R. K. Garg

Vs

Union of India and Others

Writ Petitions Nos. 355, 360, 863, 994 and 3624 of 1981

(CJI Y.V. Chandrachud, P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali, A.N. Sen JJ)

13.11.1981

JUDGMENT

BHAGWATI, J.

1. [Judgment delivered on Oct. 20, 1981] (for himself, Chandrachud, C.J. and Fazal Ali and A.N. Sen, JJ.) - These writ petitions raise a common question of law relating to the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 (hereinafter referred to as 'the Ordinance') and the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 (hereinafter referred to as 'the Act'). The principal ground on which the constitutional validity of the Ordinance and the Act is challenged is that they are violative of the equality clause contained in Article 14 of the Constitution. There is also one other ground on which the Ordinance is assailed as constitutionally invalid and it is that the President had no power under Article 123 of the Constitution to issue the Ordinance and the Ordinance is therefore ultra vires and void. We shall first deal with the latter ground since it can be disposed of briefly, but before we do so, at would be convenient to refer to the relevant provisions of the Act. It is not necessary to make any specific reference to the provisions of the Ordinance since the provisions of the Act are substantially a reproduction of the provisions of the Ordinance.

2. On January 12, 1981, both Houses of Parliament not being in session, the President issued the Ordinance in exercise of the power conferred upon him under Article 123 of the Constitution. The Ordinance was latter replaced by the Act which received the assent of the President on March 27, 1981, but which was brought into force with retrospective effect from January 12, 1981 being the date of promulgation of the Ordinance. The Act is a brief piece of legislation with only a few sections but the ascertainment of their true meaning and legal effect has given rise to considerable controversy between the parties and hence it is necessary to examine the provisions of the Act in some detail. The long title of the Act describes it as an Act "to provide for certain immunities to holders of Special Bearer Bonds, 1991 and for certain exemptions from direct taxes in relation to such Bonds and for matters connected therewith" and the provisions enacted in the Act are preceded by a Preamble which indicates the object and purpose of the Act in the following words :

> Whereas for effective economic and social planning it is necessary to canalise for productive purposes back money which has become as serious threat to the national economy;
>
> And whereas with a view to such canalisation the Central Government has decided to issue at par certain bearer bonds to be known as the Special Bearer Bonds, 1991, of the face value of ten thousand rupees and redemption value, after ten years of twelve

thousand rupees;

And whereas it is expedient to provide for certain immunities and exemptions to render it possible for persons in possession of black money to invest the same in the said Bonds;

Sections 3 and 4 are extremely material since on their true interpretation depends to a large extent the determination of the question relating to the constitutional validity of the Act and they may be reproduced as follows :

3. (1) Notwithstanding anything contained in any other law for the time being in force, -

(a) no person who has subscribed to or has otherwise acquired Special Bearer Bonds shall be required to disclose, for any purpose whatsoever, the nature and source of acquisition of such Bonds;

(b) no inquiry or investigation shall be commenced against any person under any such law on the ground that such person has subscribed to or has otherwise acquired Special Bearer Bonds; and

(c) the fact that a person has subscribed to or has otherwise acquired Special Bearer Bonds shall be taken into account and shall be inadmissible as evidence in any proceedings relating to any offence or the imposition of any penalty under any such law.

(2) Nothing in sub-section (1) shall apply in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Prevention of Corruption Act, 1947 or any offence which is punishable under any other law and which is similar to an offence punishable under either of those Chapters or under that Act or for the purpose of enforcement of any civil liability.

Explanation. - For the purposes of this sub-section, "civil liability" does not include liability by way of tax under any law for the time being in force.

4. Without prejudice to the generality of the provisions of Section 3, the subscription to, or acquisition of Special Bearer Bonds by any person shall not be taken into account for the purpose of any proceedings under the Income Tax Act, 1961 (hereinafter referred to as the Income Tax Act), the Wealth Tax Act, 1957 (hereinafter referred to as the Wealth Tax Act), or the Gift Tax Act, 1958 (hereinafter referred to as the Gift Act) and, in particular, no person who has subscribed to, or has otherwise acquired, the said Bonds shall be entitled -

(a) to claim any set-off or relief in any assessment, re-assessment, appeal, reference or other proceeding under the Income-tax Act or to reopen any assessment or re-assessment made under that Act on the ground that he has subscribed to or has otherwise acquired the said Bonds;

(b) to claim in relation to any period before the date of maturity of the said Bonds, that any asset which is includible in his net wealth for any assessment year under the Wealth Tax Act has been converted into the said Bonds; or

(c) to claim, in relation to any period before the date of maturity of the said Bonds, that any asset held by him or any sum credited in his books of account or otherwise held by him represents the consideration received by him for the transfer of the said Bonds.

We shall analyse the provisions of these two sections when we deal with the arguments advanced on behalf of the parties and that will largely decide the fate of the challenge against the constitutional validity of the Act, but in the meanwhile we may proceed to summarise the remaining provisions of the Act. Section 5 amends the Income Tax Act, 1961 by providing that the definition of "capital asset" in Section 2, clause (14) shall not include the Special Bearer Bonds issued under the Act so that any profit arising on sale of the Special Bearer Bonds would not be liable to capital gains tax and it also excludes from the computation of the total income of the assessee, premium on redemption of the Special Bearer Bonds by introducing a new sub-clause in Section 10, clause (15). Section 5, sub-section (1) of the Wealth Tax Act, 1957 is also amended by Section 6 so as to exclude the Special Bearer Bonds from the net wealth of the assessee liable to wealth-tax. Section 7, by amending Section 5, sub-section (1) of the Gift Tax Act, 1958 exempts gifts of Special Bearer Bonds from the incidence of gift-tax. Section 8 confers powers on the Central Government to make order removing any difficulty which may arise in giving effect to the provisions of the Act and Section 9, sub-section (1) repeals the Ordinance, but since the Act is brought into force with effect from the date of promulgation of the Ordinance, sub-section (2) of Section 6 provides that notwithstanding the repeal of the Ordinance, anything done or any action taken under the Ordinance shall be deemed to have been done or taken under the correspondent provisions of the Act.

3. Having set out the provisions of the Act - and be it noted again that the provisions of the Ordinance were substantially in the same terms as the provisions of the Act - we may now proceed to consider the challenge against the constitutional validity of the Ordinance on the ground that the President has no power to issue the Ordinance under Article 123 of the Constitution. There were two limbs of the argument under this head of challenge; one was that since the Ordinance had the effect of amending the tax laws, it was outside the competence of the President under Article 123 and the other was that the subject-matter of the Ordinance was in the nature of a Money Bill which could be introduced only in the House of the People and passed according to the procedure provided in Article 109 and 110 and the President had therefore no power under Article 123 to issue the Ordinance bypassing the special procedure provided in Articles 109 and 110 for the passing of a Money Bill. There is, as we shall presently pint out, no force in either of these two contentions, but we may point out straightway that both these contentions are academic, since the Act has been brought into force with effect from the date of promulgation of the Ordinance and sub-section (2) of Section 9 provides that anything done or any action taken under the Ordinance shall be deemed to have been done or taken under the corresponding provisions of the Act and the validity of anything done or an action taken under the Ordinance is therefore required to be judged nor with reference to the Ordinance under which it was done or taken, but with reference to the Act which was, by reason of its retrospective enactment, in force right from the date of promulgation of the Ordinance and under which the thing or action was deemed to have been done or taken. It is in the circumstances wholly unnecessary to consider the constitutional validity of the Ordinance, because even if the Ordinance be unconstitutional, the validity of anything done or any action taken under the Ordinance could still be justified with reference to the provisions of the Act. This would seem to be clear on first principle as a matter of pure construction and no authority is needed in support of it, but if any were needed, it may be found in the decision of this Court in Gujarat Pottery Works v. B.P. Sood, Controller of Mining Leases for India [(1967) 1 SCR 695 : AIR 1967 SC 964 : (1968) 1 SCJ 30]. There the question was whether the Mining Leases (Modification of Terms) Rules, 1956

(hereinafter referred to as the '1956 Rules') made under Mines and Minerals (Regulation and Development) Act, 1948 (referred to shortly as '1948 Act') were void as being inconsistent with the provisions of the 1948 Act and if they were void, they could be said to be continued by reason of Section 29 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter called the '1957 Act'). This Court sitting in a Constitution Bench held that the 1956 Rules were not inconsistent with the provisions of the 1948 Act and were therefore valid, but proceeded to observe that even if the 1956 Rules were void as being inconsistent with the provisions of the 1948 Act, they must by reason of Section 29 of the 1957 Act be deemed to have been made under that Act and their validity and continuity must therefore be determined with reference to the provisions of the 1957 Act and not the provisions of the 1948 Act and since there was no inconsistency between the 1956 Rules and the provisions of the 1957 Act, the 1956 Rules could not be faulted as being outside the power of the Central Government. Raghubar Dayal, J. speaking on behalf of the Court articulated the reason for taking this view in the following words :

Even if the rules were not consistent with the provisions of the 1948 Act and were therefore, void, we do not agree that they could not have continued after the enforcement of the 1957 Act. Section 29 reads :

> All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948, shall, insofar as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act.

The effect of this section is that the rules which were made or purported to have been made under the 1948 Act in respect of matters for which rules could be made under the 1957 Act would be deemed to have been made under the 1957 Act as if that Act had been in force on the date on which such rules were made and would continue in force. The Act of 1957 in a way is deemed to have been in force when the modification rules were framed in 1956. The 1956 Rules would be deemed to be framed under the 1957 Act and therefore their validity and continuity depends on the provisions of the 1957 Act and not of the 1948 Act.

