should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.

These observations dispose of the present appeal and it must be held that there is no merit in the contentions raised in support of the appeal. As the only point raised in support of the appeal fails, it is accordingly dismissed.

Appeal dismissed.

ALL INDIA BANK EMPLOYEES' ASSOCIATION

v.

NATIONAL INDUSTRIAL TRIBUNAL & OTHERS
(And Connected Petitions)

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Fundamental Right—Right to form association or union—Scope of—Stature protecting Banks from disclosure of information regarding secret reserves etc.—Constitutionality of—Banking Companies Act, 1949 (X of 1949), s. 34-A—Constitution of India, Arts. 14, 19(1)(c).

Section 34-A of the Banking Companies Act, 1949, introduced in 1960, provides that no banking company shall be compelled to produce or give inspection of its books of account or other document or furnish or disclose any statement or information which the company claims to be of a confidential nature and the production etc., of which would involve disclosure of information relating to any reserves not shown as such in its published balance sheet or any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions. Sub-section (2) of s. 34-A provides that any authority, before whom the question as to whether any amount out of such reserves or provisions should be taken into account, may refer the question to the Reserve Bank and the Reserve Bank shall furnish to the authority a certificate stating that the authority shall or shall not take into account the amount specified therein. Sub-section (3) makes s. 34-A applicable to only such banking companies whose operations extend beyond one State. The Appellant contended

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that s. 34-A contravened the fundamental right guaranteed to trade unions by Art. 19(1)(c) of the Constitution as it prevented them from effectively exercising the concomitent right of collective bargaining in respect of wages, bonus etc. before Industrial Tribunals by shutting out important and relevant evidence and that the section violated Art. 14 of the Constitution as it was not made applicable to all the banking companies.

Held, that s. 34-A of the Banking Companies Act, 1949, was constitutionally valid and did not offend either Art. 19(1)(c) or Art. 14 of the Constitution.

The right guaranteed by Art. 19(1)(c) of the Constitution does not carry with it a concomitant right that unions formed for protecting the interests of labour shall achieve their object such that any interference to such achievement by any law would be unconstitutional unless it could be justified under Art. 19(4) as being in the interests of Public order or morality. The right under Art. 19(1)(c) extends only to the formation of an association or union and insofar as the activities of the association or union are concerned or as regards the steps which the union might take to achieve its object, they are subject to such laws as may be framed and such laws cannot be tested under Art. 19(4). Section 34-A was enacted to effect a reconciliation between the conflicting interest of labour to obtain proper relief in industrial arbitration and the need to preserve and maintain the delicate fabric of the credit structure of the country by strengthening the real as well as the apparent credit worthiness of banks operating in the country. It preserved industrial adjudication in respect of disputes between the banks and their employees by entrusting the duty of determining the surplus reserve which could be taken into account as a part of the assets for determining their capacity to pay to the Reserve Bank.

Romesh Thappar v. *State of Madras* (1950) S.C.R. 594 *Express Newspapers (P) Ltd.* v. *Union of India*, (1959) S.C.R. 12, *Re. The Kerala Education Bill*, (1959) S.C.R. 995, *National Association for the advancement of coloured people* v. *Alabama*, 2 Law. Ed. Second 1488, *Bates* v. *Little Rock*, 4 Law Ed. Second 480, *National Labour Relations Board* v. *Jones & Laughlin Steel Corporation*, 81 Law. Ed. 893 and *Amalgamated Utility Workers* v. *Consolidated Edison Company of New York*, 84 Law. Ed. 738, referred to.

Though there were certain banks which were not entitled to the protection of s. 34-A that was no ground for holding that the section offended Art. 14. The complaint was not made by the banks who were not given the protection. Admittedly, 95% of the banking business in the country was in the hands of

banks to whom s. 34-A applied and they employed 80,000 out of the 90,000 bank employees. The injury to the credit structure will only be by the disclosure of the reserve etc. of the banks of this class and there is sufficient rational connection and basis for the classification to justify the differenciation. The exclusion of the Reserve Bank from the operation of s. 34-A (2) also does not amount to discrimination; in the very nature of things and on the scheme of the provision the reserve Bank could not but be excluded.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 154 of 1961.

Appeal by special leave from the judgment and order dated October 31, 1960, of the National Industrial Tribunal (Bank Disputes), Bombay, in Reference No. 1 of 1960.

WITH

Petitions Nos. 70, 80 and 82 of 1961.

Petitions Under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

A. S. R. Chari, V. G. Rao, D. P. Singh, M. K. Ramamurthi. R. K. Garg and *S. C. Agarwal,* for the appellant and the petition (in Petn. No. 80 of 61).

M. C. Setalvad, Attorney-General of India, N. V. Phadke, K. H. Bhabha, J. B. Dadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra,* for respondents Nos. 2-17 and 19-34 (In appeal and Petn. No. 80 of 61).

J. B. Dadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra,* for respondents Nos. 41-49 (In appeal and Petn. 80 of 1961).

Anand Prakash, for Respdts. Nos. 35-40 (In Petn. No. 80 of 61).

A. V. Viswanatha Sastri, D. P. Singh, M. K. Ramamurthi, R. K. Garg and *S. C. Agarwal,* for Intervener No. 2.

D. S. Nargolkar and *K. R. Choudhri,* for Petitioners Nos. 70 and 82 of 61).

M. C. Setalvad, Attorney-General of India, C.K. Daphtary, Solicitor-General of India, H.N. Sanyal, Additional Solicitor-General of India, J.B. Dadachanji,

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S. N. Andley, Rameshwar Nath and *P. L. Vohra,* for Respdt No. 2 (In Petns. Nos. 70 and 82 of 61).

Naunit Lal, for intervener No. 3.

M. C. Setalvad, Attorney-General of India and *T. M. Sen,* for Intervener No. 1.

1961. August 28. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—Civil Appeal No. 154 of 1961 has been filed on special leave obtained from this Court against an order of K. T. Desai, J., functioning as the National Industrial Tribunal (Banks Disputes) Bombay dated October 31, 1960. The point arising for decision in the appeal is as regards the constitutional validity of s.34A of the Banking Companies Act, 1949 which was enacted on August 26, 1960 as an amendment to the parent Act (Act X of 1949). The appellant before this Court is the All India Bank Employees' Association which is a trade union organization of Bank Employees of several banks operating in India. The Punjab National Bank Employees' Union, which is a trade union with similar objects has been permitted to intervene in this appeal in support of the appellant union. The three other Writ Petitions are by other Bank Employees' Unions whose description would be apparent from the cause title and all these cases have been heard together because in the writ petitions also the point raised is identical, *viz.*, the validity of s.34A of the Banking Companies Act, which will be referred to hereafter as the impugned provision.

