDGMENT

SHELAT, ACTING C.J. -

1. At all meterial times the petitioner was an employee of the Government of West Bengal in the Collectorate of Hooghly District. He was arrested on January 29, 1972 pursuant to the order of detention, dated January 25, 1972 passed by the District Magistrate, Hooghly under Section 3(2) read with Section 3(1) of the Maintenance of Internal Security Act, 26 of 1971. The said order was passed "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order". He was served with the grounds of detention on that very day. The said grounds of detention were in connection with certain incidents alleged to have taken place on April 25, 1971, September 14, 1971, October 12, 1971 and January 19, 1972, as set out therein.

2. Before the said order was issued, the petitioner and six others, also Government employees in Hooghly Collectorate, were prosecuted for their alleged parts in the first two incidents on the basis of the first information report, dated September 14, 1971, under Section 143/506 of the Penal Code. On March 29, 1972, they were discharged by the Magistrate on a final report of the police, dated March 10, 1972. Pursuant to the said order of detention, the petitioner was detained and is still in Hooghly jail.

3. The mother of the petitioner thereafter filed an application No. 318 of 1972 in the High Court of Calcutta under Section 491 of the Code of Criminal Procedure. In that application the petitioner's detention was challenged only on two grounds, namely, vagueness of the grounds of detention and their irrelevance. On May 29, 1972, the High Court dismissed the said application. The present petition is more comprehensive and for the first time challenges the validity of several provisions of the Act.

4. The record before us shows that all the steps required under the Act have been taken and complied with in the time and manner prescribed by the Act. No objection, therefore, to the petitioner's detention on that ground can be validly taken. The petitioner's case was referred to the Advisory Board constituted under the Act, which reported that there was sufficient cause for his detention. On April 15, 1972, the State Government, on receipt of the said report, confirmed the order of detention under Section 12(1) and directed that detention to continue for three years from the date of detention. The said order of confirmation was duly communicated to the detenu. The petitioner thereafter made his representation to the State Government on August 10, 1972, that is to say, several months after reference of his case to the Board and the said order of confirmation. The

said representation was not considered by the State Government as by that time this writ petition had already been filed and was pending before this Court.

5. The order of detention has been challenged in the petition on the following grounds -

(1) that the grounds of detention were vague;

(2) that there was no nexus between the grounds and maintenance of public order;

(3) that they were mechanically framed without the detaining authority applying his mind;

(4) that the order was mala fide and passed for collateral purpose, namely, to victimise the active members of the State Co-ordination Committee of which the petitioner was one;

(5) that Section 6(6)(d) and (e) of the Defence of India Act, 42 of 1971 increasing the detention period from 12 months to 3 years by the amendment of Section 13 of the Act has treated equally citizens of India and foreigners and has thereby violated Article 14;

(6) that the said order of confirmation providing three years' detention was ultra vires Article 22.

The District Magistrate by his counter-affidavit denied all the grounds of challenge to the validity of the said order.

6. On October 24, 1972, the petitioner applied for urging additional grounds of challenge and on liberty being granted to amend, the petition was amended. Stated briefly, the additional grounds challenged the validity of Sections 3, 5, 8, 11, 12 and 13 of the Act on the grounds of their being unreasonable restrictions and as violating Articles 14, 19, 21 and 22 by reason of those provisions failing to provide an impartial authority to consider a detenu's representation, and the means to challenge the materials on which the order is made, the materials placed by the authority before the advisory board and the report of the board based on such materials before government confirmed the detention.

7. The hearing of the case started before the Constitution Bench on November 17, 1972 and was heard on that day and again on November 21, 1972 and December 1, 1972. It seems that a contention was then raised as to the validity of Section 17-A of the Act which provides for a period of detention for 21 months without consulting an advisory board, which question, the Bench thought, required reconsideration of the decision in Gopalan v. State of Madras. (1950 SCR 88 : AIR 1950 SC 27 : 1950 SCJ 174) The Constitution Bench thought, therefore, that the case should be referred to a larger bench, and that is how this case has come up before us for disposal.

8. The Act was passed on July 2, 1971. Its only title shows that it was passed to provide for detention for the purpose of maintenance of internal security and matters connected therewith. Section 3(1)(a) empowers the Central and the State Governments to make an order detaining a person, if satisfied with respect to such person that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to : (i) the defence of India, the relations of India with foreign powers, the security of India, or (ii) the security of the State, or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community. Sub-section (2) authories the exercise of the power of detention under sub-section (1)(a) by certain officers named therein, inter alia, district magistrates, with respect to matters set out in Section 3(1)(a)(ii) and (iii). Section 5 confers power on the appropriate government to remove a person detained under Section

3 from one place of detention to another whether within or outside the State. Section 6 provides that such an order shall not be invalid on the ground that the concerned person is detained in a jail outside the jurisdiction of that Government or the officer making the order. Section 8 provides for the communication of grounds for detention to the detenu ordinarily within five days, and in exceptional cases within 15 days from the date of detention. Section 9 provides for the constitution of advisory boards. Section 10 provides that, save as otherwise provided for in the Act, the appropriate Government shall within 30 days from the date of detention refer every case to the advisory board. Under Section 11, the advisory board has to give its report to the Government within ten weeks from the date of detention. Sub-section (4) of Section 11 disentitled the detenu to appear by any legal practitioner before the board and makes the proceedings before and the opinion of the board confidential. Section 12 provides that if the board is of opinion that there is sufficient reason for the detention, the Government may confirm the order and continue such detention for such period as it thinks fit. In case the opinion is that there is so no such sufficient cause, the Government has to revoke the detention order. Section 13 provides that the maximum period of detention shall be 12 months from the date of detention. Section 17 provides that a foreigner, in respect of whom a detention order is passed, may be detained without obtaining the opinion of the advisory board for a longer period than three months, but not exceeding two years in any of the classes of cases, or under any of the circumstances thereinafter set out in sub-clauses (a) to (d) of sub-section (1), namely, where a foreigner enters or attempts to enter India or is found with arms, ammunition or explosives, or where a foreigner enters or attempts to enter a notified area or is found therein in breach of Section 3 of the Criminal Law Amendment Act, 1961, or where such a foreigner enters or attempts to enter in an area adjoining the borders of India specified under Section 139 of the Border Security Forces Act, 1968 without a travel document, or where the Central Government has reason to believe that such a foreigner commits or is likely to commit an offence under the Official Secrets Act, 1923. Section 17 thus lays down classes of cases in or circumstances under which foreigner can be detained for a period longer than three months without reference to an advisory board.

