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January 21.

THE SUPERINTENDENT, CENTRAL PRISON, FATEHGARH

v.

RAM MANOHAR LOHIA

(B. P. SINHA, C.J., P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.C. DAS GUPTA AND J.C. SHAH, JJ.)

Fundamental Right—Infringement of—Enactment imposing restrictions on freedom of speech—Constitutional validity—Test—"In the interest of public order". Meaning of—Doctrine of severability—Applicability—Constitution of India, Arts. 19(1) (a), 19(2)—U.P. Special Powers Act, 1932 (U.P. XIV of 1932) s. 3.

Section 3 of the U.P. Special Powers Act, 1932 (XIV of 1932), provided as follows:—

> "Whoever, by word, either spoken or written, or by signs or by visible representations, or otherwise, instigates, expressly or by implication, any person or class of persons not to pay or to defer payment of any liability, and whoever does any act, with intent or knowing it to be likely that any words, signs or visible representations containing such instigation shall thereby be communicated directly or indirectly to any person or class of persons, in any manner whatsoever, shall be punishable with imprisonment which may extend to six months, or with fine, extending to Rs. 250, or with both."

The appellant, who was prosecuted under the section for delivering speeches instigating cultivators not to pay enhanced irrigation rates to the Government, applied to the High Court for a writ of *habeas corpus* on the ground, amongst others, that the said section was inconsistent with Art. 19(1) (a) of the Constitution and as such void. The High Court decided in favour of the appellant and he was released. The State appealed to this Court and the question for determination was whether the impugned section embodied reasonable restrictions in the interests of public order and was thus protected by Art. 19(2) of the Constitution.

Held, that even though in a comprehensive sense all the grounds specified in Art. 19(2) of the Constitution on which any reasonable restrictions on the right to freedom of speech must be based can be brought under the general head "public order", that expression, inserted into the Article by the Constitution (First Amendment) Act, 1951, must be demarcated from the other grounds and ordinarily read in an exclusive sense to mean public peace, safety and tranquility in contradistinction to national upheavals, such as revolution, civil strife and war, affecting the security of the State.

Romesh Thappar v. *The State of Madras* (1950) S.C.R. 594, *Brij Bhushan* v. *The State of Delhi.* (1950) S.C.R. 605, *The State of Bihar* v. *Shailabala Devi.* (1952) S.C.R. 654 and *Cantewell* v. *Connecticut.* (1940) 310 U.S. 296, discussed.

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It is well settled by decisions of this Court that in a restriction in order to be reasonable must have a reasonable relation to the object the Legislation has in view and must not go beyond it. Restrictions, therefore, meant to be in the interest of public order which have no proximate relationship or nexus with it but can be only remotely or hypothetically connected with it, cannot be reasonable within the meaning of Art. 19(2) of the Constitution.

Rex v. *Basudeva*, A.I.R. (1950) F.C. 67, applied.

Ramji Lal Modi v. *The State of U.P.* (1957) S.C.R. 860 and *Virendra* v. *The State of Punjab*, (1958) S.C.R. 308, explained.

So judged, it cannot be said that the acts prohibited under the wide and sweeping provisions of s. 3 of the Act can have any proximate or even foreseeable connection with public order sought to be protected by it, and, consequently, that section, being violative of the right to freedom of speech guaranteed by Art. 19(1) (a) of the Constitution, must be struck down as unconstitutional.

It would be incorrect to argue that since instigation by a single individual not to pay taxes might ultimately lead to a revolution resulting in distruction of public order, that instigation must have a proximate connection with public order. No fundamental rights can be restricted on such hypothetical and imaginary consideration.

Nor is it possible to accept the argument that in a democratic set up there can be no scope for agitational approach or that any instigation to break a bad law must by itself constitute a breach of public order, for to do so without obvious limitations would be to destroy the right to freedom of speech on which democracy is founded.

It is not possible to apply the doctrine of severability relating to fundamental rights as enunciated by this Court to the provisions of the impugned section, since it is not possible to precisely determine whether the various categories of instigation mentioned therein fall within or without the constitutionally permissible limits of legislation and separate the valid parts from the invalid.

R.M.D. Chamarbaugwalla v. *The Union of India* (1957) S.C.R. 930, explained and distinguished.

