

Dalmia Cement (Bharat) Ltd. and Another

Vs

Union of India and Others

Suresh Kumar and Others

Vs

Union of India and Others

Transfer Cases (C) No. 3 of 1989 No. 177 of 1988

(K. Ramaswamy, S. Saghir Ahmed, G.B. Pattanaik JJ)

25.04.1996

JUDGMENT

RAMASWAMY, J. –

1. In this bunch of cases the petitioners are manufacturers of cement, sugar and other commodities and plastic bags (for short 'HDPE'). The HDPE industries are a small-scale sector that secured loans from the banks. They allege that due to operation of the Jute Packaging Material (Compulsory Use in Packing Commodities) Act, 1987 (for short 'the Act') their industries are running into losses and many of them are compelled to close their business. The capital obtained from the nationalised banks has become bad debt. Repeal of the Act or gradually phasing out compulsory packing of the commodities with gunny bags would relieve hardships to them. The constitutionality of the Act and the Jute Packaging Material (Compulsory Use in Packing Commodities) Rules and Statutory Order No. 539(E) dated 29-5-1987 are impugned as ultra vires and mandatory direction to the respondents to forbear enforcement thereof in packing their finished products with jute bags etc., is sought for.

2. We have had the advantage of hearing a galaxy of learned Senior Counsel with their forensic legal skills to assail the constitutionality of Sections 3 to 5 of the Act and the orders issued by the Central Government on the anvil of Articles 14, 19(1)(g) and 301 of the Constitution and their repudiation with equal vehemence by the counsel appearing for the respondents. The petitioners' fundamental premise is that their right to carry on trade and business guaranteed by Article 19(1)(g) and free flow of trade and commerce throughout the territory of India under Article 301 has been impeded by operation of the Act, the Rules and the orders issued by the Central Government. The restriction by way of compulsory packing of their finished products with gunny bags is an unreasonable restriction; further, it is not in the interests of general consumer public. The word 'general' qualifies the whole public; in other words, the restriction must be in the interest of the entire general public, namely, the consumers of diverse goods. It must not merely be a small section of the public, namely, the producer of jute. The restriction also must be for the advancement of, or to the benefit of the society as a whole. Packing with jute bags made compulsory irrespective of costs, suitability, availability, consumers' non-preference and hosts of other relevant factors, is arbitrary. Executive priority or preference to the jute sector at the cost of and in total disregard of the interests of other sectors like cement, sugar or alternative industry or general public would be

unreasonable, arbitrary and a total prohibition. Therefore, the Act is illegal and void. No law should impose restriction for the benefit of a small section of the public at the detriment of an overwhelmingly large majority of the people. The Act intends to benefit only a small section of the society as is disclosed by the Statement of Objects and Reasons, namely, vague and indeterminate 4 million rural agricultural families and 2.5 lakh industrial workers in the jute industry in comparison with general consumers' community for whose benefit the Essential Commodities Act, 1955 and the orders issued thereunder was made for regulating the equitable distribution of the essential commodities at a reasonable price.

3. The compulsion to pack cement, sugar and other essential commodities with jute bags, not only, as stated earlier, hampers free flow of trade and commerce but also escalates the cost of the essential commodities. Jute bags are unsuitable to particular commodity. Emphasis in this behalf is laid on cement. Packing cement with jute bags causes loss in weight during the course of handling in transit, recurring wastage of raw material like minerals and electricity, and loss to the consumers was repeatedly reiterated by the counsel. The wastage worked out, for the year 1987-88, is to the tune of approximately 3 million tonnes of limestone, a non-renewable natural resource, 240 million units of electrical energy and 0.5 million tonnes of coal which is another non-renewable natural resource of the country. The statistical data is only illustrative and not exhaustive. On the other hand, packing cement with HDPE prevents, apart from cost factors, loss of the essential commodities, pollution and health hazards to the workmen. The Act casts no corresponding obligation on jute manufacturers to supply gunny bags as per growing demand nor are they obligated to pass on the benefits to the growers of raw jute. The report of the High-Power Committee of 1992 would show that the growers are victims of exploitation at the hands of the manufacturers. They are not receiving any benefit from the Act.

4. The Act does not provide any guidelines to protect the interests of the growers. On the other hand, compulsory packing of the commodities with jute bags is intended to benefit only jute mill owners who have already taken large sums of money by way of subsidy from the Central Government and modernised their mills. Yet jute bags are not available to the required demands, which would establish that they had diversified the jute products. No guidelines are provided to strike a balance between the interests of the jute sector and of the general consumers and producers of other commodities.

5. The fact that the Government of India had issued orders permitting the petitioners to purchase second-hand gunny bags for packing the essential commodities is an admission that the required quantity of qualitative jute bags are not being produced. The study reports establish gradual decrease in the cultivation area of jute. The jute industry has diversified the manufacture of jute products in India which are exported abroad. The jute industry is importing raw jute from Bangladesh. The Act does not expressly intend to operate as permanent measure, and being a temporary enactment to tide over the business crisis in the jute industry, the Act is required to gradually phase out compulsory packing of the commodities with jute bags proportionately. The Committee appointed by the Central Government had recommended to the Central Government to phase out compulsory packing of the essential commodities with jute bags by the end of the Eighth Five Year Plan, namely, 1992-97. Instead of repealing the Act, by fresh orders, the Central Government has imposed hundred per cent use of gunny bags in sugar industry etc. No heed was paid by the Central Government to several representations made by the manufacturers, individually and collectively, through their associations. The High-Power Committee's report in para 6.3 has been repeatedly referred to and relied on by Shri G.L. Sanghi. It reads thus :

"The jute industry cannot be artificially propped up by this piece of legislation for an indefinite period in a liberalised economy when free market forces have come to operate. In any case, this legislative measure was only intended to provide support to the industry as an interim measure for a brief period during which the industry was expected to restructure and readjust its capacity linked to production of value-added diversified products for the domestic and international markets. The Committee is aware of the fact that the constitutional validity of the Jute Packaging Act is pending before the Supreme Court for a decision. Hence, without any prejudice to the outcome of the court proceedings, the Committee recommended that the provisions in the existing orders should be diluted gradually in two or three stages, and by 1994-95 it should be rescinded altogether."

In addition, they relied on paragraphs 6.1, 2.9, 2.10, 6.24, 9.1 and 9.6.

