(1966) 01 MAD CK 0026

Madras High Court

Case No: None

Tamizhazhagan and Another		APPELLANT
	Vs	
The Revenue Divisional Officer and Others		RESPONDENT

Date of Decision: Jan. 3, 1966

Citation: (1967) ILR (Mad) 1 : (1966) 79 LW 542 : (1966) 2 MLJ 194

Hon'ble Judges: M. Natesan, J

Bench: Division Bench

Judgement

M. Natesan, J.

These two cases raise certain interesting and important questions, particularly the competency of the State Legislature to enact Madras Act XIV of 1957, Prevention of Insults to National Honour Act (hereinafter referred to as the Act), and whether Section 5 of the Act is invalid as violative of the fundamental rights guaranteed under Article 19(1)(a) and (1)(f) of the Constitution. A further question for consideration and one of some difficulty is, whether a conviction u/s 5 of the Act for burning a copy of the Constitution taints a candidate for election as a member of a Panchayat under Madras Act XXXV of 1958 with moral delinquency, and u/s 25(1) of the Panchayat Act disqualifies him for election. Another plea is raised that the disqualification as imposed u/s 25(1) is discriminatory and offends Article 14 of the Constitution.

2. We shall first briefly set out the facts in the two cases. W.A. No. 260 of 1965 arises out of the election held in January, 1965 of members for the Namagiripet Town Panchayat, Salem District. The nomination of the appellant Tamizhazhagan, a voter in the electoral rolls for the Panchayat, was rejected by the Returning Officer on the sole ground that he had been convicted by the Sub-Divisional Magistrate, Sankari, in C.C. No. 294 of 1964 on 6th October, 1964 and sentenced to undergo R.I. for six months u/s 5 of the Prevention of Insults to National Honour Act. The Returning Officer took the view that the offence was one involving moral delinquency and

therefore the appellant was disqualified for election as a member. Section 25(1) of the Panchayat Act Madras Act(XXXV of 1958) runs thus:

A person who has been sentenced by a criminal Court to imprisonment for any offence involving moral delinquency (such sentence not having been reversed) shall be disqualified for election as a member while undergoing the sentence and for five years from the date of the expiration thereof.

From the order of rejection the appellant preferred an appeal to the Revenue Divisional Officer, Namakkal, provided under the Rules Relating to the Conduct of Election of Members, and failing in the appeal, brought up the matter to this Court by way of an application under Article 226 of the Constitution in W.P. No. 2141 of 1965. The further details as to the offence and the conviction will be considered later. But it may be stated for the present that the appellant had pleaded guilty of the offence with which he was charged, wilfully burning Part XVII of the Constitution of India on 4th October, 1964 at about 5 p.m. in the Shandypet Maidan at Rasipuram. When the writ petition came up before our learned brother Srinivasan, J., the validity of the Act has already been the subject of consideration in another case by a Division Bench in In re N. V. Natarajan (1964) 2 M.L.J. 530 : (1964) M.L.J. 666. The learned Judges Veeraswami and Kunhamed Kutti, JJ., before whom the constitutionality had been raised on an application to quash charges u/s 5 of the Act read with Section 120-B of the Indian Penal Code, upheld the constitutionality of the impugned Section 5 of the Act. On the question whether the offence under the Act involved moral delinquency, considering the nature of the offence, Srinivasan, J., held that here was a case of wilful and callous disregard of the feelings of the public and indeed a positive injury to their feelings in the shape of burning the Constitution, and that it cannot be lightly regarded as an offence not involving moral delinquency. On the view and following the Division Bench''s decision above referred to on the question of the validity of legislation, the learned Judge discharged the rule nisi. Hence the appeal.

3. The other case W.P. No. 751 of 1965 relates to the election of members to the minor village panchayat of Kambarajapuram, Kancheepuram Taluk, Chingleput. District. There are only two wards for the panchayat, each ward to elect three members, the total strength of the panchayat being six. The election was to be held on 2nd February, 1965, the last date for nomination being 31st of January, 1965. The same was the date for scrutiny of nomination papers. The petitioner K.M. Rajagopal and eight others filed their nomination papers for the first ward and for the second ward five persons filed their nominations. At the scrutiny held by one Srinivasan, a Tamil Pandit of the Municipal High School, Kancheepuram, the Election Officer for the election in question, the nomination of the petitioner was rejected suo motu. It is stated that no reasons were given in writing in spite of a request by the election agent of the petitioner. On the rejection of the petitioner''s nomination-according to the petitioner in a arbitrary fashion-it is stated that the other eight candidates for

the first ward and all the candidates for the second ward withdrew their nominations and no election was therefore held as programmed. The petitioner was able to secure in writing the ground of rejection of his nomination paper only on 9th December, 1965 on an application to the Returning Officer. It is found that the nomination of the petitioner has been rejected on the ground that he sustained disqualification, having suffered R.I. for six months by the conviction in C.C. No. 54 of 1964 on 15th May, 1964 for offences punishable under Sections 143 and 120-B, Indian Penal Code, read with Section 5 of Madras Act XIV of 1957. From the counter-affidavits filed by the Returning Officer and the Election Officer in this case it is clear that the first respondent herein did not, when scrutinising the nomination paper, exercise his own discretion. It transpired that on 30th January, 1965, the Returning Officer had sent to the Election Officer for his. information and guidance a confidential letter he had received from the third respondent in the writ petition, giving a list of persons convicted under Sections 143, 109, 120-B and 182, Indian Penal Code and Section 32 of the Police Act and Section 5 of the Prevention of Insults to National Honour Act. The Election Officer, who has been made the second respondent in the application, frankly states in his. counter-affidavit:

As I said, I bona fide thought that in communicating the letter of the third respondent along with the enclosure the first respondent intended to inform me that these persons whose names are found in. the list are disqualified in law and that I should reject their nominations if received.

Apart from other grounds common with the writ appeal, a special ground is raised in this case that the Election Officer has surrendered his judgment to the dictates of the first and third respondent and the rejection of the nomination paper is therefore invalid. In view of several questions raised in the writ petition and the same questions arise for consideration in W.A. No. 260 of 1965, the writ petition itself was taken up for hearing by us.

4. Petitioners in both the cases are prominent members of a political party, the Dravida Munnetra Kazhagam, and it is their case that the acts in question which have been labelled an offence are merely expressions of their views and ventilation of their grievance with regard to the language issue commonly referred to as the Anti-Hindi agitation. As would be seen from the F.I.R. and the charge-sheet in the record of W.P. No. 751 of 1965, the General Secretary of the D.M.K. already at a. conference held at Madras on the 12th and 13th October, 1963 had announced the decision of the Kazhagam to conduct an agitation against the imposition of Hindi in Madras State by burning publicly Part XVII of the Constitution of the Indian Republic. In the cases before us it is in furtherance of this agitation and to mark their protest against the imposition of Hindi, the petitioners had publicly burned copies of Part XVII of the Constitution after duly announcing their intention to do so and courted arrest. They pleaded guilty to the charges levelled against them and suffered imprisonment voluntarily.

5. We shall first take up for consideration the competency of the State Legislature to enact Madras Act XIV of 1957. The Act is entitled an Act to prevent insults to National Honour. The Preamble runs thus:

Whereas it is expediept and necessary to prevent certain offences against the Indian National Flag, pictures, effigies and statute of the father of the Nation, or the Constitution of India.

The Short Title of the Act as found in Section 1 is:

This Act may be called the Prevention of Insults to National Honour Act, 1957.

Section 2 of the Act makes a wilful burning or desecrating or insulting any effigy, picture or portrait of Mahatma Gandhi an offence punishable with imprisonment of either description for a term which may extend to three years or with fine or with both. Section 3 makes a wilful causing of damage to or destruction of any statute of Mahatma Gandhi an offence. Section 4 makes a wilful burning or desecrating or insulting the Indian National Flag an offence. Section 5 whose validity is impugned and with which we are concerned in the present cases, runs thus:

Whoever wilfully burns or desecrates or insults any copy or copy of a part of the Constitution of India, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

Of the remaining two sections in the Act, Section 6 makes an attempt to commit any of the offences punishable under the Act as an offence committed, and Section 7 provides that a person proceeded against under the provisions of the Act shall not be exempted from any other action that may be taken against him. The principal argument on behalf of the petitioners urged with considerable force is that the Act in question deals with national honour, the subject is national honour and the substance of the legislation is to create emblems of national honour and protect them from desecration. It is contended that national honour is not a subject either in the State List or in the Concurrent List of the Schedule VII to the Constitution. It does not come under any specific head in List I and under Head 97 of List I and Article 248 of the Constitution the Parliament will have the exclusive power to make laws in relation thereto.

6. Now, when examining the character of an enactment the constitutional validity of which is put in issue, the presumption being in favour of its validity, the Court will, if possible, give it such construction as will enable it to have effect. Unless the invalidity of an enactment is beyond doubt, the Court will not strike down an Act as ultra vires. Under the Constitution the State legislative power is to be found either under List II of the Seventh Schedule, the State List, or under List III, the Concurrent List. The Advocate-General appearing for the State would primarily rest the State''s legislative power in the matter under Item I of List III

Criminal law, including all matters in the Indian Penal Code at the commencement of the Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the Civil power.

Alternatively it is submitted that the State could rely on Item I of List II:

Public order but not including the use of naval, military or air force or any other armed forces of the Union in aid of the civil power.