Romesh Thappar v. *The State of Madras* (1950) S.C.R. 594 and *Chintaman Rao* v. *The State of Madhya Pradesh.* (1950) S.C.R. 759, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 76 of 1956.

Appeal from the judgment and order dated August 27, 1954, of the Allahabad High Court in Criminal Misc. Writ No. 20 of 1954.

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K. L. Misra, Advocate-General for the State of Uttar Pradesh. G. C. Mathur and *C. P. Lal*, for the appellants.

N. S. Bindra, for the respondent.

1960. January 21. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO J.—This appeal raises the question of interpretation of the words "in the interest of public order" in Art. 19(2) of the Constitution.

The facts are not in dispute and they lie in a small compass. The respondent, Dr. Ram Manohar Lohia, is the General Secretary of the Socialist Party of India. The U. P. Government enhanced the irrigation rates for water supplied from canals to cultivators. The party to which the respondent belongs resolved to start an agitation against the said enhancement for the alleged reason that it placed an unbearable burden upon the cultivators. Pursuant to the policy of his party, the respondent visited Farrukhabad and addressed two public meetings wherein he made speeches instigating the audience not to pay enhanced irrigation rates to the Government. On July 4, 1954, at 10 p.m. he was arrested and produced before the City Magistrate, Farrukhabad, who remanded him for two days. After investigation, the Station officer, Kaimganj, filed a charge-sheet against the respondent before Sri P. R. Gupta, a Judicial Officer at Farrukhabad. On July 6, 1954, the Magistrate went to the jail to try the case against the respondent, but the latter took objection to the trial being held in the jail premises. When the Magistrate insisted upon proceeding with the trial, the respondent obtained an adjournment on the ground that he would like to move the High Court for transfer of the case from the file of the said Magistrate. Thereafter the respondent filed a petition before the High Court for a writ of *habeas corpus* on the ground, among others, that s. 3 of the U. P. Special Powers Act (Act No. XIV of 1932), 1932, (hereinafter called the Act) was void under the Constitution.

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In the first instance the petition came up for disposal before a division bench of the High Court at Allahabad consisting of Desai and Chaturvedi, JJ. Elaborate arguments were addressed before them covering a wide field. The learned Judges delivered differing judgments expressing their views on the main points raised before them. They referred the matter to the Chief Justice for obtaining the opinion of a third Judge on the following two points: "(i) Was the provision of s. 3 of the U. P. Special Powers Act of 1932 making it penal for a person by spoken words to instigate a class of persons not to pay dues recoverable as arrears of land revenue, inconsistent with Art. 19(1)(a) of the Constitution on the 26th of January, 1950?" and "(ii) if so, was it in the interests of public order?". The petition was placed before Agarwala, J., as a third Judge, who agreeing with Desai, J., gave the following answers to the questions referred to him:

Question No. (i). "The provision of section 3 of the U. P. Special Powers Act, 1932, making it penal for a person by spoken words to instigate a class of persons not to pay dues recoverable as arrears of land revenue, was inconsistent with Article 19(1)(a) of the Constitution on the 26th January, 1950."

Question No. (ii). "The restrictions imposed by section 3 of the U. P. Special Powers Act, 1932, were not in the interests of public order."

In the usual course the matter was placed before the two learned Judges who first heard the case and they, on the basis of the majority view, allowed the petition and directed the respondent to be released. The State has preferred the present appeal against the said order of the High Court.

The learned Advocate General, appearing for the appellant, stated before us that he did not propose to canvass the correctness of the majority view on one of the important points raised in the case, namely, that the effect of the passing of the Act did not *ipso facto* deprive a citizen of his freedom of speech guaranteed under Art. 19(1) (a) of the Constitution and its validity should be tested by the provisions

of Art. 19(2) thereof. He did not concede the validity of the finding in this regard but assumed its correctness for the purpose of this case. Nothing further, therefore, need be mentioned on this point.