In this connection we may refer to the case reported as Abdul Majid v. P.R. Nayak [AIR 1951 Bom 440 : 53 Bom LR 621]. In that case Section 58 of Act 31 of 1950 repealed Ordinance 27 of 1949 and provided as follows :

The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949 (27 of 1949) shall not affect the previous operation thereof, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance shall be deemed to have been done or taken in the exercise of the power conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

Section 58 was construed thus :

> The language used in Section 58 is both striking and significant. It does not merely provide that the orders passed under the Ordinance shall be deemed to be orders passed under the Act, but it provides that the orders passed under the Ordinance shall be deemed to be orders under this Act as if this Act were in force on the day on

which certain things were done or action taken. Therefore the object of this section is, as it were, to antedate this Act so as to bring it into force on the day on which as particular order was passed which is being challenged. In other words, the validity of an order is to be judged not with reference to the Ordinance under which it was passed, but with reference to the Act subsequently passed by Parliament.

The rules have not been challenged to be ultra vires the 1947 Act in the instant case.

The same process of reasoning which appealed to this Court in upholding the validity of the 1956 Rules must apply equally in the present case and the validity of anything done or any action taken under the Ordinance must be judged with reference to the provisions of the Act and not of the Ordinance. It would therefore be academic for us to consider whether the Ordinance was within the ordinance-making power of the President under Article 123 and ordinarily we would have resisted the temptation of pronouncing on this issue, because it is a self-restraining rule of prudence adopted by this Court that "the court will not formulate a rule of constitutional law broader than is require by the precisefacts to which it is to be applied". But since considerable argument was advanced before us in regard to this issue we do not think it would be right on our part to refuse to express our view upon it.

4. The Ordinance was issued by the President under Article 123 which is the solitary Article in Chapter III headed "Legislative Powers of the President". This Article provides inter alia as follows :

123. (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament, but every such Ordinance -

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

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(3) If and so far as an Ordinance under this Article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

It will be noticed that under this Article legislative power is conferred on the President exercisable when both Houses of Parliament ar not in session. It is possible that when neither House of Parliament is in session, a situation may arise which needs to be dealt with immediately and for which there is no adequate provision in the existing law and emergent legislation may be necessary to enable the executive to cope with the situation. What is to be done and how is the problem to be solved in such a case ? Both Houses of Parliament being in recess, no legislation can be immediately undertaken and if the legislation is postponed until the House of Parliament meet

damage may be caused to public weal. Article 123 therefore confers powers on the President to promulgate a law by issuing an Ordinance to enable the executive to deal with the emergent situation which might well include a situation created by a law being declared void by a court of law. "Grave public inconvenience would be caused", points out Mr. Seervai in his famous book on Constitutional Law, if on a statute like the Sales Tax Act being declared void, "no machinery existed whereby a valid law could be promulgated to take the place of the law declared void". The President is thus given legislation power to issue an Ordinance and since under our constitutional scheme as authoritatively expounded by this Court in Shamsher Singh v. State of Punjab [(1975) 1 SCR 814 : (1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192 : 1974 Lab IC 1380 : (1974) 2 LLJ 465], the President cannot act except in accordance with the aid and advice of this Council of Ministers, it is really the executive which is invested with this legislative power. Now at first blush it might appear rather unusual and that was the main thrust of the criticism of Mr. R.K. Garg on this point - that the power to make laws should have been entrusted by the founding fathers of the Constitution to the executive, because according to the traditional outfit of a democratic political structure, the legislative power must belong exclusively to the elected representatives of the people and vesting it in the executive, though responsible to the legislature, would be undemocratic, as it might tenable the executive to abuse this power by securing the passage of an ordinary bill without risking a debate in the legislature. But if we closely analyse this provision and consider it in all its aspects, it does not appear to be so startling, though we may point out even if it were, the Court would have to accept it as the expression of the collective will of the founding fathers. It may be noted, and this was pointed out forcibly by Dr. Ambedkar while replaying to the criticism against the introduction of Article 123 in the Constituent Assembly - that the legislative power conferred on the President under this Article is not a parallel power of legislation. It is a power exercisable only when both Houses of Parliament are not in session and it has been conferred ex necessitate in order to enable the executive to meet an emergent situation. Moreover, the law made by the President by issuing an Ordinance is to strictly limited duration. It ceases to operate at the expiration of six weeks from the reassembly of Parliament or if before the expiration of this period, resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions. This also affords the clearest indication the President is invested with this legislative power only in order to enable the executive to tide over an emergent situation which may arise whilst the Houses of Parliament are not in session. Furthermore, this power to promulgate an Ordinance conferred on the President is coextensive with the power of Parliament to make laws and the President cannot issue an Ordinance which Parliament cannot enact into a law. It will therefore be seen that legislative power has been conferred on the executive by the constitution makers for a necessary purpose and it is hedged in by limitations and conditions. The conferment of such power may appear to be undemocratic but it is not so, because the executive is clearly answerable to the legislature and if the President, on the aid and advice of the executive, promulgates an Ordinance in misuse or abuse of this power, the legislature can not only pass a resolution disapproving the Ordinance but can also pass a vote of no confidence in the executive. There is in the theory of constitutional law complete control of the legislature over the executive, because if the executive misbehaves or forfeits the confidence of the legislature, it can be thrown out by the legislature. Of course this safeguard against misuse or abuse of power by the executive would dwindle in efficacy and value according (sic) as if the legislative control over the executive diminishes and the executive begins to dominate the legislature. But nonetheless it is a safeguard which protects the vesting of the legislative power in the President from the charge of being an undemocratic provision. We might profitably quote here the words of one of us (Chandrachud, J., as he then was) in State of Rajasthan v. Union of India [(1978) 1 SCR 1 : (1977) 3 SCC 592 : AIR 1977 SC 1361 : (1978) 1 SCJ 78] where, repelling the contention of the petitioner that the interpretation which the Union of India was inviting the

court to place on Article 356 would impair the future of democracy by enabling the Central Government to supersede a duly elected State Government and to dissolve its legislature without prior approval of Parliament, the learned Judge said : (SCC pp. 642-43, para 125)

> . . . there may be situations in which it is imperative to act expeditiously and recourse to the parliamentary process may, by reason of the delay involved, impair rather than strengthen the functioning of democracy. The Constitution has therefore provided safety-valves to meet extraordinary situations. They have an imperious garb and a repressive content but they are designed to save, not destroy, democracy. The fault, if any, is not in the making of the Constitution but in the working of it.

These words provide a compete answer to the criticism of Mr. R.K. Garg.

5. Now once it is accepted that the President has legislative power under Article 123 to promulgate an Ordinance and this legislative power is coextensive with the power of the Parliament to make laws, it is difficult to see how any limitation can be read into this legislative power of the President so as to make it ineffective to alter or amend tax laws. If Parliament can by enacting legislation alter or amend tax laws, equally can the President do so by issuing an Ordinance under Article 123. There have been, in fact, numerous instances where the President has issued an Ordinance replacing with retrospective effect a tax law declared void by the High Court or this Court. Even offences have been created by Ordinance issued by the President under Article 123 and such offences committed during the life of the Ordinance have been held to be punishable despite the expiry of the Ordinance (vide State of Punjab v. Mohar Singh [(1955) 1 SCR 893 : AIR 1955 SC 84 : 1955 SCJ 25 : 1955 Cri LJ 254]). It may also be noted that clause (2) of Article 123 provides in terms clear and explicit that an Ordinance promulgated under that Article shall have the same force and effect as an Act of Parliament. That there is no qualitative difference between an Ordinance issued by the President and an Act passed by Parliament is also emphasized by clause (2) of Article 367 which provides that any reference in the Constitution to Acts or laws made by Parliament shall be construed as including a reference to an Ordinance made by the President. We do not therefore think there is any substance in the contention of the petitioner that the President has not power under Article 123 to issue an Ordinance amending or altering the tax laws and that the Ordinance was therefore outside the legislative power of the President under that Article.

6. That takes us to the principal question arising in the writ petitions namely, whether the provisions of the Act are violative of Article 14 of the Constitution. The true scope and ambit of Article 14 has been the subject-matter of discussion in numerous decisions of this Court and the propositions applicable to cases arising under that Article have been repeated so many times during the last thirty years that they now sound platitudinous. The latest and most compete exposition of the propositions relating to the applicability of Article 14 as emerging from "the avalanche of cases which have flooded this Court" since the commencement of the Constitution is to be found in the judgment of one of us (Chandrachud, J., as he then was) in In re The Special Courts Bill 1978 [(1979) 2 SCR 476 : (1979) 1 SCC 380 : AIR 1979 SC 478 : (1979) 2 SCJ 35]. It not only contains a lucid statement of the propositions arising under Article 14, but being a decision given by a Bench of seven Judges of this Court, it is binding upon us. That decision sets out several propositions delineating the true scope and ambit of Article 14 but not all of them are relevant for our purpose and hence we shall refer only to those which have a direct bearing on the issue before us. They clearly recognise that classification can be made for the purpose of legislation but lay down that :

> 1. The classification must not be arbitrary but must be rational, that is to say, it must

not only be based on some qualities or characteristics which are to be found in all the person grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differential which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

2. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The question to which we must therefore address ourselves is whether the classification made by the Act in the present case satisfied the aforesaid test or it is arbitrary and irrational and hence violative of the equal protection clause in Article 14.