7. While considering the legislative competence of the State, and interpreting the heads of legislation with reference to any particular measure the test applied is to look for the pith and substance of the measure, its object or legislative intent, its purpose, and then find whether, thus substantialised the measure falls within the field of legislation assigned to the State. The decisions of the Judicial Committee from Canada under the British North America Act, 1867, may be usefully referred to in this context. Under the Canadian Constitution the general residuary power is vested in the Dominion Parliament and an attempt has been made to divide the important subjects of legislation between the Dominion and the Provinces. Section 92 of the British North America Act gives to the Provincial Legislatures exclusive authority to make laws in relation to matters coming within the list of enumerated Provincial subjects and Section 91 lists the matters coming within the competency of the Dominion Parliament, besides a general power to legislate for the peace and good Government of Canada. In AIR 1941 47 (Federal Court) a case arising under the Government of India Act, 1935, the Legislative Lists wherein are in the main and substantially followed under the present Constitution, after referring to the British North America Act, Gwyer, C J. observed:
It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one List, touches also on a subject in another list and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its ''pith and substance'' or its ''true nature and character'' for the purpose of determining whether it is legislation with respect to matters in this list or in that : Citizens Insurance Co. v. Parsons (1881) L.R. 7 A.C. 96; Russel v. Reg (1882) L.R. 7 A.C. 829, Union Colliery Co. v. Bryden L.R. (1899) A.C. 580, Attorney-General for Canada v. Attorney-General for British Columbia L.R. (1930) A.C. 111, Board of Trustees of Northern Irrigation District v. Independent Orders of Foresters L.R. (1940) A.C. 513. In my opinion, this rule of interpretation is equally applicable to the Indian Constitution Act.

In the same case Sulaiman, J., observed that it was wrong to assume that the doctrine of ''pith and substance'' laid down by their Lordships was a special doctrine exclusively applicable to the Canadian Constitution. When examining the heads or items in the lists, Gwyer, C.J., in AIR 1941 16 (Federal Court) , observes;

I think, however, that none of the items in the lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.

The legislation for different purposes may deal with the same subject-matter. But the question in each case would be as to the true nature and character of legislation or as to what is also termed '' pith and marrow'' of the legislation. It is the view of Sir Ivor Jennings in his work, "The Constitutional Laws of the Commonwealth " (Second Edition at page 192) that the specific heads refer to purposes. We are inclined to agree with this approach and the case-law in our country supports it. The first step when examining a Legislature''s competency is to see whether the Act is '' with respect to '' any of the matters in its List or in the Concurrent List. If it is not in either of the Lists, then the Act falls to the ground. If it falls in the Concurrent List and there is repugnancy between the law of the State and the law of the Union both under the concurrent spheres the law of the Union will prevail. The State legislation could, however, prevail, not with standing the repugnancy, if the State law was reserved for the President and has received his assent under Article 254 of the Constitution.

8. In State of Rajasthan v. Chawla 1959 S.C.J. 485 : 1959 M.L.J. 309, Hidayatullah, J., delivering the judgment of the Supreme Court, states:

After the dictum of Lord Selborne in Queen Empress v. Burah L.R. (1878) 3 A.C. 839, oft-quoted and applied, it must be held as settled that the Legislatures in our country possess plenary powers of legislation. This is so even after the division of the legislative powers, subject to this that the supremacy of the Legislatures is confined to the topics mentioned as Entries in the List conferring respectively powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive, are sometimes not really so. They occasionally overlap, and are to be regarded as enume ratio simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance and only if that pith and substance falls substantially within an Entry or Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival list, notwithstanding.

The learned Judge refers to the passage in AIR 1941 47 (Federal Court) , which has already been set out, and observes:

It is equally well settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given.

The legislative power being conferred under the Constitution " with respect to " heads of Legislation in the Lists, the scope and ambit of the expression " with respect to " has been the subject of consideration. In the British North America Act, the phrase used in conferring power is "in relation to " and it is in the Commonwealth of Australian Constitution Act in Section 51 while the powers of the Parliament are specified, the phrase "with respect to" is used. In AIR 1941 47 (Federal Court) Sulaiman, J., elaborates the phrase " with respect to " thus:

To avoid such difficulties the Imperial Parliament has thought fit to use the expression " with respect to " which obviously means that looking at the legislation as a whole, it must substantially be with respect to a matter in one List or the other. A remote connection is not enough. Those words do not connote the idea that it must be absolutely and exclusively within one List and not encroaching, not even in an indirect way, upon any other.

In AIR 1941 16 (Federal Court) , Varadachariar, J., comparing the two phrases " with respect to " and " relating to " remarks at page 45 thus:

A point was made by the learned Counsel for the respondents that Section 100, Constitution Act used the expression '' with respect to any of the matters enumerated in the List '' and not words like '' relating to the matters enumerated in the List''. It seems to me that the words "with respect " are not by any means less comprehensive than the words '' relating to''.

In Wynes '' Legislative Executive and Judicial Powers in Australia, 3rd Edition, at page 30, the comment with reference to " with respect to " runs thus:

The late Mr. Justice Higgins frequently drew attention to the fact that the Constitution commits to the Commonwealth Parliament power to make laws, etc. " with respect to " that is to say, " on the subject of" the enumerated powers. The matter is of some importance, for, as the learned Judge observed in Mr. Arthur''s case " we have to determine in each case what is the subject of the legislation what subject is the Act ''with respect to'' what it affects-not what things or operations it may indirectly affect. " On the other hand, the force of this argument must not be over-estimated for Parliament cannot enlarge the scope of its powers beyond the limits expressed in the Constitution by references to the words " with respect to ", as, for example, by attempting to define the subject matters of legislative power in a particular case. The true position is that the Commonwealth may legislate " with respect to " certain subjects, which means that it may exercise all necessary and incidental powers, including the power of passing ancillary provisions which may not be strictly and directly referable to the actual heading under which the grant is made.

In the footnote is noted the observation of Latham, C.J., in the Banking case (1948) 76 C.L.R. 186, that " no form of words has been suggested which would give a wider power " than these words which conferred "as wide a legislative power as can be created."

9. We may, at the outset, state that the attack on the vires is confined in the present case only to Section 5 where burning of a copy of the Constitution is made an offence. The contention for the petitioners is that the subject of this Act is even ex facie. National Honour and that a copy of the Constitution is made an emblem of National Honour. Our attention is drawn to certain items in List I-Items 23, 24, 62, 53 64 and 67, where National Highways, National Water Ways and Institutions of National Importance are found. The argument is that similarly National Honour could properly be a subject of legislation only by the Union. In our view, this is not a proper test. The fact that matters of national importance are to be found only in List I, is not of much importance and cannot add to the argument, if in fact the pith and substance of the Legislation in question cannot be found under one or other of the Items in List II or List III. Learned Counsel would have us examine the contents of the impugned Legislation side by side with Central Act XIX of 1950 the Emblems and Names (Prevention of Improper Use) Act. Under the Schedule to the Act are to be found the Indian National Flag, and the name or pictorial representation of Mahatma Gandhi or Pandit Jawaharlal Nehru, besides various other items. There is to be found also the name, emblem or official seal of the United Nations Organisation, the emblems of the St. John Ambulance Association and. any name which may suggest or be calculated to suggest the patronage of the Government of India or the Government of a State and so on. The object and purpose of that Act is entirely different. Its purpose is to prevent improper use of certain emblems and names for professional and commercial purposes. The argument is that the impugned Act by Section 5 creates an emblem of national honour in a, copy of the Constitution and it could only be done by the Parliament under its residuary legislative power. It may be that the Act is not for the first time defining or creating national honour; but certainly, it is the contention that it marks out a copy of the Constitution as one of the emblems of national honour and. therefore it would come under Item 97 of List I and any offence relating to such emblem would fall under Item 93 of List I. Mr. M. K. Nambiar for the petitioners would contend that there must be first substantive law and then provisions for punishment in relation to its breach. There can be an offence only against a law in respect of a matter. Learned Counsel Mr. Nambiar would concede that the same Act: may contain both the law and penal provision in relation thereto. As we understand learned Counsel, the impugned Act relates to national honour, makes a copy of the Constitution a subject of national honour, and makes it an offence to burn the copy. The Act will therefore fall under Article 254 of the Constitution or Item. 97 read with Item 93 of the Union List. Therefore it is outside the legislative competency of the State. If it is " public order," Item 1 in the State List, that is relied upon for the legislative competence,

then there must be a law relating thereto and any offence against the law would come under Item 64 of the State List Admittedly there is no substantive law relating to public order on the subject. Mr. V.G. Rao for Messrs. Rao and Reddy would submit in the alternative that the Act creates only offences, that it does not fall under List II and it cannot fall under Item 1 of List III as the head of offence thereunder should be confined to matters under List III.

10. We shall first take up for consideration the claim of the State that the pith and substance of legislation is " Criminal Law," Item 1 of List III, and that an offence is created under the impugned Act for the first time. It is submitted by the learned Advocate-General for the State that the present legislation is not ancillary to any of the matters in List I or to any matter outside Lists II and III. While it is contended for the petitioners that unquestionably this is a legislation relating to national honour, the contention contra is that the primary intent is to make certain act an offence, and the penal provision is not merely ancillary to any substantive law, the purpose, aim and object of the legislation itself being to create offences. Now, when the subject-matter of the legislation could properly fall under the head '' Criminal Law,'' it should not be referred to the residuary power. In AIR 1941 47 (Federal Court) , Sulaiman, J., observes at page 55:

But resort to that residual power (Section 104 of Government of India Act, 1935), should be the very last refuge. It is only when all the categories in the three Lists are absolutely exhausted that one can think of falling back upon a non-descript.

Of course, the residuary power under the present Constitution is not of the same kind as under the Constitution of 1935. The three Lists under the Constitution Act of 1935 were intended to be exhaustive. Now residuary subjects are recognised even in List I-Item 97. Still, if two constructions are possible and legislation could properly be related to one of the enumerated heads of legislation, the construction should be given to the statute which will avoid making it fall under the residuary power, particularly when relating it to the residuary power would invalidate the Act. True, the language of the enactment cannot be strained; nor its immediate objects and purpose ignored with a view to avoid its falling under the residuary power. A pretended exercise of power cannot be regularised by construction.