9. Article 19(1) guarantees the right of freedom of speech and expression of assembly, to form associations and unions to move freely throughout India, to reside and settle in any part of India and to practice any profession, occupation, trade or business, subject to reasonable restrictions which may be imposed by law as provided by clauses (2) to (6) thereof. Article 21 guarantees protection of life and liberty, the deprivation of which is not punishable, except in accordance with procedure established by law. Article 22, by its clauses (1) and (2) guarantees that no person can be detained in custody without his being informed, as soon as may be, of the grounds for his arrest and without being furnished with an opportunity to consult and be defended by a legal practitioner of his choice, and his being produces before the nearest Magistrate within 24 hours from his attest. No such person can be detained for more than that period without the authority of a magistrate. Clause (3) of Article 22, however, makes clauses (1) and (2) inapplicable to a person arrested and detained under a law providing for preventive detention. But clause (4) provides that no law providing for preventive detention shall authorise detention for a period longer than three months unless (a) an advisory board has reported before the expiration of three months that there is sufficient cause for such detention, or (b) such person is detained in accordance with a law made by Parliament under clause (7)(a) and (b).

10. Clause (7) provides that Parliament may be law prescribe : (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an advisory board in accordance with the provisions of sub-clause (a) of clause (4); (b) the maximum

period for which any person may in any class or classes of cases be detained under any law providing for preventive detention. Parliament under Entry 9 of List I of the Seventh Schedule can pass such a law for reasons connected with defence, foreign relations or the security of India, and concurrently with State legislatures under Entry 3, List III for reasons connected with the security of the State, the maintenance of public order or the maintenance of supplies and services essential to the community.

11. On December 3, 1971, the President issued a proclamation of emergency under Article 352 of the Constitution. On December 4, 1971, Parliament enacted the Defence of India Act, 42 of 1971. The Act was passed in view of the grave emergency which then existed as proclaimed by the President, and to provide for special measures to ensure public safety and interest, the defence of India and civil defence, for trial of certain offences and for matters connected therewith. Section 2(3) of the Act provided that it would remain in force during the period of operation of th proclamation of emergency and for six months thereafter. By Section 6, the Act introduced amendments in several Acts, one amongst them being the Maintenance of Internal Security Act, 1971. Clause (d) of sub-section (6) of Section 6 amended Section 13 of the Act by adding after the words therein "from the date of detention", the words and figures "or until the expiry of the Defence of India Act, 1971, whichever is later". By clause (e) of sub-section (6) of Section 6, a new section, Section 17-A was inserted in the Act. The new section reads as follows :

> "17-A (1) Notwithstanding anything contained in the foregoing provisions of this Act, during the period of operation of the Proclamation of Emergency issued on the 3rd day of December, 1971, any person (including a foreigner) in respect of whom an order of detention has been made under this Act, may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his detention in any of the following classes of cases or under any of the following circumstances, namely -
>
> (a) where such person had been detained with a view to preventing him from acting in any manner prejudicial to the defence of India, relations of India with foreign powers or the security of India; or
>
> (b) where such person had been detained with a view to preventing him acting in any manner prejudicial to the security of the State or the maintenance of the public order.
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> (2) In the case of any person to whom sub-section (1) applies, Sections 10 to 13 shall have effect subject to the following modifications, namely,
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> (a) in Section 10, for the words 'shall, within thirty days', the words 'may, at any time prior to but in no case later than three months before the expiration of two years' shall be substituted;
>
> (b) in Section 11, -
>
> (i) in sub-section (1) for the words 'from the date of detention', the words 'from the date on which reference is made to it' shall be substituted;
>
> (ii) in sub-section (2), for the words 'the detention of the person concerned', the words 'the continued detention of the person concerned' shall be substituted;

(c) in Section 12, for the words 'for the detention', in both the places where they occur, the words 'for the continued detention' shall be substituted;

(d) in Section 13, for the words 'twelve months', the words 'three years' shall be substituted."

12. The new section, Section 17-A effectuates three main changes : (1) by its non-obstente clause overrides the other provisions of the Act, (2) a person may be detained in a class or classes of cases or under the circumstances set out in sub-clauses (a) and (b) of its sub-section (1) without obtaining the opinion of an advisory board for a period longer than three months, but not exceeding two years from the date of detention, that is to say, no opinion of an advisory board need now be obtained for 21 months from the date of detention, the first three months of the detention being permissible without such opinion even before the insertion of Section 17-A; and (3) the maximum period of detention of such a person can be three years or until the expiry of the Defence of India Act, 1971 whichever is later. These changes have been brought about by Parliament exercising power contained in clause (4)(b) read with clause 7(a) and (b) of Article 22. The power is exercised in respect of classes of cases and circumstances relating to all the heads under Entries 9 and 3 of Lists I and III of of the Seventh Schedule, except one, viz., maintenance of essential and services, in respect of which Parliament has the power to pass preventive detention laws.

13. Counsel for the petitioner challenged the validity of the provisions of the Act and the detention order mainly on the following grounds -

(1) that the amendments introduced in the Act by Section 6(6)(d) and (e) are Violative of Article 22(4), (5) and (7);

(2) that Section 10, both prior to and after its amendment, contravenes Article 22(4);

(3) that Section 6(6)(d) and (e) of the Defence of India Act contravenes Article 14;

(4) that the maximum period prescribed by the amendment to Section 13 by Section 6(6)(d) of the Defence of India Act and by the new Section 17-A (2)(d) is ultra vires the powers of Parliament since it amounts to punitive and not preventive detention;

(5) that Sections 3, 5, 8, 11 and 12 of the Act are violative of Articles 14, 19 and 21 on the ground that they are unreasonable restrictions and are not saved by any of the sub-clauses of Article 19(1); and

(6) that the amendments brought about in them by Section 6(6)(d) and (e) of the Defence of India Act cannot breathe life in them as they were non est, by reason only of the subsequent proclamation of emergency.