6. The Standing Advisory Committee constituted under Section 4 of the Act is not a representative committee nor the manufacturers find their representatives in the Committee. The HDPE is much cheaper than the gunny bags. The incidence of cost of the gunny bag being a component of the sale price of the essential commodity, needless burden would be passed on to the consumers. In this regard, the sugar industry pointed out that there is increase in the sugar factories and production of sugar over the years from 216 to 435 from 37.40 lakh tonnes to 146.35 lakh tonnes respectively. On the other hand, there is gradual decline in jute cultivated area from 11.03 hectares to 9.10 hectares. Consequently, import of jute from Bangladesh has been increased from 3.10 to 54 tonnes. It is, therefore, contended that it is no longer feasible to obtain sufficient quantity of 'A' class bags fit for packing sugar. The Act being a penal Act, the Rules made and the orders issued thereunder are, therefore, arbitrary offending Article 14.

7. Interplay of the operational efficacy of the Act, the Rules and orders, on fundamental rights of the petitioners to carry on trade or business guaranteed by Articles 19(1), 14 and 301 of the Constitution would be better appreciated only if we have a grasp of their backdrop. India lives in villages. Agricultural economy is the bedrock for rural India. Property assures them social dignity and economic equality. Agriculture is the main source for economic sustenance and equality of status to the tillers of the soil who too have fundamental right to equality of status and of opportunity and right to livelihood. Agricultural operations are their prime source of livelihood and sustainers of the business and of urban population.

8. Professor Harold Laski, an iconoclastic humanist, expressing his belief in Indian Independence and its socialist destiny stated in his "Congress Socialist" of 11-4-1936, thus :

"Attainment of natural self-government to mean no more than the exchange of the control by British capitalism for that by Indian capitalism. Those who know the normal life of the poor... will realise enough that without economic security, liberty is not worth living."

9. The Avadi Resolution of Congress envisaged to redeem the plight of the tiller of soil granting permanent tenures and conferment of title to the lands held under feudalistic social order. Karachi Resolution of 1931 assured that "political freedom must include real economic freedom of starving millions". The founding fathers of the Constitution, therefore, in the objective Resolution, speaking on behalf of, "We, the people of India", pledged on their behalf to accord justice - social, economic and political to all the citizens, equality of status and opportunity and dignity of person with stated

liberties.

10. In *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] a Constitution Bench of this Court to which one of us, K. Ramaswamy, J., was a member was to consider the interplay of life, liberty and equality. The evolution of the State from police State to a welfare State accepted democratic society to safeguard the life, liberty and equality of the citizens. The exercise of right to liberty is subject to special control, lest it would become anti-social or would undermine the security of the State. Indian democracy, product of rule of law, aims not only to protect the fundamental rights of its citizens but also to establish an egalitarian social order. An individual has to live within the social confines suppressing his unsocial and unbridled growth for reconciling individual liberty with social control. Liberty must be controlled in the interests of the society. The societal interest must never be overbearing to justify total deprivation of individual liberty. Liberty cannot stand alone. It must be paired with a companion virtue; liberty and morality; liberty and law; liberty and justice; liberty and common good; liberty and responsibility which are concomitants for orderly progress and social stability. Man being a rational individual has to live in harmony with the equal rights of others more differently for the attainment of antithetic desires. Liberty would not, therefore, be always an absolute licence but must arm itself within the confines of law. In that case, the question was whether TADA Act is constitutionally valid? While declaring part of the Act as invalid, the above statement of law came to be laid therein. In *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225 : 1973 Supp SCR 1] the Full Court had held that Preamble of the Constitution is an integral part of the Constitution. In *S.R. Bommai v. Union of India* [(1994) 3 SCC 1] the Preamble has been held to be the basic structure of the Constitution.

11. The Preamble of the Constitution is the epitome of the basic structure built in the Constitution guaranteeing justice - social, economic and political - equality of status and of opportunity with dignity of person and fraternity. To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and Directive Principles of State Policy (for short, 'Directives') in Chapter IV of the Constitution delineated the socio-economic justice. The word 'justice' envisioned in the Preamble is used in a broad spectrum to harmonise individual right with the general welfare of the society. The Constitution is the supreme law. The purpose of law is realisation of justice whose content and scope vary depending upon the prevailing social environment. Every social and economic change causes change in the law. In a democracy governed by rule of law, it is not possible to change the legal basis of socio-economic life of the community without bringing about any corresponding change in the law. In interpretation of the Constitution and the law, endeavour needs to be made to harmonise the individual interest with the paramount interest of the community keeping pace with the realities of ever-changing social and economic life of the community envisaged in the Constitution. Justice in the Preamble implies equality consistent with the competing demands between distributive justice with those of cumulative justice. Justice aims to promote the general well-being of the community as well as individual's excellence. The principal end of society is to protect the enjoyment of the rights of the individuals subject to social order, well-being and morality. Establishment of priorities of liberties is a political judgment.

12. Law is the manifestation of principles of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties. Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are trinity for social and economic equality. Law is the foundation on

which the potential of the society stands. Law is an instrument for social change as also defender for social change. In *Madhu Kishwar v. State of Bihar* [(1996) 5 SCC 125] the question was whether the tribal women are entitled to equality in matters of succession with male members? One of us (K. Ramaswamy, J.) has held that they are entitled to equality in matters of succession.

13. Social justice is the comprehensive form to remove social imbalances by law harmonising the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status - social, economic and political.

14. The content, ambit and interplay of justice and social justice was elucidated in *Consumer Education & Research Centre v. Union of India* [(1995) 3 SCC 42 : 1995 SCC (L&S) 604] by a Bench of three Judges of this Court in paragraph 18 at page 67. The Court observed that the Constitution is the supreme law envisaging social justice as its arch to ensure life to everyone to be meaningful and livable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It related the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. Justice, liberty, equality and fraternity are supreme constitutional values to establish the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. Social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen. Justice is the generic term and social justice is its facet, dynamic device to mitigate the sufferings of the disadvantaged and to eliminate handicaps so as to elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury, to ward them off from distress and to make their lives livable for greater good of the society at large. Social justice, therefore, gives substantial degree of social, economic and political equality, which is the constitutional right of every citizen. In paragraph 19, it is further elaborated that social justice is one of the disciplines of justice which relates to the society. What is due cannot be ascertained by an absolute standard which keeps changing depending upon the time, place and circumstances. The constitutional concern of social justice, as an elastic continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing. It aims to secure dignity of their person. It is the duty of the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enlivens the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in result. Article 1 of the Universal Declaration of Human Rights envisions that all human beings are born free and equal in dignity and rights and each should act towards one another in a spirit of brotherhood. In that case the question was whether right to social security is a fundamental right of workman? To make the life of the workman worth living with health, it was held that right to health is a fundamental right and it is the duty of the State and the employer to provide facilities and opportunities for ensuring sustained good health and leisure to the workman as a facet of right to life under Article 21.