11. The head of legislation '' Criminal Law,'' Item 1 in the Concurrent List, is of wide significance and comprehensive in its scope. Criminal Law is made to include all matters included in the Indian Penal Code at the commencement of the Constitution. The all embrasive character of the head is only accentuated by this inclusion and further more emphasised by excluding from its scope offences against laws with respect to any of the matters specified in List I or List II, and excluding further the use of naval, military or air-force or any other armed forces of the Union in aid of the civil power. Naval, military or air-force or any other armed forces of the Union is Item 2 in the Union List. Their use under the head of Criminal Law in the Concurrent List is specifically excluded. The need for such express exclusions, as we

see it, illustrates its scope and '' Criminal Procedure '' is a separate head. In our view, under the head '' Criminal Law,'' the State Legislature and the Parliament have competence to legislate upon all matters which relate to Criminal Law, so long as the laws so enacted do not affect offences against laws expressly excluded under the Entry itself. Mr. Nambiar would interpret the head as excluding offences in respect of any of the matters specified in List I or List II, or falling under the residuary power of the Parliament, whether there is a law in respect of the matter or not. Learned Counsel would submit that the State cannot, under this head, create new offences, even though it is not an offence against any Iaw.5 in respect of matters in List I or List. II. The language of the head does not warrant this limitation. From the Concurrent List is excluded only offences against laws in respect of matters specified in List I or List II. We agree with the observations of Veeraswami, J., in In re N.V. Natarajan (1964) 2 M.L.J. 530 : 1964 M.L.J. 666 :

...the effect of the exclusion by the words '' excluding offences against laws with respect to any of the matters specified in List I or List II'' is that, till a law is made with respect to any of the matters, in List I or List II, no limit is placed upon, and the exclusion does not operate to limit the ambit of the power under the head of Criminal Law'' in List III.

12. We are unable to accede to the contention of Mr. V.G. Rao, that the power under this head would be limited to offences in respect of laws made in List III, that is the power is equated to the power that is to be found in Item 93 in the Union List, and Item 64 in the State List. The heads of legislation-Item 93. of List I and Item 64 of the List II-are clearly provisions designed to secure effective operation of valid legislation under the respective Lists. It is needless to speculate whether, in the absence of such heads of legislation under List I and List II, penal provisions in respect of legislations under the Lists cannot be sustained as an incidental power and ancillary to the main purpose. It looks as if the purpose of providing Items 93 and 64 is to take them expressly out of Item 1 of List III, and provide against one Legislature making laws in relation to offences against laws made by another Legislature; and that also explains the absence of a provision similar to Items 93 and 64 in List III. Criminal Law surely, in our view, must mean also the creation of offences. All matters included in the Indian Penal Code at the commencement of the Constitution are also brought under its scope. But the specification of matters under the Penal Code does not exhaust the amplitude of the power. The Indian Penal Code contains various categories of offences; offences against the State; offences against public tranquility, offences by or relating to public servants; offences relating to elections, coins and Government stamps, weights and measures; offences relating to public health, safety, convenience, decency and of morals; offences relating to religion and human body; offences relating to property; and so on. Section 5 of the Penal Code contemplates penal laws other than those specified under the Code, by special and local laws. The General Clauses Act (Central) Act X of 1897, defines offence as meaning " any act or omission made punishable by any law for the time

being in force ".

13. In Halsbary''s Laws of England, Third Edition, Vol. 10, at p. 271, para. 501. criminal law and procedure are stated to deal with the nature, prosecution and punishment of crime, and crime is defined as " an unlawful act or default which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment." It is stated,

Where a crime is often also an injury to a private person, who has a remedy in a civil action, it is as an act or default contrary to the order, peace and well-being of society that a crime is punishable by the State.

14. In Mogul S.S. Co. v. Mc Gregor Gow & Co.(1839) L.R. 23 Q.B.D. 589 Lord Esher, M.R., stated, " an illegal act which is a wrong against the public welfare, seems to have the necessary elements of crime."

15. Bouvier''s Law Dictionary defines crime thus:

Crime is defined as an act committed or omitted in violation of a public law forbidding or commanding it; a wrong which the Government notices as injurious to the public and punishes in what is called a criminal proceedings in its own name. It generally denotes an offence of a deep and atrocious dye. Crimes are defined and punished by statutes and by the common law and they embrace every indictable offence and include all immoral acts which tend to the prejudice of the community and are punishable criminally by Courts of justice.

16. In 14 American Jurisprudence, " Criminal Law ," at page 752, it is stated:

The term " Criminal Law " is sufficiently comprehensive to cover all of that great branch of jurisprudence which deals in any way with crimes and punishments.

At page 753, defining crime, it is stated:

Certain kinds of wrongs are considered as of a public character because they possess elements of evil which affect the public as a whole, and not merely the person whose rights or property or person have been invaded. Such a wrong is called a " crime". The term is not easy to define. Perhaps it can best be defined as any act or omission which is forbidden by law, to which a punishment is annexed, and which the State prosecutes in its own name. If the law has provided no effectual means for the trial or punishment of a particular act, there is an immunity from punishment, no matter how great an offender the individual may be, nor how much his crimes may have shocked the sense of justice of the country or endangered its safety.

17. It is clear from the above that it is for the State according to its view of public policy, to declare any particular act to be a crime. As noticed in Bouvier''s Law Dictionary a wrong which the Government notices as injurious to the public and punishes it, will be a crime. We have for instance, Section 295 of the Indian Penal

Code, making injury to or defiling places of worship with intent to insult the religion of any class of persons an offence. Under that section, whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damages or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both. But this provision is confined to insulting the religion of any class of persons, and the religious susceptibilities of any class of persons. This section and other provisions in the Act, like Section 295-A (providing against deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs), Section 297(making it a crime to trespass on burial places or places of worship with the intention of wounding the feelings of any person or insulting the religion of any person, or offering indignity to any human corpse), and Section 509(making it penal to insult the modesty of a woman by word, gesture or act), give an idea of the wide sweep that Criminal Law could take.

18. Patriotism and loyalty to the Constitution are matters of feeling and conduct with the human spirit. They are capable of drawing out of man the highest of his noble qualities and supreme sacrifice. They belong to the category of feelings which, at any rate at the present stage of society and world order, man regards as of paramount importance. From such belief flows sentiments of great regard and veneration to objects which symbolise such feelings. The Constitution of India which the people of India have given themselves, symolises the realisation of their cherished dreams after decades of unparalleled sacrifice, and it is but natural to expect any citizen of India to regard with veneration any document that embodies the Constitution. True, the Constitution can be amended and has been amended several times, but the Constitution is an organic instrument and carries within it the power to get itself amended. To the instrument as it stands he pays his deepest homage. It symbolises to him his hard won sovereignty; it contains his charter of rights.

19. It is quite a common feature to be observed that people in this country, at least large sections, look with veneration upon any parchment, paper, palm leaf, or slate, which records any writing, as manifestations of Goddess Saraswathi. If, in such circumstances, the State should think it necessary to declare the wilful burning of any article embodying the Constitution or part of it, an offence, the State is only discharging its duty, and reflecting the sentiments of large sections of the Indian public, it is only making punishable an act which may otherwise go unpunished, though it might have offended the sentiments of large sections of the community, and deeply wounded their feelings. It will be a case of mala in se, that is, an offence against, nature or contrary to the moral sense of the community, and not a mere mala prohibita, that is, an offence against laws which enjoin positve duties and

forbid things which are not maid in se, to which is annexed a penalty for non-compliance.

20. Here we would like to quote the observations of the Supreme Court in S. Veerabadran Chettiar Vs. E.V. Ramaswami Naicker and Others, . The decision impliedly recognise the duty of the State to protect the sentiments and susceptibilities of its different groups of citizens. That was a case of religious susceptibilities. The question in that case was whether the breaking in public of an unconsecrated clay idol of God Ganesa held sacred by a large section of Hindus with the express intention of insulting the feelings, of the Hindu community would be an offence u/s 295, Indian Penal Code. The Indian Penal Code had used the words " any object held sacred by any class of persons." Differing from this Court and holding that idols are only illustrative of those words and the objects destroyed need not be consecrated ones, Sinha, J., delivering the judgment of the Supreme Court, remarks at page 1035:

A sacred book like the Bible, or the Koran, or the Granth Saheb, is clearly within the ambit of these general words. If the Courts below were right in their interpretation of the crucial words in Section 295, the burning or otherwise destroying or defiling such sacred books will not come within the purview of the penal statute. In our opinion, placing such a restricted interpretation on the words, of such general import, is against all established canons of construction. Any object, however trivial or destitute of real value in itself, if regarded as sacred by any class of persons, would come within the meaning of the penal section. Nor is it absolutely necessary that the object, in order to be held sacred, should have been actually worshipped. An object may be held sacred by a class of persons without being worshipped by them. It is clear, therefore, that the Courts below were rather cynical in so lightly brushing aside the religious susceptibilities of that class of persons to which the complainant claims to belong. The section has been intended to respect the religious susceptibilities of persons of different religious persuasions or creeds. Courts have got to be very circumspect in such matters, and to pay due-regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share these beliefs or whether they are rational or otherwise, in the opinion of the Court.

21. Our attention was drawn by the learned Advocate-General to Proprietary Articles Trade Association v. Attorney-General for Canada L.R. (1931) A.C. 310 , a case arising under the British North America Act. The Dominion Parliament of Canada sought to maintain the validity of the impugned legislation by referring to Item 27 in Section 91 in the Dominion List, which ran:

Criminal Law, excepting the constitution of Courts of criminal jurisdiction, but including the procedure in criminal matters.

For the Province it was contended that the legislation fell within the exclusive legislative powers of the Province under the heads " Property and Civil Rights or Administration of Justice." After posing as one of the questions for consideration, whether in substance, the legislation fell within the enumerated class of subjects or whether, on the contrary, under the guise of enumerated class, it was an encroachment on an included class, the Judicial Committee observed:

''Criminal law'' means ''the criminal law in its widest sense'': Attorney-General for Ontario v. Hamilton Street Railway Co. L.R. (1903) A.C. 524. It certainly is not confined to what was criminal by the law of England or of any Province in 1867. The power must extend to legislation to make new crimes. Criminal law connotes, only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State. The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one; Is the act prohibited with penal consequences ?... It appears to their Lordships to be of little value to seek to confine crimes to a category of acts which by their very nature belong to the domain of '' criminal jurisprudence '', for the domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the State to be crimes, and the only common nature they will be found to possess is that they are prohibited by the State and that those who commit them are punished.