Section 34A whose validity is the matter in dispute in these proceedings runs in the following terms :—

> "34A. (1) Notwithstanding anything contained in section 11 of the Industrial Disputes Act, 1947, or any other law for the time being in force, no banking company

shall, in any proceeding under the said Act or in any appeal or other proceeding arising therefrom or connected therewith, be Compelled by any authority before which such proceeding is pending to produce, or give inspection of, any of its books of account or other document or furnish or disclose any statement or information, when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or the furnishing or disclousure of such statement or information would involve disclosure of information relating to :

(a) any reserves not shown as such in its published balance sheet ; or

(b) any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions.

(2) If, in any such proceeding in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any amount out of the reserves or provisions referred to in sub-section (1) should be taken into account by the authority before which such proceeding is pending, the authority may, if it so thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall after taking into accont principles of sound banking and all relevant circumstances concerning the banking company, furnish to the authrity a certificate stating that the authority shall not take into account any amount as such reserves and provisions of the banking company or may take them into account only to the extent of the amount specified by it in the certificate, and the certificate of the Reserve Bank on

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such question shall be final and shall not be called in question in any such proceeding.

(3) For the purposes of this section, "banking company" shall have the meaning assigned to it in the Industrial Disputes Act, 1947".

Before commencing the examination of the points in controversy and the grounds on which the legality of the above provision is impugned. It would be helpful for a better appreciation of the problem if we set out, in very brief outline, the history of the steps which led to the enactment in dispute. There was a long standing practice in England of Banking Companies, as distinguished from companies carrying on other commercial etc. activities, not to disclose, in their balance sheets and Profit & Loss accounts, bad and doubtful debts and the provision made therefore, as well as the secret reserves created and held under various items—a practice which received judicial recognition by Buckley, L., J. in *Newton* v. *Birmingham Small Arms Co., Ltd.* (1) This practice was followed by several banks in India and questions arose from time to time as to how far the practice was consistent with the statutory provisions as to disclosure contained in the several Companies Acts enacted from time to time. We shall, however, add that the desirability and even the legality of this practice has not gone without challenge, though there has been a considerable body of opinion which has held this to be salutary and necessary for the preservation and progress of a credit institution like a bank. We are not now concerned with the desirability or ethics of the practice which is a matter for the consideration of the legislature but as to the steps by which accord was established between the practice and the law.

The Indian Companies Act of 1866 drew no distinction between the contents of balance sheets of banking-companies as distinguished from those of

(1) [1906] 2 Ch. 378.

other companies and both were required to disclose a list of debts owing to the concern which were considered bad or doubtful. Provisions on the same lines, *i. e.*, without any distinction between Banking and other companies, were copied and continued by the Indian Companies Act of 1882. When, however, the Companies Act of 1913 was enacted, Form 'F' to the 3rd Schedule to the Act contained a note in respect of the sub-heading 'book debts' under the head 'Property & Assets' in the balance sheet, reading :

> "distinguishing in the case of a bank between those considered good and in respect of which the bank is fully secured and those considered good for which the bank holds no security other than the debtor's personal security; and distinguishing in all cases between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated in all cases."

It would be seen that by reason of this note the obligations imposed upon banks as regards the classification of their assets and the information to be disclosed became slightly more detailed than in the case of other companies. The practice, however, of bankers to which we adverted earlier not to disclose or not to disclose to the full extent, bad and doubtful debts but to make provision for them by setting aside under other heads, sufficient moneys which would operate as secret reserves, so that the credit of the institution would not be affected while its financial stability would remain unimpaired, was continued notwithstanding this change in the form. The Central Bank of India Limited in its published balance-sheets of the year 1925 adopted the above practice which, however, was not obviously in strict conformity with the requirements of Form 'F' to the third schedule read with the note. The

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managing-director of the bank was prosecuted by one Shamdasani who was a shareholder of the bank for "filing and publishing statements which were false in material particulars", an offence punishable under s. 282 of the Indian Companies Act. The Magistrate acquitted the accused on the ground that the balance-sheet was in accordance with the usual practice of bankers and that the reserves of the company which were shown under various heads though not as a specific provision for bad and doubtful debts covered the possible losses several times. An application for revision was filed before the High Court of Bombay and Fawcett, J. allowed it holding that "a declared provision of the form cannot be allowed to be whittled down by general considerations as to the object of a balance-sheet." This judgment was rendered on February 28, 1927 (vide *Shamdasani* v. *Pochkanwala* (1) and very soon thereafter the Government of India intervened by a notification dated March 29, 1927 under s. 151 of the companies Act 1913 amending form 'F' and as amended banks were excluded from the requirement of disclosing the reserve for bad and doubtful debts under the heading 'Capital and Liabilities' in the left-hand side of the balance-sheet, and in the right-hand column "book debts which were bad and doubtful for which provision had been made to the satisfaction of the auditors", were not required to be shown as part of the property and assets of a Bank.

The provisions of the Companies Act of 1913 underwent numerous changes by the amending Act of 1936 which included *inter alia* one whereby the change effected by the Notification, dated March 29, 1927, in Form 'F' were omitted and Form 'F' was made to retain the note which accompanied it under the Act of 1913 without the exception in favour of banks effected by the Notification. This was possibly unintended, because on the day after the amending Act came into operation, the Central Government published a Notification on January 16, 1937

(1) A.I.R. 1927 Bom. 414 : 29 Bom. L.R. 722.

again under s.151 of the Companies Act restoring the alterations in the balance-sheet Form 'F' as had been effected by the prior Notification of March 1927. The validity of this Notification was questioned as being beyond the powers of the Central Government by Shamdasani who filed a complaint against the Central Bank of India Limited and its directors charging them with having issued a false balance-sheet for the year ending December 31,1939, a balance-sheet which was in conformity with the form as modified by the Notification. The Magistrate upheld the validity of the Notification and aquitted the accused. Shamdasani preferred a revision to the High Court and a full Bench of the Bombay High Court held that the Notification was beyond the powers of the Central Government, though the order of acquittal was affirmed upholding the plea of the accused that their act was *bona fide* in that they believed the alteration in the form to be valid (Vide *Shamdasani* v. *The Central Bank of India Ltd.*(1) Immediately after this judgment the Central legislature passed Act XXX of 1943 with retrospective effect validating the Notification and amending the relevant sections of the Companies Act. (ss. 132,151, Art. 107) so as to empower the Government to effect changes in the form of the balance-sheet in the manner in which they had done in January 1937.