15. In *Valsamma Paul v. Cochin University* [(1996) 3 SCC 545 : JT (1996) 1 SC 57] a Bench of this Court has held that human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration

of Human Rights, Democracy, development and respect for human rights and the fundamental freedoms are interdependent and have mutual reinforcement. Article 29(2) of the Declaration of Human Rights provides that :

"... in the exercise of this right and freedom, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of leading the just requirements of morality, public order and general welfare in a democratic society".

The concept of equality and equal protection of law guaranteed by Article 14 of the Constitution in its proper spectrum encompasses social and economic justice in a political democracy as its species to eliminate inequalities in status and to provide facilities and opportunities among the individual and groups of people to secure adequate means of livelihood which is the foundation for stability of political democracy.

16. Social democracy means a way of life which recognises liberty, equality and fraternity as principles of life. They are the trinity. One cannot divorce one from the other. Without equality, liberty would produce supremacy of the few over the many. Equality without liberty would denude the individual of his initiative to improve excellence. Without fraternity, liberty and equality would not nature as their natural habitat. Social and economic justice is a constitutional right enshrined for the protection of the society. The right to socio-economic justice in the trinity, the Preamble, Fundamental Rights and Directives is to make the quality of life of the disadvantaged people meaningful. Equal protection in Article 14, therefore, requires affirmative action by the State to those unequals by providing facilities and opportunities. The question therein was whether right to reservation is available to women belonging by birth to forward sections of the society but married to a male member of a disadvantaged section of the society on a par with the persons from the caste to which reservation was provided ? In that context, the right to socio-economic justice, equality and fraternity was considered and the above law was laid down.

17. Gandhiji, the Father of the Nation, on the eve of independence had stated that

"independence did not mean mere freedom from British Rule by breaking the bonds of slavery but it meant more than that. It meant justice to all citizens of India, irrespective of religion, caste, creed or language, each getting his legitimate due."

The 42nd Amendment Act of the Constitution introduced, "secularism and socialism" in the Preamble which are implicit in the Directives and the Fundamental Rights read together. Social and economic justice in the context of our Indian Constitution must, therefore, be understood in a comprehensive sense to remove every inequality and to provide equal opportunity to all citizens in social as well as economic activities and in every part of life. Economic justice means the abolition of those economic conditions which ultimately result in the inequality of economic value between men. It means to establish a democratic way of life upon socio-economic structure of the society to make the rule of law dynamic.

18. Article 14 of the Constitution is a shining star among the fundamental rights which guarantees equality to every citizen and equal protection of laws to all persons. Equality before law is a correlative to the concept of rule of law for all-round evaluation of healthy social order. Directives set forth social principles to eliminate inequalities in income, in status and opportunity and to provide facilities and opportunities to every citizen to make the fundamental rights meaningful and

the life of every citizen worth living and at its best, with the dignity of person and fraternity, lest they remain empty vessels and teasing illusions to majority population.

19. The Constitution adopted mixed economy and the planned development has become a constitutional scheme to realise egalitarian social order. The Second Five Year Plan envisaged that :

"The pattern of development and the structure of the socio-economic relation should be so planned that they result in appreciable increase in income and employment but also in greater equality in income and wealth."

The Directives of the State Policy have delineated in broad spectrum socio-economic justice to all people.

"The socialistic pattern of society is a more comprehensive expression of the approach. Economic polity and constitutional changes have to be planned in a manner that would ensure economic advance along democratic and egalitarian lines."

20. In the Eighth Five Year Plan 1992-97, the Planning Commission, in its blueprint has stressed on agricultural economy and need for stepping up production in para 1.1.1 that agriculture and allied activities constitute the single largest contributor to the Gross Domestic Product (GDP), accounting for almost 33% of the total. They are vital to the national well-being as, besides providing the basic needs of the society and the raw materials for some of the important segments of Indian industry, they provide livelihood for almost two-thirds of the work force. The share of the agricultural products in the total export earnings, both in primary and processed forms, is very significant. In paragraph 1.2.7 Jute and Mesta, it is stated that the average production of jute and mesta in the Seventh Plan was 8.8 million bales. Inadequate availability of improved seeds and retting facilities are the main constraints to increasing the production of quality jute and mesta. Development of jute and mesta during the Seventh Plan was undertaken through a Special Jute Development Programme, funded by the Ministry of Textiles. Use of natural fibre as the packing material is on the revival trail and diverse jute products are now exported. The minimum support price policy to the farmers and the role of Jute Corporation of India (JCI) need to be reviewed for their effective operation. It is stated in para 1.11.1 that the Eighth Plan aims at consolidating the gains from the base built over the years in agricultural production sustaining the improvement in productivity and production. To meet the increasing demands of the growing population enlarging the income of the farmers and realising the country's potential by stepping up agricultural exports, effective steps are directed to be taken. In paragraph 1.11.7, it is stated that marketing infrastructure has to be further augmented and streamlined, especially in respect of perishable commodities. In the light of the technological advancement and gains, agricultural produce requires to promote diversification within and outside the country which will gain importance in the coming years. In paragraph 1.11.9, it is stated that the changes in the trade policies have vastly improved the prospects for realising the full potential of the country with its varied agro-climatic conditions from tropical to temperate regions, in producing commodities for export. Maximising the production of the traditional export commodities etc. requires to be stepped up on modern technologies and sustained efforts should be made in the coming years. In paragraph 1.11.11, it is stated that the promotion of initiatives outside the Government to further socio-economic development is of cardinal importance and is central to the strategy of the Eighth Plan. In paragraph 1.11.12, it is stated that many a programme and scheme will have to be continued from the previous plans, with necessary refinements or modifications to address themselves sharply to the problems for their overcome. A policy resolution in that behalf on agricultural policy was made in eloquent terms promising in para 11 that :

"Government will endeavour to create a positive trade or investment climate for agriculture on a par with industries to develop effective systems and to bestow similar benefits on agriculture as exists in industry. They issued and ensured that agriculturists are not subjected to the regulatory and tax collection machinery of the Government."