These contentions fall under two parts : (1) relating to the provisions as they stood before the amendments, and (2) relating to the amendments introduced in the Act by the Defence of India Act, Section 6(6)(d) and (e). As regards the first part, the arguments were that -

(i) the Act was invalid as the restrictions placed thereby on the fundamental rights guaranteed by Articles 14, 19(1)(a) to (d) and (g), 21 and 22 were not saved by sub-clauses (2), (3), (4) and (6) or Article 19(1);

(ii) Section 3 of the Act insofar as it empowers the detention of a person on subjective satisfaction, and not on any objective assessment of the truth of allegations made against him, imposes an unreasonable restriction on his several rights guaranteed by Article 19(1);

(iii) Section 8, which obliges the authority to furnish to the detenu the grounds of detention and confers on him the right to make a representation does not provide for its consideration by an independent and impartial body, is bad;

(iv) Section 12 is bad as government can, contrary to principles of natural justice, confirm detention for a period longer than three months in the strength of an advisory board's report without giving any opportunity to the detenu to know the contents of such a report and to controvert it;

(v) the provisions of the Act are discriminatory insofar as they drastically curtail the liberty of a detenu without his having safeguards available to a person proceeded against under Sections 107 to 110 of the Code of Criminal Procedure.

14. As stated above, Section 17-A authorises detention on the ground of prejudicial acts in relation to : (a) defence of India, relations with foreign powers and security of India, and (b) security of the State and maintenance of public order only. Counsel argued that by the use of the words "may be detained" in the first part of the section an unguided discretion has been conferred on the detaining authority whether to take action under the more drastic provisions of this section or under Section 3(1) read with Sections 10 to 13, even though the activities in respect of which action is taken are in both the cases of the kind set out in (a) and (b) above. In support of this argument, counsel relied on the decisions of this Court in Northern India Caterers Private Ltd. v. Punjab, ((1967) 3 SCR 399 : AIR 1967 SC 1581 : (1968) 1 SCJ 475) State of M. P. v. Thakur Bharat Singh, ((1967) 2 SCR 454 : AIR 1967 SC 1170 : (1968) 1 SCL 173) S. G. Jaisinghani v. Union of India, ((1967) 2 SCR 703 : AIR 1967 SC 1427 : (1967) 2 SCJ 102) Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi. ((1967) 3 SCR 525 : AIR 1967 SC 1836 : (1968) 1 SCJ 178)

15. The contention, however, is not borne out by the provisions of Sections 10 and 17-A(1) and (2). In the first place, Section 10 opens with the words "save as otherwise expressly provided in this Act". These words mean that the section would apply only to cases not expressly provided for in the Act, that is to say, to would not apply to cases falling under Sections 17 and 17-A which deal with cases "otherwise expressly provided" in the Act. In the second place, the words "may be detained" in Section 17-A(1) go with the words which follow them, "without obtaining the opinion of the advisory board" and in "any of the following classes of cases or under any of the following circumstances - "The words "may be detained", no doubt, enable the authority to detain a person without obtaining the opinion of an advisory board for a period longer than three months, but not exceeding two years in the cases therein set out. The words "may be detained" thus are words enabling the authority to detain without a board's opinion for the period there provided for, but are not words giving a choice to the authority to apply Section 17-A(a) or not. Even if the operation of Section 17-A and Section 10 side by side were to result in any difference in the working of the Act, that difference would not seem to amount to any discrimination by reason of the provision in Section 17-A(2) to the effect that in the case of a person to whom sub-section (1) applies Section 10 shall be read subject to the modification, namely, that for words "within thirty days", the words "at any time prior to but in no case later than three months before the expiration of two years" shall be substituted. In this view, there is no question of discrimination or violation of Article 14 as a result of any such discrimination. This conclusion is clearly borne out by the combined effect of the non-

obstante clause in the commencement of Section 17-A(1) and the qualifying words "save as otherwise provided in this Act" in Section 10.

16. But the more important challenge to the validity of Section 17-A was as regards incompatibility with and the non-compliance of the requirements of Article 22(7). The argument was twofold : (1) that on a proper reading of Article 22(4), (5) and (7), clause (7) was an exception to the rule laid down in clauses (4) and (2) that consequent upon such a construction of clause (7), that is, as an exception to clause (4), that clause did not generally empower Parliament to enact a law, on the subjects set out in Entries 9 and 3 of Lists I and III respectively, without the safeguard provided by clause (4), namely, of obtaining an opinion of an impartial body, like the advisory board. On the contrary, that clause authorises Parliament to enact a detention law in exceptional class or class or classes of cases and in exceptional class or classes of cases and in exceptional circumstances specifically prescribed by such a law. The contention was that Section 17-A did not comply with such a requirement of clause (7) inasmuch as enumeration of the subjects or heads in Section 17-A, except that with respect to maintenance of essential supplies and services, would not mean prescribing class or classes of cases and circumstances as provided by clause (7).

17. Three questions would emerge from this contention : (1) whether clause (7) is an exception to the rule laid down in clauses (4); (2) whether Parliament's power to enact a detention law is limited by the requirements laid down in clause (7); and (3) whether setting out verbatim the heads or subjects or some of them upon which Parliament can enact such a law would mean compliance of the requirements of clause (7).

18. These very questions were considered in one form or another in Gopalan v. State of Madras (supra), in connection with Section 12 of the Preventive Detention Act, 1950. The validity of that section was impugned on the grounds of its not having complied with the requirements laid down in clause (7), firstly, because the section merely enumerated the heads or subjects, except one, namely, maintenance of essential supplies and services, upon which under Entries 9 and 3 of Lists I and III respectively Parliament could enact a detention law and not the class or classes or cases and the circumstances in which detention, without the board's opinion, could be ordered, and secondly, because it failed to comply with both the requirements, the word 'and' in that connection being used conjunctively and not disjunctively. Section 3(1) of that Act authorised the Central or the State Government to detain a person, (i) if it was satisfied that his detention was necessary to preventing him from acting prejudicially to (a) to the defence of India, her relations with foreign powers, the security of India; or (b) the security of the State or the maintenance of public order, or (c) the maintenance of supplies and services essential to the community, or (ii) with reference to a foreigner to regulate his continued presence in India, or to make arrangements for his expulsion from India. Section 9 required the appropriate Government to place the case of the person detained under Section 3(1) before the advisory board within six weeks from the date of detention only in cases : (1) where the order was made on apprehension that the detenu was likely to act prejidicially to the maintenance of essential supplies and services, and (2) where it was made against a foreigner under the two heads stated above. Section 12 of the Act provided that a person could be detained without obtaining the board's opinion for a period longer than three months, but not exceeding one year from the date of the detention in the following, classes of cases, or to any of the following circumstances, namely, where such a person has been detained with a view to preventing him from acting prejudicially to (a) the defence of India, relations with foreign powers, the security of India, and (b) the security of the State or the maintenance of public order. Section 12(2), however, provided for a review by the appropriate Government in conclusation with a person who is or has been or is qualified to be appointed a judge of a High Court. Such a provision for a review and the

intercession of an independent and impartial person reduced to a certain extent the rigour of Section 12(1). No such review, which would be of a quasi-judicial nature, (see Lakhanpal v. Union of India ((1967) 1 SCR 433 : AIR 1967 SC 908 : (1967) 2 SCJ 278)), is provided for in the impugned Section 17-A.