22. Reference may be made to the decision of the Judicial Committee in Attorney-General for British Columbia v. Attorney-General for Canada L.R. (1937) A.C. 368 where again the amplitude of the head of legislation Criminal Law, head 27 of Section 91 of the British North America Act, came up for consideration. Following the Proprietary Articles Trade Association case L.R. (1931) A.C. 310 , above referred to, Lord Atkin states:

The basis of that decision is that there is no other criterion of wrongness'' than the intention of the Legislature in the public interest to prohibit the act or omission made criminal. Gannon, J., was of opinion that the prohibition cannot have been made in the public interest because it has in view only the protection of the individual competitor''s of the vendor. This appears to narrow unduly the discretion of the Dominion Legislature in considering the public interest. The only limitation on the plenary power of the Dominion to determine what shall or shall not be criminal is the condition that Parliament shall not in the guise of enacting criminal legislation in truth and in substance encroach on any of the classes of subjects enumerated in Section 92. It is no objection that it does in fact affect them. If a genuine attempt to amend the criminal law, it may obviously affect previously existing civil rights. The object of an amendment of the criminal law, as a rule, is to deprive the citizen of the right to do that which apart from the amendment, he could lawfully do. No doubt, the plenary power given by Section 91(27) does not deprive the Provinces of their rights u/s 92(15; of affixing penal sanctions to their own competent legislation.

23. Reference was made on behalf of the petitioners to The Board of Commerce case L.R. (1922) 1 A.C. 191 . Emphasis was laid on the following passage at page 199 of the report.

It is quite another thing, first to attempt to interfere with a class of subject committed exclusively to the Provincial Legislature, and then to justify this by enacting ancillary provisions, designated as new phases of Dominion criminal law which require title to so interfere as basis of their application.

In the context of the enactment now impugned before us, this observation has no bearing. The immediately preceding observations of Viscount Haldane are apposite for the present case:

It is one thing to construe the words ''the criminal law, except the constitution of Courts of criminal jurisdiction, but including the procedure in criminal matters/as enabling the Dominion Parliament to exercise exclusive legislative power where the subject-matter is one which by its very nature belongs to the domain of criminal jurispurdence. A general law, to take an example, making incest a crime, belongs to this class.

It is after this passage that the observation relied upon by the learned Counsel for the petitioners comes. The power of Parliament to make a crime under the general law was recognised.

24. The decision, Attorney-General for Ontario v. Reciprocal Insurers (1924) A.C. 328, is also not of any assistance to the petitioners in the present case. The Privy Council, no doubt, observes that:

the Parliament of Canada cannot, by purporting to create penal sections u/s 91, head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the Provincial sphere, to deal with matters committed to the Provinces, it cannot be upheld as valid.

Certainly the legislation in the present case cannot be said to be criminal in form only. Scrutinized in its entirety, the legislation is wholly criminal and, as admitted by Mr. V.G. Rao for the petitioners in W.P. No. 751 of 1965, the Act only creates offences. Neither the Object and Reasons for the enactment, nor the Title can be decisive of the pith and substance or true character of the legislation. Of its, seven sections leaving out the Title and the saving provision the rest of it only make offences of certain acts and provide for punishment. The following observations in the Reciprocal Insurers'' case L.R. (1924) A.C. 328, may be usefully referred to at p. 343:

Their Lordships think it undesirable to attempt to define, however generally, the limits of Dominion jurisdiction under head 27 of Section 91; but they think it proper

to observe, that what has been said above does not involve any denial of the authority of the Dominion Parliament to create offences merely because the legislation deals with matters which, in another aspect, may fall under one or more of the sub-divisions of the jurisdiction entrusted to the Provinces. It is one thing, for example, to declare corruption in municipal elections, or negligence of a given order in the management of railway trains, to be a criminal offence and punishable under the criminal Code it is another thing to make use of the machinery of the criminal law for the purpose of assuming control of" municipal corporations or of Provincial Railways.

A charge of the latter kind that the State in this case was in the guise of enacting criminal law usurping the Centre''s legislative power cannot in our view be laid. The fact that the offence relates to the Constitution a matter of all-India concern, and insult to what is termed as national honour is aimed at national honour not being within the State''s legislative competence is neither here nor there when the legislative measure is for punishing a particular conduct not the subject of any previous legislation by the Centre.

25. The decision of the Privy Council in Russel v. The Queen (1882) L.R. 7 A.C. 829 is of considerable-significance and requires specific mention. The case arose under the Temperance Act of Canada on a conviction under the Act. The question raised before the Privy Council was that, having regard to the distribution of legislative powers under the British. North America Act it was not competent for the Parliament of Canada to pass the Act in question. For the Provinces several items under the Provincial List were relied upon under one or the other of which the Act could be contained. Dealing with the head '' property and civil rights '' of the Provinces the Judicial Committee stated:

Next, their Lordships cannot think that the Temperance Act in question properly belongs to the class of subjects, ''property and civil rights''. It has in its legal aspect one obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property, but a law-placing restrictions on their sale, custody, or removal, on the ground that the free sale or use of them is dangerous to the public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which those words are used in the 92nd section. What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with, and though incidentally the free use of things in which men may have property is interfered with, the incidental interference does not alter the character of the law. Upon the same considerations the Act in question cannot be regarded as legislation in relation to civil rights. In however large a sense these words are used, it could not have been intended to

prevent the Parliament of Canada from declaring and enacting certain uses of property, and certain acts in relation to property to be criminal and wrongful. Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to overwork a horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do as he pleased with his own, cannot properly be regarded as legislation in relation to property or to civil rights. Nor could a law which prohibited or restricted the sale or exposure of cattle having a contiguous disease be so regarded. Law of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment,, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fell within the general authority of Parliament to make laws for the order and good government of Canada, and have direct relation to criminal law, which is one of the enumerated classes of subjects; assigned exclusively to the Parliament of Canada.

(The emphasis (italics) is ours.)

26. State of Rajasthan v. G. Chawla (1959) S.C.J. 485 : (1959) M.L.J. 309 gives a direct lead for the determination of the present case. The impugned Act was a State law entitled Ajmer (Sound Amplifiers Control) Act. The case arose out of a prosecution for breach of the conditions of a permit granted under the Act- inter alia that the amplifiers had been so tuned as to be audible beyond the prescribed limit. While the State relied on Entry 6 of the State List '' Public Health and Sanitation Hospitals and Dispensaries'' to oust the jurisdiction of the State Item 31 of the Union List '' Post and Telegraphs, Telephones, Wireless, Broadcasting and other like forms of communication.'' was relied upon. Before the Supreme Court besides Entry 6, reliance was placed on Entry, I '' Public Order (but not....etc.)'' Hidayatullah, J., in validating the legislation as within the legislative competence of the State, observes:

There can be little doubt that the growing nuisance of blaring loudspeakers powered by amplifiers of great output needed control, and the short question is whether this salutary measure can be said to fall within one or more of the Entries in the State List. It must be admitted that amplifiers are instruments of broadcasting, and even of communication, and in that view of the matter, they fall within Entry 31 of the Union List. The manufacture or the licensing of amplifiers or the control of their ownership or possession, including the regulating of the trade in such apparatus is one matter, but the control of the ''use of such apparatus, though legitimately owned and possessed, to the detriment of tranquillity, health and comfort of others is quite another. It cannot be said that public health does not demand control of the use of such apparatus by day or by night, or in the vicinity of hospitals or schools, or offices or habited localities. The power to legislate in relation to public health includes the power to regulate the use of amplifiers as producers of loud noises when the right of such user, by the disregard of the comfort of, and

obligation to, others, emerges as a manifest nuisance to them

The pith and substance of impugned Act is the control of the use of amplifiers in the interests of health and also tranquillity, and thus falls substantially (if not wholly) within the powers conferred to preserve, regulate and promote them and does not so fall within the Entry in the Union List, even though the amplifier the use of which is regulated and controlled is an apparatus for broadcasting or communication.

The learned Judge refers with approval to the observations of Latham, C.J., of Australia in Bank of New South Wales v. The Commonwealth (1948) 76 C.L.R. 1 :

A power to make laws '' with respect to '' a subject-matter is a power to make laws which in reality and substance are laws upon the subject-matter. It is not enough that a law should refer to the subject matter or apply to the subject-matter; for example, Income Tax laws apply to clergymen and to hotel keepers as members of the public; but no one would describe an Income Tax law as being, for that reason, a law with respect to clergymen or hotel-keepers. Building regulations apply to buildings: erected for or by banks but such regulations could not properly be described as laws with respect to banks or banking.

27. Considerable reliance was laid by the learned Counsel Mr. V.G. Rao on a passage in the judgment in In re N.V. Natarajan (1964) 2 M.L.J. 530 : (1964) M.L.J. 666, already referred to, for his contention that the subject of the impugned legislation is national honour, a matter wholly outside the competence of the State Legislature. The learned Judge, Veeraswami, J., while referring to the veneration with which the nation looked upon the National Flag, the Father of the Nation, and the Constitution, has stated:

The essence of the Act is the legislative recognition of the facts that Mahatma Gandhi as the Father of the Nation, the Indian National Flag which symbolises the sovereignty of this country and the Constitution of India, which is the supreme document and which enshrines the set up of the Democratic Republic, the rights and aspirations of the nation and the machineries of the Government are amongst those constituting our national honour and that any of the said acts done willfully is an insult to the Indian Nation and its honour and is a penal offence. While the subject of legislation is the national honour and its purpose is to preserve and protect it from any wilful acts of insult it is obvious that what is basic to the Act is public propriety and orderliness.