The gist of the argument of the learned Advocate General may be stated thus: The legislature can make laws placing reasonable restrictions on the rights of a citizen to freedom of speech and expression in the interests of public order among other grounds. The words "in the interests of public order" are wider in connotation than the words "for the maintenance of public order". Laws are rules made by the legislature for the governance of the people in the State which they are bound to obey, and they are enacted to keep public peace and order. The avowed object of s. 3 of the Act was to prevent persons from instigating others to break the laws imposing a liability upon a person or class of persons to pay taxes and other dues to the State, any authority or to any land-owner. The impugned section was enacted in the interests of public order and therefore the section was protected by Art. 19(2) of the Constitution. The learned Advocate General pointed out that the object of the State in preferring this appeal was to obtain the decision of this Court on the question of constitutional validity of s. 3 of the Act and not to pursue the matter against Dr. Lohia.

The respondent was not present at the time the appeal was heard and was not represented by an advocate. As the question raised was an important one, we requested Mr. N. S. Bindra to assist the Court, and he kindly agreed to do so. He supported the majority view of the High Court. We record our thanks for his assistance.

At the outset it would not be out of place to notice briefly the history of the Act. The Act was originally passed in the year 1932 during the British rule. In an attempt to offset the campaign of non-payment of taxes and other forms of agitation resorted to by the Congress Party, originally it was put on the statute book for one year; but in 1940 when the State was under the "Governor's rule", the Act was made

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permanent. Under the Act, ss. 1 and 2 came into effect immediately on the passing of the Act and s. 1(2) enabled the Government by notification to extend all or any of the remaining sections to any district or to any part of a district in the United Provinces. After the Constitution, the Act was not repealed but was allowed to continue, with necessary adaptations, in the statue book. Between April and June, 1954, the State Government extended the provisions of the Act to 33 districts including Farrukhabad district.

Now let us look at the provisions of the Act to ascertain its scope and field of operation. The preamble discloses that it was enacted in 1932 to make provision against and to take powers to deal with instigation to the illegal refusal of the payment of certain liablities and s. 2 defines "liablity" to mean "land revenue or any sum recoverable as arrears of land revenue or any tax, rate, cess or other dues or amount payable to Government or to any local authority, or rent of agricultural land or anything recoverable as arrears of or along with such rent". Section 3 prescribes the punishment for instigation to the non-payment of a liability. As the argument centres round this section, it will be convenient to read the same:

> *Section 3*: Whoever, by word, either spoken or written, or by signs or by visible representations, or otherwise, instigates, expressly or by implication, any person or class of persons not to pay or to defer payment of any liability, and whoever does any act, with intent or knowing it to be likely that any words, signs or visible representations containing such instigation shall thereby be communicated directly or indirectly to any person or class of persons, in any manner whatsoever, shall be punishable with imprisonment which may extend to six months, or with fine, extending to Rs. 250, or with both."

Section 4 says that any person to whom an arrear of liability is due may apply to the Collector to realize it and the Collector is authorized to realize the same

as an arrear of land revenue. The impugned section may be dissected into the following components: (i) whoever by word, either spoken or written, or by signs or by visible representations or otherwise, (ii) instigates, (iii) expressly or by implication, (iv) any person or class of persons, (v) not to pay any liability, (vi) to defer payment of any liability, (vii) does an act with intent that any words etc. shall be communicated to any person or class of persons, (viii) with the knowledge that it is likely that such words etc. shall be communicated to any person or class of persons, (ix) such communication may be made directly, or indirectly and (x) shall be punished with imprisonment or with fine or with both. Under this section a wide net has been cast to catch in a variety of acts of instigation ranging from friendly advice to a systematic propaganda not to pay or to defer payment of liability to Government, any authority or to any person to whom rent is payable in respect of agricultural land. The meaning of this section, read along with ss. 2 and 4, can be ascertained more clearly by illustration than by definition. (1) A instigates B not to pay any liability to Government, any authority or to any land owner; (2) A instigates B to defer payment of any liability to Government, any authority or landlord; (3) A instigates a class of persons to do the same; (4) A may do any one of the foregoing things not only by word, but also by signs, visible representations or otherwise; (5) A may do any one of the things *bona fide* either to get the claim decided in a Court of law or to gain time to get the law changed; (6) A may instigate B not to pay any amount due to Government or to any authority, but the said amount can be recovered by the authority concerned as arrears of land revenue; (7) A may tell C with intention or with knowledge that the said instigation may be communicated to B so that he may not pay; (8) any statement by A to C may imply such instigation. In its wide amplitude the section takes in the innocent and the guilty persons, *bona fide* and *mala fide* advice, individuals and class, abstention from payment and deferment of payment,

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expressed or implied instigation, indirect or direct instigation, liability due not only to Government but to any authority or landholder. In short, no person, whether legal adviser or a friend or a well-wisher of a person instigated can escape the tentacles of this section, though in fact the rent due has been collected through coercive process or otherwise.