19. The majority Court, consisting of Kania, C.J., and Patanjali Sastri, Mukherjea and Das, JJ., (as they all then were) rejected both the contentions, holding, firstly, that the word 'and' meant in the context 'or' which meant that it was enough if Parliament, under Article 22(7)(a), prescribed either the circumstances or the classes of cases in which a person might be detained for a period longer than three months without reference to an advisory board, and secondly, that matters referred to in Section 12 constituted sufficient description of circumstances or classes of cases so as to comply with the requirements of Article 22(7)(a), and that therefore, the section was not open to any constitutional challenge.

20. The minority Court consisting of Fazl Ali and Mahajan, JJ. (as the latter then was) accepted the petitioner's contention in both its aspects and held that the word 'and' meant the conjunctive and not the disjunctive, and that therefore, the impugned provision had to specify both the classes of cases and the circumstances in which detention for a longer period could be directed without a board's opinion. They also held that the expressions "class or classes of cases" and "the circumstances" would not mean merely the heads or the subjects on which a detention law was permissible under clause (7)(a).

21. Kania, C.J., held that the word 'and' in clause (7)(a) meant that the power of preventive detention beyond three months may be exercised, either for the circumstances in which or the class or classes of cases in which a person was suspected to be doing the objectional things mentioned in Section 12. According to him, "the use of the word 'which' twice in the first part of the sub-clause read with a comma put after each shows that the legislature wanted these to be read as disjunctive and not conjunctive". (126-127) Patanjali Sastri, J. (as he then was) also construed the word 'and' as meaning that Parliament may prescribe either the circumstances or the classes of cases or both and held that Section 12 provided both, for, to say that persons likely to act prejudicially to the defence of India may be detained beyond three months was at once to prescribe a class if persons who and the circumstances under which persons could be detained for the longer period. (216) Mukherjea, J. (as he then was) thought that clause (7)(a) laid down an enabling provision and Parliament, if it so chose, could pass a law in terms of the same. "Where an optional power is conferred on certain authority to perform two separate acts, ordinarily it would not be obligatory to perform both; it may do either if it so likes". (282) Das, J. (as he then was) also felt that Parliament "was not obliged under clause (7) to prescribed both circumstances and classes, and in any case has in fact and substance prescribed both, particularly as in some cases circumstances and classes of cases may conceivably coalesce." (330-331) The approach, on the other hand, of the minority judges was that clause (4) of Article 22 laid down a general rule and clause (7) was an exception thereto. Read in that light, clause (7) meant that Parliament could dispense with an advisory board, but that if it did, it had to prescribe the circumstances and the classes of cases, and therefore, the word 'and' in that sub-clause could not be read as 'or'. (175-176; and 235).

22. As regards the expression "the circumstances under which and the class or classes of cases in which" a person could be detained for a longer period than three months, Kania, C.J., observed that circumstances ordinarily meant events or situations extraneous to the actions of the individual concerned, while a class of cases meant determinable groups based on the actions of the individuals with a common aim or idea. He, however, held that the assumption that Entry 9 in List I and Entry 3

in List III were incapable of being considered as circumstances or classes of cases was untenable, and therefore, therefore, there was no reason why the words of those entries could not be used in Section 12 so as to comply with the requirement of clause (7)(a). (127-128) Patanjali Sastri, J., thought that clause (4) and (7) were independent clauses and could not be corelated so as to characterise clause (7) as a proviso or exception to clause (4), and that to read them as a rule and an exception was against their language and structure. He also thought that clause (7) dealt with preventive detention, a purely protectional measure, which must necessarily proceed in all cases on suspicion or anticipation as distinct from proof, (Rex v. Halliday (1917 AC 260 at 275)), and that in such laws it would be impossible to mention the various circumstances or to enumerate various classes of cases exhaustively for which a person should be detained for more than three months except in broad outline. (214) According to him, sufficient guidance could be given by broadly indicating the general nature of the prejudicial activities which a person is likely to indulge in. He observed that he failed to see why enumeration of five out of the six subjects on which a detention law was permissible under the two entries could not be said to comply with the requirements of clause (7)(a). "I fail to see", he said, "why this could not be regarded as a broad classification of cases or a broad description of circumstances where Parliament considers longer detention to be justifiable". (215)

23. While Kania, C.J., and Patanjali Sastri, J., were thus satisfied that the requirement of clause (7)(a) would be complied with by the mere enumeration of the subjects in the entries or some of them, Das, J., and Mukherjea, J., do not appear to express their satisfaction in so forthright a language. This is clear from the following passages :

"It is true that circumstances ordinarily relate to extraneous things, like riots, commotions, political or communal or some sort of abnormal situation and it is said that the farmers of the Constitution had in mind some such situation when the advisory board might be done away with. It is also urged that they had in mind that the more dangerous types of detenus should be denied the privilege of the advisory board. I am free to confess that prescription of specific circumstances or a more rigid and definite specification of classes would have been better and more desirable. But that is crying for the ideal. The Constitution has not in terms put any such limitation ...." (per Das, J., at 331-332).

> "I am extremely doubtful", said Mukherjea, J., "whether the classification of cases made by Parliament in Section 12 of the Act really fulfils the object which the Constitution had in view. The basis of classification has been the apprehended acts of the persons detained described with reference to the lists as said above. Five put of the six heads have been taken out and labelled as classes of cases to which the protection of clause (4)(a) of the article would not be available. It is against commonsense that all forms of activities connected with these five items are equally dangerous and merit the same drastic treatment. The descriptions are very general and there may be acts of various degrees of intensity and danger under each one of these heads". (281)

Although he thought that Section 12 was not framed with due regard to the object which the Constitution had in view, he held that he was unable to say that the section was invalid as being ultra vires the Constitution.