21. Article 38 of the Constitution enjoins the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, the social order in which justice -social, economic and political - shall, inform all the institutions of the national life striving to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities, opportunities amongst individuals and groups of people residing in different areas or engaged in different avocations. As stated earlier, agriculture is the mainstay of rural economy and empowerment of the agriculturists. Agriculture, therefore, is an industry. To the tiller of the soil, livelihood depends on the production and return of the agricultural produce and sustained agro-economic growth. The climatic conditions throughout Bharat are not uniform. They vary from tropical to moderate conditions. Tillers of the soil being in unorganised sector, their voice is scarcely heard and was not even remotely voiced in these cases. Their fundamental right to cultivation is as a part of right to livelihood. It is a bastion of economic and social justice envisaged in the Preamble and Article 38 of the Constitution. As stated earlier, the rights, liberties and privileges assured to every citizen are linked with corresponding concepts of duty, public order and morality. Therefore, the jural postulates form the foundation for the functioning of a just society. The fundamental rights ensured in Part III are, therefore, made subject to restrictions i.e., public purpose in Part IV Directives, public interest or public order in the interest of the general public. In enlivening the fundamental rights and the public purpose in the Directives, Parliament is the best Judge to decide what is good for the community, by whose suffrage it comes into existence and the majority political party assumes governance of the country. The Directive Principles are the fundamentals in their manifestos. Any digression is unconstitutional. The Constitution enjoins upon the Executive, Legislature and the Judiciary to balance the competing and conflicting claims involved in a dispute so as to harmonise the competing claims to establish an egalitarian social order. It is a settled law that the Fundamental Rights and the Directive Principles are the two wheels of the chariot; none of the two is less important than the other. Snap one, the other will lose its efficacy. Together, they constitute the conscience of the Constitution to bring about social revolution under rule of law. The Fundamental Rights and the Directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.

22. Social justice, therefore, forms the basis or progressive stability in the society and human progress. Economic justice means abolishing such economic conditions which remove the inequality of economic value between man and man, concentration of wealth and means of production in the hands of a few and are detrimental to the vast. Law, therefore, must seek to serve as flexible instrument of socio-economic adjustment to bring about peaceful socio-economic revolution under rule of law. The Constitution, the fundamental supreme lex distributes the sovereign power between the Executive, the Legislature and the Judiciary. The three instrumentalities, within their play endeavour to elongate the constitutional basic structure built in the Preamble, Fundamental Rights and Directives, namely, establishment of an egalitarian social order in which every citizen receives equality of opportunity and of status, social and economic justice. The court, therefore, must strive

to give harmonious interpretation to propel forward march and progress towards establishing an egalitarian social order.

23. From this perspective, let us consider the constitutionality of the provisions of the Act. The Statement of Objects and Reasons and the Preamble of the Act, would, in unmistakable terms, indicate that it intends to provide livelihood to nearly 4 million rural agricultural families and 2.5 lakh industrial workers. The ancient agro-based jute industry occupied a significant position in our national economy, in particular in the economy of the North-Eastern region of the country. It is an agro-based and labour-intensive industry. It is also an export-oriented one and its raw material is based entirely on indigenous jute produced by the above agricultural families. Parliament avowedly intended to protect the interests of the persons involved in jute production; jute industry, therefore, requires protection.

24. A balanced view of the developments in the national economy requires to be taken into consideration to protect the interests of the farmers who produce jute or any other agricultural produce and in the interests of agro-based industry of the country and workers who deliver finished products. With that objective in view, the Act was made for compulsory use of jute packaging material in the supply and distribution of certain commodities in the interest of production of raw jute and jute packaging material and the persons engaged in the production thereof for the matters connected therewith. Sections 3, 4 and 5 read thus :

"3. (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government may, if it is satisfied, after considering the recommendations made to it by the Standing Advisory Committee, that it is necessary so to do in the interests of production of raw jute and jute packaging material, and of persons engaged in the production thereof, by order published in the Official Gazette, direct, from time to time, that such commodity or class of commodities or such percentage thereof, as may be specified in the order, shall, on and from such date, as may be specified in the order, be packed for the purposes of its supply or distribution in such jute packaging material as may be specified in the order :

Provided that until such time as the Standing Advisory Committee is constituted under Section 4, the Central Government shall, before making any order under this sub-section, consider the matters specified in sub-section (2) of Section 4, and any order so made shall cease to operate at the expiration of three months from the date on which the Standing Advisory Committee makes its recommendations.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

4. (1) The Central Government shall, with a view to determining the commodity or

class of commodities or percentages thereof in respect of which jute packaging material shall be used in their packing, constitute a Standing Advisory Committee consisting of such persons as have, in the opinion of that Government, the necessary expertise to give advice in the matter.

(2) The Standing Advisory Committee shall, after considering the following matters, indicate its recommendations to the Central Government, namely. -

(a) the existing level of usage of jute material;

(b) the quantity of raw jute available;

(c) the quantity of jute material available;

(d) the protection of interests of persons engaged in the jute industry and in the production of raw jute;

(e) the need for continued maintenance of jute industry;

(f) the quantity of commodities which, in its opinion, is likely to be required for packing in jute material;

(g) such other matters as the Standing Advisory Committee may think fit.

5. Where an order has been made under Section 3 requiring any commodity, class of commodities or any percentage thereof to be packed in jute packaging material for their supply or distribution, such commodity, class of commodities or percentage thereof shall not, on and from the date specified in such order, be supplied or distributed unless the same is packed in accordance with that order :

Provided that nothing in this section shall apply to the supply or distribution of any commodity, class of commodities or percentage thereof for a period of three months from the aforesaid date if immediately before that date such commodity, class of commodities or percentage, thereof were being packed in any material other than jute packaging material."

25. Sections 6 to 8 are machinery provisions. Sections 9 to 11 are penal provisions. Section 16 gives power to the Central Government, to exempt by notification published in the Official Gazette, any person or class of persons who supply or distribute any commodity or class of commodities from the operation of any order made under Section 3. The order should be laid under sub-section (2) before each House of Parliament as provided therein. The orders issued under Section 3 are subject to modification by Parliament. Section 17 gives rule-making power to the Central Government. Rules, namely, the Jute Packaging Materials (Compulsory Use in Packing Commodities) Rules, 1987 (for short, 'the Rules') were made. Rule 3 provides for constitution of the commodities.

26. Sub-section (1) of Section 3, with a non obstante clause, excludes the operation of any other law for the time being in force and, regulates use of jute or jute packaging material in supply and distribution of certain commodities. It gives power to the Central Government, on being satisfied, on consideration of the recommendations made to it by the Standing Advisory Committee empowered to issue directions from time to time for use of the packing material. The primary

purpose and object of such directions is to protect the interests of producer of raw jute and jute packaging material. The Central Government is enjoined to protect the interests of persons engaged in the production thereof. Such orders should be published in the Official Gazette. The orders need to be passed from time to time. From the date of such order specified therein, such commodity or class of commodities or such percentage thereof, as specified in the order, should be packed with jute packaging material specified in the order for the purpose of supply or distribution of such commodity or commodities. Under the proviso, until the Standing Advisory Committee is constituted under Section 4, the Central Government should consider, before making any order, the matters as specified in sub-section (2) of Section 4. The Central Government may make an order thereunder which shall cease to operate at the expiration of 3 months from the date of the recommendations of the Standing Advisory Committee.