7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints had to be allowed to the legislature. The court should feel more inclined to given judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [354 US 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J. said in his inimitable style :

> In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainly, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive an complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adoption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Reig Refining Company [94 L Ed 381 : 338 US 604 (1950)], be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, however great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provision and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

9. With these prefatory observations, we may now proceed to examine the constitutional validity of the Act. The Preamble of the Act which "affords useful light as to what the statute intends to reach" or in other words "affords a clue to the scope of the statute" makes it clear that the Act is intended to canalise for productive purposes black money which has become a serious threat to the national economy. It is an undisputed fact that there is considerable amount of black money in circulation which is unaccounted or concealed and therefore outside the disclosed trading channels. It is largely the product of black market transactions and evasion of tax. Indeed, as pointed out by the Direct Taxes Enquiry Committee headed by Mr. Wanchoo, retired Chief Justice of India "tax evasion and black money are closely and inextricably interlinked". The abundance of black money has in fact given rise to a parallel economy operating simultaneously and competing with the official economy. This parallel economy has over the years grown in size and dimension and even on a conservative estimate, the amount of black money in circulation runs into some thousand crores. The menace of black money has now reached such staggering proportions that it is causing havoc to the economy of the country and poses a serious challenge to the fulfillment of our objectives of distributive justice and setting up of an egalitarian society. There are several causes responsible for the general of black money and they have been analysed in the Report of the Wanchoo Committee. Some of the principal causes may be summerised as follows : (1) high rates of taxation under the direct tax laws : they breed tax evasion and generate black money; (2) economy of shortages and consequent controls

and licences leading to corruption for issuing licences and permits and turning blind eye to the violation of controls; (3) donations of black money encouraged by political parties to meet election expenses and for augmenting party funds and also for personal purposes; (4) corrupt business practices such as payments of secret commission, bribes, on money, pugree etc. which need keeping on hand money in black; (5) ineffective administration and enforcement of tax laws by the authorities and (6) deterioration in moral standards so that tax evasion is not longer regarded as immoral and unethical and odes not carry any social stigma. These causes need to be eliminated if we want to eradicate the evil of back money. But whether any steps are taken or not for removing these causes with a view to preventing future generation of black money, the fact remains that today there is considerable amount of back money, unaccounted and concealed, in the hands of a few persons and it is causing incalculable damage to the economy of the country.

10. The first casualty of this evil of back money is the revenue because it loses the tax which should otherwise have come to the exchequer. The generation of black money through tax evasion throws a greater burden on the honest taxpayer and leads to economic inequality and concentration of wealth in the hands of the unscrupulous few in the country. In addition, since black money is in a way "cheap" money because it has not suffered reduction by way of taxation, there is a natural tendency among those who possess it to use it for lavish expenditure and conspicuous consumption. The existence of black money is to a large extent responsible for inflationary pressures, shortages, rise in prices and economically unhealthy speculation in commodities. It also leads to leakage of foreign exchange, making our balance of payments rather distorted and unreal and tends to defeat the economic policies of the Government by making their implementation ineffective, particularly in the field of credit and investment. Moreover, since black money has necessarily to be suppressed in order to escape detection, it results in immobilisation of investible funds which would otherwise be available to further the economic growth of the nation and in turn, foster the welfare of the common man. It is therefore no exaggeration to say that black money is a cancerous growth in the country's economy which if not checked in time is certain to lead to chaos and ruination. There can be no doubt that urgent measures are therefore required to be adopted for preventing further generation of black money as also for unearthing existing black money so that it can be canalised for productive purposes with a view to effective economic and social planning.

11. Now this problem of black money corroding the economy of the country is not a new or recent problem. It has been there almost since the Second World War and it has been continuously engaging the attention of the Government. The Government has adopted various measures in the past with a view to curbing the generation of black money and bringing it out in the open so that it may become available for strengthening the economy. For instance, the Government introduced several changes in the administrative set-up of the tax department from time to time with a view to strengthening the administrative machinery for checking tax evasion. The Government also amended Section 37 of the Indian Income Tax Act. 1922 with a view, to conferring power on the tax authorities to carry out searches and seizures and this power was elaborated and made more effectual when the Income Tax Act, 1961 came to be enacted. Quite apart from these legal and administrative measures taken for the purpose of curbing evasion of tax, certain steps were also taken to tackle the black money built up out of past evasions. In 1946, just at the close of the Second World War, high denomination notes were demonetised so as to bring within the net of taxation black money earned during the War. This was followed by the enactment of the Taxation of Income Investigation Commission Act, 1947. Then came the Voluntary Disclosure Scheme of 1951, popularly know as Tyagi Scheme, to facilitate the disclosure of suppressed income by affording certain immunities from the penal provisions. This Scheme was however not successful because it helped to unearth only Rs. 70.20 crores of black money. Thereafter, nearly a decade and a half later,

a second scheme of voluntary disclosure was introduced by Section 68 of the Finance Act, 1965. This Scheme, popularly known as the Sixty-Forty Scheme, enabled the tax evaders to disclose suppressed income by paying 60 per cent of the concealed income as tax and bringing the balance of 40 per cent into their books. This Scheme was a little more successful than the earlier one, but it could help to net only about Rs. 52.11 crores of black money. Closely following on the heels of this Scheme came another scheme under Section 24 of the Finance (No. 2) Act, 1965 popularly known as the "Block Scheme" according to which tax was payable at rates applicable to the black of concealed income disclosed an not at a flat as under the Sixty-Forty Scheme. This Scheme received a slightly better response and the income disclosed under it amounted to about Rs. 145 crores. Then came the Taxation Laws (Amendment and Miscellaneous Provisions) Ordinance, 1965 followed by an Act in identical terms, which provided for exemption from tax in certain cases of undisclosed income invested in National Defence Gold Bonds, 1980. We shall have occasion to consider the broad Scheme of this Act a little later, but for the time being we may point out that the Scheme as envisaged in this Act was very closely similar to the Scheme under the impugned Act. Subsequent to this Act followed the Report of the Wanchoo Committee and as a result of the recommendations made in this Report certain penal provisions contained in the Income Tax Act, 1961 were made more severe and rigorous. Then came the Voluntary Disclosure of Income and Wealth Ordinance, 1975 which was followed by an Act in the same terms. This legislation introduced a scheme of voluntary disclosure of income and wealth and provided certain immunities and exemptions. The record before us does not show as to what was the concealed income and wealth disclosed pursuant to this Scheme. But it is an indisputable fact that the adoption of these stringent legal and administrative measures as also the introduction of these different voluntary disclosure schemes did not have any appreciable effect and despite all these efforts made by the Government, the problem of black money continues unabated and has assumed serious dimensions. It may be possible to say and that was the criticism of Mr. R.K. Garg - that the enforcement machinery of the tax department is not as effective as it should be and no serious effort has been made to eliminate the other causes of generation of black money, but whatever may be the failures of the political and administrative machinery - and we are not here concerned to inquire into that question nor are we competent to express any opinion upon it - the fact remains that there is considerable amount of black money in the hands of persons which is causing havoc to the economy of the country and seriously prejudicing mobilisation of resources for social and economical reconstruction of the nation.

12. It was to combat this menacing problem of black money and to unearth black money lying secreted and outside the ordinary trade channels that the Act was enacted by Parliament. It was realised that all efforts to detect black money and to uncover it had failed and the problem of black money was an obstinate economic issue which was defying solution and the impugned legislation proving for issue of Special Bearer Bonds was therefore enacted with a view to mopping up black money and bringing it out in the open, so that, instead of remaining concealed and idle, such money may become available for augmenting the resources of the State and being utilised for productive purposes so as to promote effective social and economic planning. This was the object for which the Act was enacted and it is with reference to this object that we have to determine whether any impermissible differentiation is made by the Act so as to involve violation of Article 14.

13. We may now turn to examine the provisions of the Act. Section 3 sub-section (1) provides certain immunities to a person who has subscribed to or otherwise acquired Special Bearer Bonds. Clause (a) protects such a person from being required to disclose, for any purpose whatsoever, the nature and source of acquisition of the Special Bearer Bonds. Clause (b) prohibits the commencement of any inquiry or investigation against a person on the ground of his having subscribed to or otherwise acquired the Special Bearer Bonds. And clause (c) provides that the fact