24. Fazl Ali, J., on the other hand, held : (1) that clause (4) laid down a general rule and clause (7) engrafted an exception to it, and that it was never intended that Parliament could treat the normal as the abnormal, or the rule as an exception; (2) that the circumstances to be prescribed must be special

and extraordinary and the class or classes of cases must be of the same nature. The Constitution never contemplated that Parliament should mechanically reproduce all or most of the categories in the legislative entries almost verbatim and not to apply its mind to decide in what circumstances and it what class or classes of cases the advisory board should be dispensed with; (3) that even of clauses (4) and (7) were treated as alternatives and not as a rule and an exception, a law under clause (7)(a) would be an exceptionally drastic law and such a law must be intended for an exceptional situation and not for all the situations which would fall under the heads in the entries, under which a detention law is permissible. It followed, therefore, that class or classes of cases and the circumstances must be of a special nature to require legislation which dispenses with the safeguard of an advisory board. (173-176) Mahajan, J., (as he then was) held that if clause (7) were regarded as an independent clause or an alternative to clause (4), clause (4) would be rendered nugatory and such a construction would amount to the Constitution saying in one breath that a detention law cannot provide for detention for a period longer than three months without reference to an advisory board and in the same breath saying that Parliament, if it so chose, can do so in respect of or any of the subjects mentioned in the lists. If that was so, it would have been wholly unnecessary to provide such a safeguard in the Constitution on a matter which seriously affected personal liberty. On the construction of clause (7), he held that the Constitution recognised varying scales of duration of detention with the idea that this would very with the nature of the apprehended act, detention for a period of three months in ordinary cases, detention for a longer period with intervention of a board in more serious cases, and detention for a longer period than three months without the intercession of a board for a still more dangerous class or classes and for acts committed in grave situations. (238-239)

25. About a month before the Supreme Court delivered its judgment in Gopalan's case (supra), the High Court of Calcutta in Sitendra Narain Ray Choudhury v. The Chief Secretary to the Government of West Bengal, (ILR (1954) 1 Cal 1) (F.B.; Ref 1 of 1950) had decided by a majority that setting out five out of the six heads in the entries in Section 12 of the 1950 Act was sufficient compliance of the requirements under clause (4)(b) read with clause (7)(a) of Article 22.

26. Counsel for the petitioner canvassed for the reasoning given by Fazl Ali and Mahajan, JJ., while the learned Attorney-General contended that the reasoning in the judgments of the majority judges was in consonance with clause (4) and (7) of Article 22. He commended the following propositions for our acceptance :

(1) The Constitution authorises preventive detention and makes specific provisions for it in Articles 22(4) to (7);

(2) The heads in respects of which preventive can be ordered are carefully and deliberately made in Entries 9 and 3 of Lists I and III;

(3) The Constitution provides two separate and independent situations where preventive detention can be directed, namely, the substantive part of clause (4)(a) and clause (4)(b) read with clause (7)(a) and (b);

(4) Except for the enabling power in clause (7)(a) both Parliament and State legislatures are competent to make preventive detention laws under Entry 3 of List III;

(5) So far as clause (7) of Article 22 is concerned, it is an enabling clause and provides for two situations in which a law under that clause can be made by Parliament alone. In other words, these

two situations are independent of each other and are not conditions precedent.

The learned Attorney-General argued that what clause (7)(a) provides is that Parliament may prescribe the circumstances or prescribe class or classes of cases for which a person can be detained for more than three months without reference to an advisory board. In other words, the clause is an enabling clause authorising Parliament : (1) to prescribe the circumstances under which a person may be detained for a period longer than three months de hors the advisory board; and (2) to prescribe the class or classes of cases etc. In this sense Parliament can do either of the two, and therefore, though clause (7)(a) uses the word 'and' that word is used in the disjunctive and not in conjunctive sense. 'Circumstances', according to him, mean the heads or subjects set out the two legislative entries, and the expression "class or classes of cases" means incidents or activities but is not related to individuals or group or groups of individuals.

27. The learned Attorney-General finally urged the fact, which all of us are too well conscious of, that the majority decision in Gopalan's case (supra), has stood for such a long time that it should not be disturbed unless there are strong and manifest reasons to do so. Counsel for the petitioner, on the other hand, argued that the majority decision was contrary to the scheme and the terms of Article 22. Since the matter involves the right of personal liberty, the fact that the decision has held the field should not by itself be a deterrent against its reconsideration. The principles upon which such reconsideration would be resorted to have been explained by this Court in a number of decisions, of which we need remind ourselves of two only, The Bengal Immunity Co., Ltd. v. State of Bihar, ((1955) 2 SCR 603 : AIR 1955 SC 661 : 1935 SCJ 672) and The Legal Remembrancer, State of West Bengal v. The Corporation of Calcutta. ((1967) 2 SCR 170 : AIR 1967 SC 997 : 1967 Cri LJ 950) The decisions have laid down that this Court would review its earlier decisions if it is satisfied of its error or of the baneful effect such a decision would have on the general interest of the public or of it "is inconsistent with the legal philosophy of our Constitution," and that in constitutional matters this Court would do so more readily than in other branches of law as perpetuation of an error would be harmful to public interests. Indeed, the inhibition of the doctrine of Staredecisis is in this case party reduced by the fact that despite the majority decision in Gopalan's case (supra), upholding the validity of the impugned Section 12 of the Act of 1950, and presumably in deference to the minority views, that section was removed from the Act the very next year by the Preventive Detention (Amendment) Act, 1951. Further, the major premise in the majority decision that Article 22 was a self-contained code and that therefore the provisions of a law permitted by that Article would not have to be considered in the light of the provisions of Article 19 was disapproved in R. C. Cooper v. The Union of India ((1970) 3 SCR 530 : (1970) 1 SCC 248) Nevertheless, we have to bear in mind the accepted rule that earlier decisions are not be upset except upon a clear compulsion especially when the legislature has acted upon, as perhaps Parliament did, while enacting the impugned Section 17-A.

28. Article 19(1) in the first instance, guarantees the several freedoms, well accepted in all democratic systems, subject of course to the power of the State to impose reasonable restrictions in public interest and public good. Article 21 then guarantees the equally well accepted safeguard against arbitary deprivation of life and personal liberty save in accordance with procedure established by law, thereby ensuring government by law and not by men. Clauses (1) and (2) of Article 22 again lay down the well-accepted rule that a person detained in custody shall be expeditiously informed of the grounds of his arrest and guarantee his right to the assistance of a legal practitioner of his choice and the necessity of his having to be produced before a magistrate thus securing a judicial as against a legislative or an executive sanction for his arrest.