The next event in order of date relevant to to the present cotext is the report of the Company Law Amendment Commitee of the United Kingdom presided over by Mr. Justice Cohen where the entire question of undisclosed reserves was fully discussed. The pros and cons of the question were elaborately considered by the Committee and it is sufficient to refer in this connection to a short passage in the report. In paragraph 101 the problem is thus set out :

"The chief matter which has aroused controversy is the question of undisclosed or, as

(1) I. L. R. 1944 Bom. 302.

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they are frequently called, secret or inner reserves. An undisclosed reserve is commonly created by using profits to write down more than is necessary such assets as investments, freehold and leasehold property or plant and machinery; by creating excessive provisions for bad debts or other contingencies by charging capital expenditure to revenue; or by undervaluing stock in trade. Normally the object of creating an undisclosed reserve is to enable a company to avoid violent fluctuations in its published profits or its dividends."

The Committee made number of recommendations several of which were adopted in the U. K. Companies Act of 1948, and those relevant to the point under discussion served to bring the law as to the contents of a balance-sheet of a Banking Company into line with the practice of sound and well managed banks. In India, special legislation in relation to Banking Companies embodying several of these recommendations was enacted in the shape of the Banking Companies Act 1949 (Act X of 1949). Section 29 of the Act laid down the law in regard to requirements of the contents of the balance-sheets of banks. The balance-sheet, and Profit & Loss account were to be in the form set out in the 3rd schedule to that and sub-s. (3) of that section exempted Banking Companies from the requirements of conforming to the form of balance-sheet and Profit & Loss account of companies registered under the Indian Companies Act; and the Central Government were empowered by sub-s. (4) to amend the form set out in the schedule by Notifications published in the official Gazette. In Form 'A' which provided the model of a balance-sheet and Profit & Loss account in the case of banks, there was not much change as compared to the requirements of the previous law except that in the Profit & Loss account (Form 'B' of the third schedule) the provision for bad and doubtful debts was permitted to be excluded from the

income so that the amount of bad and doubtful debts did not figure separately on the income side of the profit & loss account. The income as required to be shown was "income (less provision made during the year for bad and doubtful debts)". This last item was modified by a Notification issued under the power conferred by s.29(4) of the Act in December 1951, so that after amendment the heading "Income" in the Profit & Loss Account ran: "Income (less provision made during the year for bad and doubtful debts and other usual and necessary provisions"). Thus so far as shareholders of Banks and the general public including the customers of the bank were concerned, banks were relieved from the obligation of disclosing the entirety of their reserves as such and also of the extent of bad or doubtful debts and the provision made therefor.

While the law was in this state disputes arose between the employees of banks all over India and the respective banks with regard to wages, conditions of work etc. which were referred by the Central Government in June 1949 to an *ad hoc* Tribunal with Shri K. C. Sen, a retired Judge of the Bombay High Court as Chairman. The Tribunal passed an award but its validity was successfully challenged in this Court in April 1951 on the ground that all the members of the Tribunal who passed the award were not those who had all inquired into the dispute. Thereafter a fresh Tribunal was appointed in January 1952 with Shri S. Panchapagesa Sastri, a retired Judge of the High Court of Madras as Chairman. The award of this Tribunal was published in April, 1953, but it is not necessary to state its terms. Appeals against the award were preferred to the Labour Appellate Tribunal both by the banks as well as by workmen. The Appellate Tribunal which heard the appeal consisted of three members with Shri Jeejeebhoy as president.

The claim of the workers in the appeal before the Appellate Tribunal in great part related to a

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demand for increased wages and salaries and the main defence of the banks was that they had not the capacity to pay anything beyond what the Sastry Tribunal had granted. The Jeejeebhoy Tribunal set out their difficulties in assessing the plea of incapacity raised by the banks in the context of the provisions of the Banking Companies Act and the form of balance-sheet prescribed thereunder in the following terms :—

> "At the very outset there is an initial difficulty in arriving at a correct estimate of the financial position of banks. There are two circumstances which militate against our securing a proper insight into the financial state of banks. We refer in particular to (a) the undisclosed or secret reserves and (b) to the manner in which it is permissible in law for a banking company to exhibit its balance sheet.
>
> It is not in dispute that bank do have undisclosed or secret reserves which they acquire in a number of ways, and such undisclosed reserves cannot be ascertained from the balance sheet.....
>
> x x x
>
> The other difficulty with which we are confronted at the outset is the manner in which a bank is permitted to present its profit & loss account. On the income side the form originally prescribed by the Banking Companies Act required the banks to declare "Income less provision made during the year for bad and doubtful debts)" ; this has now been altered by an amendment made by the Central Government in exercise of the powers conferred under sub-section 4 of section 29 of the Banking Companies Act to read "Income (less provision made during the year for bad and doubtful debts and other usual or necessary provisions)". The effect of this alteration is that the profits as shown for any

particular year are first shown not only of bad and doubtful debts but also of 'other usual or necessary provisions' before being shown in the balance sheet.....

It may be that these 'other usual or necessary provisions' have been passed by the Board of Directors, and by the auditors of the concern and may even have been scrutinized by the Reserve Bank of India ; but it is our duty and function to decide the question of the capacity of a bank to pay, and in the absence of important information of this character our estimate of the capacity of a concern to pay must necessarily be incomplete.....Banks feel that they now have the form of the Banking Companies Act to shield themselves against an enquiry on the subject ; but insofar as we are concerned we consider these undisclosed reserves and these appropriations relevant for the purposes of our investigation and in their absence we would have to decide as best as we could from the other materials before us and draw such inferences as justified."

It was the contention of the workmen that an Industrial Tribunal had the right in law to compel banks to disclose their secret reserves as well as the amount of "the bad and doubtful debts and other necessary provisions" which had been excluded under the head "income" in the Profit & Loss Account of banks. This matter was agitated by them before this Court in *State Bank of India and others v. Their Workmen* (1) being an appeal against the decision of the Labour Appellate Tribunal. In view, however, of the conclusion reached by this Court on other parts of the case it refrained from pronouncing upon the correctness or otherwise of this claim by the workmen.