27. Every such order shall be laid before each House of Parliament while it is in session, for a period of 30 days. It would be open to Parliament to make any modifications to the order. Both the Houses of Parliament may also agree that such order should not be made. After making modifications, if any, such amended or modified order will be the operative order. Any action taken on the ongoing order, before modification, shall be without prejudice to the action already taken.

28. Under sub-section (1) of Section 4, the Central Government should constitute a Standing Advisory Committee consisting of such persons as have, in its opinion, the necessary expertise to give advice in the matter with a view to determine the commodity or class of commodities or percentage thereof in respect of which jute packaging material shall be used in the packing. The Standing Advisory Committee, after considering the matters enumerated in clauses (a) to (g), would furnish its recommendations to the Government. Section 5 creates embargo on the supply and distribution of such specified commodity or class of commodities of any percentage thereof with reference to which an order under Section 3 came to be made. Rule 3 of the Rules carries out the purpose of Section 4 in establishment and constitution of the Standing Advisory Committees consisting of Chairman and members not exceeding 20, nominated by the Central Government for a term of three years. The date of the constitution of the Committee and of filling up of all the vacancies and the manner in which it is to be done is provided thereunder.

29. It is true that though a committee was constituted by the Central Government, in addition to the Advisory Committee which recommended to the Government to abolish compulsory use of jute packaging material by 1997, the Government and the Advisory Committee did not consider it desirable to completely phase out compulsory use of jute packaging material. It issued directions for compulsory packing of the commodities with jute packaging material with varying percentage. In the case of sugar, 100% use of jute packaging material is insisted to be continued.

30. The question, therefore, is whether directions issued by the Central Government for the compulsory packing of the commodities with jute packaging material, (in respect of sugar 100% use of the gunny bags and at varying percentage for other commodities) is unconstitutional? As stated earlier, the Act aims to accord socio-economic justice to the tillers of the soil by protecting the cultivation of raw jute and employment of the workmen engaged in the jute manufacturing industry. Jute is being produced and manufactured in North-Eastern States, West Bengal and Andhra Pradesh etc. as mentioned in the affidavit. A reading of the debates on the floor of Parliament on the Bill, does establish, cutting across the party lines, that all the members have spoken in favour of directing compulsory use of jute packaging material (gunny bags) for supply and distribution of the commodities. As stated earlier, the object of the benign measure primarily is to protect the interests of growers of agricultural produce, who cultivate raw jute. Incidentally, the manufacturers and the

workmen get benefit therefrom. Agricultural economy accords to the grower socio-economic justice to provide dignity of person, equality of opportunity to have his produce used in industry, etc. Agriculture is treated as industry on a par with any other industry. The State should provide, by legislative or executive measure, all facilities and opportunities to get them due price for their products and have them marked for use in industry. The orders passed by the Central Government are made subject to parliamentary control and subject to modification by both Houses.

31. Equally, the competing right to carry on trade or business guaranteed to a citizen or person is also to be protected. In the clash of competing rights of socio-economic justice of the producers of the agricultural commodities and of the individual right of a citizen to carry on trade or business, the latter yield place to the paramount social right. However, as rightly pointed out by the counsel, a balanced view has to be struck by the Central Government in directing use of jute packaging material at the percentage of the jute bags to be used for compulsory packing of the commodities which is subject to parliamentary control and approval. Parliament is the spokesman of the people where the need is felt most acute. When the orders passed under Section 3 are subject to modification by Parliament, Parliament preserved to itself a great salutary control over executive exercise of power under Section 3(1). It is such a valuable public protection and safeguard kept with Parliament itself. Parliament would be the best judge to discuss in each House as to what extent competing interests of the agricultural industry and the industry involved in commercial products need to be protected and would guide the Central Government appropriately by resolution or otherwise. When Parliament debates on the subject, it focuses its attention on all its constituents and it would be open to debate on the subject by participants from all the members of Parliament and political parties and of shades of opinion. Parliament is entitled to direct the Central Government to place on the floor of each House the necessary factual material for discussion. They are the best judges to direct the Central Government to act on their advice in a particular way, based on the existing factual material. Parliament is empowered to overrule the order of the Central Government under Section 3(1) by disapproval.

32. It is a question of fact, to be considered in each case, as to what percentage is required to be used; it is primarily for the Central Government to decide as executive policy. The Central Government is guided by the material placed before it and the advice tendered to it by the Standing Advisory Committee constituted under Section 4 of the Act. It depends upon the availability of jute and its products in the market, the quantum of raw jute produced by the agriculturists, its demand in the market and its capability for diversification into other industries for ancillary use of the jute material and hosts of other factors enter into the decision-making process. The exercise is required to be undertaken from time to time. The Act, the Rules and the material placed before it by the Committee and the advice tendered by the expert body form the basis. The decision taken and directions issued cannot be said to smack of arbitrariness. Guidelines are available under the Act and the Rules made in this behalf. They are parliamentary control. Paramount public interest is to provide economic security and equality and justice to the producers of raw jute and the workers engaged in manufacturing jute packaging material.

33. In *Shri Sitaram Sugar Co. Ltd. v. Union of India* [(1990) 3 SCC 233] the question arose whether fixation of price for sugar under Section 3(3-C) of the Essential Commodities Act, 1955 was an administrative or legislative function and whether the court could interfere in fixation of price thereof? A Constitution Bench of this Court had held that price fixation is a legislative function. In paragraph 57, it was held that judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the "feel of the expert" by its own views. When the

legislature acts within the sphere of its authority and delegates power to its agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial enquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are sustainable at law of the land. Judicial function in respect of such matters is exhausted when the court finds rational basis to the conclusion reached by the authority. In the matters of policy and planning, it is for the Central Government to decide whether it should adopt one or the other system of control in the best economic interest of the sugar industry and the general public grouping sugar factories on geographical-cum-agro-economic factors to determine the price. It was held that the fixation of price of sugar was not amenable to judicial review.