29. The non-applicability of clauses (1) and (2) provided by clause (3) of Article 22 in the case of an enemy-alien and a person detained under a preventive detention law was provided for, as is notorious, as a sequel to the tragic incidents and the danger to both the internal and external security of the country following the partition. Clause (3) consequently was inserted as an exception to the rule laid down in clauses (1) and (2) of Article 22. There can be no doubt whatsoever that the Constitution-makers accepted preventive detention as a necessary evil, to be tolerated in a constitutional scheme which, otherwise, guaranteed personal liberty in its well-accepted form, Having thus recognised the necessity of preventive detention laws, the Constitution-makers first delineated in clear and precise terms certain heads or subjects in respect of which only Parliament by itself and concurrently with State legislatures was enpowered to enact detention laws under Entries 9 and 3 of Lists I and III respectively. Secondly, they provided in clause (4) that no such law shall authorise detention of a person for a period longer than three months unless (a) an advisory board with persons of judicial training has reported that there is sufficient cause for detention; or (b) a person is detained in accordance with a Parliament statue passed under clause (4)(b) read with clause (7)(a) and (b). These provisions clearly indicate that ordinarily preventive detention can only be for a period of three months only. If a law, however, provides for detention for a longer period, it can only do so with the intercession of an impartial, independent body, viz., an advisory board. Sub-clause (b) of clause (4), however, provides that a detention for a longer period than three months can be had, if a person is detained under a law made by Parliament under clause (7)(a) and (b). Clause (4) thus lays down two situations in which the rule of three months detention can be relaxed : (1) where the intercession of an advisory board is provided, and (2) where Parliament has enacted a law under clause (7)(a) and (b). The proviso to sub-clause (a) of clause (4) lays down that even where there is intercession of the board, detention cannot be in any event for more than the maximum period prescribed in the law in question under clause (7). Reading clause (4) thus in its entirety, the plain meaning of the language used there is clear. It first lays down the ordinary rule of detention being only for three months and then provides two exceptions to it, viz. : (a) detention for a longer period if intercession of an advisory board is provided for, and (b) where Parliament acts under clause (7)(a) and (b), subject in both the cases to the maximum period provided in the law under consideration. It will be seen that sub-clause (a) of clause (4) is not restricted to Parliamentary Statutes, while sub-clause (b) is and applies to an Act passed by Parliament alone.

30. We next go to clause (7). That clause by its sub-clause (a) provides :

> "Parliament may by law prescribe -
>
> (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months without the opinion of an Advisory Board in accordance with the provisions of sub-clause (b) of clause (4)."

Two alternative construction of clause (7)(a) were suggested before us. The learned Attorney-General submitted that clauses (4) and (7) should be read together, and if so read, they mean two independent powers : (1) to make a law providing for longer detention with the provision for an advisory board, and (2) to make a law providing for a longer detention without an advisory board. He argued that, therefor, the powers were independent or alternative and there was no question of clause (7)(a) being an exception to clause (4)(a). Secondly, he argued that the words "may by law prescribe" in clause (7)(a) meant that that sub-clause was an enabling provision which authorised Parliament : (i) to prescribe the circumstance under which, and (ii) the class or classes of cases in which a person can be detained for a longer period without the intervention of an advisory board. Since the Constitution enables Parliament to perform two things, it has the power to do either of

them and therefore the word 'and' there used has to be read in the context as having been used in the disjunctive sense. [Maxwell on Interpretation of Statues (11th ed.) 229]. On the other hand, the contention on behalf of the petitioner was that clause (4)(a) laid down a safeguard that there has to be the intervention of a board in all cases where the law provides for detention for a period longer than three months except in the case when Parliament chooses to exercise its power under clause (7)(a).

31. In determining which of these constructions is correct, it is necessary to consider first the nature and scope of clause (4)(a). Under that clause, no law, whether passed by Parliament under Entry 9 of List I and or by Parliament and the State Legislatures under Entry 3 of List III can authorise longer detention than three months unless it provides for the intercession of an advisory board. Clause (4)(a) thus lays down a limitation on the legislative power conferred on both the Central and State legislatures while exercising their power under the said entries. The position then is that although Parliament and the State Legislatures have the power to make detention laws under any of the six topics or subjects enumerated in the two entries, clause (4)(a) first provides that a law passed by either of them cannot provide detention for a period longer than three months. It next lays down that if such a law provides detention for a period longer than three months, it can do so only if it includes the safeguard of the intercession of an advisory board, which the Constitution was anxious enough to see that it contained persons who were or would be qualified to hold the position of a High Court judge.

32. Whereas sub-clause (a) of clause (4) applies to legislation enacted by both Parliament and the State Legislatures, sub-clause (b) applies only to laws made by Parliament. Sub-clause (b) provides that the limitation placed on the power of Parliament under sub-clause (a) is not to apply to a law made by Parliament under clause (7)(a) and (b). If the theory of alternative power of Parliament either to enable a law providing for a longer period but with the intercession of a Board or to enact a law under clause (4)(b) read with clause (7)(b) providing also for a longer detention but without the intercession of a board, were accepted clause (4)(a) would be totally nullified by clause (4)(b) read with clause (7)(a). In other words, such a construction would mean that though the constitution-makers laid down a safeguard against a law providing for a longer duration, they, in the very same breath, nullified that safeguard by generally empowering Parliament under clause (4)(b) read with clause (7)(a) to enact laws with longer period of detention without the intercession of an advisory board. Surely, such an interpretation which nullifies one part of the same clause while interpreting its another part has to be avoided. Further, if clause (4)(b) read with clause (7)(a) was intended to override clause (4)(a) and the safeguard required in a law providing for detention for a longer period, the Constitution-makers would have confined clause (4)(a) only to laws made by the State Legislatures and would not have applied it to Parliament as well. The Constitution-makers in that case would have simply used in clause (4)(b) and clause (7)(a) language such as "Nothing contained in clause (4)(a) shall apply to a law of preventive detention made by Parliament". The acceptance of the theory of alternative power of Parliament means that whereas State laws providing longer detention would require he intercession of an advisory board, laws passed by Parliament, though providing for longer detention, would not. It is impossible to conceive that such a result could have been intended by the Constitution-makers, who were careful enough to provide for the intervention of an impartial and an independent body in laws whether made by Parliament or State Legislatures providing for detention for longer period than three months. On an analysis of the two clauses (4) and (7), the conclusion is inescapable that what they provide is : (a) that ordinarily, detention provided by a preventive detention law should not be for a period longer than three months; (b) that if, however, such a law does provide for a longer period than three months, it must provide for the intercession of an advisory body; and (c) that situations may arise when in certain classes of cases

Parliament alone should be empowered to enact a law which provides for a longer detention even without the intercession of an advisory board. On a careful consideration of the language of clauses (4) and (7), the theory of independent or alternative power of Parliament breaks down and cannot be accepted, firstly, because the language of the two clauses does not bear out such a construction, and secondly, because the construction under which clause (4)(b) read with clause (7)(a) lays down an exception to clause (4)(a) harmonises both the clauses and brings out the true intention in enacting the two clauses.