The diputes between the employees of banks

(1) (1959), 2 L.L.J. 205.

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and the managements, however, continued with the result that on March 21, 1960 the Central Government in exercise of the powers conferred on it by sub-s. (1A) of s. 10 of the Industrial Disputes Act referred the dispute which related to several matters to the National Tribunal constituted by a Notification of Government of the same date, K. T. Desai, J. was the Tribunal so appointed. Most of the major banks in the country were made parties to the reference including the Reserve Bank and State Bank of India. After the Tribunal started functioning and after the parties formulated their respective contentions, applications were filed by the Bank Employees Association on June 9, 1960, for directing the respondent-banks to produce before the Tribunal for the purposes of adjudication several documents listed in the applications. Among the items in respect of which production was thus sought were (1) statements showing "the secret reserves in any form" of each bank from 1954 right upto December 31, 1959 ; and (2) statements showing the provision made "for bad and doubtful debts and other usual and necessary provisions" during the years 1954 to 1959 and the total amounts outstanding in such items in each bank in the said years. The banks filed their reply on July 16, 1960. The production of the documents and the information called for on several of the matters including the above two was resisted by the Indian Banks Association (being an association of employers) on the ground that they were by law exempted from disclosure in the interest of the industry and the public and claimed absolute privilege from making the disclosure.

It was at this stage that the impugned provision was enacted by Parliament as an amendment to the Banking Companies Act. As several of the banks relied upon the impugned provisions in support of their plea that they could not be compelled to disclose either the quantum of their secret reserves or their nature, or as regards the provision made in

the several years for "bad and doubtful debts and for other reasonable and necessary provision", the bank employees association challenged the constitutional validity of s. 34A of the Banking Companies Act, which, if valid, could have afforded a sufficient answer to the demand for production of the documents in relation to these matters. This objection was argued before the National Tribunal which upheld the validity of the section. As we have stated earlier, Civil Appeal No. 154 is directed against and challenges the correctness of this decision. The Writ Petitions have been filed by Bank Employees Associations which were not parties to the application for production before the National Tribunal and are intended to support the plea of the appellant in Civil Appeal No. 154 of 1961.

The foregoing narrative would show that the Banking Companies Act, as it stood before the amendment now challenged, had brought the law as to the disclosure of secret reserves and the provision for bad and doubtful debts etc. Into accord with the usual practice of Bankers, and had protected these items from being compulsorily disclosed to the shareholders of the respective companies and to the general public. There had been a controversy as to whether the workmen of these establishments were or were not entitled to be placed on a different position from the shareholders because of the bearing of these undisclosed items on the determination of the quantum of their wage etc. and on their conditions of work having financial implications. Parliament had, by the impugned legislation, extended the protection from compulsory disclosure to the workmen as well, but with a safeguard in their case that the Reserve Bank would determine the amount of reserves etc. which could be taken into account in the course of industrial adjudication. The question before us is, is this attempt at some approximation of the position of the workmen to that of shareholders etc. unconstitutional ?

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Mr. Chari, learned Counsel for the appellant in Civil Appeal No. 154 addressed to us the main arguments in the case and these were supplemented by learned Counsel appearing for the petitioners in the several writ petitions and also by learned Counsel on behalf of the Interveners both in the appeal as well as in the petitions. Though the arguments before us ranged over a very wide field, the attack on the validity of the legislation was rested on two main grounds: (1) that the impugned legislation contravened the fundamental right guaranteed to "trade unions" by the provision contained in sub-cl. (c) of cl. (1) of Art. 19; and (2) that it violated the freedom of equality guaranteed by Art. 14 of the Constitution.

We shall consider these two points in that order: First as to the impugned provision being obnoxious to, or in contravention of sub-cl.(c) of cl. (1) of Art. 19 of the Constitution. This Article runs, to quote only the relevant words:

> "Article 19. (1) All citizens shall have the right—
>
> (a).....
>
> (b).....
>
> (c) to form associations or unions; "

The right is subject to the qualification contained in cl.(4), reading:

> "(4). Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

It is not the contention of any of the learned Counsel that the right of workmen to *form unions or associations* which is the right guaranteed by sub-cl. (c) of cl. (1) of Art. 19 on its literal reading has

been denied by the impugned legislation. The argument, however, was that it would not be a proper construction of the content of this guaranteed freedom to read the text literally but that the freedom should be so understood as to cover not merely a right to form an union in the sense of getting their union registered so as to function as an union, i.e., of placing no impediments or restrictions on their formation which could not be justified as dictated by public order or morality but that it extended to confer upon unions so formed a right to effectively function as an instrument for agitating and negotiating and by collective bargaining secure, uphold or enforce the demands of workmen in respect of their wages, prospects or conditions of work. It was further submitted that unless the guaranteed right comprehended these, the right to form an union would be most illusory. To understand the implications of learned Counsel's submission in their proper perspective the several steps in the reasoning might be set out as follows :

(1) The Constitution guarantees, by sub cl.(c) of cl. (1) of Art. 19, to citizens in general and to workers in particular the right to form unions. In this context it was pointed out that the expression 'union' in addition to the word 'association' found in the Article refers to associations formed by workmen for "trade union" purposes ; the word 'union' being specially chosen to designate labour or Trade unions.

(2) The right to "form an union" in the sense of forming a body carries with it as a concomitant right a guarantee that such unions shall achieve the object for which they were formed. If this concomitant right were not conceded, the right guaranteed to form an union would be an idle right, an empty shadow lacking all substance.

(3) The object for which labour unions are brought into being and exist is to ensure collective

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bargaining by labour with the employers. The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with employers which is the reason *d'etre* for the existence of labour organizations. Collective bargaining in order to be effective must be enforceable labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike a right which is thus a natural deduction from the right to form unions guaranteed by sub-cl. (c) of cl.(1) of Art. 19. As strikes, however, produce economic dislocation of varying intensity or magnitude, a system has been devised by which compulsory industrial adjudication is substituted for the right to strike. This is the ratio underlying the provisions of the Industrial Disputes Act 1947 under which Government is empowered in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strikes or lock-outs occur, to refer the dispute to an impartial Tribunal for adjudication with a provision banning and making illegal strikes or lock-outs during the pendency of the adjudication proceedings. The provision of an alternative to a strike in the shape of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if it were an effective substitute.