34. In *R.K. Garg v. Union of India* [(1981) 4 SCC 675 : 1982 SCC (Tax) 30] when Special Bearer Bonds (Immunities and Exemptions) Act, 1981 was challenged in this Court under Article 32 of the Constitution, this Court per majority, had held that legislation particularly in economic matters, is essentially empiric and it is based on experimentation. There may be crudities, inequities and even possibilities of abuse but on that account alone, it cannot be struck down as invalid. These can always be remedied by the legislature by passing amendments. The court must, therefore, adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities. Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom to speak or practise any religion. There is always a presumption in favour of the constitutionality of the Act. Burden is on the petitioner to show that there has been a clear transgression of constitutional principles. 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 is based on adequate grounds. In adjudging, the court may take into consideration common knowledge, matters of common report, the history of the time and may assume every state of affairs which can be conceived of as existing at the time of legislation. The Act was made and held to be valid.

35. In *Morey v. Doud* [354 US 457 : 1 L Ed 2d 1485 (1957)] in dissenting judgment, Frankfurter, J. held that in the utilities, tax, economic regulation cases judicial self-restraint, if not judicial deference to legislative judgment was emphasised. The court is always to remember that Parliament has affirmative responsibility to solve problems that were felt most acute. In economic measure, the court while claiming the constitutionality of a legislation must defer to legislative judgment.

36. In *Peerless General Finance & Investment Co. Ltd. v. Reserve Bank of India* [(1992) 2 SCC 343] one of us, K. Ramaswamy, J., in a separate but concurrent judgment held in paragraph 69 that it is well-settled law that the court is not a tribunal from the crudities and inequalities of complicated experimental economic legislation. The discretion in evolving economic measures rests with the policy-makers and not with the judiciary. Indian social order is beset with social and economic inequalities and of status, and in our socialist, secular, democratic, republic, inequality is an anathema to social and economic justice. The Reserve Bank of India Act, 1934 assigned the power to the Reserve Bank of India to regulate monetary system and the experimentation of the economic legislation can best be left to the executive unless it is found to be unrealistic or manifestly arbitrary. Even if a law is found to be wanting on trial, it is better that its defects are demonstrated and removed by amendment than that law being aborted by judicial fiat. Such an assertion of judicial power deflects responsibilities from those on whom a democratic society ultimately rests. The court has to see whether the scheme, measure or regulation adopted is relevant or appropriate to the power exercised by the authority. In that case, the directions issued by the Reserve Bank of India for regulating the money circulation were held valid.

37. In *City of New Orleans v. Nancy Dukes* [427 US 297 : 49 L Ed 2d 511] (L Ed 2d at p. 518) the dissenting view of Frankfurter, J. was upheld and the Court had stated that :

"Morey was the only case in the last half century to invalidate a wholly economic regulation solely on equal protection and now we are satisfied that the decision was erroneous."

38. In *Charles Roberts & Co. Ltd. v. British Railways Board* [(1965) 1 WLR 396 : (1964) 3 All ER 651] the Chancery Division had held that, in general, Judges are not qualified to the said questions of economic policy and such questions by their nature are not justiciable. But, in England, judicial review of parliamentary enactment was not available. That decision may not be of much assistance.

39. Robert Jackson J. in *H.P. Hood & Sons v. Dumond* (1949) had stated that our system is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the nation, that no home embargo will withhold his exports and that no foreign State will by customs, duties or regulation exclude them (vide : *The Encyclopedia of American Constitution on the chapter Economic Analysis and the Constitution* at p. 597). At p. 598, it is stated that "since 1937, the Court has consistently declined to invalidate economic legislation on substantive due process grounds and has stubbornly refused to subject such legislation to even minimal review". Economic analysis is an acquired taste; courts should not insist that legislature be educated in basic economic concepts let alone that they keep abreast of the current literature on externalities and public goods. Most economist would acknowledge that a legislature may properly choose to sacrifice economic efficiency in order to achieve some desired distribution of wealth among societal groups. Even if a private conduct is economically acceptable, a legislature could properly conclude that the conduct is interpersonally unfair in the particular way, it enables to cause harm to people.

40. It would, thus, be clear that the court is not well equipped to adjudge crudities and inequities emerging from economic legislation. The legislature is empowered to experiment on economic legislation in its attempt to remove inequalities in income or status or to provide facilities and opportunities to improve economic status or provide social and economic justice to the society or a particular discernible segment of society or to remove the defect where the legislature felt most acute. There is always presumption in favour of constitutionality. The legislature appreciates the needs of the people and directs the laws to the problems made manifest by experience and discrimination is based on adequate grounds. The court does not supplant the feel and experiment of the expert by its own views. Court in deference to legislative judgment, imposes self-restraint to adjudge on crudities and experiment but concern on core constitutionality.

41. Another serious contention of the petitioners is that the Act is a class legislation intended to benefit a small sector to jute producers or the producers of raw jute or their workmen while the total impact on the consumers at large or right to trade or business in another commodity is disproportionately large, therefore, the Act is ultra vires is devoid of substance. In the agro-based economy of India agricultural crops are cultivated in different States based on climatic and soil conditions and water resources. The diversity is so vast that no comparison would be possible in terms of population. In the entire South India, paddy cultivation is the primary economy while in Kerala spices and in Andhra Pradesh, Karnataka and Tamil Nadu sugarcane, tobacco, pulses, cotton and other commercial commodities would supplement paddy cultivation. In Gujarat and Maharashtra commercial crops would supplement the paddy cultivation. In coastal Andhra Pradesh, jute also is cultivated as a second crop. In other areas in south-eastern region, as is evident, apart

from agriculture, jute also is the main agricultural product. In Uttar Pradesh, sugarcane gets intensive cultivation apart from paddy and wheat. In Gangetic plateau, apart from agriculture, intensive sugarcane cultivation is the special feature. In Punjab and Haryana, wheat and paddy are the main cultivations. In Rajasthan, bajra, pulses etc. are cultivated. Throughout rural India, people live upon agro-based economy. None of the agricultural produce is common throughout the country but cultivation of agricultural produce is the sole resource of the rural population as majority is compared to urban population in the country. It is settled law that a class legislation based on geographical features is constitutionally valid. Article 38(a) itself recognises this diversity and directs to evolve policies suited to that class of region. It is, therefore, clear that raw agriculture produce is an input of finished product for commercial purposes and its regulation, by the Acts or Rules or orders, cannot be assailed as ultra vires the legislature on the basis of the population of the agriculturists when it affects consumer public or manufacturers of finished products whose business avocation incidentally gets affected. On that account, the Act cannot be declared void or ultra vires the power of Parliament to enact the law.