We shall now proceed to consider the constitutional validity of this section. The material portions of the relevant provisions of the Constitution may now be read:

Article 19: "(1) All citizens shall have the right—

(a) to freedom of speech and expression;

.....

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Clause (2) of Art. 19 was amended by the Constitution (First Amendment) Act, 1951. By this amendment several new grounds of restrictions upon the freedom of speech have been introduced, such as friendly relations with foreign States, public order and incitement to an offence. It is self evident and common place that freedom of speech is one of the bulwarks of a democratic form of Government. It is equally obvious that freedom of speech can only thrive in an orderly society. Clause (2) of Art. 19, therefore, does not affect the operation of any existing law or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the right of freedom of speech in the interest of public order, among others. To sustain the existing law or a new law made by the State under cl. (2) of Art. 19, so far as it is relevant to the present enquiry, two conditions should be

complied with, viz., (i) the restrictions imposed must be reasonable; and (ii) they should be in the interests of public order. Before we consider the scope of the words of limitation, "reasonable restrictions" and "in the interests of", it is necessary to ascertain the true meaning of the expression "public order" in the said clause. The expression "public order" has a very wide connotation. Order is the basic need in any organised society. It implies the orderly state of society or community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery". The expression has not been defined in the Constitution, but it occurs in List II of its Seventh Schedule and is also inserted by the Constitution (First Amendment) Act, 1951 in cl. (2) of Art. 19. The sense in which it is used in Art. 19 can only be appreciated by ascertaining how the Article was construed before it was inserted therein and what was the defect to remedy which the Parliament inserted the same by the said amendment. The impact of cl. (2) of Art. 19 on Art. 19(1)(a) before the said amendment was subject to judicial scrutiny by this Court in *Romesh Thappar* v. *The State of Madras*(1). There the Government of Madras, in exercise of their powers under s. 9(1-A) of the Madras Maintenance of Public Order Act, 1949, purported to issue an order whereby they imposed a ban upon the entry and circulation of the journal called the "Cross Roads" in that State. The petitioner therein contended that the said order contravened his fundamental right to freedom of speech and expression. At the time when that order was issued the expression "public order" was not in Art. 19(2) of the Constitution; but the words "the security of the State" were there. In considering whether the impugned Act was made in the interests of security of the State, Patanjali Sastri, J., as he then was, after citing the observation of Stephen in his Criminal Law of England, states:

(1) [1950] S.C.R. 594, 600, 601, 602.

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"Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in article 19 (1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression.....".

The learned Judge continued to state:

"The Constitution thus requires a line to be drawn in the field of public order or tranquillity marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind."

The learned Judge proceeded further to state:

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order."

This decision establishes two propositions, viz., (i) maintenance of public order is equated with maintenance of public tranquillity; and (ii) the offences against

public order are divided into two categories, viz., (a) major offences affecting the security of the State, and (b) minor offences involving breach of purely local significance. This Court in *Brij Bhushan* v. *The State of Delhi* (1) followed the earlier decision in the context of s. 7 (1) (c) of the East Punjab Public Safety Act, 1949. Fazl Ali, J., in his dissenting judgment gave the expression "public order" a wider meaning than that given by the majority view. The learned Judge observed at p. 612 thus:

> "When we approach the matter in this way, we find that while 'public disorder' is wide enough to cover a small riot or an affray and other cases where peace is disturbed by, or affects, a small group or persons, 'public unsafety' (or insecurity of the State), will usually be connected with serious internal disorders and such disturbances of public tranquillity as jeopardize the security of the State."

This observation also indicates that "public order" is equated with public peace and safety. Presumably in an attempt to get over the effect of these two decisions, the expression "public order" was inserted in Art. 19 (2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of permissible restrictions under cl. (2) of Art. 19. After the said amendment, this Court explained the scope of *Romesh Thappar's Case* (1) in *The State of Bihar* v. *Shailabala Devi* (2). That case was concerned with the constitutional validity of s. 4(1)(a) of the Indian Press (Emergency Powers) Act, 1931. It deals with the words or signs or visible representations which incite to or encourage, or tend to incite to or encourage the commission of any offence of murder or any cognizable offence involving violence.