(4) For an adjudication to satisfy the tests of reasonableness and effectiveness two conditions are necessary: (a) that the adjudicator should be enabled to have before him all the materials which are necessary for pronouncing upon the matter in controversy before him; and (b) that the adjudicator by whom the controversy between the parties should be decided should be an impartial person or body who would render the decision or award after fully hearing the parties, and that no matter in controversy should be the subject of *ex parte* decision by an interested party or without the disputants having an opportunity to know the

materials on which the decision is reached, as also an opportunity to place their case with reference to such material.

(5) In regard to the right of labour unions to function effectively and to achieve the object of their existence as set out earlier, by negotiated settlement or by compulsory adjudication, the only limitations permitted to be imposed by law are those set out in cl.(4) of Art. 19 and unless, therefore, either the objects of the association or the manner of achieving them are contrary to, or transgress public order or morality, for which reason alone reasonable restrictions might be imposed upon the guaranteed right, the freedom guaranteed is absolute.

(6) The legislation now impugned withdraws as it were a vital issue in dispute between the parties before the adjudicator, *viz.*, the capacity of the industry to pay, from his cognisance and vests the power of deciding that issue in the Reserve Bank which is a biased and interested party, the decision itself being rendered *ex parte,* the trade unions being deprived even of the knowledge of facts which lead to the decision.

It was on this line of reasoning that learned Counsel submitted that the impugned enactment violated the freedom guaranteed by sub-cl. (c) of cl. (1) of Art. 19.

We shall now proceed to consider the soundness and tenability of the steps in the reasoning. It is not necessary to discuss in any detail the first step as sub-cl. (c) of cl. (1) of Art. 19 does guarantee to all citizens the right "to from associations". It matters little whether or not learned Counsel is right in his submission that the expression 'union' in the clause has reference particularly to Trade Unions or whether the term is used in a generic sense to designate any association formed for any legitimate purpose and merely as a variant of the expression "Association" for comprehending every body of persons so formed. It is not controverted

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that workmen have a right to form "associations or unions" and that any legal impediment in the way of the formation of such unions imposed directly or indirectly which does not satisfy the tests laid down in cl. (4) would be unconstitutional as contravening a right guaranteed by Part III of the Constitution.

It is the second step in the argument of the learned Counsel, *viz.*, that the right guaranteed to form "an union" carries with it a concomitant right that the achievement of the object for which the union is formed shall not be restricted by legislation unless such restriction were imposed in the interest of public order or morality, that calls for critical examination. We shall be referring a little later to the authorities on which learned Counsel rested his arguments under this head, but before doing so we consider it would be proper to discuss the matter on principle and on the construction of the constitutional provision and then examine how far the authorities support or contradict the conclusion reached.

The point for discussion could be formulated thus : When sub-cl. (c) of cl. (1) of Art. 19 guarantees the right to form associations, is a guarantee also implied that the fulfilment of every object of an association so formed is also a protected right, with the result that there is a constitutional guarantee that every association shall effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality set out in cl. (4) of Art. 19? Putting aside for the moment the case of Labour Unions to which we shall refer later, if an association were formed, let us say for carrying on a lawful business such as a joint stock company or a partnership, does the guarantee by sub-cl.(c) of the freedom to form the association, carry with it a further guaranteed right to the company or the partnership to pursue its trade and achieve its profit-making object and that the only limitations

which the law could impose on the activity of the association or in the way of regulating its business activity would be those based on public order and morality under cl. (4) of Art. 19? We are clearly of the opinion that this has to be answered in the negative. An affirmative answer would be contradictory of the scheme underlying the text and the frame of the several fundamental rights which are guaranteed by Part III and particularly by the scheme of the seven freedoms or groups of freedoms guaranteed by sub-cls. (a) to (g) of cl. (1) of Art. 19. The acceptance of any such argument would mean that while in the case of an individual citizen to whom a right to carry on a trade or business or pursue an occupation is guaranteed by sub-cl. (g) of cl. (1) of Art. 19, the validity of a law which imposes any restriction on this guaranteed right would have to be tested by the criteria laid down by cl. (6) of Art. 19., if however he associated with another and carried on the same activity—say as a partnership, or as a company etc., he obtains larger rights of a different content and with different characteristics which include the right to have the validity of legislation restricting his activities tested by different standards, *viz.*, those laid down in cl. (4) of Art. 19. This would itself be sufficient to demonstrate that the construction which the learned Counsel for the appellant contends is incorrect, but this position is rendered clearer by the fact that Art. 19—as contrasted with certain other Articles like Arts. 26, 29 and 30—grants rights to the citizen as such, and associations can lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, *i.e.*, in right of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens, or claim freedom from restrictions to which the citizens composing it are subject.

The resulting position may be illustrated thus: If an association were formed for the purpose of

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carrying on business, the right to form it would be guaranteed by sub-cl. (c) of cl. (1) of Art. 19 subject to any law restricting that right conforming to cl. (4) of Art. 19. As regards its business activities, however, and the achievement of the objects for which it was brought into existence, its rights would be those guaranteed by sub-cl. (g) of cl. (1) of Art. 19 subject to any relevant law on the matter conforming to cl. (6) of Art. 19; while the property which the association acquires or possesses would be protected by sub-cl. (f) of cl. (1) of Art. 19 subject to legislation within the limits laid down by cl. (5) of Art. 19.

We consider it unnecessary to multiply examples to further illustrate the point. Applying what we have stated earlier to the case of a labour union the position would be this: while the right to form an union is guaranteed by sub-cl. (c), the right of the members of the association to meet would be guaranteed by sub-cl. (b), their right to move from place to place within India by sub-cl.(d), their right to discuss their problems and to propagate their views by sub-cl. (a), their right to hold property would be that guaranteed by sub-cl. (f) and so on—each of these freedoms being subject to such restrictions as might properly be imposed by cls. (2) to (6) of Art. 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to under lie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result.