42. The main plank of the petitioners, to demolish the validity of the Act as ultra vires of Article 19(1)(g), is founded on the ration in *Chintaman Rao v. State of M.P.* [1950 SCR 759 : AIR 1951 SC 118] The Central Provinces and Berar Regulation of Manufacture of Bidis (Agricultural Purposes) Act (64 of 1948), (Pre-Consolidation Act) was made empowering the Deputy Commissioner by a notification to fix a period to be agricultural season with respect to specified villages to prohibit deployment of labour in bidi manufacturing. The Deputy Commissioner issued the order prohibiting manufacturing of bidis in certain villages which came to be challenged under Article 32 of the Constitution. This Court had held that the object of the statute being a measure to provide supply of adequate labour for agricultural purposes in the area of the province, the purpose would have been achieved by legislation restricting the employment of the agricultural labour in the manufacture of bidis during the aforesaid season without prohibiting altogether manufacture of bidis themselves. Therefore, it was held that the Act has no reasonable relation to the object in view and it did not impose any reasonable restriction under Article 19(6) of the Constitution. Reasonable restriction connotes that there is a limitation imposed in enjoyment of the right which should not be arbitrary or excessive in nature beyond what is required in the interest of the public. Reasonableness implies intelligent care and deliberation, i.e., the choice of a course which reason dictates an arbitrary or excessive restriction. A legislation which arbitrarily or excessively invades the right cannot be said to contain the quality or reasonableness unless it strikes proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted under clause (6) of Article 19, must be held to be wanting to be reasonable. As pointed out by this Court, the legislature could have prohibited use of labour during the particular period of agricultural season in the area in which bidis are manufactured; instead the Act permitted the offer to issue notification imposing total prohibition on manufacture of bidis. It was, therefore, held that it was unreasonable restriction not saved by Article 19(6). Far from helping appellants, the ration indicates that if the Act strikes a reasonable balance between the exercise of the fundamental rights and reasonable restrictions in the interest of the general public, the Act would be valid. In *Narendra Kumar v. Union of India* [(1960) 2 SCR 375 : AIR 1960 SC 430] this Court upheld imposition of total prohibition in the purchase and import of copper and fixation of the prices in view of policy of eliminating the dealers from such trade as not violative of Article 19(1)(g) of the Constitution. It was held that restriction includes total prohibition. In view of the foreign exchange crunch, the prohibition on import of copper, lead etc. was upheld. It was held that the court is to see whether the test of reasonableness is satisfied by considering the question in the background of factual circumstances under which the order came to be made, taking into account the nature of the evil that was sought to be remedied by law, the ratio

of the harm caused to the individual citizens by the proposed remedy, the beneficial effect reasonably expected to the general public and whether the restraint caused by the law was more than necessary in the interest of the general public. In *Dwarka Prasad Laxmi Narain v. State of U.P.* [1954 SCR 803 : AIR 1954 SC 224] it was held that regulating the trade or business in normally available commodities was unreasonable. U.P. Coal Control Order had given absolute power to the licensing authority to renew the licence under the order. In that case, since the commodities were freely available in the market, it was held that the restriction was not a reasonable restriction under Article 19(6) of the Constitution. It is not necessary to pursue this reasoning after the Essential Commodities Act, 1955 was enacted giving power to regulate distribution, sale and supply of the essential commodities to general public and fixing prices thereof.

43. In *Parvej Aktar v. Union of India* [(1993) 2 SCC 221 : JT (1993) 1 SC 453] a Bench of three Judges was to consider the reservation of certain articles for exclusive production by the handlooms whether violative of Articles 19 and 14 of the Constitution. This Court held that there is no question of monopoly created in favour of the handloom industry. Certain articles were reserved for the handloom industry to encourage the persons engaged in the manufacture of handlooms on traditional looms engaged since 1950. Recently, when the powerloom started manufacturing the items which were traditionally being manufactured by the handlooms, that caused a serious inroad into the handloom industry. Consequently, the State stepped into the business and regulated the use of certain specified articles for being manufactured by handlooms with traditional methods. Same is the view in *G.T.N. Textiles Ltd. v. Asstt. Directors, R.O.T. Commr.* [(1993) 3 SCC 438 : JT (1993) 2 SC 416] Therein, pack of yarn was regulated by directions issued by notification by the Textile Commissioner to use certain percentage of production in hank form. Clause 16 of the Textile Control Order, 1986 was challenged as violative of Articles 19(1) and 14 noticing that the Textile (Control) Order was issued only in respect of packing yarn in hank form exclusively for handloom sector which is the largest cottage industry in India. The regulation was held to be not ultra vires Articles 19 and 14 but a reasonable restriction under Article 19(6).

44. In *Municipal Corpn. of the City of Ahmedabad v. Jan Mohd. Usmanbhai* [(1986) 3 SCC 20] a Constitution Bench of this Court held that normally the legislature is the best judge of what is good for the community but the court should not shirk its duty to determine the validity of the law. In determining the reasonableness of the restriction imposed by the law under Article 19(6), the court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the view of the person or persons on whom the restrictions are imposed. The court has to consider whether the restrictions are reasonable in the interest of the general public. The question of the interest of the general public is of wide import comprehending public order, economic welfare of the public, public security, morals and the objects mentioned in the Directive Principles. The test of reasonableness has to be viewed in the context of the issues which faced the legislature. In constructing such laws and judging their validity, courts must approach the problem from the point of view of furthering the social interest which is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve the problems and further the moral and material progress of the community as a whole.

45. In *Sushila Saw Mill v. State of Orissa* [(1995) 5 SCC 615] the Orissa Saw Mills and Saw Pits (Control) Act, 1991 and in particular Section 4 thereof was challenged as violative of Articles 19(1)(g) and 301 of the Constitution. Section 4 imposed restriction on establishing saw mills within the notified prohibited zones. It was held that the right to carry on trade or business is subject to public interest. The restriction imposed total bar on saw mills operating in the prohibited area.

Prohibition was held not violative either of Article 14 or 301. It was held that it is a class regulation to protect forest. Therefore, prohibition on establishing saw mills within the prohibited zone cannot be on geographical contiguity and was held to be reasonable restriction in the interest of society. In *State of Kerala v. Joseph Antony* [(1994) 1 SCC 301] Kerala Marine Fishing Regulation Act, 1980 (10 of 1981) and the notification issued under Section 4(1) thereof, prohibiting fishing by mechanised vessels in territorial waters by use of gears like purse, seine, ring seine, pelagic trawl and mid-water trawl etc. were challenged as violative of Article 19(1)(g). In considering the above question, this Court, in paragraph 9, had held that the court has to keep the background facts of social and marine life at the back of the mind of the court to appreciate the issue involved in the case. After careful examination, this Court had held that the High Court was not right in striking down the notification on the ground that the Government had issued two fresh notifications on the basis of the report submitted by the special officers. In paragraph 20, noticing the fact that 98.5% of the total fishermen households relying on traditional crafts and nets would be pushed below the poverty line, this Court upheld the prohibition. Therefore, it was held that the Act was to protect their rights. This Court had upheld the regulatory measure.