Mahajan, J., as he then was, observed at p. 660:

> "The deduction that a person would be free to incite to murder or other cognizable offence through the press with impunity drawn from our decision in

(1) [1950] S.C R. 605. (2) [1952] S.C.R. 654.

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Romesh Thappar's case could easily have been avoided as it was avoided by Shearer J., who in very emphatic terms said as follows:

"I have read and re-read the judgments of the Supreme Court, and I can find nothing in them myself which bear directly on the point at issue, and leads me to think that, in their opinion, a restriction of this kind is no longer permissible."

The validity of that section came up for consideration after the Constitution (First Amendment) Act, 1951, which was expressly made retrospective, and therefore the said section clearly fell within the ambit of the words "in the interest of public order". That apart the observations of Mahajan, J., as he then was, indicate that even without the amendment that section would have been good inasmuch as it aimed to prevent incitement to murder.

The words "public order" were also understood in America and England as offences against public safety or public peace. The Supreme Court of America observed in *Cantewell* v. *Connecticut* (1) thus:

"The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot.....When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious."

The American decisions sanctioned a variety of restrictions on the freedom of speech in the interests of public order. They cover the entire gamut of restrictions that can be imposed under different heads in Art. 19(2) of our Constitution. The following summary of some of the cases of the Supreme Court of America given in a well-known book on Constitutional Law illustrates the range of categories of cases covering

(1) (1940) 310 U S. 296, 308.

that expression. "In the interests of public order, the State may prohibit and punish the causing of 'loud and raucous noise' in streets and public places by means of sound amplifying instruments, regulate the hours and place of public discussion, and the use of the public streets for the purpose of exercising freedom of speech; provide for the expulsion of hecklers from meetings and assemblies, punish utterances tending to incite an immediate breach of the peace or riot as distinguished from utterances causing mere 'public inconvenience, annoyance or unrest'." In England also Acts like Public Order Act, 1936, Theatres Act, 1843 were passed: the former making it an offence to use threatening, abusive or insulting words or behaviour in any public place or at any public meeting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be caused, and the latter was enacted to authorise the Lord Chamberlain to prohibit any stage play whenever he thought its public performance would militate against good manners, decorum and the preservation of the public peace. The reason underlying all the decisions is that if the freedom of speech was not restricted in the manner the relevant Acts did, public safety and tranquillity in the State would be affected.

But in India under Art. 19(2) this wide concept of "public order" is split up under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order"

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is synonymous with public peace, safety and tranquility.

The next question is what do the words "interest of public order" mean? The learned Advocate General contends that the phrase "in the interest of public order" is of a wider connotation than the words "for the maintenance of public order" and, therefore, any breach of law which may have the tendency, however remote, to disturb the public order would be covered by the said phrase. Support is sought to be drawn for this wide proposition from the judgment of this Court in *Ramji Lal Modi* v. *The State of U.P.* (1). It is not necessary to state the facts of that case, as reliance is placed only on the observations of Das, C.J., at p. 865, which read:

> "It will be noticed that the language employed in the amended clause is "in the interests of" and not "for the maintenance of". As one of us pointed out in *Debi Saron* v. *The State of Bihar* (2), the expression "in the interests of" makes the ambit of protection very wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order."

The learned Chief Justice again in *Virendra* v. *The State of Punjab* (3) observed, at p. 317, much to the same effect:

> "As has been explained by this Court in *Ramji Lal Modi* v. *The State of U.P.* (1), the words "in the interests of" are words of great amplitude and are much wider than the words "for the maintenance of." The expression "in the interests of" makes the ambit of the protection very wide, for a law may not have been designed to directly maintain the public order or to directly protect the general public against any particular evil and yet it may have been enacted "in the interests of" the public order or the general public as the case may be."