There is no doubt that in the context of the principles underlying the Constitution and the manner in which its Part III has been framed the

guarantees embodied in it are to be interpreted in a liberal way so as to subserve the purpose for which the constitution-makers intended them and not in any pedantic or narrow sense, but this however does not imply that the Court is at liberty to give an unnatural and artificial meaning to the expressions used based on ideological considerations. Besides it may be pointed out that both under the Trade Unions act as well as under the Industrial Disputes Act the expression 'union' signifies not merely a union of workers but includes also unions of employers. If the fulfilment of every object for which an union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to an union of employers which would result in an absurdity. We are pointing this out not as any conclusive answer, but to indicate that the theory of learned Counsel that a right to form unions guaranteed by sub-cl. (c) of cl.(1) of Art.19 carries with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within cl. (4) of Art. 19 which might in any way hamper the fulfilment of those objects, should be declared unconstitutional and void under Art, 13 of the Constitution, is not a proposition which could be accepted as correct.

Besides the qualification subject to which the right under sub-cl. (c) is guaranteed, *viz.*, the contents of cl. (4) of Art. 19 throw considerable light upon the scope of the freedom, for the significance and contents of the grants of the Constitution are best uuderstood and read in the light of the restrictions imposed. If the right guaranteed included not merely that which would flow on a literal reading of the Article, but every right which is necessary in order that the association brought into existence fulfils every object for which it is formed, the qualifications therefor would be not merely those in cl.(4) of Art. 19, but would be more numerous and

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very different, restrictions which bore upon and took into account the several fields in which associations or unions of citizens might legitimately engage themselves. Merely by way of illustration we might point out that learned Counsel admitted that though the freedom guaranteed to workmen to form labour unions carried with it the concomitant right to collective bargaining together with the right to strike, still the provision in the Industrial Disputes Act forbidding strikes in the protected industries as well as in the event of a reference of the dispute to adjudication under s. 10 of the Industrial Disputes Act was conceded to be a reasonable restriction on the right guaranteed by sub-cl.(c) of cl.(1) of Art.19. It would be seen that if the right to strike were by implication a right guaranteed by sub-cl. (c) of cl. (1) of Art. 19, then the restriction on that right in the interests of the general public, *viz.*, of national economy while perfectly legitimate if tested by the criteria in cl. (6) of Art. 19, might not be capable of being sustained as a reasonable restiction imposed for reasons of morality or public order. On the construction of the Article, therefore, apart from the authorities to which we shall refer presently, we have reached the conclusion that even a very liberal interpretation of sub-cl. (c) of cl. (1) of Art. 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to be tested not with reference to the criteria laid down in cl.(4) of Art. 19 but by totally different considerations.

We shall now proceed to consider the authorities relied on by the learned Counsel in support of this theory of "concomitant right" to collective bargaining guaranteed to labour unions. First as regards the decisions of this Court on which learned

Counsel relied, *Romesh Thappar* v. *The State of Madras*(1) was the earliest case referred to and learned counsel placed reliance in particular on the following passage in the judgment of the learned Chief Justice :

> "Turning now to the merits, there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. 'Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value' : *Ex parte* Jackson, 96 U.S. 727".

Based on this, learned Counsel submitted that if the phrase 'freedom of speech and expression' in sub-cl. (a) of cl. (1) of Art. 19 were given this liberal construction so as to effectuate the object for which the freedom was conferred, a similar construction ought to be adopted of the content of the freedom guaranteed by sub-cl. (c) of cl. (1) of Art. 19. We are, however, unable to discern any analogy between the two cases. It is obvious that "freedom of speech" means freedom to speak so as to be heard by others, and therefore to convey one's ideas to others. Similarly the very idea of freedom of expression necessarily connotes that what one has a right to express may be communicated to others. Unless therefore the freedom guaranteed by sub-cl.(a) of cl. (1) of Art. 19 were read as confined to the right to speak to oneself or to express his ideas to himself, which obviously they could not mean, the guaranteed freedom would mean freedom to address others, and of conveying to others one's ideas by printed word, *viz.*, freedom of circulation. We do not see, therefore, any analogy between the case which was considered by this Court in *Romesh Thappar's* (1) case and the one before us.

(1) 1950 S.C.R. 594 In A.

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The observations in the judgment of Bhagwati, J. in *Express Newspapers (Private) Ltd.* v. *Union of India*(1) on which Counsel relied, in regard to the content of the 'freedom of speech and expression' that they "include within its scope the freedom of the press", for the press with the printed word is merely the mechanism by which the freedom is exercised do not really carry the matter any further.

We were next referred to the observations of Das C. J. in the advisory opinion *Re the Kerala Education Bill*(2). The question, which was being considered in the passage relied on, related to the scope and content of cl. (1) of Art. 30 which guarantees to all minorities a right to establish and administer educational institutions of their choice. The question debated before this Court was, whether the provision in the Kerala Education Bill which denied recognition by Government to educational institutions run by minorities contravened this freedom guaranteed to them? Dealing with this Das C. J. said :

> "Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and the rights under Art. 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which would effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is

(1) 1959 S.C.R. 12. (2) 1959 S.C.R. 995.

in truth and in effect to deprive them of their rights under Art. 30 (1)."

We do not consider that these observations and this construction of cl. (1) of Art. 30 assist learned Counsel in his submission as regards the theory of concomitant rights flowing from the freedom guaranteed by sub-cl. (c) of cl. (1) of Art. 19. The observations of the learned Chief Justice and the conclusions drawn are in relation to the construction of Art. 30 and cannot be divorced from the context. They do not purport to lay down any general rule of construction for the freedoms guaranteed under the several sub-heads of cl. (1) of Art. 19, and, indeed, what we have pointed out earlier should suffice to indicate the impossibility of upholding any such construction of the freedoms guaranteed by the latter Article.

Learned Counsel also referred us to certain passages in two judgments of the Supreme Court of the United States: *National Association for the advancement of colored people* v. *Alabama*,(1)and *Bates* v. *Little Rock*(2)in which the Court held that freedom of speech and assembly which were fundamental rights guaranteed by the Constitution would be abrogated or improperly encroached upon by legislation which compelled the disclosure to public authorities of the membership rolls. In the two decisions the facts were that the associations in question were for the protection of coloured persons and the requirement of disclosure of the names of members was inserted in the law for the purpose of putting a pressure upon these associations so as to dissuade people from joining them. The argument of learned Counsel before us was based on the dicta in these two decisions that the right to form an association which followed by reason of the 'due process' clause in the 14th amendment carried with it the right to ensure that the associations were able to maintain themselves as associations. In the two

(1) 2 Law. Ed. Second 1488. (2) 4 Law. Ed. Second 480.