46. In *Kerala Swathanthra Malaya Thozhilali Federation v. Kerala Trawlnet Boat Operators' Assn.* [(1994) 5 SCC 28] the Kerala Marine Fishing Regulation Act, 1980 (10 of 1981) and the Rules made thereunder were challenged on the ground that restrictions upon all the boats or all the horsepower of the engine and particulars of fishing gear to be carried in boats going for bottom-trawling beyond territorial waters, was impugned to be violative of Article 19(1)(g). This Court negated the contention holding that regulation was intended to ensure livelihood to lakhs of fishermen engaged in fishing by traditional methods.

47. The next question is whether the prohibition of 100% use of gunny bags by sugar industry and 70% by the cement industry is reasonable? It is true that the Committee constituted by the Government had recommended to phase out use of gunny bags on the ground that in a free market economy, now sought to be introduced, the restriction is not justified primarily to encourage free market. It is seen that the State has not abandoned and cannot abandon the mixed economy and power of regulation as mandated by constitutional policy. Parliament and the Executive are bound by the Constitution. The Act was made in implementation of socio-economic equality and policies. Even a private industry by operation of Directives contained in Part IV, is bound to adopt them, implement them and the Government policies to establish an egalitarian social order. The Committee in its free market frenzy became oblivious of the policy resolution of the Eighth Five Year Plan, the trinity, Preamble, Fundamental Rights and Directives. The executive policy of the State should be cognizant to these mandates which should always bind the Government and all agencies including private agencies. As seen, the Advisory Committee constituted under Section 4 has recommended 100% use of packing the sugar with gunny bags. On consideration of the report, the Government had acted upon the same. The economic policy to render socio-economic justice to the growers of raw jute and the workmen is based on the above constitutional policy. Lest the report of the Committee on the basis of a free market economy would be in negation of the Preamble, the Directive Principles and the Fundamental Right to economic justice to the agriculturists. So the contention is clearly unsustainable. The Standing Advisory Committee, therefore, had properly advised and the Government obviously has taken decision to continue the policy of compulsory packing of commodities or class of commodities with jute bags, regulated under Section 3 of the Act. Parliament did not negate the same.

48. The further contention that on account of the regulation, HDPE industry has become unviable and is on the brink of liquidation and the Act tends to create monopoly in favour of private industry

which does not get protection under Article 19(6), is untenable. This Court declines to examine the relative economic viability of the respective industries. It would be for the Central Government and Parliament and not for this Court to take into consideration the declaration of the Act as void. The Court has to see whether the Act serves the public purpose and the restrictions are reasonable. The Advisory Committee goes into factual details. The Government examines and takes policy decision. It lays the order on the table of both the Houses. Parliament controls exercise of power over executive policy. Restrictions are inbuilt and self-evident.

49. Further contention that the jute is being imported from Bangladesh which would show that no adequate supply of jute is available in India and that no gunny bags are adequately available to meet the growing demand of sugar industry etc., cannot be given acceptance. It is stated by the respondents that imported jute from Bangladesh is of a finer quality for use as a component in exportable jute products but not for domestic consumption. It is next contended that jute production has fallen due to decrease in the cultivated area of raw jute and the order to use gunny bags as arbitrary is without force. From the report submitted by the jute industry and from the Eighth Five Year Plan material, it is seen that considerable increase in the quantity of the jute is produced. The further contention is that the Act is aimed to benefit only the manufacturers of jute who had taken huge sums as loans or subsidy from the Central Government for modernisation of their industry; they have diversified their production for export. Neither the workmen nor the growers of jute are benefited from the regulation. We cannot decide the validity of the Act on that basis. Maybe that there does not appear to be any control on the prices of raw jute supplied by the farmers to the jute factories. If that is the situation, the Government should look into the problem and mete out justice to the producers for whose benefits the Act was primarily enacted. Corrective steps should be taken to protect the interests of the growers. For the labour, they have organised labour unions who would espouse their demands. But on that account, the Act cannot be struck down.

50. The further contention that since the Act is a temporary measure to benefit the jute industry, the regulation should be phased out gradually, is without substance. From the Eighth Plan and the Resolution, it is evident that the Government intends to continue the regulation. The further contention that the jute products are being diversified and the need for regulation, therefore, no longer subsists, cannot be accepted. It is for the Central Government to take into consideration, on the basis of the material placed before it, as to what extent the regulation would need modification. The further contention is since no adequate supply of the jute bags is available to meet the demand, the order is bad in law and cannot be gone into to invalidate the Act on that basis. It would be for the Central Government subject to parliamentary control to take a decision in his behalf and equally in respect of the alleged wastage.

51. Yet another contention that requires consideration is that in the Committee constituted under Section 4(1) only Secretaries representing various departments alone are represented and no one represents the petitioners in the Committee and that, therefore, the Act is void. This contention also cannot be accepted as a sound principle of law. However, as seen from the record, the Committee consists of the Secretaries representing various departments. It would be desirable that the industry or industries through recognised office-bearers of the associations may be nominated or given notice before the Advisory Committee meets to place their views and material in support thereof to evaluate the need for regulation and extent of regulation thereof. The persons representing the particular industry would assist the Committee to properly advise the Government before issuing directions/orders under Section 3. The provisions of the Act contain guidelines as is self-evident. Socio-economic justice is the public policy. It is subject to parliamentary control. They bear reasonable nexus to the object sought to be achieved by the Act.

52. Considered from this perspective, we hold that the provisions of Sections 3, 4 and 5 are not violative of Article 14 or 19(1)(g) of the Constitution. The Act and orders impose reasonable restriction saved by Article 19(6) of the Constitution.

53. There is no restriction on the stream of transport of commodities or class thereof by the citizens nor is there any impediment on its movement by the Act. The Act regulates only packing of the commodities or class of commodities with jute packaging material. Transportation an account thereof stands no impediment for the said trade and commerce. The commerce clause in Article 301, therefore, stands no impediment for free flow of trade and commerce in the commodities or class of commodities covered by the provisions of the Act. Considered from this perspective, we hold that the Act is not violative of Article 301 of the Constitution.

54. The transfer cases and writ petitions are accordingly dismissed and the applications disposed of but, in the circumstances, with costs quantified at Rs 10,000 payable to the Supreme Court Legal Aid Committee within a period of three months from the date of receipt of this order. On failure thereof, it would be open to the Supreme Court Legal Aid Committee to have this order executed as a decree according to law.