28. We do not read the phrase '' the subject of legislation '' in the passage quoted as referring to the purpose or object of legislation. The clauses immediately following negative any such inference. The purpose of legislation is public propriety and orderliness, in recognition of the deep consciousness of the community in the matter of the Constitution, National Flag, and the Father of the Nation. As in the Canada Temperance Act case (1882) L.R. 7 A.C. 829, in the above case, it may be that the Act which is prohibited, which is the gist and crux of the legislation, affects a

matter not within the legislative competence of the State. But it is not that matter that is the subject of the legislation. It may be that it is a subject on which the effect of the legislation incidentally falls, but that is not the real object of the legislation. The legislation is not with respect to national honour, but with respect to an offence in which national honour is involved. The purpose of the Act, its pith and substance, is to give statutory recognition to a public sentiment; to penalise that which in the view of the State the community regards as improper and offensive to its sentiments. The fact that the subject national honour is not within the State''s competence cannot preclude the State from acting within its sphere and making criminal, wrongful abuse of or insult. to national honour. The Sound Amplifer''s case (1959) S.C.J. 485 : (1959) M.L.J. 309, above referred to, if we may say so with respect, neatly brings out the distinction.

29. The decision of Chagla, C.J., and Gajendragadkar, J., (as he then was) in Kalidas Amtharam Vs. Emperor, , a decision under the Bombay Harijan (Removal of Social Disabilities) Act, under the Government of India Act, 1935, may also be referred to. The contention there was that the subject-matter of the legislation, the removal of the social disabilities of Harijans, did not form part either of List II or List III in the Seventh Schedule of the Act. It is not to be found in List I. Chagla, C.J. held that the impugned legislation clearly fell under Item 1 of List III in the Concurrent List, corresponding to the present Item 1 of List III, Criminal law. It was observed:

Now, reading this statute as a whole, it is clear that it was the view of the Legislature that social disabilities from which the Harijans suffer should be removed. According to the Legislature, anyone who was privy to the continuance of these social disabilities should be punished, and the Legislature also took the view that the only way that the harijan''s status and position could be improved was by punishing those who continued to inflict disabilities upon Harijans. Therefore, in passing this Act, what the Legislature has done is to add to the body of criminal law. It has created new offences.

30. Clearly, in our view, the impugned section squarely falls under Item 1 '' Criminal Law '' in List III, and so is within the legislative competence of the State. It-has declared an act to be a crime and added to the penal law of the State. It is manifest that the legislative purpose is to create a crime and not create for the people emblems of National honour. After decades of struggle and sacrifice the people had already given themselves a Constitution which they were proud of and which symbolised their National honour. The Act made punishable any intentional insult to the Constitution. The Act became necessary as there was clear threat of such insult from certain quarters. We are in entire agreement with Veeraswami, J., in In re N.V. Natarajan (1964) 2 M.L.J. 530 : (1964) M.L.J.666, that the impugned Section 5, is, in any case, competent for the State Legislature to enact under the head '' Criminal Law '' in the Concurrent List. We may, in passing, remark, that, though it has not been referred to, it is conceivable that legislation relating to copies of the

Constitution may come under Item 39 of the Concurrent List under the head '' Books ''.

31. The State in the alternative relied on the head of legislation, Public Order, Item 1 of List II. As it stands and is conditioned, except for the exclusion of the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power, the term is the most comprehensive term and of the widest amplitude, the maintenance of public order within the State being primarily the concern of the State. Plenary powers of legislation for the maintenance of public order within the State is to be found defined as " an expression of wide connotation and signifies that state of tranuquillity prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted ". Preventive detention for reasons connected with the security of a State and maintenance of public order, etc., is however, found in Item 3 of List III and Preventive Detention for reasons connected with the defence, foreign affairs, the security of India, etc., is found in Item 9 of List I. According to Mr. M.K. Nambiar, there cannot straightaway be creation of an offence under this head; there must be a law relating to public order specifying rights and duties of the citizens; and only breach thereof could be made an offence under Item 64 of List II. Our attention is drawn to various statutes relating to public order which have been passed, like Madras Maintenance of Public Order Act I of 1947, the Assam Maintenance of Public Order Act, 1947, and the Orissa Maintenance of Public Order Act, 1950. We cannot agree. In our view, it will be open under the head Public Order itself to prohibit by punishment any act or conduct likely to disturb peace and public tranquillity or interfere with the placid life of the community.

32. Reference was made to a decision of the Supreme Court in the The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, . But there the concept of Public Order was considered under Article 19(2) as amended by the Constitution 1st Amendment Act of 1951. The learned Judge, Subba Rao, J., who spoke for the Court, observes at page 639:

But in India under Article 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 '' is synonymous with public peace, safety and tranquility.

The very decision also recognises that an Act need not expressly state that it is for the maintenance of public order and the purpose of the Act may be implied there from. For the petitioners reliance was placed on the decision of the Federal Court in Rex v. Basudeva (1950) S.C.J. 47 :1949 F.C.R. 657 : AIR 1950 F.C. 67, a case arising from a detention order made in pursuance of the U.P. Prevention of Blackmarketing (Temporary Powers) Act, 1947. Blackmarketing was intended to be put down by the Act and in striking down the impugned provision in the Act as outside the competency of the Provincial Legislature, it is observed at page 68:

The learned Advocate-General 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 Entry. It is true that the black-marketing in essential commodities may at times lead to a disturbance of public order but so may, for example, the rash driving of an automobile or the sale of adulterated foodstuffs. 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 1 of List II. Preventive detention is a series invasion of personal liberty, and the power to make laws with respect to it is, in the case of Provincial Legislature, strictly limited by the condition that such detention must be for reasons connected with the maintenance of public order. The connection contemplated must, in our view, be real and proximate, not farfetched or problematical.

But it must be pointed out that earlier with reference to the '' pith and substance '' rule at page 68 it is remarked:

Turning to the main question, the learned Judges below invoked somewhat unnecessarily what may be called the pith and substance rule for a true solution of the problem. That rule has been evolved by the Judicial Committee for determining whether a particular statute is legislation with respect to matters in the one or the other of the Lists in Schedule VII. No such question arises in the present case. The real question is whether the preventive detention provided for in Section 3(1) itself makes no reference to the maintenance of public order.

Legislative competency under the three Lists is one thing, the testing of the validity of any particular Act under the guaranteed fundamental rights is quite a different matter. In The State of Rajasthan Vs. G. Chawla and Dr. Pohumal, , the Supreme Court has indicated that the Ajmer (Sound Amplifiers Control) Act could be brought conceivably under Entry I of the State List also. In Russel v. The Queen L.R. 7 A.C. 829, which we have considered rather in extenso above, the Temperance Act of Canada is stated to be designed for the promotion of public order, safety or morals. The end and purpose of the impugned legislation, the key to its substance, can be seen from the circumstances in which the Act came to be passed. In the Statement of Objects and Reasons it is set out that certain persons had been threatening to

burn the Constitution of India, the National Flag and portraits and pictures of Mahatma Gandhi and to destroy his statutes or otherwise desecrate or insult them, and the Government considered that the action should be put down firmly. No doubt, neither in the Act nor in the Statement of Objects and Reasons do we find any specific reference to a threat to disturbance of public order and breach of public peace. There is noticeable economy in words. But the objects whose desecration is made penal are such that one could well infer that it is taken for granted that there will be breaches of public peace and strong protest from the public if the threats are carried out. However, it is unnecessary, in our view, to canvass further the tenability of the legislation under Item 1 of List II, as it could without any difficulty be maintained under Item 1 of List III.

33. We shall next take up for consideration the contention that the measure offends the fundamental rights under Article 19(1)(a) and (1)(f) of the Constitution. Learned Counsel contends that Section 5 of Act XIV of 1957 completely prohibits with out limitation even peaceful demonstration and that even a mere innocent burning of a copy of the Constitution or part of it is itself made an offence. Learned Counsel submits that burning objects is a recognised and well-known form of protest or demonstration, and the bringing home to the Government and to the public by those who desire to do so, their objection to certain provisions of the Constitution is by a blanket provision wholly penalised. This, it is submitted, is interference with the fundamental rights of freedom of speech and expression, demonstration in whatsoever form being a form of expression or communication of ideas.

34. To start with, we are unable to read Section 5 as an unreasonable restraint. The freedom guaranteed under Article 19(1)(a) is subject to imposition of reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, their relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. We do not understand learned Counsel as contending that even desecrating or insulting a copy of the Constitution could not be restrained. As we understand him, it is the clamping down by a blanket ban of a known form of demonstration--be it ever so innocent that is questioned. Our attention was drawn to the decision of the Supreme Court in Kameshwar Prasad and Others Vs. The State of Bihar and Another, , wherein Rajagopala Ayyangar, J., delivering the judgment of the Court observes at page 1170:

Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one''s ideas or others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech.... A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to

whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedom guaranteed by Articles 191(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly for instance stone throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a)or(4). It can equally be peaceful and orderly such as happens when the members of the group merely Wear some badge drawing attention to their grievances.

Proceeding the learned Judge refers to the decision of the Supreme Court in Superintendent, Central Prison v. P.M. Lohia 1960 S.C.J. 597 : 1960 M.L.J. 340, and observes at page 1171:

The learned Judge (Subba Rao, J.) stated that in order that a legislation may be " in the interest'' of public order " there must be a proximate and reasonable nexus between the nature of the speech prohibited and public order. The learned Judge rejected the argument that the phrase " in the interests of public order " which is wider than the words " for the maintenance of public order " which were found in the Article as originally enacted, thereby sanctioned the enactment of a law which restricted the right merely because the speech had a tendency however remote to disturb public order. The connection has to be intimate, real and rational. The validity of the rule how impugned has to be judged with reference to the tests here propounded.

Dealing with the impugned rule, the learned Judge observes at page 1172:

The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration, be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result.