33. The next question is what kind of a law which can provide for a longer duration and at the same time can dispense with the advisory board is permissible under clause (7)(a). Such a law has to be one passed by Parliament and has to be one which prescribes "the circumstances under which, and the class or classes of cases in which", a person may be detained for a longer period than the one contemplated by clause (4), i.e., three months and without the requirement of an advisory board. The expression "the circumstances under which, and the class or classes of cases" evoked a controversy in Gopalan's case (supra) which resulted in difference of opinion between the majority and the minority judges. That controversy practically in the same terms was repeated before us, one side contending that enumeration of the heads or subjects in the two entries on which a law of detention can be made would sufficiently comply with the requirement of clause (7)(a), and the other side contending against such a meaning being given to the aforesaid expression. In deciding that controversy, one broad consideration at once arises and that is that the circumstances and the classes of cases mentioned in clause (7)(a) are not limited to any one or more of the subjects set out in the two entries in respect of which a detention law can be made. If the contention that enumeraion of these subjects would satisfy the requirements of clause (7)(a) were to be right, a Parliamentary law can enumerate all the six subjects in the two entries and provide detention for a longer period for reasons connected with all of them. Both the Preventive Detention Act, 1950 and the impugned Act excepted the subject of maintenance of essential supplies and services, but in the absence of any restrictive language in that respect in clause (7)(a), they need not have done so. That means that Parliament can pass a law dispensing with the advisory board by merely stating therein all the heads or subjects in the two entries. If that were done, the safeguard provided in clause (4)(a) can be rendered totally infructuous. If that was the intention, clause (7)(a) need not have been framed in an elaborate language as has been done and it would have been sufficient to provide that nothing in clause (4)(a) shall apply to a law passed by Parliament which sets out the subjects in the entries or any one or more of them. Why did the Constitution-makers consider if necessary to provide in clause (7)(a) that the law must prescribe the circumstances and the classes of cases ? The insertion of such an expression coupled with Parliament being the only body which can enact such a law seems to suggest that clause (7)(a) is an exception to clause (4)(a) and it being such an exception, Parliament alone is empowered to pass a law dealing with exceptional circumstance and exceptional classes of cases. If enumeration of the heads in the entries were to mean compliance of prescribing circumstances and classes of cases, Parliament would in such a law be dealing with all situations and all classes of cases from the lowest to the most extraordinary or abnormal and not with some only requiring treatment different from that envisaged by clause (4)(a). In such a case, clause (4)(a) would again be rendered nugatory, for, Parliament can, by enumerating verbatim the heads or subjects set out in the entries, do away with th requirement of clause (4)(a). Could that have been the intention in enacting clause (7)(a) ? It clearly could not have been so intended for the simple reason that deprivation of personal liberty even for a period longer than three months, ordinarily considered to be sufficient, required, according to clause (4)(a), at least the safeguard of an impartial body against executive action of a drastic kind.

34. The difficulty in equating enumeration in verbatim of the heads of legislation permissible under

the two entries in Lists I and III with both the circumstances and the classes of cases is that though the activities of persons thought necessary for detention may very in degrees of their impact depending upon the situations existing at the time, all of them, irrespective of their degree of intensity and impact, would be clubbed together so as to treat them equally in a law under clauses (7)(a). In such a case even activities, which would not justify the dispensation of the safeguard of an advisory board as against those which need such dispensation, would be treated equally, with the result that in respect of all activities and all situations Parliament would be enabled to dispense with the safeguard of the intervention on an advisory board. What use would then be of having clause (4)(a) if its requirement can be avoided by a law which simply sets out the subjects or some of them from the two entries ? As Mahajan, J., pointed out in Gopalan's case (supra) the language of clauses (4) and (7) show that they deal with three distinct situations : (1) where the activities and the persons likely to perpetrate them, though connected with the subjects in the entries, are of such a nature and consequence that three months' detention would meet the situation; (2) where the activities and the persons likely to perpetrate them are of such nature and consequence that they need a longer period of detention but with the intercession of an advisory board, and (3) where the activities and the persons likely to resort to them are of such a nature and consequence that the situations they create are such as require not only a longer period of detention, but also the dispensation of intercession by an advisory body. In times of severe emergency when the security of the country or part of it is threatened, for instance, not only detention for a longer period might became necessary but the intervention of an advisory body to which information of a vital nature would have to be disclosed might be regarded both as inconsistent with the safety of the country or the community as well as cumbersome. Such situations may arise not merely in cases involving the security of the nation or part or parts of it but may arise in connection with the rest of the subjects in the entries. Sabotage of essential supplies and services would in given circumstances be as dangerous as activities involving danger to the security of the State and/or public order.

35. Circumstances would ordinarily mean situations or events extraneous to the activities of a concerned person or a group of persons, such as riots, disorders, tensions, religious, recial, regional or linguistic or other such commotions, which might by their pre-existence accentuate the impact of such activities affecting the security of the country or a part of it or the public order. Class or classes of cases, on the other hand, relate to group or groups of individuals, who by the nature of their activities fall under one particular group or groups by their common or similar objective or objectives. The subjects or heads set out in the legislative entries were intended to delineate the bounds within which the legislatures can pass detention laws. The purposes of these entries and of clause (7)(a) are distinct; that of the entries to lay down the topics in respect of which legislation can be made and that of clause (7)(a) to distinguish the ordinary from the exceptional to which only the salutary safeguard provided by clause (4)(a) would not apply. Mere repetition of the subjects or topics of legislation from the entries would not mean prescribing either the circumstances or the classes of cases to which only, as against the rest of the individuals and their activities, the safeguard of intercession of an independent body would not apply. The law under clause (7)(a) would, as compared to th one to which clause (4)(a) would apply, be a drastic law and the presumption would be that such a drastic law would apply to exceptional circumstances and exceptional activities expressly and in precise terms prescribed.