We do not understand the observations of the Chief Justice to mean that any remote or fanciful connection between the impugned Act and the public order

(1) [1957] S.C.R. 860. (2) A.I.R. (1954) Pat 254.
(3) [1958] S.C.R. 308.

would be sufficient to sustain its validity. The learned Chief Justice was only making a distinction between an Act which expressly and directly purported to maintain public order and one which did not expressly state the said purpose but left it to be implied therefrom; and between an Act that directly maintained public order and that indirectly brought about the same result. The distinction does not ignore the necessity for intimate connection between the Act and the public order sought to be maintained by the Act.

Apart from the said phrase, another limitation in the clause, namely, that the restrictions shall be reasonable, brings about the same result. The word "reasonable" has been defined by this Court in more than one decision. It has been held that in order to be reasonable, "restrictions must have reasonable relation to the object which the legislation seeks to achieve and must not go in excess of that object". The restriction made "in the interests of public order" must also have reasonable relation to the object to be achieved, i.e., the public order. If the restriction has no proximate relationship to the achievement of public order, it cannot be said that the restriction is a reasonable restriction within the meaning of the said clause. A full bench decision of the Federal Court in *Rex* v. *Basudeva* (1) contains some observations which give considerable assistance to construe the words. In that case, the appellant was detained in pursuance of the order made by the Government of U.P. under the U.P. Prevention of Black-Marketing (Temporary Powers) Act, 1947. The question was whether the preventive detention provided for in s. 3(1)(i) of the said Act was preventive detention for reasons connected with the maintenance of public order. The argument in that case ran on the same lines as in the present case. The learned Advocate General there urged that habitual black-marketing in essential commodities was bound sooner or later to cause a dislocation of the machinery of controlled distribution which, in turn, might lead to breaches of the peace and that, therefore, detention with a view to prevent such black-marketing was covered by the

(1) A.I.R. (1950) F.C. 67

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entry. Answering that argument, Patanjali Sastri, J., as he then was, pointed out, at p. 69:

> "Activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot, in our opinion, fall within the purview of Entry I of List II. .....The connection contemplated must, in our view, be real and proximate, not far-fetched or problematical."

The decision, in our view, lays down the correct test. The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order.

We shall now test the impugned section, having regard to the aforesaid principles. Have the acts prohibited under s. 3 any proximate connection with public safety or tranquility? We have already analysed the provisions of s. 3 of the Act. In an attempt to indicate its wide sweep, we pointed out that any instigation by word or visible representation not to pay or defer payment of any exaction or even contractual dues to Government, authority or a landowner is made an offence. Even innocuous speeches are prohibited by threat of punishment. There is no proximate or even forseeable connection between such instigation and the public order sought to be protected under this section. We cannot accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite a revolutionary movement destroying public order. We can only say that fundamental rights cannot be controlled on such hypothetical and imaginary considerations. It is said that in a democratic set up there is no scope for agitational approach and that if a law is bad the only course is to get it modified by democratic process and that any instigation to break the law is in itself a disturbance of the public order. If this argument without obvious limitations be accepted, it would

destroy the right to freedom of speech which is the very foundation of democratic way of life. Unless there is a proximate connection between the instigation and the public order, the restriction, in our view, is neither reasonable nor is it in the interest of public order. In this view, we must strike down s. 3 of the Act as infringing the fundamental right guaranteed under Art. 19(1)(a) of the Constitution.

The learned Advocate General then contended that the section is severable and that if so severed, the section may be made to function within the limited field that stands the test of Art. 19(2) of the Constitution. He asks us to read the section as follows:

> "Whoever, by word, either spoken or written, or by signs or by visible representations, or otherwise, instigates, expressly or by implication, any class of persons not to pay or to defer payment of any liability, and whoever does any act, with intent or knowing it to be likely that any words, signs or visible representations containing such instigation shall thereby be communicated directly or indirectly to any class of persons, in any manner whatsoever, shall be punishable with imprisonment which may extend to six months, or with fine, extending to Rs. 250, or with both."

By so doing he argues that instigation of a class of persons only is made liable and thereby the section is rid of the vice of unconstitutionality.