For the petitioners reference was also made to Arthur Terminiello v. City of Chicago 337 U.S. 1 : 93 Law Ed. 1131. We do not find how this case can help the petitioners in the context of the present case. There can be no disagreement that for a successful democracy there must be utmost freedom of speech and expression. The citizen should be legally free to argue for the ushering in of what he considers to be the proper language policy by constitutional methods. A democratic Government should in the ultimate be controlled by the consensus of the governed and the process of reaching intelligent popular decisions requires freedom of speech and expression. This is guaranteed by the Constitution subject to reasonable restraints. While there must be freedom of discussion and freedom of opportunity to convince and bring round to one''s views others, one cannot overlook that large sections of the community may not be patient at all times with reference to propagation of certain ideas in certain manners and forms. The State in the circumstances would

have to solve the problem in the light of the local condition that there is no danger to public order and peace. Freedom of speech and expression guaranteed by the Constitution is not absolute and the very freedom can be enjoyed only in an orderly society. As noticed in Corpus Juris Secundum, volume 16, at page 1107:

Resort to epithets or personal abuse is not in any proper sense the communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act raises no question under the Constitution and there are well-defined and narrowly limited classes of speech, the prevention and punishment of which does not raise any constitutional problem, including the lewd and obscene, the profane, the libellous, and the insulting or fighting words which by their very utterance inflict injury or tend to incite an immediate breach of the peace. The right of free speech must be exercised with reasonable regard for the conflicting rights of others and the privilege of free speech does not confer on one individual the right to use that privilege to the injury of another.

35. Now, the impugned legislation penalises only wilfully burning of any copy or a copy of a part of the Constitution of India, and the word '' wilfully '' is of considerable import in the context of its user. It is not every burning of a copy of the Constitution that is made an offence. '' Wilfully '' there, is not just the equivalent of knowingly or intentionally. It is something more. It is burning the Constitution purposely, the purpose getting apparent from the two succeeding words '' desecrates'' or '' insults '' and as revealed by the Short Title to the Act and the Preamble. ''Wilfully '', as we see it, denotes an evil intention and it is found in Stroud''s Judicial Dictionary, 3rd Edition, Volume 4, at page 3305, that such is the common use of the word in the English language.'' Wilfully '' in the context does not mean merely intentionally as opposed to accidentally which meaning it sometimes has. In The Queen v. Senior (1899) 1 Q.B. 283 , '' wilfully '' is stated to mean that '' the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it. ''. The paper embodying the Constitution must be burned as embodying the Constitution; there must be deliberation to burn a copy or part of the Constitution with the intention of desecrating or insulting. No doubt if the words '' wilfully burns'' stand by themselves, it may take in an innocent burning of the paper containing the Constitution. But the words take their colour from the context. The enactment is not made in vacuo. The circumstances in which the Act came to be passed, the object and purpose of the Act as revealed in the Preamble and the other parts of the Act provide the key to the understanding of the language and place a limitation on the words '' wilfully burns''.

36. In Craies on Statute Law, 6th Edition, at page 177, the principles of interpretation in such circumstances as gathered from the case-law are set out thus : From Cox v. Hakes (1890) L.R. 15 A.C. 506 and Lord Bramwell 522, the following statement is extracted:

It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation." General words therefore must be understood as used with reference to the subject-matter in the mind of the Legislature and limited to it.

In Watnery Combe, Reid and Co., Ltd. v. Berners L.R. (1915) A.C. 885, Lord Haldane remarks:

That may be so interpreted where the scheme appearing from the language of the Legislature read in its entirety, points to consistency as requiring the modifications of what would be the meaning apart from any context or apart from the purpose of the Legislature as appearing from the words which the Legislature has used, or apart from the general law.

We are on a penal statute and when interpretation of the statute becomes necessary, it should lean towards preserving the liberty of the subject. That the word '' burns in Section 5 of the Act can only refer to burning with an intention of desecrating or insulting in the context of its user, will be apparent from the following illustration given in Maxwell on Interpratation of Statutes, 11th Edition, at page 324:

On the same principle, an Act which prohibited the '' taking or destroying '' of the spawn or fish would not include a '' taking '' of spawn to remove it to another bed, for the Word '' destroying '' with which '' taking '' was associated, indicated that the taking which was prohibited was dishonest or mischievous.

In an Act which made it penal to ''take or kill'' fish without the leave of the owners of the fishery, the same kind of taking '' was similarly held to have been intended.

It is an established principle of interpretation of statute that if very general language is used in an enactment, which it is clear must have been intended to have some limitation put upon it, the Preamble may be used to indicate to what particular instances the enactment is intended to apply-see Craies on Statute Law, 6th Edition, at page 203. If need be, we would read the conjunction '' or '' before '' insults'' in Section 5 as '' and'', that the section may read : '' Whoever wilfully burns or desecrates and insults". Vide Maxwell on Interpretation of Statutes, 11th Edition, at page 230 for an illustration where an absurd consequence was avoided and the real intention of the Legislature which was beyond reasonable doubt was effected by reading '' or '' as '' and ''.

37. In Frank and Wagnalls'' New Standard Dictionary '' insult'' is explained thus : "To treat with gross indignity, insolence or contempt, by word or act; officer an indignity or affront to;" ''Desecrate'' is defined in the Dictionary as "divert from sacred to a common use; give up to sacrilege; profane, as to desecrate a shrine or holy vessels".

38. Learned Counsel contends that even if a person burns a copy of the Constitution in the fastness of his own house, he could be held guilty under the section, and the wide sweep of the enactment beyond the needs makes the Act unconstitutional. We do not construe the Act like that. The gist of the offence is insult and if insult is to be effective, it has to be conveyed. The law does not take note of uncommunicated or unexhibited ideas or thoughts or feelings. In the Law Lexicon of India, Ramanatha Iyer Edition, page 603, ''Insult'' is explained as being '' active '' like outrage. The language is ''whoever insults'', not ''whoever thinks he insults'': insult cannot be taken by a copy of the constitution; it will hurt the millions who pay homage to the Constitution. The burning that is banned is not one intended for absorption of stone walls or for edification of stoic philosopher-spectators. It is a burning that one may expect would provoke and offend those hostile to the idea, while exciting the friendly and sympathetic to extremes of demonstration, with likelihood of violent classes between the two.

39. The petitioners in this case have pleaded guilty to the charges levelled against them and they have also suffered imprisonment. The convictions have become final and their validity is being questioned only collaterally in the present proceedings, the matter arising under a different context. In In the matter of Tassadus Ahmad, khan Sherwam ILR All. 352 , a Full Bench of the Allahabad High Court held that in disciplinary proceedings taken against a member of the legal profession on account of his being convicted of some offence it was not open to the person against whom such proceedings were taken to question the propriety of his conviction. The learned Judges followed the decision of the Judicial Committee in In the matter of Rajendra Nath Mukherji ILR 22 All. 49(P.C.) : L.R. 26 IndAp 242. In the circumstances, and in the view we take of the scope of Section 5 we do not think it necessary to elaborate further the discussion under Article 19(1)(a) of the Constitution. Prima facie as we see on the construction placed on Section 5 the restriction must be held to be reasonable and in the interests of public order within the meaning of Article 19(2) of the Constitution. We are in a democracy and if the sense of the community is outraged by the law it could make itself sufficiently felt in the press and in the Legislatures to put an end to any abuse and can always get the law amended.

40. Nor do we find any substance in the argument that the impugned provisions violate the fundamental rights of the petitioners under Article 19(1)(f) of the Constitution. The contention is that the paper embodying the Constitution is the property of the petitioners and they can do what they please with it. But the fundamental right under Article 19(1)(f) does not prevent the State from making laws imposing reasonable restrictions on the exercise of the right in the interests of the general public. The petitioners cannot claim any fundamental right to annoy and injure the feelings of large sections of the public by desecrating or insulting a document embodying the Constitution by law established which they venerate and hold dear. A man cannot set fire deliberately to his own cottage with an intention that the conflagration should spread to the neighbouring cottages and plead that

he can do what he pleases with his own property. In In re N V. Natarajan 1964 M.L.J. 666 : (1964) 2 M.L.J. 530, the learned Judges rejected the claim for protection under Article 19(1)(f) of the Constitution and we are in entire agreement with the decision.

41. We shall next examine the contention that the ban by Section 25(1) of the Panchayat Act on a person who has been sentenced by a Criminal Court to imprisonment for an offence involving moral delinquency standing for election as a member of the Panchayat is discriminatory and violative of Article 14 of the Constitution. The discrimination alleged is not based upon anything inherent in the provision itself; what is alleged is that this provision differs from similar provisions in other enactments in respect of elections to local bodies. In the earlier Panchayat Act of 1950 for a disqualification to operate as a ban the sentence of imprisonment should be for a period of not less than six months. Section 49 of the District Municipalities Act also requires that the sentence of imprisonment by a Criminal Court should be for a period of six months or more. That Act further provides that the offence must be other than that of a political character, and should be an offence involving moral delinquency. The requirement of the Madras District Boards Act, 1920, is also similar and is found in Section 55 of the Act. The Madras City Municipal Act, by Section 52(1) also provides disqualification only on similar grounds. But the Representation of Peoples Act, 1951, by Section 7, enacts disqualification for membership to Parliament and the State Legislature in a case where a person has been convicted by a Court in India for any offence and sentenced to imprisonment for a period of not less than two years. In the Representation of Peoples Act, there is no specification that the offence should be one involving moral delinquency. The argument of discrimination is based upon the varying provisions in the matter of elections to the several bodies. We fail to see any discrimination that would come under Article 14, in this matter. First, it must be noticed that there is no such thing as a fundamental right to stand for election to any of these bodies. In respect of each of the electoral bodies particular qualifications are prescribed, and, with reference to anv particular electoral body, one does not find any discrimination between one group and another. The different enactments adopt different standards in imposing disqualifications. The Madras Panchayat Act, 1958, by itself, does not discriminate between one class of persons and another class, where both classes of persons are similarly situated. The Act has classified persons, who have been convicted for offences involving moral delinquency. This classification cannot be said to be irrational. It is well settled that, while Article 14 forbids class legislation it does not forbid reasonable classification for purposes of legislation, and the only two tests that classification has to stand are (i) that the classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of the group; and (ii) the differentia must have a rational relation to the objects sought to be achieved by the statute in question. In respect of Panchayat elections, the electorates are generally closed and compact bodies. The Panchayats are divided

into wards, and the members of the panchayat may be expected to be in close contact with their voters. They have to command the confidence of the villagers; the anonymity and impersonality which without much difficulty could be had in town life will be hard to be retained in villages, and the Legislature might well have thought that, in such circumstances, any imprisonment, provided it involved moral delinquency, should disbar a candidate from membership. In our view, the argument based on Article 14 is wholly untenable.