of subscription to or acquisition of Special Bearer Bonds shall not be taken into account and shall be inadmissible in evidence in any proceedings relating to any offence or the imposition of any penalty. It will be seen that the immunities granted under Section 3, sub-section (1) are very limited in scope. They do not protect the holder of Special Bearer Bonds from any inquiry or investigation into concealed income which could have been made if he had not subscribed to or acquired Special Bearer Bonds. There is no immunity from taxation given to the black money which may be invested in Special Bearer Bonds. That money remains subject to tax with all consequential penalties, if it can be discovered independently of the fact of subscription to or acquisition of Special Bearer Bonds. The only protection given by Section 3, sub-section (1) is that the fact of subscription to or acquisition of Special Bearer Bonds shall be ignored altogether and shall not be relied upon as evidence showing possession of undisclosed money. This provisions relegates the Revenue to the position as if Special Bearer Bonds had not been purchased at all. If without taking into account the fact of subscription to or acquisition of Special Bearer Bonds and totally ignoring it as if it were non-existent, any inquiry or investigation into concealed income could be carried out and such income detected and unearthed, it would be open to the Revenue to do so and it would be no answer for the assessee to say that this money has been invested by him in Special Bearer Bonds and it is therefore exempt from tax or that he is on that account not liable to prosecution and penalty for concealment of such income. This is the main difference between the impugned Act and the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965. Under the latter Act, were gold is acquired by a person out of his undisclosed income, which is the same thing as black money, and such gold is tendered by him as subscription for the National Defence Gold Bonds, 1980, the income invested in such gold is exempted from tax, but where Special Bearer Bonds are purchased out of undisclosed income under the impugned Act, the income invested in the Special Bearer Bonds is not exempt from tax and if independently of the fact of purchase of the Special Bearer Bonds and ignoring them altogether, such income can be detected, it would be subject to tax. The entire machinery of the taxation laws for inquiry and investigation into concealed income is thus left untouched and no protection is granted to a person in respect of his concealed income merely because he has invested such income in Special Bearer Bonds. It is therefore incorrect to say that as soon as any person purchases Special Bear Bonds, he is immunised against the processes of taxation laws. Here there is no amnesty granted in respect of any part of the concealed income even though it be invested in Special Bearer Bonds. The whole object of the impugned Act is to induce having black money to convert it into white money by making it available to the State for productive purposes, without granting in return any immunity in respect of such black money, if it could be detected through the ordinary processes of taxation laws without taking into account the fact of purchase of Special Bearer Bonds. Now it is true - and this was one of the arguments advanced on behalf of the petitioner - that if black money were not invested in Special Bearer Bonds but were lying in cash, it could be seized by the tax authorities by carrying out search and seizure in accordance with the provisions of the tax laws and this opportunity to detect and unearth black money would be lost, if such black money were invested in Special Bearer Bonds, because even if Special Bearer Bonds were seized, they cannot be relied upon as evidence of possession of black money. But this argument of the petitioner that the detection and discovery of black money would thus be thwarted by the conversion of black money into Special Bearer Bonds is highly theoretical and does not take into account the practical realities of the situation. If it had been possible to detect and discover a substantial part of the black money in circulation by carrying out searches and seizures, there would have been no need to enact the impugned Act. It is precisely because, in spite of considerable efforts made by the tax authorities including carrying out of searches and seizures, the bulk of black money remained secreted and could not be unearthed, that the impugned Act had to be enacted. Moreover, actual seizure of black money by carrying out searches is not the only

method available to tax administration for detecting and discovering black money. There are other methods also by which concealment of income can be detected and these are commonly employed by the tax authorities in making assessment of income or wealth. Close and searching scrutiny of the books of account may reveal that accounts are not properly maintained, unexplained cash credits may provide evidence of concealment and so too unaccounted for investments or lavish expenditure; information derived from external sources may indicate that income has been concealed by resorting to stratagems like suppression of sales or under-statement of consideration; and existence of assets in the names of near relatives may give a lead showing investment of undisclosed income. All these methods and many others would still remain available to the tax authorities for detecting undisclosed income and bringing it to tax despite investment in Special Bearer Bonds. The taxable income of the holder of Special Bearer Bonds would not stand reduced by the amount invested in the purchase of Special Bearer Bonds and it would be open to the Revenue to assess such taxable income in the same manner in which it would do in any other case, employing the same methods and techniques of inquiry and investigation for determining the true taxable income. The only inhibition on the Revenue would be that it would not be entitled to call upon the assessee to disclose for the purpose of assessment, the nature and source of acquisition of the Special Bearer Bonds and in making the assessment, the investment in the Special Bearer Bonds would have to be left wholly out of account and the Revenue would not be entitled to rely upon it as evidence of possession of undisclosed money. This is the only limited immunity granted under Section 3, sub-section (1) and even this limited immunity is cut down by the provision enacted in sub-section (2) of Section 3. This sub-section says that the immunity granted under sub-section (1) shall not be available in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code or the Prevention of Corruption Act, 1947 or any other similar law. If therefore an inquiry or investigation is sought to be made against a public servant in respect of an offence under Chapter IX of the Indian Penal Code or the Prevention of Corruption Act, 1947 alleged to have been committed by him, the acquisition or possession of Special Bearer Bonds could be a ground for instituting such inquiry or investigation and it could also be an admissible piece of evidence in a prosecution in respect of such offence. The same would be the position in relation to an inquiry, investigation or prosecution in respect of an offence under Chapter XVII of the Indian Penal Code. The acquisition or possession of Special Bearer Bonds would not therefore afford any protection to a public servant against a charge of corruption or to a person committing any offence against property. Equally this immunity would not be available where what is sought to be enforced is a civil liability other than liability by way of tax. It will thus seen seen that the immunity granted in respect of subscription to or acquisition of Special Bearer Bonds is a severely restricted immunity and this is the bare minimum immunity necessary in order to induce holders of black money to bring it out in the open and invest it in Special Bearer Bonds.

14. It is also necessary to note the further restrictions provided in Section 4 which are calculated to pre-empt any possible abuse of the immunity granted in respect of subscription to or acquisition of Special Bearer Bonds. This Section in its opening part affirms in unmistakable terms that subscription to or acquisition of Special Bearer Bonds shall not be taken into account in any proceeding under the Income Tax Act, 1961 or the Wealth Tax Act, 1957 or the Gift Tax Act, 1958. If any investment in Special Bearer Bonds has been made by the assessee, it is to be ignored in making assessment on him under any of the above-mentioned three tax laws; the assessment is to be made as if no Special Bearer Bonds has been purchased at all. The process of computation of taxable income and assessment of tax on it remains unaffected and is not in any way deflected or thwarted by the investment in Special Bearer Bonds. The position remains the same as it would have been if there were no investment in Special Bearer Bonds. We have already discussed the full

implications of this proposition in the preceding paragraph while dealing with Section 3 and it is not necessary to say anything more about it. Then, proceeding further, after enacting this provision in the opening part, Section 4 branches off into three different clauses : clause (a) provides that no person who has subscribed to or otherwise acquired Special Bearer Bonds shall be entitled to claim any set off or relief in any proceeding under the Income Tax Act, 1961 or to reopen any assessment or reassessment made under that Act on the ground that he has subscribed to or otherwise acquired such Bonds. The holder of Special Bearer Bonds is thus precluded from claiming any advantage by way of set off or relief or reopening of assessment on the ground of having invested undisclosed money in purchase of Special Bearer Bonds. Clause (b) enacts another prohibition with a view to preventing abuse of the immunity granted in respect of Special Bearer Bonds and says that no person who has subscribed to or otherwise acquired Special Bearer Bonds shall be entitled to claim, in relation to any period before the date of maturity of such Bonds, that any asset which is includible in his net wealth for any assessment year under the Wealth Tax Act has been converted into such Bonds. The object of this provision is to preclude an assessee who is sought to be taxed on his net wealth under the Wealth Tax Act from escaping assessment to tax on any asset forming part of his net wealth by claiming that he has invested it in purchase of Special Bearer Bonds. The investment in Special Bearer Bonds would not grant immunity from assessment to wealth-tax to any asset which is found by the taxing authorities, otherwise than by relying on the fact of acquisition of Special Bearer Bonds, to belong to the assessee and hence forming part of his net wealth. The asset would be subjected to wealth tax despite the investment in Special Bearer Bonds. Then follows clause (c) which is extremely important and which effectively counters the possibility of serious abuse to which the issue of Special Bearer Bonds might otherwise have lent itself. It provides that no person who has subscribed to or otherwise acquired Special Bearer Bonds shall be entitled to claim, in relation to any period before the date of maturity of such Bonds, that any asset held by him or any sum credited in his books of account or otherwise held by him represents the consideration received by him for the transfer of such Bonds. This provision precludes a person from explaining away the existence of any asset held by him or any sum credited in his books of account or otherwise held by him by claiming that it represents the sale proceeds of Special Bearer Bonds held by him. If at any time before the date of maturity of the Special Bearer Bonds held by an assessee, it is found that any asset is held by him or any sum is credited in him books of account or is otherwise held by him and he is required to explain the nature and source of acquisition of such asset or sums of money, he cannot be heard to say by way of explanation that such asset or sums of money represents the consideration received by him for transfer of the Special Bearer Bonds, even if that be factually correct. This explanation, though true being statutorily excluded, it would be impossible for the assessee to offer any other explanation for the acquisition of such asset or sum of money, because any such explanation which might be given by him would be untrue and in the absence of any satisfactory explanation in regard to the nature and source of acquisition of such asset or sum of money, the Revenue would be entitled to infer that such asset has been acquired out of undisclosed income or that such sum of money represents concealed income and hence the value of such asset or such sum of money, as the case may be, should be treated as undisclosed income liable to be included in the taxable income of the assessee (vide Sections 69, 69-A and 69-B of the Income Tax Act, 1961). It is obvious that this provision in calculated to act as a strong deterrent against negotiability of Special Bearer Bonds for disclosed or "white" money. No holder of Special Bearer Bonds would dare to transfer his Bonds to another person against receipt of disclosed or "white" money, because he will not be able to account for the consideration received by him, the true explanation being statutorily unavailable to him, and such consideration would inevitably be liable to be regarded as his concealed income and would be subjected to tax and penalties. Moreover, it is difficult to see why anyone should want to invest disclosed or "white" money in the acquisition of