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decisions referred to, the learned Judges of the Supreme Court of the United States were not construing the content of a provision on the lines of Art. 19(1)(c), for in America, the right of association is not any specifically guaranteed right, but has been derived by judicial interpretation of the due process clause of the 14th Amendment. But apart from this the legislation there impugned was one which directly affected the formation of the association and in that sense may be hit by the terms of sub-cl.(c) of cl.(1) of Art. 19 if statutes with similar purpose were enacted in India. The decisions cited are no authority for the second step in the argument for which they were cited.

Learned Counsel also referred us to two other decisions of the Supreme Court of the United States in which the right of employees to self-organization, to form, join and assist labour organisations and to bargain collectively through representatives of their own choice and to engage in concerted activities for the purpose of collective bargaining or other mutual aid has been referred to as "a fundamental right" (vide *National Labor Relations Board* v. *Jones and Laughlin Steel Corporation and ors.*,(1) and *Amalgamated Utility Workers* v. *Consolidated Edison Company of New York*) (2). We do not consider the inference sought to be drawn well-founded. What the learned Judges of the Supreme Court were referring to as a fundamental right was not with reference to a fundamental right as recognized or guaranteed by the Constitution, but in the sense of a right of the unions which enacted law recognized or respected, and as other decisions of the United States' Supreme Court show, was subject to regulation by the legislature(3). We have, therefore, reached the conclusion that the right guaranteed by sub-cl.(c) of cl.(1) of Art. 19 does not carry with it a concomitant right

(1) 81 Law. Ed. 893, 909.
(2) 84 Law. Ed. 738, 741.
(3) Vide Weaver Constitutional Law and its Administration (1946) p. 505, referring to Dorchy v. Kansas 272 U. S. 306 : 71 L. Ed. 248 "Neither the common law nor the 14th Amendment confers the absolute right to strike."

that the unions formed for protecting the interests of labour shall achieve the purpose for which they were brought into existence, such that any interference, to such achivement by the law of the land would be unconstitutional unless the same could be justified as in the interests of public order or morality. In our opinion, the right guaranteed under sub-cl. (c) of cl. (1) of Art. 19 extends to the formation of an association and insofar as the activities of the association are concerned or as regards the steps which the union might take to achieve the purpose of its creation, they are subject to such laws as might be framed and that the validity of such laws is not to be tested by reference to the criteria to be found in cl. (4) of Art. 19 of the Constitution.

In this view it is not necessary to consider the other steps in the argument of learned Counsel all of which proceed upon the correctness of the step which we have just now disposed of. Nevertheless we consider it proper to deal with the submission that the impugned legislation (a) withdraws an essential part of the dispute between the parties from the jurisdiction of an impartial adjudicator and vests the same in the Reserve Bank of India which is a biased body ; and (b) that the adjudicator is left without proper materials to discharge his duties by withdrawing the proper materials from his cognizance.

A complaint that the impugned provision withdraws the dispute from the adjudication of an impartial arbitrator and leaves it to the decision of another body is an obvious over-statement of the position. The dispute between the parties in relation either to wages, bonus or other amenities or perquisites which involve financial obligations on the part of the employer remain even after the impugned provision was enacted, with the adjudicator and he alone determines the rights of the parties subject to the provisions of the Industrial law or other relevant legislation, and the relief which he could award to the employees remains

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the same. The adjudicator alone determines the capacity of the industry to pay or to bear the enhanced cost. The only result of s. 34 A is that in regard to two itmes, *viz.*, secret reserves and the provision made by banks "for bad and doubtful debts and other necessary provisions", the reasonable quantum which would be available for being taken into account by the adjudicator would be estimated and determined by an expert body which is a governmental authority or practically a department of Government, *viz.*, the Reserve Bank of India which is entrusted by law with duty of maintaining the credit structure of the country.

From what we have stated earlier as the genesis of the legislation now impugned, it would be apparent that Government had to effect a reconciliation between two conflicting interests: one was the need to preserve and maintain the delicate fabric of the credit structure of the country by strengthening the real as well as the apparent credit worthiness of banks operating in the country. It was really this principle which is vital to the economic life of the community that has been responsible for the changes that have been made from 1927 onwards as regards the form of balance-sheet and of the Profit & Loss accounts of banking companies as distinguished from other trading and industrial organizations. There was urgent need to protect from disclosure certain of the items of appropriation by banks in order to preserve them as credit institutions. On the other hand, there was the need—an equally urgent need for enabling the workers in these institutions not to be denied a proper wage and other emoluments and proper conditions of service. The question was how far information which in the interests of national economy the banks were entitled to withhold from their shareholders and the general public, was to be made available for determining the capacity of the banks to pay their employees. It was in these circumstances that the impugned legislation was

enacted which while preserving industrial adjudication in respect of disputes between the banks and their employees, entrusted the duty of determining the surplus reserve which could be taken into account as part of the assets for determining capacity to pay, to the Reserve Bank. Thus understood there does not appear to be anything unreasonable in the solution which the impugned legislation has effected.

We do not also consider that there is any substance in the complaint that the Reserve Bank of India is a biased body. If it was not the Reserve Bank of India, the only other authority that could be entrusted with the function would be the Finance Ministry of the Government of India and that department would necessarily be guided by the Reserve Bank having regard to the intimate knowledge which the Reserve Bank has of the banking structure of the country as a whole and of the affairs of each bank in particular. In the circumstance therefore it matters little from the point of view of the present argument whether it is the Finance Ministry that was vested with the power to determine the matters set up in s. 34-A or whether it is the Reserve Bank that does so, as under the impugned enactment.

Learned Counsel made a further submission that the impugned enactment was a piece of colourable legislation, and that the purported objective of securing secrecy from disclosure was really a device adopted for depressing wages and for denying to workmen employed in banks their legitimate rights. It was urged that the preamble to the amending Act sought to make out that the real purpose behind the legislation was the ensuring of secrecy from disclosure of the reserves held by the banks and of the bad and doubtful debts which arose in the course of business and the provision made for these losses and proceeded on the ratio that such disclosure would hurt the credit of the