42. We shall now take up for consideration the question whether the convictions in the two cases can be said to be for offences involving moral delinquency. The expression ''moral delinquency'' has not been defined specifically anywhere, and the principal argument strongly pressed before us is, that there is a distinction between offences against what may be called crimes against society and what the State may declare as offences in respect of political agitations. The learned Counsel contends that the offences in question are just acts of civil disobedience by certain citizens, whose moral convictions in regard to certain policies of the Government, compelled them to protest against them openly and publicly. These citizens willingly courted imprisonment for their convictions. It is submitted that the motives which led these people to the acts in question cannot be stated to be base ones, nor the persons be labelled to be of a depraved character.

43. Our learned brother, Srinivasan, J., who dealt with the writ petition, out of which the Writ Appeal arises, has observed:

The Constitution, it is said, embodies high moral and spiritual values, to which an Indian citizen pays homage, and the public destruction of such a document, whatever might be the reason which impelled the person doing so, cannot but wound the deep-seated sentiments of the members of the public. It may be that there is one section of the public which does not regard the Constitution in that light, but when there is an equally large, if not larger, section of the public, which does so, the act of burning the Constitution was intended mainly to wound the susceptibilities of a large section of the public.

44. We shall first consider the three cases of this Court, which have dealt with the question of moral delinquency or turpitude with reference to the Panchayat Act. Of the three cases, the only case, where there is reference to an argument based upon the offence being of a political character, is the one in Chelladurai and Others Vs. Sornam alias Eswaramurthy and Others, . But the actual conviction in that case was one u/s 120-B read with Sections 109 and 129 of the Indian Penal Code, and Sections 4 and 5 of the Explosive Substances Act, and the question did not really arise for consideration, as It was found that the revision petition could be disposed of on another point. The learned Judge, Anantanarayanan, J., in examining as to when an offence could be stated to be one Involving moral delinquency, observed:

For, we shall then have necessarily to be embroiled in the argument what a '' political'' offence is, and that would be even more difficult to define. In my view, applying the approach of negative exclusion, which may be fruitful in such cases, it is clear enough that all technical and formal offences, and offences not involving met is tea would be automatically excluded. Next, an offence like a rash and negligent act causing the death of a person, may be presumably excluded, for though rashness and negligence are states of mind, they do not involve a guilty intention, and are not states of mind per se transgressing, the moral law. But where such an offence as criminal conspiracy, or waging war against an established Government (Government of India--Section 121, Indian Penal Code), is committed it is very difficult to accept the validity of the decision that ''moral delinquency'' is not involved, because the motive is not personal, but political. After a careful consideration of this aspect, I am inclined to feel that any grave criminal offence, which involves an element of guilty knowledge, and which thus transgresses the majesty of the law of crimes, will necessarily involve also an element of moral delinquency '' because of its anti-social content.

45. While in a broad and general way the principle thus set out may be helpful, difficulty will arise in finding out the content of the expression " grave criminal offence " But the other element indicated, viz., anti-social content, is a matter which the Courts, which ultimately will have to find out which offence involves moral delinquency, can examine, when the relevant matters also are placed before them.

46. The next decision, Easwaramurthy v. District Munsif, Ambasamudaram (1964) 2 M.L.J. 426 : (1964) 1 M.L.J. 590, arose, out of the further stages of the above case. It is found from this case that the acts . of which the petitioner was held guilty involved offences of criminal conspiracy to set fire to and blow up railway bridges and the like. Clearly, the anti-social element is apparent. The offences, though it may be in pursuance of a political object, are grave offences under the Indian Penal Code.

47. In the third case, Karuppiah v. Inspector of Panchayat and Collector of Ramanathapuram (1965) 2 M.L.J. 137, when a Receiver in a Civil proceeding was taking steps to remove paddy from a place where it had been stored, the Villagers prevented the Receiver from discharging his duties. The president of the Panchayat was part of that crowd, and in the criminal case, the learned Sessions Judge of Ramanathapuram had observed:

He (the President) had no personal interest in the matter and he has joined the unlawful assembly Of the other accused in protesting against the carrying away of the paddy, as he was the President of the local Panchayat interested in the other accused.

48. When considering the question whether the President had become disqualified by reason of the conviction, and whether the offence was one involving moral turptitude, the learned Judge, Venkatadri, J., after referring to the two cases above

cited, held that neither the conviction nor the punishment of the President in that case of imprisonment till rising of the Court, involved any moral delinquency.

49. The Supreme Court had occasion to consider what would amount to moral turpitude or delinquency, when examining whether an Advocate was guilty of professional misconduct in In re '' P'' an Advocate (1963) 2 S.C.J. 708 : AIR 1963 S.C. 1313 . Therein it is observed:

It may be that before condemning an. Advocate for misconduct, Courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression '' moral turpitude or delinquency '' is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude.

50. In Ramanatha Iyer''s Law Lexicon of India we find moral turpitude explained thug:

Anything done contrary to justice, honesty, principle or good morals; an act of baseness, vileness, or depravity in the private and social duties, which a man owes to his fellow man, or to society in general contrary to the accepted and customary rule of right and duty between man and man....

51. In Corpus Juris Secundum, Volume 53, while dealing with libel and slander, at page 104, referring to what crimes involve moral turpitude, it is stated:

What crimes involve moral turpitude has been the subject or vast contention, extending from the view that moral turpitude inheres in every wilful breach of criminal statute to the position that only those crimes that present such vileness and depravity as arouse the abhorrence of all mankind are intended. A scriptural inhibition has been thought sufficient by some Courts conclusively to ascribe moral turpitude.... depends on the conception of the community. It has been defined as an act of base-ness, vileness, or depravity in the private and social duties which a man owes to his fellow man or society in general, contrary to the accepted and customary rule of right and duty between man and man.

In the foot-note it is stated thus:

Moral turpitude need not be inherent in the nature of the crime itself. It may spring, as here, from an alleged violation of a criminal statute prohibiting under pain of punishment the commission of certain acts.

52. A reference to the American authorities shows that the term moral turpitude which is not different from moral delinquency, is not a new term, but has been the subject of consideration for centuries. It is found in Roman Law. In ancient Rome infamia was a loss of civic honour and was a device by the Preators to enforce

equitable duties : and turpitude meant that one was in fact unworthy of civic honour, so that this circumstance was to be taken into account in the exercise of discretion, for example, in the appointment of a guardian. The censor had power in the Roman Republic to note persons as infamous where their conduct or mode of life was out of accord with good morals. Bone mores were an agency of social control preserved and given effect by censorian power.

53. In Corpus Juris Secundum, Volume 58, giving some of the definitions of moral turpitude '', it is stated (at page 1201):

The term has also been defined as meaning anything done contrary to justice, honesty, principle, or good morals, anything done knowingly contrary to justice, honesty or good morals.

Proceeding, it is found stated therein:

As a legal term, moral turpitude is defined as the quality of a crime involving grave infringement the moral sentiment of the community as distinguished from statutory mala prohibita.

After further definitions, it is stated:

Considerable difficulty has been experienced in application of the term '' Moral turpitude'' to the facts of each case. One of the reasons for this is that the term does not refer to legal standards, but rather has reference largley to moral character and state of mind; to those changing morals standards of conduct which society has set up for itself through the centuries. Since standards of moral differ from time to time and at different places, and the concept of moral turpitude depends to some extent on the state of public morals, and is to be determined by the state of public morals and the common sense of the community, and since '' moral turpitude '' is a term which conforms to, and is consonant with, the state of public morals, it never can remain stationary, but it may vary according to the community or the times. It follows therefore that moral turpitude is adaptive, and is a somewhat loose expression, the meaning of which must be left to the process of judicial inclusion and exclusion as the cases are reached and as the standards of society change.

This statement, in our view, sets out the true position.

54. The phrase '' moral turpitude '' has been widely employed in the United States in legislation dealing with immigration, disbarment, revocation of physicians'' licences, defamation, and credibility of witnesses, and latitude of interpretation enabled Courts to punish offenders who might under a less elastic terminology virtually escape unscathed.

55. In Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, , a question for consideration was whether the giving of false information to a public servant, an offence u/s 182 of the Penal Code, involved moral turpitude and so

disentitled a person to get elected to the Panchayat. The learned Judge, Tandon, J., observes in this connection (page 74):

Every false statement made by a person may not be moral turpitude, but it would be so, if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If, therefore, the individual charged with a certain conduct owes a duty either to another individual or to the society in general, to act in a specific manner or not to so act, and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

56. The question as to when an offence could be considered as involving moral turpitude has been the subject of detailed consideration by a Full Bench of the Allahabad High Court, in Buddha Pitai Vs. Sub-Divisional Officer Malihabad and Others, , where a candidate for Panchayat election had been convicted under the Prevention of Food Adulteration Act, a social legislation, for vending an article of food containing prohibited colouring matter. The learned Chief Justice and Sharma, J., took the view that the offence in question did not involve moral turpitude, while the other learned Judge differed. The learned Chief Justice observes (at page 386):

So an Act which is not immoral may be punished as an offence. The duty not to use metanile yellow as a colouring matter in a food article arises exclusively from a statutory provision and there is no element in it which can be said to be not capable of legal enforcement or cognizance. It follows that there is nothing immoral in the use of metanile yellow in a food article.... I consider it illogical to hold that every offence made punishable under the Act involves moral turpitude just because the object behind the Act is to prevent adulteration of food. Every act of mixing a substance with an article of food is not necessarily immoral. Whether it is or not would depend upon the motive; if the motive is greed it may be immoral, but not if it is simply to make the article more attractive or more delicious. When a person mixes a prohibited colouring matter in an article of food he may do it only to make it more attractive or more delicious.