Special Bearer Bonds. Ordinarily a person would go in for Special Bearer Bonds only for the purpose of converting his undisclosed money into "white" money and it would be quite unusual bordering almost on freakishness for anyone to acquire Special Bearer Bonds with disclose or "white" money, when he can get only 2 per cent simple interest on the investment in Special Bearer Bonds, while outside he can easily get anything between 15 per cent to 40 per cent yield by openly dealing with his disclosed or "white" money. The transferability of Special Bearer Bonds against disclosed or "white" money is thus, from a practical point of view, completely excluded. The question may still arise whether Special Bearer Bonds would not pass from hand to hand against undisclosed or black money. Would they not be freely negotiable against payment of undisclosed or black money ? Now it may be conceded that a purchaser of Special Bearer Bonds would undoubtedly be interested in acquiring such Bonds by making payment of "black" money, because he would thereby convert his undisclosed or "black" money into "white" money. But it is difficult to understand why a holder of Special Bearer Bonds should ever be interested in selling such Bonds against receipt of "black" money. Obviously he would have acquired such Bonds for the purpose of converting his "black" money into "white" in order to avoid the risk of being found in possession of "black" money and if that be so, it is inexplicable as to why he should again want to convert his "white" money into "black" by selling such Bonds against receipt of "black" money. The immunity granted under the provisions of the Act, limited as it is, extends only to the person who is for the time being the holder of Special Bearer Bonds and the person who has transferred the Special Bearer Bonds for black money has no immunity at all and all the provisions of tax laws are available against him for determining this true income or wealth and therefore no one who has purchased Special Bearer Bonds with a view to earning security against discovery of unaccounted money in his hands would ordinarily barter away that security by again receiving black money for the Special Bearer Bonds. Furthermore, even if Special Bearer Bonds are transferred against receipt of black money, it will not have the effect of legalising more black money into white, because the black money of the seller which had become white on his subscribing to or acquiring Special Bearer Bonds would again be converted into black money and the black money paid by the purchaser by way of consideration would become white by reason of being converted into Special Bearer Bonds. The petitioners however expressed an apprehension that Special Bearer Bonds would fetch a much higher value in the black market than that originally subscribed and this would enable a larger amount of black money to be legalised into white than what was originally invested in subscription to Special Bearer Bonds. We don not think this apprehension is well founded. It is true that once the date for original subscription to Special Bearer Bonds has expired, the only way in which Special Bearer Bonds could thereafter be acquired would be by going in the open market and the number of Special Bearer Bonds in the market being necessarily limited, they may fetch a higher value in black money from a person who is anxious to convert his black money into white. If the demand outreaches the limited supply, the price of Special Bearer Bonds in the black market may exceed the amount originally invested in subscription to Special Bearer Bonds. But even so, black money paid by the purchaser for acquisition of Special Bearer Bonds would not in its entirety be converted into white; it would change its colour from black to white only to the extent of the amount originally subscribed for the Special Bearer Bonds or at the most, if we also take into account interest on such amount, to the extent of the face value of the Special Bearer Bonds, because whatever be the amount he might have paid in black money for acquisition of the Special Bearer Bonds, the holder of the Special Bearer Bonds will get only the amount representing the face value on maturity of the Special Bearer Bonds. It will thus be seen that howsoever Special Bearer Bonds my be transferred an for whatever consideration, only a limited amount of black money, namely, the amount originally subscribed for the Special Bearer Bonds or at the most the amount representing the face value of the Special Bearer Bonds would be legalised into white money and the supposedly free negotiability of

Special Bearer Bonds would not have the effect of legalising more black money into white or encouraging further generation of black money.

15. There was also one other abuse, said the petitioners, to which Special Bearer Bonds might lend themselves and it was that if Special Bearer Bonds are sold and the sale proceeds are utilised in meeting expenditure, the assessee would not be precluded by Section 4, clause (c) from explaining the source of the expenditure to be the sale consideration of Special Bearer Bonds and hence by resorting to this strategy, white money can be accumulated as capital white expenditure is met out of black money received by way of consideration for sale of Special Bearer Bonds. We do not think there is any scope for such abuse; the apprehension expressed by the petitioners is more imaginary than real. It may be noted that in order to sustain his explanation, the assessee would have to prove to the satisfaction of the tax department that he had Special Bearer Bonds and that he sold them for a certain amount. Now if he has received black money by way of consideration, it is difficult to see how he would ever be able to establish that he sold Special Bearer Bonds for that particular amount of black money. Would he be so foolhardy as to admit that he received the consideration in black money and even if he does, would he ever be able to prove it ? Who would believe him even if he makes such an admission ? And when he has bought Special Bearer Bonds for the purpose of converting his black money into white, why should he again reconvert it into black by selling Special Bearer Bonds for black money ? The entire postulate of the argument of the petitioners is theoretical and has no basis in reality. No assessee would ever admit that he incurred expenditure out of black money received as consideration for sale of Special Bearer Bonds because it would be impossible for him to establish receipt of black money from the purchaser and if he is unable to do so, the amount of the expenditure would, by reason of Section 69-C of the Income Tax Act, 1961, be deemed to be his concealed income liable to tax. Even if we assume that in some rare and exceptional case the assessee may be able to establish that he sold Special Bearer Bonds against receipt of black money, the purchaser would straightway run into difficulties because the evidence furnished by the assessee would, in such a case, clearly establish that the purchaser had black money and he paid it to the assessee by way of consideration and he would in that event be rendered liable to tax and penalty in respect of such black money. This would show the utter improbability bordering almost on impossibility, of Special Bearer Bonds being subjected to any such abuse as is apprehended by the petitioners.

16. It was then urged on behalf of the petitioners that Section 4, clause (c) operates only in relation to a period before the date of maturity of Special Bearer Bonds and after the date of maturity, the holder of Special Bearer Bonds can sell such bonds, and, without running any risk, disclose the consideration received by him as his white money, because Section 4, clause (c) being out of the way, he can account for the possession of such money by showing that he has received it as consideration for sale of Special Bearer Bonds and so far as the purchaser is concerned, if he has paid the consideration out of his black money, he can claim the immunity granted under Section 3, sub-section (1) and his black money would be converted into white. Thus the black money of the seller which had been converted into white. Thus the black money of the seller which had been converted into white on his subscribing to or otherwise acquiring Special Bearer Bonds would remain white and in addition, the black money of the purchaser would also be converted into white by reason of his purchase of Special Bearer Bonds. This argument, plausible though it may seem, is in our opinion, fallacious and cannot be sustained. It is a highly debatable issue whether, under the provisions of the Act, Special Bearer Bonds are at all intended to be transferable after the date of maturity, for the postulate of the legislation clearly seems to be that on the date of maturity, Special Bearer Bonds will be encashed. It is indeed difficulty to believe that anyone holding Special Bearer Bonds would keep them uncashed without earning any interest from and after the date of maturity,

when they can be immediately encashed and the amount received can be invested yielding interest ranging between 18 per cent to 40 per cent. Moreover, Special Bearer Bonds would cease to be exempt from wealth tax from and after the date maturity and they would therefore be includible in the net wealth of the holder for the purpose of wealth tax and if that be so, how would it benefit the holder to keep them as part of his net wealth and pay wealth-tax upon it without earning any interest ? It is therefore extremely unlikely that Special Bearer Bonds would remain uncashed after the date of maturity and it would be equally improbable that anyone should want to purchase Special Bearer Bonds after the date of maturity when they do not yield any interest but are still includible in the net wealth for the purpose of liability to wealth-tax. But let us assume for the purpose of argument that in a given case Special Bearer Bonds are not encashed on the date of maturity and they are lawfully transferred after the date of maturity for a consideration paid by the purchaser. There are two alternatives : the consideration may be paid by the purchaser in white money or in black money. If the purchaser pays the consideration in white money, no question of conversion of further black money into white arises. It would be a straight open transaction to which no exception can be taken. But let us consider what consequences would ensue if he pays in black money. The seller would obviously be interested in showing the consideration as his white money and there may be no difficulty so far as he is concerned, because he would be able to explain the possession of such money by claiming that he has received it by way of consideration for sale of Special Bearer Bonds. Section 4, clause (c) will not stand in the way of his offering that explanation. But so far as the purchaser is concerned, he will run into serious difficulties. Even if the immunity under Section 3, sub-section (1) were available to him after the date of maturity, he will still be in trouble, because the disclosure made by the seller would be the clearest evidence showing that the purchaser had black money which he paid by way of consideration to the seller, and this evidence, being independent of the fact of acquisition of Special Bearer Bonds by the purchaser, would be admissible and the purchaser would be liable to tax and penalty on the amount of black money paid by him as consideration. We fail to see how transfer of Special Bearer Bonds after the date of maturity, even if legally permissible, can be utilised for the purpose of legalising more black money into white. But we may point out that if at any time after the date of maturity or even before, it is found that there is some loophole in the provisions of the Act or that Special Bearer Bonds are utilised for any dishonest or nefarious purpose or are being perverted to any improper use, the legislature can always step in and amend the Act or pass other appropriate legislation with a view to preventing such abuse. It must be remembered that every legislation is an experiment in achieving certain desired ends and trial and error method is inherent in every such experiment. Therefore, when experience shows that the legislation as framed has proved inadequate to achieve its purpose of mitigating an evil or there are cracks and loopholes in it which are being taken advantage of by the resourcefulness and ingenuity of those minded to benefit themselves at the cost of the State or the others, the legislature can and most certainly would intervene and change the law. But law cannot be condemned as invalid on the ground that after a period of ten years it may lend itself to some possible abuse.