36. If clause (7)(a) were construed to permit mere enumeration of the subjects in respect of which there is power to enact preventive detention laws, all those subjects can be set out verbatim, in which event clause (4)(a) would be rendered otiose. An act prejudicial to the maintenance of essential supplies and services, e.g. possession of controlled or rational food articles in excess of statutory limits, would be equated for treatment with an act prejudicial to the security of India or of

a State. On the other hand, an act sabotaging, for instance, lines of supplies and communication in times of an emergency, prejudicial to the maintenance of essential supplies and services would be equated with an act prejudicial to maintenance of public order in one locality or affecting a section of the community. Clause (7)(a), thus, envisages Parliament to apply its mind and prescribe specific situations and types of cases which require a drastic law dispensing with the intervention of an advisory board on the ground that such intervention would in such exceptional circumstances and in cases of dangerous individuals would be cumbersome or unsafe. Reading clauses (4)(a) and (7)(a) together, it is quite clear that intercession of an independent body like the advisory board was regarded by the Constitution-makers as an essential safeguard against a jurisdiction primarily based on suspicion and apprehension, which could be dispensed with in extraordinary circumstances and with regard to dangerous persons and their apprehended activities specifically prescribed in the law made under clause (7)(a). In this view, the meaning of the word 'and' in that clause must be held to have its opposite but its commonly understood sense, requiring Parliament to prescribe both the circumstances and he classes of cases in which only consideration by the board can be dispensed with.

36. In Gopalan's case (supra) Patanjali Sastri, J., (as he then was) expressed the view that in such a matter as preventive detention which by its nature depended on the likehood of certain apprehended acts it would be impossible for Parliament to exhaustively set out the circumstances or the classes of cases which a law under clause (7)(a) would be made. The difficulty felt by Patanjali Sastri, J., was sought to be answered by Fazl Ali, J., (p.178) by referring to regulation 18-B of the British Defence of the Realm Regulations, 1939, as and by way of a concrete illustration where activities and circumstances of a more dangerous type could be classified from the rest. Regulation 18-B laid down the following classes of cases where the Secretary of State could direct preventive detention -

(1) if the Secretary of State has reasonable cause to believe any person to be of hostile origin or association;

(2) if the Secretary of State has reasonable cause to believe any person to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts;

(3) if he has reasonable cause to believe any person to have been or to be a member of, or to have been or to be active in the furtherance of the objects of any such organisation mentioned; and

(4) if he has reasonable cause to believe that the recent conduct of any person for the time being in an area or any words recently written or spoken by such a person expressing sympathy with the enemy, indicates or indicate that that person is likely to assist the enemy.

Mahajan, J., (as he then was), likewise, referred to the classification of the prejudicial activities set out in Rule 34(6) of the Defence of India Rules, 1939. Such a classification of acts is also to be found in Rule 36(6) of the Defence of India Rules, 1971. Section 3(2) of the West Bengal (Prevention of Violent Activities) Act, 19 of 1970, similarly, classifies certain activities as falling within the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order". That provision runs as follows :

> "(2) For the purposes of sub-section (1), the expression 'acting in any manner prejudicial to the security of the State or the maintenance of public order' means -

(a) using, or instigating any person by words, either spoken or written, or by signs or by visible representations or otherwise, to use, any lethal weapon -

(i) to promote or propagate any cause or ideology, the promotion or propagation of which affects, or is likely to affect, adversely the security of the State or the maintenance of pubic order; or

(ii) to overthrow or to overawe the Government established by law in India.

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(b) committing mischief, within the meaning of Section 425 of the Indian Penal Code, by fire or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution or on any public building, where the commission of such mischief disturbs, or is likely to disturb, public order; or

(c) causing insult to the Indian National Flag or to any other object of public veneration, whether by mutilating, damaging, burning, defiling, destroying or otherwise, or instigating any person to do so.

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(d) committing, or instigating any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the the Arms Act, 1959 or the Explosive Sub-stances Act, 1908, where the commission of such offence disturbs, or is likely to disturb, public order; or

(e) in the case of a person referred to in clauses (a) to (f) of Section 110 of the Code of Criminal Procedure, 1898, committing any offence punishable with imprisonment where the commission of such offence disturbs, or is likely to disturb, public order."

These examples are sufficient to dispel fear of any practical difficulty in prescribing specific circumstances under which and the classes of cases which need dispensing with the intercession of an advisory board.

38. In our opinion, clause (4)(a) of Article 22 lays down a rule to which clause (4)(b), read with clause (7)(a) is an exception. Upon that view clause (7)(a) must be construed as a restriction on Parliament's power of making preventive detention laws in the sense that it can depart from the rule laid down in clause (4)(a) and dispense with reference of cases to an advisory board only by a law which prescribes both the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months without obtaining the opinion of an advisory board in accordance with the provisions of sub-clause (a) of clause (4). With great respect to the distinguished judges who formed the majority in Gopalan's case (supra), we are not able to concur in their views on the construction of clause (4)(b) and clause (7)(a) of Article 22. Section 17-A of the Act, in our opinion, has failed to comply with the requirement of clause (7)(a), and has, therefore, to be declared bad as being inconsistent with that clause.

39. In Gopalan's case (supra) the majority court had held that Article 22 was a self-contained Code

and therefore a law of preventive detention did not have to satisfy the requirements of Articles 19, 14 and 21. The view of Fazl Ali, J., on the other hand, was that preventive detention was a direct breach of the right under Article 19(a)(d) and that a law providing for preventive detention had to be subject to such judicial review as is obtainable under clause (5) of that Article. In R. C. Cooper v. Union of India (supra), the aforesaid premise of the majority in Gopalan's case (supra) was disapproved and therefore it no longer holds the field. Though Cooper's case (supra) dealt with the inter-relationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major premise of the majority in Gopalan's case (supra) to be incorrect. In view of this constructional position, counsel for the petitioner and for the intervener made submissions on Section 13 of the Act as amended by Section 6(6)(d) of the Defence of India Act as being in violation of Article 14 and also on Sections 3, 8, 9, 10, 11 and 12 of the Act even as they stood before the enactment of Section 6(6)(d) of the Defence of India Act on the ground that those provisions were not reasonable restrictions and were therefore void and the subsequent declaration of emergency and the enactment of Section 6(6)(d) could not breathe life into those provisions which were already void. Counsel also contended that the maximum period of detention prescribed by the amended Section 13 and by Section 17-A(2)(d) did not satisfy Article 22(7)(b) since the period fixed by Parliament therein is three years or until the expiry of the Defence of India Act, whichever is later, an event uncertain as no one can anticipate when the emergency would be terminated. However, in the view we have taken of Section 17-A of the Act we need not go into them as in accordance with the practice followed by this Court we need not decide more than what is necessary. We, therefore, do not express any views on the aforesaid contentions raised by counsel. It is, therefore, enough for us to declare Section 17-A as not having satisfied the requirements laid down in clause (7)(a) of Article 22 and therefore bad.

40. The consequence is that the petition succeeds and we direct that the petitioner be released forthwith from his detention.

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