The other learned Judge, Beg, J., who dissented from his colleagues in the opinion, observes (page 393):

The expression offence involving moral turpitude'' in Clause (A) of Section 5-A of the Act to my mind merely means that the offence should be such as to have the effect of embarrassing a man socially by lowering him in public estimation. If an offence is such that the community regards a person convicted of such an offence as one who has committed breach of social duties or obligations which a man owes to his fellowman or one who has acted dishonestly or against the established moral standards of honesty and integrity of accepted rules of good conduct, then conviction for such an offence would involve moral turpitude. The important

question, therefore, is not what the ingredients of the offence are, but how the community at large views the offence.

The learned Judge, Sharma, J., remarks (page 400):

One of the tests for determining the nature of the offence is to see whether it shocks the conscience of or is scorned at by the public or the society at large. Whether an offence involves moral turpitude will depend on its nature and the circumstances in which it is committed. An offence of a certain class may generally be considered to involve moral turpitude, but may not be so if committed in particular circumstances....

It will be seen that substantially the approach is the same, the difference comes in the application to particular facts. While we agree with the above observations of the learned Judge, Sharma, J., we find it difficult to follow up with one of the illustrations given. We cannot agree that a murder, if committed in a spirit of patriotism, will be an exception. It may be that patriots of the revolutionary type, who had committed murders of alien rulers, might have been applauded by sections of the community as heroes. But murder will not cease to be murder, if it is an offence under the Penal Code. Killing is permitted in war, but not in times of peace. An assassin will never be applauded by right-thinking men, and certainly the moral Code of India, as we see it does not approve of it. Nor can we see any exception in respect of offences by political parties in furtherance of political agitations. There may be all sorts of political organisations or forces in a country and members of them may commit all sorts of infractions of the criminal law in the belief that by so doing they will be furthering their political ends. But if there is an established Government, standing apart, concerned in the enforcement of the criminal law, we cannot see how there can be a blanket exception, in respect of political crimes. Nor is it possible to define with precision what a political crime is; certainly it is not just a crime by a politician. The so-called political crimes too will have to be judged in the light of the principles above enunciated-whether the offences are shocking and abhorrent to a large body of right-minded citizens.

57. We may here usefully refer to a passage from Rescoe Pound''s Jurisprudence, Volume II, Part 3, at page 269:

At the end of the eighteenth century natural law jurists had much to say about a ''right of revolution'', or, if one is to use juristic terminology, for a political idea, a liberty of revolution. Analytical jurists, on the other hand, have been zealous to point out that resistance to a law may be moral but cannot be legal. The '' right of revolution '' depends upon the natural law idea that the obligation of a legal precept depends upon its conformity to a moral precept; upon the political juristic theory that the individual conscience is the ultimate moral and hence legal arbiter. This way of thinking belongs to the extreme abstract individualism of the end of the eighteenth century which took no account of the social interest in the security of

political institutions as social institutions. It made the individual the final Judge of his legal as well as of his moral duty to yield obedience to political authority.

Surely in no modern State can the individual contend that he is the final judge of his legal as well as of his moral duty.

58. It is difficult to postulate and lay down any hard and fast rule or enunciate any cut-and-dried principle as to what crimes may be said to involve moral delinquency. As a concept, it does not lend itself to any precise definition. Frankly, it depends on the ultimate authority which has to struggle to make articulate the norm or Standard of moral behaviour which society expects at any particular period, in any particular case. A fair working rule may be phrased thus : Morals and standards of social behaviour, the duties which one human owes to his fellow being or to the society, are potential materials for the legislator, and, if the breach of the then current moral or social code is also, according to law, an offence, the offence could generally, without probe into its innate character, be held to involve moral delinquency. Difficulty will arise in analysing what laws reflect the moral sense of the community and drawing the line between offences involving moral turpitude, that is, containing in their ingredient an element of lapse from moral standards, and those not so tainted. Also laws are generally permanent, but moral ideas and Standards change, and at times change very fast. Law lags behind, and antiquated laws may stand unchanged penalising what a progressive advanced society considers highly moral and ethical. Some laws may have no relation to ethics or morals, others may have relation to moral values, but in advance of the moral sense of the generality of the body politic. Again, standards in certain facets of moral conduct, and probity would differ according to the place which the delinquent fills, or is to fill in society, his trade, occupation or profession. Higher standards, and sometimes the highest standards of probity and good conduct are called for in certain professions and places of office and power. That heavy punishments are provided for particular offences and law considers them as grave crimes may not always be conclusive of the existence of moral turpitude in the offence, though it may indicate that the act must be inherently of the vilest character. Nor can the severity of the punishment actually meted out in any particular case, or its lightness, determine the issue one way or the other. One element there must be for an offence to take in the taint of moral turpitude-the act must be regarded as immoral or disreputable, unworthy and discreditable in an honest citizen, and discountenanced by society, regardless of whether the act is punished by law as an offence. But bad motive is not a necessary ingredient for being guilty of moral turpitude; a man''s view may be perverted and a negation of what society at large considers as moral. The following passage from State v. Malusky 230 N.W. 735 : 71 A.L.R. 190, in Corpus Juris Secundum, Volume 58, at page 1204 is worth quoting in this context:

However much every man may be answerable for his acts to his own conscience, society cannot permit each individual to say for it what is moral and what is immoral. To him who lives only for the gratification of his appetites, there is no immorality in doing so. Some standard must exist according to which the determination as to whether act or conduct is moral or immoral is to be made. That standard is public sentiment-the expression of the public conscience. It may be manifest, unwritten, and more or less nebulous, as legend, as tradition, as opinion, as custom, and finally crystallised, written as the law. Thus the standard is fixed by the consensus of opinion, the judgment of the majority. When the majority is slight, there is, of course, greater opposition on the part of the minority to the standard. The majority may become the minority and the standard change. But, so long as it is established, measurement must be made according to its terms.

59. On ultimate analysis the position resolves to this : whenever the question arises whether a particular offence involves moral delinquency, the particular case will have to be decided on its own facts, and the conclusion will have to be in accordance with the public morals of the time and the commonsense of the community as ultimately judicially interpreted. Here again, the context and the purpose for which the character of the offence has to be determined will have a bearing on the matter. The question has to be approached not in an abstract fashion, but bearing in mind the implications of the particular offence, and the requirements and object of the statute for which the moral element has to be assessed.

60. Applying these principles, we have no hesitation in holding that the offence in question of which the petitioners have been found guilty are offences involving moral delinquency. The phrase '' moral delinquency '' in Section 25(1) of the Panchayat Act cannot be given a narrow construction. Any offence that would have the effect of embarrassing a man socially by lowering him in public estimation and affecting his reputation must be held to be an offence involving moral delinquency under that provision. We have earlier discussed the nature of the offence in question; the offence is a mala in se, and a person who acts in callous disregard of the just and natural feelings and sentiments of large sections of the public and shocks their conscience, must forfeit all claim to their esteem. While it would be open to any citizen to agitate in a constitutional manner for amendment of the Constitution, the Constitution itself providing for its amendment, the Constitution as such will be entitled to the highest regard and respect. After the elections, members of the panchayat are, u/s 27-A of the Panchayat Act, required to take oath or affirmation to bear true faith and allegiance to the Constitution of India as by law established, and so the petitioners, if elected, will have to swear or affirm faith and allegiance to the Constitution of India as by law established. How can they honestly reconcile themselves to swear allegiance to the Constitution, if they wilfully insult the Constitution ? In our view, when a person is convicted for an offence u/s 5 of the Insults to National Honour Act, and sentenced to imprisonment, Section 25 of the Panchayat Act of 1958 would clearly ban the entry of such a person into the body of

the panchayat as its member

61. The facts and circumstances of the two cases also do not give room for a different conclusion. The appellant in W.A. No. 260 of 1965 was specifically charged with the intention of causing insult to the Constitution of India at a public place, may be in pursuance of the anti-Hindi agitation of the D.M.K. party. It is seen from the records that the appellant is a prominent member of the said party and there was no denial of the charge. He pleaded guilty and was convicted to undergo R.I. for six months. He has not chosen to question the validity of the conviction on merits. There was no plea then that on the facts there could be no conviction. In the other case, the petitioner was charged along with others under Sections 120-B, 143 and 188, Indian Penal Code read with Section 109, Indian Penal Code, and Sections 5 and 6 of the impugned Act XIV of 1957. The petitioner along with four others is stated to have marched in a body to a public place and there taking out a copy oft he Part XVII of the Constitution set fire to it with match sticks. The petitioner was warned by the police and there was a police ban u/s 30 of the Police Act. Notice had been issued to the petitioner not to take out any procession or hold a public meeting without a licence. The petitioner with others had sent previous intimation to the Police that they would be publicly burning a copy of the Constitution. As in the other case the petitioner pleaded guilty and had been sentenced to six months'' R.I. The conviction was not challenged either on law or on the merits and the petitioner has undergone the period of imprisonment. In these circumstances on the principles discussed above, we have to hold that the petitioners in the two cases have been convicted for offences involving moral turpitude.

62. It was pointed out that in some cases nomination papers of persons similarly convicted have been accepted. We do not know the actual facts or the circumstances in which the offence was found in those cases. We have held a mere burning of a copy of the Constitution in the absence of any intention to desecrate or insult the Constitution will not be an offence under the Act. The fact that in certain other cases the nomination papers have not been rejected, is in the circumstances neither here nor there. No doubt in W.P. No. 751 of 1965 the Election Officer who had to exercise his discretion and scrutinise the nomination paper has surrendered his discretion to the dictates of the Returning Officer. But we see no useful purpose can be served by quashing the order of the rejection of the petitioner''s nomination paper in the circumstances of the case. We have to hold on the merits that the nomination paper could be validly rejected, the offence of which the petitioner has been convicted being one involving moral delinquency. Besides admittedly no election has been held for the ward in question.

63. In the result Writ Appeal No. 260 of 1965 fails and is dismissed with costs of the Government Pleader (Additional). Writ Petition No. 751 of 1965 is also dismissed and the Rule nisi is discharged, but in the circumstances there will be no order as to costs.