17. We may now proceed to consider the constitutional validity of the Act in the light of the above discussion as regards the scope and effect of is various provisions. It is obvious that the Act makes a classification between holders of black money and the rest and provides for issue of Special Bearer Bonds with a view to inducing persons belonging to the former class to invest their unaccounted money in purchase of Special Bearer Bonds, so that such money which is to day lying idle outside the regular economy of the country is canalised into productive purposes. The object of the Act being to unearth black money for being utilised for productive purposes with a view to effective social and economic planning, there has necessarily to be a classification between persons

possessing black money and others and such classification cannot be regarded as arbitrary or irrational. It is of course true - and this must be pointed out here since it was faintly touched upon in the course of the arguments - that there is no legal bar enacted in the Act against investment of white money in subscription to or acquisition of Special Bearer Bonds. But the provisions of the Act properly construed are such that no one would even think of investing white money in Special Bearer Bonds and from practical point of view, they do operate as a bar against acquisition, whether by original subscription or by purchase, of Special Bearer Bonds with white money. We do not see why anyone should want to invest his white money in subscribing to or acquiring Special Bearer Bonds which yield only 2 per cent simple interest per annum and which are not encashable for a period of not less than ten years. It is true that Special Bearer Bonds can be sold before the date of maturity but who would pay white money for them and even if in some rare and exceptional case, a purchaser could be found who would pay the consideration in white money, no one will dare to sell Special Bearer Bonds for white money, because of the disincentive provided in Section 4, clause (c). The investment of white money in Special Bearer Bonds is accordingly, as a practical measure, completely ruled out and the provisions of the Act are intended to operate only qua persons in possession of black money. There is practical and real classification made between persons having black money and persons not having such money and this de facto classification is clearly based on intelligible differentia having rational relation with the object of the Act. The petitioners disputed the validity of this proposition and contended that the classification made by the Act is discriminatory in that it excludes person with white money from taking advantage of the provisions of the Act by subscribing to or acquiring Special Bearer Bonds. But this contention is totally unfounded and we cannot accept the same. The validity of a classification has to be judged with reference to the object of the legislation and if that is done, there can be no doubt that the classification made by the Act is rational and intelligible and the operation of the provisions of the Act is rightly confined to persons in possession of black money.

18. It was then contended that the Act is unconstitutional as it offends against morality by according to dishonest assessee who have evaded payment of tax, immunities and exemptions which are denied to honest tax-payers. Those who have broken the law and deprived the State of its legitimate dues fare given benefits and concessions placing them at an advantage over those who have observed the law and paid the taxes due from them and this, according to the petitioners, is clearly immoral and unwarranted by the Constitution. We do not thin this contention can be sustained. It is necessary to remember that we are concerned here only with the constitutional validity of the Act and not with its morality. Of course, when we say this we do not wish to suggest that morality can in no case have relevance to the constitutional validity of a legislation. There may be cases where the provisions of a statute may be so reeking with immorality that the legislation can be readily condemned as arbitrary or irrational and hence violative of Article 14. But the test in every such case would be not whether the provisions of the statue offend against morality but whether they are arbitrary and irrational having regard to tall the facts and circumstances of the case. Immorality by itself is not a ground of constitutional challenge and it obviously cannot be, because morality is essentially a subjective value, except insofar as it may be reflected in any provision of the Constitution or may have crystallised into some well-accepted norm of social behaviour. Now there can be no doubt that under the provisions of the Act certain immunities and exemptions are granted with a view to inducing tax evaders to invest their undisclosed money in Special Bearer Bonds and to that extent they are given benefits and concessions which are denied to those who honestly pay their taxes. Those who are honest and who observe the law are mulcted in paying the taxes legitimately due from them while those who have broken the law and evaded payment of taxes are allowed by the provisions of the Act to convert their black money into "white" without payment of

any tax or penalty. The provisions of the Act may thus seem to be putting premium on dishonesty and they may, not, without some justification, be accused of being tinged with some immorality, but howsoever regrettable or unfortunate it may be, they had to be enacted by the legislature in order to bring out black money in the open and canalise it for productive purposes. Notwithstanding stringent laws imposing serve penalties and vigorous steps taken by the tax administration to detect black money and despite various voluntary disclosure schemes introduced by the Government from time to time, it had not been possible to unearth black money and the means of black money had over the years assumed alarming proportions causing havoc to the economy of the country and the legislature was therefore constrained to enact the Act with a view to mopping up black money so that instead of remaining idle, such money could be utilised for productive proposes. The problem of black money was an obstinate economic problem which had been defying the Government for quite some time and it was in order to resolve this problem that, other efforts having failed, the legislature decided to enact the Act, even though the effect of its provisions might be to confer certain undeserved advantages on tax evaders in possession of black money. The legislature had obviously on to alternatives : either to allow the black money to remain idle and unproductive or to induce those in possession of it to bring it out in the open for being utilised for productive purposes. The first alternative would have left no choice to the Government but to resort to deficit financing or to impose a heavy dose of taxation. The former would have resulted in inflationary pressures affecting the vulnerable sections of the society while the latter would have increased the burden on the honest taxpayer and perhaps led to greater tax evasion. The legislature therefore decided to adopt the second alternative of coaxing persons in possession of black money to disclose it and make it available to the Government for augmenting its resources for productive purposes and with that end in view, enacted the Act providing for issue of Special Bearer Bonds. It may be pointed out that the idea of issuing Special Bearer Bonds for the purpose of unearthing black money was not a brainwave which originated for the first time in the mind of the legislature in the year 1981. The suggestion for issue of Special Bearer Bonds was made as far back as 1950 by some of the members of the provisional Parliament, notably those belonging to the opposition and the Government was repeatedly asked why it was not issuing Special Bearer Bonds in order to absorb the liquidity and thereby control the inflationary pressures in the country. Though the majority of the members of the Wanchoo Committee expressed themselves against the issue of Special Bearer Bonds, Shri Chitale, a member of that Committee wrote a dissenting not in which he suggested that Special Bearer Bonds should be issued. We may point out that the majority members of the Wanchoo Committee were against issue of Special Bearer Bonds for the purpose of mopping up black money, because they apprehended certain abuses to which Special Bearer Bonds might be subjected, but as we have already pointed out while discussing the true meaning and legal effect of the provisions of the Act, we do not think that there is any scope for such abuses, for the legislature has, while enacting the provisions of the Act, taken care to see that such abuses are reduced to the minimum, if not eliminated altogether.

19. It is true that certain immunities and exemptions are granted to persons investing their unaccounted money in purchase of Special Bearer Bonds but that is an inducement which has to be offered for unearthing black money. Those who have successfully evaded taxation and concealed their income or wealth despite the stringent tax laws and the efforts of the tax department are not likely to disclose their unaccounted money without some inducement by way of immunities and exemptions and it must necessarily be left to the legislature to decided what immunities and exemptions would be sufficient for the purpose. It would be outside the province of the Court to consider if any particular immunity or exemption is necessary or not for the purpose of inducing disclosure of black money. That would depend upon diverse fiscal and economic considerations

based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in Munn v. Illinois [94 US 13], namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". The Court must defer to legislative judgment in matter relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theatre Company v. City of Chicago [57 L Ed 730 : 228 US 61 (1912)] :

> The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review.

It is true that one or the other of the immunities or exemptions granted under the provisions of the Act may be taken advantage of by resourceful persons by adopting ingenious methods and devices with a view to avoiding or saving tax. But that cannot be helped because human ingenuity is so great when it comes to tax avoidance that it would be almost impossible to frame tax legislation which cannot be abused. Moreover, as already pointed out above, the trial and error method is inherent in every legislative effort to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax evasion or avoidance not intended by the legislature, the Act can always be amended and the abuse terminated. We are accordingly of the view that none of the provisions of the Act is violative of Article 14 and its constitutional validity must be upheld.

20. These were the reasons for which we passed our Order dated September 2, 1981 rejecting the challenge against the constitutional validity of the Ordinance and the Act and dismissing the writ petitions. Since these writ petitions are in the nature of public interest litigation, we directed that there should be no order as to costs.

Gupta J. [Judgment delivered on Nov. 13, 1981] (dissenting) -

It was unable to share the view taken by the majority in disposing of these writ petitions on September 2, 1981 that "neither the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 nor the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 is violative of Article 14 of the Constitution", and I made the following Order on the same day : (p. 716, infra)

> I have come to the conclusion that the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 violate Article 14 of the Constitution and are therefore invalid. I would allow the writ petitions with costs.

I shall give my reasons later.

22. Here briefly are my reasons.

23. These five writ petitions question the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and Special Bearer Bonds (Immunities and Exemptions) Act, 1981. The Ordinance which was promulgated by the President on January 12, 1981 was repealed and replaced by the Act. The Act received the President's assent on March 27, 1981. Section 1(3) of the Act says that it shall be deemed to have come into force on January 12, 1981. The provisions of the Ordinance and the Act are similar except that Section 4(c) of the Act is worded slightly differently from the corresponding provisions of the Ordinance but the difference is not material and I shall hereinafter refer to the provisions of the Act only.

24. As the long title of the Act shows, it is an Act "to provided for certain immunities to holders of Special Bearer Bonds, 1991 and for certain exemptions from the direct taxes in relation to such Bonds and for matters connected therewith". The purpose for which the Act was passed as appearing from the Preamble is :

> Whereas for effective economic and social planning it is necessary to canalise for productive purposes black money which has become a serious threat to the national economy;

And whereas with a view to such canalisation the Central Government has decided to issue at par certain bearer bonds to be known as the Special Bearer Bonds, 1991 of the face value of ten thousand rupees and redemption value, after ten years, of twelve thousand rupees;

> And whereas it is expedient to provide for certain immunities and exemptions to render it possible for persons in possession of black money to invest the same in the said Bonds;

> The Preamble thus takes note of the fact that black money has become a serious threat to national economy and says that to make economic and social planning effective it is necessary to canalise this black money for productive purposes. The Act does not attempt to define black money. The Direct Taxes Enquiry Committee set up by the Government of India in 1970 with Shri K.N. Wanchoo, retired Chief Justice of the Supreme Court of India, as Chairman explains what the term "black money" means in its final Report submitted in December 1971 :

> It (black money) is, as its name suggests, "tainted" money - money which is not clean or what has a stigma attached to it. . . . Black is a colour which is generally associated with evil. While it symbolises something which violates moral, social or legal norms, it also suggests a veil of secrecy shrouding it. The term "black money" consequently has both these implications. It not only stands for money earned by violating legal provisions - even social conscience - but also suggests that such money is kept secret and not accounted for.