The doctrine of severability vis-a-vis the fundamental rights is sought to be supported on the basis of the wording of Art. 13(1) of the Constitution. Under that Article laws, in so far as they are inconsistent with the provisions of Part III, are void only to the extent of such inconsistency. But this implies that consistent and inconsistent parts of a law are severable. This doctrine in its relation to fundamental rights was considered by this Court in three decisions. In *Romesh Thapper's case* (1) such an argument has been repelled by this Court. Patanjali Sastri, J., as he then was, stated the legal position thus at p. 603:

(1) [1950] S.C.R. 594, 600, 601, 602.

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"Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void."

In *Chintaman Rao* v. *The State of Madhya Pradesh* (1), the same principle is again restated. Mahajan, J., as he then was observed at p. 765:

"The law even to the extent that it could be said to authorize the imposition of restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly void."

The wide reach of this principle appears to have been circumscribed to some extent in a later decision of this Court in *R. M. D. Chamarbaugwalla* v. *The Union of India* (2). In that case the constitutionality of ss. 4 and 5 of the Prize Competitions Act (42 of 1955) was challenged on the ground that 'prize competition' as defined in s. 2(d) of the Act included not merely competitions that were of a gambling nature but also those in which success depended to a substantial degree on skill. This Court, having regard to the history of the legislation, the declared object thereof and the wording of the statute, came to the conclusion that the competitions which were sought to be controlled and regulated by the Act were only those competitions in which success did not depend to any substantial degree on skill. That conclusion was sufficient to reject the contention raised in that case; but even on the assumption that

(1) [1950] S.C.R. 759. (2) [1957] S.C.R. 930.

'prize competition' as defined in s. 2(d) of the Act included those in which success depended to a substantial degree on skill as well as those in which it did not so depend, this Court elaborately considered the doctrine of severability and laid down as many as seven rules of construction. On the application of the said rules it was held that the impugned provisions were severable in their application to competitions in which success did not depend to any substantial degree on skill.

The foregoing discussion yields the following results: (1) "Public order" is synonymous with public safety and tranquillity: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State; (2) there must be proximate and reasonable nexus between the speech and the public order; (3) s. 3, as it now stands, does not establish in most of the cases comprehended by it any such nexus; (4) there is a conflict of decision on the question of severability in the context of an offending provision the language whereof is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislation; one view is that it cannot be split up if there is possibility of its being applied for purposes not sanctioned by the Constitution and the other view is that such a provision is valid if it is severable in its application to an object which is clearly demarcated from other object or objects falling outside the limits of constitutionally permissible legislation; and (5) the provisions of the section are so inextricably mixed up that it is not possible to apply the doctrine of severability so as to enable us to affirm the validity of a part of it and reject the rest.

It is not necessary in this case to express our preference for one or other of the foregoing decisions. Assuming that the summary of the rules of construction given in the last of the cases cited supra are correct and exhaustive, we are not satisfied that in the instant case the impugned section with the

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omissions suggested by the learned Advocate General could, wholly or to any extent, be salvaged. The words of the section with the suggested omissions continue to suffer from the same vice they are subjected to without the said omissions. The suggested omissions from the section only exclude individuals from the operation of the section and confine it to a class of persons and in other respects it is not freed from the defects already pointed out by us. In *R. M. D. Chamarbaugwalla's Case* (1) the difference between two classes of competitions, namely, those that are of gambling nature and those in which success depends on skill, is clear-cut and has long been recognized in legislative practice. But in the present case it is not even possible to predicate with some kind of precision the different categories of instigation falling within or without the field of constitutional prohibitions. The constitutional validity of a section cannot be made to depend upon such an uncertain factor. Whether the principle of the first two decisions is applied or that of the third is invoked, the constitutional validity of the section cannot be sustained.

We, therefore, hold that s. 3 of the Act is void as infringing Art. 19(1)(a) of the Constitution. The entire section therefore must be struck down as invalid. If so, the prosecution of the respondent under that section is void.

The learned Advocate General made an impassioned appeal to persuade us to express our view that though the present section is void on the ground that it is an unreasonable restriction on the fundamental right, in the interests of public order the State could legitimately re-draft it in a way that it would conform to the provisions of Art. 19(2) of the Constitution. It is not this Court's province to express or give advice or make general observations on situations that are not presented to it in a particular case. It is always open to the State to make such reasonable restrictions which are permissible under Art. 19(2) of the Constitution.

In the result, the appeal is dismissed.

Appeal dismissed.

(1) [1957] S.C.R. 930.