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banks which would have repercussions not merely on the individual bank but also on the banking structure of the country as a whole. This, it was submitted, was not the real but only the colourable object and purpose underlying the legislation. In this connection it was stressed that s. 21 of the Industrial Disputes Act and r. 30 of the Industrial Disputes Rules had made ample provision for securing secrecy to the affairs of every concern in regard to which disclosure would not be in public interest. We are satisfied that this submission has no basis in fact and besides even if made out does not affect the validity of the legislation. As we have pointed out already, the impugned legislation merely carries out to its logical conclusion the effect of the changes in the form of the balance-sheet and Profit and Loss accounts of Banks which starting in 1927 culminated in the notification dated December 22, 1951 under s. 29 (4) of the Banking Companies Act amending the Forms appended to that Act. If the construction of the "right to form unions" under sub-cl. (c) of cl.(1) of Art. 19 put forward by learned Counsel for impugning the validity of the enactment is negatived, then subject to the point about Art. 14 which we shall examine presently, legislative competence being conceded there could be no legal objection to its validity. Objections based on colourable legislation have relevance only in situations when the power of the legislature is restricted to particular topics, and an attempt is made to escape legal fetters imposed on its powers by resorting to forms of legislation calculated to mask the real subject-matter. No such problem exists in the present case and it is common ground that once the legislation passes the test of the fundamental rights guaranteed by Part III, legislative competence not being in dispute, its validity is beyond cavil. The question whether the secrecy assured by s. 21 of Industrial Disputes Act is or is not sufficient to protect the interests of the Banks, is a matter of legislative policy—and is for Parliament

alone—and even the fact that the Court could be persuaded that the existing law is sufficient would be no ground for invalidating the impugned legislation. When the end which the legislature seeks to achieve, *viz* ., secrecy is competent, the enquiry as to *ultra vires* stops. Whether less than what was done might have been enough, whether more drastic provision was made than occasion demanded, whether the same purposes could have been achieved by provisions differently framed or by other means, these are wholly irrelevant considerations for testing the validity of the law. They do not touch or concern the ambit of the power but only the manner of its exercise, and once the provisions of Part III of the Constitution are out of the way, the validity of the legislation is not open to challenge.

The next point urged was that the impugned provision was in violation of Art. 14; though the several learned Counsel who appeared in support of the case of the workers were not all agreed as to the precise grounds upon which it could be held that the impugned provision violated Art. 14.

It was first submitted that the provision was rendered invalid because it vested an arbitrary power in banks which were parties to a dispute under the Industrial Disputes Act, to claim or not to claim the privilege of not producing the documents and that no criterion had been indicated as to the circumstances in which Banks could decide to make the claim. But this, however, is answered by the provision itself which runs :

> "When the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document.....would involve disclosure of information relating to the matters set not—the matters set out in sub-clauses (a) and (b)."

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It was also submitted that sub-cl. (b) of sub-s. (1) was vague, in that a reference was made to "provision made for bad and doubtful debts and other usual or necessary provisions". We do not see any substance in this point either, because these words are taken from the form under the Banking Companies Act and their meaning is clear in banking circles. In fact, in the application which the employee associations made before the adjudicator to direct the production of information and documents from the banks this phrase was used and it is apparent that even the Bank Employees' Associations understood it as having a definite connotation.

It was next submitted on behalf of some of the interveners that s. 34A(1) and (2) violated Art. 14 in that the classification contained in it was impermissible as not being based on rational grounds. It was said (1) that the protection against a disclosure applied only to adjudications under the industrial Disputes Act and not to other adjudications; (2) that it applied only to certain banking companies and not to all banking companies; and (3) that by reason of s. 34A (2) the provisions of the impugned enactment were applied in a discriminatory manner to all banks other than the Reserve Bank. The first two points cover the same ground and arise out of the fact that the impugned provision by its 3rd sub-section defines a "banking company" referred to in it and to which its provisions apply, as meaning a "Banking Company" under the Industrial Disputes Act, 1947. The Industrial Disputes Act defines a "Banking Company" in s. 2(b) as follows:

> "Banking Company means a banking company as defined in s. 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one State and includes the State Bank of India and the Reserve Bank of India."

It would thus be seen that though the Banking Companies Act applied to every banking company, it is only those banks whose operations extended beyond one State were brought within the scope of the definitions of a "banking company" under the Industrial Disputes Act. The result of that was that Banking Companies not having branches in more than one State would be an industry so as to be within the Industrial Disputes Act but not "a banking company" within its definition. In the circumstances learned Counsel is right in his submission that such banking companies as are not within the definition of "a banking company" under the Industrial Disputes Act would not be entitled to claim the protection from disclosure conferred on "banking companies" by the impugned provision. This, however, is no ground for holding the legislation invalid. In the first place, the complaint of discrimination is not by the banks who are not on the terms of s. 34A entitled to the protection from disclosure of their reserves etc. Secondly it is common ground that 95% of the banking business in this country is in the hands of Banks which are within the definition of "banking companies" under s. 2(b) (b) of the Industrial Disputes Act. Besides, these banks employ over 80,000 out of the 90,000 bank-employees. In the circumstances and seeing that the injury to the credit structure will only be by the disclosure of the reserves etc., of the banks of this class, there is sufficient rational connection and basis for classification to justify the differentiation. The fact that the legislation does not cover every banking company is therefore no ground for holding the provision to be discriminatory within Art. 14.

The last point about the exclusion of the Reserve Bank of India from the operation of s. 34A (2) has also no substance. In the very nature of things and on the scheme of the provision the Reserve Bank could not but be excluded from sub-s. (3) of the impugned provision. In determining

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what reserves could properly be taken into account, the Reserve Bank would be discharging not any quasi judicial but only an administrative function, determining this matter with reference to uniform business principles and it therefore appears to us that there is no impropriety in its findings being final even in regard to itself. A submission on similar lines about bias was also made in relation to the impact of the impugned provision insofar as it related to the industrial dispute between the State Bank of India and its employees. It was pointed out to us that the Reserve Bank of India owned practically the entirety of the sharecapital of the State Bank of India, with the result that the Reserve Bank was pecuniarily and vitally interested in supporting the State Bank as against the latter's employees in any industrial dispute and that the element of bias which the situation involved would invalidate the impugned provision. We consider this argument without force. If, as we have held, the impugned provision is valid and does not violate any of the freedoms guaranteed by Part III of the Constitution in regard to the employees of the Reserve Bank, the challenge to the impugned provision cannot obviously be successful in the case of the employees of the State Bank.

As we have stated earlier, though the arguments before us ranged on a very wide ground, we have not thought it necessary to deal with all of them because in view of our conclusions on the crucial points in the case the others which were subject of debate before us did not arise for consideration.

The appeal fails and is dismissed with costs. The petitions also fail and are dismissed with costs. (one hearing fee)

Appeal and Petitions dismissed.