Today the term "black money" is generally used a to denote unaccounted money or concealed income and/or undisclosed wealth, as well as money involved in transactions wholly or partly suppressed.

The Act contains nine sections. The sections that are relevant for the present purpose are set out below :

> 3. Immunities. - (1) Notwithstanding anything contained in any other law for the time being in force, -
>
> (a) no person who has subscribed to or has otherwise acquired Special Bearer Bonds shall be required to disclose, for any purpose whatsoever, the nature and source of acquisition of such Bonds;
>
> (b) no inquiry or investigation shall be commenced against any person under any law on the ground that such person has subscribed to or has otherwise acquired Special Bearer Bonds; and
>
> (c) the fact that a person has subscribed to or has otherwise acquired Special Bearer Bonds shall not be taken into account and shall be inadmissible as evidence in any proceedings relating to any offence or the imposition of any penalty under any such law.
>
> # * * *##
>
> 4. Acquisition, etc., of Bonds not to be taken into account for certain proceedings. - Without prejudice to the generality of the provisions of Section 3., the subscription to, or acquisition of, Special Bearer Bonds by any person shall not be taken into account for the purpose of any proceedings under the Income Tax Act, 1961 (hereinafter referred to as the Income Tax Act), the Wealth Tax Act, 1957 (hereinafter referred to as the Wealth Tax Act) or the Gift Tax Act, 1958 (hereinafter referred to as the Gift Tax Act) and, in particular, no person who has subscribed to, or has otherwise acquired, the said Bonds shall be entitled -
>
> (a) to claim any set-off or relief in any assessment, re-assessment appeal, reference or other proceeding under the Income Tax Act or to re-open any assessment or re-assessment made under that Act on the ground that he has subscribed to or has otherwise acquired the said Bonds;
>
> (b) to claim, in relation to any period before the date of maturity of the said Bonds, that any asset which is includible in his net wealth for any assessment year under the Wealth Tax Act has been converted into the said Bonds; or
>
> (c) to claim, in relation to any period before the date of maturity of the said Bonds, that any asset held by him or any sum credited in his books of account or otherwise held by him represents the consideration received by him for the transfer of the said Bonds.
>
> 5. Amendment of Act 43 of 1961. - In the Income Tax Act, -
>
> (a) in Section 2, in clause (14), after sub-clause (iv), the following sub-clause shall be inserted, namely :
>
> "(v) Special Bearer Bonds, 1991, issued by the Central Government;";

(b) in Section 10, in clause (15), after sub-clause (ia), the following sub-clause shall be inserted, namely :

"(ib) premium on the redemption of Special Bearer Bonds, 1991;";

6. Amendment of Act 27 of 1957. - In Section 5 of the Wealth Tax Act, in sub-section (1), after clause (xvia), in the following clause shall be inserted, namely :

"(xvib) Special Bearer Bonds, 1991;";

7. Amendment of Act 18 of 1958. - In Section 5 of the Gift Tax Act, in sub-section (1), after clause (iiia), the following clause shall be inserted, namely :

"(iiib) of property in the form of Special Bearer Bonds, 1991;".

The marginal notes against Sections 5, 6 and 7 indicate that these sections are amendments respectively of the Income Tax Act of 1961, Wealth Tax Act of 1957 and Gift Tax Act of 1958. Section 5 excludes Special Bearer Bonds, 1991 from the capital asset of an assessee and exempts the premium payable on the redemption of the Bonds from income tax. Section 6 exempts the Bonds from wealth-tax. Section 7 exempts from gift-tax property in the form of these Bonds.

25. The Act has been challenged mainly on the ground that it infringes Article 14 of the Constitution. Article 14 forbids class legislation but permits classification. Permissible classification, it is well established, must satisfy two conditions which Das, J. enunciated in State of W.B. v. Anwar Ali Sarkar [1952 SCR 284 : AIR 1952 SC 75 : 1952 SCJ 55 : 1952 Cri LJ 510] as follows :

(1) that the classification must be founded on a intelligible differential which distinguishes those that are grouped together from others, and

(2) that the differentia must have a rational relation to the object sought to be achieved by the Act.

The immunities provided by the impugned Act are clearly for the benefit of those who have acquired the Bonds with black money. Clauses (a), (b) and (c) of Section 3(1) provide for these immunities "notwithstanding anything contained in any other law for the time being in force". Clause (a) states that no holder of Special Bearer Bonds shall be required to disclose for any purpose the nature and source of acquisition of the Bonds. Clause (b) forbids commencement of any enquiry or investigation under any law against a person on the ground that he has subscribed to or otherwise acquired the Bonds. Under clause (c) the fact that a person has subscribed to or otherwise acquired Special Bearer Bonds shall be inadmissible in evidence and cannot be taken into account in any proceeding relating to any offence or the imposition of any penalty under any law. None of these immunities is required by a person who has paid "white" money, that is, money that has been accounted for, to acquire the Bonds. To a person who has disclose the source of acquisition of the Bonds, these immunities are of no use. Section 4 makes it clear that the immunities conferred by the Act are of use only to those who have acquire the Bonds with unaccounted money. Section 4 states that the fact that one has subscribed to or otherwise acquired the Bonds shall not be taken into account in any proceeding under the Income Tax Act, 1961, the Wealth Tax Act, 1957 and the Gift Tax Act, 1958 and goes on to provide specifically that no one shall be entitled to -

(a) any manner of relief under the Income Tax Act on the ground that he has acquired the Bonds; or

(b) claim that any asset belonging to him which formed part of his net wealth in any period before the maturity of the Bonds, has been converted into such Bonds; or

(c) claim that any asset held by him or any sum of money credited in his books of account or otherwise held by him in the aforesaid period is the consideration received by him for the transfer of the Bonds.

Mr. Salve appearing for the petitioners in Writ Petitions Nos. 863 and 994 of 1981 contended that Section 4(c) did not constitute an absolute bar to the assessee seeking to prove that the said sum or asset represents the sale price of Special Bearer Bonds; on behalf of the Union of India it was asserted that this was an absolute bar. In view of the conclusion I have reached, I do not propose to decide the point and I shall proceed on the basis that it is an absolute bar. It is apparent from clauses (a) to (c) of Section 4 that the rights they deny affect only those who have disclosed their source of acquisition of the Bonds. Those in whose case the source of acquisition has not been detected are not affected by the prohibition contained in Section 4. The impugned Act denies to those who have acquired the Bonds not with black money any relief under the Income Tax Act or the Wealth Tax Act or any benefit in any other way claimed on the ground that they are holders of Special Bearer Bonds, and the relief and the benefit denied to them have been made available to those who have acquired the Bonds with black money by ignoring the source of acquisition in their case.

26. The Act thus distinguishes between two classes of holders of Special Bearer Bonds : tax evaders and honest taxpayers. Has the classification a rational relation to the object of the Act ? the object, as already noticed, is to canalise black money for productive purposes to make economic and social planning effective. If the exemptions and immunities conferred by the Act are sufficiently attractive to induce tax evaders to acquire Special Bearer Bonds, they will remain as attractive even if all these benefits were granted to those who will pay white money for the Bonds. Denial of these benefits to those who have acquired the Bonds with money which has been accounted for does knot in any way further the object of canalisation of back money for productive purpose. The discrimination in favour of black money therefore seems to be obvious. It was however argued that no one would be inclined to invest "white" money for Special Bearer Bonds which carry only two per cent annual interest. I do not think this is a consideration which could justify the discrimination. Apart from that, a return of two per cent simple interest per annum is not a correct measure of the actual advantages conferred by the Act. Taking into account the income tax and the wealth tax savings if one did not have to pay any tax on the amount with which Special Bearer Bonds were acquired - Purchasers of the Bonds with black money did not - and the tax-free premium on the Bonds, the actual return would be many times more than two per cent simple interest per annum. It must therefore be held that the basis on which the holders of Special Bearer Bonds have been classified to give certain advantages to one class and deny them to the other, has no rational nexus with the object of the Act.

27. The matter has another aspect. The classification of holders of Special Bearer Bonds into taxpayers and tax evaders does disclose a basis. Would it be an acceptable argument to say that this basis has a relation to the object of the Act because the black money invested in Special Bearer Bonds by tax evaders could be utilised for productive purposes for 10 years and that both the conditions of a valid classification were thus satisfied ? I am afraid not. In State of W.B. v. Anwar Ali Sarkar [1952 SCR 284 : AIR 1952 SC 75 : 1952 SCJ 55 : 1952 Cri LJ 510], Das, J. points out :

> The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article (Article 14) forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, . . .
>
> In Anwar Ali Sarkar case [1952 SCR 284 : AIR 1952 SC 75 : 1952 SCJ 55 : 1952 Cri LJ 510] the constitutional validity of the West Bengal Special Courts Act (10 of 1950) constitution special courts and empowering the State Government to refer "cases" or "offences" or "classes of cases" or "classes of offences" to such courts was in question. The object of the West Bengal Act was to provide for the speedier trial of certain offences. Das, J. observes further :
>
> To achieve this object, offences or cases have to be classified upon the basis of some differentia which will distinguish those offences or cases from others and which will have a reasonable relation to the recited object of the Act. The differentia and the object being, as I have said, different elements, it follows that the object by itself cannot be the basis of the classification of offences or the cases, for, in the absence of any special circumstances which may distinguish one offence or one class of offences or one class of cases from another offence, or class of offences or class of cases, speedier trial is desirable in the disposal of all offences or classes of offences or classes of cases.

If the differentia, that is, the basis of classification, and the object of the Act are distinct things, it follows that it is not enough that the differentia should have annexes with the object, but it should also be intelligible. The presence of some characteristics in one class which are not found in another is the difference between the two classes, but a further requirement is that this differentia must be intelligible. If the basis of classification is one the face of it arbitrary in the sense that it is palpably unreasonable, I do not think it is possible to all the differentia intelligible. The following passage from the judgment of Bose, J. in Anwar Ali Sarkar case [1952 SCR 284 : AIR 1952 SC 75 : 1952 SCJ 55 : 1952 Cri LJ 510] illustrate the point :

I can conceive of cases where there is the utmost good faith and where the classification is scientific and rational and yet which would offend this law. Let us take an imaginary case in which a State legislature considers that all accused persons whose skull measurements are below a certain standard, or who cannot pass a given series of intelligence tests, shall be tried summarily whatever the offence on the ground that the less complicated the trail the fairer it is to their systematic. The intention and motive are good. There is no question of favouritism, and yet I can hardly believe that such a law would be allowed to stand. But what would be the true basis of the decision ? Surely simply this that the judges would not consider that fair and proper.

The scope of Article 14 was further elaborated in some of the later decisions of this Court. This is what Bhagwati, J. speaking for himself and Chandrachud and Krishna Iyer, JJ, in E.P. Royappa v. State of T.N. [(1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] says : (SCC p. 38, para 85).

> We cannot countenance any attempt to truncate its all-embracing scope and meaning,

> for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, . . .
>
> Bhagwati, J. reiterates in Maneka Gandhi v. Union of India [(1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597] what he had said in Royappa case [(1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] and adds : (SCC p. 284, para 7).
>
> The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence . . .

To pass the test of reasonableness if it was enough that there should be a differentia which should have some connection with the object of the Act, then these observations made in Maneka Gandhi [(1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597] and Royappa [(1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] would be so much wasted eloquence. The decisions of this Court insist that the differentia must be intelligible and the nexus rational, and the observations quoted above would seem to be appropriate only if we attach some significance to the words "intelligible" and "rational". The question however remains : when is one justified in describing something as arbitrary or unreasonable ? Terms like "reasonable", "just" or "fair" derive their significance from the existing social conditions. W. Friedmann in his Legal Theory (5th Edn., p. 80) points out that expression(s) like "'a reasonable and far price' or a 'fair and equitable' restitution means nothing, except in conjunction with the social conditions of the time". Brandeis, J. in his opinion in Quaker City Cab Co. v. Commonwealth of Pennsylvania [72 L Ed 927] explains when a classification shall be reasonable : "We call that action reasonable which an informed, intelligent, just-minded, civilized man could rationally favor." Bose, J. in Anwar Ali Sarkar case [1952 SCR 284 : AIR 1952 SC 75 : 1952 SCJ 55 : 1952 Cri LJ 510] says much the same thing in holding that the West Bengal Special Courts Act 1950 offends Article 14 :

> We find men accused of heinous crimes called upon to answer for their lives and liberties. We find them picked out from their fellows, and however much the new procedure may give them a few crumbs of advantage, in the bulk they are deprived of substantial and valuable privileges of defence which others, similarly charged, are able to claim. It matters not to me, nor indeed to them and their families and their friends, whether this be done in good faith, whether it be done for the convenience of Government, whether the process can be scientifically classified and labelled, or whether it is an experiment in speedier trials made for the goods of society at large. It matters not how lofty and laudable the motives are. The question with which I charge myself is, can fair-minded, reasonable, unbiased and resolute men, who are not swayed by emotion or prejudice, regard this with equanimity and call it reasonable, just and fair regard it as that equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which obtain in India today ?

28. Keeping in mind these observations on what is reasonable, is the basis on which the holders of Special Bearer Bonds have been classified into two groups, honest taxpayers and tax evaders, intelligible ? What is arbitrary and offends Article 14, cannot be called intelligible. It is clear from the provisions of the Act set out earlier that the advantages which the tax evaders derive from the immunities provided by the Act are not available to those who have acquired the Bonds with "white" money. The Act promises anonymity and security for tax evaders. No question can be asked as to the nature and source of acquisition or possession of the Bonds. The Bonds can be transferred freely, and the apprehension expressed by the petitioners cannot be said to be baseless that passing from hand to hand the Bonds are likely to operate as parallel currency and be used for any kind of transaction. From a reading of the Preamble of the Act it does not seem that the object of the Act was only to enable the central Government to have some use for 10 years of the black money which is said to have "become a serious threat to the national economy". As I read the Preamble, the purpose of the Act is to unearth black money and use it for productive purposes for effective economic and social planning. If that be the object of the Act, it is difficult to see how its provisions help to achieve the intended purpose. The Act discloses a scheme which enables tax-evaders to convert black money into white after 10 years and in the meantime use the Bonds as parallel currency initiating a chain of black money investments. There is no provision in the Act requiring that on maturity of the Bonds their holders would have to disclose their identity, which means that if after 10 years black money which had taken the shape of Special Bearer Bonds goes underground again and retain its colour, there is nothing to prevent it. There is nothing in the scheme to halt to generation of black money which threatens the national economy. Some people by successful evasion manoeuvres are able to throw the burden of taxation off their own shoulders which means a greater burden on the honest taxpayers and this leads to economic imbalance. On the effect of giving concessions to such unscrupulous tax evaders in preference to the honest taxpayers, Mr. R.K. Garg appearing in person and Mr. Salve both repeated what the Direct Taxes Enquiry Committee's final report says : "Resorting to such a measure . . . would only shake the confidence of the honest taxpayers in the capacity of the Government to deal with the law-breakers and would invite contempt for its enforcement machinery." The petitioners submitted further that measures like the Special Bearer Bonds scheme would tempt more people to evade taxes and instead of serving a legitimate public interest would grievously damage it.

29. It has been pointed out that here have been voluntary disclosure schemes in the past. That is so, but none of them is quite like the scheme in question which not only exempts the unaccounted money in the shape of Special Bearer Bonds from all taxes but provides also for a tax-free premium on it. According to the petitioners, if the earlier schemes have been conciliatory, the present scheme amounts to capitulation to black money. I asked the Attorney-general if it was his case that all attempts to unearth black money had failed and the present scheme was the only course open. His answer was that was not this case. The affidavit filed on behalf of the Union of India also does not a make such a case. Clearly, the impugned Act puts a premium on dishonesty without even a justification of necessity - that the situation in the country left no option.

30. The Act has been criticised as immoral and unethical. Any law that rewards law-breakers and tax-dodges is bound to invite such criticism. Should the court concern itself with questions of morality and ethics in considering the constitutional validity of an Act ? Of course no law can be struck down only on the ground that it is unethical. However as Friedmann in this Legal Theory (page 43) : "There cannot be - and there never has been - a complete separation of law and morality. Historical and ideological differences concern the extent to which the norms of the social order are absorbed into the legal order." It has been held by this Court in Royappa [(1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] and Maneka Gandhi [(1978) 2 SCR

621 : (1978) 1 SCC 248 : AIR 1978 SC 597] that the principle of reasonableness is an essential element of equality. The concept of reasonableness does not exclude notions of morality and ethics. I do not see how it can be disputed that in the circumstances of a given case considerations of morality and ethics may have a bearing on the reasonableness of the law in question.

31. Having regard to the provisions of the impugned Act which I have discussed above and the object of the Act to which I have referred, is it possible to say that it is reasonable to classify the holders of Special Bearer Bonds into honest taxpayers and tax evaders for the purpose of conferring benefits on the tax evaders and denying them to those who have honestly aid their taxes, especially when a measure appeasing the tax evaders to the extent the scheme in question does is not claimed as unavoidable? The informed, fair-minded, civilized man on whose judgment both Brandies, J. and Bose, J. rely, would he have found the basis of the classification intelligible? The questions answer themselves, the arbitrary character of the differentiation is so obvious. I do not think it is possible to take the rhetoric of Royappa [(1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] and Maneka Gandhi [(1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597] seriously and find that the Act passes the test of reasonableness.

32. What I have said above on the Special Bearer Bonds scheme should not be read as an expression of opinion on the wisdom of the Government policy - that the scheme is not the best in the circumstances. My conclusion is based not on what the policy of the Government is but on what the equality clause in Article 14 requires.

33. Having held that the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 are invalid on the ground that they infringe Article 14 of the Constitution, I do not find it necessary to consider whether Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 is outside the Ordinance-making power of the President under Article 123 of the Constitution.

ORDERS DATED SEPTEMBER 2, 1981

On behalf of Chandrachud, C.J. and Bhagwati Fazal Ali and A.N. Sen, JJ.

We are of the view that the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 is not outside the Ordinance-making power of the President under Article 123 of the Constitution and is not invalid on that count. We also take the view that neither the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 nor the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 is violative of Article 14 of the Constitution. We accordingly dismiss the petitions but, sine the petitions are in the nature of public interest litigation, we make no order as to costs. The reasons for making this Order will follow later.

On behalf of Gupta, J. (dissenting)

I have come to the conclusion that the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 violate Article 14 of the Constitution and are therefore invalid. I would allow the writ petitions with costs.

I shall give my reasons later.

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